

ORDERS FROM FEBRUARY 23 THROUGH  
APRIL 8, 1981

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FEBRUARY 23, 1981

*Dismissal Under Rule 53*

No. 80-769. SONITROL CORP. *v.* BENNETT. Ct. App. Ind. Certiorari dismissed under this Court's Rule 53.

*Affirmed on Appeal*

No. 80-714. JEFFERSON COUNTY, COLORADO, ET AL. *v.* UNITED STATES. Affirmed on appeal from C. A. 10th Cir. Reported below: 627 F. 2d 217.

No. 80-805. INTERIM BOARD OF TRUSTEES OF THE WESTHEIMER INDEPENDENT SCHOOL DISTRICT ET AL. *v.* COALITION TO PRESERVE HOUSTON AND THE HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL. Affirmed on appeal from D. C. S. D. Tex. Reported below: 494 F. Supp. 738.

No. 80-801. CONSUMERS UNION OF UNITED STATES, INC., ET AL. *v.* SIEBERT, SUPERINTENDENT OF BANKS OF NEW YORK. Affirmed on appeal from D. C. S. D. N. Y. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

*Appeals Dismissed*

No. 80-697. COALITION TO PRESERVE HOUSTON AND THE HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL. *v.* INTERIM BOARD OF TRUSTEES OF THE WESTHEIMER INDEPENDENT SCHOOL DISTRICT ET AL. Appeal from D. C. S. D. Tex. dismissed for want of jurisdiction. Reported below: 494 F. Supp. 738.

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No. 80-852. *WIESNER v. WILLKIE FARR & GALLAGHER*. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of jurisdiction. Reported below: 76 App. Div. 2d 1044, 428 N. Y. S. 2d 771.

No. 80-5939. *SHAO FEN CHIN, ADMINISTRATOR v. ST. LUKE'S HOSPITAL CENTER ET AL.* Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Reported below: 51 N. Y. 2d 835, 413 N. E. 2d 1173.

No. 80-853. *PENTHOUSE INTERNATIONAL, LTD., ET AL. v. RANCHO LA COSTA, INC., ET AL.* Appeal from Ct. App. Cal., 2d App. Dist. Motion of Times Mirror Co. et al. for leave to file a brief as *amici curiae* granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 106 Cal. App. 3d 646, 165 Cal. Rptr. 347.

No. 80-902. *FLEMING v. COURT OF APPEALS OF NEW YORK*. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-5904. *SITTON v. TEXAS*. Appeal from County Ct. at Law No. 2, Travis County, Tex., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-906. *DAMASCUS COMMUNITY CHURCH v. CLACKAMAS COUNTY, OREGON*. Appeal from Ct. App. Ore. dismissed for want of substantial federal question. Reported below: 45 Ore. App. 1065, 610 P. 2d 273.

No. 80-932. *SOUTHERN PACIFIC TRANSPORTATION Co. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA (CITY OF SALINAS, REAL PARTY IN INTEREST)*. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question.

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No. 80-968. *CITY OF DETROIT v. DETROIT POLICE OFFICERS ASSN. ET AL.* Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. Reported below: 408 Mich. 410, 294 N. W. 2d 68.

No. 80-1014. *CARROLL FEED SERVICE, INC. v. DIRECTOR, ILLINOIS DEPARTMENT OF AGRICULTURE, ET AL.* Appeal from App. Ct. Ill., 2d Dist., dismissed for want of substantial federal question. Reported below: 83 Ill. App. 3d 164, 403 N. E. 2d 762.

No. 80-1055. *REMBOLD, ADMINISTRATOR, ET AL. v. ELIZABETH GAMBLE DEACONESS HOME ASSN., DBA CHRIST HOSPITAL, ET AL.* Appeal from Ct. App. Ohio, Hamilton County, dismissed for want of substantial federal question.

No. 80-5920. *GOODE v. OHIO.* Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question.

No. 80-5902. *DE PRIEST v. BIBLE, COMMISSIONER, TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY, ET AL.* Appeal from Ct. App. Tenn. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE STEWART would note probable jurisdiction and set case for oral argument.

*Certiorari Granted—Affirmed.* (See No. 80-338, *ante*, p. 1.)

*Certiorari Granted—Vacated and Remanded*

No. 80-892. *GAF CORP. v. CHENG.* C. A. 2d Cir. *Certiorari* granted, judgment vacated, and case remanded with instructions that the appeal be dismissed. *Firestone Tire & Rubber Co. v. Risjord*, 449 U. S. 368 (1981). Reported below: 631 F. 2d 1052.

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*Vacated and Remanded After Certiorari Granted*

No. 80-5116. *JENKINS v. BREWER*. C. A. 7th Cir. [Certiorari granted, 449 U. S. 981.] Upon consideration of the motion of respondent to dismiss the writ of certiorari as improvidently granted, the judgment is vacated and the case is remanded for further consideration in light of the Civil Rights of Institutionalized Persons Act, Pub. L. 96-247, 94 Stat. 349.

*Miscellaneous Orders*

No. A-589. *PRATT v. UNITED STATES*. Application for transfer of custody, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-592 (80-1331). *FLORIDA v. MALONE*. Sup. Ct. Fla. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-633. *COOPER v. COOPER*. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-670. *CALIFORNIA v. VELASQUEZ*; and

No. A-680. *CALIFORNIA v. LANPHEAR*. Sup. Ct. Cal. The temporary stays heretofore entered by JUSTICE REHNQUIST are vacated and the applications for stay are denied.

No. D-38. *IN RE DISBARMENT OF DONNELLY*. John J. Donnelly, Jr., of Washington, D. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 24, 1975 [420 U. S. 941], is hereby discharged.

No. D-192. *IN RE DISBARMENT OF CRUMPACKER*. Disbarment entered. [For earlier order herein, see 446 U. S. 933].

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No. D-195. IN RE DISBARMENT OF CORY. Disbarment entered. [For earlier order herein, see 449 U. S. 979.]

No. D-201. IN RE DISBARMENT OF NOONAN. Disbarment entered. [For earlier order herein, see 449 U. S. 978.]

No. D-207. IN RE DISBARMENT OF WALSH. It having been reported to the Court by Robert O'Connor, of Omaha, Neb., that Bernard Walsh, Jr., has died, the rule to show cause, heretofore issued on November 10, 1980 [449 U. S. 979], is hereby discharged.

No. D-209. IN RE DISBARMENT OF PATT. Disbarment entered. [For earlier order herein, see 449 U. S. 990.]

No. 85, Orig. TEXAS *v.* OKLAHOMA. Report of the Special Master on motion of Texas Power & Light Co. for leave to intervene received and ordered filed. Exceptions, if any, with supporting briefs to the Report may be filed within fourteen days. Reply briefs, if any, to such Exceptions may be filed within seven days. [For earlier order herein, see, *e. g.*, 449 U. S. 990.]

No. 79-1144. TEXAS INDUSTRIES, INC. *v.* RADCLIFF MATERIALS, INC., ET AL. C. A. 5th Cir. [Certiorari granted, 449 U. S. 949.] Motion of Corrugated Container Class in M. D. L. 310 (SD Tex.) for leave to file a brief as *amicus curiae* granted.

No. 79-1794. MICHIGAN *v.* SUMMERS. Sup. Ct. Mich. [Certiorari granted, 449 U. S. 898.] Motion of American Civil Liberties Union for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 80-242. LEHMAN, SECRETARY OF THE NAVY *v.* NAKSHIAN. C. A. D. C. Cir. [Certiorari granted *sub nom.* *Hidalgo v. Nakshian*, 449 U. S. 1009.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

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No. 79-1943. *ALESSI ET AL. v. RAYBESTOS-MANHATTAN, INC., ET AL.* C. A. 3d Cir. [Probable jurisdiction noted, 449 U. S. 949]; and

No. 80-193. *BUCZYNSKI ET AL. v. GENERAL MOTORS CORP. ET AL.* C. A. 3d Cir. [Certiorari granted, 449 U. S. 950.] Motion of ERISA Industry Committee for leave to file a brief as *amicus curiae* in No. 80-193 granted. Motions of Chamber of Commerce of the United States of America, Allegheny-Ludlum Industries, Inc., et al., and National Steel Corp. for leave to file briefs as *amici curiae* granted. Joint motion of petitioners in No. 80-193 and appellants in No. 79-1943 for divided argument granted.

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, 449 U. S. 950.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 80-251. *ROSTKER, DIRECTOR OF SELECTIVE SERVICE v. GOLDBERG ET AL.* D. C. E. D. Pa. [Probable jurisdiction noted, 449 U. S. 1009.] Motion of Stacey Acker et al. for leave to participate in oral argument as *amici curiae* denied.

No. 80-396. *CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC., ET AL.* C. A. 1st Cir. [Certiorari granted, 449 U. S. 1060.] Motion of James J. Clancy for leave to file a brief as *amicus curiae* granted.

No. 80-332. *RHODES, GOVERNOR OF OHIO, ET AL. v. CHAPMAN ET AL.* C. A. 6th Cir. [Certiorari granted, 449 U. S. 951.] Motion of State Public Defender of California for leave to file a brief as *amicus curiae* granted. Motion of the Attorney General of Oregon for leave to file an untimely motion for leave to participate in oral argument as *amicus curiae* denied.

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No. 80-317. UNIVERSITY OF TEXAS ET AL. *v.* CAMENISCH. C. A. 5th Cir. [Certiorari granted, 449 U. S. 950.] Motions of Michigan Rehabilitation Association et al.; Legal Action Center of the City of New York, Inc.; American Civil Liberties Union et al.; Deaf Counseling, Advocacy & Referral Agency, Inc., et al.; and American Coalition of Citizens with Disabilities et al. for leave to file briefs as *amici curiae* granted.

No. 80-429. COUNTY OF WASHINGTON, OREGON, ET AL. *v.* GUNTHER ET AL. C. A. 9th Cir. [Certiorari granted, 449 U. S. 950.] Motion of American Federation of Labor and Congress of Industrial Organizations et al. for leave to file a brief as *amici curiae* granted.

No. 80-441. GULF OIL CO. ET AL. *v.* BERNARD ET AL. C. A. 5th Cir. [Certiorari granted, 449 U. S. 1033.] Motion of Tallahassee Memorial Hospital for leave to participate in oral argument as *amicus curiae* denied.

No. 80-544. FIRST NATIONAL MAINTENANCE CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. [Certiorari granted, 449 U. S. 1076.] Joint motion for leave to dispense with printing the joint appendix granted.

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, 449 U. S. 1033.] Motion of respondent Gaedecke for divided argument granted. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 80-1002. BOARD OF EDUCATION OF THE HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY, ET AL. *v.* ROWLEY, BY ROWLEY ET UX. C. A. 2d 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. 80-1239 (A-640). RAILWAY LABOR EXECUTIVES' ASSN. *v.* GIBBONS, TRUSTEE, ET AL. Appeal from C. A. 7th Cir. Motion of appellant to expedite consideration of the appeal denied. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. 80-5815. IN RE RUTHERFORD;

No. 80-5897. IN RE ROBERTS;

No. 80-5909. IN RE WATKINS;

No. 80-5926. IN RE WELCH;

No. 80-5971. IN RE LIKAKUR;

No. 80-5994. IN RE MAPSON; and

No. 80-6044. IN RE GREEN. Petitions for writs of mandamus denied.

No. 80-5901. IN RE SPHALER. Petition for writ of mandamus and/or prohibition denied.

No. 80-1044. IN RE FISHER. Petition for writ of prohibition and/or mandamus and/or certiorari denied.

#### *Probable Jurisdiction Noted*

No. 80-737. CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING ET AL. *v.* CITY OF BERKELEY, CALIFORNIA, ET AL. Appeal from Sup. Ct. Cal. Probable jurisdiction noted. Reported below: 27 Cal. 3d 819, 614 P. 2d 742.

No. 80-1146. ZOBEL ET UX. *v.* WILLIAMS, COMMISSIONER OF REVENUE OF ALASKA, ET AL. Appeal from Sup. Ct. Alaska. Probable jurisdiction noted. Reported below: 619 P. 2d 448.

No. 80-847. COMMON CAUSE ET AL. *v.* SCHMITT ET AL.; and

No. 80-1067. FEDERAL ELECTION COMMISSION *v.* AMERICANS FOR CHANGE ET AL. Appeals from D. C. D. C. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 512 F. Supp. 489.

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No. 80-5950. LOGAN *v.* ZIMMERMAN BRUSH CO. ET AL. Appeal from Sup. Ct. Ill. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 82 Ill. 2d 99, 411 N. E. 2d 277.

*Certiorari Granted*

No. 80-327. VALLEY FORGE CHRISTIAN COLLEGE *v.* AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 619 F. 2d 252.

No. 80-986. NORTH HAVEN BOARD OF EDUCATION ET AL. *v.* BELL, SECRETARY OF EDUCATION, ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 629 F. 2d 773.

No. 80-1082. SMITH, CORRECTIONAL SUPERINTENDENT *v.* PHILLIPS. C. A. 2d Cir. Certiorari granted. Reported below: 632 F. 2d 1019.

No. 80-689. WIDMAR ET AL. *v.* VINCENT ET AL. C. A. 8th Cir. Motions of Bible Study et al. and Center for Law and Religious Freedom of the Christian Legal Society for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 635 F. 2d 1310.

No. 80-702. UNITED STATES *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari granted. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 624 F. 2d 111.

No. 80-848. PIPER AIRCRAFT CO. *v.* REYNO, PERSONAL REPRESENTATIVE OF THE ESTATES OF FEHILLY ET AL.; and

No. 80-883. HARTZELL PROPELLER, INC. *v.* REYNO, PERSONAL REPRESENTATIVE OF THE ESTATES OF FEHILLY ET AL. C. A. 3d Cir. Certiorari in No. 80-848 granted. Certiorari in No. 80-883 granted limited to Question 1 presented by the petition. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 630 F. 2d 149.

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No. 80-757. NEW YORK MERCANTILE EXCHANGE ET AL. *v.* LEIST ET AL.;

No. 80-895. CLAYTON BROKERAGE CO. OF ST. LOUIS, INC. *v.* LEIST ET AL.; and

No. 80-936. HEINOLD COMMODITIES, INC., ET AL. *v.* LEIST ET AL. C. A. 2d Cir. Motion of Board of Trade of the City of Chicago et al. for leave to file a brief as *amici curiae* in No. 80-757 granted. Motion of Futures Industry Association for leave to file a brief as *amicus curiae* in No. 80-936 granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 638 F. 2d 283.

No. 80-846. ROSE, WARDEN *v.* LUNDY. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 624 F. 2d 1100.

