

ORDERS FROM OCTOBER 6, 1980, THROUGH  
FEBRUARY 10, 1981

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OCTOBER 6, 1980

*Appeals Dismissed*

No. 79-1483. SUPERMARKETS GENERAL CORP., T/A HOCHSCHILD KOHN DEPARTMENT STORE *v.* MARYLAND. Appeal from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 286 Md. 611, 409 A. 2d 250.

No. 79-1594. BOWEN *v.* BOWEN. Appeal from Ct. Civ. App. Tex., 11th Sup. Jud. Dist., dismissed for want of substantial federal question.

No. 79-1703. FULKERSON *v.* STATE BAR OF CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question.

No. 79-1772. CALDERONE *v.* FERRIGNO, ADMINISTRATOR, BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF NEW YORK CITY, ET AL. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of substantial federal question. Reported below: 69 App. Div. 2d 901, 416 N. Y. S. 2d 158.

No. 79-1776. HARDING *v.* MELTON, COMMISSIONER OF NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 49 N. Y. 2d 739, 402 N. E. 2d 1171.

No. 79-1819. UNITED ILLUMINATING CO. ET AL. *v.* CITY OF NEW HAVEN ET AL. Appeal from Sup. Ct. Conn. dismissed for want of substantial federal question. Reported below: 179 Conn. 627, 427 A. 2d 830.

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No. 79-1880. *LAKE LAWRENCE, INC. v. THURSTON COUNTY ET AL.* Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 92 Wash. 2d 656, 601 P. 2d 494.

No. 79-1989. *CITIZENS PARTY ET AL. v. MANCHIN, SECRETARY OF STATE OF WEST VIRGINIA.* Appeal from Sup. Ct. App. W. Va. dismissed for want of substantial federal question. Reported below: — W. Va. —, 270 S. E. 2d 634.

No. 79-2028. *ALDENS, INC. v. TULLY ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 49 N. Y. 2d 525, 404 N. E. 2d 703.

No. 79-2066. *BEER ET AL. v. AUSTIN, SECRETARY OF STATE OF MICHIGAN, ET AL.* Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. Reported below: 408 Mich. 957.

No. 79-6281. *IN RE ADOPTION OF E. M. A. (DIXON, APPELLANT).* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 487 Pa. 152, 409 A. 2d 10.

No. 79-6825. *CATER v. ILLINOIS.* Appeal from App. Ct. Ill., 3d Dist., dismissed for want of substantial federal question. Reported below: 78 Ill. App. 3d 983, 398 N. E. 2d 28.

No. 80-21. *HEART MINISTRIES, INC., ET AL. v. KANSAS EX REL. O'SULLIVAN, COUNTY ATTORNEY, RENO COUNTY, KANSAS.* Appeal from Sup. Ct. Kan. dismissed for want of substantial federal question. Reported below: 227 Kan. 244, 607 P. 2d 1102.

No. 80-32. *HYNNING v. DUFIEF MORTGAGE, INC., ET AL.* Appeal from Cir. Ct. Arlington County, Va., dismissed for want of substantial federal question.

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No. 80-51. *BRIDGES v. VIRGINIA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION*. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question. Reported below: 220 Va. lxvii.

No. 80-61. *FULTZ v. KENTUCKY*. Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 596 S. W. 2d 28.

No. 80-90. *NATIONAL WOOD PRESERVERS, INC. v. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL.*; and

No. 80-98. *ROGERS ET UX. v. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL.* Appeals from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 489 Pa. 221, 414 A. 2d 37.

No. 80-144. *UNITED FEDERATION OF TEACHERS WELFARE FUND v. STATE HUMAN RIGHTS APPEAL BOARD ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of substantial federal question.

No. 80-5065. *JEROKOVITCH v. RICCIUTI ET AL.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 488 Pa. 537, 412 A. 2d 1106.

No. 79-1530. *TOWN v. RENO, STATE ATTORNEY OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, 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: 377 So. 2d 648.

No. 79-1889. *RIVERA v. OREGON STATE EMPLOYEES ASSN. ET AL.* Appeal from D. C. Ore. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 80-5093. *PAYNE v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 596 S. W. 2d 911.

No. 79-1969. *ACKERLEY COMMUNICATIONS, INC., ET AL. v. CITY OF SEATTLE ET AL.*; and

No. 79-1972. *DIAMOND PARKING, INC. v. CITY OF SEATTLE*. Appeals from Sup. Ct. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied. Reported below: 92 Wash. 2d 905, 602 P. 2d 1177.

No. 79-2026. *SALORIO ET AL. v. GLASER, DIRECTOR, DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF NEW JERSEY*. Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 82 N. J. 482, 414 A. 2d 943.

No. 79-6626. *WILLIAMS v. MISSISSIPPI*. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 608 F. 2d 1021.

No. 79-6634. *LINDEN v. ST. MARTIN'S PRESS ET AL.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6678. *DONNELLY v. MIDDLESEX SUPERIOR COURT ET AL.* Appeal from Ct. App. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Mass. App. —, 399 N. E. 2d 37.

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No. 79-6646. *PRENZLER v. REED*. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6652. *RODRIGUEZ v. UNITED STATES ARMY ET AL.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6672. *CASEY v. AULT, CORRECTIONS DIRECTOR*. Appeal from C. A. 10th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6820. *BRACKETT v. ESTELLE, CORRECTIONS DIRECTOR*. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6847. *HARSHFIELD v. RICKETTS, CORRECTIONS DIRECTOR, ET AL.* Appeal from C. A. 10th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6866. *MASONE v. MASONE*. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 49 N. Y. 2d 916, 405 N. E. 2d 713.

No. 79-6898. *GRADY ET AL. v. MCLEAN*. Appeal from App. Div., Sup. Ct. N. Y., 4th 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: 73 App. Div. 2d 1067, 425 N. Y. S. 2d 439.

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No. 80-138. *VANDERLINDEN, EXECUTOR v. VANDERLINDEN, EXECUTOR*. Appeal from Ct. App. Iowa dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 297 N. W. 2d 382.

No. 80-80. *PRINCE GEORGE'S PROPERTIES, INC. v. PRINCE GEORGE'S COUNTY, MARYLAND, ET AL.* Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 44 Md. App. 759.

No. 80-5018. *BRESSLER v. FIRST APPELLATE COURT OF CALIFORNIA, DISTRICT ONE, 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. 80-5079. *REED v. SCHWAB ET AL.* Appeal from Sup. Ct. Ore. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-1720. *DOVE ET AL. v. INDIANA*. Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: — Ind. —, 397 N. E. 2d 580.

No. 79-1846. *NEW HAMPSHIRE ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 616 F. 2d 240.

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No. 79-1722. *PITSENBURGER v. PITSENBURGER*. Appeal from Ct. App. Md. Motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of substantial federal question. Reported below: 287 Md. 20, 410 A. 2d 1052.

No. 79-1865. *OSTRAGER v. STATE BOARD OF CONTROL ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 99 Cal. App. 3d 1, 160 Cal. Rptr. 317.

No. 79-1939. *VARA ET AL. v. CITY OF HOUSTON ET AL.* Appeal from Ct. Civ. App. Tex., 14th Sup. Jud. Dist., dismissed for want of properly presented federal question. Reported below: 583 S. W. 2d 935.

No. 79-2041. *CLAYTON v. CENTRAL SCHOOL DISTRICT NO. 1 OF THE TOWNS OF CONKLIN ET AL.* Appeal from Ct. App. N. Y. dismissed for want of properly presented federal question. Reported below: 49 N. Y. 2d 888, 405 N. E. 2d 235.

No. 79-6519. *ZACKAI v. BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES FOR CHICAGO STATE UNIVERSITY.* Appeal from Sup. Ct. Ill. dismissed for want of properly presented federal question. Reported below: 78 Ill. 2d 143, 399 N. E. 2d 590.

No. 79-2033. *WOODWARD, ADMINISTRATOR v. BURNHAM CITY HOSPITAL ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 79 Ill. 2d 295, 402 N. E. 2d 560.

No. 80-14. *FAYETTEVILLE STREET CHRISTIAN SCHOOL ET AL. v. NORTH CAROLINA ET AL.* Appeal from Sup. Ct. N. C. dismissed for want of jurisdiction. Reported below: 299 N. C. 351, 261 S. E. 2d 908.

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No. 79-6630. *ROCHE v. BIG MOOSE OIL FIELD TRUCK SERVICE ET AL.* Appeal from Sup. Ct. La. dismissed for want of substantial federal question. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 381 So. 2d 396.

No. 79-6719. *CONRAD v. PENN ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

No. 79-2044. *NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY ET AL. v. HUFSTEDLER, SECRETARY OF EDUCATION, ET AL.* Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction. JUSTICE STEWART took no part in the consideration or decision of this case. Reported below: 489 F. Supp. 1248.

No. 80-77. *LOPEZ, GUARDIAN v. CITY OF DAYTON, OHIO, ET AL.* Appeal from Ct. App. Ohio, Montgomery County, dismissed for want of jurisdiction.

No. 80-125. *MEADS ET AL. v. CARTER, PRESIDENT OF THE UNITED STATES, ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

#### *Vacated and Remanded on Appeal*

No. 79-1938. *MITCHELL, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF UTAH, ET AL. v. D. R.* Appeal from C. A. 10th Cir. Motion of appellee for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Harris v. McRae*, 448 U. S. 297 (1980), and *Williams v. Zbaraz*, 448 U. S. 358 (1980). JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, would affirm the judgment of the United States Court of Appeals for the Tenth Circuit. He therefore dissents and does so for the reasons set forth in the respective dissenting opinions filed by him and JUSTICE BRENNAN in *Harris v. McRae* and its companion cases, 448 U. S., at 348 and 329. Reported below: 617 F. 2d 203.

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*Certiorari Granted—Vacated and Remanded*

No. 79-1557. MASSACHUSETTS *v.* HURLEY. Sup. Jud. Ct. Mass. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan*, 446 U. S. 335 (1980). Reported below: 379 Mass. 456, 405 N. E. 2d 97.

No. 79-1602. MISSOURI *v.* MORGAN. 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: 592 S. W. 2d 796.

No. 79-1751. NEW YORK *v.* CONYERS. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Jenkins v. Anderson*, 447 U. S. 231 (1980). Reported below: 49 N. Y. 2d 174, 400 N. E. 2d 342.

No. 79-1789. COTTON WAREHOUSE ASSN. ET AL. *v.* MARSHALL, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Industrial Union Dept. v. American Petroleum Institute*, 448 U. S. 607 (1980). Reported below: 199 U. S. App. D. C. 54, 617 F. 2d 636.

No. 79-1796. FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* REPRODUCTIVE HEALTH SERVICES ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Harris v. McRae*, 448 U. S. 297 (1980); *Williams v. Zbaraz*, 448 U. S. 358 (1980); and *Maher v. Gagne*, 448 U. S. 122 (1980). JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissents and does so for the reasons set forth in the respective dissenting opinions filed by him

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and JUSTICE BRENNAN in *Harris v. McRae* and its companion cases, 448 U. S., at 348 and 329. Reported below: 614 F. 2d 585.

No. 79-2003. CALIFORNIA *v.* LANPHEAR. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Adams v. Texas*, 448 U. S. 38 (1980). Reported below: 26 Cal. 3d 814, 608 P. 2d 689.

No. 79-2004. FRANZEN ET AL. *v.* SMITH. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Jenkins v. Anderson*, 447 U. S. 231 (1980). Reported below: 618 F. 2d 1204.

No. 79-6514. LEWIS *v.* LOUISIANA STATE PENITENTIARY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan*, 446 U. S. 335 (1980). Reported below: 612 F. 2d 577.

No. 79-6770. GAVIN *v.* ANDERSON, WARDEN. C. A. 6th 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 Attorney General of Michigan in his memorandum filed September 2, 1980. JUSTICE REHNQUIST dissents. Reported below: 620 F. 2d 302.

No. 80-5006. COON *v.* ALABAMA. Sup. Ct. Ala. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Beck v. Alabama*, 447 U. S. 625 (1980). Reported below: 380 So. 2d 990.

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*Certiorari Dismissed*

No. 79-1996. DISTRICT ATTORNEY OF SACRAMENTO COUNTY *v.* SACRAMENTO COUNTY CIVIL SERVICE COMMISSION ET AL. Sup. Ct. Cal. Certiorari dismissed as moot. Reported below: 26 Cal. 3d 257, 604 P. 2d 1365.

No. 80-5122. BROWNELL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari dismissed for want of jurisdiction. Reported below: 79 Ill. 2d 508, 404 N. E. 2d 181.

*Miscellaneous Orders*

No. A-1020 (O. T. 1979). GIOVINAZZI *v.* NEW JERSEY. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-1177 (O. T. 1979). JAFFER *v.* CITY OF MIAMI ET AL. Cir. Ct. Fla., Dade County. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. A-161. VON MEDLIN ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ (COUNTY OF SANTA CRUZ, REAL PARTY IN INTEREST). Application for stay, addressed to JUSTICE POWELL and referred to the Court, denied.

No. A-232. MOBLEY ET AL. *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. Application for stay of adoption, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-238. RAPIDES PARISH SCHOOL BOARD ET AL. *v.* VALLEY ET AL. D. C. W. D. La. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 5, Orig. UNITED STATES *v.* CALIFORNIA. The Solicitor General is requested to file a response to the petition for rehearing within 30 days. JUSTICE MARSHALL took no part in the consideration or decision of this order. [For earlier decision herein, see, *e. g.*, 447 U. S. 1.]

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No. 1, Orig. WISCONSIN ET AL. *v.* ILLINOIS ET AL.;  
No. 2, Orig. MICHIGAN *v.* ILLINOIS ET AL.; and  
No. 3, Orig. NEW YORK *v.* ILLINOIS ET AL. Report of the Special Master received and ordered filed. Exceptions, if any, to the report may be filed within 14 days. Replies, if any, to the exceptions may be filed within seven days. Report of the Special Master with respect to costs received and ordered filed. JUSTICE MARSHALL took no part in the consideration or decision of these orders. [For earlier order herein, see, *e. g.*, 441 U. S. 921.]

No. 83, Orig. MARYLAND ET AL. *v.* LOUISIANA. Report of the Special Master on Motions of the Plaintiffs for Judgment on the Pleadings and of the Defendant for Dismissal of the Complaint received and ordered filed. Report of the Special Master filed May 14, 1980, and Report of the Special Master filed October 6, 1980, are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 447 U. S. 902.]

No. 78-1841. CUYLER, CORRECTIONAL SUPERINTENDENT, ET AL. *v.* ADAMS. C. A. 3d Cir. [Certiorari granted, 444 U. S. 1069.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 79-395. UNITED STATES *v.* MORRISON. C. A. 3d Cir. [Certiorari granted, 448 U. S. 906.] Motion of respondent for appointment of counsel granted, and it is ordered that Salvatore J. Cucinotto, Esquire, of Philadelphia, Pa., be appointed to serve as counsel for respondent in this case.

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 permit Andrew J. Levander, Esquire, to present oral argument *pro hac vice* granted.

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No. 79-408. CITY OF MILWAUKEE ET AL. *v.* ILLINOIS ET AL. C. A. 7th Cir. [Certiorari granted, 445 U. S. 926.] Motion of the Solicitor General to permit Andrew J. Levander, Esquire, to present oral argument *pro hac vice* granted.

No. 79-900. FEDERAL TRADE COMMISSION ET AL. *v.* STANDARD OIL COMPANY OF CALIFORNIA. C. A. 9th Cir. [Certiorari granted, 445 U. S. 903.] Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 79-983. UNITED STATES *v.* WILL ET AL. D. C. N. D. Ill. [Probable jurisdiction postponed, 444 U. S. 1068]; and

No. 79-1689. UNITED STATES *v.* WILL ET AL. D. C. N. D. Ill. [Probable jurisdiction postponed, 447 U. S. 919.] Motion of appellees for divided argument granted.

No. 79-1260. CHANDLER ET AL. *v.* FLORIDA. Sup. Ct. Fla. [Probable jurisdiction noted, 446 U. S. 907.] Motion of CBS, Inc., for leave to file a brief as *amicus curiae* granted. Motion of Post-Newsweek Stations, Florida, Inc., for leave to participate in oral argument as *amicus curiae* denied.

No. 79-1266. STEADMAN *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 5th Cir. [Certiorari granted, 446 U. S. 917.] Motions of Securities Industry Association and National Committee of Discount Security Brokers for leave to participate in oral argument as *amici curiae* denied.

No. 79-1356. JOHNSON ET AL. *v.* BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL. C. A. 7th Cir. [Certiorari granted, 448 U. S. 910.] Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted, and 15 additional minutes allotted for that purpose. Respondents also allotted 15 additional minutes for oral argument.

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No. 79-1336. CHICAGO & NORTH WESTERN TRANSPORTATION Co. v. KALO BRICK & TILE Co. Ct. App. Iowa. [Certiorari granted, 446 U. S. 951.] Motion of the Solicitor General for additional time for oral argument as *amicus curiae* granted, and five additional minutes allotted for that purpose. Respondent also allotted an additional five minutes for oral argument.

No. 79-1404. PENNHURST STATE SCHOOL AND HOSPITAL ET AL. v. HALDERMAN ET AL.;

No. 79-1408. MAYOR OF PHILADELPHIA ET AL. v. HALDERMAN ET AL.;

No. 79-1414. PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS ET AL. v. PENNHURST STATE SCHOOL AND HOSPITAL ET AL.;

No. 79-1415. COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATOR FOR BUCKS COUNTY ET AL. v. HALDERMAN ET AL.; and

No. 79-1489. PENNHURST PARENTS-STAFF ASSN. v. HALDERMAN ET AL. C. A. 3d Cir. [Certiorari granted, 447 U. S. 904.] Motion of petitioners to dispense with printing appendix denied.

No. 79-1515. UNITED STATES v. SWANK ET AL. Ct. Cl. [Certiorari granted, 446 U. S. 934.] Motions of respondents for additional time for oral argument and for divided argument denied.

No. 79-1896. ARKANSAS LOUISIANA GAS Co. v. HALL ET AL. Ct. App. La., 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE STEWART took no part in the consideration or decision of this order.

No. 79-6436. RAY v. SOWDERS, REFORMATORY SUPERINTENDENT, 446 U. S. 969. Respondent is requested to file a response to the petition for rehearing within 30 days.

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No. 79-1601. *SUMNER, WARDEN v. MATA*. C. A. 9th Cir. [Certiorari granted, 448 U. S. 910.] Motion of petitioner to dispense with printing appendix denied. Motion of respondent for appointment of counsel granted, and it is ordered that Ezra Hendon, Esquire, of San Francisco, Cal., be appointed to serve as counsel for respondent in this case.

No. 79-1841. *GRANDDAD BREAD, INC. v. CONTINENTAL BAKING Co.* C. A. 9th Cir.;

No. 79-1856. *EATON CORP. v. FOX*. C. A. 6th Cir.;

No. 79-1922. *CENTRAL OF GEORGIA RAILROAD Co. v. HENDLEY*. C. A. 5th Cir.;

No. 79-1953. *FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL. v. CHAMBLY ET AL.* C. A. 8th Cir.;

No. 79-2059. *AMERICAN ELECTRIC POWER Co., INC., ET AL. v. CITY OF MISHAWAKA, INDIANA, ET AL.* C. A. 7th Cir.;

No. 80-60. *HERWEG ET VIR v. RAY, GOVERNOR OF IOWA, ET AL.* C. A. 8th Cir.; and

No. 80-146. *SHIFFRIN ET AL. v. BRATTON ET AL.* C. A. 7th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 79-1835. *ROBERTS v. RANDALL, U. S. CIRCUIT JUDGE, ET AL.* Motion for leave to file petition for writ of certiorari and/or other relief denied.

No. 79-6689. *STEELMAN v. RICKETTS, CORRECTIONS DIRECTOR, ET AL.*;

No. 79-6896. *STEELMAN v. RICKETTS, CORRECTIONS DIRECTOR, ET AL.*; and

No. 80-5196. *IN RE OLIVER*. Motions for leave to file petitions for writs of habeas corpus denied.

No. 79-1527. *ALASKA ET AL. v. MCGLYNN, U. S. DISTRICT JUDGE*. Motion for leave to file petition for writ of mandamus denied.

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No. 79-1787. LEONARD M. *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT (CALIFORNIA, REAL PARTY IN INTEREST);

No. 79-6742. REINER *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN ET AL.;

No. 79-6748. WHITE *v.* LIVELY, U. S. CIRCUIT JUDGE, ET AL.;

No. 80-163. IN RE CHESTNUTT MANAGEMENT CORP.;

No. 80-5181. IN RE GREEN; and

No. 80-5185. IN RE GREEN. Motions for leave to file petitions for writs of mandamus denied.

No. 79-6648. WRIGHT *v.* UNITED STATES. Motion for leave to file petition for writ of mandamus and other relief denied.

No. 79-6804. JACKSON ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. Motion for leave to file petition for writ of mandamus and prohibition denied.

No. 79-6699. PAUL *v.* STAFFORD, U. S. DISTRICT JUDGE;

No. 80-5155. IN RE HERNANDEZ; and

No. 80-5164. IN RE ALLEN. Motions for leave to file petitions for writs of mandamus and/or prohibition denied.

No. 79-2018. MAROULIS *v.* COUNTY COURT OF DUTCHESS COUNTY ET AL. Motion for leave to file petition for writ of prohibition denied.

*Probable Jurisdiction Noted or Postponed*

No. 79-1740. BALL ET AL. *v.* JAMES ET AL. Appeal from C. A. 9th Cir. Probable jurisdiction noted. Reported below: 613 F. 2d 180.

No. 80-231. ANDRUS, SECRETARY OF THE INTERIOR, ET AL. *v.* INDIANA ET AL. Appeal from D. C. S. D. Ind. Probable jurisdiction noted. Reported below: 501 F. Supp. 452.

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No. 79-1423. WESTERN & SOUTHERN LIFE INSURANCE Co. v. STATE BOARD OF EQUALIZATION OF CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist. Probable jurisdiction noted. Reported below: 99 Cal. App. 3d 410, 159 Cal. Rptr. 539.

No. 79-1538. ANDRUS, SECRETARY OF THE INTERIOR v. VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL.; and

No. 79-1596. VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL. v. ANDRUS, SECRETARY OF THE INTERIOR. Appeals from D. C. W. D. Va. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 483 F. Supp. 425.

No. 79-6779. LITTLE v. STREATER. Appeal from App. Sess., Super. Ct. Conn., New Haven Jud. Dist. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted.

No. 79-1952. CALIFORNIA MEDICAL ASSN. ET AL. v. FEDERAL ELECTION COMMISSION ET AL. Appeal from C. A. 9th Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 641 F. 2d 619.

#### *Certiorari Granted*

No. 79-1429. AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC., ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.; and

No. 79-1583. NATIONAL COTTON COUNCIL OF AMERICA v. MARSHALL, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari in No. 79-1429 granted limited to Questions 1, 2, and 4 presented by the petition. Certiorari in No. 79-1583 granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 199 U. S. App. D. C. 54, 617 F. 2d 636.

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No. 79-1252. CALIFORNIA ET AL. *v.* SIERRA CLUB ET AL.; and

No. 79-1502. KERN COUNTY WATER AGENCY ET AL. *v.* SIERRA CLUB ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 610 F. 2d 581.

No. 79-1890. ANDRUS, SECRETARY OF THE INTERIOR, ET AL. *v.* ALASKA ET AL.; and

No. 79-1904. KENAI PENINSULA BOROUGH *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 612 F. 2d 1210.

No. 79-1977. RODRIGUEZ *v.* COMPASS SHIPPING CO., LTD., ET AL.; PEREZ *v.* ARYA NATIONAL SHIPPING LINE, LTD.; and BARULEC *v.* OVE SKOU, R. A. C. A. 2d Cir. Certiorari granted limited to Questions 1, 2, and 3 presented by the petition. Reported below: 617 F. 2d 955 (first case); 622 F. 2d 575 (second case); 622 F. 2d 572 (third case).

No. 80-45. JOHNSON *v.* J. O. L. Ct. App. D. C. Certiorari granted and case set for oral argument in tandem with No. 79-5932, *Doe et al. v. Delaware* [probable jurisdiction noted, 445 U. S. 942]. Reported below: 409 A. 2d 1073.

No. 80-83. MUSKIE, SECRETARY OF STATE *v.* AGEE. C. A. D. C. Cir. Certiorari granted. Motion of respondent to vacate the stay heretofore entered by THE CHIEF JUSTICE denied. Reported below: 203 U. S. App. D. C. 46, 629 F. 2d 80.

No. 79-1709. ALBERNAZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 612 F. 2d 906.

No. 79-1907. COMMISSIONER OF INTERNAL REVENUE *v.* PORTLAND CEMENT COMPANY OF UTAH. C. A. 10th Cir. Certiorari granted. Reported below: 614 F. 2d 724.

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No. 79-1944. J. TRUETT PAYNE CO., INC. *v.* CHRYSLER MOTORS CORP. C. A. 5th Cir. Certiorari granted. Reported below: 607 F. 2d 1133.

No. 79-2006. BARRENTINE ET AL. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL. C. A. 8th Cir. Motion of respondents to dismiss the memorandum for the United States as *amicus curiae* granted. Certiorari granted. Reported below: 615 F. 2d 1194.

No. 79-6423. LASSITER *v.* DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY. Ct. App. N. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 43 N. C. App. 525, 259 S. E. 2d 336.

No. 79-6740. BULLINGTON *v.* MISSOURI. Sup. Ct. Mo. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 594 S. W. 2d 908.

No. 79-6853. WEBB *v.* WEBB. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 245 Ga. 650, 266 S. E. 2d 463.

No. 80-5060. CARTER *v.* KENTUCKY. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 598 S. W. 2d 763.

No. 79-6624. ROSALES-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 617 F. 2d 1349.

No. 79-6777. STEAGALD *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 606 F. 2d 540 and 615 F. 2d 642.

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No. 80-11. MERRION ET AL., DBA MERRION & BAYLESS, ET AL. *v.* JICARILLA APACHE TRIBE ET AL.; and

No. 80-15. AMOCO PRODUCTION CO. ET AL. *v.* JICARILLA APACHE TRIBE ET AL. C. A. 10th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 617 F. 2d 537.

*Certiorari Denied.* (See also Nos. 79-1530, 79-1846, 79-1889, 79-1969, 79-1972, 79-2026, 79-6626, 79-6634, 79-6646, 79-6652, 79-6672, 79-6678, 79-6820, 79-6847, 79-6866, 79-6898, 80-80, 80-138, 80-5018, and 80-5079, *supra.*)

No. 79-1362. AMERICAN FIDELITY LIFE INSURANCE CO. ET AL. *v.* ALABAMA FARM BUREAU MUTUAL CASUALTY INSURANCE Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 602.

No. 79-1376. PLISS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 577.

No. 79-1389. REINE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 377 So. 2d 131.

No. 79-1406. CITY OF LOS ANGELES *v.* GREATER WESTCHES-TER HOMEOWNERS ASSN. ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 3d 86, 603 P. 2d 1329.

No. 79-1410. DUPART ET AL. *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 383 So. 2d 1226.

No. 79-1494. CLARK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 2d 391.

No. 79-1522. POTASHNICK ET AL. *v.* PORT CITY CONSTRUCTION Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1101.

No. 79-1534. BUTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 1372.

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No. 79-1544. *MOORE v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 588 S. W. 2d 396.

No. 79-1552. *DEPARTMENT OF REVENUE OF ALABAMA ET AL. v. FOX, FORMERLY DBA CHEROKEE CONSTRUCTION CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 178.

No. 79-1560. *GARRETT v. ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 2d 1038.

No. 79-1570. *SMITH v. COTTON BROTHERS BAKING Co., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 738.

No. 79-1580. *WOOTEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 79-1586. *ROBERTS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 644 F. 2d 683.

No. 79-1592. *WEST v. BERGLAND, SECRETARY OF AGRICULTURE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 2d 710.

No. 79-1595. *SHARPE v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 370 So. 2d 42.

No. 79-1599. *SCM CORP. v. FEDERAL TRADE COMMISSION*. C. A. 2d Cir. Certiorari denied. Reported below: 612 F. 2d 707.

No. 79-1610. *DROBENA ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 2d 1095.

No. 79-1611. *METZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 147.

No. 79-1628. *RUBIN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 96 Cal. App. 3d 968, 158 Cal. Rptr. 488.

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No. 79-1635. *SOUTH DAKOTA v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 1190.

No. 79-1641. *CARTER ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 613 F. 2d 256.

No. 79-1643. *BOSCO v. BECK, REGION II ADMINISTRATOR, U. S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 769.

No. 79-1646. *WEST GULF MARITIME ASSN. v. FEDERAL MARITIME COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 59, 610 F. 2d 1001.

No. 79-1647. *KOWALIK ET UX. v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 2d 690.

No. 79-1652. *MILLER v. LANDRIEU, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 58, 610 F. 2d 1000.

No. 79-1653. *WEARLY ET AL. v. FEDERAL TRADE COMMISSION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 2d 662.

No. 79-1655. *HEAVY LIFT SERVICES, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1121.

No. 79-1661. *KEARNEY-NATIONAL, INC. v. BURNDY CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1286.

No. 79-1667. *HANNAHVILLE INDIAN COMMUNITY ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: — Ct. Cl. —, 614 F. 2d 1273.

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No. 79-1672. *LEA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 426.

No. 79-1673. *ACAVINO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 79-1675. *VICKNAIR ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 372.

No. 79-1685. *BREITNER ET AL. v. HARRIS, DBA RICHARD HARRIS BUILDERS*. C. A. 6th Cir. Certiorari denied.

No. 79-1686. *RILEY v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. cxxx.

No. 79-1687. *KNIGHT ET AL. v. HEANEY, U. S. CIRCUIT JUDGE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 1162.

No. 79-1688. *MARCELLO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-1691. *SUBAITANI v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 39 Md. App. 768.

No. 79-1696. *ARNOLD ET AL. v. ELK GROVE VILLAGE*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 79-1697. *ROWAN DRILLING CO. ET AL. v. WINK*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 98.

No. 79-1704. *GRCICH v. JOGODA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1353.

No. 79-1705. *INDEPENDENT BANKERS ASSOCIATION OF AMERICA v. HEIMANN, COMPTROLLER OF THE CURRENCY, UNITED STATES DEPARTMENT OF THE TREASURY*. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 431, 613 F. 2d 1164.

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No. 79-1706. *ANDREWS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 618 F. 2d 646.

No. 79-1707. *DA COSTA ET AL. v. DA COSTA ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 487 Pa. 616, 410 A. 2d 782.

No. 79-1710. *KONDRAT v. BYRON*. Ct. App. Ohio, Lake County. Certiorari denied.

No. 79-1712. *CARPENTERS DISTRICT COUNCIL OF SOUTHERN COLORADO ET AL. v. REID BURTON CONSTRUCTION, INC.* C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 2d 698.

No. 79-1717. *WRITERS GUILD OF AMERICA, WEST, INC., ET AL. v. AMERICAN BROADCASTING COS., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 2d 355.

No. 79-1721. *CARLE FOUNDATION v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 611 F. 2d 1192.

No. 79-1724. *YEH v. SYSTEM DEVELOPMENT CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 778.

No. 79-1725. *CITY OF BOCA RATON v. BOCA VILLAS CORP. ET AL.*; and *CITY OF BOCA RATON v. ARVIDA CORP.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 371 So. 2d 154 (first case); 371 So. 2d 160 (second case).

No. 79-1726. *LEFKOWITZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 1313.

No. 79-1728. *HOT SPRINGS COUNTY SCHOOL DISTRICT NUMBER ONE ET AL. v. WASHAKIE COUNTY SCHOOL DISTRICT NUMBER ONE ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 606 P. 2d 310.

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No. 79-1727. *DILLON v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 221 Ct. Cl. 892, 618 F. 2d 124.

No. 79-1729. *McBRIDE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1358.

No. 79-1730. *COUNTY OF SANTA BARBARA v. COLLINS*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-1731. *STURGIS v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 379 So. 2d 534.

No. 79-1736. *DARNEILLE ET AL. v. CARO*. C. A. 2d Cir. Certiorari denied.

No. 79-1737. *OGLE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 613 F. 2d 233.

No. 79-1741. *WILSON ET AL. v. OMAHA INDIAN TRIBE ET AL.*;

No. 79-1744. *RGP, INC., ET AL. v. OMAHA INDIAN TRIBE ET AL.*; and

No. 79-1779. *IOWA ET AL. v. OMAHA INDIAN TRIBE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 1153.

No. 79-1742. *AMERICAN STERILIZER Co. v. SYBRON CORP. ET AL.*; and

No. 79-1916. *SYBRON CORP. ET AL. v. AMERICAN STERILIZER Co.* C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 890.

No. 79-1746. *KILROY v. COSTLE, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 225.

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No. 79-1748. GENERAL COMMITTEE OF ADJUSTMENT, UNITED TRANSPORTATION UNION *E v.* BURLINGTON NORTHERN, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 161.

No. 79-1752. ADAMS ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 1277.

No. 79-1753. CONWAY ET AL. *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 397 So. 2d 1095.

No. 79-1755. GULLO *v.* LAMBERT ET AL. Cir. Ct. Arlington County, Va. Certiorari denied.

No. 79-1756. KEENAN MOTORS, INC. *v.* A. R. D. CORP. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 287.

No. 79-1759. ELIASON CORP. *v.* NATIONAL SANITATION FOUNDATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 614 F. 2d 126.

No. 79-1761. SEAY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 44 N. C. App. 301, 260 S. E. 2d 786.

No. 79-1762. TOWER LOAN OF MISSISSIPPI, INC. *v.* HARRIS. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 120.

No. 79-1763. CHLORINE INSTITUTE, INC., ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 120.

No. 79-1765. ARTHUR ANDERSEN & Co. *v.* STEWART ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 614 F. 2d 11.

No. 79-1768. MYERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 613 F. 2d 230.

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No. 79-1767. WILMINGTON UNITED NEIGHBORHOODS ET AL. v. U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 112.

No. 79-1769. SANDERS v. OLIVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 611 F. 2d 804.

No. 79-1770. SWINEHART v. UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 853.

No. 79-1771. TRIO PROCESS CORP. ET AL. v. L. GOLDSTEIN'S SONS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 1353.

No. 79-1774. LOOK v. MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 379 Mass. 893, 402 N. E. 2d 470.

No. 79-1775. KONDRAT v. MITROVICH ET AL. Ct. App. Ohio, Lake County. Certiorari denied.

No. 79-1778. FLISK, RECEIVER v. PEOPLES GAS LIGHT & COKE Co. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 79-1781. MOREJON-PACHECO v. UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 1296.

No. 79-1782. SHOEMAKER v. UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 79-1783. SMITH v. OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 79-1785. NORTHERN NATURAL GAS Co. v. PREMIER RESOURCES, LTD. C. A. 10th Cir. Certiorari denied. Reported below: 616 F. 2d 1171.

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No. 79-1786. *SHAFFER v. BOND*. Ct. App. Okla. Certiorari denied.

No. 79-1788. *JUSTAK v. BOCHNOWSKI ET AL.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 391 N. E. 2d 872.

No. 79-1790. *WATSON ET UX. v. COLLEX, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1355.

No. 79-1792. *McALESTER CORP., DBA ALRIDGE HOTEL, ET AL. v. MARSHALL, SECRETARY OF LABOR.* C. A. 10th Cir. Certiorari denied.

No. 79-1793. *HARRISON v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 573.

No. 79-1797. *DONOVAN WIRE & IRON CO. v. WHEELING-PITTSBURGH STEEL CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 614 F. 2d 945.

No. 79-1799. *LAUFGAS v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-1801. *LIBBEY-OWENS-FORD Co. v. EIRHART ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 616 F. 2d 278.

No. 79-1803. *GREEN ET AL. v. LOUISIANA*; and

No. 79-2045. *DUPUIS ET AL. v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 378 So. 2d 934.

No. 79-1804. *GARCIA-JARAMILLO v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 604 F. 2d 1236.

No. 79-1807. *NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1361.

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No. 79-1806. *BISSO TOWBOAT CO. v. BAZILE*. C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 101.

No. 79-1808. *BONFOEY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 816.

No. 79-1811. *DOE ET AL. v. IRWIN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1162.

No. 79-1813. *WEBB ET AL. v. UNITED STATES*; and

No. 79-6782. *JOHNS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 672.

No. 79-1815. *SALOB v. AMBACH, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 756, 423 N. Y. S. 2d 305.

No. 79-1817. *NELIPOWITZ v. CHRISTO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1289.

No. 79-1818. *BEACON NATIONAL INSURANCE CO. ET AL. v. TEXAS STATE BOARD OF INSURANCE ET AL.* Ct. Civ. App. Tex., 3d Sup. Jud. Dist. Certiorari denied. Reported below: 582 S. W. 2d 616.

No. 79-1821. *KESLER v. INDIANA SUPREME COURT DISCIPLINARY COMMISSION*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 397 N. E. 2d 574.

No. 79-1823. *NORTHFIELD CHEESE CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 289.

No. 79-1824. *MALLOW ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-1828. *PAVILONIS v. KING, GOVERNOR OF MASSACHUSETTS, ET AL.*; and *PAVILONIS v. SECRETARY OF EDUCATION*. C. A. 1st Cir. Certiorari denied.

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No. 79-1831. *HECKER v. TOWNSHIP OF DOVER*. Super. Ct. N. J. Certiorari denied.

No. 79-1833. *AKRON, CANTON & YOUNGSTOWN RAILROAD CO. ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 611 F. 2d 1162.

No. 79-1836. *FOWLER ET UX. v. GENERAL DEVELOPMENT CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 98.

No. 79-1837. *ROBINSON v. GRIEVANCE COMMITTEE OF THE SEVENTH JUDICIAL DISTRICT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 2d 209, 420 N. Y. S. 2d 430.

No. 79-1839. *FAZIO ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 1066.

No. 79-1842. *D. J. McDUFFIE, INC., ET AL. v. OLD RELIABLE FIRE INSURANCE CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 145.

No. 79-1843. *MASON ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 222 Ct. Cl. 436, 615 F. 2d 1343.

No. 79-1844. *DEPARTMENT OF NATURAL RESOURCES OF WASHINGTON ET AL. v. THURSTON COUNTY ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 92 Wash. 2d 656, 601 P. 2d 494.

No. 79-1845. *CASTAGNA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 1026.

No. 79-1847. *MASON v. McDOWELL*. C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 770.

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No. 79-1848. RETAIL STORE EMPLOYEES UNION, LOCAL No. 919, ET AL. *v.* UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1291.

No. 79-1849. RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS, INC., ET AL. *v.* NEW YORK STATE TAX COMMISSION ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 72 App. Div. 2d 978, 421 N. Y. S. 2d 752.

No. 79-1850. MARTEN ET AL. *v.* THIES, DIRECTOR, SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 99 Cal. App. 3d 161, 160 Cal. Rptr. 57.

No. 79-1851. BARNDT *v.* WISSAHICKON SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1352.

No. 79-1854. LANGE ET AL. *v.* NATURE CONSERVANCY, INC., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 24 Wash. App. 416, 601 P. 2d 963.

No. 79-1855. EASTALCO ALUMINUM Co. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 44 Md. App. 754.

No. 79-1858. CASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 1111.

No. 79-1859. GREYHOUND CORP. ET AL. *v.* MT. HOOD STAGES, INC., DBA PACIFIC TRAILWAYS. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 394.

No. 79-1860. GOINGS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-1861. EPP ET AL. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

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No. 79-1864. FIUMARA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 79-1866. SKALICKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 1117.

No. 79-1867. JONES *v.* ALEXANDER, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 778.

No. 79-1868. POTTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 384.

No. 79-1869. S & M MATERIALS Co. *v.* SOUTHERN STONE Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 198.

No. 79-1871. CASTILLO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 769.

No. 79-1872. HOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-1873. HERTHEL *v.* UNITED STATES;

No. 79-6673. HOLT *v.* UNITED STATES;

No. 79-6674. JOHNSON *v.* UNITED STATES; and

No. 79-6688. AHLBRAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-1875. ENERGY CONSUMERS & PRODUCERS ASSN., INC. *v.* DEPARTMENT OF ENERGY. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 632 F. 2d 129.

No. 79-1876. BLAKE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 731.

No. 79-1877. UNION OIL COMPANY OF CALIFORNIA *v.* EVANSON ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 619 F. 2d 72.

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No. 79-1879. *BOHACK CORP. v. IOWA BEEF PROCESSORS, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 2d 777.

No. 79-1882. *BOYLAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 359.

No. 79-1884. *WISCONSIN ET AL. v. REESE, TRUSTEE IN BANKRUPTCY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 963.

No. 79-1885. *LAW ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 775.

No. 79-1888. *ORION RESEARCH INC. v. ENVIRONMENTAL PROTECTION AGENCY.* C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 2d 551.

No. 79-1893. *FREEDOM INSTITUTE OF AMERICA ET AL. v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-1894. *PAGNIELLO v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-1897. *G. G. S., INC. v. LINOLEX SYSTEMS, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 110.

No. 79-1898. *L'HOSTE ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 796.

No. 79-1899. *LOUISIANA v. MENNE.* Sup. Ct. La. Certiorari denied. Reported below: 380 So. 2d 14.

No. 79-1900. *FREEMAN v. O'NEAL STEEL, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1123.

No. 79-1902. *ROSENBAUM v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 113.

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No. 79-1903. *BEELER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-1905. *SEA ISLAND BROADCASTING CORPORATION OF SOUTH CAROLINA v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 200 U. S. App. D. C. 187, 627 F. 2d 240.

No. 79-1906. *MAYOR OF BALTIMORE ET AL. v. BARGER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 616 F. 2d 730.

No. 79-1911. *RUTH v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 276 Pa. Super. 631, 424 A. 2d 544.

No. 79-1912. *FULTZ v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 2d 204.

No. 79-1914. *HARBOUR v. HARBOUR*. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 590 S. W. 2d 828.

No. 79-1915. *CITY OF CLEVELAND v. KRUPANSKY, U. S. DISTRICT JUDGE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 619 F. 2d 572 and 576.

No. 79-1917. *CHAPLAIN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 621 F. 2d 1272.

No. 79-1919. *HUWALDT v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 590.

No. 79-1921. *TREASURER, PRINCE GEORGE'S COUNTY, MARYLAND v. WASHINGTON NATIONAL ARENA LIMITED PARTNERSHIP ET AL.* Ct. App. Md. Certiorari denied. Reported below: 287 Md. 38, 410 A. 2d 1060.

No. 79-1923. *AGAPITO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 324.

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No. 79-1924. *INDEPENDENT ORDER OF FORESTERS v. BIER ET AL.* Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 79-1925. *MOUNTAINEER EXCAVATING Co., INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 102.

No. 79-1926. *UNION CAMP CORP. v. SEABOARD COAST LINE RAILROAD Co.* C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 604.

No. 79-1927. *FRANCIS v. UNITED STATES*; and  
No. 80-292. *DE LILLO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 939.

No. 79-1928. *TULLY CORPORATION OF VIRGINIA v. WINTER, A MINOR BY WINTER.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 113.

No. 79-1929. *BANKS ET UX. v. PHILLIPS.* Ct. App. N. C. Certiorari denied. Reported below: 43 N. C. App. 739, 260 S. E. 2d 97.

No. 79-1930. *ALBERNAZ ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 1234.

No. 79-1931. *SANDER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 215.

No. 79-1932. *THORNTON v. EQUIFAX, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 700.

No. 79-1933. *WESLEY v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1297.

No. 79-1934. *DANIELS v. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 615 F. 2d 1367.

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No. 79-1935. *SOUTHERN PACIFIC TRANSPORTATION Co. v. BAILEY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 1385.

No. 79-1936. *MARENO, A MINOR BY MARENO v. WALKER ET AL.* C. A. 2d Cir. Certiorari denied.

No. 79-1937. *WALNUT PROPERTIES, INC. v. LONG BEACH CITY COUNCIL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 100 Cal. App. 3d 1018, 161 Cal. Rptr. 411.

No. 79-1940. *U. S. CABLEVISION CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 341.

No. 79-1942. *SHAFFER v. COOK, JUDGE.* Sup. Ct. Okla. Certiorari denied.

No. 79-1945. *RONCKETTI ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied.

No. 79-1947. *SCHAFFAN ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 614 F. 2d 860.

No. 79-1948. *WINNEBAGO TRIBE OF NEBRASKA v. RAY, DISTRICT ENGINEER, UNITED STATES ARMY CORPS OF ENGINEERS, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 621 F. 2d 269.

No. 79-1949. *KAIN v. S.S. VJAZMA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 577.

No. 79-1950. *BERK, EXECUTRIX v. COUNTY OF LOS ANGELES ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 3d 201, 605 P. 2d 381.

No. 79-1951. *PUCKETT v. PAULDING COUNTY, GEORGIA, BY ITS BOARD OF COMMISSIONERS.* Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 439, 265 S. E. 2d 579.

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No. 79-1954. THOMPSON *v.* J. S. YOUNG CO.; and THOMPSON *v.* OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 1310 (both cases).

No. 79-1955. HAYS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 79-1956. CLEAN LAND AIR WATER CORP. *v.* WASTE SYSTEMS, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 79-1957. PISEL ET UX. *v.* ITT CONTINENTAL BAKING CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 2d 142, 399 N. E. 2d 1243.

No. 79-1958. INDIANA REFRIGERATOR LINES, INC. *v.* WISCONSIN PACKING CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 441.

No. 79-1960. POWERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 2d 317.

No. 79-1961. BEARCE, ADMINISTRATOR, ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 556.

No. 79-1962. MURRAY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 621 F. 2d 1163.

No. 79-1963. PRESIDIO BRIDGE CO. *v.* MUSKIE, SECRETARY OF STATE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 578.

No. 79-1965. COUNTY OF LOS ANGELES ET AL. *v.* MARSHALL, SECRETARY OF LABOR, ET AL; and

No. 80-72. MARSHALL, SECRETARY OF LABOR, ET AL. *v.* COUNTY OF LOS ANGELES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 185, 631 F. 2d 767.

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No. 79-1966. *COLONIAL PENN INSURANCE Co. v. SHOCKLEY*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 233.

No. 79-1968. *GORDON v. BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM ET AL.* C. A. 5th Cir. Certiorari denied.

No. 79-1971. *JACOBSEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 292.

No. 79-1973. *MOLLY MURPHY'S, INC., ET AL. v. MASTERS*. C. A. 10th Cir. Certiorari denied.

No. 79-1974. *LETT'S INDUSTRIES, INC. v. WIERSEMA*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 112.

No. 79-1975. *METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP, MARION COUNTY, INDIANA v. BUCKLEY ET AL.*;

No. 79-2001. *BOWEN, GOVERNOR OF INDIANA, ET AL. v. BUCKLEY ET AL.*;

No. 79-2067. *METROPOLITAN SCHOOL DISTRICT OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA, ET AL. v. BUCKLEY ET AL.*;

No 80-99. *SCHOOL TOWN OF SPEEDWAY, INDIANA, ET AL. v. BUCKLEY ET AL.*;

No. 80-115. *HOUSING AUTHORITY OF THE CITY OF INDIANAPOLIS, INDIANA v. BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA, ET AL.*; and

No. 80-129. *BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA, ET AL. v. METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP, INDIANA, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 637 F. 2d 1101.

No. 79-1976. *RAYMER v. DOUBLEDAY & Co., INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 241.

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No. 79-1978. *WEEREN ET AL. v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 3d 654, 607 P. 2d 1279.

No. 79-1979. *GARRAHY, GOVERNOR OF RHODE ISLAND, ET AL. v. PALMIGIANO ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 616 F. 2d 598.

No. 79-1980. *THOMAS, DBA J & J EXXON, ET AL. v. CITY OF MARIETTA, GEORGIA, ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 485, 265 S. E. 2d 775.

No. 79-1981. *ARRIGALE ET UX. v. INTERNATIONAL FIDELITY INSURANCE Co.* C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1353.

No. 79-1982. *FULCHER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 200 U. S. App. D. C. 121, 626 F. 2d 985.

No. 79-1983. *LOCAL 13889, UNITED STEELWORKERS OF AMERICA v. SMITH ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 1229.

No. 79-1985. *JOURDAIN ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 617 F. 2d 507.

No. 79-1986. *APPLEMAN ET AL. v. BEACH, ASSESSOR OF BERNALILLO COUNTY, ET AL.* Sup. Ct. N. M. Certiorari denied. Reported below: 94 N. M. 237, 608 P. 2d 1119.

No. 79-1987. *YIAMOUIYIANNIS v. CONSUMERS UNION OF THE UNITED STATES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 2d 932.

No. 79-1990. *ARCHER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 978, 406 N. E. 2d 804.

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No. 79-1991. *LOWENSCHUSS v. BLUHDORN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 2d 18.

No. 79-1992. *LAVELLE v. WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 79-1993. *HORAK v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 625 F. 2d 767.

No. 79-1994. *BALANO v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 618 F. 2d 624.

No. 79-1999. *FRANKLIN PROPERTY CO., DBA HILTON INN v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 447.

No. 79-2000. *COHEN v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 489 Pa. 167, 413 A. 2d 1066.

No. 79-2002. *KONSKI ENGINEERS, P. C., ET AL. v. LEVITT, COMPTROLLER OF NEW YORK, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 850, 404 N. E. 2d 1337.

No. 79-2005. *SHARROW v. HOLTZMAN.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1290.

No. 79-2007. *WILLIAMS v. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 441.

No. 79-2008. *SANTA FE LAND IMPROVEMENT Co. v. CITY OF BERKELEY ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 3d 515, 606 P. 2d 362.

No. 79-2011. *ELLIS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 604.

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No. 79-2012. *GALLAGHER v. CHRYSLER CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 613 F. 2d 167.

No. 79-2013. *ANGRIST v. UNITED STATES*; and

No. 79-2017. *WEXLER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 1218.

No. 79-2015. *THOMAS ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 436.

No. 79-2020. *HAMMETT v. ROCKWELL INTERNATIONAL CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1295.

No. 79-2021. *STRAND v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 617 F. 2d 571.

No. 79-2022. *BUCHER ET AL. v. SHUMWAY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 572.

No. 79-2023. *PATINO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 79-2024. *URBATEC v. YUMA COUNTY, ARIZONA.* C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 1216.

No. 79-2025. *STERRITT TRUCKING, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 2d Cir. Certiorari denied.

No. 79-2027. *ANDERSON, LEGAL REPRESENTATIVE OF ANDERSON'S ESTATE, ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 535.

No. 79-2029. *HOEHLING v. UNIVERSAL CITY STUDIOS, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 618 F. 2d 972.

No. 79-2031. *INSURANCE COMPANY OF NORTH AMERICA v. POYNER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 618 F. 2d 1186.

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No. 79-2035. ALLEN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 380 So. 2d 313.

No. 79-2036. FARRI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 579.

No. 79-2037. MISSOURI *v.* NATIONAL ORGANIZATION FOR WOMEN, INC. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 1301.

No. 79-2038. KIMBROUGH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 78 Ill. App. 3d 1200, 406 N. E. 2d 1161.

No. 79-2039. CASASSA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 668, 404 N. E. 2d 1310.

No. 79-2042. BRONSTEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 1327.

No. 79-2043. WIGGINESS, INC., ET AL. *v.* FRUCHTMAN, COMMISSIONER, DEPARTMENT OF BUILDINGS OF NEW YORK CITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1346.

No. 79-2046. DAZET *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 378 So. 2d 1369.

No. 79-2047. SIMMONS *v.* IOWA ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 290 N. W. 2d 589.

No. 79-2048. DYKSTRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 595.

No. 79-2050. CHROME PLATE, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 990.

No. 79-2052. SMITH *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 190, 267 S. E. 2d 826.

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No. 79-2053. *SINN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 415.

No. 79-2055. *MAZUR v. PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari before judgment denied.

No. 79-2057. *POWELL v. NIGRO*. C. A. D. C. Cir. Certiorari denied.

No. 79-2058. *SILVERNAIL v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 25 Wash. App. 185, 605 P. 2d 1279.

No. 79-2061. *ALSOBROOK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 139.

No. 79-2063. *MCILROY ET AL., EXECUTORS v. ARKANSAS ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 268 Ark. 227, 595 S. W. 2d 659.

No. 79-2069. *BULGIER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 472.

No. 79-2070. *0.086 ACRES OF LAND ET AL. v. DEPARTMENT OF TRANSPORTATION OF GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 118, 267 S. E. 2d 651.

No. 79-2071. *SCOTT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 918.

No. 79-2072. *WILLIAMS ET UX. v. NEW YORK STATE HIGHER EDUCATION SERVICES CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 2d 216.

No. 79-2073. *BEHLING ET AL. v. SCHMIDT ET AL., DBA BROWN DEER DEVELOPMENT Co.* Sup. Ct. Wis. Certiorari denied. Reported below: 95 Wis. 2d 731, 291 N. W. 2d 581.

No. 79-2074. *ALLEN v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 382 So. 2d 11.

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No. 79-2075. *WISE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-2076. *YOUNG v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 2d 1281.

No. 79-2077. *NEW YORK WATER SERVICE CORP. v. PUBLIC SERVICE COMMISSION OF NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 706, 405 N. E. 2d 710.

No. 79-2079. *BURGESS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-2081. *INENDINO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 592.

No. 79-2082. *ANNICARO v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 375 So. 2d 860.

No. 79-2083. *UNITED STEELWORKERS OF AMERICA ET AL. v. HOMER D. BRONSON CO.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1287.

No. 79-2084. *SAN ANTONIO PORTLAND CEMENT CO. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 1148.

No. 79-6083. *McCOWAN v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 226 Kan. 752, 602 P. 2d 1363.

No. 79-6236. *GODDARD v. VAUGHN, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below 614 F. 2d 929.

No. 79-6267. *DEWITT v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 286 N. W. 2d 379.

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No. 79-6285. HUDSON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 286 Md. 569, 409 A. 2d 692.

No. 79-6321. BROWN *v.* MITCHELL, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. lxviii.

No. 79-6322. MITCHELL *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 593 S. W. 2d 280.

No. 79-6325. COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 79-6331. SAUNDERS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 401 A. 2d 629.

No. 79-6348. LOWERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-6365. BLADES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 619 P. 2d 875.

No. 79-6372. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 377 So. 2d 1149.

No. 79-6373. RAGLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-6380. INORIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 576.