*Certiorari Denied.* (See also Nos. 80-853, 80-902, 80-5904, and 80-1044, *supra.*)

No. 79-1881. AGRELLA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 372 So. 2d 487.

No. 80-442. GARMAN *v.* NORTHERN TRUST Co. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 2d 1252.

No. 80-553. DEMANETT ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 862.

No. 80-585. MAYNE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 483, 414 A. 2d 1.

No. 80-601. CASSADY *v.* GREEN. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1090.

No. 80-607. SAGER *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 600 S. W. 2d 541.

No. 80-610. FREEMAN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 619 F. 2d 1112.

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No. 80-616. *McGOVERN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

No. 80-617. *STEMPLE v. BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 623 F. 2d 893.

No. 80-631. *HOSPITAL CENTRAL SERVICES ASSN. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 611.

No. 80-673. *TAYLOR v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied.

No. 80-693. *SIFFRIN RESIDENTIAL ASSOCIATION FOR THE DEVELOPMENTALLY DISABLED OF STARK COUNTY, INC., ET AL. v. GARCIA ET UX.* Sup. Ct. Ohio. Certiorari denied. Reported below: 63 Ohio St. 2d 259, 407 N. E. 2d 1369.

No. 80-698. *NEWSPAPER PRINTING CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 625 F. 2d 956.

No. 80-715. *UNITED GAS PIPE LINE CO. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 1127.

No. 80-716. *LONE STAR STEEL CO. v. NATIONAL LABOR RELATIONS BOARD ET AL.*; and

No. 80-940. *NATIONAL LABOR RELATIONS BOARD v. LONE STAR STEEL CO. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 639 F. 2d 545.

No. 80-722. *CANADIAN MOUNTAIN HOLIDAYS, LTD. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (BUIST, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-728. *COLETTI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1205.

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No. 80-734. *PENA ET AL. v. O'CONNELL, RECEIVER*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 439.

No. 80-742. *NATIONAL PORK PRODUCERS COUNCIL ET AL. v. BLOCK, SECRETARY OF AGRICULTURE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 2d 1353.

No. 80-758. *S.S. ZOE COLOCOTRONI ET AL. v. PUERTO RICO ET AL.*; and

No. 80-979. *PUERTO RICO ET AL. v. S.S. ZOE COLOCOTRONI ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 628 F. 2d 652.

No. 80-759. *SANCHEZ ET AL. v. TUCSON UNIFIED SCHOOL DISTRICT No. 1 ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 1338.

No. 80-760. *TURNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-764. *ENSTAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 857.

No. 80-765. *BROWN INSULATING SYSTEMS, INC. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 629 F. 2d 428.

No. 80-766. *ANDERSON ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 626 F. 2d 1358.

No. 80-768. *AMUSEMENT & MUSIC OPERATORS ASSN. ET AL. v. COPYRIGHT ROYALTY TRIBUNAL ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 204 U. S. App. D. C. 259, 636 F. 2d 531.

No. 80-771. *BURNHAM VAN SERVICE, INC., ET AL. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 41.

No. 80-773. *PENELLO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

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No. 80-776. *SHORT v. KITTRELL*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1013.

No. 80-779. *CONCERNED JEWISH YOUTH v. MCGUIRE, POLICE COMMISSIONER OF NEW YORK CITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 621 F. 2d 471.

No. 80-785. *CERTAIN UNINDICTED INDIVIDUALS AND CORPORATIONS v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 2d 943.

No. 80-786. *RASHKIND, ASSISTANT STATE PROSECUTING ATTORNEY, 11TH JUDICIAL CIRCUIT OF FLORIDA v. MARRERO ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 499.

No. 80-804. *SILVERMAN, ADMINISTRATRIX v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 621 F. 2d 961.

No. 80-809. *LITTON SYSTEMS, INC. v. LUNDY*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 590.

No. 80-814. *SAFEWAY STORES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 622 F. 2d 425.

No. 80-818. *REDDING ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 1169.

No. 80-819. *BRISTOL SPRING MANUFACTURING CO. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1203.

No. 80-820. *MANKA ET AL. v. MARTIN ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: 200 Colo. —, 614 P. 2d 875.

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No. 80-822. *LIVINGSTON, ADMINISTRATRIX v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 627 F. 2d 165.

No. 80-828. *PACIFIC LEGAL FOUNDATION ET AL. v. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 917.

No. 80-832. *MILLER ET AL. v. CALHOUN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1091.

No. 80-835. *DASCO, INC., ET AL. v. AMERICAN CITY BANK & TRUST Co., N. A., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-839. *MARTIER v. UNITED STATES*; and

No. 80-1019. *JASTRZEBSKI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 633 F. 2d 210.

No. 80-843. *CARIBE TRAILER SYSTEMS, INC., ET AL. v. PUERTO RICO MARITIME SHIPPING AUTHORITY ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-844. *SAFIR v. CHUDNOFF, TRUSTEE IN BANKRUPTCY*. C. A. 2d Cir. Certiorari denied. Reported below: 634 F. 2d 619.

No. 80-845. *KAUFMAN INVESTMENT CORP. v. JOHNSON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 598.

No. 80-858. *INTERNATIONAL PRINTING & GRAPHIC COMMUNICATIONS UNION ET AL. v. COLLIER*; and

No. 80-859. *INTERNATIONAL PRINTING & GRAPHIC COMMUNICATIONS UNION, LOCAL No. 6, ET AL. v. COLLIER*. Sup. Ct. Va. Certiorari denied. Reported below: No. 80-858, 220 Va. ciii; No. 80-859, 220 Va. civ.

No. 80-860. *OUIMET CORP. ET AL. v. PENSION BENEFIT GUARANTY CORPORATION ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 630 F. 2d 4.

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No. 80-862. *McNEIL v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 47 N. C. App. 30, 266 S. E. 2d 824.

No. 80-863. *WOLSKI v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 83 Ill. App. 3d 17, 403 N. E. 2d 528.

No. 80-864. *PATHWAY BELLOWS, INC. v. BLANCHETTE ET AL., TRUSTEES*. C. A. 2d Cir. Certiorari denied. Reported below: 630 F. 2d 900.

No. 80-865. *HARRIS ET AL. v. VIRGINIA*; and

No. 80-884. *SYSKI v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: No. 80-865, 221 Va. xcvi; No. 80-884, 221 Va. cxlviii.

No. 80-873. *W. W. LEASING UNLIMITED v. COUNTY OF MONTEREY*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 109 Cal. App. 3d 636, 167 Cal. Rptr. 12.

No. 80-876. *SCARPELLI v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 82 Ill. App. 3d 689, 402 N. E. 2d 915.

No. 80-877. *HOPKINS ET AL. v. RECTOR, CHURCHWARDENS, AND VESTRYMEN OF THE PARISH OF CALVARY, HOLY COMMUNION AND ST. GEORGE'S IN THE CITY OF NEW YORK, ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 74 App. Div. 2d 808, 426 N. Y. S. 2d 966.

No. 80-879. *SAX ET AL. v. OLIFF ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 669 F. 2d 1162.

No. 80-881. *TEMA OIL CO. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 436, 631 F. 2d 1018.

No. 80-891. *AUBUCHON v. MISSOURI*. C. A. 8th Cir. Certiorari denied. Reported below: 631 F. 2d 581.

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No. 80-894. *BECKER'S MOTOR TRANSPORTATION, INC., ET AL. v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 632 F. 2d 242.

No. 80-898. *TONER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 899.

No. 80-900. *CARBONE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 1159.

No. 80-903. *FOWLER v. IDAHO*. Sup. Ct. Idaho. Certiorari denied. Reported below: 101 Idaho 546, 617 P. 2d 850.

No. 80-907. *JENSEN ET AL. v. FARRELL LINES, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 625 F. 2d 379.

No. 80-911. *JONES ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 1353.

No. 80-913. *ILLINOIS CENTRAL GULF RAILROAD Co. v. INGLE*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 608 S. W. 2d 76.

No. 80-914. *COHEN, ATTORNEY GENERAL OF MAINE v. EQUIFAX SERVICES, INC., ET AL.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 420 A. 2d 189.

No. 80-918. *TRUE ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied.

No. 80-919. *MOORE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 627 F. 2d 830.

No. 80-930. *BLUE SHIELD OF VIRGINIA ET AL. v. VIRGINIA ACADEMY OF CLINICAL PSYCHOLOGISTS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 476.

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No. 80-933. *PHYSICIANS NATIONAL HOUSE STAFF ASSN. ET AL. v. MURPHY, CHAIRMAN, NATIONAL LABOR RELATIONS BOARD, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 206 U. S. App. D. C. 87, 642 F. 2d 492.

No. 80-934. *ANTHONY J. BERTUCCI CONSTRUCTION Co., INC., ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1303.

No. 80-935. *FIRST NATIONAL BANK OF JACKSON v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1004.

No. 80-942. *SHAHEEN v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 80-943. *CURTIN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 109 Cal. App. 3d 691, 167 Cal. Rptr. 636.

No. 80-946. *LOUISIANA AIRCRAFT, INC. v. AYCOCK, ADMINISTRATOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 432.

No. 80-952. *EMORY v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1347.

No. 80-954. *ARBOLEDA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 985.

No. 80-959. *OHIO v. THOMPSON ET AL.* Ct. App. Ohio, Stark County. Certiorari denied.

No. 80-960. *MATSCHKE v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 83 Ill. App. 3d 1000, 404 N. E. 2d 1047.

No. 80-961. *FEDERAL TRADE COMMISSION v. OFFICIAL AIRLINE GUIDES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 630 F. 2d 920.

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No. 80-962. BOARD OF SUPERVISORS OF SAN DIEGO COUNTY *v.* LONERGAN, AUDITOR AND CONTROLLER OF SAN DIEGO COUNTY ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 27 Cal. 3d 855, 616 P. 2d 802.

No. 80-967. HOSPITAL & INSTITUTIONAL WORKERS UNION, LOCAL 250 *v.* PASATIEMPO DEVELOPMENT CORP. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 1011.

No. 80-971. LANDIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 2d 66.

No. 80-973. SMITH *v.* FORD MOTOR Co. C. A. 10th Cir. Certiorari denied. Reported below: 626 F. 2d 784.

No. 80-976. SIRCY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 627 F. 2d 1094.

No. 80-982. KARN *v.* MAGNAVOX Co. ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 424 A. 2d 25.

No. 80-984. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 712.

No. 80-996. MCGINLEY *v.* HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 116, 412 N. E. 2d 376.

No. 80-998. WOLFSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 208.

No. 80-1001. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 215.

No. 80-1003. DANIEL CONSTRUCTION Co., A DIVISION OF DANIEL INTERNATIONAL CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 621.

No. 80-1005. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 224.

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No. 80-1006. CRAIG ET AL. *v.* COUNTY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 659.

No. 80-1011. WYCHE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1348.

No. 80-1015. ASCHER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 81 Ill. 2d 485, 411 N. E. 2d 1.

No. 80-1020. ADAMS ET AL. *v.* D'ANDREA. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 469.

No. 80-1028. TONER ET AL. *v.* HANNA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 630 F. 2d 442.

No. 80-1029. LONDON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1356.

No. 80-1033. JAMIL *v.* SOUTHRIDGE COOPERATIVE SECTION 4, INC. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 77 App. Div. 2d 822, 429 N. Y. S. 2d 340.

No. 80-1039. MACIEJEWSKI ET AL. *v.* ENTERTAINMENT CONCEPTS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 497.

No. 80-1041. RIZZO *v.* DAVIS, DISTRICT DIRECTOR OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 624 F. 2d 1091.

No. 80-1042. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 123.

No. 80-1046. REICHSTEIN *v.* BRIGGS. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 80-1050. BARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 494.

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No. 80-1051. *ANDERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 625 F. 2d 910.

No. 80-1053. *QUICK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 892.

No. 80-1054. *OLTERS DORF v. CHESAPEAKE & OHIO RAILROAD Co.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 83 Ill. App. 3d 457, 404 N. E. 2d 320.

No. 80-1056. *TOURVILLE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1206.

No. 80-1059. *ALLOTT v. SICINSKI ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1106.

No. 80-1063. *MONTGOMERY v. AMERICAN AIRLINES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 607.

No. 80-1064. *SINGLETON v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 185.

No. 80-1065. *TWO RIVERS Co. v. CURTISS BREEDING SERVICE, A DIVISION OF SEARLE AGRICULTURE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1242.

No. 80-1066. *BASKES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 640 F. 2d 48.

No. 80-1071. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 218.

No. 80-1072. *GERALD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1291.

No. 80-1078. *ROLLINS INTERNATIONAL, INC. v. STAUB ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 218.

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No. 80-1079. *RAGU FOODS, INC., ET AL. v. HUNT-WESSON FOODS, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 919.

No. 80-1081. *HOLMES v. DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW.* Ct. App. D. C. Certiorari denied. Reported below: 421 A. 2d 27.

No. 80-1088. *BLODGETT ET UX. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 225 Ct. Cl. —, 650 F. 2d 289.

No. 80-1089. *SHAKESPEARE CO. v. FURY IMPORTS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 585.

No. 80-1090. *HATCHER ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 891.

No. 80-1091. *RIGGS ET UX. v. TERRAZAS.* Ct. App. Tenn. Certiorari denied. Reported below: 612 S. W. 2d 461.

No. 80-1094. *BURLINGTON NORTHERN INC. v. FLANIGAN.* C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 2d 880.

No. 80-1097. *STALDER ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 1224.

No. 80-1100. *MARRIOTT CORP. ET AL. v. BETHLEHEM STEEL CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 631 F. 2d 441.

No. 80-1108. *SHARTEL ET AL. v. BLASINGHAM ET AL.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 84 Ill. App. 3d 981, 406 N. E. 2d 565.

No. 80-1111. *WING DING CHAN v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 396, 631 F. 2d 978.

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No. 80-1113. *ATHANASIOU ET AL. v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-1117. *CASTILLO v. FORSHY, UNITED STATES MARSHAL*. C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 1098.

No. 80-1131. *VIARS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-1133. *FINGER v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 403, 431 N. Y. S. 2d 71.

No. 80-1141. *ESTATE OF CADY v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 634 F. 2d 631.

No. 80-1143. *MATSIS v. MATSIS*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 75 App. Div. 2d 1030, 427 N. Y. S. 2d 896.

No. 80-1144. *GUTIERREZ v. BOSTON OLD COLONY INSURANCE Co.* Sup. Ct. Fla. Certiorari denied. Reported below: 386 So. 2d 783.

No. 80-1150. *SMITH v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 155 Ga. App. 506, 271 S. E. 2d 654.

No. 80-1157. *SANDATE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 326.

No. 80-1174. *SOO LINE RAILROAD Co. v. TOWN OF EAST TROY*. C. A. 7th Cir. Certiorari denied. Reported below: 653 F. 2d 1123.

No. 80-1175. *MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 361.

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No. 80-1186. *MURZYN v. UNITED STATES*; and  
No. 80-5936. *HALL v. UNITED STATES*. C. A. 7th Cir.  
Certiorari denied. Reported below: 631 F. 2d 525.

No. 80-1197. *GARNER v. UNITED STATES*. C. A. 9th Cir.  
Certiorari denied. Reported below: 632 F. 2d 758.

No. 80-1218. *BOWLER v. REAGAN, PRESIDENT OF THE  
UNITED STATES, ET AL.* C. A. 1st Cir. Certiorari denied.  
Reported below: 647 F. 2d 159.

No. 80-1280. *CHACON ET AL. v. UNITED STATES*. C. A. 4th  
Cir. Certiorari denied.

No. 80-5382. *FORD ET AL. v. GRIFFIN, WARDEN, ET AL.*  
C. A. 10th Cir. Certiorari denied.

No. 80-5454. *ALFARO ET AL. v. FLORIDA*. Sup. Ct. Fla.  
Certiorari denied. Reported below: 386 So. 2d 1321.

No. 80-5485. *SULLIVAN ET AL. v. UNITED STATES*. C. A.  
4th Cir. Certiorari denied. Reported below: 625 F. 2d 9.

No. 80-5503. *JUSTICE v. UNITED STATES*. C. A. 6th Cir.  
Certiorari denied. Reported below: 627 F. 2d 1093.

No. 80-5522. *GOOCH v. MISSISSIPPI*. Sup. Ct. Miss. Cer-  
tiorari denied. Reported below: 384 So. 2d 74.

No. 80-5563. *WRIGHT v. FLORIDA*. Dist. Ct. App. Fla., 2d  
Dist. Certiorari denied. Reported below: 389 So. 2d 1121.

No. 80-5582. *CLENNY v. HARRISON, WARDEN*. C. A. 6th  
Cir. Certiorari denied. Reported below: 633 F. 2d 214.

No. 80-5595. *GURMANKIN v. COSTANZO ET AL.* C. A. 3d  
Cir. Certiorari denied. Reported below: 626 F. 2d 1115.

No. 80-5596. *CHIN ET AL. v. UNITED STATES*. C. A. 2d  
Cir. Certiorari denied. Reported below: 622 F. 2d 1090.

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No. 80-5599. *ALESTRA v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 388 So. 2d 1133.

No. 80-5603. *LEWIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 628 F. 2d 1276.

No. 80-5604. *CHAVEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 953.

No. 80-5631. *SASSER v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 387 So. 2d 237.

No. 80-5633. *BLAND v. TEXAS*. Sup. Ct. Tex. Certiorari denied.

No. 80-5635. *ANDERSON v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 45 Ore. App. 692, 608 P. 2d 1234.

No. 80-5653. *CALHOUN v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 80-5662. *WATTERS ET AL. v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1104.

No. 80-5663. *STRICKLIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1012.

No. 80-5664. *BARBER v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied.

No. 80-5675. *CRAMER v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 98 Wis. 2d 416, 296 N. W. 2d 921.

No. 80-5688. *MARTINEZ ET AL. v. BLUM, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 624 F. 2d 1.

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No. 80-5689. *COREY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 704.

No. 80-5694. *KENNEY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 386 So. 2d 365.

No. 80-5697. *PATTERSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 627 F. 2d 760.

No. 80-5699. *DEEMS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 81 Ill. 2d 384, 410 N. E. 2d 8.

No. 80-5719. *DUFUR, AKA BAKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 2d 512.

No. 80-5723. *BONI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-5726. *LIGHT v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 386 So. 2d 364.

No. 80-5742. *TURNER v. MUNCY, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1351.

No. 80-5743. *PRY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 689.

No. 80-5755. *HARDING v. BORDENKIRCHER, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 80-5791. *YARETSKY ET AL. v. BLUM, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 817.

No. 80-5800. *LAROSE v. WORCESTER HOUSING AUTHORITY ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 629 F. 2d 691.

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No. 80-5801. *SOLOMON, DBA VIC'S GARAGE v. FUSCO ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 295.

No. 80-5802. *BROOKS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5803. *ANAYA v. ROMERO, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 627 F. 2d 226.

No. 80-5807. *COOPER v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 387 So. 2d 712.

No. 80-5810. *BRADENBURG v. MASCHNER, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 80-5811. *ROGERS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 78 App. Div. 2d 590, 434 N. Y. S. 2d 674.

No. 80-5814. *PHILLIPS v. BENTON, CORRECTIONS DIRECTOR, ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 80-5817. *FALLIN v. WARDEN, MARYLAND PENITENTIARY.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 98.

No. 80-5821. *CLUMM v. OHIO.* Ct. App. Ohio, Athens County. Certiorari denied.

No. 80-5822. *CARIGLIO v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-5825. *ROBINSON v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 626.

No. 80-5826. *ROBINSON v. SANDERS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 625.

No. 80-5827. *WILLIAMS ET AL. v. NORTH CAROLINA STATE BAR ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 624 F. 2d 1094.

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No. 80-5828. *HANEI v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 81 Ill. App. 3d 690, 403 N. E. 2d 16.

No. 80-5829. *HAIID v. WALKER ET AL.* C. A. 5th Cir. Certiorari denied.

No. 80-5831. *HOUSLEY v. MATTOX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 171.

No. 80-5833. *BROOKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 449.

No. 80-5834. *DONOHUE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 913, 429 N. Y. S. 2d 885.

No. 80-5835. *GROCHULSKI v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 637 F. 2d 50.

No. 80-5842. *EDWARDS v. JAGO*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 214.

No. 80-5845. *KNIGHT v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 80-5846. *ROBINSON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. cxxxvi.

No. 80-5848. *BARKSDALE v. BREWER, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 80-5849. *GRAY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 80-5852. *MAGILL v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 386 So. 2d 1188.

No. 80-5855. *HALL v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 297 N. W. 2d 80.

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No. 80-5857. *HENDERSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 109 Cal. App. 3d 219, 167 Cal. Rptr. 141.

No. 80-5858. *LANE v. JONES, SHERIFF*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1296.

No. 80-5860. *ARCENEUX ET AL. v. TEXACO, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 924.

No. 80-5863. *PACKARD v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 389 So. 2d 56.

No. 80-5865. *WOFFORD v. HARRIS, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1206.

No. 80-5868. *LEWANDOWSKI v. EGELER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 624 F. 2d 1100.

No. 80-5869. *VASSER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 648 F. 2d 507.

No. 80-5871. *VALENTINO v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-5873. *OLIVER v. CUYLER, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-5874. *PRUITT v. LEEKE, CORRECTIONS COMMISSIONER, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 625.

No. 80-5875. *SHULER v. GARRISON, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 2d 270.

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No. 80-5878. *PHILLIPS v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 380 Mass. —, 409 N. E. 2d 771.

No. 80-5879. *IN RE C. S.* Sup. Ct. N. J. Certiorari denied. Reported below: 85 N. J. 466, 427 A. 2d 563.

No. 80-5880. *ERICKSON ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 80-5881. *LAWSON v. ORIGINAL APPALACHIAN ARTWORKS, INC.* C. A. 5th Cir. Certiorari denied.

No. 80-5883. *CLEVELAND v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 2d 1212.

No. 80-5886. *BROOKS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 80-5890. *ORPIANO v. JOHNSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 632 F. 2d 1096.

No. 80-5891. *THERIAULT ET AL. v. ESTABLISHMENT OF RELIGION ON TAXPAYERS' MONEY IN THE FEDERAL BUREAU OF PRISONS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 620 F. 2d 648.

No. 80-5892. *WATKINS v. MARTIN, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 2d 1215.

No. 80-5898. *PASSARO v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 80-5903. *COUNTRYMAN v. ZIPP, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 632 F. 2d 30.

No. 80-5905. *JOHNSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 605 S. W. 2d 929.

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No. 80-5911. *HILL v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. c.

No. 80-5912. *AVILES v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY, ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-5915. *PREACHER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1222.

No. 80-5917. *FLENNER v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. lxxxix.

No. 80-5922. *GRAVES v. WILLIAMS, SHERIFF*. Ct. App. Wis. Certiorari denied. Reported below: 99 Wis. 2d 65, 298 N. W. 2d 392.

No. 80-5923. *PUSCH ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 1353.

No. 80-5924. *TENG ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 80-5930. *KEEZER ET AL. v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 292 N. W. 2d 714.

No. 80-5934. *SULLIVAN v. SOWDERS, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 453.

No. 80-5935. *KANASOLA v. SMITH, ATTORNEY GENERAL, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 630 F. 2d 472.

No. 80-5941. *BROUGHTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 632 F. 2d 706.

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No. 80-5944. *KOHL'S v. UNITED PARCEL SERVICE, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 203 U. S. App. D. C. 139, 629 F. 2d 173.

No. 80-5948. *LOCKETT v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-5949. *BURKHALTER v. CHRYSLER CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1096.

No. 80-5952. *STEELE v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-5955. *FINLAYSON ET AL. v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 76 App. Div. 2d 670, 431 N. Y. S. 2d 839.

No. 80-5956. *SKINNER v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 80-5957. *JOHNSON v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 80-5958. *KADET v. SMITH, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1202.

No. 80-5959. *ANTONELLI v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied.

No. 80-5960. *MAZZELLA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5961. *THOMAS v. UNITED STATES;* and

No. 80-5965. *MADDOX v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 239.

No. 80-5962. *RHEUARK ET AL. v. DALLAS COUNTY, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 297.

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No. 80-5963. *HOLMES v. ORR, SECRETARY OF THE AIR FORCE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-5964. *PHIPPS v. BROWN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-5967. *MOORE, AKA WARD v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 639 F. 2d 786.

No. 80-5968. *ROHL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 195.

No. 80-5970. *HALE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-5973. *FAISON ET UX. v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-5974. *ELIASON v. CHRISTLEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1348.

No. 80-5975. *SMITH v. WASHINGTON.* Sup. Ct. Wash. Certiorari denied.

No. 80-5976. *IVORY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 80-5978. *BROWN v. LOGGINS, CORRECTIONAL SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

No. 80-5979. *HARRIS v. PETERSON.* Ct. App. Ore. Certiorari denied. Reported below: 47 Ore. App. 375, 614 P. 2d 635.

No. 80-5983. *OSBORNE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 452.

No. 80-5984. *MUCCIE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

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No. 80-5985. *DELOACH, AKA ZOCKMAN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 210 U. S. App. D. C. 48, 654 F. 2d 763.

No. 80-5987. *TIMMONS v. FRANZEN ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 80-5988. *BOAG v. ARIZONA*. Ct. App. Ariz. Certiorari denied.

No. 80-5989. *CONEY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 388 So. 2d 1164.

No. 80-5990. *HOCKENBURY v. SOWDERS, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 111 and 633 F. 2d 443.

No. 80-5991. *MCDONALD v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY*. Sup. Ct. Tenn. Certiorari denied.

No. 80-5992. *HUGHES v. HOPPER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1036.

No. 80-5993. *AVERY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 214.

No. 80-5995. *YOUNG, AKA CLOUDY v. RUSTAMIER*. C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 74.

No. 80-5997. *WITHERSPOON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 1247.

No. 80-6001. *YIN-HO WONG v. CARLSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 628.

No. 80-6004. *REGAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

No. 80-6010. *GEORGE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 1299.

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No. 80-6011. *ZUCKERMAN v. UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 639 F. 2d 770.

No. 80-6014. *SMITH v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 635 F. 2d 693.

No. 80-6015. *DUNAWAY v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 214.

No. 80-6016. *FERREBOEUF v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 632 F. 2d 832.

No. 80-6018. *CLAYBROOKS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 622 F. 2d 587.

No. 80-6019. *JACKS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 634 F. 2d 390.

No. 80-6020. *GUERRA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 410.

No. 80-6022. *TUCKER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 627 F. 2d 238.

No. 80-6043. *OSBORNE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 374.

No. 80-6048. *WOODS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1220.

No. 80-6054. *AEBISCHER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 80-6057. *SPIKES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 144.

No. 80-6062. *ARMSTRONG v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 632 F. 2d 1354.

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No. 80-6063. *TOLLIVER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 639 F. 2d 786.

No. 80-6065. *WRIGHT v. BOMBARD, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 638 F. 2d 457.

No. 80-6070. *LEE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 563.

No. 80-6072. *LEWIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 1382.

No. 80-6078. *GREGG v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 773, 412 N. E. 2d 387.

No. 80-6079. *MOWAT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 866.

No. 80-6081. *LUTTRELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 730.

No. 80-6083. *WICKIZER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 900.

No. 80-6086. *MCCOY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

No. 80-6099. *FONTANEZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 628 F. 2d 687.

No. 80-6105. *MOLINA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 637.

No. 79-1856. *EATON CORP. v. FOX*. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 615 F. 2d 716.

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No. 79-1953. FREEMAN, DIRECTOR, MISSOURI DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* CHAMBLY ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 624 F. 2d 1108.

No. 79-6309. CLARK *v.* FLORIDA. Sup. Ct. Fla.;

No. 80-5856. BAKER *v.* GEORGIA. Sup. Ct. Ga.; and

No. 80-5986. GREEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: No. 79-6309, 379 So. 2d 97; No. 80-5856, 246 Ga. 259, 272 S. E. 2d 61; No. 80-5986, 246 Ga. 598, 272 S. E. 2d 475.

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. 80-255. GEORGIA POWER Co. *v.* 138.30 ACRES OF LAND ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 617 F. 2d 1112.

No. 80-381. DIGILIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 726.

No. 80-472. ENGLE, CORRECTIONAL SUPERINTENDENT *v.* SIMS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 619 F. 2d 598.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE BLACKMUN join, dissenting.

This Court has been asked to review a determination by a Federal Court of Appeals that a state-court murder conviction was obtained in violation of the Double Jeopardy Clause

of the Fifth Amendment. Because I think the conclusion of the Court of Appeals is wrong and has erroneously expanded the role that court was to play in providing habeas corpus review of state-court criminal convictions, I dissent from denial of the petition for certiorari.