No. 79-6384. DEBENEDICTIS ET AL. *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 370 So. 2d 37.

No. 79-6385. STALLINGS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 592 S. W. 2d 465.

No. 79-6387. COHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 617 F. 2d 56.

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No. 79-6396. *FLYNN v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 92 Wis. 2d 427, 285 N. W. 2d 710.

No. 79-6403. *LAPA v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-6407. *GANEY v. EDWARDS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 507.

No. 79-6410. *JAMES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 777.

No. 79-6434. *PHELPS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 338, 265 S. E. 2d 53.

No. 79-6447. *HOLMES v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 79-6448. *MARSHALL v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 372 So. 2d 477.

No. 79-6449. *MONTIGUE v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: 288 Ore. 359, 605 P. 2d 656.

No. 79-6453. *McGILL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-6454. *STRUM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 604.

No. 79-6456. *PARTON v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 154.

No. 79-6458. *JOHNSON v. CITY OF BIRMINGHAM, ALABAMA*. Ct. Crim. App. Ala. Certiorari denied.

No. 79-6460. *JORDAN, AKA ADAMS v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: 288 Ore. 391, 605 P. 2d 646.

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No. 79-6467. *WILLIS ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 604.

No. 79-6472. *JONES v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 75 Ill. App. 3d 945, 393 N. E. 2d 1372.

No. 79-6474. *BLACK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 2d 1330.

No. 79-6477. *CLARK v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 592 S. W. 2d 709.

No. 79-6481. *FEISTMAN ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 776.

No. 79-6482. *BRITT ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 152 Ga. App. 695, 263 S. E. 2d 691.

No. 79-6484. *CARO-CARVAJAL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 576.

No. 79-6499. *EAKER v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 380 So. 2d 19.

No. 79-6500. *WARREN v. GOVERNMENT NATIONAL MORTGAGE ASSN. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 2d 1229.

No. 79-6506. *COVINO v. MORRIS, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 79-6507. *MARTINOVSKY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 118.

No. 79-6515. *MASTERS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 1117.

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No. 79-6516. *CADENA v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 1385.

No. 79-6517. *DIAZ v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 75 Ill. App. 3d 387, 394 N. E. 2d 465.

No. 79-6520. *GREEN v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 390 N. E. 2d 1087.

No. 79-6521. *MADRID v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 595 S. W. 2d 106.

No. 79-6522. *ORTEGO v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 382 So. 2d 921.

No. 79-6524. *GENTRY v. SMITH, REFORMATORY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 2d 580.

No. 79-6525. *CEBALLO v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 380 So. 2d 626.

No. 79-6526. *LATHAM v. HARRIS, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 285.

No. 79-6529. *COX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-6530. *HARRIS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 79-6533. *HUANG v. ROSEN ET AL.* Ct. App. D. C. Certiorari denied.

No. 79-6534. *PUSTELNIK v. CANNONITO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

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No. 79-6535. *WITHERS v. LEVINE, CORRECTION COMMISSIONER, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 158.

No. 79-6536. *YOUNG v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 82 N. J. 292, 412 A. 2d 798.

No. 79-6541. *SMITH v. NEW YORK.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 72 App. Div. 2d 636, 421 N. Y. S. 2d 144.

No. 79-6542. *O'HERN v. CHICAGO TYPOGRAPHICAL UNION No. 16 ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 605 F. 2d 559.

No. 79-6543. *LEBLANC v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 2d 1012.

No. 79-6544. *SMITH v. COX, CORRECTIONAL SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 1310.

No. 79-6545. *GORDON v. REDMAN, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 79-6548. *HALL, ADMINISTRATRIX v. PARAMOUNT PICTURES CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 197 U. S. App. D. C. 180, 607 F. 2d 494.

No. 79-6549. *WILLIAMS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 573.

No. 79-6550. *MOSES v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 180, 263 S. E. 2d 916.

No. 79-6552. *ALI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-6553. *MARS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 704.

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No. 79-6554. *LOPEZ v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 79-6555. *CLOUDY v. REARDON*. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 774.

No. 79-6556. *CRAWFORD v. EGELER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 602.

No. 79-6557. *PHIPPS v. ROGERS, SHERIFF*. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 578.

No. 79-6559. *BERRY v. ROBINSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 95.

No. 79-6560. *GOW v. COUNTY OF DADE*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 371 So. 2d 493.

No. 79-6561. *LONG v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 44 Md. App. 757.

No. 79-6562. *KULWIEC v. AIR LINE PILOTS ASSN.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1288.

No. 79-6563. *DAIGLE v. HAWAII*. Sup. Ct. Haw. Certiorari denied.

No. 79-6564. *LARD v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 79-6565. *PHILLIPS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 79-6566. *FELTON v. HARRIS, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 79-6568. *SCOTT v. WARDEN, MARYLAND PENITENTIARY*. Ct. Sp. App. Md. Certiorari denied.

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No. 79-6569. *CAREAGA v. JAMES, JUDGE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 2d 1062.

No. 79-6571. *MUHAMMAD v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 611 F. 2d 375.

No. 79-6573. *BOAG v. CARDWELL, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 79-6575. *ROBINSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 306.

No. 79-6577. *AUZENNE v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 380 So. 2d 626.

No. 79-6578. *FARMER v. CALIFORNIA.* Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 79-6579. *MATTHEWS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 288.

No. 79-6582. *GABALDON v. ROMERO, WARDEN, ET AL.; and CORDOVA ET AL. v. ROMERO, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 2d 1267 (second case).

No. 79-6586. *DANIELS v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 2d 220, 400 N. E. 2d 399.

No. 79-6589. *KING v. MORLEY, JUDGE.* Sup. Ct. Ohio. Certiorari denied.

No. 79-6590. *AMAR v. CALIFORNIA;* and

No. 79-6591. *AMAR v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 79-6593. *HARMAN v. WARE, SHERIFF.* C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1357.

No. 79-6595. *WARD v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 2d 298.

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No. 79-6597. *LAVONTE v. HARBER ET UX.* Ct. App. Ore. Certiorari denied.

No. 79-6600. *BLACKMON v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA.* C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 183.

No. 79-6606. *PRATT v. PARRATT, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 2d 486.

No. 79-6607. *THOMAS v. OHIO\** Sup. Ct. Ohio. Certiorari denied. Reported below: 61 Ohio St. 2d 254, 400 N. E. 2d 897.

No. 79-6613. *GRUZEN v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 267 Ark. 380, 591 S. W. 2d 342.

No. 79-6616. *HOFF v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 81 N. J. 401, 408 A. 2d 795.

No. 79-6617. *LANE ET AL. v. AHUMADA.* Sup. Ct. Miss. Certiorari denied. Reported below: 381 So. 2d 147.

No. 79-6620. *MAXFILL v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 79-6621. *STEVENS v. KIRKPATRICK.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 100.

No. 79-6622. *PURYEAR v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 79-6623. *STEELMAN v. BRAY, SHERIFF.* C. A. 10th Cir. Certiorari denied.

No. 79-6627. *TARKOWSKI v. ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 112.

No. 79-6628. *TARKOWSKI v. COUNTY OF LAKE ET AL.* C. A. 7th Cir. Reported below: 618 F. 2d 114.

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No. 79-6631. *GLEASON v. WYSE, YOUTH CENTER SUPERINTENDENT, ET AL.* C. A. 1st Cir. Certiorari denied.

No. 79-6632. *AMATO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 79-6633. *MATHIS v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 242 Ga. 761, 251 S. E. 2d 305.

No. 79-6635. *ROSS v. FAIRFAX COUNTY GOVERNMENT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 103.

No. 79-6638. *YOUNG, AKA CLOUDY v. SYDOW, CAPTAIN, INDIANA STATE PRISON.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 590.

No. 79-6640. *RAHMAN, AKA MCGEE v. KOEHLER, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 79-6641. *CORBETT v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 722.

No. 79-6642. *McKINLEY v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 73 Ill. App. 3d 1107, 395 N. E. 2d 1246.

No. 79-6643. *FINKLEY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-6644. *CARTE v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

No. 79-6645. *JOHNSON v. NUNES ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1087.

No. 79-6647. *McFARLAND v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 287 N. W. 2d 162.

No. 79-6649. *COLOMBANI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1346.

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No. 79-6650. *SKIDMORE v. CONSOLIDATED RAIL CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 2d 157.

No. 79-6651. *CALDWELL ET AL. v. HENDERSON, REGIONAL DIRECTOR, BUREAU OF PRISONS, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 79-6653. *WHITE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 306.

No. 79-6654. *McILVAIN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-6655. *HANSON ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 2d 1261.

No. 79-6656. *CORSANI v. SENA, JUDGE, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 572.

No. 79-6657. *MEJIA v. NEW YORK SHERATON HOTEL.* C. A. 2d Cir. Certiorari denied.

No. 79-6658. *NEAL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-6659. *FAUST v. WATKINS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1356.

No. 79-6660. *MONEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 311.

No. 79-6661. *OPACKI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-6662. *VARGAS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 54.

No. 79-6664. *ALFORD v. CENTRAL INTELLIGENCE AGENCY.* C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 348.

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No. 79-6665. *DiSANTO v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. Reported below: 8 Mass. App. 694, 397 N. E. 2d 672.

No. 79-6666. *CIARCIA ET AL. v. THOMAS*, U. S. DISTRICT JUDGE. C. A. 6th Cir. Certiorari denied.

No. 79-6667. *O'DILLON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 342, 265 S. E. 2d 18.

No. 79-6668. *BIRT v. HOPPER, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 221, 265 S. E. 2d 276.

No. 79-6670. *FORD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 79-6671. *GOODMAN ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 587.

No. 79-6675. *BOYD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 129.

No. 79-6676. *SULLIVAN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 294.

No. 79-6677. *PAPPAS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 306.

No. 79-6679. *McCALL v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 79-6680. *LEBEDUN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1358.

No. 79-6681. *MORTON v. STYNCHCOMBE, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 292.

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No. 79-6683. *POWELL v. BOOZER*, ACTING REGIONAL ADMINISTRATOR, UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 79-6684. *THIEL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 778.

No. 79-6685. *ROE v. UNITED STATES ATTORNEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 618 F. 2d 980.

No. 79-6686. *BOLDEN v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 380 So. 2d 40.

No. 79-6687. *TARKOWSKI v. ROBERT BARTLETT REALTY CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 109.

No. 79-6690. *ROSADO ET AL. v. CIVILETTI, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 1179.

No. 79-6691. *THOMPSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 594 S. W. 2d 456.

No. 79-6692. *ROMERO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 814.

No. 79-6693. *RIDEOUT v. UNITED STATES*; and

No. 80-7. *JABARA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 1319.

No. 79-6694. *ESCALANTE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 1197.

No. 79-6695. *CARTER v. THOMAS*. C. A. 5th Cir. Certiorari denied.

No. 79-6696. *HARBOLT v. DEPARTMENT OF STATE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 772.

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No. 79-6697. *ANDERSON v. MITCHELL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 95.

No. 79-6698. *FRAZIER v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 79-6700. *MONTGOMERY v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 127.

No. 79-6701. *HOOK v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 285.

No. 79-6702. *RAMOS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 1065, 423 N. Y. S. 2d 974.

No. 79-6703. *CROOKER v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 620 F. 2d 313.

No. 79-6707. *BOGGS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 991.

No. 79-6708. *JOSEPH v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 572.

No. 79-6709. *ALLISON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 779.

No. 79-6710. *O'BRIEN v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 79-6711. *THIESS v. FRANKLIN SQUARE HOSPITAL, INC., ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 44 Md. App. 761.

No. 79-6712. *WILLIAMS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 759.

No. 79-6713. *JEFFERSON v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 379 So. 2d 1389.

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No. 79-6714. *HELTON v. MOORE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 603.

No. 79-6717. *MCCORMICK v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 295.

No. 79-6718. *BIG DAY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 79-6720. *GAMINEE ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 311.

No. 79-6721. *SHEEHY ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 1234.

No. 79-6722. *CERBO v. FAUVER, CORRECTIONS COMMISSIONER, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 2d 714.

No. 79-6723. *LONGORIA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 66.

No. 79-6725. *SILVA v. NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1290.

No. 79-6726. *CARTER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 238.

No. 79-6727. *KULWIEC v. UNITED AIR LINES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 574.

No. 79-6728. *RODRIGUEZ v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 72 App. Div. 2d 671, 422 N. Y. S. 2d 272.

No. 79-6729. *WILLIAMS v. TALLAHASSEE MOTORS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 689.

No. 79-6730. *SCOTT v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 592 S. W. 2d 644.

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No. 79-6732. *INGRAM v. UNITED STATES*; and

No. 80-5077. *PORTER v. UNITED STATES*. C. A. 4th Cir.  
Certiorari denied. Reported below: 622 F. 2d 588.

No. 79-6733. *TILLER v. CARTER ET AL.* C. A. 4th Cir.  
Certiorari denied. Reported below: 618 F. 2d 105.

No. 79-6734. *LEE v. WYRICK, WARDEN*. C. A. 8th Cir.  
Certiorari denied.

No. 79-6735. *LAYTON v. PHEND, REFORMATORY SUPERIN-  
TENDENT*. C. A. 7th Cir. Certiorari denied. Reported be-  
low: 622 F. 2d 592.

No. 79-6736. *ENGLISH v. UNITED STATES*. C. A. 7th Cir.  
Certiorari denied. Reported below: 620 F. 2d 150.

No. 79-6737. *HAWKINS v. UNITED STATES*. C. A. 9th Cir.  
Certiorari denied. Reported below: 618 F. 2d 117.

No. 79-6738. *WHITE v. UNITED STATES*. C. A. 9th Cir.  
Certiorari denied. Reported below: 621 F. 2d 940.

No. 79-6739. *KNOTT v. LOUISIANA*. Sup. Ct. La. Cer-  
tiorari denied. Reported below: 379 So. 2d 1064.

No. 79-6741. *CARABALLO v. NEW YORK*. Sup. Ct. N. Y.,  
Kings County. Certiorari denied.

No. 79-6744. *GARRETT v. HUTTO, CORRECTIONS DIRECTOR*.  
Sup. Ct. Va. Certiorari denied.

No. 79-6746. *EAKER v. CALIFORNIA*. Ct. App. Cal., 1st  
App. Dist. Certiorari denied. Reported below: 100 Cal.  
App. 3d 1007, 161 Cal. Rptr. 417.

No. 79-6747. *WHITE v. UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN*. C. A. 6th Cir.  
Certiorari denied.

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No. 79-6750. *HARRYMAN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 870.

No. 79-6753. *ROSS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 598 S. W. 2d 885.

No. 79-6754. *AHMETI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 206.

No. 79-6755. *SHABAZZ, AKA PHILLIPS v. WILLIAMS ET AL.* Sup. Ct. Okla. Certiorari denied. Reported below: 608 P. 2d 1131.

No. 79-6756. *LEBEL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 1054.

No. 79-6757. *RUCKER v. FICKAS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 1108.

No. 79-6758. *LUMBERT v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 79-6759. *LANTZY v. HOWARD*. C. A. 3d Cir. Certiorari denied.

No. 79-6760. *MIRELES v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 79 Ill. App. 3d 173, 398 N. E. 2d 150.

No. 79-6762. *BIB'LE v. STATE BAR OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 26 Cal. 3d 548, 606 P. 2d 733.

No. 79-6763. *MOUTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 1379.

No. 79-6764. *DAY v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 94 N. M. 753, 617 P. 2d 142.

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No. 79-6767. *DAVIS v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 293.

No. 79-6768. *CARTER v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 953, 424 N. Y. S. 2d 15.

No. 79-6769. *LITTLE v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 574, 266 S. E. 2d 265.

No. 79-6771. *SCOTLAND v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 578.

No. 79-6772. *CLUGSTON ET AL. v. MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 602.

No. 79-6773. *ARTUSO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 618 F. 2d 192.

No. 79-6774. *YAGY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1346.

No. 79-6775. *RUDD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 783.

No. 79-6776. *ZAMORSKY v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 82 N. J. 287, 412 A. 2d 793.

No. 79-6778. *BELTON v. PILVAX PRINTING CORP. ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 830, 404 N. E. 2d 1335.

No. 79-6780. *LEE v. WILLINS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 617 F. 2d 320.

No. 79-6783. *PAYNE v. OHIO.* Ct. App. Ohio, Franklin County. Certiorari denied.

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No. 79-6784. *CANADY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 694.

No. 79-6785. *PRATER v. BROWN*. C. A. 9th Cir. Certiorari denied.

No. 79-6786. *WELLS v. SOUTHERN AIRWAYS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 107.

No. 79-6787. *SANCHEZ-JARAMILLO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 637 F. 2d 1094.

No. 79-6788. *EASTON v. OREGON STATE BAR*. Sup. Ct. Ore. Certiorari denied. Reported below: 289 Ore. 99, 610 P. 2d 270.

No. 79-6789. *SMALLWOOD v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 414 A. 2d 822.

No. 79-6790. *ARTHUR v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 488 Pa. 262, 412 A. 2d 498.

No. 79-6791. *PARSLEY v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 401 N. E. 2d 1360.

No. 79-6792. *TARKO v. BUCHANAN, DBA ARNOLD A. SEMLER, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 79-6793. *DAVIDSON v. WILKINSON, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 1215.

No. 79-6795. *DUTT v. ALABAMA STATE UNIVERSITY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1295.

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No. 79-6796. *NABORS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-6797. *GRIFFIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 1342.

No. 79-6800. *WILLIAMS v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 107.

No. 79-6802. *WATTS v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 515.

No. 79-6803. *PADGETT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 783.

No. 79-6805. *NAVARRO-SALAZAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 311.

No. 79-6807. *PARISIE v. IRVING, DIRECTOR, ILLINOIS PRISONER REVIEW BOARD, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 79-6808. *BOYD v. SMITH, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 79-6810. *PIGGIE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 622 F. 2d 486.

No. 79-6811. *JAFFER v. DIEFFENDERFER, DADE COUNTY ELECTIONS SUPERVISOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 577.

No. 79-6812. *MARTIN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 566.

No. 79-6813. *HAMILTON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 79-6814. *LUPO v. HENDERSON, WARDEN*. C. A. 2d Cir. Certiorari denied.

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No. 79-6815. *AUSTIN v. WOODARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 581.

No. 79-6816. *VENTURA v. CUPP, PENITENTIARY SUPERINTENDENT.* Sup. Ct. Ore. Certiorari denied. Reported below: 289 Ore. 45; and 289 Ore. 135, 610 P. 2d 1232.

No. 79-6817. *HERNANDEZ-ROJAS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 533.

No. 79-6818. *SMITH v. ASSIGNMENT OFFICE OF MONTGOMERY COUNTY CIRCUIT COURT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 586.

No. 79-6819. *RIGDON v. RUSSELL ANACONDA ALUMINUM Co. ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 381 So. 2d 983.

No. 79-6821. *HORTON, AKA BYNUM v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 580.

No. 79-6822. *PINSON v. MAYWEBB HOSIERY MILLS ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 380 So. 2d 244.

No. 79-6823. *WILSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 621 F. 2d 927.

No. 79-6824. *WILLIS v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 628, 650 F. 2d 287.

No. 79-6827. *HOLLEY v. COUNTY OF LOS ANGELES, CALIFORNIA, ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 102 Cal. App. 3d 926, 162 Cal. Rptr. 636.

No. 79-6828. *MAINS v. BUTTERWORTH ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 619 F. 2d 83.

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No. 79-6831. *HUNTER v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1296.

No. 79-6832. *COLLINS v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-6836. *MURCHISON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 630 F. 2d 1322.

No. 79-6837. *TARKOWSKI v. SCOTT, ATTORNEY GENERAL OF ILLINOIS, ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 79-6838. *TARKOWSKI v. ILLINOIS ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 79-6839. *MOON v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 79-6840. *RAY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 588.

No. 79-6841. *NEELEY v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 79 Ill. App. 3d 528, 398 N. E. 2d 988.

No. 79-6842. *GARRETT v. DIRECTOR, DEPARTMENT OF CORRECTIONS OF VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 79-6843. *HOUSE v. FOGG, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 79-6844. *MENDOZA-BAUTISTA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 118.

No. 79-6845. *RIDDELL v. BRADLEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

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No. 79-6849. *CARTER v. MITCHELL, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 809.

No. 79-6850. *ORTIZ v. HARRIS, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 285.

No. 79-6851. *EYLER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 2d 1255.

No. 79-6852. *KRZEMINSKI v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 614 F. 2d 121.

No. 79-6855. *LEWIS v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 79-6857. *CROSBY v. UNITED STATES DEPARTMENT OF THE AIR FORCE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1286.

No. 79-6859. *SMITH v. DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS.* C. A. 9th Cir. Certiorari denied. Reported below: 615 F. 2d 1251.

No. 79-6861. *MARATY v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 597 S. W. 2d 609.

No. 79-6863. *ANTILL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 648.

No. 79-6864. *CARROLL v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 402 N. E. 2d 1234.

No. 79-6865. *CARTER v. ADMINISTRATIVE JUDGES OF THE SUPREME COURT OF NEW YORK, KINGS COUNTY, ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 79-6867. *HUSLAGE ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 580.

No. 79-6868. *BUTLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 2d 258.

No. 79-6869. *DOWD v. CUYLER, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1089.

No. 79-6871. *McINERNEY v. BERMAN ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 621 F. 2d 20.

No. 79-6874. *BOWEN v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 79-6875. *NUTTER v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 79-6877. *FASANO v. HALL ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 2d 555.

No. 79-6878. *COOPER v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 403 N. E. 2d 826.

No. 79-6879. *DOE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 2d 110.

No. 79-6880. *ISAACS ET AL. v. BALKCOM, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 79-6881. *ABU-BAKR, AKA KING v. COSTELLO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 590.

No. 79-6882. *BUCHANAN v. NORRIS, JAILER*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 301.

No. 79-6883. *RODRIGUEZ v. ROMERO, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 79-6886. *GONZALES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 104.

No. 79-6889. *BRINKLEY v. LEFEVRE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 45.

No. 79-6890. *FORSBERG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

No. 79-6891. *McCRARY v. MEROLA, DISTRICT ATTORNEY OF BRONX COUNTY*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 205.

No. 79-6892. *BRYAN v. BYRD ET AL.* C. A. 4th Cir. Certiorari denied.

No. 79-6893. *SNEAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 79-6894. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 280.

No. 79-6895. *PHILLIPS v. BROWN, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 79-6897. *HAMPEL v. MOTEL PROPERTIES, INC.* Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 507, 266 S. E. 2d 805.

No. 80-1. *GREEN v. BARTHOLOMEW ET AL.* C. A. 2d Cir. Certiorari denied.

No. 80-2. *SMITH v. CHRYSLER CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 566.

No. 80-3. *KELLOGG MALL ASSOCIATES v. BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ET AL.* Sup. Ct. Kan. Certiorari denied. Reported below: 227 Kan. 231, 607 P. 2d 1330.

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No. 80-6. INTERNATIONAL LONGSHOREMEN'S ASSN., LOCAL 1402 *v.* MARSHALL, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 96.

No. 80-8. EVANS *v.* MATNEY. C. A. 10th Cir. Certiorari denied.

No. 80-9. ERATH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 777.

No. 80-10. BUTLER *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 222 Ct. Cl. 598, 650 F. 2d 285.

No. 80-16. LAKESIDE POULTRY RANCH, INC., ET AL. *v.* WALLACE, DIRECTOR, DEPARTMENT OF FOOD AND AGRICULTURE OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 116.

No. 80-18. UNIVERSAL WASTE CONTROL ET AL. *v.* WESTERN WASTE SERVICE SYSTEMS. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 1094.

No. 80-19. LEWIS ET AL. *v.* ANDERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 615 F. 2d 778.

No. 80-22. ORGANIZZAZIONE NAVOBI ITALIANA (URUGUAY), S. A., ET AL. *v.* TRANS INTERNATIONAL AIRLINES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 114.

No. 80-23. SEELIG ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 2d 207.

No. 80-24. CONTINENTAL TRAINING SERVICES, INC., ET AL. *v.* VENZARA. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 292.

No. 80-27. DEVOTO ET AL. *v.* PACIFIC FIDELITY LIFE INSURANCE Co. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 1340.

No. 80-30. STALLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1284.

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No. 80-31. *MILLIKEN, GOVERNOR OF MICHIGAN, ET AL. v. BRADLEY ET AL.*;

No. 80-48. *BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, MICHIGAN, ET AL. v. MILLIKEN, GOVERNOR OF MICHIGAN, ET AL.*; and

No. 80-104. *LULAC COUNCIL 11054 ET AL. v. MILLIKEN, GOVERNOR OF MICHIGAN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 1143.

No. 80-33. *SMITTY BAKER COAL Co., INC. v. UNITED MINE WORKERS OF AMERICA.* C. A. 4th Cir. Certiorari denied. Reported below. 620 F. 2d 416.

No. 80-34. *IVARY v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 222 Ct. Cl. 617, 650 F. 2d 285.

No. 80-36. *THOMPSON ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 223 Ct. Cl. 643, 650 F. 2d 286.

No. 80-38. *ALMEDA MALL, INC., ET AL. v. HOUSTON LIGHTING & POWER Co.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 343.

No. 80-40. *BERNITSKY ET AL., T/A BERNITSKY BROTHERS COAL Co., SLOPE 2 v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 948.

No. 80-42. *STROUTH v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-44. *DUAL MANUFACTURING & ENGINEERING, INC., ET AL. v. BURRIS INDUSTRIES, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 2d 660.

No. 80-46. *PILOTTI v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 846, 423 N. Y. S. 2d 358.

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No. 80-47. *McINTYRE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 381 So. 2d 408.

No. 80-52. *BOARD OF EDUCATION OF BALTIMORE COUNTY v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 97.

No. 80-58. *DREIER v. YANIK ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 288.

No. 80-62. *WEISMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 624 F. 2d 1118.

No. 80-63. *RALEY'S, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 1374.

No. 80-65. *STEVENS v. OHIO*. Ct. App. Ohio, Clermont County. Certiorari denied.

No. 80-66. *GOLDBERG v. WARDEN, ALLENWOOD FEDERAL PRISON CAMP*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 60.

No. 80-67. *ELECTRICAL PRODUCTS DIVISION OF MIDLAND-ROSS CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 617 F. 2d 977.

No. 80-69. *NEAL-COOPER GRAIN Co. v. INTERNATIONAL COMMODITIES EXPORT CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 590.

No. 80-70. *CAIRE v. STASSI, DBA JOHN A. STASSI REAL ESTATE*. Sup. Ct. La. Certiorari denied. Reported below: 379 So. 2d 1056.

No. 80-71. *HINSON v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 80-73. *AMERICAN HOME ASSURANCE Co. v. COMMERCIAL UNION ASSURANCE Co.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 379 So. 2d 757.

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No. 80-79. *EDWARDS ET AL. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 201 U. S. App. D. C. 1, 627 F. 2d 460.

No. 80-81. *ORTEGA v. PEREZ*. Sup. Ct. P. R. Certiorari denied.

No. 80-85. *TAYLOR, SECRETARY OF HEALTH AND REHABILITATIVE SERVICES OF FLORIDA v. GOLDEN ISLES CONVALESCENT CENTER, INC., DBA HALLANDALE REHABILITATION CENTER, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1355.

No. 80-86. *DUCK ET AL. v. HARLESS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 619 F. 2d 611.

No. 80-87. *3,218.9 ACRES IN WARREN COUNTY, PENNSYLVANIA, ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 619 F. 2d 288.

No. 80-88. *SANCHEZ v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 384 So. 2d 1385.

No. 80-89. *LEAK REPAIRS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 592.

No. 80-91. *DICK v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 80-92. *ARTARIAN v. ARTAR*. Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 751.

No. 80-93. *MACFARLANE v. BERTLING ET UX*. Ct. App. Ore. Certiorari denied. Reported below: 45 Ore. App. 1, 607 P. 2d 232.

No. 80-96. *SAVOY FAUCET Co., INC., DBA SAVOY BRASS MANUFACTURING Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1345.

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No. 80-101. *SMITH v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 93 Wash. 2d 329, 610 P. 2d 869.

No. 80-102. *MADSEN v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 125 Ariz. 346, 609 P. 2d 1046.

No. 80-109. *ESTATE OF SHELTON ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 10th Cir. Certiorari denied. Reported below: 612 F. 2d 1276.

No. 80-110. *TAMARI ET AL., DBA WAHBE TAMARI & SONS Co. v. BACHE HALSEY STUART, INC., FORMERLY BACHE & Co., INC.* C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 2d 1196.

No. 80-112. *McKNIGHT v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 199 Colo. 313, 607 P. 2d 1007.

No. 80-113. *SCHERER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 592.

No. 80-114. *WILHELM ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 580.

No. 80-119. *GILL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 2d 540.

No. 80-121. *OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 28, AFL-CIO v. MIDWEST STOCK EXCHANGE, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 620 F. 2d 629.

No. 80-122. *SPARKS v. WESTERN SHORE PUBLISHING CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 199 U. S. App. D. C. 10, 615 F. 2d 1369.

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No. 80-123. GLASER, DIRECTOR, DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF NEW JERSEY *v.* SALORIO ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 82 N. J. 482, 414 A. 2d 943.

No. 80-124. WADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 294.

No. 80-127. TEXAS *v.* FAULDER. Ct. Crim. App. Tex. Certiorari denied. Reported below: 611 S. W. 2d 630.

No. 80-130. WALLS *v.* DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT. Ct. App. D. C. Certiorari denied.

No. 80-131. CARRICARTE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 384 So. 2d 1261.

No. 80-134. BOARD OF EDUCATION OF THE ALTMAR-PARISH-WILLIAMSTOWN CENTRAL SCHOOL DISTRICT ET AL. *v.* AMBACH, COMMISSIONER OF EDUCATION OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 986, 406 N. E. 2d 1061.

No. 80-136. CHOCALLO, ADMINISTRATIVE LAW JUDGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290 and 622 F. 2d 578.

No. 80-139. PENNSYLVANIA PIPELINE, INC. *v.* NORTHERN CALIFORNIA DISTRICT COUNCIL OF HOD CARRIERS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 103 Cal. App. 3d 163, 162 Cal. Rptr. 851.

No. 80-140. M. G. R. S., INC. *v.* CALIFORNIA STATE BOARD OF EQUALIZATION. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-141. KELLEY MANUFACTURING Co. *v.* LILLISTON CORP. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 100.

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No. 80-143. *DETWEILER v. DETWEILER*. Super. Ct. Pa. Certiorari denied. Reported below: 278 Pa. Super. 632, 425 A. 2d 12.

No. 80-149. *MISCELLANEOUS DRIVERS & HELPERS UNION, LOCAL 610 v. PULITZER PUBLISHING CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 618 F. 2d 1275.

No. 80-150. *HARTFORD ACCIDENT & INDEMNITY CO. v. MILES*. Ct. Civ. App. Tex., 2d Sup. Jud. Dist. Certiorari denied. Reported below: 590 S. W. 2d 223.

No. 80-152. *BOCRA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 623 F. 2d 281.

No. 80-160. *RUSECKAS v. GUNSTEN, T/A GUNSTEN AGENCY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 586.

No. 80-165. *MAISLIN TRANSPORT OF DELAWARE ET AL. v. FARRELL LINES, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 616 F. 2d 619.

No. 80-168. *HUTCHER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 1083.

No. 80-179. *AUTRY ET AL. v. FLORES ET UX.* C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 1386.

No. 80-181. *GORE ET AL. v. WOCHNER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 183.

No. 80-187. *RUSH v. BAYFRONT MEDICAL CENTER, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 294.

No. 80-188. *KONSCOL v. GEORGIA EX REL. KONSCOL*. Sup. Ct. Ga. Certiorari denied.

No. 80-198. *BOUCHER v. CITY OF HAVRE, MONTANA, ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 609 P. 2d 275.

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No. 80-209. *GELMAN ET AL. v. FEDERAL ELECTION COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 357, 631 F. 2d 939.

No. 80-211. *JOHNSTON v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 80-230. *OHIO SUBURBAN WATER Co. v. PUBLIC UTILITIES COMMISSION OF OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 62 Ohio St. 2d 17, 402 N. E. 2d 539.

No. 80-232. *MARCHESE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 80-234. *ADKINSON v. ALASKA*. Sup. Ct. Alaska. Certiorari denied. Reported below: 611 P. 2d 528.

No. 80-250. *CRAMER v. METROPOLITAN FEDERAL SAVINGS & LOAN ASSN. ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-268. *McCURRY ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-271. *RATLIFF v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 2d 1293.

No. 80-294. *GREENE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 626 F. 2d 75.

No. 80-5001. *ROHNER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 82.

No. 80-5002. *WOOD v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 596 S. W. 2d 394.

No. 80-5003. *JONES v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 274 Pa. Super. 162, 418 A. 2d 346.

No. 80-5005. *YANEZ v. ROMERO, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 619 F. 2d 851.

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No. 80-5007. *MOBLEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 80-5009. *ZILLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 562.

No. 80-5012. *LEWIS ET AL. v. LEWIS ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 271 Pa. Super. 519, 414 A. 2d 375.

No. 80-5013. *COOKES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5015. *BROWN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. lxviii.

No. 80-5016. *KEY v. BOARD OF VOTER REGISTRATION OF CHARLESTON COUNTY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 88.

No. 80-5017. *WILLIS v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 104 Cal. App. 3d 433, 163 Cal. Rptr. 718.

No. 80-5020. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 299.

No. 80-5021. *WOODS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 844.

No. 80-5024. *TALAMANTE v. ROMERO, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 620 F. 2d 784.

No. 80-5026. *WASSERBERGER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 980, 406 N. E. 2d 805.

No. 80-5027. *FERRIS v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO, ET AL. (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

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No. 80-5029. *JAUDON v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 591.

No. 80-5031. *INGRAM v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 584.

No. 80-5034. *BROWN v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 1057.

No. 80-5035. *GALLAGHER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 620 F. 2d 797.

No. 80-5036. *PETERSON v. BARKSDALE, SHERIFF, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-5038. *ALLEN v. HILTON ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5039. *LIVINGSTON v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5040. *LEE v. DUCKWORTH, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 590.

No. 80-5041. *JONES v. YOUNG ET AL.* C. A. 5th Cir. Certiorari denied.

No. 80-5044. *GREENWOOD v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-5045. *PINCIARO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 588.

No. 80-5046. *DANZEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 286.

No. 80-5047. *SNEAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 80-5051. *NEWBOLD v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 46.

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No. 80-5052. *GULLICK v. NEW HAMPSHIRE*. Sup. Ct. N. H. Certiorari denied. Reported below: 120 N. H. 99, 411 A. 2d 1113.

No. 80-5054. *BASZNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1101.

No. 80-5056. *GREENE v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 80-5059. *WEDRA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 618 F. 2d 192.

No. 80-5062. *NEAL v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 383 So. 2d 507.

No. 80-5063. *DIETRICH v. LIMBS, UNITED STATES MARSHAL*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 190.

No. 80-5064. *GREEN v. ARMSTRONG RUBBER Co.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 967.

No. 80-5066. *CLAYTON v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 62 Ohio St. 2d 45, 402 N. E. 2d 1189.

No. 80-5068. *ROBERTS v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 62 Ohio St. 2d 170, 405 N. E. 2d 247.

No. 80-5070. *SHIRLEY v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 616, 266 S. E. 2d 218.

No. 80-5075. *MELTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 80-5076. *RIDDELL v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied.

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No. 80-5081. SANDOVAL *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 80-5082. TILLI *v.* CAPABIANCO ET AL. C. A. 3d Cir. Certiorari denied.

No. 80-5086. VANDERDOES *v.* ST. CLAUDE GENERAL HOSPITAL OF NEW ORLEANS, LTD. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 378 So. 2d 207.

No. 80-5087. VANDERDOES *v.* OCHSNER CLINIC ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 377 So. 2d 1368.

No. 80-5088. GOODLEY *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 116.

No. 80-5090. SEALE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1101.

No. 80-5091. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 709.

No. 80-5092. KING *v.* MASSACHUSETTS. Ct. App. Mass. Certiorari denied. Reported below: 9 Mass. App. 892, 403 N. E. 2d 142.

No. 80-5094. ALFORD *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 80-5095. PRAZAK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 623 F. 2d 152.

No. 80-5097. BURNETT *v.* ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 2d 668.

No. 80-5100. CARTERA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. lxxii.

No. 80-5102. WINKLE *v.* GRAND NATIONAL BANK. Sup. Ct. Ark. Certiorari denied. Reported below: 267 Ark. 123, 601 S. W. 2d 559.

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No. 80-5105. *SORRELLS v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 80-5107. *FLORES v. ONION ET AL., JUDGES*. C. A. 5th Cir. Certiorari denied.

No. 80-5109. *TARKOWSKI v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 80-5111. *ARANDA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5114. *LOYD v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 398 N. E. 2d 1260.

No. 80-5120. *BOSTIC v. DURHAM COUNTY SUPERIOR COURT*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 95.

No. 80-5121. *MOORE v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 80 Ill. App. 3d 995, 400 N. E. 2d 525.

No. 80-5124. *SHAW v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 223 Ct. Cl. 532, 622 F. 2d 520.

No. 80-5125. *ALDRIDGE ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Santa Clara. Certiorari denied.

No. 80-5126. *FRANK v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 80-5129. *DOWNING v. EASTON HOSPITAL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 601 F. 2d 574.

No. 80-5130. *NELSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-5131. *WILSON ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

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No. 80-5133. *MOLINARIO v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 383 So. 2d 345.

No. 80-5135. *MONTGOMERY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 620 F. 2d 753.

No. 80-5138. *BAKER v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 403 N. E. 2d 1069.

No. 80-5140. *ZAUN ET AL. v. CAPPARELLI ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 80-5141. *JOHNSON v. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1360.

No. 80-5145. *McGUIRK v. FAIR ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 622 F. 2d 597.

No. 80-5147. *COURTNEY v. BLAND, CORRECTIONS COMMISSIONER.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 301.

No. 80-5148. *HOLLEY v. ANDERSON, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1099.

No. 80-5149. *HARFLINGER v. LANE, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1104.

No. 80-5152. *WITT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 283.

No. 80-5153. *AGENA v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1088.

No. 80-5154. *CROW ET AL. v. MISSOURI.* Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 600 S. W. 2d 162.

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No. 80-5156. *EZZELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5157. *CROOKER v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1087.

No. 80-5159. *BONDS v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 43 N. C. App. 467, 259 S. E. 2d 377; and 45 N. C. App. 62, 262 S. E. 2d 340.

No. 80-5165. *SMITH v. STRIKE FORCE, DEPARTMENT OF JUSTICE, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-5166. *LILLIBRIDGE, TRUSTEE, ET AL. v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 80-5174. *GALLAGHER v. CRIST, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 594.

No. 80-5177. *WADE v. FRANKLIN STRICKLIN LAND SURVEYORS, INC.* Sup. Ct. Ark. Certiorari denied.

No. 80-5180. *KUYKENDALL ET AL. v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. cix.

No. 80-5182. *CRENSHAW v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 274 S. C. 475, 266 S. E. 2d 61.

No. 80-5197. *DEWEEVER v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 2d Cir. Certiorari denied.

No. 80-5210. *HICKS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 80-5211. *THURMOND v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1094.

No. 80-5218. *MATTHEWS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

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No. 80-5223. BERLAND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 623 F. 2d 746.

No. 80-5233. NABKEY *v.* CITY OF GRAND RAPIDS ET AL. Ct. App. Mich. Certiorari denied.

No. 80-5247. HOLGUIN-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5250. GONZALEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1105.

No. 80-5251. CHAUSSEE *v.* PUTMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 309.

No. 80-5257. DONKIS *v.* ROHRBAUGH ET AL. C. A. 4th Cir. Certiorari denied.

No. 80-5261. FIELDS *v.* COOK, JUDGE, ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5270. GREER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 80-5277. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 588.

No. 80-5286. NAVA-RAMIREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 1109.

No. 80-5289. TARGEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-5290. RUSSELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 79-1234. RICHARDSON ET AL. *v.* LOKEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 600 F. 2d 1265.

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No. 79-1446. MICHIGAN *v.* HAMPTON. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 407 Mich. 354, 285 N. W. 2d 284.

No. 79-1829. MICHIGAN *v.* COMBS. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 79-1887. BLUM, COMMISSIONER OF NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES *v.* STENSON. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 628 F. 2d 1345.

No. 79-1891. ESTELLE, CORRECTIONS DIRECTOR *v.* PAPRSKAR. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 612 F. 2d 1003.

No. 80-28. WILMOT, CORRECTIONAL SUPERINTENDENT *v.* WALKER. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 628 F. 2d 1346.

No. 80-204. RYDER TRUCK LINES, INC. *v.* FARMER. Sup. Ct. Ga. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 245 Ga. 734, 266 S. E. 2d 922.

No. 80-257. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA *v.* SCOTT. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 617 F. 2d 99.

No. 79-1525. NAISBITT, EXECUTOR, ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 611 F. 2d 1350.

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No. 79-1838. *RAISEN v. RAISEN ET AL.* Sup. Ct. Fla. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 379 So. 2d 352.

No. 79-1870. *ADULT BOOKMART, INC. v. GEORGIA.* Ct. App. Ga. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 152 Ga. App. 838, 264 S. E. 2d 273.

No. 79-1878. *STANSBERRY, DBA UNIVERSAL STUDIO, ET AL. v. HOLMES, HARRIS COUNTY DISTRICT ATTORNEY, ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 613 F. 2d 1285.

No. 79-6835. *HUNTER v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 77 Ill. App. 3d 1106, 402 N. E. 2d 443.

No. 80-5004. *WHISENHUNT v. GEORGIA.* Ct. App. Ga. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 152 Ga. App. 829, 264 S. E. 2d 271.

No. 80-5118. *ROSSER v. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 438.* C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 616 F. 2d 221.

No. 80-5160. *EVANS v. SOWDERS, REFORMATORY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 620 F. 2d 302.

No. 79-1612. *AMERICAN BROADCASTING COS., INC., ET AL. v. VEGOD CORP. ET AL.* Sup. Ct. Cal. Motions of California Department of Consumer Affairs, National Association of Broadcasters, and Times Mirror Co. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 25 Cal. 3d 763, 603 P. 2d 14.

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No. 79-1555. TENNESSEE *v.* BERRY. Sup. Ct. Tenn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 592 S. W. 2d 553.

No. 79-1574. BROWN ET AL. *v.* STONE ET AL. Sup. Ct. Miss. Certiorari denied. JUSTICE WHITE would dismiss the petition as moot. JUSTICE STEWART would grant certiorari. Reported below: 378 So. 2d 218.

No. 79-1656. PEREZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE STEWART would grant certiorari. Reported below: 610 F. 2d 1266.

No. 79-1708. NEW YORK *v.* S & E SHIPPING CORP. ET AL.;  
No. 79-1716. S & E SHIPPING CORP. *v.* UNITED STATES  
ET AL.; and

No. 79-1718. SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO *v.* UNITED STATES ET AL. C. A. 2d Cir. Motion of Seaboard Allied Milling Corp. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 600 F. 2d 349.

No. 79-1732. HILTON, AKA MILTON, ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE POWELL would grant certiorari. Reported below: 619 F. 2d 127.

No. 79-1863. HARPER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE POWELL would grant certiorari. Reported below: 617 F. 2d 35.

No. 79-1750. FINGAR *v.* SEABOARD COAST LINE RAILROAD Co. C. A. 5th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 606 F. 2d 648.

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No. 79-1739. INUPIAT COMMUNITY OF THE ARCTIC SLOPE *v.* ATLANTIC RICHFIELD CO. ET AL.; and

No. 79-1743. UNITED STATES *v.* ATLANTIC RICHFIELD CO. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 612 F. 2d 1132.

No. 79-2080. MEAD CORP. ET AL. *v.* ADAMS EXTRACT CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 614 F. 2d 958.

No. 80-82. LEMONS ET AL. *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 620 F. 2d 228.

No. 79-1791. FLYNT *v.* GEORGIA. Ct. App. Ga. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 153 Ga. App. 232, 264 S. E. 2d 669.

No. 79-1918. HAWKINS *v.* CITY OF BIRMINGHAM; and HOLDERFIELD *v.* CITY OF BIRMINGHAM. Ct. Crim. App. Ala. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the convictions. Reported below: 380 So. 2d 994 (first case); 380 So. 2d 990 (second case).

No. 79-6345. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 613 F. 2d 787.

No. 79-1802. TOMLIN ET AL. *v.* WOODRUFF ET AL. C. A. 6th Cir. Motion of Tennessee Bar Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 616 F. 2d 924.

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No. 80-5014. *MAXWELL ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the convictions. Reported below: 152 Ga. App. 776, 264 S. E. 2d 254.

No. 79-1809. *MOON v. ROADWAY EXPRESS, INC.*; and  
No. 79-1810. *ROGERS v. FRITO-LAY, INC.* C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 611 F. 2d 1074.

No. 79-1816. *METHODIST HOSPITAL OF KENTUCKY, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 619 F. 2d 563.

No. 79-1892. *LAREDO COCA-COLA BOTTLING Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 613 F. 2d 1338.

No. 79-1820. *BADGER v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. JUSTICE STEWART and JUSTICE POWELL would grant certiorari.

No. 79-1825. *FEDERAL ENERGY REGULATORY COMMISSION v. PANHANDLE EASTERN PIPE LINE Co.* C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 198 U. S. App. D. C. 387, 613 F. 2d 1120.

No. 79-1883. *WESTINGHOUSE ELECTRIC CORP. v. HUNTER ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 616 F. 2d 267.

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No. 79-1946. *MORAN v. GOULD CORP. ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 612 F. 2d 728.

No. 80-43. *TEMPLETON'S SERVICE, INC., ET AL. v. MOBIL OIL CORP.* Temp. Emerg. Ct. App. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 624 F. 2d 1084.

No. 79-1853. *DURHAM DISTRIBUTORS, INC., ET AL. v. BOMBARDIER LTD. ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 605 F. 2d 1 and 615 F. 2d 575.

No. 79-6475. *BROWN v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 612 F. 2d 1306.

No. 79-1857. *ALCOA STEAMSHIP Co., INC. v. M/V NORDIC REGENT ET AL.* C. A. 2d Cir. Motions of Association of Trial Lawyers of America, American Institute of Marine Underwriters, and National Industrial Traffic League for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 654 F. 2d 147.

No. 79-1874. *STIPE ET AL. v. UNITED STATES.* C. A. 10th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 620 F. 2d 237.

No. 79-1910. *ILLINOIS CENTRAL GULF RAILROAD Co. v. KAISER ALUMINUM & CHEMICAL CORP.* C. A. 8th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 615 F. 2d 470.

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No. 79-1967. *IMPERIAL DISTRIBUTORS, INC., ET AL. v. UNITED STATES ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 617 F. 2d 892.

No. 79-2056. *MILLER v. TEXAS STATE BOARD OF BARBER EXAMINERS.* C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 615 F. 2d 650.

- No. 79-6570. *HOLTAN v. NEBRASKA.* Sup. Ct. Neb.;  
No. 79-6580. *HOUSTON v. TENNESSEE.* Sup. Ct. Tenn.;  
No. 79-6585. *STEVENS v. GEORGIA.* Sup. Ct. Ga.;  
No. 79-6619. *ALDRIDGE v. FLORIDA.* Sup. Ct. Fla.;  
No. 79-6636. *FITZPATRICK v. MONTANA.* Sup. Ct. Mont.;  
No. 79-6706. *CAMPBELL v. ZANT, WARDEN.* Sup. Ct. Ga.;  
No. 79-6752. *EVANS v. ARIZONA.* Sup. Ct. Ariz.;  
No. 79-6798. *FITZPATRICK v. SENTENCE REVIEW DIVISION OF SUPREME COURT OF MONTANA.* Sup. Ct. Mont.;  
No. 79-6809. *TUCKER v. GEORGIA.* Sup. Ct. Ga.;  
No. 79-6826. *PREJEAN v. LOUISIANA.* Sup. Ct. La.;  
No. 79-6830. *MCCLESKY v. GEORGIA.* Sup. Ct. Ga.;  
No. 79-6876. *PIERRE v. MORRIS, WARDEN.* Sup. Ct. Utah;  
No. 79-6887. *ANDREWS v. MORRIS, WARDEN.* Sup. Ct. Utah;  
No. 80-5042. *ENGLISH v. TEXAS.* Ct. Crim. App. Tex.;  
No. 80-5080. *PRESNELL v. ZANT, WARDEN.* Super. Ct. Ga., Butts County; and  
No. 80-5113. *WILLIAMS v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: No. 79-6570, 205 Neb. 314, 287 N. W. 2d 671; No. 79-6580, 593 S. W. 2d 267; No. 79-6585, 245 Ga. 583, 266 S. E. 2d 194; No. 79-6636, — Mont. —, 606 P. 2d 1343; No. 79-6706, 245 Ga. 368, 265 S. E. 2d 22; No. 79-6752, 120 Ariz. 158, 584 P. 2d 1149, and

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124 Ariz. 526, 606 P. 2d 16; No. 79-6809, 245 Ga. 68, 263 S. E. 2d 109; No. 79-6826, 379 So. 2d 240; No. 79-6830, 245 Ga. 108, 263 S. E. 2d 146; No. 79-6876, 607 P. 2d 812; No. 79-6887, 607 P. 2d 816; No. 80-5042, 592 S. W. 2d 949; No. 80-5113, 205 Neb. 56, 287 N. W. 2d 18.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 79-6765. *KELLY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 620 F. 2d 305.

No. 80-59. *CARMI v. METROPOLITAN ST. LOUIS SEWER DISTRICT ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 620 F. 2d 672.

No. 79-6431. *AHUMADA v. UNITED STATES*;

No. 79-6609. *MONROY v. UNITED STATES*; and

No. 79-6705. *OSPINA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 614 F. 2d 61.

No. 79-6531. *HALL v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. Sup. Ct. Fla. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 385 So. 2d 757.

No. 79-6610. *PRIESTER v. BANKER'S TRUST OF SOUTH CAROLINA, ADMINISTRATOR, ET AL.* C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 618 F. 2d 103.

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No. 79-6794. COLEMAN *v.* SENTENCE REVIEW DIVISION OF SUPREME COURT OF MONTANA. Sup. Ct. Mont. Stay of execution of sentence of death heretofore granted by JUSTICE MARSHALL on August 27, 1980, vacated. Certiorari denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 80-97. BURNS *v.* SULLIVAN ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari limited to Question 2 presented by the petition. Reported below: 619 F. 2d 99.

No. 80-5053. QUINONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 592 S. W. 2d 933.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 80-5110. ROSEE *v.* BOARD OF TRADE OF CITY OF CHICAGO ET AL. C. A. 7th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 618 F. 2d 114.

#### *Rehearing Denied*

No. 79-1600. BOMBARDIER LTD. ET AL. *v.* ENGINE SPECIALTIES, INC., 446 U. S. 983. Petition for rehearing denied.

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*Appeals Dismissed*

No. 80-55. *MASTRANGELO v. PENNSYLVANIA*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 489 Pa. 254, 414 A. 2d 54.

No. 80-173. *BARMAT v. ROBERTSON, SUPERINTENDENT, ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL, ET AL.* Appeal from Ct. App. Ariz. dismissed for want of substantial federal question. Reported below: 125 Ariz. 514, 611 P. 2d 101.

No. 80-5212. *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 petition for writ of certiorari, certiorari denied.

No. 80-5213. *PRENZLER v. PIKE ET AL.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction.

*Vacated and Remanded on Appeal*

No. 79-1862. *GLOBE NEWSPAPER CO. v. SUPERIOR COURT FOR THE COUNTY OF NORFOLK*. Appeal from Sup. Jud. Ct. Mass. Judgment vacated and case remanded for further consideration in light of *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555 (1980). Reported below: 379 Mass. 846, 401 N. E. 2d 360.

*Certiorari Granted—Vacated and Remanded*

No. 80-183. *ILLINOIS v. WEBER*. App. Ct. Ill., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Salvucci*, 448 U. S. 83 (1980). Reported below: 80 Ill. App. 3d 1025, 400 N. E. 2d 926.

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No. 80-5187. *TAYLOR 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 for the United States filed September 17, 1980. JUSTICE WHITE and JUSTICE REHNQUIST dissent. Reported below: 624 F. 2d 1092.

#### *Miscellaneous Orders*

No. A-230. *HAYDEN v. FLORIDA*. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-239. *GLUCK v. GLUCK*. Sup. Ct. Conn. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-251. *WOOD v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA*. C. A. 9th Cir. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. A-286. *CALIFORNIA v. BRAESEKE*. Sup. Ct. Cal. The stay heretofore entered by JUSTICE REHNQUIST is continued pending the timely filing and disposition of a petition for writ of certiorari.

No. A-303. *MYERS ET AL. v. NATIONAL BROADCASTING Co., INC., ET AL.* C. A. 2d Cir. Application for stay, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. 78-1318. *O'BANNON, SECRETARY OF PUBLIC WELFARE OF PENNSYLVANIA v. TOWN COURT NURSING CENTER ET AL.*, 447 U. S. 773. Motion of respondent Town Court Nursing Center, Inc., to amend the judgment denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

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No. D-188. *IN RE DISBARMENT OF KESLER*. Disbarment entered. [For earlier order herein, see 446 U. S. 915.]

No. 79-404. *UNITED STATES v. CORTEZ ET AL.* C. A. 9th Cir. [Certiorari granted, 447 U. S. 904.] Motion of respondents for divided argument granted.

No. 79-408. *CITY OF MILWAUKEE ET AL. v. ILLINOIS ET AL.* C. A. 7th Cir. [Certiorari granted, 445 U. S. 926.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted.

No. 79-824. *FEDERAL COMMUNICATIONS COMMISSION ET AL. v. WNCN LISTENERS GUILD ET AL.*;

No. 79-825. *INSILCO BROADCASTING CORP. ET AL. v. WNCN LISTENERS GUILD ET AL.*;

No. 79-826. *AMERICAN BROADCASTING COS., INC., ET AL. v. WNCN LISTENERS GUILD ET AL.*; and

No. 79-827. *NATIONAL ASSOCIATION OF BROADCASTERS ET AL. v. WNCN LISTENERS GUILD ET AL.* C. A. D. C. Cir. [Certiorari granted, 445 U. S. 914.] Motion of the Solicitor General for divided argument granted. Motion of petitioners in No. 79-825 for divided argument denied.