On February 27, 1962, the Juvenile Division of the Cuyahoga County, Ohio, Court of Common Pleas issued a citation and warrant against the respondent alleging that he had participated in several armed robberies, one of which resulted in a death. Respondent was taken into custody and brought before the Juvenile Court on March 27, 1962, for a hearing; no transcript or record of that hearing was made. In accordance with then Ohio Rev. Code Ann. § 2151.26 (1954),\* the Juvenile Court decided to bind respondent over to the Criminal Division of the Court of Common Pleas for trial as an adult. This determination was entered on the court's docket as a journal entry which is the only record of what transpired at that hearing. The journal entry reads:

"TO COURT: This twenty-seventh day of March, 1962, James Samuel Sims, a minor of about the age of seventeen years, came before the Honorable Albert A. Woldman upon the petition of Charles R. Reynolds alleging that James Samuel Sims is a delinquent child in this:

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\*At the time of the juvenile proceedings afforded respondent in this case, Ohio Rev. Code Ann. § 2151.26 (1954) provided:

"In any case involving a delinquent child under sections 2151.01 to 2151.54, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case."

that on or about February 16, 1962, at 4502 St. Clair Avenue, Cleveland, Ohio, he did unlawfully, and by putting in fear while armed with a dangerous weapon, to wit, a pistol, rob from the person of one, Dorothy Kulas, cash in the approximate amount of \$1069.00, contrary to the statute in such case made and provided for and against the peace and dignity of the State of Ohio. That on or about February 18, 1962, at 3005 Woodhill Road, Cleveland, Ohio, he did unlawfully, purposely and while in the perpetration of a robbery, kill one, William C. Beasley, contrary to the form of the statute in such case made and provided for and against the peace and dignity of the State of Ohio. That on or about February 23, 1962, at 6938 Kinsman Road, Cleveland, Ohio, he did unlawfully, and by putting in fear while armed with a dangerous weapon, to wit, a pistol, rob from the person of one, David Warren, cash in the approximate amount of \$104.50, contrary to the form of the statute in such case made and provided for and against the peace and dignity of the State of Ohio. *It appearing to the Court that said child has committed acts which, if committed by an adult, would be felonies, a mental and physical examination having been made by duly qualified persons as provided by statute, it is hereby ordered that pursuant to Section 2151.26 Ohio Revised Code the said James Samuel Sims be bound over to the Court of Common Pleas of Cuyahoga County for further proceedings according to law. It is ordered that said James Samuel Sims be, and he hereby is, committed to the jail of Cuyahoga County.*" 619 F. 2d 598, 599 (1980). (Emphasis added.)

Following this journal entry, respondent was indicted on two counts of first-degree murder. Respondent pleaded not guilty, but later withdrew his plea and entered a plea of guilty to homicide generally and waived trial by jury. Pursuant to

then-current Ohio law, respondent was tried before a three-judge court solely on the issue of the degree of culpability. He was found guilty of first-degree murder on both counts of the indictment and sentenced to two consecutive terms of life imprisonment.

On May 17, 1976, respondent filed a *pro se* motion for leave to appeal with the Ohio Eighth District Court of Appeals seeking to challenge his conviction on the ground that he had been placed twice in jeopardy by being tried and convicted as an adult in criminal court. The Court of Appeals granted his motion, appointed counsel, but later found no error and affirmed the convictions and sentences. With regard to the double jeopardy claim, the court acknowledged that this Court held in *Breed v. Jones*, 421 U. S. 519 (1975), that a juvenile who has been subject to a "jurisdictional or adjudicatory hearing" in a juvenile court before being bound over to be tried as an adult is placed twice in jeopardy by the later criminal trial. However, this Court also stated that it was not foreclosing States from requiring a finding of probable cause as a prerequisite for transfer. *Id.*, at 538, n. 18. Applying the principles set forth in *Breed*, the Ohio Court of Appeals found that there was no indication that an adjudicatory hearing or a jurisdictional hearing was conducted in this case. The court explained:

"There is no finding of delinquency, and there is no recitation of any evidence upon which such an adjudication could be premised. All that appears to have occurred is that the Juvenile Court arrived at a determination that there was an appearance of possible criminal action which properly and appropriately should be considered by the Court of Common Pleas of Cuyahoga County." *State v. Sims*, 55 Ohio App. 2d 285, 290, 380 N. E. 2d 1350, 1353 (1977).

After the Ohio Supreme Court dismissed respondent's appeal for failure to state a substantial constitutional question,

respondent petitioned for a writ of habeas corpus in the United States District Court for the Northern District of Ohio again alleging a double jeopardy claim. The District Court denied the petition. The court held that the journal entry lent little support to respondent's position because it contained neither a specific finding that respondent committed any of the criminal acts alleged nor a recitation of evidence. The court also rejected the respondent's contention that because the journal entry purported to be issued pursuant to Ohio Rev. Code Ann. § 2151.26 (1954), compliance with that statute required that a juvenile be formally adjudged delinquent before being bound over to be tried as an adult. In rejecting this contention, the District Court explained that the proper operation and construction of § 2151.26 was largely unsettled prior to the clarification provided by the Ohio Supreme Court in *In re Jackson*, 21 Ohio St. 2d 215, 257 N. E. 2d 74 (1970). Prior to that 1970 decision, many Juvenile Courts bound over only on a determination of probable cause. Given the uncertainty of the law surrounding § 2151.26 prior to the *Jackson* decision, the District Court was unwilling to assume that an adjudication of delinquency was made at respondent's 1962 hearing. The pre-*Jackson* practice of binding over on a probable-cause determination, coupled with the absence of any specific factual findings indicative of adjudication, strongly suggests that respondent's juvenile hearing was of a nonadjudicatory nature.

The Court of Appeals for the Sixth Circuit reversed. 619 F. 2d 598 (1980). According to the Court of Appeals, the District Court's reasoning overlooks the essential fact that the Juvenile Judge was empowered to impose sanctions at the 1962 hearing, that evidence was taken, and that the liberty and reputation of the respondent were put in risk at that time. The rendering of a final judgment is immaterial to the applicability of the Double Jeopardy Clause and therefore the much disputed meaning of the Juvenile Court's jour-

nal entry is irrelevant and unnecessary to the disposition of the case. The court stated:

“What actually occurred at the March 27, 1962 hearing is also insignificant. Once the Juvenile Court, possessing the jurisdiction and power to enter final orders levying a wide range of possible sanctions, began a hearing, not limited in scope by statute to a preliminary or probable cause hearing, jeopardy attached and appellant possessed the constitutional right to have the Juvenile Court, as the original trier of fact, determine his fate.” *Id.*, at 605.

Subsequently, the Court of Appeals denied a petition for rehearing, stating that petitioner was in error in his contention that the court’s opinion would require the release of every juvenile who was bound over according to the procedures of former Ohio Rev. Code Ann. § 2151.26 (1954). The court explained that it was not deciding that there would be a double jeopardy violation where the record of the Juvenile Court hearing plainly established that the hearing was limited to a determination of probable cause.

The decision of the Court of Appeals, in my view, merits review if not outright summary reversal for several reasons. In the first place, any petition for habeas corpus which seeks to attack a juvenile journal entry, or to construe it, by means of a federal habeas petition filed 16 years later should receive the strictest scrutiny from the federal courts who are asked to intervene and set aside a state-court conviction presumptively valid on its face. This was commendably recognized by the District Court when it said:

“Inquiry concerning the nature of the March 27, 1962 hearing by the Juvenile Court is hindered by the absence of any transcript of the proceeding.” App. to Pet. for Cert. A-20.

A federal court in this situation should also not lose sight of the fact that it is the habeas applicant who has the burden of

proving a constitutional violation, see *Sumner v. Mata*, 449 U. S. 539 (1981), and that no system of justice which gives both society and a defendant their due is aided by attempting to reconstruct or re-evaluate events that took place decades ago, as if it were an archaeological expedition, rather than an exercise in the administration of justice.

Public confidence that justice is administered fairly between the defendant and the State is not bolstered by the fact that the opinion of the Court of Appeals can quite reasonably be read as inconsistent on its face with its later order denying the petition for rehearing. In that order, the court stated that a double jeopardy violation would not arise if it were clear that a probable-cause determination, as opposed to a delinquency determination, was made at the bindover hearing. This is in direct contradiction to the analysis the court employed in its original opinion where it stated that it need not inquire into what occurred at the 1962 hearing because once the Juvenile Court began a hearing which was not limited by statute to a probable-cause determination, jeopardy attached.

To the extent the court meant what it said in its original opinion, the decision is of significant importance. First, to reach its conclusion the court had to make an assessment as to the type of determination a juvenile court was required to make in 1962 prior to binding over a juvenile for trial as an adult. The court held that an Ohio juvenile court was required to make a "delinquency" determination at such a hearing and it reached this result even though the other courts which addressed the issue, including the Ohio state courts, all concluded to the contrary, explaining that the law on this point was not settled until the 1970 decision in *Jackson*. The prior uncertainty of the law on this point (and consequently the Court of Appeals' error) is most clearly illustrated by the fact that *Jackson* itself affirmed a lower court opinion reversing a juvenile's bindover on a finding of probable cause. It is patently obvious to me that the Ohio state courts are much

more competent than a federal habeas court to determine what Ohio law required of juvenile courts in 1962.

The assumption, made cavalierly in my opinion by the Court of Appeals, that a double jeopardy violation arose because the Ohio Juvenile Court was required to make a delinquency determination prior to binding the juvenile over for trial as an adult, goes far beyond what we held in *Breed v. Jones*, 421 U. S. 519 (1975). If the decision remains the law of the Sixth Circuit, and if we deny certiorari there is no reason to believe that other Circuits will not follow it, and it may well require the release of every juvenile bound over under the same statute and then subsequently convicted as an adult. If we dealt here with the fate of only one criminal defendant, it would not be worth the time of this Court to inquire into the correctness of the decision of the Court of Appeals. But a decision that appears to require what may be the massive release of large numbers of similarly situated convicted criminals should not occur without this Court's first reviewing the constitutional underpinnings of such decision.

The District Court, sitting as it did with a District Judge far more familiar with Ohio practice than the three judges of the Court of Appeals only one of whom is an Ohioan, was surely correct in its unwillingness to assume that an adjudication of delinquency was made at respondent's 1962 hearing. Indeed, as the District Court stated:

"The pre-*In re Jackson* practice of binding over on a probable cause determination, coupled with the absence of any specific factual findings indicative of an adjudication, discussed *infra*, strongly suggest that petitioner's juvenile hearing was of a non-adjudicatory nature." App. to Pet. for Cert. A-23.

For the reasons previously stated, I would grant certiorari to review what seems to me an abuse of the "Great Writ" by the Court of Appeals for the Sixth Circuit. Respondent was indicted by the Cuyahoga County grand jury on two counts

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of first-degree murder 19 years ago, and although first pleading not guilty to these charges, later withdrew this plea and entered a plea of guilty to homicide generally and waived a trial by jury. He was then tried before a three-judge court solely on the degree of culpability according to then-current Ohio law, and was found guilty and sentenced to two consecutive terms of life imprisonment on the basis of his plea. It was not until 14 years later that it occurred to him that these Ohio proceedings violated the double jeopardy provision of the Fifth and Fourteenth Amendments, and then he unsuccessfully sought relief in the Ohio Court of Appeals, the Supreme Court of Ohio, and the United States District Court for the Northern District of Ohio. It cannot be fairly said that the opinion of the Court of Appeals will affect only respondent, but it can be fairly said that respondent has set in motion legal machinery, both state and federal, far exceeding either the merits of his claim or the proper allocation of judicial resources in a system of justice which recognizes both the interests of society and that of the defendant.

No. 80-484. PRINCE EDWARD SCHOOL FOUNDATION *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

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

The initial question presented by this petition is whether the Internal Revenue Service is entitled to deny tax-exempt status to a private school which discriminates in its admissions policy. If so, the additional question posed is what steps a private school must take in order to establish that its admissions policy is in fact nondiscriminatory.

Petitioner, Prince Edward School Foundation, was formed as a nonprofit private school foundation to operate elementary and secondary schools in Prince Edward County, Va. The principal purpose for petitioner's establishment was to ensure a segregated education for the white children who attended petitioner's schools. *Griffin v. School Board of Prince Edward*

*County*, 377 U. S. 218, 223, 231 (1964). Presently, petitioner's sole activity is the operation of one private school, Prince Edward Academy.

From 1959 until 1970, petitioner was considered by the Service as a tax-exempt organization within the terms of § 501 (c)(3) of the Internal Revenue Code of 1954, 26 U. S. C. § 501 (c)(3). Section 501 (a) of the Code exempts from the federal income taxes organizations described in § 501 (c)(3), and this latter provision includes corporations or foundations "organized and operated exclusively for religious, charitable, scientific, . . . literary, or educational purposes . . . ."

In 1970, the Service announced that it would no longer recognize the tax-exempt status of any private school unless the school adopted and administered a nondiscriminatory admissions policy. This new position was announced during the course of litigation in *Green v. Connally*, 330 F. Supp. 1150 (DC 1971), in which the Service's prior policy was being challenged. A three-judge panel in *Green* thereafter ruled that a private school is not entitled to acquire or retain exempt status under § 501 (c)(3) unless it has a racially nondiscriminatory admissions policy. Although § 501 (c)(3) does not, by its express terms, impose such a limitation on the right to tax-exempt status, the *Green* court reasoned that such a limitation was mandated by both public policy and the common-law definition of "charitable."<sup>1</sup>

To effectuate its new policy regarding tax exemptions for private schools, the Service issued Revenue Procedure 72-54 (currently Rev. Proc. 75-50, 1975-2 Cum. Bull. 587), which requires a private school seeking tax-exempt status to publicize its nondiscriminatory admissions policy to all segments

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<sup>1</sup> This Court summarily affirmed the District Court's decision, *sub nom. Coit v. Green*, 404 U. S. 997 (1971), but we later explained in *Bob Jones University v. Simon*, 416 U. S. 725, 740, n. 11 (1974), that this affirmance lacks precedential weight because no controversy remained in *Green* by the time the case reached this Court.

of the community either through a newspaper of general circulation or over the broadcast media.

Petitioner has continuously refused to publicize that its school has a racially nondiscriminatory admissions policy, although it has steadfastly contended that in fact this is the case. (App. to Pet. for Cert. 49a.) In 1978, the Service revoked petitioner's exempt status because it "[had] not complied with the requirements of Revenue Procedure 75-50 nor any of its guidelines that preceded it and [has] not demonstrated that [it has] adopted a racially nondiscriminatory policy as to students . . . ." (*Id.*, at 18a.)

Thereafter, petitioner brought this action under 26 U. S. C. § 7428 to review the Service's determination regarding its tax-exempt status, attacking both the statutory and constitutional validity of Rev. Proc. 75-50. Petitioner filed affidavits in the District Court asserting that it has an open admissions policy and, although no black student has ever attended its school, no black student has ever applied for admission and no official of or personnel related to the petitioner has ever done or said anything to discourage such application. (App. to Pet. for Cert. 49a.) Petitioner also argued to the District Court that since 1973 it has been subject to an injunction entered by another District Court requiring it to admit any qualified black applicants. *McCrary v. Runyon*, 363 F. Supp. 1200 (ED Va. 1973), *aff'd*, 427 U. S. 160 (1976). No contention has been made that petitioner is in violation of that injunction order.

On cross-motions for summary judgment, the District Court upheld the Service's determination. The District Court concluded:

"It is accordingly undisputed that the plaintiff has never admitted, never received an application from, and thus has never denied admission to a black person. Notwithstanding the absence of direct evidence in either party's favor, it remains the plaintiff's burden to establish that

its policy is to admit black students on the same basis as those of other races. The plaintiff has failed to present any evidence to that effect. On the other hand, the inference that plaintiff in fact administers a racially discriminatory policy may be drawn from the circumstances surrounding the school's establishment. . . . A further inference that plaintiff administers a racially discriminatory admissions policy can be drawn from the fact that plaintiff has previously conceded that it practiced a racially discriminatory policy of exclusiveness, was subsequently enjoined from such practices by court order, but has failed to present any evidence that it has since modified that policy."<sup>2</sup>

The questions presented by this petition are of widespread importance. The validity of the Service's policy of denying tax-exempt status to private schools which have a racially discriminatory admissions policy is not apparent from a reading of the relevant provisions of the 1954 Code. Section 501 (c)(3) speaks to a number of different types of organizations which are entitled to tax-exempt treatment. Separate references are made to "educational" and "charitable" organizations. Arguably, these separate references reflect Congress' intent that not all educational institutions must also be charitable institutions (as that term was used in the common law) in order to receive tax-exempt status. Moreover, for statutory interpretation purposes, it is difficult to distinguish between private schools which discriminate on the basis of race, private "religious" schools which discriminate on the basis of religion, and private "religious" schools which dis-

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<sup>2</sup> The District Court did not address petitioner's statutory and constitutional challenges to Rev. Proc. 75-50. The court reasoned that a ruling on the validity of this Revenue Procedure would not affect the ultimate question of whether petitioner was in fact administering a non-discriminatory admissions policy. The opinion of the District Court was affirmed in a *per curiam* order by the Court of Appeals.

criminate on the basis of race but claim that separation of the races is one of the tenets of their religion. Certainly, the Service has never proffered any persuasive reason why these situations should be treated dissimilarly.

Given the general rule that words of a statute, including the Revenue Acts, should be interpreted where possible in their ordinary, everyday sense, *Malat v. Riddell*, 383 U. S. 569, 571 (1966); *Hanover Bank v. Commissioner*, 369 U. S. 672, 687 (1962), the authority of the Secretary of the Treasury to promulgate this policy regarding the tax status of private schools is sufficiently questionable to merit review by this Court. Perhaps, implementation by the Service of the express language of the statute will, as suggested by the District Court in *Green v. Connally, supra*, create problems of a constitutional nature. That, however, is a question that this Court, as opposed to the Service, is better equipped to address.

Assuming, *arguendo*, the validity of the Service's policy pertaining to private schools, the determination made by the District Court that petitioner does not qualify for tax-exempt treatment is questionable on the record before us. Petitioner was, and still is, under a court order not to discriminate in its admissions. No contempt proceedings have been initiated against the petitioner for violation of that order. Moreover, the District Court had before it sworn affidavits that petitioner has an open admissions policy. Admittedly, petitioner refused to advertise this open admissions policy, but the Service's requirement of such is one step further removed from the express language of the statute and therefore of even more questionable statutory and constitutional validity.

Not surprisingly, petitioner has not had the opportunity to demonstrate the sincerity of its open admissions practice. Petitioner has retained, and in fact teaches, its belief that racial segregation is desirable. The Court, however, has upheld the First Amendment right of parents to send their children to educational institutions such as petitioner's, although we have condemned as unlawful the *practice* of deny-

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ing admission to such institutions on account of race. *McCrary v. Runyon*, 427 U. S. 160, 176 (1976). It is easy to understand why any black parents would not seek their child's admission to an "educational" institution which seeks to inculcate the merits of segregation in the value system of its students. It is not at all unlikely that petitioner will never receive an application for the admission of a black child. This, however, is of no relevance to the narrow question of whether a black child, if he desired to attend petitioner's institution, would in fact be granted admission on the same basis as a white child. The Service presented no evidence to rebut the evidence brought forth by the petitioner that this would be the case.

Because I believe the time has come for this Court to deal with the difficult statutory and constitutional questions raised in this petition, I dissent from the denial of the petition for a writ of certiorari.

No. 80-733. SHEET METAL WORKERS' INTERNATIONAL ASSN., AFL-CIO *v.* CARTER. C. A. 5th Cir. Certiorari denied. Reported below: 618 F. 2d 1093.

JUSTICE REHNQUIST, dissenting.

The Court of Appeals for the Fifth Circuit held in this case that an order of the District Court for the Southern District of Georgia remanding a case to the state court from which it was removed was reviewable through a petition for a writ of mandamus. This conclusion is directly contrary to the plain language of 28 U. S. C. § 1447 (d), which provides that "[a]n order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise." Such manifest disregard of the language of Congress should in my opinion warrant at least review by this Court, if not summary reversal.

The complicated course of this litigation began in 1972, when respondent filed an action against petitioner International Union in state court. Petitioner did not answer the

complaint but instead moved to dismiss it for improper service. This motion was denied and a default judgment eventually entered against petitioner. A state trial was held for the sole purpose of calculating damages. The judgment entered for respondent, however, was ultimately reversed by the Georgia Supreme Court on the ground that the International had not been properly served. *Sheet Metal Workers' International Assn. v. Carter*, 241 Ga. 220, 244 S. E. 2d 860 (1978). When the action was reinstated and petitioner was properly served, it removed the action to federal court. As early as pretrial conference it clearly developed that respondent's only claim was a state-law claim for intentional infliction of emotional distress, App. to Pet. for Cert. 1a, but respondent never moved to remand the case and the court did not do so *sua sponte*. The case proceeded to trial and the jury awarded compensatory and punitive damages in favor of respondent. Petitioner then moved to have the judgment vacated and the case remanded for lack of subject-matter jurisdiction. The District Court concluded that jurisdiction was lacking, set aside the verdict and judgment, and remanded the action to state court. The court then stated: "Notwithstanding 28 U. S. C. § 1447 (d), this Court hopes this Order is appealable. Perhaps another exception may be carved out of the statute." *Id.*, at 3a.

The Court of Appeals acceded to the wishes of the District Court. It granted respondent's petition for a writ of mandamus, vacated the remand order, and directed the District Court to consider if it had pendent jurisdiction of the state-law claim. It overcame to its satisfaction the seemingly clear prohibition of § 1447 (d) on the ground that § 1447 (c) required remand "[i]f at any time before final judgment it appears that the case was removed improvidently and without jurisdiction," while the District Court ordered remand *after* final judgment. Relying on our decision in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U. S. 336 (1976), the

court reasoned that the remand order was not within § 1447 (c) and thus review was not prohibited by § 1447 (d).

In *Thermtron*, however, the Court stated that “[i]f a trial judge purports to remand a case on the ground that it was removed ‘improvidently and without jurisdiction,’ his order is not subject to challenge in the court of appeals by appeal, by mandamus, or otherwise.” 423 U. S., at 343. The District Court remanded this case precisely for the quoted reason. While *Thermtron* also stated that “[t]here is no indication whatsoever that Congress intended to extend the prohibition against review to reach remand orders entered on grounds not provided by the statute,” *id.*, at 350, this remand order was entered on grounds permitted by the statute and therefore comes under that portion of the *Thermtron* opinion stating that “we neither disturb nor take issue with the well-established general rule that § 1447 (d) and its predecessors were intended to forbid review by appeal or extraordinary writ of any order remanding a case on the grounds permitted by the statute.” *Id.*, at 351–352. See *Briscoe v. Bell*, 432 U. S. 404, 414, n. 13 (1977) (“Where the order is based on one of the enumerated grounds, review is unavailable no matter how plain the legal error in ordering the remand”); *Gravitt v. Southwestern Bell Telephone Co.*, 430 U. S. 723 (1977) (“Title 28 U. S. C. § 1447 (c) provides for remanding a removed action when the district court determines that ‘the case was removed improvidently and without jurisdiction’; and when a remand has been ordered on these grounds, 28 U. S. C. § 1447 (d) unmistakably commands that the order ‘remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise’”). Nothing in *Thermtron* suggests a further exception to the clear prohibition of § 1447 (d) based merely on the timing of the district judge’s remand order.

The Court of Appeals stated that appellate review of remand orders entered after final judgment served the policy concerns underlying § 1447 (d). Not only is such policy

analysis inappropriate in light of the plain language of the statute, it is unsound also. Congress' purpose in enacting § 1447 (d) was to "prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues." *Thermtron, supra*, at 351. When the appellate court undertakes review of a remand order entered after final judgment and concludes that a remand was appropriate, the wasteful delay is clear. Although a retrial in state court may be avoided if a reviewing federal court determines remand was inappropriate, such a benefit can only be had by subjecting *all* remand orders after final judgment to review. The present case is actually a paradigmatic example of the delay Congress intended to prevent, since the Court of Appeals did not even resolve the jurisdictional issue, but remanded to the District Court for further proceedings. A clearer instance of the evil Congress intended to avoid—"delay in the trial of remanded cases by protracted litigation of jurisdictional issues"—would be difficult to imagine.

This Court obviously cannot grant certiorari to review every case in which four of its Members believe an important issue is presented and wrongly decided. But where, as here, we deal not with shades of gray clustering on both sides of a wavering legal line, but instead with a jurisdictional statute in which Congress has stated in bright-line terms that "[a]n order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise," the case for plenary consideration is considerably stronger.

In these days of proliferating litigation, there is a tendency to lose sight of the very sensible observation of Justice Brandeis, dissenting in *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932), that "in most matters it is more important that the applicable rule of law be settled than that it be settled right." This is particularly true of jurisdictional statutes and statutes and rules regulating trial procedures and appellate review. Here the Court of Appeals, contrary to the opinion in *Thermtron, supra*, reviewed by extraordinary writ

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(mandamus) an order remanding a case on grounds permitted by the applicable statute. If it may without further review here breathe life into the District Court's hope that "another exception may be carved out of the statute," the congressional policy underlying the statute will soon be at the mercy of any court of appeals which wishes to disobey it.

Since the litigation in question has been protracted, and because petitioner may be suspected of having engaged in tactical maneuvering in order to bring itself within the ambit of the congressional prohibition against such review, there is natural sympathy for respondent. But sympathy so generated is not a sound basis for administering a system of justice involving sensitive federal-state questions such as this. Since the action of the Court of Appeals was squarely contrary to the express congressional language referred to above, I would grant the petition for certiorari and reverse the judgment.

No. 80-777. BLACKBURN, WARDEN *v.* THOMAS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 623 F. 2d 383.

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, dissenting.

In 1972, respondent was tried in a Louisiana state court for possessing and distributing cocaine and heroin. Pursuant to the state law applicable at that time, the jury consisted of five members. La. Code Crim. Proc. Ann., Art. 782 (West 1967) (amended 1975). Respondent raised no objection to its size. The jury unanimously voted to convict respondent, and he was sentenced to a prison term.

More than six years later, after exhausting state remedies, respondent sought habeas corpus in Federal District Court.<sup>1</sup>

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<sup>1</sup> Respondent did not take a direct appeal from his conviction. He exhausted his state remedies by seeking state collateral relief, relying for the

Relying on this Court's decision in *Ballew v. Georgia*, 435 U. S. 223 (1978), respondent argued that his trial violated the Sixth Amendment (applicable to the States through the Fourteenth), because a jury of five persons was constitutionally inadequate. The District Court granted the writ in reliance on *Ballew*, App. to Pet. for Cert. 11a, 22a-31a, and the Court of Appeals for the Fifth Circuit affirmed, 623 F. 2d 383 (1980). The Court of Appeals recognized that respondent's conviction had become final long before *Ballew* held that five-member juries are unconstitutional. It nevertheless held that *Ballew* should be applied retroactively to invalidate all convictions rendered by juries of that size.<sup>2</sup>

I believe that the Court of Appeals improperly applied *Ballew* to reverse respondent's conviction. I therefore would grant the petition for certiorari and reverse the decision of the Court of Appeals.

Three recent cases govern respondent's claim. In *Ballew, supra*, we held that juries in criminal cases must have at least six members to meet constitutional requirements. A smaller jury may be insufficient to "foster effective group deliberation," 435 U. S. at 232, 234 (opinion of BLACKMUN, J.), and to provide a "fair cross-section" of the community, *id.*, at 245 (WHITE, J., concurring in judgment). Our decision in *Ballew* was reaffirmed one year later in *Burch v. Louisiana*, 441 U. S. 130, 137 (1979), when we identified similar constitutional flaws in a conviction reached by a nonunanimous

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first time on his jury-composition claim. The state trial court did not address respondent's failure to enter a contemporaneous objection to the five-member jury. Its denial of relief thus was on the merits. App. to Pet. for Cert. 34a. The Louisiana Supreme Court denied review. *State ex rel. Thomas v. Blackburn*, 361 So. 2d 1218 (1978).

<sup>2</sup> Respondent failed to object at trial to the size of his jury. N. 1, *supra*. The Court of Appeals correctly disregarded this procedural default and reached the merits of respondent's petition because the state trial court on collateral review had ruled upon the merits, see *ibid.* *County Court of Ulster v. Allen*, 442 U. S. 140, 152-153, 154 (1979); *Franks v. Delaware*, 438 U. S. 154, 161-162 (1978).

six-member jury. Cf. *Apodaca v. Oregon*, 406 U. S. 404 (1972); *Johnson v. Louisiana*, 406 U. S. 356 (1972).

Soon thereafter, in *Brown v. Louisiana*, 447 U. S. 323 (1980), the Court applied *Burch* retroactively to reverse a conviction reached by a nonunanimous six-member jury. The Court divided three ways in *Brown*, and it is essential for our present purposes to identify the divergent views. JUSTICE BRENNAN wrote for a plurality of four Justices and concluded that any conviction reached by a nonunanimous six-member jury should be reversed. Two other Justices concurred in the result, stating that *Burch* should be applied retroactively only to cases pending on direct review at the time *Burch* was decided. 447 U. S., at 337 (POWELL, J., with whom STEVENS, J., joined), quoting *Hankerson v. North Carolina*, 432 U. S. 233, 248 (1977) (POWELL, J., concurring in judgment). Three Justices dissented, arguing against any retroactive application of the new rule, because there was no "substantial likelihood" that a 5-to-1 jury reached a result that was "factually incorrect." 447 U. S., at 338 (REHNQUIST, J., with whom BURGER, C. J., and WHITE, J., joined), quoting *Williams v. United States*, 401 U. S. 646, 656, n. 7 (1971).