No. 79-1157. *ROSEWELL, TREASURER OF COOK COUNTY, ILLINOIS, ET AL. v. LASALLE NATIONAL BANK, TRUSTEE.* C. A. 7th Cir. [Certiorari granted, 445 U. S. 925.] Motion of Cook County Legal Assistance Foundation ex rel. Fred Schubert for leave to file a brief as *amicus curiae* granted.

No. 79-1171. *MINNESOTA v. CLOVER LEAF CREAMERY CO. ET AL.* Sup. Ct. Minn. [Certiorari granted, 445 U. S. 949.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted.

No. 79-1420. *FIRESTONE TIRE & RUBBER CO. v. RISJORD.* C. A. 8th Cir. [Certiorari granted, 446 U. S. 934.] Motion of petitioner to supplement the record granted.

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No. 79-1320. *KASSEL, DIRECTOR OF TRANSPORTATION, ET AL. v. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE*. C. A. 8th Cir. [Probable jurisdiction noted, 446 U. S. 950.] Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted.

No. 79-1601. *SUMNER, WARDEN v. MATA*. C. A. 9th Cir. [Certiorari granted, 448 U. S. 910.] Motion of petitioner for divided argument denied.

No. 79-1631. *DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA ET AL. v. WISCONSIN EX REL. LA FOLLETTE ET AL.* Sup. Ct. Wis. [Probable jurisdiction noted, 448 U. S. 909.] Motion of the Democratic Conference for leave to file a brief as *amicus curiae* granted. Motion of appellees for divided argument granted. Request for additional time for oral argument denied.

No. 79-1764. *TEXAS DEPARTMENT OF COMMUNITY AFFAIRS v. BURDINE*. C. A. 5th Cir. [Certiorari granted, 447 U. S. 920.] Motion of Lonny F. Zweiner, Esquire, to permit Gregory Wilson, Esquire, to present oral argument *pro hac vice* on behalf of petitioner granted.

No. 80-5311. *IN RE HERNANDEZ*; and

No. 80-5312. *IN RE HERNANDEZ*. Petitions for writs of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 79-1640. *SCHAD ET AL. v. BOROUGH OF MOUNT EPHRAIM*. Appeal from Super. Ct. N. J., App. Div. Probable jurisdiction noted.

No. 80-195. *METROMEDIA, INC., ET AL. v. CITY OF SAN DIEGO ET AL.* Appeal from Sup. Ct. Cal. Probable jurisdiction noted. Reported below: 26 Cal. 3d 848, 610 P. 2d 407.

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*Certiorari Granted*

No. 79-1777. COMPLETE AUTO TRANSIT, INC., ET AL. v. REIS ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 614 F. 2d 1110.

No. 80-169. UNITED PARCEL SERVICE, INC. v. MITCHELL ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 624 F. 2d 394.

No. 80-180. McDANIEL ET AL. v. SANCHEZ ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 615 F. 2d 1023.

No. 79-1794. MICHIGAN v. SUMMERS. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 407 Mich. 432, 286 N. W. 2d 226.

No. 79-1997. CONNECTICUT BOARD OF PARDONS ET AL. v. DUMSCHAT ET AL. C. A. 2d Cir. Motion of respondents Brown and Czaja for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 618 F. 2d 216.

*Certiorari Denied.* (See also No. 80-5212, *supra.*)

No. 79-2030. BOSTICK ET AL. v. BOORSTIN, LIBRARIAN OF CONGRESS. C. A. D. C. Cir. Certiorari denied. Reported below: 199 U. S. App. D. C. 289, 617 F. 2d 871.

No. 79-2064. WALDBAUM v. FAIRCHILD PUBLICATIONS, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 201 U. S. App. D. C. 301, 627 F. 2d 1287.

No. 79-6848. CARVER v. McELROY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 565.

No. 79-6856. CHEERS v. SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 2d 463.

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No. 80-17. *BOWERS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

No. 80-35. *WEINGARTEN v. BLOCK ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 102 Cal. App. 3d 129, 162 Cal. Rptr. 701.

No. 80-41. *ILLINOIS ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 591.

No. 80-53. *NORTH AMERICAN SOCCER LEAGUE ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 1379.

No. 80-75. *KECO INDUSTRIES, INC. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 443.

No. 80-78. *PROVENZANO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 985.

No. 80-107. *MENOMINEE TRIBE OF INDIANS ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 223 Ct. Cl. 662, 650 F. 2d 286.

No. 80-111. *BARR ET AL., ADMINISTRATORS v. CITY OF NEW YORK ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 834, 425 N. Y. S. 2d 439.

No. 80-117. *PATEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 1358.

No. 80-153. *HEADY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 80-155. *AMSTAR CORP. v. DOMINO'S PIZZA, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 252.

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No. 80-156. *MASSACHUSETTS v. HUGHES*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 380 Mass. 583, 404 N. E. 2d 1239.

No. 80-162. *TURNER v. RAYNES*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 92.

No. 80-164. *DANNING, TRUSTEE IN BANKRUPTCY v. PACIFIC PROPELLER, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 731.

No. 80-166. *COLBY v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 644.

No. 80-171. *SAVE THE BAY, INC. v. UNITED STATES CORPS OF ENGINEERS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 322.

No. 80-178. *OGIONY ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 617 F. 2d 14.

No. 80-186. *WRIGHT v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 400, 268 S. E. 2d 378.

No. 80-190. *DIAMOND v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 292.

No. 80-194. *RAMIREZ v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 80-197. *WORLDWIDE CHURCH OF GOD, INC., ET AL. v. CALIFORNIA*. Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 80-200. *MORSEY v. GREEN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 917.

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No. 80-205. *TOSO v. CITY OF SANTA BARBARA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 101 Cal. App. 3d 934, 162 Cal. Rptr. 210.

No. 80-206. *TEAGUE v. CITY OF ST. LOUIS, MISSOURI*. C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 2d 773.

No. 80-210. *ARMSTRONG v. MAPLE LEAF APARTMENTS, LTD., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 622 F. 2d 466.

No. 80-212. *MIZE ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 1046.

No. 80-216. *KAUFMAN v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 80-217. *HOWELL v. THOMAS, SHERIFF*. C. A. 5th Cir. Certiorari denied.

No. 80-220. *UNIDENTIFIED REMAINS OF A VESSEL v. PLATORO LTD., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1051.

No. 80-225. *LOVE v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 275 S. C. 55, 271 S. E. 2d 110.

No. 80-229. *SELLERS ET AL. v. RUPERT ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 881, 408 N. E. 2d 671.

No. 80-5033. *PALMIGIANO v. HOULE*. C. A. 1st Cir. Certiorari denied. Reported below: 618 F. 2d 877.

No. 80-5043. *HARVEY v. SIMS*. Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 556, 265 S. E. 2d 879.

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No. 80-5071. *CALHOUN v. WEST VIRGINIA*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5078. *NAVARRO v. UNITED STATES PAROLE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 566.

No. 80-5085. *ANDERSON v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-5104. *HACKETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 623 F. 2d 343.

No. 80-5128. *FOREMAN v. BEE BINDERY, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 592.

No. 80-5144. *WARREN v. HARVEY, ACTING DIRECTOR, WHITING FORENSIC INSTITUTE*. C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 925.

No. 80-5178. *HAMILTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 348.

No. 80-5183. *HOWARD v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 598 S. W. 2d 763.

No. 80-5192. *RENFRO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 569.

No. 80-5195. *BEAL v. BEAL*. Ct. App. Wash. Certiorari denied. Reported below: 24 Wash. App. 1030.

No. 80-5198. *McCRARY v. PETTIGRASS*. C. A. 2d Cir. Certiorari denied.

No. 80-5201. *SNEED v. HENSLEY, DETECTIVE, ASHEVILLE POLICE DEPARTMENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 295.

No. 80-5205. *STEINKE v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 292 N. W. 2d 243.

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No. 80-5206. *COWART v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 112.

No. 80-5220. *DiSILVESTRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 203.

No. 80-5221. *ANGELUCCI v. FITZGERALD, CORRECTIONS COMMISSIONER, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 202.

No. 80-5225. *CAULEY v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 831, 425 N. Y. S. 2d 272.

No. 80-5234. *BLEIER v. GENERAL SERVICES ADMINISTRATION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 308.

No. 80-5239. *PENN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 2d 876.

No. 80-5259. *GODFREY v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 383 So. 2d 575.

No. 80-5260. *TURNER v. COUNTY OF SISKIYOU ET AL.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 80-5262. *NELSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 588.

No. 80-5294. *BERMAN v. BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY, ET AL.* Super. Ct. N. J. Certiorari denied.

No. 80-5295. *LUTHER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1093.

No. 80-5299. *STONE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 580.

No. 80-5301. *HIGGINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

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No. 80-5313. *GREEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 630 F. 2d 566.

No. 80-5314. *GREEN v. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-5318. *VEZZANA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-5326. *GRAHAM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 57.

No. 80-5329. *KALSBECK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 625 F. 2d 123.

No. 80-5331. *TAFERO v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 566.

No. 80-5332. *SCHMIDT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 626 F. 2d 616.

No. 80-5334. *WERTZ ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 625 F. 2d 1128.

No. 80-5347. *FLEMING v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 246 Ga. 90, 270 S. E. 2d 185.

No. 80-5415. *IN RE GREEN*. C. A. D. C. Cir. Certiorari denied.

No. 80-5416. *GREEN v. BEAVER, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 79-1457. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1969, ET AL. v. BISE ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 618 F. 2d 1299.

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No. 79-1713. RED LAKE BAND OF CHIPPEWA INDIANS *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 614 F. 2d 1161.

No. 79-1920. SAFEWAY STORES, INC., ET AL. *v.* MEAT PRICE INVESTIGATORS ASSN. ET AL.;

No. 79-1959. MEAT PRICE INVESTIGATORS ASSN. ET AL. *v.* SAFEWAY STORES, INC., ET AL.;

No. 79-2060. BLACK ET AL. *v.* ALBERTSON'S, INC., ET AL.;

No. 80-103. LOWE ET AL. *v.* SAFEWAY STORES, INC., ET AL.; and

No. 80-105. AGEE ET AL. *v.* SAFEWAY STORES, INC., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions. Reported below: 600 F. 2d 1148.

No. 79-1988. EARTH SATELLITE CORP. ET AL. *v.* HASTINGS ET AL. C. A. D. C. Cir. Motion of respondent Hastings for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 202 U. S. App. D. C. 85, 628 F. 2d 85.

No. 80-237. OHIO *v.* YOUNG. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 62 Ohio St. 2d 370, 406 N. E. 2d 499.

No. 79-6512. HOLLOWAY *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 362 So. 2d 333.

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

The Court in this case denies certiorari to review what I believe is an important due process question requiring interpretation of our decisions in *Keeble v. United States*, 412 U. S. 205 (1973), and *Beck v. Alabama*, 447 U. S. 625 (1980).

The facts, taken from the state-court opinion and the undisputed allegations of the petition, may be summarized briefly. On November 7, 1972, a man was killed in Dade County, Fla. Five days later, petitioner voluntarily turned himself over to the Miami police in connection with the killing. After issuing *Miranda* warnings, the police took two separate statements from petitioner concerning the victim's death. Petitioner was then released. On November 29, he communicated with one of the police detectives and furnished a third statement.

About three and one-half years later, on June 23, 1976, petitioner and a codefendant were indicted for the capital felony of first-degree murder based on the 1972 killing. Following presentation of all the evidence, the trial court decided over petitioner's objection that it would not instruct the jury on the lesser included state offenses of second-degree murder, third-degree murder, and manslaughter, on the ground that the Florida statute of limitations had run on these lesser offenses.<sup>1</sup> The jury was instructed solely as to first-degree murder. Petitioner was convicted and sentenced to life imprisonment.

On appeal, the Florida District Court of Appeal affirmed the conviction. 362 So. 2d 333 (1978). The appellate court concluded that a defendant has no state or federal constitutional right to have a court instruct on lesser offenses where "any conviction returned as to such offense would be a nullity." *Id.*, at 335. After accepting jurisdiction and hearing argument, the Supreme Court of Florida, with one dissent, denied certiorari. 379 So. 2d 953 (1980).

This Court's decision in *Keeble v. United States*, *supra*, casts doubt on the validity of the state court's analysis. In *Keeble*, the Court held that an Indian charged with a federal

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<sup>1</sup> At the time of the killing, the statute of limitations for each of the lesser offenses was two years. Fla. Stat. § 932.465 (1972). There was no period of limitations for the crime of first-degree murder. *Ibid.*

crime under the Major Crimes Act was entitled to an instruction on a lesser included offense even though the Act did not confer federal jurisdiction over the defendant for the lesser crime. The Court explained the value of such a safeguard:

“[I]f the prosecution has not established beyond a reasonable doubt every element of the offense charged, and if no lesser offense instruction is offered, the jury must, as a theoretical matter, return a verdict of acquittal. But a defendant is entitled to a lesser offense instruction—in this context or any other—precisely because he should not be exposed to the substantial risk that the jury’s practice will diverge from theory. Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of *some* offense, the jury is likely to resolve its doubts in favor of conviction.” (Emphasis in original). 412 U. S., at 212–213.

More recently, in *Beck v. Alabama, supra*, the Court held that the death sentence may not constitutionally be imposed after a jury verdict of guilt of a capital offense if the jury has not been permitted to consider an alternative verdict of guilt of a lesser included offense. In reaffirming the Court’s commitment to the lesser-offense doctrine, the Court observed that “the nearly universal acceptance of the rule in both state and federal courts establishes the value to the defendant of this procedural safeguard.” 447 U. S., at 637.

Thus the Court more than once has expressed the understanding that a lesser-included-offense option minimizes the risk of undermining the reasonable-doubt standard. Florida, whose laws here apply, apparently has reached the same understanding, and requires that any person indicted for a “degree crime” such as first-degree murder<sup>2</sup> is entitled to

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<sup>2</sup> See Fla. Stat. § 782.04 (1976 and Supp. 1980) (defining murder as a degree crime).

have the jury instructed on all degrees of the offense.<sup>3</sup> It is not disputed that, absent the running of the statute of limitations, petitioner would have been so entitled in this case.

On the record presented, it appears that the State's own delay in bringing an indictment against petitioner may have caused the statute of limitations to run. Serious due process concerns are raised if the State through prosecutorial inaction can avoid its own mandate to instruct on lesser degrees of an offense. Assuming that petitioner's uncontested version of the facts is accurate, I believe such conduct merits plenary review.

Even if we were to find, upon a fuller development of the record, that the State bears no onus for the delay in securing an indictment, I am inclined to the view that petitioner retains his right to a lesser-offense instruction. The Court's decisions in both *Keeble* and *Beck* imply that affording jurors a less drastic alternative may be constitutionally necessary to enhance or preserve their essential factfinding function.<sup>4</sup> Whether the trial court properly may enter a judgment of guilt should the jury convict for a lesser included offense seems to me a separate, *legal* matter with which the factfinder need have no concern.<sup>5</sup> Because I believe that a trial

<sup>3</sup> Florida Rule of Criminal Procedure 3.490 reads as follows:

*"Determination of Degree of Offense* If the indictment or information charges an offense which is divided into degrees, without specifying the degree, the jurors may find the defendant guilty of any degree of the offense charged; if the indictment or information charges a particular degree the jurors may find the defendant guilty of the degree charged or of any lesser degree. The court shall in all such cases charge the jury as to the degrees of the offense."

<sup>4</sup> Both *Keeble* and *Beck* stop short of explicitly holding that a defendant is entitled to a lesser-included-offense instruction as a matter of due process. In the circumstances of those cases, however, such a holding was not necessary in order to prescribe the lesser-offense instruction.

<sup>5</sup> The legal question may be determined by whether the defendant himself chooses to invoke a statute of limitations defense. At least two Cir-

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court's asserted lack of jurisdiction may not be dispositive of the due process concerns here invoked, I would grant the petition for certiorari.

No. 79-6583. *MOOREFIELD v. UNITED STATES SECRET SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 1021.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

Because the decision in this case is subject to serious question under the reasoning of *NLRB v. Robbins Tire & Rubber Co.*, 437 U. S. 214 (1978), I dissent from the denial of certiorari.

The Secret Service maintains an open file on petitioner, who has twice been convicted of threatening to kill the President. In January 1976, petitioner filed an administrative request with the Service to inspect that file, or at least such portions of it as could be segregated from exempt portions.<sup>1</sup> There were at that time no proceedings pending against petitioner. His request was denied in its entirety.<sup>2</sup> This decision was

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culits have held that a defendant can effectively waive this defense. *United States v. Wild*, 179 U. S. App. D. C. 232, 236-238, 551 F. 2d 418, 422-424, cert. denied, 431 U. S. 916 (1977); *United States v. Doyle*, 348 F. 2d 715, 718-719, and n. 3 (CA2), cert. denied, 382 U. S. 843 (1965) (waiver by guilty plea); *United States v. Parrino*, 212 F. 2d 919, 922 (CA2), cert. denied, 348 U. S. 840 (1954) (same). The court in *Wild*, in concluding that the statute of limitations constitutes an affirmative defense to be raised by the defendant rather than a jurisdictional bar to prosecution, relied heavily on this Court's prior statement to that effect in *United States v. Cook*, 17 Wall. 168, 179 (1872). See also *Biddinger v. Commissioner of Police*, 245 U. S. 128, 135 (1917). There is no indication in the record before us as to how petitioner acted in this regard, or even whether he was presented with a choice.

<sup>1</sup> The Court of Appeals recognized that Moorefield's convictions did not affect his right to see the file.

<sup>2</sup> The Secret Service cited seven Freedom of Information Act exemptions in refusing the original request. These exemptions appear in 5 U. S. C. §§ 552 (b) (2), (5), (7) (A, C-F).

upheld on administrative appeal and in subsequent judicial proceedings brought under the Freedom of Information Act, 5 U. S. C. § 552 (a)(4)(B). During the course of these proceedings, petitioner learned that the file he sought consisted of 225 pages. Despite a request by petitioner, at no time was this file itemized and indexed in such a way as to correlate particular portions of the file with particular exemption provisions of the Act.

The District Court conducted an *in camera* inspection of the file and then granted respondents' motion for summary judgment, finding that disclosure "would constitute a threat to ongoing enforcement activities and to certain individuals within [and] without the Secret Service." The Court of Appeals affirmed, 611 F. 2d 1021 (CA5 1980), relying on this Court's interpretation of Exemption 7 (A) of the Act, 5 U. S. C. § 552 (b)(7)(A), in *Robbins Tire*.

The Act requires that records and materials in the possession of federal agencies be made available on demand, unless the requested material falls within one of nine statutory exemptions. Exemption 7 (A) states: "This section does not apply to matters that are . . . (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings . . . ." The present language of this Exemption is the result of a 1974 amendment to the Act. The Act, prior to 1974, had exempted from disclosure all "investigatory files compiled for law enforcement purposes." 5 U. S. C. § 552 (b)(7) (1970 ed.). In *Robbins Tire* we surveyed the meaning and scope of Exemption 7 (A) in light of the legislative history that led to its narrowing in 1974. We concluded that the purpose of the 1974 amendment had been "to eliminate 'blanket exemptions' for Government records simply because they were found in investigatory files compiled for law enforcement purposes . . . ." 437 U. S., at 236.

The Court of Appeals decision in this case creates a "blanket exemption" for any open Secret Service file. The court reached this result by means of a novel interpretation of the phrase "enforcement proceedings" and a questionable inference from *Robbins Tire*. First, the court interpreted "enforcement proceedings" to include more than adjudicatory procedures. It held that because Secret Service investigations are "directed toward an active and concrete effort to enforce the law," 611 F. 2d, at 1025, they qualify as "enforcement proceedings" under the Act. Second, *Robbins Tire* permits agencies to make "generic determinations" that disclosure of certain kinds of materials would interfere with enforcement proceedings. The Court of Appeals held that Secret Service files qualify as such a generic determination. Thus, any Secret Service file related to an open investigation is wholly exempted, without more, from disclosure.

The Court of Appeals thought that the prophylactic aim of the Secret Service distinguishes it from other law enforcement agencies that conduct "investigations with a view towards apprehending law-breakers and bringing them to justice." 611 F. 2d, at 1025. Clearly, however, other law enforcement agencies have prophylactic goals, and the acts the Secret Service investigates are crimes. See, *e. g.*, 18 U. S. C. § 871 (threats against the President are punishable by fine and imprisonment). If Secret Service investigations, without limitation, qualify as enforcement proceedings regardless of whether or not there is an adjudicatory proceeding pending or imminent, then arguably many investigatory files of other law enforcement agencies also qualify for exemption.

*Robbins Tire* concluded that a generic determination that disclosure of witness statements prior to unfair labor practice hearings would interfere with those proceedings was permissible under Exemption 7 (A). The decision of the Court of Appeals, however, did not make a generic determination with

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respect to a kind of document, but rather with respect to a kind of investigatory file. Such a file could include various types of documents. This seems inconsistent with what the Court said in *Robbins Tire*:

“by substituting the word ‘records’ for ‘files,’ [the 1974 amendment] would make clear that courts had to consider the nature of the particular document as to which exemption was claimed, in order to avoid the possibility of impermissible ‘commingling’ by an agency’s placing in an investigatory file material that did not legitimately have to be kept confidential.” 437 U. S., at 229–230.

Accordingly, I would issue the writ and give this case plenary consideration.

No. 80–157. *E. R. SQUIBB & SONS, INC. v. SINDELL ET AL.*;

No. 80–158. *UPJOHN Co. v. SINDELL ET AL.*;

No. 80–170. *REXALL DRUG Co. ET AL. v. SINDELL ET AL.*;

and

No 80–172. *ABBOTT LABORATORIES v. SINDELL ET AL.* Sup. Ct. Cal. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 26 Cal. 3d 588, 607 P. 2d 924.

No. 80–175. *WOODLANDS TELECOMMUNICATIONS CORP. v. SOUTHWESTERN BELL TELEPHONE Co.* C. A. 5th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 615 F. 2d 1372.

No. 80–5208. *VINSON v. RICHMOND POLICE DEPARTMENT ET AL.* C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 618 F. 2d 107.

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No. 80-5235. *FINNEY v. BALKCOM, WARDEN*. Super. Ct. Ga., Tattnall County;

No. 80-5252. *STEELMAN v. ARIZONA*. Sup. Ct. Ariz.;  
and

No. 80-5268. *ANTONE v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 80-5252, 120 Ariz. 301, 585 P. 2d 1213; No. 80-5268, 382 So. 2d 1205.

JUSTICE BRENNAN and 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. 79-1694. *HAMILTON v. GENERAL MOTORS CORP.*, 447 U. S. 907. Petition for rehearing denied.

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*Dismissal Under Rule 53.* (See No. 79-972, *infra.*)

#### *Affirmed on Appeal*

No. 80-215. *EDWARDS ET AL. v. SERVICE MACHINE & SHIP-BUILDING CORP., INC., ET AL.* Affirmed on appeal from C. A. 5th Cir. Reported below: 617 F. 2d 70.

#### *Appeals Dismissed*

No. 80-116. *DARRIGO v. STATE COMMISSION ON JUDICIAL CONDUCT ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE WHITE and JUSTICE STEVENS would dismiss for want of substantial federal question. Reported below: 74 App. Div. 2d 801, 426 N. Y. S. 2d 1006.

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No. 80-235. CRENSHAW *v.* BLANTON, GOVERNOR OF TENNESSEE, ET AL. Appeal from Ct. App. Tenn. dismissed for want of properly presented federal question. Reported below: 606 S. W. 2d 285.

No. 80-5173. CLAY, ADMINISTRATOR *v.* HALL ET AL. Appeal from Ct. App. Tenn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 597 S. W. 2d 737.

No. 80-5272. BROWN *v.* KANSAS WORKMEN'S COMPENSATION FUND. Appeal from Sup. Ct. Kan. dismissed for want of substantial federal question. JUSTICE STEWART took no part in the consideration or decision of this case. Reported below: 227 Kan. 645, 608 P. 2d 1356.

*Certiorari Granted—Vacated and Remanded.* (See also No. 79-1901, *ante*, p. 1.)

No. 79-1970. CICCONE *v.* TEXTRON, INC. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mohasco Corp. v. Silver*, 447 U. S. 807 (1980). Reported below: 616 F. 2d 1216.

No. 79-1998. CALIFORNIA *v.* TERESINSKI. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Crews*, 445 U. S. 463 (1980). Reported below: 26 Cal. 3d 457, 605 P. 2d 874.

No. 80-208. EWALD *v.* GREAT ATLANTIC & PACIFIC TEA Co., INC. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mohasco Corp. v. Silver*, 447 U. S. 807 (1980). Reported below: 620 F. 2d 1183.

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No. 80-5275. *BRACEWELL v. ALABAMA*. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Beck v. Alabama*, 447 U. S. 625 (1980). Reported below: 401 So. 2d 125.

### *Certiorari Dismissed*

No. 79-972. *WESTVACO CORP. ET AL. v. ADAMS EXTRACT CO. ET AL.* C. A. 5th Cir. [Certiorari granted, 447 U. S. 919.] Motion of respondents Owens-Illinois, Inc., et al. to dismiss the writ of certiorari granted. Motion of Westvaco Corp. to dismiss the writ of certiorari pursuant to Rule 53 granted. Motion of Mead Corp. for leave to intervene as a party petitioner denied. Certiorari dismissed. JUSTICE POWELL took no part in the consideration or decision of this case.

### *Vacated and Remanded After Certiorari Granted*

No. 79-1356. *JOHNSON ET AL. v. BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.* C. A. 7th Cir. [Certiorari granted, 448 U. S. 910.] Judgment vacated and case remanded for further consideration in light of the subsequent development described in the suggestion of mootness filed by respondents on October 2, 1980; the response of petitioners filed on October 10, 1980; the response of the United States as *amicus curiae* filed on October 10, 1980; and the reply filed on October 15, 1980.

### *Miscellaneous Orders*

No. A-146 (80-5216). *SCOTT v. FLORIDA*. Application for stay of proceedings in the Supreme Court of Florida, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

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No. A-253 (80-552). CALIFORNIA MANUFACTURERS ASSN. ET AL. *v.* INDUSTRIAL WELFARE COMMISSION OF CALIFORNIA ET AL.; and

No. A-254 (80-560). SAN JOAQUIN NISEI FARMERS LEAGUE ET AL. *v.* INDUSTRIAL WELFARE COMMISSION OF CALIFORNIA ET AL. Sup. Ct. Cal. The order entered by JUSTICE REHNQUIST on September 26, 1980, staying the issuance of a peremptory writ of mandate is vacated, and applications are denied.

No. A-322. SKEEN ET AL. *v.* HOOPER, SECRETARY OF STATE OF NEW MEXICO. Application for injunction, presented to JUSTICE WHITE, and by him referred to the Court, denied.

No. A-333. WHIG PARTY OF ALABAMA ET AL. *v.* SIEGELMAN, SECRETARY OF STATE OF ALABAMA, ET AL. C. A. 5th Cir. Application for injunction and other relief, presented to JUSTICE BRENNAN, and by him referred to the Court, denied.

No. D-186. IN RE DISBARMENT OF COOPER. Disbarment entered. [For earlier order herein, see 446 U. S. 915.]

No. D-190. IN RE DISBARMENT OF FUSCIELLO. Disbarment entered. [For earlier order herein, see 446 U. S. 915.]

No. D-191. IN RE DISBARMENT OF SCHILPP. Disbarment entered. [For earlier order herein, see 446 U. S. 933.]

No. D-194. IN RE DISBARMENT OF AMOS. Disbarment entered. [For earlier order herein, see 447 U. S. 902.]

No. 79-1388. KIRCHBERG *v.* FEENSTRA ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 446 U. S. 917.] Suggestion of mootness filed by appellees Edwards and Louisiana rejected.

No. 80-83. MUSKIE, SECRETARY OF STATE *v.* AGEE. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 818.] Motion of respondent to expedite denied.

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No. 80-255. GEORGIA POWER CO. *v.* 138.30 ACRES OF LAND ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-293. UNITEX LTD. ET AL. *v.* DAN RIVER, INC. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE POWELL took no part in the consideration or decision of this order.

No. 80-5422. IN RE MAGEE; and

No. 80-5447. IN RE MOORE. Petitions for writs of habeas corpus denied.

#### *Probable Jurisdiction Postponed*

No. 80-5. McCARTY *v.* McCARTY. Appeal from Ct. App. Cal., 1st App. Dist. Further consideration of question of jurisdiction postponed to hearing of case on the merits.

#### *Certiorari Granted*

No. 79-1734. PARRATT ET AL. *v.* TAYLOR. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 620 F. 2d 307.

No. 79-1711. MIDDLESEX COUNTY SEWERAGE AUTHORITY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1754. JOINT MEETING OF ESSEX AND UNION COUNTIES *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1760. CITY OF NEW YORK ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.; and

No. 80-12. ENVIRONMENTAL PROTECTION AGENCY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL. C. A. 3d Cir. Certiorari granted limited to the following questions:

1. Whether the Federal Water Pollution Control Act, 33 U. S. C. § 1251 *et seq.* (1976 ed. and Supp. III), and the Marine Protection, Research, and Sanctuaries Act of 1972,

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33 U. S. C. § 1401 *et seq.* (1976 ed. and Supp. III), imply a private right of action independent of the rights explicitly created by the citizens suit provisions of those Acts, 33 U. S. C. § 1415 (g).

2. Whether a private citizen has standing to maintain a federal common law nuisance action for alleged damages sustained resulting from ocean pollution as a general federal question under 28 U. S. C. § 1331.

3. Whether any federal common law nuisance action for alleged damages sustained resulting from ocean pollution, if available to a private citizen, is not preempted by the present regulatory scheme governing ocean pollution established by the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act.

Cases consolidated and a total of one hour allotted for oral argument. Reported below: 616 F. 2d 1222.

*Certiorari Denied.* (See also Nos. 80-116 and 80-5173, *supra.*)

No. 79-1637. *J. P. STEVENS & Co., INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 4th Cir. *Certiorari denied.* Reported below: 612 F. 2d 881.

No. 79-1913. *AAACON AUTO TRANSPORT, INC. v. MILLER.* C. A. 5th Cir. *Certiorari denied.* Reported below: 614 F. 2d 292.

No. 79-6724. *SHAW v. TEXAS.* Ct. Crim. App. Tex. *Certiorari denied.* Reported below 598 S. W. 2d 883.

No. 79-6751. *JACOBS v. ROWE, CORRECTIONS DIRECTOR, ET AL.* C. A. 7th Cir. *Certiorari denied.* Reported below: 618 F. 2d 114.

No. 79-6833. *KRAMARCZYK v. ILLINOIS.* App. Ct. Ill., 1st Dist. *Certiorari denied.* Reported below: 78 Ill. App. 3d 6, 396 N. E. 2d 1081.

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No. 80-37. *LESTER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 101 Cal. App. 3d 613, 161 Cal. Rptr. 703.

No. 80-95. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. ALEXANDER, SECRETARY OF THE ARMY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 474.

No. 80-106. *SAICI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 206.

No. 80-118. *DAY ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 1122.

No. 80-128. *INVESTORS RESEARCH CORP. ET AL. v. SECURITIES AND EXCHANGE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 168, 628 F. 2d 168.

No. 80-132. *BERG v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 1026.

No. 80-145. *UNDERWOOD ET AL. v. SECRETARY OF THE INTERIOR*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

No. 80-154. *MOLES v. MORTON F. PLANT HOSPITAL, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 293.

No. 80-199. *BERKLEY MACHINE WORKS & FOUNDRY Co. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 4th Cir. Certiorari denied. Reported below: 623 F. 2d 898.

No. 80-218. *SHERWOOD v. BROWN, SECRETARY OF DEFENSE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 619 F. 2d 47.

No. 80-219. *BIG BEAR SUPERMARKETS No. 3 v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 640 F. 2d 924.

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No. 80-228. *SUBURBAN REALTY Co. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 171.

No. 80-240. *JONES ET AL. v. KNELLER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 204.

No. 80-244. *ALDRIDGE v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 744, 266 S. E. 2d 513.

No. 80-247. *TAMA MEAT PACKING CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. D. C. Cir. Certiorari denied.

No. 80-248. *RUDOLF WOLFF & Co., LTD. v. NEIMAN, DBA LONDON GROUP (1974)*. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 2d 1189.

No. 80-249. *SCHARA ET AL. v. ANACONDA Co.* Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 610 P. 2d 132.

No. 80-253. *YANOWITZ v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 67 Ohio App. 2d 141, 426 N. E. 2d 190.

No. 80-260. *MILESTONE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 626 F. 2d 264.

No. 80-261. *LA ROCHELLE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 116.

No. 80-267. *MANNING v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-269. *CONNECTICUT v. GOLD*. Sup. Ct. Conn. Certiorari denied. Reported below: 180 Conn. 619, 431 A. 2d 501.

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No. 80-272. *T. F. H. PUBLICATIONS, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 579.

No. 80-279. *RIEGEL TEXTILE CORP. v. GRYC, BY GRYC, ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 297 N. W. 2d 727.

No. 80-282. *Yow v. AMERICAN HOME ASSURANCE Co.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 589.

No. 80-285. *CHVOSTA v. PIERRE ET AL.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-287. *SHEMITZ v. DEERE & Co., INC.* C. A. 7th Cir. Certiorari denied. Reported below: 623 F. 2d 1180.

No. 80-288. *SHUFFMAN, EXECUTRIX v. HARTFORD TEXTILE CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1345.

No. 80-303. *RENFRO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 497.

No. 80-312. *BONO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-570. *STROOM v. CIVILETTI, ATTORNEY GENERAL*. C. A. D. C. Cir. Certiorari before judgment denied.

No. 80-5037. *GREER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 592 S. W. 2d 645.

No. 80-5050. *JOHNS v. NANAWALE COMMUNITY ASSN. ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5069. *MATA v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 125 Ariz. 243, 609 P. 2d 58.

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No. 80-5096. *RAUB v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 1205.

No. 80-5117. *ELLIS v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 488 Pa. 594, 413 A. 2d 384.

No. 80-5186. *PATTERSON v. GARRINGTON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 80-5203. *PHILLIPS v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5207. *DAVIS v. STEPHENSON, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1348.

No. 80-5244. *QUIGG v. CRIST, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 1107.

No. 80-5264. *MONTGOMERY v. NATIONAL MULTIPLE SCLEROSIS SOCIETY*. C. A. D. C. Cir. Certiorari denied.

No. 80-5267. *NORRIS v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-5271. *ROACH v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-5292. *CLARK v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 416 A. 2d 717.

No. 80-5293. *BOYD v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5333. *MAYES v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 850.

No. 80-5340. *MEIER v. HUGHES TOOL Co.* C. A. 10th Cir. Certiorari denied.

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No. 80-5342. *FORD v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 627 F. 2d 807.

No. 80-5348. *BARRETT v. U. S. CUSTOMS SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 291.

No. 80-5362. *KLINE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-5365. *DEMARCO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-5367. *SACCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 80-5374. *GARCIA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 625 F. 2d 162.

No. 80-5383. *PRICE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

No. 80-5386. *YATES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1094.

No. 80-5389. *BROWN, AKA DENNIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 80-5390. *WADE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-5391. *LAGATTUTA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-5395. *DEVLIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1093.

No. 80-5409. *BENTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 587.

No. 80-5413. *MIZE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 866.

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No. 80-5418. *FORREST v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 1107.

No. 80-5438. *WARGO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 79-1545. *AMSTAR CORP. v. SOUTHERN PACIFIC TRANSPORT COMPANY OF TEXAS AND LOUISIANA*. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1100.

JUSTICE BLACKMUN, dissenting.

It seems to me that the Court's denial of certiorari in this case utterly ignores the parties' intent in executing a consent to a judgment and in their subsequent actions pursuant thereto.

Petitioner is a sugar refiner. It filed suit under § 20 (11) of the Interstate Commerce Act, 24 Stat. 386, as amended, 49 U. S. C. § 20 (11),<sup>1</sup> against respondent, a common carrier by motor, for damage to a cargo of sugar respondent undertook to transport. Although respondent by its formal answer denied liability, the real issue in the litigation proved to be the amount for which respondent was liable. Petitioner-shipper took the position that, under *Gore Products, Inc. v. Texas & N. O. R. Co.*, 34 So. 2d 418 (La. App. 1948), the proper measure of damages was the profit lost by petitioner on the completed sale, or \$7,529.28. Respondent-carrier, on the other hand, contended that the proper measure was the cost of reprocessing the sugar for resale to another customer, or \$488.65.<sup>2</sup> Respondent moved for partial summary judgment only on the issue of the quantum of damages. Over

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<sup>1</sup> Section 20 (11) was repealed in 1978 by Pub. L. 95-473, § 4 (b), 92 Stat. 1466, but the Interstate Commerce Act was reenacted as positive law by the same statute. 92 Stat. 1337.

<sup>2</sup> The smaller amount is not in dispute. Respondent has not agreed that the larger amount is correct, but it states that it "has always assumed" that the profit lost on the completed sale of the sugar was in excess of the smaller amount. Brief in Opposition 2.

petitioner's objection, the United States District Court for the Eastern District of Louisiana granted that motion, leaving open, so far as that court was concerned, the issue of liability. The partial summary judgment, being interlocutory, of course was not then appealable. See 28 U. S. C. §§ 1291 and 1292.

After a pretrial conference, the parties by their counsel entered into a stipulation of facts, App. to Pet. for Cert. 29a, and submitted to the court a "Joint Motion for Approval of Consent Judgment." *Id.*, at 32a.<sup>3</sup> The District Court then entered its "Consent Judgment upon Joint Stipulation of Facts," *id.*, at 26a, the final paragraph of which recited:

"This judgment is rendered in recognition of the reservation by the plaintiff of its right to prosecute an appeal in this action in connection with this judgment and in connection with the partial summary judgment rendered on March 14, 1979." *Id.*, at 27a.

The smaller of the two sums was then paid to petitioner. It thereupon executed a satisfaction of judgment, *id.*, at 34a, still reciting its reservation.<sup>4</sup>

Petitioner in due course appealed to the United States Court of Appeals for the Fifth Circuit. Both sides devoted their briefs in that court exclusively to the liability issue. The Court of Appeals, however, with a short *per curiam* opinion, held that, on the authority of another *per curiam* opin-

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<sup>3</sup> This Joint Motion recited:

"Amstar Corporation joins in this motion with full reservation of its right to prosecute an appeal in this action, both with respect to the attached consent judgment and with respect to the partial summary judgment granted in this action on March 14, 1979." App. to Pet. for Cert. 33a.

<sup>4</sup> The satisfaction provided:

"This Satisfaction of Judgment has been executed by Amstar Corporation with full reservation of its right to prosecute an appeal in this action in connection with the judgment entered on May 3, 1979, and in connection with the partial summary judgment rendered on March 14, 1979." *Id.*, at 34a.

ion, *White & Yarborough v. Dailey*, 228 F. 2d 836 (CA5 1955), (the governing authority of which I seriously question), "the fact that both parties freely consented to the entry of a final judgment precludes an appeal from it." 607 F. 2d 1100 (1979).

It seems to me to be clear that any consent on the part of petitioner did not reach the disputed difference between \$7,529.28 and \$488.65. To the extent that the Court of Appeals' holding rests on the suggestion in *White & Yarborough v. Dailey*, 228 F. 2d, at 837, that an appeal will not lie when payment of the judgment has been accepted, that holding is inconsistent with *United States v. Hougham*, 364 U. S. 310 (1960), where this Court said:

"It is a generally accepted rule of law that where a judgment is appealed on the ground that the damages awarded are inadequate, acceptance of payment of the amount of the unsatisfactory judgment does not, standing alone, amount to an accord and satisfaction of the entire claim." *Id.*, at 312.

Nor does the mere fact that the parties entered into a consent judgment preclude appeal. In *Swift & Co. v. United States*, 276 U. S. 311 (1928), it was observed:

"The decree sought to be vacated was entered with the defendants' consent. Under the English practice a consent decree could not be set aside by appeal or bill of review, except in case of clerical error. . . . In this Court a somewhat more liberal rule has prevailed. Decrees entered by consent have been reviewed upon appeal or bill of review where there was a claim of lack of actual consent to the decree as entered . . . ." *Id.*, at 323-324.

Here there is "a claim of lack of actual consent." See also *Nashville, C. & St. L. R. Co. v. United States*, 113 U. S. 261 (1885); *Pacific R. Co. v. Ketchum*, 101 U. S. 289 (1880).

The Court of Appeals' opinion also seems to me to be in

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some tension, if not outright conflict, on the point at issue, with *diLeo v. Greenfield*, 541 F. 2d 949, 952 (CA2 1976); *United States ex rel. H & S Industries, Inc. v. F. D. Rich Co.*, 525 F. 2d 760, 764-765 (CA7 1975); and *Gadsden v. Fripp*, 330 F. 2d 545, 548 (CA4 1964).

It may well be that upon review of the merits of the District Court's judgment, respondent will prevail. It seems to me, however, that petitioner is entitled to a ruling on the merits of its appeal to the Court of Appeals, and is not to be foreclosed by a strict concept of consent and acceptance in the face of facts that the asserted consent was specifically limited and that petitioner consistently and persistently disclaimed full settlement of the lawsuit. Indeed, until the case arrived here, respondent does not appear to have claimed otherwise.

The amount in contest is not large, but that fact in itself is no reason for this Court's lack of interest in a case where the principle is important. I would give serious consideration to a summary reversal of the judgment of the Court of Appeals. At the least, I would grant certiorari and set the case for argument.

No. 79-1735. *JARRETT v. JARRETT*. Sup. Ct. Ill. Certiorari denied. Reported below: 78 Ill. 2d 337, 400 N. E. 2d 421.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

This petition raises the significant question whether the State may deprive a divorced mother of the custody of her children through operation of a conclusive presumption that her cohabitation with an unmarried adult male constitutes custody not in the best interests of the children, however strong the contrary evidence. Because the decision below<sup>1</sup> conflicts with the import of relevant precedent of this Court, I dissent from the denial of a writ of certiorari.

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<sup>1</sup> 78 Ill. 2d 337, 400 N. E. 2d 421 (1979).

In December 1976, petitioner Jacqueline Jarrett was divorced from respondent Walter Jarrett. Jacqueline was given custody of their three daughters, then aged 12, 10, and 7. Jacqueline was also awarded use of the family home and child support; Walter had visitation rights, and the children regularly spent their weekends with him. In April 1977, Jacqueline told Walter that her friend, Wayne Hammon, was going to move into the family home. Walter objected and one week later filed a custody modification petition, seeking custody of his children on the grounds that he objected to his ex-wife's nonmarital relationship and did not wish his daughters to be raised in what he regarded to be an immoral atmosphere.

Following a hearing at which Jacqueline, Walter, and Hammon testified, the Circuit Court modified its original decree and granted custody of the children to Walter, finding the custody change necessary for the "moral and spiritual well-being and development" of the children. 78 Ill. 2d 337, 342, 400 N. E. 2d 421, 422 (1979). The Appellate Court reversed, reasoning that the Circuit Court made no finding and identified no evidence that Jacqueline was unfit to retain custody and, further, that there was no evidence that the change in custody was necessary to serve the best interests of the children.

A divided Illinois Supreme Court reversed the Appellate Court and reinstated the Circuit Court's modified custody decree. Applying the Illinois rule that a change in custody will be ordered only if necessary to serve the best interests of the child, the State Supreme Court found that Jacqueline's ostensible violation of the Illinois fornication statute<sup>2</sup> evinced a "disregard for existing standards of conduct [that] instructs her children, by example, that they, too, may ignore

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<sup>2</sup>Section 11-8 of the Criminal Code of 1961 provides that "[a]ny person who cohabits or has sexual intercourse with another not his spouse commits fornication if the behavior is open and notorious." Ill. Rev. Stat., ch. 38, § 11-8 (1977).

them, and could well encourage the children to engage in similar activity in the future." *Id.*, at 346-347, 400 N. E. 2d, at 424 (citations omitted). The court, therefore, concluded that retention of custody by Jacqueline adversely affected the best interests of the children since there was a possibility of harm to them, even though it might become manifest only in the future, there being no showing of current actual harm.<sup>3</sup> *Stanley v. Illinois*, 405 U. S. 645 (1972), was distinguished on the ground that *Stanley* invalidated a conclusive presumption that an unwed father is unfit to exercise custody over his children, whereas the conclusion in the instant case rested not on a conclusive presumption, but on a finding reached after Jacqueline was afforded a full hearing on the question whether she was an inadequate parent.

The decision of the Illinois Supreme Court that, in effect, a divorced woman's ostensible violation of the Illinois fornication statute presumptively harmed the best interests of the children and that this was conclusive for purposes of custody presents a serious question under the Fourteenth Amendment. Giving conclusive effect to such a violation would appear to contravene the teaching of *Stanley v. Illinois*:

"It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that *Stanley* is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children. . . . Given the opportunity to make his case, *Stanley* may have been seen to be deserving of custody of his offspring." *Id.*, at 654-655 (footnotes omitted).

I had supposed that *Stanley* established the proposition that "the interest of a parent in the companionship, care, custody,

<sup>3</sup> The best interests of the child may be sufficiently adversely affected to justify custody modification under Illinois law where, *inter alia*, "the child's present environment endangers seriously his physical, mental, moral or emotional health. . . ." Ill. Rev. Stat., ch. 40, § 610 (b) (3) (1977).

and management of his or her children," *id.*, at 651, cannot be determined by the evidentiary shortcut of a conclusive presumption. Thus, for purposes of this case, *Stanley* would seem to foreclose custody modification on the basis of a similar conclusive presumption of serious adverse effect on the children's best interests despite whatever contrary evidence may have been or might be adduced. This is particularly true since there is no rational basis for the conclusive presumption actually utilized, whether Jacqueline is viewed as having violated the fornication statute only or as being a lawbreaker generally.

Nothing in the record or in logic supports a conclusion that divorced parents who fornicate, for that reason alone, are unfit or adversely affect the well-being and development of their children in any degree over and above whatever adverse effect separation and divorce may already have had on the children. Illinois seldom, if ever, enforces its fornication statute<sup>4</sup> and therefore can hardly contend that there is a rational correlation between divorced parents who fornicate and divorced parents who impair the healthy development of their children.

Nor can Jacqueline be presumed to have an adverse effect on her children's well-being because she is a lawbreaker, for surely such a presumption would be irrationally overbroad. It would make no sense to treat murder, fornication, and traffic violations similarly for purposes of custody modification. If Illinois' enforcement record is an indication of how important it views violations of various laws, it appears that Illinois attempts to enforce its traffic laws more frequently than its "seldom-enforced fornication statute." 78 Ill. 2d, at 352, 400 N. E. 2d, at 427 (Moran, J., dissenting). If Jacqueline had violated Illinois' traffic laws, she might have lost her driver's license, but surely not custody of her children.

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<sup>4</sup> Illinois did not enforce its fornication statute in this case.

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Moreover, not only is there no basis for conclusively presuming that Jacqueline's cohabitation would adversely affect her children sufficiently to justify modification, but also any such conclusion is unequivocally rejected by the record which affirmatively shows that the "children were healthy, well adjusted, and well cared for." *Id.*, at 351, 400 N. E. 2d, at 426 (Goldenhersh, C. J., dissenting). There was no evidence of actual harm; nor was there evidence, statistical or otherwise, to suggest that the children's current exposure to their mother's cohabitation might result in harm to them that might become manifest only in the future. Surely, in any event, it is no more likely that divorced mothers who fornicate are unfit than are unwed fathers. Thus, this case squarely presents the question whether the Due Process Clause entitles Jacqueline to a meaningful hearing at which the trial judge determines, without use of a conclusive presumption, whether violation of the fornication statute adversely affects the well-being of the children.

Further, we should grant the petition and address the constitutional question it so clearly presents because the answer to that question has important implications for many households. The 1978 Census Bureau Statistics cited by the Illinois Supreme Court reveal that there are 1.1 million households composed of an unmarried man and woman and that upwards of 25% of those households also include at least one child. *Id.*, at 345, 400 N. E. 2d, at 424. While the statistics do not reveal how many of these households were formed after a divorce, and with respect to which the non-custodial divorced parent may be able to seek custody, the crude figures alone suggest that the custodial pattern is a pervasive one.

Accordingly, I dissent from the denial of certiorari and would grant the petition and set the case for oral argument.

MR. JUSTICE BLACKMUN also dissents from the denial of certiorari and would set the case for argument.

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No. 79-1909. CALIFORNIA *v.* MUSANTE. Ct. App. Cal., 4th App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below 102 Cal. App. 3d 156, 162 Cal. Rptr. 158.

No. 79-1964. ANDRUS, SECRETARY OF THE INTERIOR *v.* BAKER. C. A. 9th Cir. Certiorari denied. Reported below: 613 F. 2d 224.

JUSTICE BLACKMUN, with whom JUSTICE MARSHALL and JUSTICE POWELL join, dissenting.

The issue in this case is whether the Secretary of the Interior has applied an improper standard for determining that a mineral discovery is "valuable" under 30 U. S. C. § 22.<sup>1</sup> Because I believe that issue to be an important one deserving review here, and because the decision and judgment of the Court of Appeals may well thwart a proper attempt on the part of the Secretary to reject excessive mining claims while preserving the public's right to enjoy its lands, I dissent from the denial of certiorari.

In 1952, respondent began to mine cinders from a cone located within a volcanic field on public land near Flagstaff, Arizona. In 1965, he applied to the Bureau of Land Management of the Department of the Interior for a patent covering five 20-acre placer mining claims for cinders on land on which he claimed to have discovered "valuable mineral deposits." Respondent's claims covered an estimated 15 million tons of cinders. At the request of the Forest Service of the Depart-

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<sup>1</sup> Section 22 reads:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

ment of Agriculture, the Bureau issued an administrative contest complaint seeking cancellation of those claims.<sup>2</sup> Over the period from 1953 to 1976, respondent extracted and marketed less than one million tons; of this amount, a substantial portion was sold for purposes not cognizable under the mining laws. The Secretary considered these factors, along with the marginal profitability of the local cinders market, in concluding that respondent's total reserves far exceeded reasonable market demand for the foreseeable future. While validating two of respondent's claims, the Interior Board of Land Appeals nullified two others, reasoning that development of all four claims would be imprudent. 23 I. B. L. A. 319 (1976). Respondents sought judicial review in the United States District Court for the District of Arizona. On cross-motions for summary judgment, that court affirmed the agency's decision. The Court of Appeals, however, vacated and remanded, holding that the Secretary had exceeded his statutory powers in relying on an "excess reserves" analysis to limit the patentability of a mineral claim. 613 F. 2d 224 (CA9 1980).

Two complementary methods for determining whether a mineral deposit is of value have been developed over time. For many years, the "prudent person" test called for validation of mineral claims whenever extraction of the discovered deposits offered a "reasonable prospect of success" to a "person of ordinary prudence." *Castle v. Womble*, 19 L. D. 455, 457 (1894). This Court approved that test on numerous occasions, most recently in *Andrus v. Charlestone Stone Products Co.*, 436 U. S. 604 (1978). As a refinement on what at times perhaps appeared to be an imprecise standard, the Secretary came to require an applicant to show that his claimed deposit could be extracted and marketed at a profit. In *United States v. Coleman*, 390 U. S. 599, 603 (1968), this Court reversed a Court of Appeals' conclusion to the effect that the

<sup>2</sup> The Bureau later dismissed its complaint as to one of the claims.

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marketability standard was "different and more onerous" than the prudent person test. The Court viewed the modification as "an admirable effort to identify with greater precision and objectivity the factors relevant to a determination that a mineral deposit is 'valuable.'" *Id.*, at 602.

I believe that, as in *Coleman*, the Court of Appeals may have unduly restrained the Secretary's authority to evaluate claims of mineral discoveries on public lands; its ruling appears to be based on the perception, possibly a misperception, that the Secretary's "excess reserves" analysis does violence to the statute. In light of that ruling, one now may expect the assertion of additional claims involving "valuable" mineral deposits not marketable in the foreseeable future. This can, and probably will, result in the withdrawal of vast acreage from the public domain for purposes unrelated to mining. Even if Congress later acts to implement the "excess reserves" concept, a prospect at best uncertain, such prospective legislation might not return to the public trust those claims already perfected pursuant to the Court of Appeals' ruling. See *Best v. Humboldt Placer Mining Co.*, 371 U. S. 334, 335-336 (1963).

The case thus raises a substantial question regarding administration of public lands, and surely is arguably in conflict with the rationale of *United States v. Coleman*. I therefore would grant certiorari and have the issue resolved only after plenary consideration.

No. 79-1995. CITY OF LOS ANGELES *v.* LYONS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 615 F. 2d 1243.

JUSTICE WHITE, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

Respondent in this case seeks injunctive and declaratory relief under 42 U. S. C. § 1983 to restrain an alleged practice of the Los Angeles Police Department. Because I believe

that respondent's standing to seek this relief is open to serious question in the light of *O'Shea v. Littleton*, 414 U. S. 488 (1974), and *Rizzo v. Goode*, 423 U. S. 362 (1976), I dissent from the denial of certiorari.

In February 1977, respondent filed a seven-count complaint against the city of Los Angeles and four of its police officers. Respondent alleged that the four officers stopped his car for a minor traffic violation and that, without any provocation or reason to fear for their safety, they applied strangleholds around his neck, rendering him unconscious. He further alleged that the use of strangleholds in such non-life-threatening situations was a policy of the police department. Respondent sought damages, and injunctive and declaratory relief, claiming that the use of strangleholds in non-life-threatening situations violates the First, Fourth, Eighth, and Fourteenth Amendments.