In sum, in *Burch*, as in *Ballew*, we identified constitutional defects in jury composition. Though the system challenged in each case differed somewhat, we invalidated each one for essentially the same reason: the Constitution requires that criminal juries be structured in a manner conducive to highly reliable adjudication. *Ballew, supra*, at 232, 234 (opinion of BLACKMUN, J.); *Burch, supra*, at 137. It does not follow from either case, however, that unanimous five-member juries and nonunanimous six-member juries frequently—or even occasionally—render incorrect decisions. A criminal defendant's interest in a new trial, based on *post hoc* "speculation about what would have happened" with a jury of different size or structure, *Brown v. Louisiana, supra*, at 340 (REHNQUIST, J., dissenting), need not always prevail over the

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public interest in assuring the finality of convictions. See *Sumner v. Mata*, 449 U. S. 539, 550-551, n. 3 (1981) ("both society and the individual criminal defendant have [an interest] 'in insuring that there will at some point be the certainty that comes with an end to litigation'"), quoting *Sanders v. United States*, 373 U. S. 1, 24-25 (1963) (Harlan, J., dissenting); *Mackey v. United States*, 401 U. S. 667, 675-702 (1971) (Harlan, J., concurring in part and dissenting in part); *Hankerson v. North Carolina*, *supra*, at 247-248 (POWELL, J., concurring in judgment). At some point, the costs of retroactive application of new constitutional principles of jury size or structure exceed the possibility of enhanced reliability that may be obtained upon retrial.<sup>3</sup>

The present case involves a conviction rendered by a unanimous five-member jury. If the case now were to be tried, it is plain in light of *Ballew* that such a jury is not of constitutionally adequate size. But this case was tried in 1972—more than six years before *Ballew*—and it is now before us on *collateral review*. The retroactivity analysis of the plurality in *Brown v. Louisiana* thus is not controlling. Instead, the governing position is that represented by the combined views of the other five Justices in *Brown*. Because the Court of Appeals in this case improperly relied on the reasoning of the *Brown* plurality to apply *Ballew* retroactively, I would grant certiorari and reverse its judgment.

No. 80-837. GRASSI v. UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 626 F. 2d 444.

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<sup>3</sup>The State is greatly disadvantaged when a conviction, long thought to be final, is reversed on collateral review. The State's opportunity to hold a retrial under these circumstances may be only theoretical. Witnesses disappear and memories fade with the passage of time. See *Hankerson v. North Carolina*, 432 U. S. 233, 247 (1977) (POWELL, J., concurring in judgment).

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No. 80-963. *MICHIGAN v. OLAH*. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. 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: 409 Mich. 948, 298 N. W. 2d 422.

No. 80-5432. *WATKINS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. JUSTICE MARSHALL would grant certiorari and reverse the judgment. *Hicks v. Oklahoma*, 447 U. S. 343 (1980).

No. 80-5643. *SNELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 627 F. 2d 186.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner seeks review on double jeopardy grounds of his conviction of attempted bank robbery. 18 U. S. C. § 2113 (a). I would grant the petition for certiorari and reverse the judgment of the United States Court of Appeals for the Ninth Circuit.

Petitioner was originally charged in an indictment with attempted extortion, 18 U. S. C. § 1951, and conspiracy to commit bank robbery, 18 U. S. C. §§ 371, 2113 (a), and was convicted on both counts. On appeal, the Court of Appeals affirmed the conspiracy conviction, but reversed the attempted extortion conviction on the ground that the conduct charged was within the exclusive coverage of 18 U. S. C. § 2113 (a). 550 F. 2d 515 (1977). Petitioner was then charged in a second indictment with attempted bank robbery in violation of § 2113 (a), arising out of the same transaction which had given rise to the conspiracy conviction and the reversed conviction of attempted extortion. The United States District Court for the Northern District of California dismissed this second indictment on double jeopardy and due process grounds. The Court of Appeals reversed and re-

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manded the case to the District Court for trial. 592 F. 2d 1083 (1979). A petition for certiorari was denied. 442 U. S. 944 (1979). Petitioner was then convicted of attempted bank robbery. His request to set aside his conviction on double jeopardy grounds was rejected by the Court of Appeals, 627 F. 2d 186 (1980), and this petition followed.

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. Since the charge under the second indictment arose out of the same criminal transaction that led to the conspiracy conviction and the reversed conviction of attempted extortion, the Double Jeopardy Clause barred its prosecution. I would, therefore, grant the petition for certiorari and reverse the judgment of the Court of Appeals.

No. 80-784. WASHINGTON *v.* DAUGHERTY. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 94 Wash. 2d 263, 616 P. 2d 649.

No. 80-964. KENTUCKY *v.* NEWSOME ET AL. Sup. Ct. Ky. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 609 S. W. 2d 370.

No. 80-1086. WYRICK, WARDEN *v.* HENSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 634 F. 2d 1080.

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No. 80-812. MESCALERO APACHE TRIBE *v.* O'CHESKEY, COMMISSIONER OF REVENUE OF NEW MEXICO, ET AL. C. A. 10th Cir. Motion of Navajo Forest Products Industries for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 625 F. 2d 967.

No. 80-978. KEPHART *v.* INSTITUTE OF GAS TECHNOLOGY. C. A. 7th Cir. Motion of Legal Services for the Elderly for leave to file an untimely brief as *amicus curiae* denied. Certiorari denied. Reported below: 630 F. 2d 1217.

No. 80-1007. MARSCHAK, AKA ASHLEY, TRUSTEE *v.* KIRKLAND & ELLIS ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 734.

No. 80-1025. LECLAIR ET AL. *v.* SAUNDERS. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 627 F. 2d 606.

No. 80-1026. CHRYSLER CORP. *v.* DAWSON ET AL. C. A. 3d Cir. Motion of Motor Vehicle Manufacturers Association of the United States for leave to file a brief as *amicus curiae* granted. Motion of petitioner to strike portions of respondents' brief in opposition denied. Certiorari denied. Reported below: 630 F. 2d 950.

No. 80-1038. PUBLIC SERVICE COMMISSION OF TENNESSEE ET AL. *v.* LOUISVILLE & NASHVILLE RAILROAD CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 426.

No. 80-5824. LUM ET AL. *v.* CAMPBELL, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 626 F. 2d 739.

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No. 80-5840. LANGWORTHY *v.* MARYLAND. Ct. Sp. App. Md. Motion of Citizens' Commission on Human Rights for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 46 Md. App. 116, 416 A. 2d 1287.

*Rehearing Denied*

- No. 79-395. UNITED STATES *v.* MORRISON, 449 U. S. 361;  
No. 79-870. UNITED STATES RAILROAD RETIREMENT BOARD *v.* FRITZ, 449 U. S. 166;  
No. 79-1679. WASTE MANAGEMENT OF WISCONSIN, INC. *v.* FOKAKIS, 449 U. S. 1060;  
No. 79-2040. PACILEO, SHERIFF *v.* WALKER, 449 U. S. 86;  
No. 79-2059. AMERICAN ELECTRIC POWER CO., INC., ET AL. *v.* CITY OF MISHAWAKA, INDIANA, ET AL., 449 U. S. 1096;  
No. 80-613. SHOSHONE TRIBE ET AL. *v.* DRY CREEK LODGE, INC., ET AL., 449 U. S. 1118;  
No. 80-707. BRADY *v.* DOE, 449 U. S. 1081;  
No. 80-5315. MAGGARD *v.* FLORIDA PAROLE COMMISSION, 449 U. S. 960;  
No. 80-5580. EUGE *v.* UNITED STATES ET AL., 449 U. S. 1065;  
No. 80-5585. PAPP *v.* OHIO, 449 U. S. 1065;  
No. 80-5612. IN RE GAMBARA, 449 U. S. 1087;  
No. 80-5716. BALOUN ET AL. *v.* GENERAL MOTORS CORP., 449 U. S. 1090;  
No. 80-5725. GOODEN *v.* TEXAS, 449 U. S. 1072;  
No. 80-5770. IN RE JACKSON, 449 U. S. 1075;  
No. 80-5780. IN RE BEACH, 449 U. S. 1076;  
No. 80-5782. IN RE LOHMANN, 449 U. S. 1109; and  
No. 80-5866. PROCA *v.* UNITED STATES, 449 U. S. 1093.  
Petitions for rehearing denied.

No. 80-163. IN RE CHESTNUTT MANAGEMENT CORP., 449 U. S. 816 and 1027. Motion for leave to file a second petition for rehearing denied.

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No. 80-5476. GORNICK *v.* ILLINOIS ET AL., 449 U. S. 1018;  
and

No. 80-5540. GRINAN *v.* TRESPALACIOS, 449 U. S. 1036.  
Motion for leave to file petitions for rehearing denied.

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*Miscellaneous Order*

No. 87, Orig. CALIFORNIA *v.* TEXAS. In this case the Solicitor General is invited to file a brief expressing the views of the United States by noon Wednesday, March 4, 1981.

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*Appeals Dismissed*

No. 80-1040. PINCUS *v.* ESTATE OF GREENBERG ET AL. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. JUSTICE STEWART would note probable jurisdiction and set case for oral argument. Reported below: 390 So. 2d 40.

No. 80-1102. LUNG ET AL. *v.* O'CHESKEY ET AL. Appeal from Sup. Ct. N. M. dismissed for want of substantial federal question. Reported below: 94 N. M. 802, 617 P. 2d 1317.

No. 80-1152. ROCHESTER GAS & ELECTRIC CORP. *v.* PUBLIC SERVICE COMMISSION OF NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 51 N. Y. 2d 823, 413 N. E. 2d 359.

No. 80-1192. SYSKA, GUARDIAN *v.* MONTGOMERY COUNTY BOARD OF EDUCATION ET AL. Appeal from Ct. Sp. App. Md. dismissed for want of substantial federal question. Reported below: 45 Md. App. 626, 415 A. 2d 301.

No. 80-1231. GARRISON *v.* ILLINOIS. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 82 Ill. 2d 444, 412 N. E. 2d 483.

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No. 80-5658. *RUIZ v. TEXAS*. Appeal from Common Ct. at Law No. 1, Hidalgo County, Tex., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE BRENNAN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

*Certiorari Granted—Vacated and Remanded*

No. 79-5710. *BESSER v. GRAHAM, GOVERNOR OF FLORIDA*. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Weaver v. Graham, ante*, p. 24. Reported below: 376 So. 2d 857.

No. 79-5885. *PORTLEY v. GROSSMAN ET AL.* C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Weaver v. Graham, ante*, p. 24. Reported below: 605 F. 2d 563.

No. 79-6574. *MATTHEWS 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 *Weaver v. Graham, ante*, p. 24. Reported below: 620 F. 2d 288.

*Certiorari Granted—Reversed.* (See No. 80-485, *ante*, p. 139; and No. 80-532, *ante*, p. 147.)

*Miscellaneous Orders*

No. A-714. *SCHIFF v. UNITED STATES*. C. A. 2d Cir. Application for recall and stay of mandate, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 80-396. *CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC., ET AL.* C. A. 1st Cir. [Certiorari granted, 449 U. S. 1060.] Motion of James Clancy for leave to participate in oral argument as *amicus curiae* denied.

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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, 449 U. S. 820.] Motion of Westmoreland Resources, Inc., for leave to file a brief as *amicus curiae* granted. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 80-251. ROSTKER, DIRECTOR OF SELECTIVE SERVICE *v.* GOLDBERG ET AL. D. C. E. D. Pa. [Probable jurisdiction noted, 449 U. S. 1009.] Motion of National Organization for Women for leave to participate in oral argument as *amicus curiae* denied.

No. 80-348. H. A. ARTISTS & ASSOCIATES, INC., ET AL. *v.* ACTORS' EQUITY ASSN. ET AL. C. A. 2d Cir. [Certiorari granted, 449 U. S. 991.] Motion of respondents for leave to divide oral argument with American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* granted.

No. 80-420. FLYNT ET AL. *v.* OHIO. Sup. Ct. Ohio. [Certiorari granted, 449 U. S. 1033.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the Solicitor General to permit Andrew J. Levander, Esquire, to present oral argument *pro hac vice* as *amicus curiae* granted.

No. 80-429. COUNTY OF WASHINGTON, OREGON, ET AL. *v.* GUNTHER ET AL. C. A. 9th Cir. [Certiorari granted, 449 U. S. 950.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

#### *Certiorari Granted*

No. 80-824. POLK COUNTY ET AL. *v.* DODSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 628 F. 2d 1104.

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No. 80-885. NATIONAL LABOR RELATIONS BOARD *v.* HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORP.; NATIONAL LABOR RELATIONS BOARD *v.* MALLEABLE IRON RANGE Co.; and

No. 80-1103. HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Motion of Office & Professional Employees, AFL-CIO, for leave to file a brief as *amicus curiae* in No. 80-885 granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 80-885 (first case) and No. 80-1103, 627 F. 2d 766; No. 80-885 (second case), 631 F. 2d 734.

No. 80-939. FEDERAL ELECTION COMMISSION *v.* DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE ET AL.; and

No. 80-1129. NATIONAL REPUBLICAN SENATORIAL COMMITTEE *v.* DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 212 U. S. App. D. C. 374, 660 F. 2d 773.

*Certiorari Denied.* (See also No. 80-5658, *supra.*)

No. 80-569. LOCALS 1830 AND 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSN., AFL-CIO *v.* BAILEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 588.

No. 80-657. McCOWN ET AL. *v.* CRAVENS, RECEIVER, ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 613 P. 2d 442.

No. 80-741. HIDALGO COUNTY GRAND JURY COMMISSIONERS ET AL. *v.* CIUDADANOS UNIDOS DE SAN JUAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 807.

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No. 80-746. BRADSHAW, SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION *v.* HALL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 630 F. 2d 1018.

No. 80-823. BASSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 1007.

No. 80-866. HAYS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 219.

No. 80-868. BURWELL ET AL. *v.* EASTERN AIR LINES, INC.; and

No. 80-1076. EASTERN AIR LINES, INC. *v.* BURWELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 633 F. 2d 361.