The only issue before this Court is whether in seeking injunctive and declaratory relief respondent has stated a case or controversy within the jurisdiction of the federal courts. The Court of Appeals, reversing the District Court, held that respondent did have standing. The Court of Appeals distinguished this case from *O'Shea v. Littleton*, *supra*, and *Rizzo v. Goode*, *supra*, on two grounds: First, there was a greater likelihood in this case that respondent would be subjected at some future date to the alleged illegal conduct; second, respondent did not seek "structural relief" requiring the federal courts to supervise the conduct of state officials, but only an injunction against the use of an established police practice.<sup>1</sup>

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<sup>1</sup> The Court of Appeals also suggests that since respondent would have had standing to challenge the practice in the short period of time between his being stopped by the police and their use of a stranglehold upon him, the standing problem here can be analyzed in terms of mootness doctrine. The court believed that although respondent no longer has a live controversy, he falls within two exceptions to the mootness doctrine. First, a voluntary cessation of challenged conduct does not moot a claim if there is a strong possibility of its recurrence. Second, respondent's claim is one

*O'Shea* and *Rizzo* made clear that the federal courts are not the forum in which dissatisfied citizens may air their disagreements with government policy. The jurisdiction of the federal courts is limited by the case-or-controversy requirement of Art. III. Unless a party demonstrates a "personal stake in the outcome," *Baker v. Carr*, 369 U. S. 186, 204 (1962), the disagreement may not be settled by the federal courts. For purposes of equitable relief, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy . . . if unaccompanied by any continuing, present adverse effects" and if there is no "real and immediate threat of repeated injury" to the plaintiff. *O'Shea v. Littleton*, *supra*, at 495-496. Here, the prospect of future injury rests on the likelihood that respondent will again be stopped or arrested and have the allegedly unconstitutional procedures applied to him. In *O'Shea*, we held that this kind of possibility does not satisfy the case-or-controversy requirement.

There is no question that there is a case or controversy with respect to respondent's right to damages for an alleged past violation of his constitutional rights.<sup>2</sup> However, with respect to a threat of future injury, respondent's position cannot be distinguished from that of any other person who may at some future date have a confrontation with the Los Angeles police. This is the kind of injury we have previously characterized as "abstract" and, therefore, insuf-

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that is "capable of repetition, yet evading review." The first ground, however, merely restates the problem: it is precisely because petitioner does not threaten harm to respondent except in the abstract manner in which everyone in Los Angeles is threatened that respondent's standing is questionable. The second ground is not applicable because the constitutional issue would be addressed in a damages action brought under § 1983.

<sup>2</sup> If this controversy constitutes a § 1983 cause of action, the constitutional issue would be fully litigated in the damages suit.

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ficient to create the personal stake required by Art. III. 414 U. S., at 494.

We could not conclude that respondent has standing to press his claims for equitable relief without re-examining our holdings in *O'Shea* and *Rizzo* on the limits of the case-or-controversy requirement of Art. III. Of course, we cannot give plenary consideration to every misapplication of constitutional requirements, but the decision of the Court of Appeals appears so at odds with our precedents that I dissent from denial of certiorari.

No. 79-2068. THOMPSON *v.* MEDICAL LICENSING BOARD OF INDIANA ET AL. Ct. App. Ind. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: — Ind. App. —, 389 N. E. 2d 43, and — Ind. App. —, 398 N. E. 2d 679.

No. 80-147. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL No. 627 *v.* GEORGE E. HOFFMAN & SONS, INC. C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 617 F. 2d 1234.

No. 80-259. RUTHERFORD ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Motion of American Cancer Society, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 616 F. 2d 455.

No. 80-266. HOWELL *v.* CITY OF BIRMINGHAM. Ct. Crim. App. Ala. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 383 So. 2d 567.

No. 80-275. DAVIS ET AL. *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 617 F. 2d 1100.

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No. 80-290. *FIORE v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari. Reported below: 9 Mass. App. 618, 403 N. E. 2d 953.

No. 80-5127. *PINEIRO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 620 F. 2d 299.

No. 80-5158. *ALFREY ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 620 F. 2d 551.

No. 80-5204. *HULSEY v. ARKANSAS*. Sup. Ct. Ark.;

No. 80-5215. *DAMPIER v. GEORGIA*. Sup. Ct. Ga.; and

No. 80-5228. *MATA v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: No. 80-5204, 268 Ark. 312, 595 S. W. 2d 934; No. 80-5215, 245 Ga. 426, 265 S. E. 2d 565, and 245 Ga. 882, 268 S. E. 2d 349; No. 80-5228, 125 Ariz. 233, 609 P. 2d 48.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 80-5284. *SARTO v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied. JUSTICE MARSHALL would grant certiorari.

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### *Miscellaneous Orders\**

No. A-332. NATIONAL REPUBLICAN SENATORIAL COMMITTEE *v.* DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE ET AL. Motion to vacate the temporary stay, heretofore entered by the THE CHIEF JUSTICE on October 17, 1980, denied.

\*For order amending the Court's Rules, see *post*, p. 1137.

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October 27, November 3, 1980

## OCTOBER 27, 1980

*Dismissal Under Rule 53*

No. 80-5055. *KENNEDY v. FAIRMAN, WARDEN*. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 618 F. 2d 1242.

## NOVEMBER 3, 1980

*Appeals Dismissed*

No. 79-6743. *ALLISON v. FULTON-DE KALB HOSPITAL AUTHORITY*. 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. 445, 265 S. E. 2d 575.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

The issue on this appeal is whether the Georgia Supreme Court's reliance upon a newly announced state procedural rule requiring litigants to raise federal constitutional claims earlier than other claims constituted reliance upon an independent and adequate state ground barring this Court's jurisdiction.

Appellee Fulton-De Kalb Hospital Authority filed a complaint on February 5, 1975, against appellant Allison for hospital expenses incurred by his 16-year-old daughter when she gave birth to an illegitimate child. There was no contract between Allison and the hospital. Instead, the suit was brought under a now repealed Georgia paternal child-support statute making it the duty of the father to provide for the "maintenance, protection, and education of his child" until majority. Ga. Code § 74-105 (1978).<sup>1</sup>

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<sup>1</sup> The new Georgia statute, enacted soon after this Court's decision in *Orr v. Orr*, 440 U. S. 268 (1979), states:

"Until majority, it is the joint and several duty of each parent to provide for the maintenance, protection, and education of the child, except to

Allison's answer to the complaint denied owing any money; however, his answer failed to raise any constitutional challenge to the statute. In April 1976, the hospital answered interrogatories revealing, *inter alia*, that Allison was billed because of his status as father of the minor patient. Almost three years later, but still before the start of trial, *Orr v. Orr*, 440 U. S. 268 (1979), was decided by this Court, and Allison amended his answer to include an equal protection challenge to the statute. His case was tried several days later, and resulted in entry of judgment for the hospital. Observing that the debt was incurred more than four years before *Orr* was decided, the trial court, without analysis, concluded, *inter alia*, that the constitutional defense established by *Orr* should not be given retroactive effect.

On appeal, the Georgia Supreme Court affirmed the judgment, refusing to reach the constitutional question on the ground that it had not been timely raised. The court noted that under state case law, constitutional challenges must be raised "at the first opportunity," which the court interpreted as occurring when "the law which is subject to constitutional objection comes to the attention of the challenger's attorney," 245 Ga. 445, 446, 265 S. E. 2d 575, 576 (1980). In this case, the court interpreted the rule to require constitutional challenge at least at the time the hospital answered Allison's interrogatories.

Because I entertain serious doubt whether our decided cases permit the Georgia Supreme Court to avoid decision of Allison's federal constitutional claim by charging him with the duty to anticipate application of the new procedural rule announced in his case, *NAACP v. Alabama*, 357 U. S. 449, 457-458 (1958), and because I doubt in any event that the rule serves a legitimate state interest, *Henry v. Mississippi*,

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the extent that the duty of one parent is otherwise or further defined by court order." Ga. Code Ann. § 74-105 (1979).

379 U. S. 443, 447-448 (1965); *Ward v. Board of County Comm'rs*, 253 U. S. 17, 22-23 (1920), I think that the case presents a substantial federal question: whether the new rule constitutes an independent and adequate state ground precluding our consideration of Allison's federal constitutional claim.

The Georgia Supreme Court's interpretation of "at the first opportunity" is not supported by prior precedent in the Georgia case law.<sup>2</sup> But more important, Georgia's civil practice statute directly conflicts with the Georgia Supreme Court's interpretation. That statute states that a "party may amend his pleading as a matter of course and without leave of court at any time before the entry of a pre-trial order." Ga. Code § 81A-115 (a) (1978). Appellant asserts, without contradiction from appellee, that there was no pre-trial order entered prior to appellant's amendment of his answer. Therefore, it would appear that Allison was entitled to amend his pleading (as he did) under § 81A-115 (a) "as

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<sup>2</sup> The Georgia Supreme Court cited only *Brckett v. State*, 227 Ga. 493, 181 S. E. 2d 380 (1971), and 5 Encyclopedia of Georgia Law § 182 (1977), to support its holding. But *Brckett* states without further explanation the general proposition that constitutional claims must be raised "at the first opportunity." 227 Ga., at 495, 181 S. E. 2d, at 382. The claim in *Brckett* was not raised before the start of trial, as here, but after the guilty verdict was returned. It was this timing the court considered to be too late. The Encyclopedia states that constitutional claims generally may not be raised after trial, and also comments that, if the constitutional "point is apparent at the outset, it may be raised by demurrer or other pleading." § 182, p. 530. Certainly appellant might properly believe that amending his answer before trial would suffice under this view of the law.

Other Georgia cases dealing with the definition of "at the first opportunity" similarly fail to support the Georgia Supreme Court's interpretation here. See, e. g., *Woods v. State*, 222 Ga. 321, 322, 149 S. E. 2d 674, 677 (1966); *Loomis v. State*, 203 Ga. 394, 404-405, 47 S. E. 2d 58, 64 (1948); *Boyers v. State*, 198 Ga. 838, 841-843, 33 S. E. 2d 251, 254-255 (1945).

a matter of course and without leave of court.”<sup>3</sup> The Georgia Supreme Court, inexplicably, does not refer to this statute. Certainly appellant cannot be charged with anticipating the Georgia Supreme Court’s interposition of this new procedural rule.<sup>4</sup> This is yet another case, therefore, where novelty in procedural requirements cannot defeat review by this Court when a party justifiably acted in reliance on prior state law. *Blair v. Kentucky*, No. 79-1795, and *Carpenter v. Kentucky*, No. 79-1798, *post*, p. 962 (BRENNAN, J., joined by MARSHALL, J., dissenting);<sup>5</sup> *NAACP v. Alabama, supra*, at 457-458.

In any event, it is highly doubtful that this rule serves a legitimate state interest. The rule discriminates against federal constitutional claims by placing additional burdens on them that are not placed on state-law claims: the federal constitutional challenge can only be considered if raised as soon as the challenging party becomes aware of the allegedly unconstitutional law; the state-law challenge can be considered if it is raised at any time prior to entry of a pretrial order. Such a distinction between federal constitutional and state-law claims belies any genuine state interest in the rule. At least as long as the constitutional claim is made at a time when the court may consider and decide it without disruption

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<sup>3</sup> Even if a pretrial order had been entered, the result here would be the same. The statute further states that a “party may [thereafter] amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Ga. Code § 81A-115 (a) (1978). The statute nowhere suggests that constitutional claims will be treated specially. The Georgia Supreme Court’s new rule vitiates the discretion given by the statutory language to the trial judge to grant leave to amend “when justice so requires.”

<sup>4</sup> The trial court itself thought appellant’s constitutional claim timely, and gave it full consideration.

<sup>5</sup> Unlike petitioners in *Blair* and *Carpenter*, however, since this is a civil case, appellant will have no other federal-court remedy if we refuse to consider his appeal.

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of the proceeding, the state interest in judicial efficiency is served. The Georgia Supreme Court asserts that a defendant must not be allowed to delay the raising of "defenses indefinitely in hopes that a decision will be rendered which provides him with an arguable constitutional defense," 245 Ga., at 446-447, 265 S. E. 2d, at 576-577,<sup>6</sup> but surely this rationale is equally applicable to changes in state law. Similarly, the rationale that requiring early presentation of claims might serve state interests in promoting settlement before trial and apprising parties of the opposing side's case is equally applicable to state-law as well as constitutional claims. In short, the Georgia Supreme Court's procedural rule effects an unnecessary and irrational discrimination against federal constitutional claims.

I would therefore at least postpone the question of jurisdiction and set the case for oral argument.<sup>7</sup>

No. 80-189. GRANT-BILLINGSLEY WHOLESALE LIQUOR CO., INC. v. LENNEN, SECRETARY OF REVENUE OF KANSAS, ET AL. Appeal from Sup. Ct. Kan. dismissed for want of substantial federal question. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. JUSTICE BRENNAN took no part in the consideration or decision of this case. Reported below: 227 Kan. 179, 606 P. 2d 102.

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<sup>6</sup> Appellant did move for four continuances before the trial began, but there is no evidence of bad-faith dilatory tactics.

<sup>7</sup> Appellee does not appear to contest Allison's claim that the challenged statute is unconstitutional. Indeed, § 1 of the Family and Domestic Relations Law Amended Act (1979) states:

"It is the intent of this Act to revise and modernize certain laws of this State which relate to intrafamilial duties, rights, and obligations, including laws relating to . . . support of minors . . . so as to comply with those standards of equal protection under the law announced in the United States Supreme Court decision in the case of *Orr v. Orr*." 1979 Ga. Laws 469.

The remaining question, therefore, is whether *Orr* should be given retroactive effect in this case. See *Chevron Oil Co. v. Huson*, 404 U. S. 97, 105-109 (1971).

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No. 80-301. *WAYNE HAVEN NURSING HOME ET AL. v. FINLEY, STATE COMMISSIONER OF HEALTH, ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 83 N. J. 67, 415 A. 2d 1147.

No. 80-313. *SUTTON v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS.* 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: 70 App. Div. 2d 467, 421 N. Y. S. 2d 371.

No. 80-5061. *O'CONNOR ET UX. v. PALLUDAN CORP.* Appeal from Sup. Ct. Nev. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-5308. *BECKER v. EVANS.* Appeal from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-322. *KORN v. OHIO.* Appeal from Ct. App. Ohio, Marion County, dismissed for want of substantial federal question.

No. 80-377. *VOGEL v. ROBINSON ET AL.* Appeal from App. Ct. Ill., 3d Dist., dismissed for want of substantial federal question. Reported below: 80 Ill. App. 3d 312, 399 N. E. 2d 688.

No. 80-5361. *GOUDIE v. HACKMAN ET AL.* Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

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*Certiorari Granted—Vacated and Remanded*

No. 79-1886. CALIFORNIA *v.* LEVEL. Ct. App. Cal., 2d App. Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the Court of Appeal to consider whether its judgment is based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). Reported below: 103 Cal. App. 3d 899, 162 Cal. Rptr. 682.

No. 80-74. TAPIA-ACUNA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief filed October 3, 1980. THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE REHNQUIST dissent and would deny the petition for writ of certiorari. Reported below: 620 F. 2d 311.

No. 80-274. CALIFORNIA *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA (ENGERT ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 1st App. Dist. Motion of respondents Engert and Gamble for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the Court of Appeal to consider whether its judgment is based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE STEVENS dissent. Reported below: 105 Cal. App. 3d 365, 164 Cal. Rptr. 210.

No. 80-5132. C. P. *v.* DISTRICT OF COLUMBIA. 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 *Rhode Island v. Innis*, 446 U. S. 291 (1980). Reported below: 411 A. 2d 643.

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*Miscellaneous Orders*

No. A-357. MARQUEZ ET AL. *v.* CARTER, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. A-361. PUERTO RICO *v.* MUSKIE, SECRETARY OF STATE, ET AL. C. A. 1st Cir. The order entered by JUSTICE BRENNAN on October 24, 1980, is vacated, and the applications for stay are denied.

No. 79-395. UNITED STATES *v.* MORRISON. C. A. 3d Cir. [Certiorari granted, 448 U. S. 906.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 79-678. SAN DIEGO GAS & ELECTRIC CO. *v.* CITY OF SAN DIEGO ET AL. Ct. App. Cal., 4th App. Dist. [Probable jurisdiction postponed, 447 U. S. 919.] Motion of the Solicitor General for divided argument denied. Motion of San Diego Urban League for divided argument denied.

No. 79-814. DELTA AIR LINES, INC. *v.* AUGUST. C. A. 7th Cir. [Certiorari granted, 446 U. S. 907.] Motion of the Solicitor General for divided argument granted.

No. 79-824. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* WNCN LISTENERS GUILD ET AL.;

No. 79-825. INSILCO BROADCASTING CORP. ET AL. *v.* WNCN LISTENERS GUILD ET AL.;

No. 79-826. AMERICAN BROADCASTING COS., INC., ET AL. *v.* WNCN LISTENERS GUILD ET AL.; and

No. 79-827. NATIONAL ASSOCIATION OF BROADCASTERS ET AL. *v.* WNCN LISTENERS GUILD ET AL. C. A. D. C. Cir. [Certiorari granted, 445 U. S. 914.] Motion of respondents for divided argument granted.

No. 79-983. UNITED STATES *v.* WILL ET AL. D. C. N. D. Ill. [Probable jurisdiction postponed, 444 U. S. 1068]; and

No. 79-1689. UNITED STATES *v.* WILL ET AL. D. C. N. D. Ill. [Probable jurisdiction postponed, 447 U. S. 919.] Motion of Washington State Bar Association for leave to file an untimely brief as *amicus curiae* denied.

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No. 79-1056. NORTHWEST AIRLINES, INC. *v.* TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, ET AL. C. A. D. C. Cir. [Certiorari granted, 447 U. S. 920.] Motion of Trans World Airlines, Inc., for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* denied. JUSTICE BLACKMUN took no part in the consideration or decision of these motions.

No. 79-1176. CITY OF MEMPHIS ET AL. *v.* GREENE ET AL. C. A. 6th Cir. [Certiorari granted, 446 U. S. 934.] Motion of Hein Park Civic Association for leave to file a brief as *amicus curiae* granted. Motion of respondents for divided argument denied.

No. 79-1213. MINNICK ET AL. *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Cal., 1st App. Dist. [Certiorari granted, 448 U. S. 910.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* denied.

No. 79-1236. CARSON ET AL. *v.* AMERICAN BRANDS, INC., T/A AMERICAN TOBACCO Co., ET AL. C. A. 4th Cir. [Certiorari granted, 447 U. S. 920.] Motion of respondent Unions for divided argument granted. Motion of the Solicitor General for divided argument granted.

No. 79-1260. CHANDLER ET AL. *v.* FLORIDA. Sup. Ct. Fla. [Probable jurisdiction noted, 446 U. S. 907.] Motion of appellee for divided argument granted.

No. 79-6624. ROSALES-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, *ante*, p. 819.] Motion for appointment of counsel granted, and it is ordered that John J. Cleary, Esquire, of San Diego, Cal., be appointed to serve as counsel for petitioner in this case.

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No. 79-1404. PENNHURST STATE SCHOOL AND HOSPITAL ET AL. *v.* HALDERMAN ET AL.;

No. 79-1408. MAYOR OF PHILADELPHIA ET AL. *v.* HALDERMAN ET AL.;

No. 79-1414. PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS ET AL. *v.* PENNHURST STATE SCHOOL AND HOSPITAL ET AL.;

No. 79-1415. COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATOR FOR BUCKS COUNTY ET AL. *v.* HALDERMAN ET AL.; and

No. 79-1489. PENNHURST PARENTS-STAFF ASSN. *v.* HALDERMAN ET AL. C. A. 3d Cir. [Certiorari granted, 447 U. S. 904.] Motion of Congress of Advocates for the Retarded, Inc., et al. for leave to file a brief as *amici curiae* granted. Motion of respondents for divided argument granted. Motion of Illinois et al. for leave to participate in oral argument as *amici curiae* denied. Motion of petitioners for divided argument granted. Motion of American Psychiatric Association for leave to participate in oral argument as *amicus curiae* denied.

No. 79-5962. VINCENT *v.* TEXAS. Ct. Crim. App. Tex. [Probable jurisdiction postponed, 445 U. S. 960.] Motion of appellee to dismiss the appeal denied.

No. 79-6777. STEAGALD *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 819.] Motion for appointment of counsel granted, and it is ordered that John Richard Young, Esquire, of Atlanta, Ga., be appointed to serve as counsel for petitioner in this case.

No. 79-6779. LITTLE *v.* STREATER. App. Sess., Super. Ct. Conn., New Haven Jud. Dist. [Probable jurisdiction noted, *ante*, p. 817.] Motion for appointment of counsel granted, and it is ordered that Jon C. Blue, Esquire, of Hartford, Conn., be appointed to serve as counsel for appellant in this case.

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No. 80-299. JOHN NUVEEN & Co., INC., ET AL. *v.* SANDERS ET AL. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE STEVENS took no part in the consideration or decision of this order.

No. 80-323. COLUMBIA BROADCASTING SYSTEM, INC. *v.* AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE STEWART took no part in the consideration or decision of this order.

No. 80-461. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL-CIO *v.* G. C. MURPHY Co. C. A. 3d Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 80-5202. IN RE MAGEE. Petition for writ of mandamus denied.

No. 80-5341. IN RE JACKSON. Petition for writ of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 79-1943. ALESSI ET AL. *v.* RAYBESTOS-MANHATTAN, INC., ET AL. Appeal from C. A. 3d Cir. Probable jurisdiction noted, case consolidated with No. 80-193 [*Buczynski et al. v. General Motors Corp. et al.*], *infra*, and a total of one hour allotted for oral argument. Reported below: 616 F. 2d 1238.

*Certiorari Granted*

No. 79-1144. TEXAS INDUSTRIES, INC. *v.* RADCLIFF MATERIALS, INC., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 604 F. 2d 897.

No. 80-298. MONROE *v.* STANDARD OIL Co. C. A. 6th Cir. Certiorari granted. Reported below: 613 F. 2d 641.

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No. 80-317. UNIVERSITY OF TEXAS ET AL. *v.* CAMENISCH. C. A. 5th Cir. Certiorari granted. Reported below: 616 F. 2d 127.

No. 80-429. COUNTY OF WASHINGTON, OREGON, ET AL. *v.* GUNTHER ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 602 F. 2d 882 and 623 F. 2d 1303.

No. 80-54. ITT GILFILLAN *v.* CLAYTON; and

No. 80-5049. CLAYTON *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. C. A. 9th Cir. Motion of petitioners in No. 80-5049 for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 623 F. 2d 563.

No. 80-193. BUCZYNSKI ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 3d Cir. Certiorari granted, case consolidated with No. 79-1943 [*Alessi et al. v. Raybestos-Manhattan, Inc., et al.*], *supra*, and a total of one hour allotted for oral argument. Reported below: 616 F. 2d 1238.

No. 80-207. CBS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 80-213. AMERICAN BROADCASTING COS., INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 80-214. NATIONAL BROADCASTING CO., INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 202 U. S. App. D. C. 369, 629 F. 2d 1.

No. 80-120. ST. MARTIN EVANGELICAL LUTHERAN CHURCH ET AL. *v.* SOUTH DAKOTA. Sup. Ct. S. D. Motion of Alabama et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 290 N. W. 2d 845.

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No. 80-332. RHODES, GOVERNOR OF OHIO, ET AL. *v.* CHAPMAN ET AL. C. A. 6th Cir. Motion of respondent Chapman for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 624 F. 2d 1099.

No. 80-5303. BELTRAN *v.* MYERS, DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted limited to Question 1 presented by the petition. Reported below: 622 F. 2d 1304.

*Certiorari Denied.* (See also Nos. 79-6743, 80-301, 80-313, 80-5061, and 80-5308, *supra.*)

No. 79-2051. CITY OF APOPKA, FLORIDA, ET AL. *v.* DOWDELL ET AL. C. A. 5th Cir. Certiorari denied.

No. 79-2054. LEWIS ET AL. *v.* MCGRAW ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 2d 192.

No. 79-2062. CHOATE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 619 F. 2d 21.

No. 79-6761. JOHNSON *v.* ESTELLE, CORRECTIONS DIRECTOR. Ct. Crim. App. Tex. Certiorari denied.

No. 79-6829. HENDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 295.

No. 79-6834. EVANS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 80 Ill. App. 3d 444, 399 N. E. 2d 1333.

No. 79-6854. KEAGBINE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 77 Ill. App. 3d 1039, 396 N. E. 2d 1341.

No. 79-6870. BYRNE *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 595 S. W. 2d 301.

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No. 79-6888. *THERIAULT v. CHARLES COLSON PRISON FELLOWSHIP ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-20. *SQUIRES v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 591.

No. 80-57. *DOUBLE "Q", INC. v. ANDRUS, SECRETARY OF THE INTERIOR.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 602.

No. 80-76. *VALDES v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 59.

No. 80-135. *STEVENS v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-159. *GREEN v. AMERADA HESS CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 212.

No. 80-161. *FREEDLANDER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 625 F. 2d 111.

No. 80-192. *MARTORANO v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 620 F. 2d 912.

No. 80-241. *KABLE PRINTING CO. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 591.

No. 80-246. *COMMUNITY GRAIN, INC. v. COOK INDUSTRIES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 978.

No. 80-280. *CONSOLIDATED OIL & GAS, INC., ET AL. v. KING RESOURCES Co. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 2d 703.

No. 80-281. *OKC CORP. v. WILLIAMS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 58.

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No. 80-284. SEQUOYAH ET AL. *v.* TENNESSEE VALLEY AUTHORITY. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 1159.

No. 80-296. EMPRESAS ELECTRONICAS WALSER, INC., ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 223 Ct. Cl. 686, 650 F. 2d 286.

No. 80-300. VIELEHR *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 104 Cal. App. 3d 392, 163 Cal. Rptr. 795.

No. 80-306. COLEBANK ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 57, 610 F. 2d 999.

No. 80-307. STEPHENS INSTITUTE, DBA ACADEMY OF ART COLLEGE *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 720.

No. 80-314. FACTORS ETC., INC. *v.* MEMPHIS DEVELOPMENT FOUNDATION. C. A. 6th Cir. Certiorari denied. Reported below: 616 F. 2d 956.

No. 80-316. ALEXANDER *v.* GINO'S INC. C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 2d 71.

No. 80-319. MENCHACA ET UX. *v.* CHRYSLER CREDIT CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 507.

No. 80-324. CONIGLIO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 1004, 426 N. Y. S. 2d 891.

No. 80-325. RADOMSKI, AKA KNIGHT *v.* KNIGHT ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 414 A. 2d 1211.

No. 80-326. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 622 F. 2d 507.

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No. 80-334. *SILVERMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 206.

No. 80-335. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 2d 535.

No. 80-339. *SECURITY MANAGEMENT Co., INC., ET AL. v. ROTHENBERG ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 1149.

No. 80-344. *QUINAULT PACIFIC CORP. ET AL. v. AETNA BUSINESS CREDIT, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 893.

No. 80-345. *QUINAULT PACIFIC CORP. ET AL. v. AETNA BUSINESS CREDIT, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 293.

No. 80-349. *NATIONAL CHAMBER ALLIANCE FOR POLITICS ET AL. v. FEDERAL ELECTION COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 200 U. S. App. D. C. 322, 627 F. 2d 375.

No. 80-350. *SEA-LAND SERVICE, INC., ET AL. v. MILOS*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 574.

No. 80-353. *SANTORA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 1052.

No. 80-355. *REYNOLDS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 624 F. 2d 95.

No. 80-357. *McMAHON ET AL. v. CITY OF VIRGINIA BEACH*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. 102, 267 S. E. 2d 130.

No. 80-360. *MIDESSA TELEVISION Co., INC., ET AL. v. MIDLAND TELECASTING Co.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 1141.

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No. 80-361. *MALMED ET AL. v. THORNBURGH, GOVERNOR OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 2d 565.

No. 80-363. *LEWIS v. LEWIS ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 80-364. *ATESER ET UX. v. PUBLIC HOSPITAL DISTRICT NUMBER ONE, DBA VALLEY GENERAL HOSPITAL, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 309.

No. 80-367. *PRESBYTERIAN CHURCH OF HARRISBURG v. LIBERTY MUTUAL INSURANCE Co.* Super. Ct. Pa. Certiorari denied. Reported below: 273 Pa. Super. 302, 417 A. 2d 660.

No. 80-370. *FARKAS v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-373. *DRIZIN ET AL. v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 10th Cir. Certiorari denied. Reported below: 622 F. 2d 512.

No. 80-385. *SHAW v. HOSPITAL AUTHORITY OF COBB COUNTY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 946.

No. 80-408. *BAKER ET UX. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 292.

No. 80-413. *KANSAS CITY SOUTHERN RAILWAY Co. v. GREAT LAKES CARBON CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 822.

No. 80-414. *COLLINS ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 832.

No. 80-417. *ANDERSON v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 841, 267 S. E. 2d 259.

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No. 80-430. *GRASSI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1295.

No. 80-433. *COLE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 98.

No. 80-448. *TUCKER v. HARTFORD NATIONAL BANK & TRUST Co.* Sup. Ct. Conn. Certiorari denied. Reported below: 181 Conn. 296, 435 A. 2d 350.

No. 80-462. *TRIMARCHE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1206.

No. 80-475. *SPRINGPARK ASSOCIATES v. CROWN LIFE INSURANCE Co.* C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 1377.

No. 80-479. *FRENCH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 628 F. 2d 1069.

No. 80-492. *ANDERSON v. BOLGER, POSTMASTER GENERAL, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 81.

No. 80-513. *LANE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1336.

No. 80-527. *MYERS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 635 F. 2d 932.

No. 80-538. *CIAMPAGLIA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 628 F. 2d 632.

No. 80-539. *TALBERT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 299.

No. 80-5019. *BORRELLI v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 621 F. 2d 1092.

No. 80-5030. *SINCLAIR v. BROWN, DISTRICT ATTORNEY, PARISH OF EAST BATON ROUGE*. Sup. Ct. La. Certiorari denied. Reported below: 385 So. 2d 787.

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No. 80-5032. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 1109.

No. 80-5072. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 588.

No. 80-5083. GAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 623 F. 2d 673.

No. 80-5089. McDONALD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 387 So. 2d 1116.

No. 80-5101. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 623 F. 2d 339.

No. 80-5106. CROSS *v.* MITCHELL, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 293.

No. 80-5112. PERRY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 104 Cal. App. 3d 268, 163 Cal. Rptr. 522.

No. 80-5115. WATTS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 80-5137. GREEN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 891, 408 N. E. 2d 675.

No. 80-5151. BAUN *v.* CIVILETTI, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 80-5167. BILBREY *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5170. ALBRIGHT *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 96 Wis. 2d 122, 291 N. W. 2d 487

No. 80-5175. BULLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 1082.

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No. 80-5184. *EDWARDS v. ANDREWS, ASSISTANT WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 80-5191. *HARRIS v. ADAMS.* C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 543.

No. 80-5193. *WRIGHT v. LEFEVRE, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 80-5209. *BRYANT v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 949, 409 N. E. 2d 999.

No. 80-5217. *BROWN v. JERNIGAN, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 914.

No. 80-5222. *HOLT v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 80-5229. *McKINNEY v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5238. *BURLESON v. TURNER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 859.

No. 80-5240. *RIDDLE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 80-5242. *SPRADLEY v. FLORIDA.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 783.

No. 80-5243. *HARNEST v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 595 S. W. 2d 865.

No. 80-5246. *BRACKETT v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 246 Ga. 160, 269 S. E. 2d 420.

No. 80-5254. *KINNELL v. ATKINS ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5255. *KINNELL v. MEARA, BURBON COUNTY ATTORNEY, ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 80-5256. SANDERS ET AL. *v.* HANKINS. Ct. Sp. App. Md. Certiorari denied.

No. 80-5265. BAGGETT *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 859.

No. 80-5273. GHIONE *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 191.

No. 80-5274. TWYMAN *v.* HESS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 80-5276. LANDI *v.* CALIFORNIA. Super. Ct. Cal., County of Solano. Certiorari denied.

No. 80-5278. MARTINEZ *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 94 N. M. 436, 612 P. 2d 228.

No. 80-5280. CHICCO *v.* JONES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1087.

No. 80-5285. INGRAM *v.* PRUITT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 861.

No. 80-5287. GREEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 80-5288. PHILLIPS *v.* NIGH, GOVERNOR OF OKLAHOMA, ET AL. Sup. Ct. Okla. Certiorari denied.

No. 80-5291. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 600 S. W. 2d 344.

No. 80-5296. TYSON *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1346.

No. 80-5298. GERHARDT ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1093.

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No. 80-5300. *LEONARD v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 300 N. C. 223, 266 S. E. 2d 631.

No. 80-5309. *DICKINSON v. SEIGLER ET AL.* C. A. 5th Cir. Certiorari denied.

No. 80-5315. *MAGGARD v. FLORIDA PAROLE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 890.

No. 80-5319. *JOHNSON v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-5322. *CAMP v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 104 Cal. App. 3d 244, 163 Cal. Rptr. 510.

No. 80-5323. *FLOYD v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 598 S. W. 2d 517.

No. 80-5330. *HARRIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 632 F. 2d 837.

No. 80-5336. *MOSER v. WILSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 862.

No. 80-5343. *DOWLING v. GOVERNMENT OF THE VIRGIN ISLANDS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 660.

No. 80-5358. *DANTZLER v. DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF FLORIDA EX REL. MORRIS*. Sup. Ct. Fla. Certiorari denied. Reported below: 386 So. 2d 635.

No. 80-5363. *BUSIC ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

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- No. 80-5368. *SALINAS v. UNITED STATES*; and  
No. 80-5393. *MALDONADO v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 618 F. 2d 1092.
- No. 80-5370. *YOUNG v. DUCKWORTH, WARDEN*. C. A.  
7th Cir. Certiorari denied.
- No. 80-5373. *COCHRAN v. MANOS*. C. A. 6th Cir. Cer-  
tiorari denied. Reported below: 620 F. 2d 301.
- No. 80-5376. *McCLURE v. NATIONAL LABOR RELATIONS  
BOARD*. C. A. 4th Cir. Certiorari denied.
- No. 80-5397. *MCDONALD v. SMITH, WARDEN*. C. A. 6th  
Cir. Certiorari denied. Reported below: 624 F. 2d 1100.
- No. 80-5404. *PANA v. CUYLER ET AL.* C. A. 3d Cir. Cer-  
tiorari denied.
- No. 80-5419. *HARRIS v. UNITED STATES*. C. A. D. C. Cir.  
Certiorari denied. Reported below: 201 U. S. App. D. C.  
15, 627 F. 2d 474.
- No. 80-5421. *STEPHENS v. UNITED STATES*. C. A. 7th  
Cir. Certiorari denied. Reported below: 624 F. 2d 1106.
- No. 80-5431. *MOORE v. MOORE*. C. A. 4th Cir. Certio-  
rari denied. Reported below: 631 F. 2d 729.
- No. 80-5434. *ROBERTSON v. WARDEN, MARYLAND PENI-  
TENTIARY*. C. A. 4th Cir. Certiorari denied. Reported be-  
low: 624 F. 2d 1095.
- No. 80-5437. *ARMSTRONG v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied. Reported below: 627 F. 2d 1093.
- No. 80-5453. *TECUMSEH v. UNITED STATES*. C. A. 10th  
Cir. Certiorari denied. Reported below: 630 F. 2d 749.
- No. 80-5469. *WRIGHT v. UNITED STATES*. C. A. 5th Cir.  
Certiorari denied. Reported below: 622 F. 2d 792.

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No. 80-5483. *EUBANKS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 80-5486. *PAUL v. UNITED STATES BUREAU OF PRISONS*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1092.

No. 80-5489. *CLAYTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

No. 79-1795. *BLAIR v. KENTUCKY*; and

No. 79-1798. *CARPENTER ET AL. v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 592 S. W. 2d 132.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

These petitions present the question whether the decision of the Supreme Court of Kentucky rests upon an independent and adequate state procedural ground that bars this Court's review of petitioners' constitutional claim, *inter alia*, that their convictions were based on a record lacking sufficient evidence. Because the question of when and how failure to comply with state procedural rules precludes our consideration of a federal constitutional claim is itself a federal question, *Henry v. Mississippi*, 379 U. S. 443, 447-448 (1965), and because I have serious doubts whether the Kentucky Supreme Court could properly insist on compliance with the procedural rule it invoked, I dissent from the denial of certiorari.

Petitioners Carpenter, Borders, and Blair were convicted in a Kentucky trial court of wanton endangerment in the first degree and criminal mischief in the third degree. The charges stemmed from the allegation that they fired a shotgun at businesses and automobiles injuring one person and damaging property. All three petitioners moved for directed verdict of acquittal at the close of the Commonwealth's case, and also moved for new trial after the jury verdict. Both motions were grounded on claims that the evidence was insufficient to sustain guilty verdicts. However, no petitioner

moved for a directed verdict on that ground at the close of all the evidence.

The Kentucky intermediate appellate court entertained petitioners' appeals from their convictions, and set them aside after finding that the evidence was insufficient to sustain the convictions.<sup>1</sup> The Supreme Court of Kentucky affirmed as to Carpenter and Borders, but reversed as to Blair. The court rejected the Commonwealth's argument that under state procedural law, *Kimbrough v. Commonwealth*, 550 S. W. 2d 525, 529 (Ky. 1977), petitioners Carpenter and Borders' failure at the close of all the evidence to move for a directed verdict for insufficiency of the evidence forfeited their right of review on that ground. Citing *Vachon v. New Hampshire*, 414 U. S. 478, 480 (1974), the Kentucky Supreme Court not only held that "the evidence was insufficient" but also concluded that "the record before us contains *no relevant evidence* linking Carpenter and Borders to the charged offenses." (Emphasis added.) Blair's case differed, the court held, because there was "relevant evidence" as to him. See *Thompson v. Louisville*, 362 U. S. 199, 206 (1960). The court therefore applied the *Kimbrough* rule and held that Blair had waived his right to raise the insufficiency-of-the-evidence issue on appeal.

The Commonwealth filed a petition for rehearing. This time, the Kentucky Supreme Court reversed itself and reinstated the convictions of Carpenter and Borders. The court held that, "as clarified in *Kimbrough*, . . . in order for the issue of the sufficiency of the evidence to be preserved for appellate review, the party wishing to use the insufficiency as a basis for his appeal must have moved for a directed verdict at the close of all the evidence, not just at the close of the Commonwealth's case in chief." 592 S. W. 2d 132, 133 (1979).

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<sup>1</sup>The Court of Appeals initially remanded for a new trial but six months later withdrew that original opinion and substituted a new one reversing the convictions outright.

But *Kimbrough* was decided eight months after petitioners' trial and announced new Kentucky law. Prevailing Kentucky law at the time of the trial embodied the procedural rule that the issue of insufficiency of the evidence was preserved for appellate review when the motion for a directed verdict was made *either* at the close of the Commonwealth's case *or* at the close of all the evidence. *Crain v. Commonwealth*, 484 S. W. 2d 839, 842 (1972).<sup>2</sup> Plainly petitioners could not fairly be charged with anticipating the new rule first announced eight months after their trial. This is thus clearly a case where "[n]ovelty in procedural requirements cannot be permitted to thwart review in this Court applied

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<sup>2</sup> Every other case cited by the Kentucky Supreme Court in support of the *Kimbrough* procedural rule was decided after *Kimbrough*. The Commonwealth's brief cites two cases, *Delong v. Commonwealth*, 225 Ky. 461, 9 S. W. 2d 136, 137 (1928), and *Harvey v. Commonwealth*, 423 S. W. 2d 535, 537 (Ky. 1967), both decided before petitioners' trial, for the view that *Kimbrough* merely reiterated prior state law. If anything, however, these two cases lend support for the opposite proposition that, prior to *Kimbrough*, the court would review a claim that the trial court erred in denying a motion for a directed verdict made at the close of the prosecutor's case. In *Delong*, the defendants claimed that the trial court's failure to direct a verdict on their motion at the close of the Commonwealth's case was reversible error. The appellate court noted that, instead of resting their case after their motion, defendants proceeded to "take the stand and . . . furnis[h] enough evidence themselves to sustain the conviction." 225 Ky., at 463, 9 S. W. 2d, at 137. The court therefore declined to reverse the trial court, not because defendants failed to renew their motions for directed verdicts, but precisely because the court, after reviewing the full evidentiary record, found sufficient evidence to support their convictions.

In *Harvey*, the court similarly concluded after a review of all the evidence that "any deficiency which may have existed in the Commonwealth's evidence" was rectified after defendant presented his evidence. 423 S. W. 2d, at 537. For this reason, the court found no reversible error in the trial court's failure to direct the verdict at the conclusion of the Commonwealth's evidence. This appellate posture also has been regularly followed by the Kentucky courts in the civil context in reviewing a motion for a directed verdict at the close of the plaintiff's case. *E. g.*, *Lyon v. Prater*, 351 S. W. 2d 173, 175 (Ky. 1961).

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for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *NAACP v. Alabama*, 357 U. S. 449, 457-458 (1958). See *Henry v. Mississippi*, 379 U. S., at 448, n. 3.<sup>3</sup>

These cases are particularly compelling given the two explicit findings by the Supreme Court and Court of Appeals of Kentucky to the effect that the evidence was not only insufficient but also irrelevant to support the guilty verdicts of Carpenter and Borders.<sup>4</sup> Although petitioners may now obtain federal habeas corpus relief, it is wasteful of sparse judicial resources to require resort to that remedy since the issues presented are only questions of law and no hearing is required to develop a record upon which to decide the cases.<sup>5</sup>

Because I am unable to reconcile the Kentucky Supreme Court's procedural holding in the present cases with its unambiguous procedural rule applicable at the time of petitioners' trial, I would grant the petitions for certiorari.

No. 80-64. *EGBERT v. KANSAS*. Sup. Ct. Kan. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 227 Kan. 266, 606 P. 2d 1022.

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<sup>3</sup> The Commonwealth's argument that Kentucky Criminal Rule 9.54 (2), applicable at the time of petitioners' trial, effectively embodied the *Kimbrough* rule, is unavailing. The Kentucky Supreme Court relied solely on *Kimbrough* and later cases in reversing itself and did not so much as mention Rule 9.54 (2). In any event, the Rule, which deals with motions for jury instructions "fairly and adequately presented," on its face does not support the *Kimbrough* rule, and interpretative case law is similarly unresponsive.

<sup>4</sup> Because the convictions of Carpenter and Borders were struck down under the "no evidence" test, *Thompson v. Louisville*, 362 U. S. 199, 206 (1960), it follows *a fortiori* that the convictions were faulty under the now controlling insufficiency-of-the-evidence constitutional standard, *Jackson v. Virginia*, 443 U. S. 307, 318-319 (1979). Moreover, although the Supreme Court found "relevant evidence" linking Blair to the crime, this would not end the inquiry as to him under the *Jackson* test.

<sup>5</sup> This is certainly true at least as to Carpenter and Borders.

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No. 80-100. LORAIN JOURNAL CO. ET AL. v. MILKOVICH. Ct. App. Ohio, Lake County. Motions of Beacon Journal Publishing Co. et al. and Ohio Newspapers Association for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE STEWART would deny this petition for want of a final judgment. Reported below: 65 Ohio App. 2d 143, 416 N. E. 2d 662.

JUSTICE BRENNAN, dissenting.

This petition for certiorari raises an important question concerning limitations on the authority of trial courts to grant dismissals, summary judgments, or judgments notwithstanding the verdict<sup>1</sup> in favor of media defendants in libel actions, based on the qualified privilege outlined in *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964).

On January 8, 1975, the News-Herald of Willoughby, Ohio, published a column by sportswriter Ted Diadiun criticizing respondent Michael Milkovich, a wrestling coach at Maple Heights High School, who is treated as a "public figure" for purposes of this case. Headlined "Maple beat the law with the 'big lie,'" the column accused Milkovich of lying about a fracas that occurred during one of his team's wrestling matches.

On February 9, 1974, the Maple High wrestling team, coached by Milkovich, faced a team from Mentor High School. A brawl involving both wrestlers and spectators erupted after a controversial ruling by a referee. Several wrestlers were injured. The Ohio High School Athletic Association (OHSAA) subsequently conducted a hearing into the occurrence, censured Milkovich for his conduct at the match,

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<sup>1</sup> Although the decision below concerned directed verdicts, its holding would affect the courts' treatment of summary judgments and judgments notwithstanding the verdict as well. In each of these situations, the court is called upon to answer the same question: whether there is sufficient evidence for the jury to find actual malice under the applicable "clear and convincing evidence" burden of proof.

placed his team on probation for the school year, and declared the team ineligible to compete in the state wrestling tournament. Diadiun attended and reported on both the match and the hearing, at which Milkovich had defended his behavior. Thereafter, a group of parents and high school wrestlers filed suit in Franklin County Common Pleas Court, claiming that the OHSAA had denied the team due process. Milkovich, not a party to that lawsuit, appeared as a witness for the plaintiffs. On January 7, 1975, the court held that due process had been denied, and enjoined the team's suspension. *Barrett v. Ohio High School Athletic Assn.*, No. 74CV-09-3390.<sup>2</sup>

Diadiun did not attend the court hearing, review the transcript, or read the court's opinion, but he wrote a column about the decision based on his own recollection of the wrestling match and ensuing OHSAA hearing and on a description of the court proceeding given him by an OHSAA Commissioner. In the column, Diadiun stated that Milkovich and others had "misrepresented" the occurrences at the OHSAA hearing, and that Milkovich's testimony "had enough contradictions and obvious untruths so that the six board members were able to see through it." Diadiun went on to say, however, that at the later court hearing Milkovich and a fellow witness "apparently had their version of the incident polished and reconstructed, and the judge apparently believed them." Diadiun concluded that anyone who had attended the match "knows in his heart that Milkovich . . . lied at the hearing after . . . having given his solemn oath to tell the truth. But [he] got away with it."

Milkovich filed a libel action in state court against petitioners Diadiun, the News-Herald, and the latter's parent

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<sup>2</sup> The court ruled that the wrestling team was denied its right to cross-examine witnesses and to call witnesses on its behalf. The court did not make any factual findings concerning the underlying occurrences, nor did it comment on those occurrences.

corporation. Petitioners moved for summary judgment. The court held that Milkovich is a public figure for purposes of the *New York Times* test,<sup>3</sup> but denied summary judgment. The action was then tried to a jury. After five days of trial, at the close of Milkovich's evidence, petitioners moved for a directed verdict. They argued that Milkovich had failed to proffer sufficient evidence from which the jury could conclude that Diadiun's column had been published with actual malice under the *New York Times* test. The court granted the motion for directed verdict, stating that the evidence, considered most strongly in favor of Milkovich, "fails to establish by clear and convincing proof that the article . . . was published with knowledge of its falsity or in reckless disregard of the truth."

Milkovich appealed to the State Court of Appeals, which reversed and remanded for trial. The court stated that Diadiun's column conflicted with the factual determination reached in the earlier Common Pleas Court injunctive action, and held that this conflict alone constituted sufficient evidence of actual malice to withstand petitioner's motion for directed verdict.<sup>4</sup> Petitioners appealed to the Ohio Supreme Court,

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<sup>3</sup> The ruling that Milkovich is a public figure is unchallenged.

<sup>4</sup> The court stated:

"In the instant case, a court of law, based on the evidence before it, and having the right to determine where the truth lay, even though on a due process question, determined the truth in favor of the plaintiff and the wrestling team he coached. Thus, he had his day in court and was, at that time at least, exonerated by the only recognized arbiter of the truth in our American judicial system, but thereafter was still called a liar for the testimony he allegedly gave during that trial. . . . It would appear that, though the press might be at liberty to criticize the judicial process and the results of a given case, unless and until the judgment of the court is overturned on appeal, the determination of what constitutes the truth has been made. Thus, any news article written either as fact as a news item, or as opinion, that is published knowing that it conflicts with a judicial determination of the truth, may, in our opinion, be regarded as a reckless disregard of the truth so as to constitute 'actual

and also sought review in the nature of certiorari. The Ohio Supreme Court dismissed the appeal as raising "no substantial constitutional question" and otherwise denied review. The court also denied petitioners' motion for rehearing.<sup>5</sup>

The import of the Ohio appellate court's holding is plainly that, even in the absence of proof of knowing falsehood or reckless disregard for the truth, a newspaper forfeits its right to a directed verdict, summary judgment, or judgment notwithstanding the verdict on the issue of actual malice if it has published a statement that conflicts, however tangentially, with a decision by a court. This holding is clearly contrary to the First Amendment and to the relevant precedents of this Court. I had supposed it was settled that newspapers are privileged to publish their views of the facts, so long as those views are not recklessly or knowingly false. It matters not that such views may conflict with those of a court, for the press is free to differ with judicial determinations. In the libel area, neither a court nor any other institution is the "recognized arbiter of the truth," as the court below asserted. See *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 339-340 (1974).<sup>6</sup>

malice' so as to be actionable libel of a public person. Whether, in a given case, it constitutes a reckless disregard of the truth, is not, in our opinion, a question of law, but a question of fact based on the evidence before the court." 65 Ohio App. 2d 143, 146, 416 N. E. 2d 662, 666 (1979).

<sup>5</sup> Although the appellate court below remanded the case for retrial, including a jury determination on the actual-malice issue, the decision was nonetheless a final judgment for purposes of 28 U. S. C. § 1257. A decision in favor of petitioners would terminate the litigation, while a failure to decide the question now would leave the press in Ohio "operating in the shadow of . . . a rule of law . . . the constitutionality of which is in serious doubt." *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469, 486 (1975); *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241, 246-247 (1974).

<sup>6</sup> Indeed, at common law, a factual finding embodied in the judgment in another cause could not even be used as evidence of that fact in court. 5 J. Wigmore, *Evidence* § 1671a, pp. 806-807 (Chadbourn rev. 1974).

One part of the "strategic protection" that decisions of this Court have extended to the press in the libel area is the insistence that a public figure can prevail "only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth." *Gertz v. Robert Welch, Inc.*, *supra*, at 342; *New York Times Co. v. Sullivan*, 376 U. S., at 285-286. The court in a libel action has a responsibility to ensure that sufficient evidence of actual malice has been introduced to permit a jury finding under this exacting standard. This protection must not be withdrawn merely because the press account may have differed with the conclusions of a court, lest the "uninhibited, robust, and wide-open," *New York Times v. Sullivan*, *supra*, at 270, discussion of judicial proceedings be deterred. See *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555 (1980).

The consequence of the erroneous ruling in this case is particularly apparent on the facts: petitioners were denied a directed verdict on the strength of a prior court opinion that did not even discuss, let alone decide, what had happened at the disrupted wrestling match or whether Milkovich had testified truthfully. The court had merely ruled that the Maple High School wrestling team was denied certain procedural safeguards required under due process. Thus, it is abundantly apparent that the state court's conclusion that Diadiun wrote this column "knowing that it conflicts with a judicial determination of the truth" is unpersuasive even on its own terms.

Because in my view the decision of the Ohio appellate court in this case seriously contravenes the principles of the First Amendment as interpreted by this Court, and threatens to chill the freedom of newspapers in Ohio to publish their view of the facts where they differ with the view of the courts, I dissent and would grant certiorari to review this important question of constitutional law.

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No. 80-137. DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT OF LOUISIANA *v.* BEAIRD-POULAN, INC. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 255.

JUSTICE REHNQUIST, dissenting.

More than half a century ago, this Court observed that "[t]he settled policy of Congress, in authorizing the taking of land and appurtenances, has been to limit the right to compensation to interests in the land taken." *Mitchell v. United States*, 267 U. S. 341, 346 (1925). In 1970, however, Congress enacted the Uniform Relocation Assistance and Real Property Acquisition Policies Act, wherein it declared its purpose to "establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." 84 Stat. 1895, 42 U. S. C. § 4621. The substantive provisions of the Act provide for actual reasonable expenses in moving the condemnee, his business, his family, his farm, or other personal property, and actual reasonable expenses in searching for a replacement business or farm. The only substantive provisions of the Act dealing with state condemnations in general are carefully treated in 42 U. S. C. §§ 4627 and 4630, which forbid the head of a "Federal agency" to approve a "grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project . . . unless he receives satisfactory assurances from such State agency" that fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a federal agency under the earlier sections of the Act.

We may expect frequent interaction between the Federal and State Governments such as is contemplated by the Act, and the fact that this case raises serious questions under the

Act concerning federal jurisdiction would lead me to grant certiorari.

Beaird-Poulan, a corporation engaged in the manufacture of chain saws, owned a 16.5-acre tract of land in Louisiana. It operated plant facilities on the front portion of this tract, while the rest consisted of unimproved timberland not used for business purposes in any way. In May 1971 the Louisiana Department of Transportation and Development (DOTD) expropriated a 3-acre section of the unused portion of the tract for construction of Interstate 220, a federally assisted highway project. Beaird-Poulan moved some of its facilities to a new plant location after the expropriation, and filed suit against DOTD and the United States Secretary of Transportation in Federal District Court to recover its moving expenses. It alleged that its action arose under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U. S. C. § 4601 *et seq.* Pursuant to § 4630 Louisiana had enacted its own Relocation Assistance Act, La. Rev. Stat. Ann. §§ 38:3101-3110 (West Supp. 1980).

The United States District Court, after preliminary litigation as to the meaning of the Louisiana Constitution, ordered respondent to submit its claim to petitioner, and ordered that petitioner conduct a full, fair, and complete adversary hearing, retaining "jurisdiction of this case to review the administrative determination." After considering respondent's claim petitioner denied it both because the state legislation was not in effect when the claim arose, and because respondent did not qualify as a displaced person.

Beaird-Poulan did not seek either rehearing or review of the DOTD decision in state court<sup>1</sup> but rather filed a motion in Federal District Court stating that it was "aggrieved by the administrative determination . . . and desires that this Court

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<sup>1</sup> It appears that such review is available after exhaustion of administrative remedies. See, *e. g.*, *Bounds v. State of Louisiana, Department of Highways*, 333 So. 2d 714 (La. App.), writ refused, 338 So. 2d 295 (La. 1976).

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review the administrative determination." Over DOTD's objection the court took the case and supplemented the administrative record. The court based its jurisdiction on 28 U. S. C. § 1331 (a) (1976 ed., Supp. III), and concluded that its function was "to review [the DOTD] decision denying relocation assistance benefits." It rejected a contention that judicial review was unavailable, concluding that Congress intended to foreclose review under a separate section covering acquisition policies, 42 U. S. C. § 4651, but not under the relocation provision, 42 U. S. C. § 4622. On the merits the court ruled that Beard-Poulan was a displaced person and directed DOTD to determine the amount of its moving expenses. 441 F. Supp. 866. The Fifth Circuit affirmed in a one-sentence *per curiam* adopting the District Court opinion as its own. 616 F. 2d 255.

The District Court determined that Congress did not intend to preclude judicial review of *federal* relocation payment determinations under 42 U. S. C. § 4622, but it failed to note that the case before it involved a relocation payment determination made not by a *federal* agency, but by a state agency under state law. Nothing in the Act purports to give federal courts the power to review such determinations of state agencies. Although such silence may not preclude federal judicial review of *federal* agency decisions under the Administrative Procedure Act, 5 U. S. C. § 701, the APA is of course not applicable to state agencies.