No. 80-880. CONTINENTAL OIL Co. *v.* OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 630 F. 2d 446.

No. 80-920. SOUTH SHORE HOSPITAL *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari denied. Reported below: 630 F. 2d 40.

No. 80-926. HEDMAN ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 1184.

No. 80-938. BURBANK ANTI-NOISE GROUP ET AL. *v.* LEWIS, SECRETARY OF TRANSPORTATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 623 F. 2d 115.

No. 80-948. ARMORED TRANSPORT, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 629 F. 2d 1313.

No. 80-953. CITY OF CHICAGO *v.* NATIONAL ORGANIZATION FOR WOMEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 622 F. 2d 591.

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No. 80-956. *EMCH ET AL., CO-PERSONAL REPRESENTATIVES OF EMCH'S ESTATE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 523.

No. 80-957. *ODOM CONSTRUCTION CO., INC., ET AL. v. UNITED STATES DEPARTMENT OF LABOR ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 110.

No. 80-981. *HAMMOND v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 82 Ill. App. 3d 839, 403 N. E. 2d 305.

No. 80-989. *BROWN v. BROWN*. Sup. Ct. La. Certiorari denied. Reported below: 387 So. 2d 565.

No. 80-999. *GREEN v. ACKERMAN, DIRECTOR OF HEALTH OF OHIO, ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 80-1062. *SHIELDS v. UNITED STATES NATIONAL BANK OF OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 46 Ore. App. 807, 613 P. 2d 114.

No. 80-1068. *JEWISH HOSPITAL ASSOCIATION OF LOUISVILLE, KENTUCKY, INC. v. STEWART MECHANICAL ENTERPRISES, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 628 F. 2d 971.

No. 80-1092. *EATON ET AL. v. SUPREME COURT OF ARKANSAS COMMITTEE ON PROFESSIONAL CONDUCT*. Sup. Ct. Ark. Certiorari denied. Reported below: 270 Ark. 573, 607 S. W. 2d 55.

No. 80-1098. *ORANGE COUNTY, NEW YORK v. DONOVAN, SECRETARY OF LABOR*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 889.

No. 80-1105. *WOLFSON v. BAKER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 1074.

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No. 80-1106. *CASTELLI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 2d 1211.

No. 80-1116. *STANDARD REGISTER CO. v. GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 508, O-K-I*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 215.

No. 80-1120. *PALMERI ET AL. v. UNITED STATES*; and  
No. 80-1271. *CAMPISANO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 192.

No. 80-1125. *BARTZ ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 583, 633 F. 2d 571.

No. 80-1136. *DRUMMOND v. STAHL ET AL.* Ct. App. Ariz. Certiorari denied. Reported below: 127 Ariz. 122, 618 P. 2d 616.

No. 80-1138. *MAYOR OF BALTIMORE ET AL. v. CROCKETT ET UX*. Ct. Sp. App. Md. Certiorari denied. Reported below: 45 Md. App. 682, 415 A. 2d 606.

No. 80-1179. *MATHEWS v. HANNAH, JUDGE, ET AL.* Ct. App. Ariz. Certiorari denied.

No. 80-1184. *McGEE v. ALASKA*. Sup. Ct. Alaska. Certiorari denied. Reported below: 614 P. 2d 800.

No. 80-1223. *JONES v. UNITED STATES* C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 402.

No. 80-1265. *D'ANTIGNAC v. UNITED STATES*; and  
No. 80-1266. *WELCH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 428.

No. 80-1299. *MAZZA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 2d 1211.

No. 80-1309. *LEE v. LAW OFFICES OF ALIOTO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 222.

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No. 80-5637. *CARTER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 631 F. 2d 726.

No. 80-5647. *FRAME v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 45 Ore. App. 723, 609 P. 2d 830.

No. 80-5665. *CULBRETH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-5711. *LANDRY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 388 So. 2d 699.

No. 80-5718. *BURTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 2d 975.

No. 80-5740. *BYERS v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 80-5758. *GUICE v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 83 Ill. App. 3d 914, 404 N. E. 2d 261.

No. 80-5851. *TURNER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 639 F. 2d 785.

No. 80-5872. *OCCHINO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 629 F. 2d 561.

No. 80-5913. *GOLDSTEIN v. BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY OF NEW JERSEY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1201.

No. 80-5937. *PETROFSKY, DBA PETROF TRADING Co. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 222 Ct. Cl. 450, 616 F. 2d 494.

No. 80-5999. *HARGROVE v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 80-6000. *DAVIS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

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No. 80-6002. *HAYNES v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 80-6003. *McKELDIN v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 631 F. 2d 458.

No. 80-6006. *POTTS v. COURT OF CRIMINAL APPEALS OF TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 80-6013. *GALLION v. MASSEY FERGUSON Co. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 634 F. 2d 631.

No. 80-6024. *STATUM v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 390 So. 2d 886.

No. 80-6089. *BUTZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 563.

No. 80-6095. *HOPKINSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 631 F. 2d 665.

No. 80-6103. *WASHINGTON v. MARKS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 445.

No. 80-6104. *WHITNEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 654.

No. 80-6120. *WELCH v. HICKEY, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION*. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 784.

No. 80-6122. *EDMON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 2d 790.

No. 80-6126. *LITTLES, AKA D'ANGELO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 80-6129. *MASSEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1084.

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No. 80-6138. MESA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 638 F. 2d 507.

No. 80-6142. JENKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 776.

No. 80-6159. WRIGHT *v.* UNITED STATES. C.A. 6th Cir. Certiorari denied. Reported below: 644 F. 2d 887.

No. 80-323. COLUMBIA BROADCASTING SYSTEM, INC. *v.* AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. C. A. 2d Cir. Motions of National Broadcasting Co., Inc.; American Broadcasting Cos., Inc.; and All-Industry Television Station Music License Committee for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of these motions or this petition. Reported below: 620 F. 2d 930.

No. 80-340. WASHINGTON *v.* DYER. Ct. App. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 25 Wash. App. 1036.

No. 80-548. MICHIGAN *v.* RANDLE. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE and JUSTICE POWELL would grant certiorari.

No. 80-854. KERPELMAN *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Motion to recuse THE CHIEF JUSTICE denied. Certiorari denied. Reported below: 288 Md. 341, 420 A. 2d 940.

No. 80-929. CORBIN, TRUSTEE IN BANKRUPTCY *v.* FEDERAL RESERVE BANK OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 629 F. 2d 233.

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No. 80-1104. STEWART-WARNER CORP. *v.* WESTERN ELECTRIC Co., INC. C. A. 4th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 333.

*Rehearing Denied*

- No. 80-650. CONNOR *v.* FLYNN, 449 U. S. 1079;  
No. 80-723. PATRICELLI *v.* MECCA LTD. ET AL., 449 U. S. 1082;  
No. 80-775. CIAFFONI ET AL. *v.* COWDEN ET AL., 449 U. S. 1083;  
No. 80-5429. DEGIDEO *v.* ALTEMOSE CONSTRUCTION CO., 449 U. S. 1086;  
No. 80-5565. WILLIAMS *v.* LOUISIANA, 449 U. S. 1103;  
No. 80-5641. DOE *v.* WEST ET AL., 449 U. S. 1088;  
No. 80-5751. BALDWIN *v.* LOUISIANA, 449 U. S. 1103;  
No. 80-5778. WILSON *v.* GEORGIA, 449 U. S. 1103;  
No. 80-5792. JOHL *v.* TOWN OF GROTON ET AL., 449 U. S. 1092; and  
No. 80-5830. DUNK ET UX. *v.* MANUFACTURERS LIGHT & HEAT Co., 449 U. S. 1128. Petitions for rehearing denied.
- No. 79-938. ALLSTATE INSURANCE Co. *v.* HAGUE, PERSONAL REPRESENTATIVE OF HAGUE'S ESTATE, 449 U. S. 302; and  
No. 80-529. CALGON CORP. *v.* DAVIS, 449 U. S. 1101. Petitions for rehearing denied. JUSTICE STEWART took no part in the consideration or decision of these petitions.

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*Miscellaneous Order*

No. A-754. WILLIAMS *v.* INDIANA. Application for stay of execution of Steven T. Judy, presented to JUSTICE STEVENS, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the stay.

MARCH 9, 1981

*Certiorari Granted—Vacated and Remanded*

No. 80-276. WESTINGHOUSE ELECTRIC CORP. v. VAUGHN ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Texas Dept. of Community Affairs v. Burdine*, ante, p. 248. JUSTICE STEWART took no part in the consideration or decision of this case. Reported below: 620 F. 2d 655.

No. 80-5589. SIMPSON v. GEORGIA. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Wood v. Georgia*, ante, p. 261. Reported below: 154 Ga. App. 775, 270 S. E. 2d 50.

JUSTICE BRENNAN, dissenting.

I agree with JUSTICE WHITE that the record in this case presents clear evidence of waiver and that remand is therefore inappropriate. Rather than grant the petition for a writ of certiorari, however, I would vote to summarily reverse the conviction for distributing obscene materials in violation of Ga. Code § 26-2101 (1975) under the view I have frequently expressed, and to which I adhere, that such an obscenity statute is facially unconstitutional. See *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73, 113 (1973) (BRENNAN, J., dissenting); *McKinney v. Alabama*, 424 U. S. 669, 678 (1976) (separate opinion of BRENNAN, J.).

JUSTICE WHITE, dissenting.

We granted certiorari in *Wood v. Georgia*, ante, p. 261, in order to decide whether it is permissible under the Equal Protection Clause for a State to revoke an offender's probation for failure to make regular payments toward the satisfaction of a fine when nonpayment is due to the offender's indigency. This case raises the identical issue.

The majority vacated and remanded *Wood v. Georgia* on the ground that petitioners were perhaps deprived of

their constitutional right to adequate assistance of counsel by the possibly divided loyalties of their counsel. For reasons that I have explained in my dissent in that case, *ante*, at 275-281, I do not believe that the Court's disposition of *Wood* falls within the limits of our jurisdiction. The same jurisdictional limits apply to this case: petitioner at no point sought relief in the Georgia courts on the basis of a claim of ineffective assistance of counsel, nor has there been a final decision on this issue by the highest state court in which a decision could be had, as is required by 28 U. S. C. § 1257 (3). Beyond that, however, the State abandoned any suggestion of conflicting interest and has not raised it here.

There is, in my view, even less justification for the majority's disposition of this case than there is for the conclusion reached in *Wood*. Here, the potential conflict of interest was explained by the trial court to petitioner, and petitioner waived whatever constitutional right he might have had to a different attorney. The transcript in this case shows that the State's attorney raised the conflict of interest issue:

"It is my contention, and the facts would show, . . . that [petitioner] worked for an organization headquartered on Marietta Street; that they promised they would pay all fines, if any, the lawyer's fees, bond fees and what not and he is now in a position that if his fine had been paid, he would not be where he is. He would not be in jail. . . . [T]he people who promised him that were the people that employed Mr. Zell to come and represent him. . . . If he has employed Mr. Zell, that is one thing, but if they have employed Mr. Zell to come down here and act on his behalf in this matter, I say that there is a clear and distinct conflict of interest." Tr. 2.

The trial court responded to this charge by asking petitioner if Mr. Zell was representing him and petitioner answered: "He is right now." The court continued:

"Well, do you understand that if you do not have an

attorney and desire an attorney, that I will appoint an attorney to represent you or if you do not know that, I am informing you now." *Id.*, at 4.

Petitioner responded that he "agreed to allow Mr. Zell to represent [him] because he is totally familiar with the case." He responded specifically that he knew of no possible conflict of interest between himself and Mr. Zell and of none between himself and any client represented by Mr. Zell, including his former employer. The discussion ended with the following exchange:

"THE COURT: I will let Mr. Zell—if you want me to appoint someone to represent you, I will appoint someone to represent you. I mean, you are free to have Mr. Zell or to have the Court appoint someone.

"MR. SIMPSON: Well, as I stand right now, I just as soon would go ahead with the hearing with Mr. Zell representing me here." *Id.*, at 7.

As I read this record, the possible conflict was fully explained to petitioner, the trial judge made perfectly clear that petitioner could have alternative counsel appointed, and petitioner voluntarily and knowingly decided that he would prefer to have Mr. Zell represent him. Even if there was a possible conflict of interest in Mr. Zell's representation—a proposition with which I do not agree, as I explained in *Wood*—I do not understand how the majority can read this record as failing to establish a valid waiver. Since there is no contention that the right to conflict-free counsel cannot be waived, I can perceive no possible bar to our reaching and resolving the equal protection issue presented in this case and in *Wood*.

Accordingly, I dissent from the Court's disposition of this case. Even if *Wood* was properly vacated and remanded, the petition in this case should be granted and the underlying constitutional issue resolved. With all due respect, I dissent.

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*Miscellaneous Orders*

No. ———. *HOMAN & CRIMEN, INC., ET AL. v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Motion of petitioners to direct the Clerk to accept and docket the petition for writ of certiorari denied. Reported below: 626 F. 2d 1201.

No. A-611 (80-1418). *STEVLIICH ET AL. v. UNITED STATES*. C. A. 7th Cir. Application for recall and stay of mandate, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-625. *ATIYEH, GOVERNOR OF OREGON, ET AL. v. CAPPS ET AL.* D. C. Ore. Motion to vacate the stay heretofore entered by JUSTICE REHNQUIST is denied. JUSTICE BRENNAN and JUSTICE STEVENS would vacate the stay.

No. A-720. *BUREAU OF ECONOMIC ANALYSIS, UNITED STATES DEPARTMENT OF COMMERCE v. LONG ET AL.* Application for stay, presented to JUSTICE STEVENS, and by him referred to the Court, granted. The order of the United States District Court for the Western District of Washington, filed January 12, 1981, is stayed pending disposition of the appeal currently pending before the United States Court of Appeals for the Ninth Circuit.

No. A-737. *YIP v. UNITED STATES*; and

No. A-741. *GAN v. UNITED STATES*. Applications for continuation of bail, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-197. *IN RE DISBARMENT OF CAMPBELL*. Disbarment entered. [For earlier order herein, see 449 U. S. 978.]

No. D-206. *IN RE DISBARMENT OF KERPELMAN*. Disbarment entered. [For earlier order herein, see 449 U. S. 979.]

No. D-211. *IN RE DISBARMENT OF BARBUTO*. Disbarment entered. [For earlier order herein, see 449 U. S. 990.]

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No. D-212. *IN RE DISBARMENT OF GROSS*. Disbarment entered. [For earlier order herein, see 449 U. S. 1007.]