The rule that applies to cases such as the present one was stated a quarter of a century ago in *Chicago, R. I. & P. R. Co. v. Stude*, 346 U. S. 574 (1954). The railroad, pursuant to Iowa law, condemned certain land. It appealed the local sheriff's award of compensation to the Federal District Court, alleging diversity of citizenship and seeking to limit the award. This Court sustained a dismissal of the action: "The United States District Court . . . does not sit to review on appeal action taken administratively . . . in a state proceed-

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ing. . . . The Iowa Code does not purport to authorize such an appeal, Congress has provided none by statute, and the Federal Rules of Civil Procedure make no such provision." *Id.*, at 581.

The District Court cited 28 U. S. C. § 1331 (a) (1976 ed., Supp. III) as the basis for its jurisdiction, but the present case does not "arise under" federal law. The proceedings before the DOTD, which the District Court purported to review, were grounded on La. Rev. Stat. Ann. § 38:3101 *et seq.* (West Supp. 1980). Although this state legislation is similar to the federal Act, and was enacted in response to 42 U. S. C. § 4630, it is nonetheless still a state law. Nothing in the federal Act gives displaced persons a direct cause of action against state agencies, nor does respondent cite any evidence in the legislative history suggesting that such an action was contemplated. On the contrary, the Act encourages States to make appropriate relocation payments under their own laws by conditioning the availability of federal funds on the provision of such payments. *Ibid.* The carrot of federal funds, not the stick of private suits, was chosen by Congress as the means of providing relocation payments to those displaced by the States for federally assisted projects.

Because the District Court assumed to the contrary, and exercised jurisdiction either to review the decision of the state agency or to entertain a direct action against the state agency, I would grant the petitioner agency's petition for certiorari.

No. 80-184. *ILLINOIS v. DOWDELL*. App. Ct. Ill., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 81 Ill. App. 3d 266, 401 N. E. 2d 295.

No. 80-185. *KLIPPAN, GMBH v. VOLKSWAGEN OF AMERICA, INC.* Sup. Ct. Alaska. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 611 P. 2d 498.

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No. 80-224. WESTINGHOUSE ELECTRIC CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 618 F. 2d 107.

No. 80-305. ALABAMA DAIRY COMMISSION ET AL. *v.* DELVIEW MEADOW GOLD DIVISION, BEATRICE FOODS CO., ET AL. Sup. Ct. Ala. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 383 So. 2d 511.

No. 80-337. ROBERTS *v.* SEARS, ROEBUCK & Co. C. A. 7th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 617 F. 2d 460.

No. 80-263. ITHACA COLLEGE FACULTY ASSN., NYSUT-AFT *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 623 F. 2d 224.

No. 80-297. HOLDING *v.* BVA CREDIT CORP. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 618 F. 2d 99.

No. 80-5248. INMATES, RICHMOND CITY JAIL *v.* WINSTON ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 622 F. 2d 584.

No. 80-405. TRAN CON CORP., DBA PALLADIUM *v.* ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD (RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, REAL PARTY IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE BRENNAN would grant certiorari.

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No. 80-308. *ORTHO PHARMACEUTICAL CORP. v. MCKENNA ET VIR.* C. A. 3d Cir. Certiorari denied. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 622 F. 2d 657.

No. 80-352. *KALINSKY ET AL. v. GENERAL DYNAMICS CORP. ET AL.* C. A. 9th Cir. Motion of California Trial Lawyers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 622 F. 2d 1315.

No. 80-5103. *DOWNS v. FLORIDA.* Sup. Ct. Fla.;

No. 80-5317. *REDD v. BALKCOM, WARDEN.* Sup. Ct. Ga.;

and

No. 80-5359. *DAVIS v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 80-5359, 597 S. W. 2d 358.

JUSTICE BRENNAN and 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. 79-1245. *ACAVINO v. UNITED STATES*, 446 U. S. 951. Petition for rehearing denied.

NOVEMBER 5, 1980

#### *Dismissal Under Rule 53*

No. 80-5403. *PRATT v. UNITED STATES.* C. A. 1st Cir. Certiorari dismissed under this Court's Rule 53.

NOVEMBER 7, 1980

#### *Dismissal Under Rule 53*

No. 80-5526. *SANDERS v. UNITED STATES.* C. A. 6th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 627 F. 2d 1094.

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NOVEMBER 10, 1980

*Appeals Dismissed*

No. 80-318. *EXXON CORP. ET AL. v. CITY OF MENTOR, OHIO*. Appeal from Ct. App. Ohio, Lake County, dismissed for want of substantial federal question.

No. 80-401. *RUBIN ET UX. v. GLASER, DIRECTOR, DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF NEW JERSEY, ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 83 N. J. 299, 416 A. 2d 382.

No. 80-5427. *ROBERTS v. MCCOY ET AL.* Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 621 F. 2d 439.

No. 80-5528. *CONRAD v. RODINO, MEMBER OF CONGRESS, ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

No. 80-5529. *CONRAD v. CARTER, PRESIDENT OF THE UNITED STATES, ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

*Certiorari Granted—Affirmed in Part, Reversed in Part, and Remanded.* (See No. 79-6000, ante, p. 5.)

*Certiorari Granted—Vacated and Remanded*

No. 80-365. *WASHINGTON v. FITZSIMMONS*. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the Supreme Court of Washington to consider whether its judgment is based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). JUSTICE BRENNAN, JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS dissent. Reported below: 93 Wash. 2d 436, 610 P. 2d 893.

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*Miscellaneous Orders*

No. A-292. *BIZZARD v. UNITED STATES*. Application for bail and/or writ of habeas corpus, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-388. *MCLAIN v. MEIER, SECRETARY OF STATE OF NORTH DAKOTA, ET AL.* Application for stay and injunctive relief, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D-196. *IN RE DISBARMENT OF BROADWELL*. It is ordered that Paul Herbert Broadwell of Phoenix, Ariz., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-197. *IN RE DISBARMENT OF CAMPBELL*. It is ordered that William H. Campbell, of Omaha, Neb., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-201. *IN RE DISBARMENT OF NOONAN*. It is ordered that Francis Patrick Noonan, of Poolesville, Md., 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-203. *IN RE DISBARMENT OF HENDERSON*. It is ordered that Alan Burton Henderson, of Towson, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-195. *IN RE DISBARMENT OF CORY*. It is ordered that Ernest Neal Cory, Jr., of Laurel, Md., 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-198. *IN RE DISBARMENT OF FOGEL*. It is ordered that Martin Fogel, of Rockville, Md., 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-205. *IN RE DISBARMENT OF SILASKI*. It is ordered that George S. Silaski, of Kalamazoo, Mich., 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-206. *IN RE DISBARMENT OF KERPELMAN*. It is ordered that Leonard Jules Kerpelman, of Baltimore, Md., 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-207. *IN RE DISBARMENT OF WALSH*. It is ordered that Bernard Walsh, Jr., of Papillion, Neb., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 79-880. *KISSINGER ET AL. v. HALPERIN ET AL.* C. A. D. C. Cir. [Certiorari granted, 446 U. S. 951.] Motion of Bertram Zweibon et al. for leave to file a brief as *amici curiae* granted. JUSTICE REHNQUIST took no part in the consideration or decision of this motion.

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No. 79-1056. NORTHWEST AIRLINES, INC. *v.* TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, ET AL. C. A. D. C. Cir. [Certiorari granted, 447 U. S. 920.] Motions of International Union of Electrical, Radio & Machine Workers, AFL-CIO; Mary P. Laffey et al.; and American Federation of Labor and Congress of Industrial Organizations et al. for leave to file briefs as *amici curiae* granted. JUSTICE BLACKMUN took no part in the consideration or decision of these motions.

No. 79-1404. PENNHURST STATE SCHOOL AND HOSPITAL ET AL. *v.* HALDERMAN ET AL.;

No. 79-1408. MAYOR OF PHILADELPHIA ET AL. *v.* HALDERMAN ET AL.;

No. 79-1414. PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS ET AL. *v.* PENNHURST STATE SCHOOL AND HOSPITAL ET AL.;

No. 79-1415. COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATOR FOR BUCKS COUNTY ET AL. *v.* HALDERMAN ET AL.; and

No. 79-1489. PENNHURST PARENTS-STAFF ASSN. *v.* HALDERMAN ET AL. C. A. 3d Cir. [Certiorari granted, 447 U. S. 904.] Motions of National Association of Retarded Citizens et al. and plaintiffs in *Brewster v. Dukakis*, et al., for leave to participate in oral argument as *amici curiae* denied.

No. 79-1734. PARRATT ET AL. *v.* TAYLOR. C. A. 8th Cir. [Certiorari granted, *ante*, p. 917.] Motion of respondent for appointment of counsel granted, and it is ordered that Kevin Colleran, Esquire, of Lincoln, Neb., be appointed to serve as counsel for respondent in this case.

No. 80-419. ARIZONA *v.* MARICOPA COUNTY MEDICAL SOCIETY ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

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No. 80-704. GIBBONS, TRUSTEE, ET AL. *v.* RAILWAY LABOR EXECUTIVES' ASSN. ET AL. C. A. 7th Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 80-5560. IN RE CORLEY. Petition for writ of habeas corpus denied.

No. 79-2016. IN RE INTERSIMONE. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 80-84. ANDERSON BROS. FORD ET AL. *v.* VALENCIA ET AL. C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 617 F. 2d 1278.

No. 80-5116. JENKINS *v.* BREWER. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 624 F. 2d 1106.

*Certiorari Denied.* (See also No. 80-5427, *supra.*)

No. 79-1524. CITIZENS CASUALTY COMPANY OF NEW YORK *v.* SLOTKIN ET AL.;

No. 79-1535. McGRATH *v.* SLOTKIN ET AL.;

No. 79-1571. McGRATH *v.* SLOTKIN ET AL.; and

No. 79-1719. AMERICAN MUTUAL INSURANCE COMPANY OF BOSTON *v.* SLOTKIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 301.

No. 79-6663. TROZZO ET AL. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 79-6766. WARDEN *v.* KIDD, CIRCUIT COURT CLERK OF JEFFERSON COUNTY, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 308.

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No. 79-6858. *PARKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 82.

No. 79-6872. *THOMAS v. MUSKIE, SECRETARY OF STATE, ET AL.*; and

No. 79-6873. *THOMAS v. MUSKIE, SECRETARY OF STATE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 79-6899. *CASON v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 596 S. W. 2d 436.

No. 80-39. *VOLZ v. UNITED STATES DEPARTMENT OF JUSTICE*. C. A. 10th Cir. Certiorari denied. Reported below: 619 F. 2d 49.

No. 80-236. *NEWMAN MEMORIAL HOSPITAL, INC., ET AL. v. HACKNEY, ADMINISTRATRIX*. C. A. 10th Cir. Certiorari denied. Reported below: 621 F. 2d 1069.

No. 80-262. *DACEY v. COTTER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 573.

No. 80-368. *FEDERAL ELECTION COMMISSION v. AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS*. C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 97, 628 F. 2d 97.

No. 80-369. *AVINS v. WHITE*. C. A. 3d Cir. Certiorari denied. Reported below: 627 F. 2d 637.

No. 80-371. *RAO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 964, 425 N. Y. S. 2d 888.

No. 80-374. *REYNOLDS, DBA BEN'S AUTO SALES v. YAZZIE ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 623 F. 2d 638.

No. 80-375. *SHAMES v. SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO (SHAMES, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

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No. 80-376. *BURDEN v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 105 Cal. App. 3d 917, 166 Cal. Rptr. 542.

No. 80-383. *ADCOCK v. IOWA*. Ct. App. Iowa. Certiorari denied. Reported below: 292 N. W. 2d 878.

No. 80-394. *SHRIVER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 632 P. 2d 420.

No. 80-397. *LEE ET AL. v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 397 N. E. 2d 1047.

No. 80-407. *THOMPSON v. TURNER, ASSISTANT DIRECTOR, ALABAMA STATE HIGHWAY DEPARTMENT*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1259.

No. 80-409. *THOMAS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 1108.

No. 80-411. *MORSEBURG v. BALYON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 2d 972.

No. 80-424. *RUSSELL v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 227 Kan. 897, 610 P. 2d 1122.

No. 80-432. *CITY OF NEWARK, NEW JERSEY, ET AL. v. NATURAL RESOURCES COUNCIL, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF NEW JERSEY, ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 82 N. J. 530, 414 A. 2d 1304.

No. 80-438. *GRAYDON v. PASADENA REDEVELOPMENT AGENCY ET AL. (HAHN, INC., REAL PARTY IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 104 Cal. App. 3d 631, 164 Cal. Rptr. 56.

No. 80-445. *LIGONS v. BECHTEL POWER CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 625 F. 2d 771.

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No. 80-453. *ROBERTS v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 80-457. *WILSON v. FIRESTONE, SECRETARY OF STATE OF FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 345.

No. 80-460. *MERLO ET AL. v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 80-540. *BROOKS v. SUPREME COURT OF SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 274 S. C. 601, 267 S. E. 2d 74.

No. 80-5073. *CLAYTON v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 565.

No. 80-5146. *MIDDLEBROOKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 273.

No. 80-5150. *CHAFIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 2d 927.

No. 80-5237. *WARD v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 24 Wash. App. 761, 603 P. 2d 857.

No. 80-5304. *SAMUELS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 1035, 409 N. E. 2d 1368.

No. 80-5328. *PHIPPS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 1000.

No. 80-5337. *GALADA v. GUILLEN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 860.

No. 80-5344. *MITCHELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 625 F. 2d 158.

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No. 80-5345. *BROWN v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 599 S. W. 2d 498.

No. 80-5346. *SPRINGFIELD v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 96 Wis. 2d 740, 297 N. W. 2d 510.

No. 80-5352. *DANIELS v. JAGO*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1089.

No. 80-5356. *BLAKNEY v. SCHOOL DISTRICT OF PHILADELPHIA*; and

No. 80-5357. *BLAKNEY v. SCHOOL DISTRICT OF PHILADELPHIA*. C. A. 3d Cir. Certiorari denied.

No. 80-5364. *ENGLISH v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 297.

No. 80-5366. *TONEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 277.

No. 80-5369. *HICKS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5372. *GUNN v. ANDERSON*. C. A. 6th Cir. Certiorari denied.

No. 80-5375. *GUSS v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 80-5377. *WILLIAMS v. HINTON*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 589.

No. 80-5378. *BABERS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 178.

No. 80-5396. *HEFFNER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

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No. 80-5401. *DANKERT v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 392, 268 S. E. 2d 435.

No. 80-5420. *CHOW v. SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 594.

No. 80-5474. *DEGGENDORF v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 626 F. 2d 47.

No. 80-5500. *DEVINCENT v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 632 F. 2d 147.

No. 80-5509. *JEWELL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1351.

No. 79-6715. *CULBERSON v. MISSISSIPPI*. Sup. Ct. Miss.;

No. 79-6862. *STONE v. FLORIDA*. Sup. Ct. Fla.;

No. 79-6884. *FAIR v. GEORGIA*. Sup. Ct. Ga.;

No. 80-5119. *MULLIGAN v. GEORGIA*. Sup. Ct. Ga.;

No. 80-5163. *ESQUIVEL v. TEXAS*. Ct. Crim. App. Tex.;

No. 80-5249. *REDDIX v. MISSISSIPPI*. Sup. Ct. Miss.;

and

No. 80-5399. *JORDAN v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: No. 79-6715, 379 So. 2d 499; No. 79-6862, 378 So. 2d 765; No. 79-6884, 245 Ga. 868, 268 S. E. 2d 316; No. 80-5119, 245 Ga. 266, 264 S. E. 2d 204; No. 80-5163, 595 S. W. 2d 516; No. 80-5249, 381 So. 2d 999; No. 80-5399, 126 Ariz. 283, 614 P. 2d 825.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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No. 80-5523. FRASQUILLO-ZOMOSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 99.

No. 80-5524. COURY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 299.

No. 80-5527. HOSKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 295.

No. 80-5534. LEYBA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 627 F. 2d 1059.

No. 80-5535. GARCIA-ANGUIANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-359. JOHNSON, FOR THE USE OF ROSSIELLO *v.* ALL-STATE INSURANCE Co. C. A. 7th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 629 F. 2d 1244.

No. 80-502. FLOREY ET AL. *v.* SIOUX FALLS SCHOOL DISTRICT 49-5 ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 619 F. 2d 1311.

### *Rehearing Denied*

No. 79-6410. JAMES *v.* UNITED STATES, *ante*, p. 846;

No. 79-6531. HALL *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, *ante*, p. 892;

No. 79-6533. HUANG *v.* ROSEN ET AL., *ante*, p. 848;

No. 79-6892. BRYAN *v.* BYRD ET AL., *ante*, p. 868;

No. 80-5124. SHAW *v.* UNITED STATES, *ante*, p. 881;

No. 80-5166. LILLIBRIDGE, TRUSTEE, ET AL. *v.* UNITED STATES ET AL., *ante*, p. 883; and

No. 80-5218. MATTHEWS *v.* UNITED STATES, *ante*, p. 883. Petitions for rehearing denied.

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*Affirmed on Appeal*

No. 80-333. *TOWN OF SOUTHAMPTON v. TROYER ET AL.* Affirmed on appeal from C. A. 2d Cir. For the reasons stated in his dissent in *Schaumburg v. Citizens for Better Environment*, 444 U. S. 620, 639 (1980), JUSTICE REHNQUIST would reverse the judgment of the Court of Appeals. Reported below: 628 F. 2d 1346.

*Appeals Dismissed*

No. 80-5263. *BULLWINKLE v. CALIFORNIA*; and

No. 80-5456. *BULLWINKLE v. CALIFORNIA*. Appeals from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. Reported below: 105 Cal. App. 3d 82, 164 Cal. Rptr. 163.

No. 80-5440. *SHAO FEN CHIN, ADMINISTRATOR v. ST. LUKE'S HOSPITAL CENTER ET AL.* Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 50 N. Y. 2d 928.

*Certiorari Granted—Reversed.* (See No. 79-1895, *ante*, p. 33; and No. 80-321, *ante*, p. 39.)

*Certiorari Granted—Vacated and Remanded*

No. 79-6745. *PATRICK v. GEORGIA*;

No. 80-5010. *HARDY v. GEORGIA*; and

No. 80-5266. *THOMAS v. GEORGIA*. Sup. Ct. Ga. Motions of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Judgments vacated and cases remanded for further consideration in light of *Godfrey v. Georgia*, 446 U. S. 420 (1980). CHIEF JUSTICE BURGER, JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE REHNQUIST dissent. Reported below: No. 79-6745, 245 Ga. 417, 265 S. E. 2d 553; No. 80-5010, 245 Ga. 272, 264 S. E. 2d 209; No. 80-5266, 245 Ga. 688, 266 S. E. 2d 499.

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*Vacated and Remanded After Certiorari Granted*

No. 80-45. *JOHNSON v. J. O. L.* Ct. App. D. C. [Certiorari granted, *ante*, p. 818.] Judgment vacated and case remanded for further consideration in light of the position presently asserted by the respondent in his motion to dismiss filed October 27, 1980; the opposition filed thereto by petitioner on November 6, 1980; and the reply filed thereto by respondent on November 13, 1980.

*Miscellaneous Orders*

No. A-385. *ZOBEL ET UX. v. WILLIAMS, COMMISSIONER OF REVENUE OF ALASKA, ET AL.* Application for stay, presented to JUSTICE REHNQUIST, and by him referred to the Court, granted. The mandate of the Supreme Court of Alaska is stayed pending the timely filing and disposition of the appeal. JUSTICE REHNQUIST dissents.

No. D-199. *IN RE DISBARMENT OF FISCHER.* It is ordered that Charles Fischer, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-202. *IN RE DISBARMENT OF EASLER.* It is ordered that William R. Easler, of Spartanburg, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-204. *IN RE DISBARMENT OF SCHLATER.* It is ordered that Donald E. Schlater, of Havertown, 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.

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No. D-208. *IN RE DISBARMENT OF NOREN*. It is ordered that Donald H. Noren, of Plantation, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-209. *IN RE DISBARMENT OF PATT*. It is ordered that Seymour Harold Patt, of Reno, Nev., 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-210. *IN RE DISBARMENT OF BURKA*. It is ordered that Leonard W. Burka, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-211. *IN RE DISBARMENT OF BARBUTO*. It is ordered that James Vito Barbuto, of Akron, 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. 85, Orig. *TEXAS v. OKLAHOMA*. Motion of Texas Power & Light Co. for leave to intervene referred to the Special Master. [For earlier order herein, see 444 U. S. 1065.]

No. 79-1056. *NORTHWEST AIRLINES, INC. v. TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, ET AL.* C. A. D. C. Cir. [Certiorari granted, 447 U. S. 920.] Motion of the Solicitor General for divided argument granted. *JUSTICE BLACKMUN* took no part in the consideration or decision of this motion.

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No. 79-1388. *KIRCHBERG v. FEENSTRA ET AL.* C. A. 5th Cir. [Probable jurisdiction noted, 446 U. S. 917.] Motion of NOW Legal Defense and Education Fund et al. for leave to file a brief as *amici curiae* granted.

No. 79-1538. *ANDRUS, SECRETARY OF THE INTERIOR v. VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL.*; and

No. 79-1596. *VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL. v. ANDRUS, SECRETARY OF THE INTERIOR.* D. C. W. D. Va. [Probable jurisdiction noted, *ante*, p. 817.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 80-5116. *JENKINS v. BREWER.* C. A. 7th Cir. [Certiorari granted, *ante*, p. 981.] Motion of petitioner for appointment of counsel granted, and it is ordered that John Seelig Elson, Esquire, of Chicago, Ill., be appointed to serve as counsel for petitioner in this case.

No. 80-5385. *IN RE WILLIAMS.* Petition for writ of habeas corpus denied.

JUSTICE BRENNAN and 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 vacate the death sentence in this case.

#### *Certiorari Granted*

No. 79-1517. *FEDERATED DEPARTMENT STORES, INC., ET AL. v. MOITIE ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 611 F. 2d 1267.

No. 80-348. *H. A. ARTISTS & ASSOCIATES, INC., ET AL. v. ACTORS' EQUITY ASSN. ET AL.* C. A. 2d Cir. Certiorari granted. Reported below: 622 F. 2d 647.

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*Certiorari Denied.* (See also No. 80-5440, *supra*.)

No. 79-1830. *HEISE v. VILLAGE OF PEWAUKEE*. Sup. Ct. Wis. Certiorari denied. Reported below: 92 Wis. 2d 333, 285 N. W. 2d 859.

No. 79-1984. *STRUBE v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 274 Pa. Super. 199, 418 A. 2d 365.

No. 79-2009. *LEVINSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 75 Ill. App. 3d 429, 394 N. E. 2d 509.

No. 79-2019. *KELLER, DISTRICT ATTORNEY FOR CLAYTON JUDICIAL CIRCUIT, STATE OF GEORGIA v. SEPTUM, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 456.

No. 79-2078. *SWARTOUT v. CIVIL SERVICE COMMISSION OF SPOKANE ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 25 Wash. App. 174, 605 P. 2d 796.

No. 80-68. *STROUSE ET AL. v. CARTER, JUDGE*. Sup. Ct. Okla. Certiorari denied.

No. 80-133. *LEVITT & SONS OF PUERTO RICO, INC. v. COMMERCIAL INSURANCE Co.* C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1087.

No. 80-142. *HAYES v. PENNSYLVANIA ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 489 Pa. 419, 414 A. 2d 318.

No. 80-223. *HOWE ET AL. v. ALLIED VAN LINES, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 1147.

No. 80-256. *GLENN v. SHIPP ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 603.

No. 80-286. *WOOTERS ET AL. v. JORNLIN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 580.

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No. 80-351. *MAGNELLI v. PENNSYLVANIA ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 47 Pa. Commw. 597, 408 A. 2d 904.

No. 80-354. *DRESSER INDUSTRIES, INC. v. SECURITIES AND EXCHANGE COMMISSION.* C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 345, 628 F. 2d 1368.

No. 80-362. *FAUSNER ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied.

No. 80-380. *GREGORY ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 626 F. 2d 11.

No. 80-391. *AKERS v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1285.

No. 80-421. *FOXMAN ET UX. v. RENISON.* C. A. 2d Cir. Certiorari denied. Reported below: 625 F. 2d 429.

No. 80-425. *NORTON ET AL. v. LEADVILLE CORP.* Ct. App. Colo. Certiorari denied.

No. 80-426. *SCHWARZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 193.

No. 80-440. *SIKORA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 2d 1175.

No. 80-447. *OLSEN v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 293 N. W. 2d 216.

No. 80-464. *DICKISON ET AL. v. GOLDSCHMIDT, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1106.

No. 80-466. *SORIANO v. MOORE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 783.

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No. 80-469. *SPEIRS ET AL. v. BANK OF NEVADA ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 95 Nev. 870, 603 P. 2d 1074.

No. 80-473. *SOUTHERN PACIFIC TRANSPORTATION Co. v. EVANS, TEMPORARY ADMINISTRATRIX, ET AL.* Ct. Civ. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 590 S. W. 2d 515.

No. 80-476. *DEMARCO v. PENNSYLVANIA STATE BOARD OF MEDICAL EDUCATION AND LICENSURE.* Pa. Commw. Ct. Certiorari denied. Reported below: 47 Pa. Commw. 500, 408 A. 2d 572.

No. 80-523. *WALSH v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 623 F. 2d 489.

No. 80-536. *SERAPHIM v. WISCONSIN ET AL.* Sup. Ct. Wis. Certiorari denied. Reported below: 97 Wis. 2d 485, 294 N. W. 2d 485.

No. 80-587. *STOTTS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 710.

No. 80-595. *SMITH v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 629 F. 2d 650.

No. 80-600. *WITSCHNER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 840.

No. 80-604. *WALKER v. BARRY, MAYOR OF DISTRICT OF COLUMBIA, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 201 U. S. App. D. C. 82, 627 F. 2d 541.

No. 80-619. *LONEY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 212.

No. 80-626. *GRAVETT v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 768.

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No. 80-634. *FIELDS ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 207.

No. 80-5022. *WHITE v. BLOOM ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 621 F. 2d 276.

No. 80-5025. *GALADA v. TICE*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 583.

No. 80-5067. *SCOTT ET AL. v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 80-5099. *SILVA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 80-5108. *EVELAND v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 80-5142. *DAVIS v. ANDERSON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 80-5162. *EIGNER v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 583.

No. 80-5176. *WILLIAMS v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 383 So. 2d 564.

No. 80-5190. *BERARDI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 723.

No. 80-5199. *CARMEL v. UNITED STATES PAROLE COMMISSION*. C. A. 2d Cir. Certiorari denied.

No. 80-5200. *GRIFFIN v. STEPHENSON, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 583.

No. 80-5253. *KEZIAH v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 584.

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No. 80-5349. MAULDIN *v.* GRANT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 303.

No. 80-5354. WELCH *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 269 Ark. 208, 599 S. W. 2d 717.

No. 80-5371. NOE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 384 So. 2d 1046.

No. 80-5380. RODIC *v.* THISTLEDOWN RACING CLUB ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 736.

No. 80-5384. WOODARD *v.* WACHOVIA BANK & TRUST CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 864.

No. 80-5400. BEMBER *v.* CONNECTICUT. App. Sess., Super. Ct. Conn. Certiorari denied.

No. 80-5402. MCQUEEN *v.* STEPHENSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 585 and 626 F. 2d 862.

No. 80-5406. JOHL *v.* PERKINS. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 743, 424 N. Y. S. 2d 807.

No. 80-5407. PATTERSON *v.* MERCER ET AL. C. A. 6th Cir. Certiorari denied.

No. 80-5408. PETERS *v.* BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

No. 80-5412. JONES *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 124.

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No. 80-5435. *LARREA v. SMITH, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 204.

No. 80-5436. *ROSENBERG v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-5441. *GROFT v. HUNTINGDON COUNTY, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5443. *MCCRAY v. BURRELL.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 705.

No. 80-5459. *BLACK v. DALSHHEIM, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1200.

No. 80-5462. *BENJAMIN v. HOWARD, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5477. *WHEELER v. DAVIS, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1094.

No. 80-5507. *ARTWAY v. DEL TUFO, UNITED STATES ATTORNEY, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5508. *SNEED v. BRESSON, ACTING CHIEF, PRIVACY ACTS BRANCH, RECORDS MANAGEMENT DIV., U. S. DEPT. OF JUSTICE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 863.

No. 80-5519. *DUGGER ET AL. v. VANDEVER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1089.

No. 80-5542. *MANGRUM v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 418 A. 2d 1071.

No. 80-5543. *CHRISTENSEN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

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No. 80-5544. *GUERRIERO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-5553. *KAISER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 1095.

No. 80-5568. *LEDESMA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 632 F. 2d 670.

No. 80-5579. *JACKSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 627 F. 2d 883.

No. 79-1834. *COCA-COLA BOTTLING COMPANY OF MEMPHIS v. NATIONAL LABOR RELATIONS BOARD ET AL.*; and *COCA-COLA BOTTLING COMPANY OF MEMPHIS v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION No. 1196*. C. A. 6th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 616 F. 2d 949 (first case); 615 F. 2d 1360 (second case).

No. 79-6341. *MARTIN v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 376 So. 2d 300.

JUSTICE BRENNAN and 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.

JUSTICE STEWART, dissenting.

The Louisiana jury that imposed the death penalty upon the petitioner found two aggravating circumstances: (1) the petitioner had knowingly created a risk of death or great bodily harm to more than one person; and (2) he had committed the offense in an especially heinous, atrocious, or cruel manner. 376 So. 2d 300, 311-312. In affirming the death

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sentence, the Louisiana Supreme Court held that the jury had properly found the first aggravating circumstance. *Id.*, at 312. It then reasoned that since the jury had had the power to sentence the petitioner to death on the basis of a single aggravating circumstance, there was no need for it to review the correctness of the jury's finding of the second aggravating circumstance. *Ibid.*

Under the state death penalty statute, however, while the jury was permitted to impose capital punishment where it found only a single aggravating circumstance, it was not required to do so. La. Code Crim. Proc. Ann., Art. 905.3 (West Supp. 1980). The Louisiana court's reasoning, therefore, ignores the possibility that some of the jurors may have voted for the death sentence because of the existence of the second aggravating circumstance alone, or that others may have voted for the death penalty only because of the existence of the two aggravating circumstances.

The jury's verdict thus makes it impossible to determine whether some or all of the jurors may have relied on the existence of the second aggravating circumstance in reaching their decision to impose the sentence of death. Accordingly, I would grant the petition for certiorari, vacate the judgment of the Louisiana Supreme Court, and remand this case to that court for consideration of the validity of the jury's finding of the second aggravating circumstance. *Stromberg v. California*, 283 U. S. 359, 368.

No. 79-6615. *DRAKE v. ZANT, WARDEN*. Super. Ct. Ga., Butts County; and

No. 79-6704. *WESTBROOK v. BALKCOM, WARDEN*. Sup. Ct. Ga. Certiorari denied.

JUSTICE STEVENS, concurring.

After our decision in *Godfrey v. Georgia*, 446 U. S. 420, the Supreme Court of Georgia, in cases remanded by this Court for further consideration in light of *Godfrey*, decided to ad-

here to its prior position that a death penalty imposed on the basis of a plurality of aggravating circumstances, each of which has been established by proof beyond a reasonable doubt, will not be set aside simply because one of those aggravating circumstances is vulnerable. See, e. g., *Hamilton v. State*, 246 Ga. 264, 271 S. E. 2d 173 (1980); *Brooks v. State*, 246 Ga. 262, 271 S. E. 2d 172 (1980); *Collins v. State*, 246 Ga. 261, 271 S. E. 2d 352 (1980).<sup>\*</sup> Because the Georgia Supreme Court's position is clear, and because I consider it consistent with this Court's decisions, I think the Court has correctly decided to deny certiorari in both No. 79-6704 and No. 79-6615, even though similar cases were remanded to the Georgia Supreme Court for reconsideration immediately after we decided *Godfrey*.

JUSTICE BRENNAN and 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

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<sup>\*</sup>In *Brooks*, the Georgia Supreme Court stated:

"Having reconsidered the facts of the present case as directed, this court now reaffirms on two, independent grounds, the appellant's sentence of death for the murder of Carol Jeannine Galloway.

"First, in the present case, the jury's verdict for the death sentence was predicated, not only on Code Ann. § 27-2534.1 (b) (7), but also on Code Ann. § 27-2534.1 (b) (2) (the jury found, beyond a reasonable doubt, that the murder was committed during the appellant's commission of a rape and an armed robbery).

"Where two or more statutory aggravating circumstances are found by the jury, the failure of one circumstance does not so taint the proceedings as to invalidate the other aggravating circumstance found and the sentence of death based thereon." *Gates v. State*, 244 Ga. 587, 599 (261 SE 2d 349) (1979).

"Therefore, we reaffirm the appellant's sentence of death on the ground that the jury's finding of Code Ann. § 27-2534.1 (b) (2) was supported by legally sufficient evidence." 246 Ga., at 263, 271 S. E. 2d, at 172-173. Justice Hill concurred only on the basis of the *Gates* rationale. *Ibid*.

U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

JUSTICE STEWART, dissenting.

I would grant the petition for certiorari in No. 79-6615, vacate the judgment insofar as it approved the imposition of the death sentence, and remand the case for reconsideration. See *Martin v. Louisiana*, ante, p. 998 (STEWART, J., dissenting).

I would vacate the judgment of the Supreme Court of Georgia in No. 79-6704, insofar as it left undisturbed the death penalty, and remand the case to that court for further consideration in light of *Godfrey v. Georgia*, 446 U. S. 420 (1980).

The sentence of death was imposed in No. 79-6704 upon the basis of the statutory aggravating circumstance involved in the *Godfrey* case (Ga. Code § 27-2534.1 (b)(7) (1978)), and an additional statutory aggravating circumstance. If, after *Godfrey*, the Supreme Court of Georgia should decide that the § (b)(7) aggravating circumstance could not constitutionally justify the death sentence, Georgia law would prohibit a further finding that the error was harmless simply because of the existence of the other aggravating circumstance. Under Georgia's capital sentencing scheme, the trial court is the sentencing authority. Ga. Code §§ 27-2503 (b), 27-2534.1 (b) (1978). In addition, the sentencer has the power to decline to impose the death penalty even if it finds that one or more statutory aggravating circumstances are present in the case. See *Fleming v. State*, 240 Ga. 142, 146-147, 240 S. E. 2d 37, 40-41 (1977); *Hawes v. State*, 240 Ga. 327, 334-335, 240 S. E. 2d 833, 839 (1977). See also *Gregg v. Georgia*, 428 U. S. 153, 203. Thus, under Georgia's capital punishment scheme, only the trial judge or jury can know and determine what to do when upon appellate review it has been concluded that a particular aggravating circumstance should not have been considered in sentencing the defendant to death.

I had thought that it was on the basis of precisely this reasoning that the Court only months ago unanimously acted as it did with respect to four cases which were, in all relevant respects, indistinguishable from this one. See *Davis v. Georgia*, 446 U. S. 961; *Collins v. Georgia*, 446 U. S. 961; *Baker v. Georgia*, 446 U. S. 961; *Hamilton v. Georgia*, 446 U. S. 961.

JUSTICE WHITE, dissenting.

I dissent from the denial of certiorari in these cases. I would vacate the judgment in each case insofar as it affirmed the imposition of the death sentence and would remand for reconsideration in light of *Godfrey v. Georgia*, 446 U. S. 420 (1980). The judgment in each case was entered prior to our decision in *Godfrey*. In each case, the jury found two statutory aggravating circumstances which permit imposition of the death penalty under Georgia law, one of which was that involved in *Godfrey*. In each case the Georgia Supreme Court sustained both circumstances in its mandatory review of the sentence.

We have remanded such cases before, and we should do so now. This would allow the Georgia Supreme Court in the first instance to determine whether the death penalty should be sustained without regard to the validity of the *Godfrey* circumstance. I would not make that determination here, as the Court is apparently doing; for I do not understand the Georgia cases cited by JUSTICE STEVENS to hold either that the Georgia Supreme Court is without power to set aside a death penalty if it sustains only one of the aggravating circumstances found by the jury or that, although the court has that power, it invariably will not disturb the death penalty in such situations. Of course, the Georgia Supreme Court could avoid any such question if on remand it found sufficient grounds to sustain the *Godfrey* aggravating circumstance.

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Nor do I believe that the Constitution requires the Georgia Supreme Court to vacate the sentences if it fails to sustain the *Godfrey* aggravating circumstance. The cases now before us involve only sentencing, not guilt or innocence, and there is no constitutional right to jury sentencing. The imposition of a death sentence, despite a failure to sustain all of the aggravating circumstances found by the jury, does not conflict with either *Stromberg v. California*, 283 U. S. 359 (1931), or *Street v. New York*, 394 U. S. 576 (1969). The Georgia Supreme Court has held that under Georgia law it has the power to determine whether or not a death sentence should be imposed under these circumstances. As I see it, this does not violate the United States Constitution.

No. 80-5216. *SCOTT v. FLORIDA*. Sup. Ct. Fla.;

No. 80-5335. *JONES v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 80-5495. *RUSSELL v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 80-5335, 381 So. 2d 983; No. 80-5495, 598 S. W. 2d 238.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 80-273. *HART AND MILLER ISLANDS AREA ENVIRONMENTAL GROUP, INC., ET AL. v. UNITED STATES ARMY CORPS OF ENGINEERS ET AL.* C. A. 4th Cir. Motions of Sierra Club et al. and Bair Island Investments, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 621 F. 2d 1281.

No. 80-329. *SMITH v. McCRAY*. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 622 F. 2d 705.

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No. 80-201. SILVER CREEK PACKING CO. *v.* MARSHALL, SECRETARY OF LABOR. C. A. 9th Cir. Motion of Nisei Farmers League for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 615 F. 2d 848.

No. 80-488. MASSACHUSETTS *v.* BRANT. Sup. Jud. Ct. Mass. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 380 Mass. 876, 406 N. E. 2d 1021.

No. 80-506. KAPLAN *v.* POINTER ET AL. C. A. D. C. Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 80-477. AD HOC '78 ET AL. *v.* ROUSE PHILADELPHIA, INC., ET AL. Super. Ct. Pa. Motion of American Civil Liberties Foundation of Pennsylvania for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 275 Pa. Super. 54, 417 A. 2d 1248.

No. 80-5172. COLE *v.* STEVENSON, CORRECTIONAL SUPERINTENDENT, ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 620 F. 2d 1055.

No. 80-5350. FRYBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 622 F. 2d 1010.

#### *Rehearing Denied*

No. 79-1530. TOWN *v.* RENO, STATE ATTORNEY OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, ET AL., *ante*, p. 803;

No. 79-1889. RIVERA *v.* OREGON STATE EMPLOYEES ASSN. ET AL., *ante*, p. 803;

No. 79-6458. JOHNSON *v.* CITY OF BIRMINGHAM, ALABAMA, *ante*, p. 846; and

No. 79-6506. COVINO *v.* MORRIS, WARDEN, ET AL., *ante*, p. 847. Petitions for rehearing denied.

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No. 79-6585. STEVENS *v.* GEORGIA, *ante*, p. 891;

No. 79-6785. PRATER *v.* BROWN, *ante*, p. 862;

No. 80-5016. KEY *v.* BOARD OF VOTER REGISTRATION OF CHARLESTON COUNTY ET AL., *ante*, p. 877;

No. 80-5029. JAUDON *v.* SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 878;

No. 80-5082. TILLI *v.* CAPABIANCO ET AL., *ante*, p. 880; and

No. 80-5177. WADE *v.* FRANKLIN STRICKLIN LAND SURVEYORS, INC., *ante*, p. 883. Petitions for rehearing denied.

NOVEMBER 25, 1980

*Miscellaneous Order*

No. A-453. MISSOURI KANSAS TEXAS RAILROAD Co. *v.* UNITED STATES ET AL. The order heretofore entered by JUSTICE POWELL on November 21, 1980, at 7 p. m., is vacated and the application for stay presented to JUSTICE POWELL, and by him referred to the Court, is denied. The application, filed November 22, 1980, at 12:05 p. m., for an order enjoining the effectiveness of the merger between Burlington Northern Inc. and St. Louis-San Francisco Railroad Co., is denied. Treating the application for a temporary stay as an application for stay of the judgment of the United States Court of Appeals for the Fifth Circuit pending the timely filing and disposition of a petition for writ of certiorari, the application for stay is denied. JUSTICE MARSHALL took no part in the consideration or decision of this order.

DECEMBER 1, 1980

*Appeal Dismissed*

No. 80-422. TEMPLE UNIVERSITY OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION ET AL. *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE ET AL. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal ques-

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tion. JUSTICE BRENNAN and JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 490 Pa. 207, 415 A. 2d 413.

*Miscellaneous Orders*

No. A-409. PFAFF ET AL. *v.* WELLS, SHERIFF. Application for enlargement from custody pending appeal, addressed to JUSTICE MARSHALL and referred to the Court, denied. JUSTICE MARSHALL took no part in the consideration or decision of this application.

No. A-426. CUARON ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ET AL. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. JUSTICE MARSHALL took no part in the consideration or decision of this application.

No. D-171. IN RE DISBARMENT OF GARCIA. Disbarment entered. [For earlier order herein, see 444 U. S. 894.]

No. D-183. IN RE DISBARMENT OF BARNES. Disbarment entered. [For earlier order herein, see 444 U. S. 1029.]

No. D-184. IN RE DISBARMENT OF CAIN. Disbarment entered. [For earlier order herein, see 444 U. S. 1042.]

No. D-187. IN RE DISBARMENT OF WOLK. Disbarment entered. [For earlier order herein, see 446 U. S. 915.]

No. D-189. IN RE DISBARMENT OF MANN. Disbarment entered. [For earlier order herein, see 446 U. S. 915.]

No. D-200. IN RE DISBARMENT OF MCMAHON. It is ordered that Joseph R. McMahon, of Miami, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-212. *IN RE DISBARMENT OF GROSS*. It is ordered that Nelson G. Gross, of Saddle River, 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-213. *IN RE DISBARMENT OF HALVERSON*. It is ordered that John Byron Halverson, of Yorba Linda, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 80, Orig. *COLORADO v. NEW MEXICO ET AL.* The amended answer to the bill of complaint is referred to the Special Master. [For earlier order herein, see, *e. g.*, 441 U. S. 902.]

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.] Motion of petitioner for leave to file a supplemental brief after argument granted. JUSTICE STEWART and JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 79-1429. *AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC., ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.* C. A. D. C. Cir. [Certiorari granted, *ante*, p. 817.] Motion of American Iron & Steel Institute for leave to file a brief as *amicus curiae* granted.

No. 79-1944. *J. TRUETT PAYNE Co., INC. v. CHRYSLER MOTORS CORP.* C. A. 5th Cir. [Certiorari granted, *ante*, p. 819.] Motion of Vanco Beverage, Inc., for leave to file a brief as *amicus curiae* granted.

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No. 79-6853. *WEBB v. WEBB*. Sup. Ct. Ga. [Certiorari granted, *ante*, p. 819.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted. Motion of J. Reese Franklin, Esquire, and W. S. Perry, Esquire, to withdraw as counsel for respondent granted. Motion of respondent for appointment of counsel granted, and it is ordered that Manley F. Brown, Esquire, of Macon, Ga., be appointed to serve as counsel for respondent in this case.

No. 80-11. *MERRION ET AL., DBA MERRION & BAYLESS, ET AL. v. JICARILLA APACHE TRIBE ET AL.*; and

No. 80-15. *AMOCO PRODUCTION CO. ET AL. v. JICARILLA APACHE TRIBE ET AL.* C. A. 10th Cir. [Certiorari granted, *ante*, p. 820.] Motions of Mountain States Legal Foundation, Salt River Project Agricultural Improvement and Power District et al., and Shell Oil Co. et al. for leave to file briefs as *amici curiae* granted. Motion of petitioners for divided argument granted. Request for additional time for oral argument denied. JUSTICE STEWART took no part in the consideration or decision of these motions.

No. 80-54. *ITT GILFILLAN v. CLAYTON*; and

No. 80-5049. *CLAYTON v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 950.] Motion for appointment of counsel granted, and it is ordered that John T. McTernan, Esquire, of Los Angeles, Cal., be appointed to serve as counsel for Clifford E. Clayton in these cases. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 80-503. *KING, CHIEF, FAIRFAX COUNTY POLICE DEPARTMENT, ET AL. v. WALLACE ET AL.* C. A. 4th Cir. Motion of respondents to consolidate this case with No. 79-6777, *Steagald v. United States* [certiorari granted, *ante*, p. 819], denied.

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No. 80-532. FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES ET AL. *v.* FLORIDA NURSING HOME ASSN. ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-781. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, CLC, ET AL. *v.* WESTINGHOUSE ELECTRIC CORP. C. A. 3d Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied. JUSTICE STEWART and JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 80-5574. IN RE RAINES. Petition for writ of habeas corpus denied.

No. 80-5502. IN RE JOHNSON. Petition for writ of mandamus denied.

No. 80-738. IN RE PENNHURST PARENTS-STAFF ASSN. Petition for writ of mandamus and prohibition and other relief denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

*Probable Jurisdiction Noted*

No. 80-251. ROSTKER, DIRECTOR OF SELECTIVE SERVICE *v.* GOLDBERG ET AL. Appeal from D. C. E. D. Pa. Motion of Stacey Acker et al. for leave to intervene denied. Probable jurisdiction noted. Reported below: 509 F. Supp. 586.

*Certiorari Granted*

No. 80-242. HIDALGO, SECRETARY OF THE NAVY *v.* NAKSHIAN. C. A. D. C. Cir. Certiorari granted. Reported below: 202 U. S. App. D. C. 59, 628 F. 2d 59.

No 80-493. UNITED STATES DEPARTMENT OF EDUCATION *v.* SEATTLE UNIVERSITY. C. A. 9th Cir. Certiorari granted. Reported below: 621 F. 2d 992.

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*Certiorari Denied*

No. 79-6806. *MENZIES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 79-6846. *CREACH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 79 Ill. 2d 96, 402 N. E. 2d 228.

No. 80-25. *BARRY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 80-50. *MCDONALD v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 597 S. W. 2d 365.

No. 80-151. *ALTUS NEWSPAPERS, INC., DBA ALTUS TIMES DEMOCRAT, ET AL. v. AKINS*. Sup. Ct. Okla. Certiorari denied. Reported below: 609 P. 2d 1263.

No. 80-167. *WRIGHTING v. APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-191. *CARLSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 617 F. 2d 518.

No. 80-221. *INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, ET AL. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 631 F. 2d 81.

No. 80-222. *CUSTER ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 140, 622 F. 2d 554.

No. 80-226. *JACKSON v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 383 So. 2d 781.

No. 80-258. *SEKAQUAPTEWA v. MACDONALD*; and

No. 80-265. *MACDONALD v. SEKAQUAPTEWA*. C. A. 9th Cir. Certiorari denied. Reported below: 619 F. 2d 801.

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No. 80-277. *CALLOW v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 80-320. *COSTELLO v. BOARD OF APPEALS OF THE TOWN OF CONCORD*. Ct. App. Mass. Certiorari denied. Reported below: 9 Mass. App. 477, 402 N. E. 2d 100.

No. 80-342. *WOOD WALKER & Co. v. MARBURY MANAGEMENT, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 705.

No. 80-358. *STRICOF v. STRICOF*. Ct. App. Mich. Certiorari denied.

No. 80-366. *GREAT LAKES INTERNATIONAL, INC. v. KLUTZNICK, SECRETARY OF COMMERCE, ET AL.*; and

No. 80-549. *JACKMAN & Co. ET AL. v. GREAT LAKES INTERNATIONAL, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 203.

No. 80-372. *MITCHELL v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 399; 268 S. E. 2d 360.

No. 80-389. *COASTAL PETROLEUM Co. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 207 Ct. Cl. 701, 524 F. 2d 1206.

No. 80-390. *SMITH v. DAWS, POSTMASTER, MIAMI, FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1069.

No. 80-393. *WALLS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-395. *MINYE v. UNIVERSITY OF MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1100.

No. 80-398. *PIAMBINO ET AL. v. SYLVA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 610 F. 2d 1306.

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No. 80-399. *CONFORTE ET UX. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 869.

No. 80-400. *WENINGER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 624 F. 2d 163.

No. 80-412. *GOOD HOPE REFINERIES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 57.

No. 80-423. *CHISM v. NORFOLK & WESTERN RAILWAY Co.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-449. *IN RE WALTER STRAUS & SON, INC.* C. A. 5th Cir. Certiorari denied.

No. 80-450. *CARNEY ET UX. v. AHMANSON TRUST Co.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-463. *DOMINION TOOL & DIE Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 623 F. 2d 484.

No. 80-467. *HOLMES v. DISTRICT OF COLUMBIA*. Ct. App. D. C. Certiorari denied. Reported below: 418 A. 2d 142.

No. 80-468. *PRECES v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 378 So. 2d 77.

No. 80-481. *KALMANOVITZ v. SECURITIES AND EXCHANGE COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 28, 629 F. 2d 62.

No. 80-489. *DUZAC v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 911.

No. 80-491. *BURLESON v. HOWARD*. Ct. App. D. C. Certiorari denied.

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No. 80-501. *GUTI ET AL. v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 25 Wash. App. 1043.

No. 80-504. *LAUFGAS v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-505. *ARLINGHAUS, EXECUTRIX v. RITENOUR ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 629.

No. 80-507. *RAHIN ET UX. v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-508. *NICOLETTE ET AL. v. BLOCH, U. S. DISTRICT JUDGE, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-509. *MONGIELLO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 807, 429 N. Y. S. 2d 338.

No. 80-512. *BALTIMORE COUNTY, MARYLAND v. RAYMOND INTERNATIONAL BUILDERS, INC., ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 247, 412 A. 2d 1296.

No. 80-514. *LOCAL UNION No. 137, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL. v. FRITO-LAY, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 1354.

No. 80-517. *JUNEAU SQUARE CORP. ET AL. v. FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 798.

No. 80-520. *JARVILL ET AL. v. CITY OF EUGENE ET AL.* Sup. Ct. Ore. Certiorari denied. Reported below: 289 Ore. 157, 613 P. 2d 1.

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No. 80-522. *FIRST AMERICAN NATIONAL BANK OF NASHVILLE v. SCARBORO*. C. A. 6th Cir. Certiorari denied. Reported below: 619 F. 2d 621.

No. 80-524. *RUSSELL ET AL. v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 80-525. *BUSCHMANN v. UNITED NEW YORK SANDY HOOK PILOTS' ASSN. ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 1041, 410 N. E. 2d 747.

No. 80-531. *SCHNEIDER v. BOWES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 193.

No. 80-534. *ADLER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 730, 409 N. E. 2d 888.

No. 80-546. *STUDIENGESELLSCHAFT KOHLE M.B.H., TRUSTEE v. EASTMAN KODAK Co.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1315.

No. 80-555. *COTA v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 105 Cal. App. 3d 282, 164 Cal. Rptr. 323.

No. 80-563. *PREMO PHARMACEUTICAL LABORATORIES, INC., ET AL. v. ELI LILLY & Co.* C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 120.

No. 80-564. *DUPLANTIS v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 388 So. 2d 751.

No. 80-579. *CARDEN ET UX. v. MONTANA*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 82.

No. 80-638. *SEIDMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 2d 1222.

No. 80-641. *KALMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

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No. 80-645. *BURGIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 1352.

No. 80-647. *PIERCE ET AL. v. NECA-IBEW WELFARE TRUST FUND*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 589.

No. 80-656. *APPLING COUNTY, GEORGIA, ET AL. v. MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 1301.

No. 80-679. *DELGADO ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 294.

No. 80-687. *CLAFLIN v. CLAFLIN*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 82 Ill. App. 3d 246, 402 N. E. 2d 673.

No. 80-696. *AMERICAN TRANSFER & STORAGE Co. v. BROWN*. Sup. Ct. Tex. Certiorari denied. Reported below: 601 S. W. 2d 931.

No. 80-701. *THOMPSON v. UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5011. *BROWER v. UNITED STATES*; and

No. 80-5023. *MARINO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 76.

No. 80-5048. *BURBANK v. WARDEN, ILLINOIS STATE PENITENTIARY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 113.

No. 80-5143. *MOLINARIO v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 384 So. 2d 759.

No. 80-5169. *BROWN v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 96 Wis. 2d 238, 291 N. W. 2d 528.

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No. 80-5171. *HUDSON v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 382 So. 2d 479.

No. 80-5189. *KLIMAS v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 94 Wis. 2d 288, 288 N. W. 2d 157.

No. 80-5194. *TURNER v. YOUNG*. C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 587.

No. 80-5279. *PRICE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 587.

No. 80-5305. *SAVAGE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 673, 409 N. E. 2d 858.

No. 80-5325. *TURPIN v. CITY OF WEST HAVEN*. C. A. 2d Cir. Certiorari denied. Reported below: 619 F. 2d 196.

No. 80-5394. *WOODS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 195.

No. 80-5414. *MAGEE v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5417. *INDORATO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 628 F. 2d 711.

No. 80-5423. *PONTICELLI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 985.

No. 80-5424. *SMITH v. SHOEMAKER, CHIEF, ADULT PROBATION AUTHORITY, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-5425. *FARIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-5426. *BASTIAN v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 297.

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No. 80-5430. *MAPLE v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5439. *MIDDLETON v. NELSON*. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 80-5442. *FORE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. 1007, 265 S. E. 2d 729.

No. 80-5444. *SWEETWINE v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 288 Md. 199, 421 A. 2d 60.

No. 80-5446. *WILLIAMS v. MARSHALL, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 628 F. 2d 934.

No. 80-5448. *EVERETTE v. STEPHENSON*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 860.

No. 80-5449. *HENDERSON, AKA COLLIER v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 387 So. 2d 93.

No. 80-5450. *ABU-BAKR v. ROWE ET AL*. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1107.

No. 80-5455. *JONES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1096.

No. 80-5458. *CAVEGN v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 294 N. W. 2d 717.

No. 80-5460. *FRANKLIN v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 80-5461. *WILLIAMS, AKA MTHAWABU v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 385 So. 2d 214.

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No. 80-5464. *MAINS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1093.

No. 80-5465. *NICKENS v. WHITE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 622 F. 2d 967.

No. 80-5473. *GUYNN v. JEFFERSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 860.

No. 80-5476. *GORNICK v. ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied.

No. 80-5479. *HUNTER v. ELLIS, JUDGE*. Sup. Ct. Ore. Certiorari denied.

No. 80-5480. *ALBERTI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 77 App. Div. 2d 602, 430 N. Y. S. 2d 6.

No. 80-5482. *STOKELEY ET AL. v. SMITH, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 206.

No. 80-5487. *MILLER ET AL. v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1100.

No. 80-5493. *LEVASSEUR v. HAWAII*. Int. Ct. App. Haw. Certiorari denied. Reported below: 1 Haw. App. 19, 613 P. 2d 1328.

No. 80-5496. *OLIVENCIA v. CAMPBELL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 291.

No. 80-5497. *THOMAS v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5501. *CHESTNUT v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 14, 409 N. E. 2d 958.

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No. 80-5505. WINSTEAD *v.* ROGERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 1095.

No. 80-5512. DANKERT *v.* CLERK, SUPERIOR COURT, COBB COUNTY, GEORGIA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 80-5513. McNEAL *v.* BORDENKIRCHER, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5515. PETERSON *v.* PETERSON. Sup. Ct. Minn. Certiorari denied.

No. 80-5521. BRADLEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 939, 429 N. Y. S. 2d 48.

No. 80-5532. MAHL *v.* BOARD OF TRUSTEES OF FIRE FIGHTERS PENSION AND RELIEF FUND FOR THE CITY OF NEW ORLEANS. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1015.

No. 80-5536. HESELIUS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-5537. JONES *v.* CIVILETTI, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied.

No. 80-5539. GRINAN *v.* GIEGOLD. C. A. 3d Cir. Certiorari denied.

No. 80-5541. WRIGHT *v.* ZAHRADNICK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 513.

No. 80-5545. HARRIS *v.* OPENHAUS ET AL. C. A. 9th Cir. Certiorari denied.

No. 80-5546. MARTINEZ *v.* ROMERO. C. A. 10th Cir. Certiorari denied. Reported below: 626 F. 2d 807.

No. 80-5549. ANDREWS *v.* ROBERTSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

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No. 80-5550. *SHEHADEH v. GREEN HOTELS, INC., ET AL.* Ct. App. D. C. Certiorari denied.

No. 80-5552. *WOODWARD v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 80-5558. *GARDNER v. MISSOURI.* Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 600 S. W. 2d 614.

No. 80-5559. *BREEST v. PERRIN, WARDEN.* C. A. 1st Cir. Certiorari denied. Reported below: 624 F. 2d 1112.

No. 80-5583. *PORRES DE RICO v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

No. 80-5592. *WILLIAMS v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-5593. *URIBE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-5594. *PELCZARSKI v. SOUTHEASTERN BANK & TRUST CO. ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 627 F. 2d 1087.

No. 80-5607. *STONE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 909.

No. 80-5611. *WILLIAMS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 697.

No. 80-5614. *SMITH v. KEOHANE, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5619. *REED v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1013.

No. 80-5621. *BLACK v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 218.

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No. 80-5628. *CROWHURST v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 629 F. 2d 1297.

No. 80-5630. *ACEVEDO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 627 F. 2d 68.

No. 80-5642. *RADA-SOLANO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 577.

No. 80-5649. *ANDERSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 627 F. 2d 161.

No. 80-5655. *McCRAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 299.

No. 79-1385. *DUVAL COUNTY RANCH CO., INC., ET AL. v. SPARKS ET AL., DBA SIDNEY A. SPARKS, TRUSTEE*. C. A. 5th Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below 604 F. 2d 976.

No. 80-311. *ARTHUR ANDERSEN & Co. v. UNITED STATES ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 623 F. 2d 720.

No. 80-346. *VIRGINIA ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 620 F. 2d 1018.

No. 80-378. *CHRYSLER CORP. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 203 U. S. App. D. C. 283, 631 F. 2d 865.

No. 79-2032. *STARLING v. BEARD ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 613 F. 2d 312.

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No. 80-435. VALTEK, INC., ET AL. *v.* CONTROL COMPONENTS, INC., ET AL. C. A. 5th Cir. Motion of Patent Law Association of Chicago for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 609 F. 2d 763 and 616 F. 2d 892.

No. 80-511. GENERAL ELECTRIC CO. *v.* CURTISS-WRIGHT CORP. C. A. 3d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 624 F. 2d 1089.

No. 80-554. COHN ET AL. *v.* NATIONAL BROADCASTING CO., INC., ET AL. Ct. App. N. Y. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 50 N. Y. 2d 885, 408 N. E. 2d 672.

No. 80-519. NELSON OIL Co., INC. *v.* SHELL OIL Co. Temp. Emerg. Ct. App. Motion of Independent Terminal Operators Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 627 F. 2d 228.

No. 80-556. CENTRAL LIQUOR CO. ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE dissents from the denial of certiorari because the judgment below is in conflict with the judgments of other Courts of Appeals. *E. g.*, *United States v. Alessi*, 536 F. 2d 978 (CA2 1976), and *United States v. Griffin*, 617 F. 2d 1342 (CA9 1980). Reported below: 628 F. 2d 1264.

No. 80-561. CONTROL DATA CORP. *v.* POTTER INSTRUMENT Co. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE dissents from the denial of certiorari because the judgment below is in conflict with the judgments of other Courts of Appeals. *E. g.*, *Martinez v. Trainor*, 556 F. 2d 818, 821 (CA7 1977); *Jusino v. Morales & Tio*, 139 F. 2d 946 (CA1 1944); *Virginia Land Co. v. Miami Shipbuilding Corp.*, 201 F. 2d 506 (CA5 1953).

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No. 80-543. *NEW YORK v. HOWARD*. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 50 N. Y. 2d 583, 408 N. E. 2d 908.

No. 80-5134. *GORMLEY v. DIRECTOR, CONNECTICUT STATE DEPARTMENT OF ADULT PROBATION, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 938.

JUSTICE WHITE, dissenting.

Under Connecticut law, a person is guilty of a misdemeanor when "with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm." Conn. Gen. Stat. § 53a-183 (a)(3) (1975 rev.). Petitioner was convicted of violating this statute after she made a telephone call to a woman with whom she had some personal quarrel. Following an unsuccessful direct appeal in the state courts,<sup>1</sup> petitioner brought a federal habeas corpus action arguing that under the First and Fourteenth Amendments the statute was unconstitutionally overbroad. The Court of Appeals for the Second Circuit found no constitutional infirmity. The petition for certiorari challenges that judgment.

To be sure, a State has a valid interest in protecting its citizens against unwarranted invasions of privacy. *Rowan v. Post Office Department*, 397 U. S. 728 (1970). See generally Note, Give Me a Home Where No Salesmen Phone: Telephone Solicitation and the First Amendment, 7 *Hastings Const. L. Q.* 129 (1979). This is especially true when unprotected speech, such as obscenity or threats of physical violence, is involved. But it is equally clear that a State may not pursue these interests by unduly infringing on what would

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<sup>1</sup> On direct appeal in the state courts, the First Amendment argument presented here was raised in and rejected by the Appellate Session of the Superior Court, *State v. Anonymous*, 34 Conn. Supp. 689, 389 A. 2d 1270, appeal denied, 174 Conn. 803, 382 A. 2d 1332 (1978).

otherwise be protected speech. It is therefore critical to recall that speech may be "annoying" without losing its First Amendment protection<sup>2</sup> and that the Connecticut statute on its face criminalizes any telephone call that annoys and was intended to do so. It is not difficult to imagine various clearly protected telephone communications that would fall within the ban of the Connecticut statute.<sup>3</sup> As such it is fairly arguable that the statute is substantially overbroad and hence unconstitutional. *Lewis v. New Orleans*, 415 U. S. 130 (1974); *Gooding v. Wilson*, 405 U. S. 518 (1972).<sup>4</sup>

Beyond the obvious tension between our prior cases and the judgment below is the difference in opinion among those courts that have considered constitutional challenges to similar state statutes. Contrary to the decision reached by the

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<sup>2</sup> *Norwell v. Cincinnati*, 414 U. S. 14 (1973); *Coates v. Cincinnati*, 402 U. S. 611, 615-616 (1971). See *Terminiello v. Chicago*, 337 U. S. 1 (1949).

<sup>3</sup> For example, the Supreme Court of Illinois found that a similar statute risked criminal prosecution for a variety of situations involving protected speech.

"Conceivably, this section could make criminal a single telephone call made by a consumer who wishes to express his dissatisfaction over the performance of a product or service; a call by a businessman disturbed with another's failure to perform a contractual obligation; by an irate citizen, perturbed with the state of public affairs, who desires to express his opinion to a public official; or by an individual bickering over family matters." *People v. Klick*, 66 Ill. 2d 269, 274, 362 N. E. 2d 329, 331-332 (1977).

<sup>4</sup> Given that the overbreadth may be substantial, petitioner has standing to raise the First Amendment claim even if the words she used were unprotected threats of violence. *Broadrick v. Oklahoma*, 413 U. S. 601 (1973). Furthermore, the case was submitted to the jury under an instruction which would have permitted a conviction if petitioner was found to have made *either* an annoying or threatening call with the requisite intent. The general verdict did not reveal on what ground the conviction rested. Even assuming that the facts could have supported a guilty verdict based on petitioner's unprotected speech, petitioner may have been convicted for making a merely annoying communication.

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Court of Appeals in this case, state appellate courts have invalidated substantially equivalent provisions as being unconstitutionally overbroad. *People v. Klick*, 66 Ill. 2d 269, 362 N. E. 2d 329 (1977) (invalidating statute making it a crime for anyone who “[w]ith intent to annoy another, makes a telephone call, whether or not conversation thereby ensues”); *State v. Dronso*, 90 Wis. 2d 149, 279 N. W. 2d 710 (Ct. App. 1979) (same). Another court has invalidated a like statute on the grounds that it was unconstitutionally vague. *State v. Blair*, 287 Ore. 519, 601 P. 2d 766 (1979) (statute made it a crime to communicate by telephone “in a manner likely to cause annoyance or alarm” to the receiver). On the other hand, various state courts, like the Connecticut court in this case, have rejected overbreadth challenges to telephone harassment statutes. See, e. g., *State v. Elder*, 382 So. 2d 687 (Fla. 1980) (statute prohibiting a person from making a telephone call “whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number”); *Constantino v. State*, 243 Ga. 595, 255 S. E. 2d 710 (1979) (prohibiting repeated telephoning “for the purpose of annoying, harassing or molesting another or his family”). See generally *United States v. Lampley*, 573 F. 2d 783 (CA3 1978); *People v. Smith*, 89 Misc. 2d 789, 392 N. Y. S. 2d 968 (1977). The above cases demonstrate that the state courts are not in agreement concerning application of First Amendment principles in this area of the law.

The foregoing suggests that even if the Court is of the view that the judgment below is correct, there is sufficient reason to grant certiorari and issue a judgment to this effect. Accordingly, I dissent.

No. 80-5463. *MARTIN-TRIGONA v. GOULETAS ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 634 F. 2d 354.

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*Rehearing Denied*

- No. 79-1410. DUPART ET AL. *v.* LOUISIANA, *ante*, p. 820;  
No. 79-1704. GRCICH *v.* JOGODA ET AL., *ante*, p. 823;  
No. 79-1732. HILTON, AKA MILTON, ET AL. *v.* UNITED STATES, *ante*, p. 887;  
No. 79-1737. OGLE *v.* UNITED STATES, *ante*, p. 825;  
No. 79-1804. GARCIA-JARAMILLO *v.* IMMIGRATION AND NATURALIZATION SERVICE, *ante*, p. 828;  
No. 79-1815. SALOB *v.* AMBACH, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL., *ante*, p. 829;  
No. 79-1836. FOWLER ET UX. *v.* GENERAL DEVELOPMENT CORP., *ante*, p. 830;  
No. 79-1863. HARPER ET AL. *v.* UNITED STATES, *ante*, p. 887;  
No. 79-1876. BLAKE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 832;  
No. 79-1902. ROSENBAUM *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 833;  
No. 79-1934. DANIELS *v.* SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT ET AL., *ante*, p. 835;  
No. 79-1961. BEARCE, ADMINISTRATOR, ET AL. *v.* UNITED STATES, *ante*, p. 837;  
No. 79-1965. COUNTY OF LOS ANGELES ET AL. *v.* MARSHALL, SECRETARY OF LABOR, ET AL., *ante*, p. 837;  
No. 79-1992. LAVELLE *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL., *ante*, p. 840;  
No. 79-2057. POWELL *v.* NIGRO, *ante*, p. 843;  
No. 79-2058. SILVERNAIL *v.* WASHINGTON, *ante*, p. 843;  
No. 79-2071. SCOTT *v.* UNITED STATES, *ante*, p. 843;  
No. 79-6610. PRIESTER *v.* BANKER'S TRUST OF SOUTH CAROLINA, ADMINISTRATOR, ET AL., *ante*, p. 892;  
No. 79-6619. ALDRIDGE *v.* FLORIDA, *ante*, p. 891; and  
No. 79-6650. SKIDMORE *v.* CONSOLIDATED RAIL CORP. ET AL., *ante*, p. 854. Petitions for rehearing denied.

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- No. 79-6664. ALFORD *v.* CENTRAL INTELLIGENCE AGENCY, *ante*, p. 854;
- No. 79-6681. MORTON *v.* STYNCHCOMBE, SHERIFF, ET AL., *ante*, p. 855;
- No. 79-6690. ROSADO ET AL. *v.* CIVILETTI, ATTORNEY GENERAL, ET AL., *ante*, p. 856;
- No. 79-6711. THIESS *v.* FRANKLIN SQUARE HOSPITAL, INC., ET AL., *ante*, p. 857;
- No. 79-6757. RUCKER *v.* FICKAS ET AL., *ante*, p. 860;
- No. 79-6772. CLUGSTON ET AL. *v.* MICHIGAN ET AL., *ante*, p. 861;
- No. 79-6818. SMITH *v.* ASSIGNMENT OFFICE OF MONTGOMERY COUNTY CIRCUIT COURT ET AL., *ante*, p. 864;
- No. 79-6826. PREJEAN *v.* LOUISIANA, *ante*, p. 891;
- No. 79-6831. HUNTER *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, *ante*, p. 865;
- No. 79-6861. MARATTY *v.* KENTUCKY, *ante*, p. 866;
- No. 80-1. GREEN *v.* BARTHOLOMEW ET AL., *ante*, p. 868;
- No. 80-32. HYNNING *v.* DUFIEF MORTGAGE, INC., ET AL., *ante*, p. 802;
- No. 80-44. DUAL MANUFACTURING & ENGINEERING, INC., ET AL. *v.* BURRIS INDUSTRIES, INC., ET AL., *ante*, p. 870;
- No. 80-163. IN RE CHESTNUTT MANAGEMENT CORP., *ante*, p. 816;
- No. 80-211. JOHNSTON *v.* UNITED STATES ET AL., *ante*, p. 876;
- No. 80-5050. JOHNS *v.* NANAWALE COMMUNITY ASSN. ET AL., *ante*, p. 921;
- No. 80-5051. NEWBOLD *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 878;
- No. 80-5053. QUINONES *v.* TEXAS, *ante*, p. 893; and
- No. 80-5173. CLAY, ADMINISTRATOR *v.* HALL ET AL., *ante*, p. 914. Petitions for rehearing denied.

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No. 80-5220. *DiSILVESTRO v. UNITED STATES*, *ante*, p. 903. Petition for rehearing denied.

No. 5, Orig. *UNITED STATES v. CALIFORNIA*, 447 U. S. 1. Petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 79-1396. *INTERNATIONAL BUSINESS MACHINES CORP. v. GREYHOUND COMPUTER CORP.*, 446 U. S. 929; and

No. 79-1397. *INTERNATIONAL BUSINESS MACHINES CORP. v. GREYHOUND COMPUTER CORP.*, 446 U. S. 916. Motion for leave to file petition for rehearing denied. JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 79-1722. *PITSENBERGER v. PITSENBERGER*, *ante*, p. 807. Motion of appellant for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 79-2044. *NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY ET AL. v. HUFSTEDLER, SECRETARY OF EDUCATION, ET AL.*, *ante*, p. 808. Petition for rehearing denied. JUSTICE BLACKMUN dissents. JUSTICE STEWART took no part in the consideration or decision of this petition.

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*Dismissal Under Rule 53*

No. 80-559. *VANDERWATER v. LOPEZ*. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 620 F. 2d 1229.

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*Appeals Dismissed*

No. 80-176. *DANA CORP. ET AL. v. CALIFORNIA ET AL.*; and

No. 80-177. *CONTIGNITRON Co. v. CALIFORNIA ET AL.* Appeals from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. Reported below: 103 Cal. App. 3d 424, 162 Cal. Rptr. 875.

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No. 80-551. *BUTCHER v. SUPERIOR COURT OF LOS ANGELES COUNTY (HENNEFER ET AL., REAL PARTIES IN INTEREST)*. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 80-662. *SULLIVAN v. KAISER ENGINEERS, INC., ET AL.* Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 62 Ohio St. 2d 304, 405 N. E. 2d 302.

No. 80-552. *CALIFORNIA MANUFACTURERS ASSN. ET AL. v. INDUSTRIAL WELFARE COMMISSION OF CALIFORNIA ET AL.* Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 27 Cal. 3d 690, 613 P. 2d 579.

No. 80-591. *VALAD ELECTRIC HEATING CORP. v. TED R. BROWN & ASSOCIATES, INC., ET AL.* Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 618 P. 2d 1004.

No. 80-5451. *REED v. DEL CHEMICAL CORP.* 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. Reported below: 44 Ore. App. 79, 605 P. 2d 759.

*Certiorari Granted—Reversed and Remanded.* (See No. 79-2040, *ante*, p. 86.)

#### *Miscellaneous Orders*

No. A-397. *LEAD INDUSTRIES ASSN., INC., ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.*; and

No. A-404. *NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC. v. MARSHALL, SECRETARY OF LABOR, ET AL.* The requests of applicants, Lead Industries Association, Inc., and

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National Association of Recycling Industries, Inc., for a stay of the Occupational Safety and Health Administration's final standard for occupational exposure to lead, 29 CFR § 1910.1025 (1979), and of the decision of the United States Court of Appeals for the District of Columbia Circuit sustaining in part and remanding in part that standard, 208 U. S. App. D. C. 60, 647 F. 2d 1189, are granted in the following respects, pending the filing and disposition of petitions for certiorari.

It is ordered that the following portions of 29 CFR § 1910.1025 (1979) are stayed:

(1) Sections 1910.1025 (e)(1), (4), (5), (6), which provide for compliance by engineering and work practice controls.

(2) Section 1910.1025 (e)(3), which governs written compliance programs, except for paragraph (F).

(3) Section 1910.1025 (f)(2)(ii), which relates to the use of respirators in situations in which engineering and work practice controls are not sufficient. During the period of this stay, employers shall provide a powered, air-purifying respirator in lieu of the respirator specified in Table II of (f)(2)(i) when the physical characteristics of the employee are such that the respirators specified in Table II are inadequate for his or her protection. All other sections of the regulation that refer to paragraph (f) shall incorporate only those portions of (f) not stayed herein.

(4) Section 1910.1025 (i), governing hygiene facilities and practices, to the extent that it requires the construction of new facilities or substantial renovation of existing facilities.

(5) Sections 1910.1025 (j)(2) and (j)(3)(ii)(D) insofar as they require biological monitoring and medical examination for zinc protoporphyrin; and § 1910.1025 (j)(3)(iii), which requires a multiple physician review mechanism.

(6) Section 1910.1025 (m), dealing with signs.

(7) Section 1910.1025 (r), startup dates, to the extent that its obligations are inconsistent with the substantive requirements of this order.

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The motion to stay the application of all other sections of the standard not specifically stayed by this order is denied.

The motion to stay the judgment and order of the Court of Appeals is granted insofar as the judgment and order require action inconsistent with the stay hereby entered. Otherwise, the motion to stay the judgment and order is denied, including the motion to stay the administrative proceedings ordered by the Court of Appeals.

JUSTICE POWELL took no part in the consideration or decision of these applications.

No. A-458. DAWSON *v.* HOLGUIN ET AL. 6th Jud. Dist. Ct., Grant County, N. M. Application for stay of proceedings, addressed to JUSTICE POWELL and referred to the Court, denied.

No. 79-1252. CALIFORNIA ET AL. *v.* SIERRA CLUB ET AL.; and

No. 79-1502. KERN COUNTY WATER AGENCY ET AL. *v.* SIERRA CLUB ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 818.] Motion of the Solicitor General for additional time for oral argument and for divided argument granted, and an additional 20 minutes allotted the federal respondents for that purpose.

No. 83, Orig. MARYLAND ET AL. *v.* LOUISIANA. Motion of the Solicitor General and cross-motion of Louisiana for divided argument granted. Requests for additional time for oral argument granted, and a total of one hour and forty minutes allotted for oral argument. [For earlier order herein, see, *e. g.*, *ante*, p. 812.]

No. 79-1890. ANDRUS, SECRETARY OF THE INTERIOR, ET AL. *v.* ALASKA ET AL.; and

No. 79-1904. KENAI PENINSULA BOROUGH *v.* ALASKA ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 818.] Motion of the Solicitor General for divided argument granted.

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No. 79-1944. *J. TRUETT PAYNE Co., INC. v. CHRYSLER MOTORS CORP.* C. A. 5th Cir. [Certiorari granted, *ante*, p. 819.] Motion of Ricky Hasbrouck et al. for leave to file a brief as *amici curiae* granted.

No. 79-2006. *BARRENTINE ET AL. v. ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.* C. A. 8th Cir. [Certiorari granted, *ante*, p. 819.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 79-6423. *LASSITER v. DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY.* Ct. App. N. C. [Certiorari granted, *ante*, p. 819.] Motion of North Carolina Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 79-6624. *ROSALES-LOPEZ v. UNITED STATES.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 819.] Motion of the Solicitor General to permit George W. Jones, Esquire, to present oral argument *pro hac vice* granted.

No. 79-6853. *WEBB v. WEBB.* Sup. Ct. Ga. [Certiorari granted, *ante*, p. 819.] Motion of National Center on Women and Family Law, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 80-11. *MERRION ET AL., DBA MERRION & BAYLESS, ET AL. v. JICARILLA APACHE TRIBE ET AL.; and*

No. 80-15. *AMOCO PRODUCTION Co. ET AL. v. JICARILLA APACHE TRIBE ET AL.* C. A. 10th Cir. [Certiorari granted, *ante*, p. 820.] Motion of the Solicitor General for divided argument on behalf of respondents granted. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 80-5617. *IN RE RELIFORD.* Petition for writ of mandamus denied.

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*Probable Jurisdiction Noted*

No. 80-581. COMMONWEALTH EDISON CO. ET AL. *v.* MONTANA ET AL. Appeal from Sup. Ct. Mont. Probable jurisdiction noted. Case set for oral argument in tandem with consolidated cases No. 80-11, *Merrion et al., dba Merrion & Bayless, et al. v. Jicarilla Apache Tribe et al.*, and No. 80-15, *Amoco Production Co. et al. v. Jicarilla Apache Tribe et al., supra.* The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: — Mont. —, 615 P. 2d 847.

*Certiorari Granted*

No. 80-264. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL. *v.* BRISTOL LABORATORIES DIVISION OF BRISTOL-MYERS CO. C. A. 2d Cir. Certiorari granted. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 620 F. 2d 17.

No. 80-590. GULF OFFSHORE CO., A DIVISION OF POOL CO. *v.* MOBIL OIL CORP. ET AL. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari granted. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 594 S. W. 2d 496.

No. 80-420. FLYNT ET AL. *v.* OHIO. Sup. Ct. Ohio. Certiorari granted. Reported below: 63 Ohio St. 2d 132, 407 N. E. 2d 15.

No. 80-441. GULF OIL CO. ET AL. *v.* BERNARD ET AL. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 619 F. 2d 459.

*Certiorari Denied.* (See also Nos. 80-552, 80-591, and 80-5451, *supra.*)

No. 80-239. FEDERAL INSURANCE CO. *v.* SOLO CUP CO. C. A. 7th Cir. Certiorari denied. Reported below: 619 F. 2d 1178.

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No. 80-252. *TEXAS A & M UNIVERSITY ET AL. v. GAY STUDENT SERVICES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 160.

No. 80-331. *HICKS ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1295.

No. 80-379. *JOHNSON v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 200 U. S. App. D. C. 240, 627 F. 2d 293.

No. 80-404. *UNITED STATES FIDELITY & GUARANTY Co. v. HENDERSON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 530.

No. 80-494. *RIVCOM CORP. v. AGRICULTURAL LABOR RELATIONS BOARD ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 80-510. *SINGH ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 758.

No. 80-533. *LA CORBIERE v. SAN DIEGO STATE UNIVERSITY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 594.

No. 80-550. *HONOLULU SPORTING GOODS Co., LTD., A DIVISION OF ZALE CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 310.

No. 80-558. *WEINGARDEN v. UNITED STATES;*

No. 80-632. *GOLDEN v. UNITED STATES;* and

No. 80-682. *TAPERT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 625 F. 2d 111.

No. 80-560. *SAN JOAQUIN NISEI FARMERS LEAGUE ET AL. v. INDUSTRIAL WELFARE COMMISSION OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 3d 690, 613 P. 2d 579.

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No. 80-562. *HATAMI v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-566. *CHAVIS ET AL. v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 45 N. C. App. 438, 263 S. E. 2d 356.

No. 80-567. *PEREA v. STOUT ET AL.* Ct. App. N. M. Certiorari denied. Reported below: 94 N. M. 595, 613 P. 2d 1034.

No. 80-572. *SAMBS v. CITY OF BROOKFIELD*. Sup. Ct. Wis. Certiorari denied. Reported below: 97 Wis. 2d 356, 293 N. W. 2d 504.

No. 80-575. *THOMPSON v. NATIONAL RAILROAD PASSENGER CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 814.

No. 80-589. *CITY OF MANASSAS PARK ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 515, 633 F. 2d 181.

No. 80-621. *WASHINGTON v. HANTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 94 Wash. 2d 129, 614 P. 2d 1280.

No. 80-658. *FREY ET AL. v. PANZA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 621 F. 2d 596.

No. 80-665. *SOUTHLAND NEWS, INC. v. CITY OF SPRINGFIELD, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1106.

No. 80-725. *SHELTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 193.

No. 80-739. *AAA TRUCKING CORP. ET AL. v. GREEN ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

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No. 80-751. *ESCOBEDO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 1098.

No. 80-5008. *SIMMONS v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 381 So. 2d 803.

No. 80-5188. *LONG v. MASON, HEAD OF CORRECTIONS*. Ct. App. Ore. Certiorari denied. Reported below: 45 Ore. App. 335, 608 P. 2d 624.

No. 80-5224. *JOHNSON v. HAMILTON, JUDGE*. Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 266 S. E. 2d 125.

No. 80-5231. *PRUITT v. SOUTH CAROLINA ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 274 S. C. 565, 266 S. E. 2d 779.

No. 80-5321. *JOHNSON v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 44 Md. App. 756.

No. 80-5457. *QUINONES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 2d 1222.

No. 80-5466. *HENRIKSEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-5471. *WHITEHEAD v. MITCHELL, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1352.

No. 80-5530. *MOORE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

No. 80-5538. *CORLEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 416 A. 2d 713.

No. 80-5540. *GRINAN v. TRESPALACIOS*. C. A. 3d Cir. Certiorari denied.

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No. 80-5547. *BLUE v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5556. *HAMLET v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-5557. *ROBINSON v. McCALL ET AL.*; *ROBINSON v. WOODARD ET AL.*; *ROBINSON v. NORTH CAROLINA ET AL.*; *ROBINSON v. SALMON ET AL.*; and *ROBINSON v. UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 862 (first case); 626 F. 2d 863 (second and third cases); 628 F. 2d 1350 (fourth case); 634 F. 2d 625 (fifth case).

No. 80-5562. *BUCHANAN v. SOWDERS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 213.

No. 80-5564. *MOBLEY ET AL. v. FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 386 So. 2d 329.

No. 80-5575. *JENKINS v. WEST VIRGINIA BOARD OF PROBATION AND PAROLE*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5587. *SMITH v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5598. *GOOLSBY v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 275 S. C. 110, 268 S. E. 2d 31.

No. 80-5601. *DILLARD v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5609. *VADER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 630 F. 2d 792.

No. 80-5620. *FLEMING v. UNITED STATES SUPREME COURT ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 80-5648. *FENNELL v. UNITED STATES*; and  
No. 80-5656. *WRIGHT v. UNITED STATES*. C. A. 5th Cir.  
Certiorari denied. Reported below: 626 F. 2d 494.

No. 80-5651. *WILLIAMS v. BORDENKIRCHER, WARDEN*.  
Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5668. *BATIMANA v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: 623 F. 2d 1366.

No. 80-5669. *THORNHILL v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-5670. *TAYLOR v. UNITED STATES*; and  
No. 80-5680. *MAULDIN v. UNITED STATES*. C. A. 2d Cir.  
Certiorari denied. Reported below: 636 F. 2d 1204.

No. 80-5673. *DEVINCENT v. UNITED STATES*. C. A. 1st  
Cir. Certiorari denied. Reported below: 632 F. 2d 145.

No. 80-5676. *HAMPTON v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-5690. *TIERNAN v. UNITED STATES*. C. A. 3d Cir.  
Certiorari denied. Reported below: 639 F. 2d 777.

No. 80-5695. *BANCROFT ET AL. v. UNITED STATES*. C. A.  
1st Cir. Certiorari denied. Reported below: 628 F. 2d 632.

No. 80-5701. *MONTGOMERY v. UNITED STATES*. C. A.  
10th Cir. Certiorari denied.

No. 80-416. *MERCK & Co., INC. v. STAATS, COMPTROLLER  
GENERAL OF THE UNITED STATES, ET AL.* C. A. D. C. Cir.  
Certiorari before judgment denied. JUSTICE STEWART took  
no part in the consideration or decision of this petition.

No. 80-434. *SMITHKLINE CORP. v. STAATS, COMPTROLLER  
GENERAL OF THE UNITED STATES, ET AL.* C. A. 3d Cir. Cer-  
tiorari before judgment denied. JUSTICE STEWART took no  
part in the consideration or decision of this petition.

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No. 80-458. CITY OF SOUTH LAKE TAHOE ET AL. v. CALIFORNIA TAHOE REGIONAL PLANNING AGENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 625 F. 2d 231.

JUSTICE WHITE, with whom JUSTICE MARSHALL joins, dissenting.

In *Board of Education v. Allen*, 392 U. S. 236 (1968), this Court held that members of a local school board had standing to challenge in federal court the constitutionality of a state statute that required them to lend books to parochial school students. Addressing the constitutional requirement that the parties have a "personal stake in the outcome" of the litigation, the Court found such a "stake" in the dilemma that the appellants confronted: a choice between violating their oaths of office to support the United States Constitution or refusing to comply with the statutory requirements, a step which was "likely to bring their expulsion from office and also a reduction in state funds for their school district." *Id.*, at 241, n. 5. The Court of Appeals in the present case stated that

"[w]ere *Allen* the last word from the Supreme Court on standing, we could simply adopt [its] rationale . . . and determine that the councilmembers in the case before us have standing on the basis that they believe that enforcing the . . . ordinances would violate their oaths of office." 625 F. 2d 231, 236 (1980).

The court declined to follow *Allen*, however, holding instead that our subsequent cases have effectively overruled *Allen*. I do not believe that we have *sub silentio* overruled *Allen*. The Courts of Appeals, however, are in conflict over its continuing validity. Compare *Regents of the Univ. of Minn. v. NCAA*, 560 F. 2d 352, 363-364 (CA8 1977), and *Aguayo v. Richardson*, 473 F. 2d 1090, 1100 (CA2 1973), with *Finch v. Mississippi State Medical Assn., Inc.*, 585 F. 2d 765 (CA5 1978). If the *Allen* doctrine is to be reconsidered, it should be done by this Court, and not by the various Courts of Appeals. I therefore dissent from the denial of certiorari.

The California Tahoe Regional Planning Agency (CTRPA) is a political subdivision of the State of California, exercising responsibility for the development and enforcement of plans for land and resource development in the Lake Tahoe region of California. Cal. Gov't Code Ann. § 67040 *et seq.* (West Supp. 1980). The city of South Lake Tahoe lies within the geographic area regulated by the CTRPA. Petitioners, the city, its Mayor and four council members, are required by law to enforce CTRPA regulations, Cal. Gov't Code Ann. §§ 67072, 67102 (West Supp. 1980). A willful failure of a state official to perform his duty is a misdemeanor, Cal. Gov't Code Ann. § 1222 (West 1980), which may result in removal from office. Cal. Penal Code. Ann. § 661 (West 1970).

In August 1975, the CTRPA enacted the plan of land-use and transportation regulations that is the subject of this lawsuit. Petitioners, believing that enforcement of these regulations would be unconstitutional on a number of grounds,<sup>1</sup> brought suit in Federal District Court seeking injunctive and declaratory relief. The District Court dismissed the action, believing that federal-court abstention was appropriate. The Court of Appeals affirmed, holding that petitioners did not have standing to invoke the jurisdiction of the federal courts.

The Court of Appeals relied primarily on *Schlesinger v. Reservists to Stop the War*, 418 U. S. 208 (1974), and *United States v. Richardson*, 418 U. S. 166 (1974), to support its conclusion that petitioners could no longer claim standing under

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<sup>1</sup> Specifically, petitioners alleged that enforcement of the challenged regulations would (1) take property for public use without just compensation and without due process of law, in violation of the Fifth and Fourteenth Amendments; (2) deprive persons subject to the regulations of equal protection of the laws, in violation of the Fifth and Fourteenth Amendments; (3) unreasonably infringe the right to travel, in violation of the Fourteenth Amendment; and (4) conflict with and frustrate the land-use ordinance and transportation plan of the Tahoe Regional Planning Compact, which was approved by Congress, in violation of the Supremacy Clause of Art. VI.

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WHITE, J., dissenting

*Allen*. Those cases held that Art. III requires that a party assert more than "the generalized interest of all citizens in constitutional governance" to invoke the jurisdiction of the federal courts. I do not doubt the validity of this principle. See *Los Angeles v. Lyons*, ante, p. 934 (WHITE, J., dissenting from denial of certiorari). *Allen*, however, was not, nor could it have been, an exception to this constitutional requirement. Therefore, I do not believe that *Schlesinger* and *Richardson* have had the effect the lower court ascribed to them.

Appellants in *Allen* did not simply express abstract disapproval of a government policy; rather, they were required by their position to act to implement that policy and a failure to act would have threatened immediate injury. At the same time, however, appellants were bound by their oaths to act in a contrary manner. It was this dilemma that created a personal stake in the controversy and that distinguishes their situation from that of the parties in either *Schlesinger* or *Richardson*.<sup>2</sup> Nor is it sufficient to argue that this dilemma could be avoided simply by resignation, as suggested by the concurring opinion below: this alternative only further distinguishes the plaintiffs from other citizens and demonstrates their concrete interests in the controversy. Petitioners in this case face exactly the same kind of dilemma. Therefore, as the Court of Appeals noted, *Allen* controls this situation if it is still good law.

The Court of Appeals also held that the city had no stand-

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<sup>2</sup> *Allen* also suggested, as an alternative ground, that appellants had standing because a refusal to enforce the statute could bring about a reduction in the state funds for their school districts. On this theory, appellants had standing to represent the interests of their institution and the larger group of people that would be adversely affected by the reduction in funding. Similarly, petitioners in this case alleged that the city would suffer a loss of funds, through a decrease in property values and thereby tax revenues, and sought standing as the representatives of this larger group of residents that would be adversely affected by the statute.

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ing because a political subdivision of a State may not raise constitutional objections to the validity of a state statute, citing, *Williams v. Mayor of Baltimore*, 289 U. S. 36, 40 (1933); *Newark v. New Jersey*, 262 U. S. 192, 196 (1923); *Trenton v. New Jersey*, 262 U. S. 182, 188 (1923); *City of New York v. Richardson*, 473 F. 2d 923, 929 (CA2 1973); *Aguayo v. Richardson*, *supra*, at 1100-1101. Such a *per se* rule is inconsistent with *Allen*, in which one of the appellants was a local board of education. Furthermore, there is a conflict in the Circuits over the validity of such a rule. Cf. *Rogers v. Brockett*, 588 F. 2d 1057, 1067-1071 (CA5 1979), and *City of New York v. Richardson*, *supra*.

Because the jurisdictional questions raised by this case are important and have received conflicting answers in the Courts of Appeals and because the case raises a question of the continuing validity of our own precedent, I would grant certiorari and set the case for plenary consideration.

JUSTICE BRENNAN would also grant the petition for writ of certiorari.

No. 80-574. ATTORNEY GENERAL OF NEW JERSEY *v.* BISACCIA. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 623 F. 2d 307.

No. 80-482. LEAD INDUSTRIES ASSN., INC. *v.* ENVIRONMENTAL PROTECTION AGENCY; and

No. 80-483. ST. JOE MINERALS CORP. *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 208 U. S. App. D. C. 1 and 55, 647 F. 2d 1130 and 1184.

No. 80-609. JOHNSON *v.* NORDSTROM-LARPENTEUR AGENCY, INC. C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 623 F. 2d 1279.

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No. 80-515. *YORK v. FEDERAL HOME LOAN BANK BOARD ET AL.* C. A. 4th Cir. Motions of National Association of State Savings and Loan Supervisors and North Carolina Savings and Loan League for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 624 F. 2d 495.

No. 80-5058. *DAVID LEVELL W. v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

JUSTICE MARSHALL, dissenting.

Petitioner, a 13-year-old minor, was taken from his home to a police station for questioning by police officers who had neither an arrest warrant nor probable cause for his arrest. The court below held that there was no violation of petitioner's constitutional rights because the officers acted on instructions from his mother. Because I believe the case presents an important question concerning a parent's authority to waive her minor child's right under the Fourth and Fourteenth Amendments to be free from "unreasonable seizures," I dissent from denial of the petition for a writ of certiorari.

### I

On March 8, 1979, an investigator with the Los Angeles Police Department told two of his subordinates that he had been in contact with a mother about one of her children who allegedly had been involved in a burglary. He told the officers that the mother had agreed to bring the minor to the police station the previous day but had failed to do so, and he instructed the officers to go to the woman's house and find out when she would bring her son to the station.

At the house, the officers were invited into a bedroom where they saw petitioner's mother lying in bed. The officers informed her of the reason for their visit and asked why she had not brought her son to the police station the previous day as she had promised. Petitioner's mother explained that her car had broken down, and when the officers asked her if

she could bring the boy in that day, she told them that her car was still not working. The officers next inquired where her son was. The mother pointed to petitioner, who was lying in another bed in the same room, and told him to wake up. The officers then asked her when she would be able to bring her son in and she replied: "Well, you officers are here. You can take him down." She told the officers that she had been having trouble with her son and wanted to know if he had been involved in a burglary so she could notify his probation officer. She then told petitioner to get out of bed and get dressed because the officers were waiting for him. Petitioner dressed and left the house with the officers, who placed him in handcuffs before driving him to the police station. At the station, petitioner was given the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966). He indicated that he understood them, waived his rights, and confessed to the burglary.<sup>1</sup>

A petition was filed against petitioner in juvenile court charging him with burglary in violation of § 459 of the Cal. Penal Code Ann. (West Supp. 1980). Petitioner filed a motion to suppress the confession he made at the police station as the fruit of an illegal arrest. At the combined suppression and adjudication hearing, the State conceded that the police officers had neither an arrest warrant nor probable cause to arrest petitioner at the time he was taken to the station for questioning. Nonetheless, the court denied the suppression motion and relied on the confession in sustaining the charge against petitioner. At the dispositional hearing, the court ordered that petitioner be removed from the custody of his mother. Physical confinement was set at a maximum period of two years.

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<sup>1</sup>This statement of facts is from the opinion of the court below which was originally published at 103 Cal. App. 3d 469 (1980) (advance sheets) and included as petitioner's appendix to his petition for certiorari before this Court. On July 18, 1980, the California Supreme Court ordered that the opinion not be published in the official California Appellate Reports.

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MARSHALL, J., dissenting

On appeal, a divided California Court of Appeal affirmed the judgment of the juvenile court. The majority found no proof that petitioner had agreed to accompany the officers to the station. But relying on California cases that had "recognized and acknowledged the supervisory authority and control of parents over their children,"<sup>2</sup> the majority held that petitioner's constitutional rights were not violated because both petitioner and the police officers complied with his mother's request that he be taken to the station for questioning.<sup>3</sup> The Supreme Court of California denied a petition for a hearing without opinion.<sup>4</sup>

## II

If petitioner had been five years older when the arrest occurred, there would be no question that the judgment below must be reversed. In *Dunaway v. New York*, 442 U. S. 200, 216 (1979), we held that "detention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrests." Here, the court below specifically found that petitioner did not personally consent to accompany the officers to the station.<sup>5</sup> The officers did not ask petitioner if he was willing to accompany them to the station. And the officers did not believe that petitioner was accompanying them voluntarily, for they placed him in handcuffs to prevent him escaping en route to the station. Moreover, as respondent concedes, the officers had neither a warrant nor probable cause to arrest petitioner

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<sup>2</sup> App. to Pet. for Cert. 6.

<sup>3</sup> On this issue, the dissenting judge argued that the police officers violated petitioner's constitutional right by detaining him for custodial interrogation at a time when they had neither a warrant nor probable cause for his arrest. *Id.*, at 15-20 (Jefferson, J., dissenting).

<sup>4</sup> Two judges of that court indicated that they would have granted the petition for a hearing.

<sup>5</sup> *Id.*, at 5.

when they took him to the station for questioning. If he were an adult, petitioner's subsequent confession would have to be suppressed as the fruit of an illegal arrest. *Wong Sun v. United States*, 371 U. S. 471 (1963).<sup>6</sup>

The court below reached a different result solely because petitioner is a minor. Thus, the case squarely presents the question whether a constitutional violation occurred when petitioner, a minor, was taken from his home to a police station for questioning by police officers who, although they had his mother's consent to their action, had neither an arrest warrant nor probable cause for petitioner's arrest. I believe that the Court should consider this issue.

The Court has never previously considered the scope of Fourth Amendment protections when asserted by a minor.<sup>7</sup> Indeed, we have never attempted to define the "totality of the relationship of the juvenile and the state." *In re Gault*, 387 U. S. 1, 13 (1967). Nonetheless our cases have established that minors "are 'persons' under our Constitution . . . possessed of fundamental rights which the state must respect . . . ." *Tinker v. Des Moines School Dist.*, 393 U. S. 503, 511 (1969). As we explained in *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52, 74 (1976): "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of maturity. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."<sup>8</sup>

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<sup>6</sup> There is no suggestion that the causal connection between petitioner's detention and his confession was broken in a manner which might purge the taint of the arrest.

<sup>7</sup> The Fourth Amendment is applicable to the States through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U. S. 643 (1961).

<sup>8</sup> We have held that minors are entitled to constitutional protection for freedom of speech, *Tinker v. Des Moines School Dist.*, 393 U. S. 503 (1969); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943), equal protection against racial discrimination, *Brown v. Board of Education*, 347 U. S. 483 (1954), and due process in civil proceedings, *Goss v. Lopez*, 419 U. S. 565 (1975).

Moreover, our cases have exhibited particular sensitivity to minors' claims to constitutional protection against deprivations of liberty by the State. Because loss of liberty is no less a deprivation for a child than for an adult, *In re Gault*, 387 U. S., at 27, we have held that a minor's right with respect to many of these claims is virtually coextensive with an adult's. Thus, we have extended the Fourteenth Amendment's guarantee against deprivation of liberty without due process of law to minors involved in juvenile proceedings. We have held that a minor facing juvenile charges is entitled to notice, counsel, and confrontation of witnesses. *Id.*, at 33, 36-37, 57. "Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." *Id.*, at 13, quoting with approval *Haley v. Ohio*, 332 U. S. 596, 601 (1948) (Douglas, J., plurality opinion). Similarly, our cases have accorded minors the right against self-incrimination, *In re Gault, supra*, protection against coerced confessions, *Gallegos v. Colorado*, 370 U. S. 49 (1962); *Haley v. Ohio, supra*, guarantees against double jeopardy, *Breed v. Jones*, 421 U. S. 519 (1975), and the presumption of innocence implemented by the government's burden to prove guilt beyond a reasonable doubt, *In re Winship*, 397 U. S. 358 (1970).

I believe that if the Court examined this issue, we would be hard-pressed to find reasons to distinguish these rights, which clearly apply to minors, from the Fourth Amendment right invoked by petitioner.<sup>9</sup> No less than due process pro-

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<sup>9</sup> Many state and lower federal courts have extended Fourth Amendment guarantees to minors involved in juvenile proceedings. See, e. g., *Brown v. Fauntleroy*, 143 U. S. App. D. C. 116, 442 F. 2d 838 (1971); *Cooley v. Stone*, 134 U. S. App. D. C. 317, 414 F. 2d 1213 (1969); *In re Scott K.*, 24 Cal. 3d 395, 595 P. 2d 105 (1979); *In re Harvey*, 222 Pa. Super. 222, 229, 295 A. 2d 93, 96-97 (1972); *In re Morris*, 29 Ohio Misc. 71, 278 N. E. 2d 701 (Columbiana Cty. Common Pleas Ct. 1971); *Ciulla v. State*, 434 S. W. 2d 948, 950 (Tex. Civ. App. 1968); *State v. Lowry*, 95 N. J. Super. 307, 313-317, 230 A. 2d 907, 910-912 (1967); *In re Williams*,

tections, the guarantee against unreasonable governmental searches and seizures "defines the rights of the individual and delimits the powers which the state may exercise." *In re Gault, supra*, at 20 (footnote omitted). As the Court has stated, the Fourth Amendment protects "[t]he security of one's privacy against arbitrary intrusion by the police . . . ." *Wolf v. Colorado*, 338 U. S. 25, 27 (1949). Neither the court below nor respondent goes so far as to suggest that minors enjoy no protection of this personal privacy under the Fourth Amendment. Instead, respondent argues that the court below correctly held that petitioner's mother had lawful authority to instruct the police officers to take her son to the station for questioning. Respondent contends that inasmuch as petitioner's mother could have brought him to the station herself, she merely authorized the officers to do what she could have done herself.

Essential to this claim is the assumption that a parent's right to guide her child's upbringing<sup>10</sup> includes the authority to waive a constitutional right that the child may have.<sup>11</sup>

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49 Misc. 2d 154, 169-170, 267 N. Y. S. 2d 91, 109-110 (Ulster Cty. Family Ct. 1966); *Urbasek v. People*, 76 Ill. App. 2d 375, 222 N. E. 2d 233 (1966).

<sup>10</sup> See *Wisconsin v. Yoder*, 406 U. S. 205, 232 (1972); *Pierce v. Society of Sisters*, 268 U. S. 510, 534-535 (1925).

<sup>11</sup> The Fourth Amendment's warrant and probable-cause requirements impose limits on the actions of the police. Respondent concedes that the police had neither a warrant nor probable cause for petitioner's detention. His mother's consent could not and did not supply the requisite probable cause or warrant. Even though petitioner's mother could have taken him to the station herself, it does not follow from this that she had the authority to waive petitioner's Fourth Amendment right and permit the police to detain him without complying with constitutional requirements.

The Supreme Court of California rejected a similar claim by the State in another case that also involved a minor's Fourth Amendment right. *In re Scott K., supra*. In that case a police officer obtained permission from a parent to search a box that belonged to his minor son. The court rejected the State's suggestion that because the father could have searched the box himself, he had the authority to permit the police to search it.

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MARSHALL, J., dissenting

I find this assumption extremely disturbing for I see no way to cabin its implications. If a parent may, without even consulting the child, waive his constitutional rights, then the police may constitutionally coerce confessions from minors so long as the officers have the parents' consent to their action. Even more troubling, there is nothing in respondent's reasoning to preclude a juvenile court from finding a minor guilty upon proof less than beyond a reasonable doubt, as long as the parent waives that critical due process requirement. The view of parental authority advanced by respondent and adopted by the court below suggests no reason to bar these actions.

But even assuming that the view of parental authority espoused by the court below is correct, there is a major inconsistency in the court's reasoning. The court's view of parental authority rests on the supposition that petitioner was too immature to make the decision about whether to go to the station with the police officers for himself. But if that is the case, I find it hard to discern the logic of the same court's conclusion that petitioner was capable of making a knowing and intelligent waiver of his *Miranda* rights, whose application to a minor are not in doubt. Surely, if a minor in his home lacks the capacity to decide whether to accompany police officers to the station for questioning, there must be some question about the same minor's capacity to make a knowing and intelligent waiver of his rights at the police station. A coherent view, fully adopting the court's theory of a minor's incapacity, would result in the exclusion of petitioner's confession because he would be deemed incapable of waiving his *Miranda* rights. And his conviction would be reversed because it was based on the confession.<sup>12</sup>

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<sup>12</sup> Alternatively, if petitioner is presumed capable of making a knowing and intelligent decision, as the court below assumed in connection with his waiver of his *Miranda* rights, then petitioner could object to being taken, handcuffed, to the police station. And he would here be permitted to

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Because I believe that the case raises important questions that were not adequately addressed by the court below, I would grant the petition for a writ of certiorari and set the case for plenary consideration.

JUSTICE BRENNAN and JUSTICE WHITE, agreeing for the most part with JUSTICE MARSHALL's dissenting opinion, would also grant certiorari.

No. 80-5123. *McKENZIE v. MONTANA*. Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 608 P. 2d 428.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

On two prior occasions, this Court has vacated decisions of the Supreme Court of Montana in this death penalty case and remanded the case for further consideration. *McKenzie v. Montana*, 443 U. S. 903 (1979); *McKenzie v. Montana*, 433 U. S. 905 (1977). In both instances, we directed the Supreme Court of Montana to reconsider the case in light of intervening decisions of this Court establishing that due process prohibits a State from placing on a defendant the burden to disprove an element of the offense charged. *McKenzie v. Montana*, 443 U. S. 903 (1979) (directing reconsideration in light of *Sandstrom v. Montana*, 442 U. S. 510 (1979)); *McKenzie v. Montana*, 433 U. S. 905 (1977) (directing reconsideration in light of *Patterson v. New York*, 432 U. S. 197 (1977)). On each remand, the state court reaffirmed the conviction and reinstated the death penalty. — Mont. —,

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claim violation of the Fourth Amendment's probable-cause and warrant requirements by the police. This view is perhaps more consistent with decisions by this Court that have recognized the rights of minors faced with decisions that critically affect their own lives. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976) (upholding pregnant minor's right to make an abortion decision without parental consent).

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MARSHALL, J., dissenting

608 P. 2d 428 (1980); 177 Mont. 280, 581 P. 2d 1205 (1978). In its most recent decision in this case, the State Supreme Court conceded that the jury instructions unconstitutionally shifted to petitioner the burden to disprove that he had the criminal intent necessary to support conviction. — Mont., at —, 608 P. 2d, at 457–458. The court nonetheless avoided granting petitioner a new trial by deeming this constitutional violation “harmless error.” *Id.*, at —, 608 P. 2d, at 458–459. A state court’s analysis of harmless error in a typical case may not present a question worthy of full review by this Court, yet, where, as here, the death penalty is the result, close scrutiny is required. Because I find the court’s analysis of harmless error lacking of evenhanded treatment, I dissent from this Court’s denial of certiorari.

Petitioner was charged with two counts of deliberate homicide, two counts of aggravated kidnaping, one count of sexual intercourse without consent, and two counts of aggravated assault, all arising from the death of one woman. A major element in petitioner’s defense was that he was incapable of “knowingly” or “purposely” committing the homicide. Petitioner and the prosecutor produced conflicting psychiatric and psychological testimony at trial concerning petitioner’s ability to understand the criminal nature of his conduct and to conform his conduct to the requirements of law. Although petitioner’s capacity to form the required criminal intent was thus put directly in issue, over petitioner’s specific objection, the judge repeatedly directed the jury that “the law also presumes that a person intends the ordinary consequences of his voluntary act” and that “an unlawful act was done with an unlawful intent.”<sup>1</sup> The trial court essentially instructed the

<sup>1</sup> Instruction 31 gave general directions on methods of proof about mental state. It stated that “the law expressly directs the jury to reason: That an unlawful act was done with an unlawful intent and also that a person is presumed to intend the ordinary consequences of his voluntary act,” but Instruction 32 noted that a “particular purpose” may be inferred but not assumed. App. to Pet. for Cert. 20g–21g. Instruction 33

jury that it could presume the necessary criminal intent if it found petitioner had committed the acts charged. Petitioner was convicted of deliberate homicide and aggravated kidnaping, and sentenced to death.

In *Sandstrom v. Montana*, *supra*, we explicitly held that instructions of the kind challenged by petitioner violate due process because they shift to the defendant the burden to persuade the jury that he lacked the requisite criminal intent. On remand of the instant case in light of *Sandstrom*, the Montana court agreed that the challenged instructions unconstitutionally shifted the burden of proving the intent element of the crime from the State to the defendant. — *Mont.*, at —, 608 P. 2d, at 457. The court, however, reasoned that not all such constitutional errors are prejudicial<sup>2</sup>

concerned the method of proof applicable to the offense of deliberate homicide. That instruction directed that if the jury found that petitioner committed an illegal act on the victim, "the law presumes that an unlawful act was done with an unlawful intent; that is, the law expressly directs you to reason from such unlawful act that the defendant acted with an unlawful intent, or purpose." *Id.*, at 22g. Instruction 35 described the method of proof applicable to kidnaping. It provided that because no particular purpose was required as an element of the offense, the requisite mental state could be established presumptively. Thus, if the jury found that petitioner restrained the victim "either by secreting her in a place of isolation, or by using physical force, or by threatening to use physical force to hold her, the law presumes that he acted therein with unlawful intent, purpose or knowledge, and expressly directs you to so reason." *Id.*, at 26g-27g. Instruction 37 provided that proof of the mental state requisite for sexual intercourse without consent "can be made by presumption." *Id.*, at 28g. Similarly, Instruction 38 specified that the mental state necessary for aggravated assault could be proved by the presumption that "[a]n unlawful act was done with an unlawful intent, and the legal presumption that a person is presumed to intend the ordinary consequences of his voluntary act' can be used to prove the mental state of knowingly." *Id.*, at 30g.

<sup>2</sup> This Court has not decided whether it can ever be harmless to instruct a jury that it may presume criminal intent from the fact of the criminal act. See *Sandstrom v. Montana*, 442 U. S. 510, 526-527 (1979) (remanding on that issue).

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and concluded that this Court has never mandated which of three possible standards for evaluating the harmlessness of a constitutional error<sup>3</sup> must be used. The court then selected the standard that permits a court to sustain the conviction despite the constitutional error where there is "overwhelming evidence" of guilt. *Id.*, at —, 608 P. 2d, at 458. Finally, the court found such overwhelming evidence was present in this case.

But what evidence did the court find sufficient to overcome the constitutional error of directing the jury to presume the presence of the requisite criminal intent from the nature of the acts committed? The Montana court itself relied solely on "the vicious manner in which the crimes were committed" in concluding that petitioner "purposely and knowingly intended" to commit the crimes. *Id.*, at —, 608 P. 2d, at 459. I cannot help but be shocked that in taking this approach, the Montana court simply applied the forbidden presumption. In so doing, the court neglected to perform its task on review: it failed to examine whether the disapproved instructions could have infected the jury verdict. Instead, the court served as another factfinder, again impermissibly placing the burden on petitioner to disprove that the nature of his acts established the requisite criminal intent. It surely cannot be that a verdict following an unconstitutional instruction permitting the jury to presume criminal intent can be im-

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<sup>3</sup> The court reasoned:

"At least three definable approaches appear in the United States Supreme Court cases: (1) Focusing on the erroneously admitted evidence or other constitutional error to determine whether it might have contributed to the conviction[,] e. g., *Fahy v. Connecticut* (1963), 375 U. S. 85 . . . ; (2) excluding the constitutional infirmity where overwhelming evidence supports the conviction [,] e. g., *Milton v. Wainwright* (1972), 407 U. S. 371 . . . ; (3) determining whether the tainted evidence is merely cumulative or duplicates properly admitted evidence[,] e. g., *Harrington v. California* (1969), 395 U. S. 250 . . ." — *Mont.*, at —, 608 P. 2d, at 458.

munized from reversal because the reviewing court also impermissibly presumes criminal intent.

This result was perhaps inevitable once the state court selected the "overwhelming evidence" of guilt standard to analyze whether the constitutional error was harmless. For whatever value that standard may have in reviewing a verdict following introduction of evidence obtained in violation of constitutional guarantees, see, *e. g.*, *Milton v. Wainwright*, 407 U. S. 371 (1972), use of the standard actually precludes effective review of the prejudicial impact of unconstitutional jury instructions.<sup>4</sup> Where isolated, tainted evidence is at issue, the reviewing court may exclude that evidence from its assessment of whether the remaining evidence supports the conviction. But where the constitutional error occurred in the jury instructions, no isolated portion of the record can be eliminated from the judicial assessment. Nor can the effect of the instructions be evaluated by examining the evidence alone, and ignoring the unconstitutional instructions. For the precise issue in such cases is the manner in which the jury could have assessed the evidence as a whole, not the importance of any particular piece of evidence to sustain the verdict. In selecting the "overwhelming evidence" standard on the theory that "an appellate court should view the case as a whole in assessing harmless or prejudicial error," — *Mont.*, at —, 608 P. 2d, at 458, the state court neglected to review the possible effect of the unconstitutional instructions on the jury's verdict.

The possibility that a constitutional error in jury instructions was harmless must be evaluated on the premise that the jury acted lawfully and reasonably followed the erroneous

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<sup>4</sup> The Montana court acknowledged "criticism of this standard by text-writers and legal commentators." *Id.*, at —, 608 P. 2d, at 458. See, *e. g.*, Field, Assessing the Harmlessness of Federal Constitutional Error—A Process in Need of a Rationale, 125 U. Pa. L. Rev. 15, 32–36 (1976).

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instruction.<sup>5</sup> Then the court must ask whether the defective instruction may have contributed to the jury verdict.<sup>6</sup> And, before finding the error harmless, the reviewing court must be convinced beyond a reasonable doubt that the error did not so contribute. *Chapman v. California*, 386 U. S. 18 (1967). Indeed, on remand in *State v. Sandstrom*, — Mont. —, —, 603 P. 2d 244, 245 (1979), the Supreme Court of Montana followed just this analysis. We had remanded *Sandstrom* for consideration of questions such as whether the use of the disapproved instruction was harmless error in that case, and whether such error could ever be harmless. *Sandstrom v. Montana*, 442 U. S., at 526–527. In response, the State Supreme Court correctly applied *Chapman* in reasoning that it could find harmless error only upon concluding:

“[T]he offensive instruction could not reasonably have contributed to the jury verdict. In considering the instruction, and the fact that intent was the main issue in

<sup>5</sup> See generally R. Traynor, *The Riddle of Harmless Error* 73–74 (1970).

<sup>6</sup> Before this Court, Montana argues that even if petitioner's conviction for deliberate homicide resulted from the unconstitutional presumption of intent, his conviction for aggravated kidnaping is untainted by the error. Montana claims that because this is the case, the death penalty can stand, as only one sentence was imposed, despite petitioner's conviction on both the homicide and kidnaping counts. This argument, which was never adopted by the state court, is fatally flawed because instructions on the kidnaping charge also included the disapproved presumption of criminal intent. As Montana itself acknowledges, “the jury was then informed that they could employ the *Sandstrom* presumption to find that [kidnaping] was done ‘purposely’ or ‘knowingly.’” Brief in Opposition 7. Montana argues that any error from this instruction was cured by the additional instructions on aggravated kidnaping. These instructions directed that after finding that petitioner committed the kidnaping, the jury could infer, but not presume, he also had particular criminal purposes to inflict bodily injury, to terrorize, or to facilitate the commission of other crimes. These additional requirements could not, however, eliminate the role of the forbidden instruction in the initial finding of a kidnaping.

the District Court trial, we cannot make that assertion. The erroneous instruction goes to a vital element of the proof of the crime, namely the intent of the defendant Sandstrom in committing the homicide. If the jury followed the instruction, it could have presumed the intent without proof beyond a reasonable doubt." — Mont., at —, 603 P. 2d, at 245.

Therefore, the court ordered a new trial for Sandstrom. The Montana court subsequently applied the same reasoning in *State v. Hamilton*, — Mont. —, —, 605 P. 2d 1121, 1132 (1980) (appellate court must determine impact of instruction upon a reasonable jury).

It appears that only in petitioner's case is the Montana court unwilling to apply this analysis.<sup>7</sup> This seems to be yet another case in which a court sanctions "egregious violations of the constitutional rights of criminal defendants by blandly reciting the formula 'harmless error.'" *Briggs v. Connecticut*, 447 U. S. 912, 915 (1980) (MARSHALL, J., joined by BRENNAN, J., dissenting). However unpleasant the facts of this or other cases may be, the courts are obligated to protect the constitutional rights of the defendant. Due to concern that petitioner's rights have not been preserved, this Court has already remanded this case twice. I can understand the Court's reluctance to entertain this case yet again, for we presume that lower courts adhere to the purposes of remands from this Court. Yet the Montana court has failed to fulfill its obligation to carry out the mandate of our decisions.<sup>8</sup> There-

<sup>7</sup> Petitioner is also the only person on whom Montana imposed the death sentence under a statute enacted in 1973 before it was amended to provide different procedures for deliberate homicide and aggravated kidnaping, the offenses relevant here. See Mont. Rev. Codes Ann. § 94-5-304 (Supp. 1974), Mont. Code Ann. §§ 45-2-101 (52), 46-18-101, 46-18-111 to 46-18-112 (1979).

<sup>8</sup> For this reason, this case seems a particularly apt one for seeking federal habeas corpus relief. The dissenting judge in the Montana court

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fore, I would grant certiorari and set the case for plenary consideration.

I also adhere to my view that the death penalty is, under all circumstances, a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Furman v. Georgia*, 408 U. S. 238, 314-371 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting); *Lockett v. Ohio*, 438 U. S. 586, 619-621 (1978) (MARSHALL, J., concurring in judgment), and on that basis alone I would grant certiorari and vacate the death sentence in this case.

No. 80-5488. SWINDLER *v.* ARKANSAS. Sup. Ct. Ark.; and

No. 80-5602. DAVIS *v.* GEORGIA ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: No. 80-5488, 267 Ark. 418, 592 S. W. 2d 91; No. 80-5602, 246 Ga. 200, 269 S. E. 2d 461.

JUSTICE BRENNAN and 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. 80-91. DICK *v.* HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., *ante*, p. 872;

No. 80-194. RAMIREZ *v.* UNITED STATES, *ante*, p. 900;

No. 80-217. HOWELL *v.* THOMAS, SHERIFF, *ante*, p. 901;

No. 80-285. CHVOSTA *v.* PIERRE ET AL., *ante*, p. 921; and

No. 80-5268. ANTONE *v.* FLORIDA, *ante*, p. 913. Petitions for rehearing denied.

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found the majority's decision unsupportable. — Mont., at —, —, —, 608 P. 2d, at 459, 462, 465 (Shea, J., dissenting).

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*Appeal Dismissed*

No. 80-636. *MACKINNEY ET AL. v. GELFGREN 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. Reported below: 624 F. 2d 191.

*Miscellaneous Orders*

No. A-490. *KLUTZNICK, SECRETARY OF COMMERCE, ET AL. v. SHAPIRO, ESSEX COUNTY EXECUTIVE.* D. C. N. J. The order entered December 4, 1980, by JUSTICE BRENNAN is continued pending the timely filing and final disposition of a petition for writ of certiorari. JUSTICE STEWART and JUSTICE STEVENS dissent.

No. A-504. *CITIZENS CONCERNED FOR SEPARATION OF CHURCH AND STATE v. CITY AND COUNTY OF DENVER.* Application to vacate the order of the United States Court of Appeals for the Tenth Circuit, entered December 3, 1980, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE STEVENS dissent.

No. 83, Orig. *MARYLAND ET AL. v. LOUISIANA.* Motions of Columbia Gas Transmission Corp. et al. for leave to file Exceptions to the Report of the Special Master and for leave to reply to the Exceptions of Louisiana are granted. Exceptions to the Report of the Special Master are set for oral argument. [For earlier order herein, see, *e. g., ante*, p. 1031.]

No. 79-700. *WALTER FLEISHER Co., INC. v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. [Certiorari granted, 446 U. S. 917.] Motion of petitioner for leave to file a supplemental brief after argument granted.

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No. 79-1429. AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC., ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.; and

No. 79-1583. NATIONAL COTTON COUNCIL OF AMERICA v. MARSHALL, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 817.] Joint motion of the Solicitor General and union respondents for additional time for oral argument denied. Motion of the Solicitor General and union respondents for divided argument granted.

No. 79-1711. MIDDLESEX COUNTY SEWERAGE AUTHORITY ET AL. v. NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1754. JOINT MEETING OF ESSEX AND UNION COUNTIES v. NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1760. CITY OF NEW YORK ET AL. v. NATIONAL SEA CLAMMERS ASSN. ET AL.; and

No. 80-12. ENVIRONMENTAL PROTECTION AGENCY ET AL. v. NATIONAL SEA CLAMMERS ASSN. ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 917.] Motion of the Solicitor General for divided argument granted.

No. 79-1794. MICHIGAN v. SUMMERS. Sup. Ct. Mich. [Certiorari granted, *ante*, p. 898.] Motion of John B. Holmes, Jr., et al. for leave to file a brief as *amici curiae* granted.

No. 79-1977. RODRIGUEZ v. COMPASS SHIPPING CO., LTD., ET AL.; PEREZ v. ARYA NATIONAL SHIPPING LINE, LTD.; and BARULEC v. OVE SKOU, R. A. C. A. 2d Cir. [Certiorari granted, *ante*, p. 818.] Motion of respondent Ove Skou, R. A., for divided argument granted.

No. 80-5. McCARTY v. McCARTY. Ct. App. Cal., 1st App. Dist. [Probable jurisdiction postponed, *ante*, p. 917.] Motion of Non-Commissioned Officers Association of the United States et al. for leave to file a brief as *amici curiae* granted.

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No. 79-6423. *LASSITER v. DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY*. Ct. App. N. C. [Certiorari granted, *ante*, p. 819.] Motion of National Legal Aid and Defender Association for leave to file a brief as *amicus curiae* granted. Motion of Gregory C. Malhoit, Esquire, to permit Leowen Evans, Esquire, to present oral argument *pro hac vice* granted. Motion of the Attorney General of North Carolina for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 80-169. *UNITED PARCEL SERVICE, INC. v. MITCHELL ET AL.* C. A. 2d Cir. [Certiorari granted, *ante*, p. 898.] Motions of American Federation of Labor and Congress of Industrial Organizations and International Brotherhood of Teamsters for leave to file briefs as *amici curiae* granted.

No. 80-332. *RHODES, GOVERNOR OF OHIO, ET AL. v. CHAPMAN ET AL.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 951.] Motion of petitioners to be excused from supplementing the joint appendix granted.

No. 80-5713. *IN RE CLIFTON*. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 80-396. *CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC., ET AL.* C. A. 1st Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 626 F. 2d 1060.

*Certiorari Denied.* (See also No. 80-636, *supra*.)

No. 79-1679. *WASTE MANAGEMENT OF WISCONSIN, INC. v. FOKAKIS*. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 138.

No. 79-6799. *MORRIS v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 153 Ga. App. 415, 265 S. E. 2d 337.

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No. 80-295. NATIONAL ASSOCIATION OF MINORITY CONTRACTORS ET AL. *v.* ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 1381.

No. 80-330. UNITED BEEF PACKERS, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 80-347. DE JONG PACKING CO. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 1329.

No. 80-406. PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA *v.* UNITED STATES ET AL.; and

No. 80-614. MARTIN ET AL. *v.* PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 812.

No. 80-439. MELLI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 757, 429 N. Y. S. 2d 338.

No. 80-454. PARFITT ET AL. *v.* COLUMBUS CORRECTIONAL FACILITY ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 62 Ohio St. 2d 434, 406 N. E. 2d 528.

No. 80-465. PAPAGO TRIBAL UTILITY AUTHORITY *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 235, 628 F. 2d 235.

No. 80-471. SUN PETROLEUM PRODUCTS CO. *v.* MARSHALL, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 622 F. 2d 1176.

No. 80-487. HARPER ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

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No. 80-588. *KRAMER MOTORS, INC. v. BRITISH LEYLAND, LTD., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1175.

No. 80-592. *SHAW v. KANSAS.* Ct. App. Kan. Certiorari denied. Reported below: 5 Kan. App. 2d xvi, 615 P. 2d 843.

No. 80-597. *MARTIN PAINTING & COATING CO. v. MARSHALL, SECRETARY OF LABOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 629 F. 2d 437.

No. 80-606. *RUHLANDER ET AL. v. DISTRICT COURT OF HAMPSHIRE ET AL.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 381 Mass. 148, 408 N. E. 2d 830.

No. 80-612. *BERGER v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 46 N. C. App. 348, 275 S. E. 2d 568.

No. 80-615. *BESASE ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 623 F. 2d 463.

No. 80-623. *WINFIELD v. WALGREEN Co.* App. Ct. Ill., 1st Dist. Certiorari denied.

No. 80-627. *A JUVENILE v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 381 Mass. 379, 409 N. E. 2d 755.

No. 80-652. *JOHN T. BRADY & Co. v. FORM-EZE SYSTEMS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 623 F. 2d 261.

No. 80-654. *GOWAN v. ST. FRANCIS COMMUNITY HOSPITAL.* Sup. Ct. S. C. Certiorari denied. Reported below: 275 S. C. 203, 268 S. E. 2d 580.

No. 80-666. *BARRY v. AMERICAN FINANCIAL ENTERPRISES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 955.

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No. 80-668. *WESTERN AIR LINES, INC. v. INTERNATIONAL TRAVEL ARRANGERS, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 623 F. 2d 1255.

No. 80-671. *NAGEOTTE ET AL. v. COUNTY OF STAFFORD, VIRGINIA.* Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. cxxiii.

No. 80-705. *GRANT ET AL. v. OWENS-CORNING FIBERGLAS CORP. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5057. *HALL v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 207.

No. 80-5139. *HENDERSON, AKA COLLIER v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 383 So. 2d 508.

No. 80-5168. *HAAR v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 94 N. M. 539, 612 P. 2d 1350.

No. 80-5226. *CARTER v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 383 So. 2d 397.

No. 80-5230. *GAUL v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 1005, 425 N. Y. S. 2d 902.

No. 80-5236. *JOHNSON v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 303.

No. 80-5241. *HICKS v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5245. *PAYNE v. THOMPSON, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 622 F. 2d 254.

No. 80-5281. *RICARDO ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 1124.

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No. 80-5283. *McCLAIN v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5297. *DERRICO v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 181 Conn. 151, 434 A. 2d 356.

No. 80-5310. *NASH v. REEDEL ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5316. *YOUNG v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 385 So. 2d 16.

No. 80-5351. *BLAKE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

No. 80-5387. *NEWKIRK v. WARDEN, MARYLAND PENITENTIARY.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1350.

No. 80-5411. *GREEN v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-5478. *CRUTE v. VIRGINIA.* Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. lxxviii.

No. 80-5506. *SAUTER v. ARIZONA.* Sup. Ct. Ariz. Certiorari denied.

No. 80-5566. *RAWLS v. MABRY, CORRECTION COMMISSIONER.* C. A. 8th Cir. Certiorari denied. Reported below: 630 F. 2d 654.

No. 80-5567. *DOERR v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 297.

No. 80-5571. *COOPER v. MITCHELL, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 859.

No. 80-5572. *DOUTHIT v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

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No. 80-5576. *WATKINS v. THOMAS, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 387.

No. 80-5580. *EUGE v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 624 F. 2d 1109.

No. 80-5585. *PAPP v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 80-5588. *GROFT v. CONNELL CHEVROLET Co., INC.* C. A. 7th Cir. Certiorari denied.

No. 80-5590. *WELLS v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 598 S. W. 2d 770.

No. 80-5597. *LYDON v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 381 Mass. 356, 409 N. E. 2d 745.

No. 80-5616. *FRISCH v. FRISCH.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 80-5625. *JENKINS v. BORDENKIRCHER, WARDEN.* Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5681. *BOYD v. BORDENKIRCHER, WARDEN.* Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5683. *MAHLER v. GARRISON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1349.

No. 80-5702. *MORRIS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 623 F. 2d 145.

No. 80-5705. *JONES v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 1224.

No. 80-5712. *CLIFTON v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5722. *HUGHES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 619.

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No. 80-5724. *DUNCAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 224.

No. 80-5728. *SAUNDERS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 212.

No. 80-5729. *CORNWELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 686.

No. 80-5730. *FRANK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-418. *UNITED BUSINESS COMMUNICATIONS, INC. v. MILGO ELECTRONIC CORP.* C. A. 10th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 623 F. 2d 645.

No. 80-530. *HUDSON v. INTERNATIONAL BUSINESS MACHINES CORP. ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 620 F. 2d 351.

No. 80-565. *HEYL, AS PERSONAL REPRESENTATIVE OF ZIMMERMAN'S ESTATE AND AS GUARDIAN v. CARNIVAL CRUISE LINES, INC.* C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 625 F. 2d 1012.

No. 80-582. *ZACHARY ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 621 F. 2d 155.

No. 80-691. *ARKANSAS v. HAYNES*. Sup. Ct. Ark. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BLACKMUN would grant certiorari. Reported below: 269 Ark. 506, 602 S. W. 2d 599.

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No. 80-659. ADAMS *v.* PEAT, MARWICK, MITCHELL & Co. C. A. 6th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 623 F. 2d 422.

No. 80-5179. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 598 S. W. 2d 123.

No. 80-5561. HANCE *v.* GEORGIA. Sup. Ct. Ga.;

No. 80-5632. CLARK *v.* ARIZONA. Sup. Ct. Ariz.; and

No. 80-5645. WITT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 80-5561, 245 Ga. 856, 268 S. E. 2d 339; No. 80-5632, 126 Ariz. 428, 616 P. 2d 888; No. 80-5645, 387 So. 2d 922.

JUSTICE BRENNAN and 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. 79-1735. JARRETT *v.* JARRETT, *ante*, p. 927;

No. 79-6580. HOUSTON *v.* TENNESSEE, *ante*, p. 891;

No. 79-6857. CROSBY *v.* UNITED STATES DEPARTMENT OF THE AIR FORCE ET AL., *ante*, p. 866;

No. 79-6888. THERIAULT *v.* CHARLES COLSON PRISON FELLOWSHIP ET AL., *ante*, p. 952;

No. 80-45. JOHNSON *v.* J. O. L., *ante*, p. 989;

No. 80-250. CRAMER *v.* METROPOLITAN FEDERAL SAVINGS & LOAN ASSN. ET AL., *ante*, p. 876;

No. 80-5186. PATTERSON *v.* GARRINGTON, WARDEN, *ante*, p. 922; and

No. 80-5202. IN RE MAGEE, *ante*, p. 949. Petitions for rehearing denied.

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No. 80-5217. *BROWN v. JERNIGAN, WARDEN*, *ante*, p. 958;  
No. 80-5274. *TWYMAN v. HESS, WARDEN, ET AL.*, *ante*,  
p. 959;

No. 80-5276. *LANDI v. CALIFORNIA*, *ante*, p. 959; and

No. 80-5401. *DANKERT v. GEORGIA*, *ante*, p. 986. Petitions for rehearing denied.

No. 79-972. *WESTVACO CORP. ET AL. v. ADAMS EXTRACT Co. ET AL.*, *ante*, p. 915. Petition of Georgia-Pacific Corp. and Packaging Corporation of America for rehearing and for further relief denied. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 80-5272. *BROWN v. KANSAS WORKMEN'S COMPENSATION FUND*, *ante*, p. 914. Petition for rehearing denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

DECEMBER 30, 1980

*Miscellaneous Order*

No. A-567. *KLUTZNICK, SECRETARY OF COMMERCE, ET AL. v. CAREY, GOVERNOR OF NEW YORK, ET AL.* The application of the Solicitor General for a stay pending appeal to the United States Court of Appeals for the Second Circuit was presented to JUSTICE MARSHALL as Circuit Justice, and by him referred to the Court. The application was directed to that portion of the judgment entered December 29, 1980, by the United States District Court for the Southern District of New York, case No. 80 Civ. 4550, that precludes the Bureau of the Census from certifying to the President the population totals for New York and the state-by-state census tabulations, on December 31, 1980, as mandated by 13 U. S. C. § 141 (b). The application is hereby granted. This order shall remain in effect pending disposition of the appeal by

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MARSHALL, J., dissenting

the Court of Appeals. JUSTICE STEVENS took no part in the consideration or decision of this application.

JUSTICE MARSHALL, dissenting.

In this case, applicant Secretary of Commerce and others seek a stay pending appeal, of an order of the United States District Court for the Southern District of New York, enjoining the Census Bureau from certifying the official tabulation of New York State's population to the President as required by 13 U. S. C. § 141 (b). Respondents include the City of New York and its Mayor; the Governor of the State; and several voters and taxpayers in various city, congressional, and state senatorial and assembly districts who filed suit in District Court alleging that the 1980 census was conducted in a manner that will inevitably result in an undercount, largely in low-income areas populated by members of minority groups. Specifically, respondents alleged that the master address registers used by the Census Bureau were grossly inadequate and that the followup check of the master address registers by Postal Service and census workers was grossly inadequate. Respondents' ultimate contentions were that the resulting undercount not only will cause New York to lose at least one congressional seat to which it is entitled when reapportionment is made pursuant to the 1980 census, but that it will also result in the dilution of the votes of New York residents vis-à-vis those of residents of other States, and will cost New York City and the State vast sums of money distributed under federal revenue sharing and other programs with statutory formulas tied to the census.

The District Court initially entered a preliminary injunction against the Census Bureau: It found that respondents had established a clear possibility of irreparable harm to the efficacy of their votes, and that respondents were likely to succeed because they had submitted significant evidence concerning Census Bureau mismanagement and had raised serious questions as to whether some of the Bureau's policies and

procedures were carried out in an arbitrary and irrational manner. The District Court declined to stay the preliminary injunction, and on appeal, the Court of Appeals for the Second Circuit affirmed the District Court's denial of a stay. The Court of Appeals found that respondents had demonstrated a possibility of irreparable harm and had also shown sufficient prospect of success on the merits to justify a preliminary injunction, and that the District Court did not disregard traditional equitable principles in issuing the preliminary injunction.

On December 22, 1980, the District Court entered final judgment in favor of respondents. The court found that the Bureau's implementation of the census was improper in several respects and that the Bureau's mismanagement of the census had resulted in a significant undercount in New York. The District Court ordered the Bureau to adjust the actual census data regarding New York in a reasonable and scientific manner to compensate for the disproportionate undercount, and it enjoined the Bureau from certifying New York's population totals to the President on December 31, 1980, as required by statute. Applicants then brought this stay application.

Most of applicants' memorandum in support of their stay application is devoted to arguing that the respondents are unlikely to succeed on the merits of the case.\* On the sparse record before this Court, I am not prepared to conclude that respondents cannot prevail on the merits. The Court of

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\*Applicants also rely on JUSTICE STEWART's stay of the District Court's decision in *Young v. Klutznick*, 497 F. Supp. 1318 (ED Mich. 1980). In that case, the District Court enjoined the Census Bureau from certifying population totals for *any* States by December 31, 1980. But in this case, unlike in *Young*, the District Court order *only* applies to *New York's* population totals. Thus, applicants cannot rely on the alleged interest of various States in using the census figures for redistricting purposes for state legislatures.

Appeals rejected applicants' claim that respondents cannot prevail on the merits and, as noted, the District Court has ruled against applicants as has at least one other District Court. For me, the crucial issue in ruling on this application is applicants' inability to show that there is a substantial likelihood that they will suffer irreparable harm if a stay is not issued. The only thing applicants point to is that the Census Bureau will be unable to comply with the December 31 deadline if the District Court's order is not stayed. But as the Court of Appeals pointed out, there is nothing sacrosanct about the December 31 deadline. If the District Court's conclusion is correct, the inability to meet the deadline is the Bureau's own fault. Moreover, the actual reapportionment of seats based on the 1980 census will not commence until some later date and there is nothing about the District Court's order that prevents this reapportionment from taking place well in advance of the 1982 congressional elections.

Applicants' failure to prove irreparable harm from denial of their stay application stands in marked contrast to the irreparable harm that will be inflicted on respondents if the Census Bureau is allowed to certify inaccurate (at least according to the District Court) results to the President. Applicants have not suggested that there is any procedure for correcting these "inaccurate" figures once they are reported to the President and he transmits them to Congress as required by statute, and these figures will presumably be the basis for the reapportionment of congressional seats and a variety of federal revenue grants. The members of minority groups and other residents of low-income areas who were not counted by the Census Bureau will therefore suffer the irreparable injury stemming from the undercount. Thus, it appears that granting the application not only fails to preserve the status quo, it may actually moot the underlying controversy. In these circumstances, I cannot agree that a stay must issue.

JANUARY 12, 1981

*Appeals Dismissed*

No. 80-576. *LACLEDE GAS CO. v. PUBLIC SERVICE COMMISSION OF MISSOURI*. Appeal from Ct. App. Mo., Western Dist., dismissed for want of substantial federal question. Reported below: 600 S. W. 2d 222.

No. 80-593. *BISHOP v. BURTON*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 246 Ga. 153, 269 S. E. 2d 417.

No. 80-5554. *HERRERA v. HERNANDEZ*. Appeal from Ct. Civ. App. Tex., 13th Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 595 S. W. 2d 189.

No. 80-5355. *WHITTEMORE v. CIRCUIT COURT OF KENOSHA COUNTY*. Appeal from Sup. Ct. Wis. dismissed for want of jurisdiction. JUSTICE BLACKMUN would dismiss the appeal for want of jurisdiction, treat the papers whereon the appeal was taken as a petition for writ of certiorari, and deny certiorari.

No. 80-5551. *CONRAD v. BURGER, CHIEF JUSTICE OF THE UNITED STATES, ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

No. 80-5725. *GOODEN v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 600 S. W. 2d 336.

No. 80-5781. *PRENZLER v. MANLIN SERVICE CORP.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 80-5816. BIN-RILLA, AKA PRESTON *v.* ISRAEL, WARDEN. 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.

*Certificate Dismissed*

No. 80-444. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS *v.* CARTER, PRESIDENT OF THE UNITED STATES, ET AL. Certificate from the United States Court of Appeals for the District of Columbia Circuit dismissed.

*Miscellaneous Orders*

No. A-420. ROYSE *v.* WASHINGTON ET AL. Application for bail and/or writ of habeas corpus, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-484 (80-5808). OLIVER *v.* MARKS, CORRECTION COMMISSIONER, ET AL. D. C. E. D. Pa. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-521. NOE *v.* UNITED STATES. Application for bail pending appeal, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-530. ARIZONA ET AL. *v.* PLANNED PARENTHOOD OF CENTRAL AND NORTHERN ARIZONA ET AL. C. A. 9th Cir. Application for stay, presented to JUSTICE REHNQUIST, and by him referred to the Court, denied.

No. 79-1252. CALIFORNIA ET AL. *v.* SIERRA CLUB ET AL.; and

No. 79-1502. KERN COUNTY WATER AGENCY ET AL. *v.* SIERRA CLUB ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 818.] Motion of Contra Costa County Water Agency et al. for leave to file a brief as *amici curiae* granted.

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No. 79-1423. WESTERN & SOUTHERN LIFE INSURANCE CO. v. STATE BOARD OF EQUALIZATION OF CALIFORNIA. Ct. App. Cal., 2d App. Dist. [Probable jurisdiction noted, *ante*, p. 817.] Motion of American Council of Life Insurance for leave to file a brief as *amicus curiae* granted.

No. 79-1538. ANDRUS, SECRETARY OF THE INTERIOR v. VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL.; and

No. 79-1596. VIRGINIA SURFACE MINING & RECLAMATION ASSN., INC., ET AL. v. ANDRUS, SECRETARY OF THE INTERIOR. D. C. W. D. Va. [Probable jurisdiction noted, *ante*, p. 817.] Motions of Pike County, Kentucky, and Coal Operators & Associates, Inc., for leave to participate in oral argument as *amici curiae* denied.

No. 79-1734. PARRATT ET AL. v. TAYLOR. C. A. 8th Cir. [Certiorari granted, *ante*, p. 917.] Motion of respondent to dismiss the writ of certiorari denied.

No. 79-1794. MICHIGAN v. SUMMERS. Sup. Ct. Mich. [Certiorari granted, *ante*, p. 898.] Motion of the Solicitor General for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Respondent also allotted an additional 10 minutes for oral argument.

No. 79-1943. ALESSI ET AL. v. RAYBESTOS-MANHATTAN, INC., ET AL. C. A. 3d Cir. [Probable jurisdiction noted, *ante*, p. 949]; and

No. 80-193. BUCZYNSKI ET AL. v. GENERAL MOTORS CORP. ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 950.] Joint motion of appellees in No. 79-1943 and respondent General Motors Corp. in No. 80-193 for divided argument granted. Request for additional time for oral argument denied. Motion of American Association of Retired Persons et al. for leave to file a brief as *amici curiae* granted. Motions of Merl D. Stong et al. and Gray Panthers for leave to file briefs as *amici curiae* in No. 80-193 granted.

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No. 80-54. ITT GILFILLAN *v.* CLAYTON; and

No. 80-5049. CLAYTON *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 950.] Motion of respondents International Union, United Automobile, Aerospace & Agricultural Implement Workers of America and its Local 509 for divided argument granted.

No. 80-231. ANDRUS, SECRETARY OF THE INTERIOR, ET AL. *v.* INDIANA ET AL. D. C. S. D. Ind. [Probable jurisdiction noted, *ante*, p. 816.] Motion of appellees for additional time for oral argument denied.

No. 80-317. UNIVERSITY OF TEXAS ET AL. *v.* CAMENISCH. C. A. 5th Cir. [Certiorari granted, *ante*, p. 950.] Motions of American Council on Education et al. and Equal Employment Advisory Council for leave to file briefs as *amici curiae* granted.

No. 80-456. THOMPSON, SECRETARY, DEPARTMENT OF SOCIAL AND HEALTH SERVICES OF WASHINGTON, ET AL. *v.* BERRY ET AL. Sup. Ct. Wash. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-922. MARSHALL, SECRETARY OF LABOR *v.* ALABAMA ET AL. C. A. 5th Cir. Motions of Lutheran Church-Missouri Synod and Grace Baptist Temple, Prattville, Alabama, et al. for leave to file briefs as *amici curiae* granted. Motion of respondents to expedite consideration of the petition for writ of certiorari denied.

No. 80-5700. IN RE PAYTON;

No. 80-5769. IN RE ROBINSON; and

No. 80-5770. IN RE JACKSON. Petitions for writs of mandamus denied.

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No. 80-5780. *IN RE BEACH*. Petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 80-608. *UNITED STATES POSTAL SERVICE v. COUNCIL OF GREENBURGH CIVIC ASSNS. ET AL.* Appeal from D. C. S. D. N. Y. Probable jurisdiction noted. Reported below: 490 F. Supp. 157.

*Certiorari Granted*

No. 80-202. *AMERICAN EXPRESS CO. v. KOERNER*. C. A. 5th Cir. Certiorari granted. Reported below: 615 F. 2d 191.

No. 80-544. *FIRST NATIONAL MAINTENANCE CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari granted. Reported below: 627 F. 2d 596.

*Certiorari Denied.* (See also Nos. 80-5725, 80-5781, and 80-5816, *supra*.)

No. 79-1180. *DUPLANTIER ET AL. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 654.

No. 79-1841. *GRANDDAD BREAD, INC. v. CONTINENTAL BAKING Co.* C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 1105.

No. 79-2065. *HORWITZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 1101.

No. 80-227. *COLE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 384 So. 2d 374.

No. 80-302. *KIMPEL v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 78 Ill. App. 3d 929, 397 N. E. 2d 926.

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No. 80-304. *MASSARELLA v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 80 Ill. App. 3d 552, 400 N. E. 2d 436.

No. 80-343. *LEWIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-356. *INDEPENDENT INSURANCE AGENTS OF AMERICA, INC., ET AL. v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM*. C. A. D. C. Cir. Certiorari denied.

No. 80-387. *HARDING, DAHM & Co., INC. v. LIGHTSEY*. C. A. 7th Cir. Certiorari denied. Reported below: 623 F. 2d 1219.

No. 80-388. *STEPNEY v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 181 Conn. 268, 435 A. 2d 701.

No. 80-402. *J. P. STEVENS & Co., INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 623 F. 2d 322.

No. 80-403. *GOULD, DBA BROKERS FOR AGRICULTURAL CO-OPERATIVE ASSNS. v. INTERSTATE COMMERCE COMMISSION*. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 847.

No. 80-428. *MANGES ET AL. v. COUNTY OF DUVAL ET AL.* Ct. Civ. App. Tex., 4th Sup. Jud. Dist. Certiorari denied. Reported below: 587 S. W. 2d 436.

No. 80-436. *TURKISH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 623 F. 2d 769.

No. 80-437. *ARSHAL v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 223 Ct. Cl. 179, 621 F. 2d 421.

No. 80-443. *REEVES v. INTERNATIONAL TELEPHONE & TELEGRAPH CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 1342.

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- No. 80-459. *DUNCAN ET AL. v. PENINGER*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 486.
- No. 80-486. *KARAS v. UNITED STATES*; and  
No. 80-490. *PECORA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 500.
- No. 80-496. *BURNS ET AL. v. GULF OIL CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 81.
- No. 80-497. *TOWRY v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 568.
- No. 80-528. *SAVARESE v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 298.
- No. 80-535. *CONCERNED PARENTS & CITIZENS FOR THE CONTINUING EDUCATION AT MALCOLM X (P. S. 79) ET AL. v. NEW YORK CITY BOARD OF EDUCATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 751.
- No. 80-541. *COUNTY OF FAIRFAX, VIRGINIA, ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 2d 932.
- No. 80-573. *SMITH, ADMINISTRATRIX v. CHESAPEAKE & OHIO RAILROAD Co.* C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1101.
- No. 80-583. *WHEELING-PITTSBURGH STEEL CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 618 F. 2d 1009.
- No. 80-594. *AMERADA HESS CORP. v. UNITED STATES*; and  
No. 80-605. *KAYO OIL CO. ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 461.
- No. 80-598. *JOLY v. CREEDON*. C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 2d 615.

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No. 80-599. *JEFFERS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1104.

No. 80-611. *CIANCIULLI ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-618. *REFRIGERATED TRANSPORT Co., INC., ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 201 U. S. App. D. C. 87, 627 F. 2d 546.

No. 80-625. *SHAPIRO ET AL. v. MIDWEST RUBBER RECLAIMING Co. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 626 F. 2d 63.

No. 80-630. *GARBER v. UNITED STATES*; and

No. 80-770. *DENUCCI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 626 F. 2d 1144.

No. 80-635. *MICHAEL REESE PHYSICIANS & SURGEONS ET AL. v. QUERN, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID*. C. A. 7th Cir. Certiorari denied. Reported below: 625 F. 2d 764.

No. 80-637. *SUNNYSIDE VALLEY IRRIGATION DISTRICT v. KITTITAS RECLAMATION DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 95.

No. 80-643. *STRATOS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 863.

No. 80-646. *CONNOR v. WARREN, ADMINISTRATOR, ET AL.* Sup. Ct. N. J. Certiorari denied.

No. 80-648. *EUROPEAN TRADE SPECIALISTS, INC., ET AL. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-650. *CONNOR v. FLYNN*. Sup. Ct. N. J. Certiorari denied.

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No. 80-655. *NICKOLAOU ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 734.

No. 80-661. *GEORGE BANTA Co., INC., BANTA DIVISION v. NATIONAL LABOR RELATIONS BOARD*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 354.

No. 80-670. *WIDMER v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 1065, 424 N. Y. S. 2d 310.

No. 80-672. *FOXX v. DISTRICT COURT OF THE STATE OF NEVADA FOR THE EIGHTH JUDICIAL DISTRICT (FOXX, REAL PARTY IN INTEREST)*. Sup. Ct. Nev. Certiorari denied.

No. 80-674. *LAREDO PACKING Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 593.

No. 80-680. *WERNER v. UPJOHN Co., INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 848.

No. 80-683. *CONSOLIDATED FARMERS MUTUAL INSURANCE Co. ET AL. v. ANCHOR SAVINGS ASSN. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-684. *PERLUSS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 625 F. 2d 1371.

No. 80-686. *MORRISON v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 275 Pa. Super. 454, 418 A. 2d 1378.

No. 80-688. *CORPORACION VENEZOLANA DE FOMENTO v. MERBAN CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 786.

No. 80-690. *HATTEN ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 10th Cir. Certiorari denied.

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No. 80-694. *WOOD v. WOOD*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 379 So. 2d 220.

No. 80-695. *PAYNE v. WEINSTOCK*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 380 So. 2d 591.

No. 80-700. *ROWRY v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-703. *LAUCHLI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1105.

No. 80-706. *INDUSTRIAL TILE, INC. v. STEWART ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 388 So. 2d 171.

No. 80-707. *BRADY v. DOE*. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 598 S. W. 2d 338.

No. 80-708. *CATENA v. CAPITOL INDUSTRIES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 190.

No. 80-711. *RITTENHOUSE CONSULTING ENTERPRISES, LTD., ET AL. v. NEW JERSEY STATE COMMISSION OF INVESTIGATION*. C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 996.

No. 80-712. *ABDELLA v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 94 Wis. 2d 694, 289 N. W. 2d 372.

No. 80-713. *HURON DIE CASTING, INC., ET AL. v. CREDITORS' COMMITTEE OF HURON DIE CASTING, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1090.

No. 80-718. *HEWITT ET AL. v. CITY OF ESCONDIDO*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 107 Cal. App. 3d 78, 165 Cal. Rptr. 545.

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No. 80-721. *ELDER, DBA VORPAL GALLERIES v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 620 F. 2d 310.

No. 80-723. *PATRICELLI v. MECCA LTD. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 205.

No. 80-724. *McCUTCHEON v. BOARD OF EDUCATION OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied.

No. 80-729. *OWEN, ADMINISTRATOR v. MESERVE ET AL., TRUSTEES*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 381 Mass. 273, 408 N. E. 2d 867.

No. 80-736. *SPENCE v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 896.

No. 80-740. *ECKMAN v. UNITED STATES*;

No. 80-5484. *BLUM v. UNITED STATES*; and

No. 80-5491. *MACHI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: No. 80-740, 631 F. 2d 725; Nos. 80-5484 and 80-5491, 631 F. 2d 726.

No. 80-743. *SHAPIRO ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 170.

No. 80-744. *ARCINIEGA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-748. *ROOT v. WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 866.

No. 80-755. *DESIMONE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

No. 80-774. *HUGHES AIRCRAFT CO. ET AL. v. MESSERSCHMITT-BOELKOW-BLOHM, GMBH*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 580.

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No. 80-775. CIAFFONI ET AL. *v.* COWDEN ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 491 Pa. 46, 417 A. 2d 1136.

No. 80-787. DINKIN *v.* GANEA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1286.

No. 80-790. HAZARD *v.* HAZARD. Ct. App. N. C. Certiorari denied. Reported below: 46 N. C. App. 280, 264 S. E. 2d 908.

No. 80-796. ZICARELLI *v.* DIETZ, CHAIRMAN, NEW JERSEY PAROLE BOARD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 312.

No. 80-799. MASELLI *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 182 Conn. 66, 437 A. 2d 836.

No. 80-800. BIOMETRIC AFFILIATED RESEARCH LABORATORIES, INC., ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

No. 80-803. GREENAWALT ET AL. *v.* PAWLAK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 628 F. 2d 826.

No. 80-807. BLUMBERG ET AL. *v.* PRINCE GEORGE'S COUNTY, MARYLAND, ET AL. Ct. App. Md. Certiorari denied. Reported below: 288 Md. 275, 418 A. 2d 1155.

No. 80-811. LONG ET AL. *v.* ARCELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 1145.

No. 80-825. BITHONEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 631 F. 2d 1.

No. 80-826. TINARI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 631 F. 2d 17.

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No. 80-829. *DEL GENIO v. UNITED STATES BUREAU OF PRISONS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 644 F. 2d 585.

No. 80-855. *ANTON v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 2d 1252.

No. 80-856. *MURRELL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-867. *JACKSTADT v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 80-882. *EDLER INDUSTRIES, INC., ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 194.

No. 80-888. *ROWBOTHAM v. AMERICAN AIRLINES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

No. 80-899. *PERLSTEIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 632 F. 2d 661.

No. 80-909. *TERCERO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 640 F. 2d 190.

No. 80-910. *CALAVO GROWERS OF CALIFORNIA v. GENERALI BELGIUM ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 963.

No. 80-912. *SISK v. UNITED STATES*; and

No. 80-917. *BENSON ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 629 F. 2d 1174.

No. 80-916. *DiNARDI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 218.

No. 80-5136. *PEREZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

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- No. 80-5219. *MIMS v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 384 So. 2d 1377.
- No. 80-5232. *HIRTZER v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.
- No. 80-5269. *BOULWARE v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied.
- No. 80-5282. *MITCHELL v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 300 N. C. 305, 266 S. E. 2d 605.
- No. 80-5306. *BREWER v. OVERBERG, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 51.
- No. 80-5324. *PARK v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 81 Ill. App. 3d 108, 400 N. E. 2d 966.
- No. 80-5327. *BAXTER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1030.
- No. 80-5338. *SPARKS v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 386 So. 2d 364.
- No. 80-5339. *DEVINE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.
- No. 80-5353. *BARTH v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 95 Wis. 2d 740, 293 N. W. 2d 180.
- No. 80-5379. *WALKER v. LOCKHART, CORRECTION DIRECTOR*. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 683.
- No. 80-5381. *COPELAND v. IOWA*. Ct. App. Iowa. Certiorari denied. Reported below: 292 N. W. 2d 878.

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- No. 80-5388. *TINSLEY v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 181 Conn. 388, 435 A. 2d 1002.
- No. 80-5398. *WILKS v. ISRAEL, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 627 F. 2d 32.
- No. 80-5405. *SOTO-MATOS v. FAUVER, CORRECTIONS COMMISSIONER, ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.
- No. 80-5410. *BURGOS v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.
- No. 80-5429. *DEGIDEO v. ALTEMOSE CONSTRUCTION CO.* C. A. 3d Cir. Certiorari denied.
- No. 80-5470. *SMITH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 483.
- No. 80-5481. *WILKINS v. HINTON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 864.
- No. 80-5494. *BRYANT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1097.
- No. 80-5498. *WHITFIELD v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 102, 629 F. 2d 136.
- No. 80-5499. *KEITH v. BORDENKIRCHER, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1349.
- No. 80-5504. *FRAZIER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 2d 728.
- No. 80-5510. *ARRINGTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 1119.
- No. 80-5511. *SULLIVAN v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 294.

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No. 80-5516. *ELCAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1093.

No. 80-5517. *SCOTT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 2d 729.

No. 80-5518. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 2d 350.

No. 80-5531. *YOST v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5570. *LYLES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 1095.

No. 80-5577. *WILEY v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 228 Kan. xciii, 615 P. 2d 773.

No. 80-5606. *EDWARDS v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 83 Ill. App. 3d 128, 403 N. E. 2d 771.

No. 80-5610. *LESS v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5612. *IN RE GAMBARA*. Sup. Ct. Ill. Certiorari denied.

No. 80-5622. *HOOVER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 603 S. W. 2d 882.

No. 80-5623. *PENA v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 50 N. Y. 2d 400, 406 N. E. 2d 1347.

No. 80-5624. *WATSON v. MICHAEL I. SCHAFFER Co., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-5626. *ALEXANDER v. WEST VIRGINIA BOARD OF PROBATION AND PAROLE*. Sup. Ct. App. W. Va. Certiorari denied.

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No. 80-5627. *MILES v. THOMPSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1091.

No. 80-5629. *BARNES v. CUPP, PENITENTIARY SUPERINTENDENT*. Ct. App. Ore. Certiorari denied. Reported below: 44 Ore. App. 533, 606 P. 2d 664.

No. 80-5634. *HENDERSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 80-5636. *MITCHELL v. SMITH, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 1009.

No. 80-5639. *HAMMITT v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 80-5641. *DOE v. WEST ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 2d 1222.

No. 80-5646. *SMITH v. WOODARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 626.

No. 80-5650. *GONZALEZ v. HAMMOCK, CHAIRMAN, NEW YORK STATE BOARD OF PAROLE*. C. A. 2d Cir. Certiorari denied. Reported below: 639 F. 2d 844.

No. 80-5652. *ARTHUR v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 154 Ga. App. 735, 269 S. E. 2d 887.

No. 80-5654. *WILLIAMS v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 602 S. W. 2d 148.

No. 80-5657. *BARNER v. STEPHENSON, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 2d 727.

No. 80-5666. *PHARR v. ISRAEL, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 629 F. 2d 1278.

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No. 80-5667. *GRAY v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 80-5678. *HYDEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 618 F. 2d 411.

No. 80-5679. *THOMAS v. CARDWELL, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 1375.

No. 80-5682. *MCNEAL v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5684. *BEAVEN v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5685. *WHITE v. BLOOM ET AL.* C. A. 8th Cir. Certiorari denied.

No. 80-5686. *ARCHIE v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 97 Wis. 2d 753, 295 N. W. 2d 225.

No. 80-5687. *PLIES v. PINE TREE MOTEL, INC., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5691. *GIBSON v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 381 Mass. 372, 409 N. E. 2d 741.

No. 80-5692. *BOYD v. CITY AND COUNTY OF DENVER, COLORADO, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5698. *WILLIAMSON v. DAVIS, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1012.

No. 80-5703. *McGUGAN v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-5704. *McGEE v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1206.

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- No. 80-5706. *COCHRAN v. CITY OF AKRON*. Ct. App. Ohio, Summit County. Certiorari denied.
- No. 80-5709. *WILSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 628.
- No. 80-5710. *AILLON v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 182 Conn. 124, 438 A. 2d 30.
- No. 80-5714. *EVANS v. ANDERSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 214.
- No. 80-5716. *BALOUN ET AL. v. GENERAL MOTORS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 213.
- No. 80-5720. *STOVER v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 389 So. 2d 1109.
- No. 80-5721. *MEREDITH v. SMITH, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 217.
- No. 80-5731. *NORRIS v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 408 Mich. 857.
- No. 80-5732. *ROSEMAN v. OHIO*. Sup. Ct. Ohio. Certiorari denied.
- No. 80-5733. *HUDSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 736.
- No. 80-5734. *JOHNSON v. CUYAHOGA COUNTY, INC., OHIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 216.
- No. 80-5735. *BUCHANAN v. SEARCY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 213.

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No. 80-5736. *JOHNSON v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO*. C. A. 6th Cir. Certiorari denied.

No. 80-5737. *PARO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

No. 80-5738. *NAPOLEON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 80-5739. *AMOS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 627 F. 2d 237.

No. 80-5744. *FRAZIER, AKA BEACHUM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5745. *ATKINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5749. *MARTINEZ v. SMITH, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 618.

No. 80-5753. *ROUSE v. UNITED STATES*; and

No. 80-5754. *ADDERLY ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: No. 80-5753, 633 F. 2d 212; No. 80-5754, 633 F. 2d 211.

No. 80-5756. *FORD v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5759. *BERZITO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 498 F. 2d 1398.

No. 80-5760. *ROBERTS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 239.

No. 80-5761. *GRAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 494.

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No. 80-5766. *SIMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1092.

No. 80-5771. *CHIPMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 211.

No. 80-5772. *DUKES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1204.

No. 80-5774. *THOMAS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-5776. *HAMMORK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1358.

No. 80-5784. *BINGHAM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 548.

No. 80-5786. *DOZIER v. SOWDERS, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-5788. *BENNETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1309.

No. 80-5792. *JOHL v. TOWN OF GROTON ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1345.

No. 80-5797. *ULMER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1015.

No. 80-5804. *EYRICH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1205.

No. 80-5806. *EMASSAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1205.

No. 80-5832. *ALLEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 1353.

No. 80-5837. *IQBAL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1220.

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No. 80-5838. *FERRELL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5843. *HINES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 612 F. 2d 507.

No. 80-5844. *ZITEK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 2d 940.

No. 80-5866. *PROCA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 223.

No. 80-5867. *VASQUEZ-MORALES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 733.

No. 79-1922. *CENTRAL OF GEORGIA RAILROAD CO. v. HENDLEY*. C. A. 5th Cir. Motion of National Railway Labor Conference for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 609 F. 2d 1146.

No. 79-2014. *ANDERSON ET AL. v. WINSETT*. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE would grant certiorari and reverse the judgment summarily. Reported below: 617 F. 2d 996.

JUSTICE WHITE, with whom JUSTICE REHNQUIST joins, dissenting.

In *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 12 (1979), we held that a Nebraska statute created an "expectancy of release [on parole]" that was "entitled to some measure of constitutional protection." The Nebraska statute provided in part:

"Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it *shall* order his release *unless* it is of the opinion that his release should be deferred because:

"(a) There is a substantial risk that he will not conform to the conditions of parole;

“(b) His release would depreciate the seriousness of his crime or promote disrespect for law;

“(c) His release would have a substantially adverse effect on institutional discipline; or

“(d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law-abiding life when released at a later date.”<sup>1</sup>

We emphasized that our decision rested on the “unique structure and language” of the Nebraska statute and cautioned that whether any other state statute created a liberty interest would have to be decided on a case-by-case basis. *Ibid.*

In this case respondent, a Delaware state prisoner, filed suit against petitioners, state prison officials, alleging that petitioners violated his due process rights when they denied him work release. The Court of Appeals for the Third Circuit examined the Delaware statutory provisions and regulations governing work release programs in light of *Greenholtz* and concluded that a liberty interest was implicated when respondent was denied work release. The court conceded that Delaware prison officials exercise substantial discretion in making work release decisions but concluded that their discretion is not unbounded. It determined that under Delaware law prison officials must exercise their discretion “consistently with the purpose and policy behind work release.”<sup>2</sup> The court also observed that the State had established “an elaborate institutional system” for processing work release applications.<sup>3</sup> Two separate committees must evaluate the inmate’s fitness for work release and recommend that work release be granted before the inmate’s application may be sub-

<sup>1</sup> Neb. Rev. Stat. § 83-1,114 (1) (1976) (emphasis added). See *Greenholtz v. Nebraska Penal Inmates*, 442 U. S., at 11.

<sup>2</sup> *Winsett v. McGinnes*, 617 F. 2d 996, 1007 (1980) (en banc).

<sup>3</sup> *Id.*, at 1006.

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mitted to the prison superintendent. In light of this three-tier review system, the court concluded that the superintendent could not reject work release applications for reasons that were unrelated to the purposes of the work release program. Since Delaware prison officials do not have unlimited discretion to deny work release to an inmate who meets the basic criteria for eligibility, the Court of Appeals held that under *Greenholtz* respondent had established an "expectancy of [work] release" that was entitled to constitutional protection.<sup>4</sup> The court clearly rejected the view expressed in the dissenting opinion that respondent could not prevail under the standard established in *Greenholtz* since Delaware law does not provide that an eligible inmate *shall* be granted work release *unless* prison authorities determine, based on certain statutory criteria, that work release ought to be denied.

We did not expressly state in *Greenholtz* that the "shall . . . unless" language of the Nebraska statute was the critical factor underlying our determination that the statute created a liberty interest. However, other Courts of Appeals have examined parole release statutes lacking mandatory language and have concluded in light of *Greenholtz* that those statutes do not create liberty interests. See *Wagner v. Gilligan*, 609 F. 2d 866 (CA6 1979); *Boothe v. Hammock*, 605 F. 2d 661 (CA2 1979); *Shirley v. Chestnut*, 603 F. 2d 805 (CA10 1979).<sup>5</sup>

I believe this Court should grant certiorari to clarify the

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<sup>4</sup> The court distinguished this case from *Meachum v. Fano*, 427 U. S. 215 (1976), in which we rejected the respondent state prisoners' argument that they had a constitutionally protected liberty interest in remaining in particular prisons. The state statute involved in *Meachum* permitted prison officials to transfer prisoners to other state correctional institutions "for whatever reason or for no reason at all." *Id.*, at 228.

<sup>5</sup> The Court of Appeals for the Ninth Circuit has stated that the presence of mandatory language is an important factor to be considered in determining whether a statute creates a liberty interest. *Bowles v. Tenant*, 613 F. 2d 776, 778 (1980).

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implications of the *Greenholtz* decision by considering whether the Delaware statute and regulations involved in this case created a constitutionally protected liberty interest.

No. 79-2059. AMERICAN ELECTRIC POWER CO., INC., ET AL. v. CITY OF MISHAWAKA, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 616 F. 2d 976.

No. 80-174. CALIFORNIA v. PATRICK STEVEN W. Ct. App. Cal., 2d App. Dist. Certiorari denied. THE CHIEF JUSTICE would grant certiorari and reverse the judgment. JUSTICE BLACKMUN would grant certiorari and set case for oral argument. Reported below: 104 Cal. App. 3d 615, 163 Cal. Rptr. 848.

No. 80-233. MICHIGAN v. WALTON. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 80-382. GENERAL PUBLIC UTILITIES CORP. ET AL. v. SUSQUEHANNA VALLEY ALLIANCE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 619 F. 2d 231.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE POWELL join, dissenting.

In this case the Court of Appeals for the Third Circuit held that a private party seeking to compel agency compliance with the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, 42 U. S. C. § 4321 *et seq.*, need not exhaust administrative remedies prior to filing suit in Federal District Court. Because I believe that a long series of our cases heretofore regarded as settled law require such exhaustion, *e. g.*, *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41 (1938), I dissent from the denial of the petition for certiorari and would set the case for argument.

The case arises out of the effort of the Nuclear Regulatory

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REHNQUIST, J., dissenting

Commission and petitioners, the owners and operators of Three Mile Island Nuclear Station, to treat and eventually dispose of radioactive wastewater resulting from the accident occurring at Three Mile Island in March 1979. In May 1979, respondents commenced this action against the Commission and petitioners, alleging that the Commission had approved petitioners' construction and operation of a facility to decontaminate the radioactive wastewater, known as EPICOR II, and planned to allow the processed water to be discharged in the Susquehanna River. Specifically, respondents alleged that the Commission had failed to prepare an environmental impact statement for the EPICOR II system, in violation of NEPA, 42 U. S. C. § 4332, and had failed to require petitioners to secure a license or construction permit for the system, in violation of the Atomic Energy Act of 1954, 68 Stat. 919, as amended, 42 U. S. C. § 2011 *et seq.* The complaint also charged that the possible discharge of "high-level radioactive" water into the river would violate both the Federal Water Pollution Control Act (FWPCA), § 301 (f), 86 Stat. 846, 33 U. S. C. § 1311 (f), and a federal constitutional right to "be born and to live mentally and physically unimpaired."

The District Court found that respondents had failed to exhaust their administrative remedies under the Atomic Energy Act and dismissed the complaint for lack of subject-matter jurisdiction. It noted that the administrative remedy available under the Act, 10 CFR § 2.206 (1980),<sup>1</sup> "allows

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<sup>1</sup> Title 10 CFR § 2.206 (1980) provides in relevant part:

"(a) Any person may file a request for the Director of Nuclear Reactor Regulation . . . to institute a proceeding . . . to modify, suspend or revoke a license, or for such other action as may be proper. . . .

"(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director . . . shall either institute the requested proceeding in accordance with the subpart or shall advise the person who made the request in writing that no proceeding will be

plaintiffs to ask the [Commission] for all the relief sought in this court." It further noted that the Act makes any final decision of the Commission reviewable exclusively in the courts of appeals. 42 U. S. C. § 2239 (b) and 28 U. S. C. § 2342.

The Court of Appeals affirmed in part and reversed in part. Although it affirmed the District Court's dismissal of claims arising under the Atomic Energy Act on the grounds that the Commission has exclusive jurisdiction over licensing actions, 42 U. S. C. § 2239 (b), and that private parties may not judicially enforce the Act, 42 U. S. C. § 2271 (c), it nonetheless found that the District Court had jurisdiction to *compel* Commission compliance with NEPA. It reasoned that where the Commission "fragments" its environmental review of projects, as is allegedly the case here, the district courts could prohibit such fragmentation. The court went on to hold that the District Court had jurisdiction over respondents' FWPCA and constitutional claims, reasoning that respondents had satisfied the conditions of the FWPCA's citizen-suit provision, 33 U. S. C. § 1365 (a), and that the District Court was the "appropriate" forum to consider the constitutional claims.

Petitioners contend, correctly in my view, that the decision below ignored the "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.*, *supra*, at 50-51; *McKart v. United States*, 395 U. S. 185, 193, 195 (1969). Even the Solicitor General, who does not seek certiorari in this case, "agrees with petitioners that the [C]ourt of [A]ppeals erred in a number of its rulings and that its decision is contrary to the prior decisions of this Court." Memorandum for United States Nuclear Regulatory Commission 1.

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instituted in whole or in part, with respect to his request, and the reasons therefor."

The gist of petitioners' argument is that Congress has placed with the Commission the authority to regulate its licensees' handling of radioactive materials and has limited judicial review of the Commission's decisions to the courts of appeals. This Court has recognized that the adequacy of Commission compliance with NEPA, not just with the Atomic Energy Act, is reviewable solely in the courts of appeals pursuant to 42 U. S. C. § 2239 (b) and 28 U. S. C. § 2342. See *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U. S. 519, 526-527 (1978). Indeed, the decision below is in direct conflict with a decision of the Court of Appeals for the District of Columbia Circuit which held that where a statutory review procedure assigns to the courts of appeals exclusive review responsibility over agency action—as does the Atomic Energy Act—a district court may not exercise concurrent jurisdiction to resolve allegations of agency noncompliance with NEPA. *City of Rochester v. Bond*, 195 U. S. App. D. C. 345, 354-355, 603 F. 2d 927, 936-937 (1979).

The "fragmentation" of judicial review in this case results not from the action of the Commission, but from the decision below which splinters judicial review of claims that arise essentially out of the same factual setting. It is anomalous to hold, as did the court below, that the Atomic Energy Act claims are reviewable exclusively in the Court of Appeals, while claims arising under NEPA, FWPCA, and the Constitution are reviewable originally in the District Court.<sup>2</sup> The

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<sup>2</sup> Although it is clear that the court below erred with respect to the NEPA claim, I suggest that it is on no firmer footing with respect to the FWPCA and constitutional claims. It appears, for example, that the Commission has exclusive jurisdiction to regulate the discharge of the type of radioactive water involved in this case, see *Train v. Colorado Public Interest Research Group*, 426 U. S. 1, 16-17 (1976). In any event, all of the claimed violations arise out of the very activities which are subject to Commission regulatory control, and considerations of judicial economy require that all of the claims be resolved in the first instance by the Commission.

decision below means that the District Court, the Court of Appeals, and the Commission will all exercise concurrent jurisdiction over the same claims at the same time. Such a trifurcated review procedure is not only inefficient, duplicating judicial and administrative effort, but more importantly, it leads to premature interference with agency processes, contrary to the policy underlying direct review statutes.<sup>3</sup>

Although the Solicitor General concedes that the decision below was wrong, he asserts that the case is not worthy of this Court's attention because the decision will be regarded merely as an "anomaly that cannot be reconciled with this Court's settled teaching on exhaustion of administrative remedies." Memorandum for United States Nuclear Regulatory Commission 5. I am not so sanguine. I fear that unless accorded plenary review here the decision below will spawn

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<sup>3</sup> The problems of segregated review are amply illustrated by the facts of this case. On May 25, 1979, the same day suit was filed in this case, the Commission issued a statement prohibiting the treatment or discharge of contaminated water until it had completed an environmental assessment. During the next several months, the Commission staff prepared an environmental assessment on the proposed operation of EPICOR II. The Commission eventually published a draft Environmental Impact Statement, 45 Fed. Reg. 54495 (1980), and issued an opinion on October 16, 1980, permitting the processing of radioactive wastewater by EPICOR II, but specifically prohibiting any discharge of the processed water pending further study. Respondents subsequently filed a petition for review of that order in the Court of Appeals for the Third Circuit pursuant to 42 U. S. C. § 2239. That case raises the same NEPA issues presented in this case. Thus, the District Court, the Court of the Appeals for the Third Circuit, and the Commission are presently exercising concurrent jurisdiction over the same issues. This sort of procedural chaos is invited by the decision of the Court of Appeals in this case.

What may well be the better course both legally and practically is suggested by a recent case in the District Court for the District of Columbia which raised virtually the same issues presented here. *City of Lancaster v. NRC*, No. 79-1368. There the court dismissed with prejudice plaintiffs' suit on the basis, *inter alia*, of the Commission's adherence to its May 25, 1979, statement.

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others like it allowing circumvention of agency review and pursuit of NEPA claims directly in the district courts. Accordingly, I dissent from the denial of the petition for certiorari.

No. 80-410. *WASSERMAN, TRUSTEE v. WASHINGTON*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 623 F. 2d 1169.

No. 80-747. *MICHIGAN v. ANDERSON*. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 409 Mich. 474, 295 N. W. 2d 482.

No. 80-872. *ILLINOIS v. SAVORY*. App. Ct. Ill., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 82 Ill. App. 3d 767, 403 N. E. 2d 118.

No. 80-293. *UNITEX LTD. ET AL. v. DAN RIVER, INC.* C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 624 F. 2d 1216.

No. 80-499. *WILLIAMS ET AL. v. PACIFIC MARITIME ASSN. ET AL.* C. A. 9th Cir. Motion of Teamsters for a Democratic Union et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below; 617 F. 2d 1321.

No. 80-529. *CALGON CORP. v. DAVIS*. C. A. 3d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 627 F. 2d 674.

No. 80-730. *HELERINGER v. KENTUCKY BAR ASSN.* Sup. Ct. Ky. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 602 S. W. 2d 165.

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No. 80-628. *COWLES COMMUNICATIONS, INC. v. ALIOTO*. C. A. 9th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 623 F. 2d 616.

No. 80-521. *LOUDOUN TIMES-MIRROR ET AL. v. ARCTIC Co., LTD., T/A IROQUOIS RESEARCH INSTITUTE*. C. A. 4th Cir. Motion of Reporters' Committee for Freedom of the Press et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 624 F. 2d 518.

No. 80-788. *ADAMS EXTRACT CO. ET AL. v. FRANNEY ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 620 F. 2d 1086.

No. 80-620. *AYOUB ET AL. v. MORRISON ET AL.* C. A. 3d Cir. Motions of Pennsylvania Bar Association, Pennsylvania Conference of Trial Judges, and Alexander F. Barbieri for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 627 F. 2d 669.

No. 80-791. *BLITSTEIN v. UNITED STATES*. C. A. 10th Cir. Motion of National Association of Criminal Defense Lawyers, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 626 F. 2d 774.

No. 80-5098. *GREEN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 611 P. 2d 262.

No. 80-5307. *LIVINGSTON v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 614 P. 2d 1118.

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- No. 80-5520. *MASSIE v. SUMNER, WARDEN*. C. A. 9th Cir.;
- No. 80-5565. *WILLIAMS v. LOUISIANA*. Sup. Ct. La.;
- No. 80-5605. *SHRINER v. FLORIDA*. Sup. Ct. Fla.;
- No. 80-5644. *PEEK v. ZANT, WARDEN*. Sup. Ct. Ga.;
- No. 80-5672. *COLLINS v. GEORGIA*. Sup. Ct. Ga.;
- No. 80-5674. *HAMILTON v. GEORGIA*. Sup. Ct. Ga.;
- No. 80-5715. *CLARK v. LOUISIANA*. Sup. Ct. La.;
- No. 80-5751. *BALDWIN v. LOUISIANA*. Sup. Ct. La.; and
- No. 80-5778. *WILSON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 80-5520, 624 F. 2d 72; No. 80-5565, 383 So. 2d 369; No. 80-5605, 386 So. 2d 525; No. 80-5672, 246 Ga. 261, 271 S. E. 2d 352; No. 80-5674, 246 Ga. 264, 271 S. E. 2d 173; No. 80-5715, 387 So. 2d 1124 and 389 So. 2d 1335; No. 80-5751, 388 So. 2d 664; No. 80-5778, 246 Ga. 62, 268 S. E. 2d 895.

JUSTICE BRENNAN and 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. 79-1820. *BADGER v. UNITED STATES ET AL.*, *ante*, p. 889;
- No. 79-1857. *ALCOA STEAMSHIP Co., INC. v. M/V NORDIC REGENT ET AL.*, *ante*, p. 890;
- No. 79-2047. *SIMMONS v. IOWA ET AL.*, *ante*, p. 842;
- No. 79-6704. *WESTBROOK v. BALKCOM, WARDEN*, *ante*, p. 999;
- No. 79-6715. *CULBERSON v. MISSISSIPPI*, *ante*, p. 986;
- No. 79-6872. *THOMAS v. MUSKIE, SECRETARY OF STATE, ET AL.*, *ante*, p. 982; and
- No. 79-6873. *THOMAS v. MUSKIE, SECRETARY OF STATE, ET AL.*, *ante*, p. 982. Petitions for rehearing denied.

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- No. 79-6884. *FAIR v. GEORGIA*, *ante*, p. 986;
- No. 80-137. *DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT OF LOUISIANA v. BEAIRD-POULAN, INC.*, *ante*, p. 971;
- No. 80-166. *COLBY v. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES*, *ante*, p. 900;
- No. 80-296. *EMPRESAS ELECTRONICAS WALSER, INC., ET AL. v. UNITED STATES*, *ante*, p. 953;
- No. 80-313. *SUTTON v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS*, *ante*, p. 944;
- No. 80-321. *STONE ET AL. v. GRAHAM, SUPERINTENDENT OF PUBLIC INSTRUCTION OF KENTUCKY*, *ante*, p. 39;
- No. 80-322. *KORN v. OHIO*, *ante*, p. 944;
- No. 80-334. *SILVERMAN v. UNITED STATES*, *ante*, p. 954;
- No. 80-344. *QUINAULT PACIFIC CORP. ET AL. v. AETNA BUSINESS CREDIT, INC., ET AL.*, *ante*, p. 954;
- No. 80-345. *QUINAULT PACIFIC CORP. ET AL. v. AETNA BUSINESS CREDIT, INC., ET AL.*, *ante*, p. 954;
- No. 80-438. *GRAYDON v. PASADENA REDEVELOPMENT AGENCY ET AL. (HAHN, INC., REAL PARTY IN INTEREST)*, *ante*, p. 983;
- No. 80-556. *CENTRAL LIQUOR CO. ET AL. v. UNITED STATES*, *ante*, p. 1022;
- No. 80-5061. *O'CONNOR ET UX. v. PALLUDAN CORP.*, *ante*, p. 944;
- No. 80-5151. *BAUN v. CIVILETTI, ATTORNEY GENERAL, ET AL.*, *ante*, p. 957;
- No. 80-5256. *SANDERS ET AL. v. HANKINS*, *ante*, p. 959;
- No. 80-5308. *BECKER v. EVANS*, *ante*, p. 944;
- No. 80-5356. *BLAKNEY v. SCHOOL DISTRICT OF PHILADELPHIA*, *ante*, p. 985;
- No. 80-5357. *BLAKNEY v. SCHOOL DISTRICT OF PHILADELPHIA*, *ante*, p. 985; and
- No. 80-5384. *WOODARD v. WACHOVIA BANK & TRUST CO. ET AL.*, *ante*, p. 996. Petitions for rehearing denied.

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- No. 80-5404. *PANA v. CUYLER ET AL.*, *ante*, p. 961;  
No. 80-5406. *JOHL v. PERKINS*, *ante*, p. 996;  
No. 80-5407. *PATTERSON v. MERCER ET AL.*, *ante*, p. 996;  
No. 80-5408. *PETERS v. BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. ET AL.*, *ante*, p. 996;  
No. 80-5427. *ROBERTS v. MCCOY ET AL.*, *ante*, p. 977;  
No. 80-5440. *SHAO FEN CHIN, ADMINISTRATOR v. ST. LUKE'S HOSPITAL CENTER ET AL.*, *ante*, p. 988;  
No. 80-5528. *CONRAD v. RODINO, MEMBER OF CONGRESS, ET AL.*, *ante*, p. 977;  
No. 80-5529. *CONRAD v. CARTER, PRESIDENT OF THE UNITED STATES, ET AL.*, *ante*, p. 977; and  
No. 80-5532. *MAHL v. BOARD OF TRUSTEES OF FIRE FIGHTERS PENSION AND RELIEF FUND FOR THE CITY OF NEW ORLEANS*, *ante*, p. 1019. Petitions for rehearing denied.
- No. 80-337. *ROBERTS v. SEARS, ROEBUCK & Co.*, *ante*, p. 975. Petition for rehearing denied. JUSTICE STEWART took no part in the consideration or decision of this petition.
- No. 79-1750. *FINGAR v. SEABOARD COAST LINE RAILROAD Co.*, *ante*, p. 887; and  
No. 80-297. *HOLDING v. BVA CREDIT CORP. ET AL.*, *ante*, p. 975. Petitions for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of these petitions.
- No. 79-6562. *KULWIEC v. AIR LINE PILOTS ASSN.*, *ante*, p. 850; and  
No. 79-6727. *KULWIEC v. UNITED AIR LINES, INC.*, *ante*, p. 858. Motion for leave to file petition for rehearing denied.

JANUARY 19, 1981

*Order Appointing Clerk*

It is ordered that Alexander L. Stevas be appointed Clerk of this Court to succeed Michael Rodak, Jr., effective at the commencement of business January 17, 1981, and that he take the oath of office as required by statute.

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*Order Appointing Chief Deputy Clerk*

It is ordered that Francis J. Lorson be appointed Chief Deputy Clerk of this Court to succeed Alexander L. Stevas effective at the commencement of business January 17, 1981, and that he take the oath of office as required by statute.

*Appeal Dismissed*

No. 80-806. *DROCIAK v. SUPREME COURT OF NEW HAMPSHIRE*. Appeal from Sup. Ct. N. H. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Vacated and Remanded.* (See also No. 80-5618, *ante*, p. 405.)

No. 80-431. *MCALPIN ET AL. v. ARMSTRONG, RECEIVER, ET AL.* C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded with instructions that the appeal be dismissed. *Firestone Tire & Rubber Co. v. Risjord*, *ante*, p. 368. Reported below: 625 F. 2d 433.

*Miscellaneous Orders*

No. A-576. *O'HAIR ET AL. v. COOKE ET AL.* C. A. 5th Cir. Application for a temporary injunction, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-199. *IN RE DISBARMENT OF FISCHER*. Disbarment entered. [For earlier order herein, see *ante*, p. 989.]

No. D-204. *IN RE DISBARMENT OF SCHLATER*. Disbarment entered. [For earlier order herein, see *ante*, p. 989.]

No. D-214. *IN RE DISBARMENT OF TOOMEY*. It is ordered that Regis Lee Toomey of Houston, 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.

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No. D-210. *IN RE DISBARMENT OF BURKA*. Disbarment entered. [For earlier order herein, see *ante*, p. 990.]

No. D-215. *IN RE DISBARMENT OF LONG*. It is ordered that George Wayne Long of San Antonio, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-216. *IN RE DISBARMENT OF MEHTA*. It is ordered that Mahendra R. Mehta of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-217. *IN RE DISBARMENT OF DOUGLAS*. It is ordered that George R. Douglas, Jr., of Bethesda, Md., 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. 83, Orig. *MARYLAND ET AL. v. LOUISIANA*. Motion of Columbia Gas Transmission Corp. et al. for leave to file a response to Louisiana's reply granted. JUSTICE POWELL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, *ante*, p. 1058.]

No. 79-1144. *TEXAS INDUSTRIES, INC. v. RADCLIFF MATERIALS, INC., ET AL.* C. A. 5th Cir. [Certiorari granted, *ante*, p. 949.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Petitioner also allotted an additional 10 minutes for oral argument. Motion of Mead Corp. for leave to participate in oral argument as *amicus curiae* denied.

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No. 79-1711. MIDDLESEX COUNTY SEWERAGE AUTHORITY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1754. JOINT MEETING OF ESSEX AND UNION COUNTIES *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1760. CITY OF NEW YORK ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.; and

No. 80-12. ENVIRONMENTAL PROTECTION AGENCY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 917.] Motion of petitioners in No. 79-1754 for additional time for oral argument and for designation of counsel to argue on behalf of the nonfederal parties denied. Motion of petitioners in No. 79-1711 for designation of counsel to argue on behalf of the nonfederal parties denied.

No. 79-1777. COMPLETE AUTO TRANSIT, INC., ET AL. *v.* REIS ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 898.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 79-1944. J. TRUETT PAYNE CO., INC. *v.* CHRYSLER MOTORS CORP. C. A. 5th Cir. [Certiorari granted, *ante*, p. 819.] Motion of Cessna Aircraft Co. for leave to file a brief as *amicus curiae* granted.

No. 80-180. McDANIEL ET AL. *v.* SANCHEZ ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 898.] Motions of Lawyers' Committee for Civil Rights Under Law and American Civil Liberties Union for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for divided argument granted.

No. 80-429. COUNTY OF WASHINGTON, OREGON, ET AL. *v.* GUNTHER ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 950.] Motion of American Society for Personnel Administration for leave to file a brief as *amicus curiae* granted.

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No. 80-827. SCANLON, SECRETARY OF EDUCATION OF PENNSYLVANIA *v.* BATTLE ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-5116. JENKINS *v.* BREWER. C. A. 7th Cir. [Certiorari granted, *ante*, p. 981.] Motions of John Howard Association and National Prison Project et al. for leave to file briefs as *amici curiae* granted.

No. 80-5782. IN RE LOHMANN; and

No. 80-5805. IN RE WATKINS. Petitions for writs of mandamus denied.

#### *Certiorari Granted*

No. 78-1789. ARKANSAS LOUISIANA GAS CO. *v.* HALL ET AL. Sup. Ct. La. Certiorari granted. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 368 So. 2d 984.

No. 80-148. ROBBINS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari granted. Reported below: 103 Cal. App. 3d 34, 162 Cal. Rptr. 780.

No. 80-780. ROWAN COS., INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 624 F. 2d 701.

No. 80-795. HEFFRON, SECRETARY AND MANAGER OF THE MINNESOTA STATE AGRICULTURAL SOCIETY BOARD OF MANAGERS, ET AL. *v.* INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., ET AL. Sup. Ct. Minn. Certiorari granted. Reported below: 299 N. W. 2d 79.

No. 80-328. NEW YORK *v.* BELTON. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 50 N. Y. 2d 447, 407 N. E. 2d 420.

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No. 80-289. UNITED MINE WORKERS OF AMERICA, LOCAL No. 1854, ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL.; and

No. 80-692. NATIONAL LABOR RELATIONS BOARD *v.* AMAX COAL Co., A DIVISION OF AMAX, INC., ET AL. C. A. 3d Cir. Certiorari in No. 80-289 granted limited to Question 1 presented by the petition. Certiorari in No. 80-692 granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 614 F. 2d 872.

*Certiorari Denied.* (See also No. 80-806, *supra.*)

No. 80-315. SOUTH PACIFIC Co. (PACIFIC LINES) *v.* RICHINS ET AL.; and

No. 80-392. BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES AND CANADA ET AL. *v.* RICHINS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 620 F. 2d 761.

No. 80-386. AMERICAN JEWISH CONGRESS ET AL. *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 73 App. Div. 2d 881, 424 N. Y. S. 2d 338.

No. 80-446. UNION PACIFIC RAILROAD Co. *v.* FLETCHER. C. A. 8th Cir. Certiorari denied. Reported below: 621 F. 2d 902.

No. 80-470. AIR LINE PILOTS ASSN., INTERNATIONAL, AFL-CIO *v.* TRANS INTERNATIONAL AIRLINES, INC.;

No. 80-478. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION, ET AL. *v.* TRANS INTERNATIONAL AIRLINES, INC.; and

No. 80-480. TRANS INTERNATIONAL AIRLINES, INC. *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AIRLINE DIVISION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 F. 2d 949.

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No. 80-516. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* STEVENS ET AL. Ct. App. D. C. Certiorari denied. Reported below: 413 A. 2d 1305.

No. 80-547. WALLIN ET UX. *v.* CITY OF PORT TOWNSEND ET AL. Ct. App. Wash. Certiorari denied. Reported below: 25 Wash. App. 1041.

No. 80-557. RICH *v.* FLORIDA; and ROTH *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 380 So. 2d 591 (first case); 378 So. 2d 794 (second case).

No. 80-577. HOGAN & HARTSON ET AL. *v.* INTERNATIONAL CONTROLS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 204.

No. 80-603. BAKER *v.* UNITED STATES;

No. 80-677. TURNIPSEED ET AL. *v.* UNITED STATES; and

No. 80-678. FARRIS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 890.

No. 80-622. AJLOUNY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 830.

No. 80-633. HACKENBERGER, DBA RON'S TRUCKING SERVICE *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 628 F. 2d 966.

No. 80-676. SHARGEL, ATTORNEY ON BEHALF OF ALOI *v.* FENTON, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 596 F. 2d 42 and 633 F. 2d 206.

No. 80-699. WELLS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 868.

No. 80-717. KISS *v.* MONMOUTH COUNTY WELFARE BOARD. Super. Ct. N. J., App. Div. Certiorari denied.

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No. 80-719. *HANSHAW v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 80-727. *GREAVES ET UX. v. DEPARTMENT OF REVENUE OF OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: 289 Ore. 511, 614 P. 2d 100.

No. 80-731. *UPJOHN CO. v. TIMM ET VIR*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 536.

No. 80-732. *RUCKER CO. v. SHELL OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 334.

No. 80-750. *WARDLE v. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND*. C. A. 7th Cir. Certiorari denied. Reported below: 627 F. 2d 820.

No. 80-752. *CARNEY v. CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-753. *MOELLER v. BROWNE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 618.

No. 80-761. *FRITO-LAY, INC. v. LOCAL UNION No. 137, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 1354.

No. 80-762. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 978.

No. 80-772. *ENVIRONMENTAL DEFENSE FUND, INC. v. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY*. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 340, 631 F. 2d 922.

No. 80-783. *PARK COUNTY, MONTANA, ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 718.

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No. 80-789. *HAYDEN v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 380 So. 2d 588.

No. 80-793. *DIXILYN CORP. v. RODRIGUE*. C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 537.

No. 80-797. *HART v. MAYOR OF BALTIMORE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 625 F. 2d 13.

No. 80-810. *GARCIA v. GLOOR ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 264.

No. 80-915. *SCHAFFER v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 346.

No. 80-923. *MOORE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 2d 1171.

No. 80-925. *ROSENTHAL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 628.

No. 80-5428. *BOWLEG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 206.

No. 80-5433. *MILLER v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 490 Pa. 457, 417 A. 2d 128.

No. 80-5475. *PASSARO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 938.

No. 80-5555. *KRAMER v. HOPPER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1041.

No. 80-5569. *ENGLAND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 637.

No. 80-5591. *PALMER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 625 F. 2d 830.

No. 80-5659. *BERRY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 193.

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No. 80-5661. *JOHNSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 631 F. 2d 726.

No. 80-5717. *WAGNER v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 80-5741. *GAMBLE v. HESS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5746. *WHITE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 607 F. 2d 203.

No. 80-5747. *STIEHL v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 585 S. W. 2d 716.

No. 80-5748. *COUCH v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 606 S. W. 2d 768.

No. 80-5750. *MURTAUGH v. SMITH, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 217.

No. 80-5762. *LONDON v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-5765. *JACOX v. MEMPHIS CITY BOARD OF EDUCATION ET AL.* Ct. App. Tenn. Certiorari denied. Reported below: 604 S. W. 2d 872.

No. 80-5767. *WHITE v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 80-5773. *MASON v. EDMISTEN, ATTORNEY GENERAL OF NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1350.

No. 80-5777. *HOBSON v. WESTERN AIRLINES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5798. *WALLACE v. CITY OF ROCKY RIVER ET AL.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

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No. 80-5812. COSEY ET AL. v. ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 82 Ill. App. 3d 968, 403 N. E. 2d 656.

No. 80-5853. WALLACE v. McCRONE ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-5877. SHORES v. DIRECTOR, UNITED STATES PAROLE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 733.

No. 80-5882. HALL v. UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 1225.

No. 80-5885. JONES v. MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 288 Md. 618, 420 A. 2d 1241.

No. 80-474. PROCTER & GAMBLE MANUFACTURING Co. v. FISHER. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE would grant certiorari. Reported below: 613 F. 2d 527.

JUSTICE REHNQUIST, dissenting.

The decision by the Court of Appeals for the Fifth Circuit in this case seriously undermines our recent decision in *Teamsters v. United States*, 431 U. S. 324 (1977), and accordingly I would grant certiorari.

Respondent, a black employee of petitioner, filed this Title VII action on July 15, 1974, alleging that petitioner discriminated against black employees in promotion decisions at its Dallas, Tex., plant. Pursuant to the provisions of a collective-bargaining agreement, promotions at the plant are based on seniority when the ability and merit of competing employees are approximately equal. For most jobs at the plant, ability and merit are determined by evaluating work performance, absentee record, disciplinary history, and medical condition. Promotion to certain "critical" jobs is governed by the results of an evaluation system known as the

"total assessment process," involving examinations, interviews, and questionnaires. Employees bidding for promotion to one of the critical jobs are ranked, pursuant to this process, as "strong," "acceptable," "borderline," or "weak." The promotion is awarded to the most senior bidder receiving an "acceptable" rating.

In an opinion filed one month prior to our decision in *Teamsters*, the District Court concluded that petitioner's seniority system was not bona fide under § 703 (h) of Title VII, 42 U. S. C. § 2000e-2 (h),<sup>1</sup> and that petitioner had discriminated against respondent and the class he represented. In *Teamsters*, however, we held that an otherwise valid seniority system did not lose its bona fide character simply because its operation may perpetuate past discrimination. On appeal after *Teamsters*, the Court of Appeals acknowledged that the District Court had erred and that petitioner's seniority system was bona fide and legally valid under § 703 (h). 613 F. 2d 527, 542. The court nonetheless "saved" the District Court decision on the ground that it was based not only on the existence of a seniority system which perpetuated past acts of discrimination but also on a finding of active, current discrimination. The support for this finding consisted of statistical evidence demonstrating that black employees "are marked by their conspicuous presence in the 'lower echelons' of the employee hierarchy." *Id.*, at 543.

The difficulty with the lower court's reliance on this statistical evidence of disparate impact to support the ultimately required finding of discriminatory intent is that the court completely failed to consider the effect of the bona fide seniority system on the significance of the statistics. All of

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<sup>1</sup> This provides, in pertinent part:

"[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system, . . . provided that such differences are not the result of an intention to discriminate because of race . . . ."

the nonmanagement employees with seniority dates predating July 1, 1966, are white. As of January 1, 1977, there were 239 white employees at the plant with more seniority than the most senior black employee. App. to Pet. for Cert. 40a. Thus, despite the highly successful efforts of petitioner to hire blacks<sup>2</sup> the normal operation of the seniority system for promotion results, at least for the present, in the statistical evidence of disparate impact relied upon by the Court of Appeals.

In *Teamsters* we stressed that "the unmistakable purpose of § 703 (h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII . . . even where the employer's pre-Act discrimination resulted in whites having greater existing seniority rights than Negroes." 431 U. S., at 352. See also *California Brewers Assn. v. Bryant*, 444 U. S. 598, 600 (1980). Here, however, the Court of Appeals has premised a Title VII violation on just such a routine application. Surely little is left of *Teamsters* or indeed § 703 (h) if the results of the normal operation of a concededly bona fide seniority system may be used as proof of discrimination. In such a case the employer is found liable not for present racial discrimination but for complying with a seniority system. This is directly contrary to the intent of Congress, embodied in § 703 (h), and the opinion of this Court interpreting that provision in *Teamsters*.

Although statistical evidence of disparate impact in promotions may be a sign of intentional discrimination in some cases, it is not when the statistics are based on the operation of a bona fide seniority system or reflect other nondiscriminatory factors. This has been recognized by other courts employing a more sensitive approach to statistical evidence than that used by the court below. For example, in an opinion remanding a District Court decision for reconsideration in light of *Teamsters*, the Court of Appeals for the Sixth Circuit

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<sup>2</sup> In 1966, 0.5% of petitioner's employees at the Dallas plant were black. As of 1977 this figure had risen to 14.7%, surpassing the percentage of blacks in the area's total work force (12.8%). App. to Pet. for Cert. 40a.

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recognized that “[w]hile the plaintiffs introduced into evidence . . . statistical exhibits . . . that indicated blacks were underrepresented in the better-paying jobs, . . . the statistical differences must be discounted to the extent they are simply a reflection of the impact of the bona fide seniority system . . . .” *Alexander v. Aero Lodge No. 735*, 565 F. 2d 1364, 1382 (1977), cert. denied, 436 U. S. 946 (1978). See also *Movement for Opportunity and Equality v. General Motors Corp.*, 622 F. 2d 1235, 1244–1245 (CA7 1980).

This Court has recognized that “[s]tatistical analyses have served and will continue to serve an important role as one indirect indicator of racial discrimination . . . .” *Mayor of Philadelphia v. Educational Equality League*, 415 U. S. 605, 620 (1974). The blind use of statistics, however, cannot be permitted to undermine the policies of Congress or erode our decisions on substantive law. Disraeli’s familiar “statement that “there are three kinds of lies: lies, damned lies and statistics,” rings true in this case. Because of the growing importance of statistical evidence and the apparent misuse of it below, I would grant certiorari.

No. 80–613. *SHOSHONE TRIBE ET AL. v. DRY CREEK LODGE, INC., ET AL.* C. A. 10th Cir. Motion of Pueblo of Cochiti et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 623 F. 2d 682.

No. 80–5708. *BROWN v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 381 So. 2d 690.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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*Rehearing Denied*

No. 79-6341. MARTIN *v.* LOUISIANA, *ante*, p. 998;

No. 79-6436. RAY *v.* SOWDERS, REFORMATORY SUPERINTENDENT, 446 U. S. 969;

No. 79-6615. DRAKE *v.* ZANT, WARDEN, *ante*, p. 999;

No. 80-421. FOXMAN ET UX. *v.* RENISON, *ante*, p. 993;

No. 80-5103. DOWNS *v.* FLORIDA, *ante*, p. 976;

No. 80-5172. COLE *v.* STEVENSON, CORRECTIONAL SUPERINTENDENT, ET AL., *ante*, p. 1004;

No. 80-5215. DAMPIER *v.* GEORGIA, *ante*, p. 938; and

No. 80-5264. MONTGOMERY *v.* NATIONAL MULTIPLE SCLEROSIS SOCIETY, *ante*, p. 922. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 80-669. BENSON REALITY CORP. ET AL. *v.* KOCH, MAYOR OF NEW YORK CITY, ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 50 N. Y. 2d 994, 409 N. E. 2d 948.

No. 80-897. YOUNG *v.* PARK ET AL. Appeal from Sup. Ct. R. I. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — R. I. —, 417 A. 2d 889.

*Certiorari Granted—Vacated and Remanded.* (See No. 80-568, *ante*, p. 609.)

*Affirmed After Certiorari Granted*

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.\*] Judgment affirmed by an equally

\*[REPORTER'S NOTE: Argued January 15, 1980. Andrew S. Garb argued

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divided Court. JUSTICE STEWART took no part in the consideration or decision of this case.

*Miscellaneous Orders*

No. A-600. RHOADES ET AL. v. ARKANSAS. Ct. App. Ark. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-601. PARTIDO NUEVO PROGRESISTA ET AL. v. PEREZ, ADMINISTRATOR, PUERTO RICO ELECTIONS COMMISSION, ET AL. Application for recall and stay of the mandate of the United States Court of Appeals for the First Circuit, presented to JUSTICE BRENNAN, and by him referred to the Court, denied.

No. A-622 (80-1058). HAMPTON ROADS SHIPPING ASSN. ET AL. v. INTERNATIONAL LONGSHOREMEN'S ASSN. ET AL. C. A. 4th Cir. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. D-218. IN RE DISBARMENT OF KAUFMAN. It is ordered that Sidney B. Kaufman of Westfield, 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.

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the cause for petitioner. With him on the briefs were *Frank M. Keesling* and *Thomas W. Henning*.

*James Dexter Clark* argued the cause for respondents. With him on the brief was *John H. Larson*.

*Ernest J. Brown* argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General McCree*, *Assistant Attorney General Ferguson*, and *Stuart A. Smith*.

Briefs of *amici curiae* urging reversal were filed by *Gerald T. Manpearl* for Pioneer Electronics of America et al.; and by *Charles R. Ajalat*, *pro se*.

This case was restored to the calendar for reargument, 446 U. S. 915, but was not reargued.]

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No. 79-1144. TEXAS INDUSTRIES, INC. *v.* RADCLIFF MATERIALS, INC., ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 949.] Motion of River Cement Co. for leave to file a brief as *amicus curiae* granted.

No. 79-1711. MIDDLESEX COUNTY SEWERAGE AUTHORITY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1754. JOINT MEETING OF ESSEX AND UNION COUNTIES *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.;

No. 79-1760. CITY OF NEW YORK ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL.; and

No. 80-12. ENVIRONMENTAL PROTECTION AGENCY ET AL. *v.* NATIONAL SEA CLAMMERS ASSN. ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 917.] Motion of respondents National Sea Clammers Association and Gosta Lovgren for divided argument denied.

No. 80-120. ST. MARTIN EVANGELICAL LUTHERAN CHURCH ET AL. *v.* SOUTH DAKOTA. Sup. Ct. S. D. [Certiorari granted, *ante*, p. 950.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Motion of Alabama and Nevada for leave to participate in oral argument as *amici curiae* granted, and 10 additional minutes allotted for that purpose.

No. 80-207. CBS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 80-213. AMERICAN BROADCASTING COS., INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 80-214. NATIONAL BROADCASTING CO., INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 950.] Motion of petitioner CBS, Inc., for divided argument granted.

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No. 80-5. *McCARTY v. McCARTY*. Ct. App. Cal., 1st App. Dist. [Probable jurisdiction postponed, *ante*, p. 917.] Motion of National Organization for Women Legal Defense and Education Fund et al. for leave to file a brief as *amici curiae* granted.

No. 80-332. *RHODES, GOVERNOR OF OHIO, ET AL. v. CHAPMAN ET AL.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 951.] Motion of American Medical Association et al. for leave to file a brief as *amici curiae* granted.

No. 80-495. *LESTER ET UX. v. ANDERSON, EXECUTRIX*. Ct. App. La., 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-5303. *BELTRAN v. MYERS, DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH, ET AL.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 951.] Motion of petitioner for summary reversal and remand in part, and for vacation and remand in part due to intervening legislation, denied.

No. 80-5981. *IN RE WOOD*. Petition for writ of habeas corpus denied.

No. 80-5820. *IN RE McDONALD*;

No. 80-5839. *IN RE McCALLUM*; and

No. 80-5847. *IN RE HUSKEY*. Petitions for writs of mandamus denied.

*Probable Jurisdiction Noted*

No. 80-850. *JONES, WARDEN v. HELMS*. Appeal from C. A. 5th Cir. Motion of appellee for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 621 F. 2d 211.

No. 80-901. *MARSHALL, SECRETARY OF LABOR v. DEWEY ET AL.* Appeal from D. C. E. D. Wis. Probable jurisdiction noted. Reported below: 493 F. Supp. 963.

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*Certiorari Granted*

No. 80-710. UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL. *v.* LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 628 F. 2d 812.

No. 80-756. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* GRAY PANTHERS. C. A. D. C. Cir. Certiorari granted. Reported below: 203 U. S. App. D. C. 146, 629 F. 2d 180.

No. 80-802. NATIONAL GERIMEDICAL HOSPITAL AND GERONTOLOGY CENTER *v.* BLUE CROSS OF KANSAS CITY ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 628 F. 2d 1050.

No. 80-808. UNITED STATES *v.* TURKETTE. C. A. 1st Cir. Certiorari granted. Reported below: 632 F. 2d 896.

No. 80-5392. HOWE *v.* CIVILETTI, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 625 F. 2d 454.

*Certiorari Denied.* (See also No. 80-897, *supra.*)

No. 79-1426. BANKERS TRUST Co. *v.* MALLIS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 615 F. 2d 68.

No. 79-5515. BROWN *v.* MITCHELL, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. Reported below: 598 F. 2d 835.

No. 80-146. SHIFFRIN ET AL. *v.* BRATTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 635 F. 2d 1228.

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No. 80-542. *SCHNEIDER v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 269 Ark. 245, 599 S. W. 2d 730.

No. 80-580. *O'HARA ET AL., GUARDIANS v. KOVENS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 625 F. 2d 15.

No. 80-584. *WALSH, ADMINISTRATRIX v. LOUISIANA HIGH SCHOOL ATHLETIC ASSN. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 152.

No. 80-586. *CHEVRON SHIPPING Co. (STANDARD OIL COMPANY OF CALIFORNIA) v. BAPTISTE*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 106 Cal. App. 3d 87, 164 Cal. Rptr. 789.

No. 80-596. *O'DONNELL v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 378 So. 2d 1311.

No. 80-624. *HUFSTEDLER, SECRETARY OF EDUCATION, ET AL. v. BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 599.

No. 80-667. *WITTENBERG ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 621 F. 2d 813.

No. 80-685. *THRIF-TEE, INC. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1351.

No. 80-709. *BADWAN ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 1228.

No. 80-720. *ASSURE COMPETITIVE TRANSPORTATION, INC. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 629 F. 2d 467.

No. 80-726. *IN RE YENGO*. Sup. Ct. N. J. Certiorari denied. Reported below: 84 N. J. 111, 417 A. 2d 533.

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No. 80-735. *BELLINGHAM FROZEN FOODS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 674.

No. 80-821. *JOHNSTON ET AL. v. SILVA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 640.

No. 80-831. *BRONNER v. FULTON ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 388 So. 2d 533.

No. 80-834. *HIGHLANDERS, INC., ET AL. v. ROTHMAN, TRUSTEE*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 116.

No. 80-836. *SIMMONS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 246 Ga. 390, 271 S. E. 2d 468.

No. 80-838. *EVANS ET AL. v. CENTRAL PIEDMONT COMMUNITY COLLEGE*. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 860.

No. 80-842. *KELLY v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. cx.

No. 80-849. *JEFFERSON TRUCKING Co., INC. v. CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS, LOCAL UNION No. 135*. C. A. 7th Cir. Certiorari denied. Reported below: 628 F. 2d 1023.

No. 80-857. *MCQUEENEY v. GLENN ET AL.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 400 N. E. 2d 806.

No. 80-861. *BAGNALL ET AL. v. AIR LINE PILOTS ASSN., INTERNATIONAL, ET AL.*; and

No. 80-886. *AIR LINE PILOTS ASSN., INTERNATIONAL v. BAGNALL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 336.

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No. 80-896. *AVNET v. AVNET*. Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 751.

No. 80-908. *VILLAGE OF HOFFMAN ESTATES v. VILLAGE OF BARRINGTON HILLS ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 81 Ill. 2d 392, 410 N. E. 2d 37.

No. 80-5445. *MARSHALL v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5452. *LACY v. LOCAL 287, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1106.

No. 80-5467. *CORNELL v. IOWA*. C. A. 8th Cir. Certiorari denied. Reported below: 628 F. 2d 1044.

No. 80-5468. *GENTRY v. UTAH*. Sup. Ct. Utah. Certiorari denied.

No. 80-5472. *COLLINS v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 80-5490. *FLEMISTER v. JOHNSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1090.

No. 80-5525. *MAZUS v. DEPARTMENT OF TRANSPORTATION OF PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 870.

No. 80-5548. *GALVEZ-DIAZ v. MCCARTHY, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 191.

No. 80-5573. *CUTHBERTSON ET AL. v. CBS, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 139.

No. 80-5578. *PEISTER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 631 F. 2d 658.

No. 80-5581. *STEELE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 628.

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No. 80-5586. *HILL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1358.

No. 80-5600. *FARBER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 630 F. 2d 569.

No. 80-5608. *SANDERS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 2d 1309.

No. 80-5613. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 830.

No. 80-5615. *FARMER v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5638. *ANYAMELE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 171.

No. 80-5707. *POARCH v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. cxxix.

No. 80-5764. *POPE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 217.

No. 80-5779. *CIRAOLLO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1204.

No. 80-5783. *WATKINS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-5785. *WOOD v. WAINWRIGHT*. C. A. 5th Cir. Certiorari denied.

No. 80-5787. *WILSON v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY*. C. A. 6th Cir. Certiorari denied.

No. 80-5789. *SCHLEMM v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 82 Ill. App. 3d 639, 402 N. E. 2d 810.

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No. 80-5794. *MEIER v. PEARLMAN ET AL.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 401 N. E. 2d 31.

No. 80-5808. *OLIVER v. MARKS, CORRECTIONS COMMISSIONER, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5809. *BONDS-EL v. ANDERSON, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 213.

No. 80-5819. *MCCRARY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 80-5830. *DUNK ET UX. v. MANUFACTURERS LIGHT & HEAT Co.* Sup. Ct. Pa. Certiorari denied.

No. 80-5841. *SHAFFNER v. SOWDERS, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1219.

No. 80-5870. *CLARK v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 598 F. 2d 994 and 622 F. 2d 917.

No. 80-5876. *ALEXANDER v. BORDENKIRCHER, WARDEN.* Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5893. *HARRISON v. LEFEVRE, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 80-5906. *YIN-HO WONG v. CIVILETTI, ATTORNEY GENERAL, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 628.

No. 80-5907. *VANDER PAUWERT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 223.

No. 80-5927. *HAMPTON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 633 F. 2d 927.

No. 80-5928. *SANDERS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 637.

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No. 80-5929. SANDOVAL-CASTANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1205.

No. 80-5931. FLOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 222.

No. 80-5940. WALTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1347.

No. 80-5943. WILLIS ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 633 F. 2d 930.

No. 80-5946. GOODMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 639 F. 2d 770.

No. 80-5947. ALI *v.* GIBSON, COMMISSIONER OF PUBLIC SAFETY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 631 F. 2d 1126.

No. 80-270. PAXMAN ET AL. *v.* HENRICO COUNTY SCHOOL BOARD ET AL.;

No. 80-451. ALBEMARLE COUNTY SCHOOL BOARD *v.* PAXMAN; and

No. 80-452. HENRICO COUNTY SCHOOL BOARD *v.* PAXMAN ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 612 F. 2d 848.

No. 80-341. WERNETH *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 101 Idaho 241, 611 P. 2d 1026.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner seeks review on double jeopardy grounds of his conviction of embezzlement by corporate officer. I would grant the petition for certiorari and reverse the judgment of the Supreme Court of Idaho.

Petitioner was initially charged with the crime of embezzle-

ment by bailee. Idaho Code § 18-2407 (1979). At the start of the trial a jury was empaneled, witnesses were sworn, and testimony by a state witness was taken. 101 Idaho 241, 242, 611 P. 2d 1026, 1027 (1980). Jeopardy had clearly attached. *Crist v. Bretz*, 437 U. S. 28, 38 (1978).

The State then moved to amend the information to charge the additional crime of embezzlement by corporate officer. Idaho Code § 18-2402 (1948). Defense counsel opposed the motion and the trial judge sustained the objection. The State then moved to dismiss the original charge, embezzlement by bailee, and after defense counsel stated and then withdrew his objection, the trial judge dismissed that charge.

Four days later, petitioner was charged with the crime of embezzlement by corporate officer. The charge was based on the same transaction which had given rise to the dismissed charge. Petitioner moved to dismiss on the ground that a new trial would violate his right against double jeopardy, but that motion was denied and petitioner was convicted. Petitioner then appealed to the Idaho Supreme Court, which affirmed the conviction. The Idaho Supreme Court did, however, reject the trial court's finding that petitioner had consented to dismissal of the initial charge of embezzlement by bailee.

I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, applied to the States through the Fourteenth Amendment, requires the prosecution in one proceeding, except in extremely limited circumstances not present here, of "all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring). See *Clift v. Alabama*, 435 U. S. 909 (1978) (BRENNAN, J., dissenting); *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting), and cases collected therein. Accordingly, I would grant the petition for certiorari and reverse the judgment of the Supreme Court of Idaho.

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No. 80-384. MARIN COUNTY DEMOCRATIC CENTRAL COMMITTEE *v.* UNGER. Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 102 Cal. App. 3d 681, 162 Cal. Rptr. 611.

No. 80-571. MISSOURI *v.* SOURS. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE BLACKMUN and JUSTICE REHNQUIST would dismiss the petition for writ of certiorari as moot. Reported below: 603 S. W. 2d 592.

No. 80-639. SULLIVAN *v.* PERINI NORTH RIVER ASSOCIATES ET AL.; and

No. 80-651. FUSCO *v.* PERINI NORTH RIVER ASSOCIATES ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 622 F. 2d 1111.

No. 80-649. EDISON ELECTRIC INSTITUTE ET AL. *v.* COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 80-675. MOORE ET AL. *v.* PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 83 N. J. 572, 417 A. 2d 19.

No. 80-887. BURNS ET AL. *v.* DIOCESE OF NEWARK ET AL. Sup. Ct. N. J. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 83 N. J. 594, 417 A. 2d 31.

No. 80-830. ADVERTISER Co. *v.* FULTON ET AL. Sup. Ct. Ala. Motion of South Carolina Press Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 388 So. 2d 533.

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No. 80-869. *HOTT v. INDIANA*. Ct. App. Ind. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: — Ind. App. —, 400 N. E. 2d 206.

No. 80-878. *OLKON v. MINNESOTA*. Sup. Ct. Minn. Motion of Minnesota Civil Liberties Union for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 299 N. W. 2d 89.

No. 80-5161. *JOHNSON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 611 P. 2d 1137.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner was charged by information on April 1, 1975, in the District Court of Tulsa County, Okla., with the crime of kidnaping for the purpose of extortion. On April 16, 1975, he was charged in the District Court of Osage County, Okla., with the crime of murder in the first degree arising out of the same criminal episode. Following preliminary hearings in both courts, petitioner was bound over for trial. He subsequently moved for and was granted a continuance of the murder trial pending completion of his kidnaping trial.

Petitioner was found guilty of kidnaping and sentenced to 60 years in prison. Petitioner then filed a pleading in the Osage County District Court, entitled "Petition for Writ of Habeas Corpus or Petition for Writ of Prohibition or Petition for Writ of Mandamus," alleging, *inter alia*, that a trial on the first-degree murder charge would violate his federal constitutional right against multiple trials and multiple punishments embodied in the Double Jeopardy Clause of the Fifth Amendment. Before the District Court acted on his pleading, petitioner sought similar relief from the Oklahoma Court of Criminal Appeals, which was denied. The District Court later denied the requested relief.

Petitioner next filed in Osage County District Court a "Plea

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of Former Jeopardy," urging that his kidnaping conviction barred the murder trial on the ground that the two crimes were not separate and distinct offenses. He also moved to strike all references to the kidnaping in the Osage County information. Although the plea and the motion were denied by the District Court, the Court of Criminal Appeals, upon application by petitioner for a writ of mandamus, vacated the trial court's ruling, holding that the plea and motion should have been granted. The court noted, however, that the kidnaping conviction would not prohibit a subsequent prosecution for second-degree murder. Contending that a second-degree murder trial was also barred, petitioner sought a rehearing and a writ of prohibition. The Court of Criminal Appeals, after vacating its previous opinion prohibiting a trial on first-degree murder but allowing a trial on second-degree murder, denied all of petitioner's requests for relief. *Johnson v. Hampton*, 572 P. 2d 1301 (1978).

On petition for certiorari, this Court granted certiorari, vacated the Court of Criminal Appeals decision, and remanded the case for further consideration in light of *Brown v. Ohio*, 432 U. S. 161 (1977), and *Harris v. Oklahoma*, 433 U. S. 682 (1977). *Johnson v. Hampton*, 434 U. S. 947 (1977). On remand, the Court of Criminal Appeals granted a writ of prohibition against a trial for first-degree murder. The information was subsequently amended to charge second-degree murder, and to strike all references to the kidnaping. Petitioner again sought a writ of prohibition from the Court of Criminal Appeals, alleging, *inter alia*, that the trial would violate the Double Jeopardy Clause. The court declined to assume jurisdiction and dismissed the writ. Petitioner then was tried and convicted of second-degree murder, and sentenced to 10 years to life. On appeal, the Court of Criminal Appeals affirmed. 611 P. 2d 1137 (1980).

I would grant the petition for certiorari and reverse the judgment of the Oklahoma Court of Criminal Appeals. I

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adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, applied to the States through the Fourteenth Amendment, requires the prosecution in one proceeding, except in extremely limited circumstances not present here, of "all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring). See *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting), and cases collected therein.\*

No. 80-5514. *SEAY v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 390 So. 2d 11.

No. 80-5823. *DILDINE v. DILDINE ET AL.* Sup. Ct. S. C. Certiorari denied. JUSTICE MARSHALL would grant certiorari.

No. 80-5854. *CAPE v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 246 Ga. 520, 272 S. E. 2d 487.

JUSTICE BRENNAN and 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. 80-320. *COSTELLO v. BOARD OF APPEALS OF THE TOWN OF CONCORD*, *ante*, p. 1011;

No. 80-391. *AKERS v. COMMISSIONER OF INTERNAL REVENUE*, *ante*, p. 993;

No. 80-555. *COTA v. COUNTY OF LOS ANGELES ET AL.*, *ante*, p. 1014; and

No. 80-5493. *LEVASSEUR v. HAWAII*, *ante*, p. 1018. Petitions for rehearing denied.

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\*Respondent argues that petitioner waived his double jeopardy claim in the proceedings below. Respondent's arguments are meritless.

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No. 80-5537. JONES *v.* CIVILETTI, ATTORNEY GENERAL, ET AL., *ante*, p. 1019;

No. 80-5539. GRINAN *v.* GIEGOLD, *ante*, p. 1019; and

No. 80-5561. HANCE *v.* GEORGIA, *ante*, p. 1067. Petitions for rehearing denied.

No. 79-6542. O'HERN *v.* CHICAGO TYPOGRAPHICAL UNION No. 16 ET AL., *ante*, p. 849. Motion for leave to file petition for rehearing denied.

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*Dismissal Under Rule 53*

No. 79-1587. A/S IVARANS REDERI *v.* JOHNSON. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 613 F. 2d 334.