No. D-219. *IN RE DISBARMENT OF ROSPOND*. It is ordered that Robert P. Rospond, of Andover, 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-220. *IN RE DISBARMENT OF OSTROFF*. It is ordered that Geoffrey Ostroff, of Cherry Hill, 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-221. *IN RE DISBARMENT OF LEIGHTON*. It is ordered that Elliott Leighton, of Santa Rosa, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-222. *IN RE DISBARMENT OF STRICKLAND*. It is ordered that Maurice R. Strickland, of East Orange, 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-224. *IN RE DISBARMENT OF KLAUBER*. It is ordered that Gerald Ney Klauber, 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-223. *IN RE DISBARMENT OF WOLF*. It is ordered that Edward H. Wolf, 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-225. *IN RE DISBARMENT OF FLORSHEIM*. It is ordered that Robert Florsheim, 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. 87, Orig. *CALIFORNIA v. TEXAS*. Application of California for a temporary restraining order granted, and it is ordered that enforcement of the emergency order, No. 176.22.20.001, dated February 17, 1981, and effective March 1, 1981, promulgated by the Texas Department of Agriculture, is stayed pending action on the motion for leave to file a bill of complaint or further order of the Court. JUSTICE WHITE, JUSTICE REHNQUIST, and JUSTICE STEVENS dissent. [For earlier order herein, see *ante*, p. 961.]

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, 449 U. S. 917.] Motion of petitioners in No. 79-1711 for leave to file a supplemental brief after argument granted.

No. 80-850. *JONES, WARDEN v. HELMS*. C. A. 5th Cir. [Probable jurisdiction noted, 449 U. S. 1122.] Motion of appellant for divided argument denied.

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No. 80-317. UNIVERSITY OF TEXAS ET AL. *v.* CAMENISCH. C. A. 5th Cir. [Certiorari granted, 449 U. S. 950.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 80-441. GULF OIL CO. ET AL. *v.* BERNARD ET AL. C. A. 5th Cir. [Certiorari granted, 449 U. S. 1033.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 80-544. FIRST NATIONAL MAINTENANCE CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. [Certiorari granted, 449 U. S. 1076.] Motion of Washington Legal Foundation, Inc., for leave to file a brief as *amicus curiae* granted.

No. 80-1188. EDGAR *v.* MITE CORP. ET AL. C. A. 7th Cir.; and

No. 80-6045. KREMER *v.* CHEMICAL CONSTRUCTION CORP. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 80-1491. TELTRONICS SERVICES, INC. *v.* L. M. ERICSSON TELECOMMUNICATIONS, INC. C. A. 2d Cir. Motion of petitioner to expedite consideration of the petition for writ of certiorari denied.

No. 80-1320. IN RE RAMIREZ; and

No. 80-5533. IN RE DORTY. Petitions for writs of mandamus denied.

#### *Probable Jurisdiction Noted*

No. 80-990. CABELL, ACTING CHIEF PROBATION OFFICER OF LOS ANGELES COUNTY, ET AL. *v.* CHAVEZ-SALIDO ET AL. Appeal from D. C. C. D. Cal. Probable jurisdiction noted. Reported below: 490 F. Supp. 984.

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*Certiorari Granted*

No. 78-1545. ZIPES ET AL. *v.* TRANS WORLD AIRLINES, INC.;

No. 78-1549. TRANS WORLD AIRLINES, INC. *v.* ZIPES ET AL.; and

No. 80-951. INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 7th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: Nos. 78-1545 and 78-1549, 582 F. 2d 1142; No. 80-951, 630 F. 2d 1164.

No. 80-419. ARIZONA *v.* MARICOPA COUNTY MEDICAL SOCIETY ET AL. C. A. 9th Cir. Motions of The Gray Panthers and The American Association of Retired Persons et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 643 F. 2d 553.

No. 80-518. U. S. INDUSTRIES/FEDERAL SHEET METAL, INC., ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 200 U. S. App. D. C. 402, 627 F. 2d 455.

No. 80-931. CHARLES D. BONANNO LINEN SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 630 F. 2d 25.

No. 80-1070. RIDGWAY ET AL. *v.* RIDGWAY ET AL. Sup. Jud. Ct. Me. Motion of respondent Furbush for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 419 A. 2d 1030.

*Certiorari Denied*

No. 80-278. MUNSON, PROSECUTING ATTORNEY FOR THE SIXTH JUDICIAL DISTRICT OF ARKANSAS *v.* WOMACK. C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 1292.

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No. 80-681. LOCAL LODGE No. 875, BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, AFL-CIO *v.* DONOVAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

No. 80-782. OLEGARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 F. 2d 204.

No. 80-841. HENSLER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 625 F. 2d 1141.

No. 80-889. MALIK *v.* HIDDEN VALLEY CIVIC CLUB ET AL. Ct. Civ. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 601 S. W. 2d 59.

No. 80-893. KIRKLAND ET AL. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.;

No. 80-1128. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.; and

No. 80-1139. ARKANSAS-BEST FREIGHT SYSTEM, INC. *v.* KIRKLAND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 629 F. 2d 538.

No. 80-921. BROOKLIER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 620.

No. 80-958. HOPLAND NOKOMIS ASSN. ET AL. *v.* WATT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 221.

No. 80-983. UNITED STATES STEEL CORP. *v.* CHRIST. C. A. 10th Cir. Certiorari denied.

No. 80-992. FITZPATRICK ET AL. *v.* KIRKLAND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 796.

No. 80-995. SAUNDERS *v.* LEHMAN, SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 629 F. 2d 596.

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No. 80-1043. *GERDES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1013.

No. 80-1047. *GEORGIA POWER CO. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 521, 633 F. 2d 554.

No. 80-1049. *WESTERN CATHOLIC CHURCH v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 631 F. 2d 736.

No. 80-1093. *BROMLEY CORP., DBA ROBERTS AIRWAYS, ET AL. v. CORTESE, ADMINISTRATRIX, ET AL.* Certiorari denied. Reported below: 623 F. 2d 1084.

No. 80-1109. *TEICHGRAEBER ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1204.

No. 80-1122. *SCHWARZ v. COASTAL RESOURCES MANAGEMENT COUNCIL ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 2d 616.

No. 80-1142. *SOWECO, INC. v. SHELL OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 1178.

No. 80-1151. *HAHN ET AL. v. ATLANTIC RICHFIELD CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 625 F. 2d 1095.

No. 80-1156. *GIBBS v. WELSH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 631 F. 2d 436.

No. 80-1159. *HOLLINGSWORTH v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 155 Ga. App. 878, 273 S. E. 2d 639.

No. 80-1161. *JOHNSON v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 270 Ark. 247, 604 S. W. 2d 927.

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No. 80-1165. HANIGAN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 80-1172. BUTTKE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 625 F. 2d 202.

No. 80-1177. CUMMINGS, SHERIFF, ET AL. *v.* DOBBS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 214.

No. 80-1182. MESERVE, REORGANIZATION TRUSTEE, ET AL. *v.* CHESAPEAKE & OHIO RAILWAY CO. ET AL.; and

No. 80-1196. CHESAPEAKE & OHIO RAILWAY CO. ET AL. *v.* MESERVE ET AL., TRUSTEES. C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 2d 1359.

No. 80-1185. WILSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 390 So. 2d 575.

No. 80-1187. SPENCER, DBA IRVING EQUIPMENT & CONSTRUCTION Co. *v.* HOWE RICHARDSON SCALE Co. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1013.

No. 80-1194. WEIDMAN METAL MASTERS Co., INC. *v.* GLASS MASTER CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 1024.

No. 80-1198. SHAPIRO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 390 So. 2d 344.

No. 80-1202. BAXTER *v.* CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-1209. O'BISO *v.* BOARD OF EDUCATION OF THE BOROUGH OF LINCOLN PARK, MORRIS COUNTY. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 774.

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No. 80-1211. *GENERAL PORTLAND CEMENT Co. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 321.

No. 80-1212. *WATTS v. CIVIL SERVICE BOARD FOR THE CITY OF COLUMBIA, TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. Reported below: 606 S. W. 2d 274.

No. 80-1243. *FRANKS v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 391 So. 2d 1133.

No. 80-1279. *HILL v. AMERICAN AIRLINES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 730.

No. 80-1311. *SHELNUT ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 59.

No. 80-1323. *DELUCCA ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 294.

No. 80-1324. *CARIELLO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 192.

No. 80-1328. *EGAN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 563.

No. 80-1355. *DEAN ET AL. v. COUNTY OF BRAZORIA, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 1331.

No. 80-5584. *OUTLAW v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 80-5671. *ZELDES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1206.

No. 80-5768. *MCDONALD v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 80-5859. *MCDONALD v. DRAPER, JUDGE*. Ct. Crim. App. Tenn. Certiorari denied.

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No. 80-5894. *ANTONI v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 634 F. 2d 617.

No. 80-5895. *DEVINCENT v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 632 F. 2d 155.

No. 80-5919. *MUSE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 1041.

No. 80-6007. *BRADENBURG v. BEAMAN ET AL.*; and  
No. 80-6032. *BRADENBURG v. SHILLINGER, WARDEN, ET AL.*  
C. A. 10th Cir. Certiorari denied. Reported below: 632 F.  
2d 120.

No. 80-6021. *DOCK v. MORRIS, WARDEN, ET AL.* C. A.  
10th Cir. Certiorari denied.

No. 80-6023. *COLEMAN v. SOWDERS, WARDEN*; and  
No. 80-6094. *COLEMAN v. SOWDERS, WARDEN*. C. A. 6th  
Cir. Certiorari denied. Reported below: 642 F. 2d 450.

No. 80-6027. *JOHNSON v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 80-6028. *KINNELL v. CLERK OF THE COURT OF APPEALS OF KANSAS ET AL.*; *KINNELL v. CARLIN ET AL.*; and  
*KINNELL v. WILLCOTT ET AL.* C. A. 10th Cir. Certiorari  
denied.

No. 80-6033. *RAMOS v. PUERTO RICO*. Super. Ct. P. R.,  
Aquadilla Part. Certiorari denied.

No. 80-6035. *SHEPPHARD v. CIRCUIT COURT OF CLARK COUNTY, INDIANA, ET AL.* Sup. Ct. Ind. Certiorari denied.  
Reported below: — Ind. —, 413 N. E. 2d 258.

No. 80-6036. *HOLSEY v. WATKINS, U. S. DISTRICT JUDGE*.  
C. A. 4th Cir. Certiorari denied. Reported below: 634 F.  
2d 623.

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No. 80-6037. *MAYNARD v. ENGLE*, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1218.

No. 80-6040. *PHILLIPS v. CAREY ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 638 F. 2d 207.

No. 80-6041. *DOAK v. MARYLAND*; and

No. 80-6042. *DOAK v. MARYLAND*. Ct. App. Md. Certiorari denied.

No. 80-6046. *RAHMAN, AKA MCGEE v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 80-6047. *CALIGURI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 1159.

No. 80-6049. *OWCHARIW v. LAHR ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-6050. *HARRIS v. SPAIN, JUDGE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 628 F. 2d 1349.

No. 80-6052. *ORPIANO v. HORSLEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 625.

No. 80-6053. *MULLINS v. OHIO*. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 80-6060. *YOUNG v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-6061. *MACARTHUR v. PHILIPPINE AIR LINES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 192.

No. 80-6066. *SARSYCKI v. HESS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 80-6091. *HENDERSON v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 730.

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No. 80-6140. *LININGER v. MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied.

No. 80-6153. *WIDEMON v. PETROVSKY, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-6162. *D'ANGELO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 80-6166. *INGRAM v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 2d 1227.

No. 80-6175. *GONZALEZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 207.

No. 80-871. *BRIDDLE v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 84 Ill. App. 3d 523, 405 N. E. 2d 1357.

JUSTICE BRENNAN, with whom JUSTICE STEWART joins, dissenting.

Petitioner, who has been acquitted of speeding, has filed a petition for a writ of certiorari, claiming that his pending prosecution for perjury and obstruction of justice would constitute double jeopardy under the Fifth and Fourteenth Amendments if the prosecution were allowed to proceed. I would grant the petition for certiorari and reverse the judgment below insofar as it permitted prosecution of the perjury charge.

At petitioner's trial for speeding, the arresting state trooper testified that, after clocking petitioner's speed by radar, he stopped petitioner's car and took his license. When petitioner told the trooper that he was a county board member and was late for an important meeting at the office of the Forest Preserve District, the trooper allowed petitioner to proceed to that office. The trooper followed petitioner, parked behind petitioner's car after arriving at the office of the Forest Preserve District, and then wrote up the citation. The citation listed petitioner's name, address, and driver's license

number and described his vehicle as a 1978 silver Chevrolet, bearing Illinois dealer license plates, number D/L 80E. Petitioner signed his name and address on the back of the ticket.

Petitioner, appearing *pro se*, testified that, on the day in question, he was driving a green Cadillac which did not bear dealer plates. When the prosecutor asked whether petitioner had borrowed or rented a car that day, petitioner responded that he had never driven a car with dealer plates, had never driven a silver Chevrolet, and had not driven a Chevrolet in the preceding 15 years. Petitioner was acquitted of the speeding charge.

After the acquittal, petitioner was indicted for perjury and for obstruction of justice. The perjury charge was based on petitioner's testimony that he was driving a Cadillac, not a Chevrolet. The trial court dismissed the indictment on the ground that prosecution of these charges was barred "under the doctrine of collateral estoppel." App. to Pet. for Cert. 2. The Appellate Court of Illinois reversed, concluding that the doctrine of collateral estoppel embodied in the Double Jeopardy Clause of the Fifth Amendment was inapplicable and that, accordingly, *Ashe v. Swenson*, 397 U. S. 436 (1970), did not bar prosecution of the indictment. 84 Ill. App. 3d 523, 405 N. E. 2d 1357 (1980).

I believe that the Court's opinion in *Ashe v. Swenson* forbids prosecution of petitioner for perjury. In *Ashe*, we held that the double jeopardy guarantee encompasses the doctrine of collateral estoppel as a constitutional requirement. Determining the applicability of that doctrine "requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.'" 397 U. S., at 444. Thus, in *Ashe*, petitioner's acquittal of the charge of robbing one of six men playing poker precluded a prosecution for robbing another of the six men, because

"[t]he single rationally conceivable issue in dispute before the jury was whether the petitioner had been one of the robbers. And the jury by its verdict found that he had not." *Id.*, at 445.

At petitioner's speeding trial, "[t]he single rationally conceivable issue in dispute," *ibid.*, was whether petitioner was driving the automobile described in the citation, a 1978 silver Chevrolet, or whether he was driving a "green Cadillac." There is no need to speculate over whether petitioner's acquittal might have rested on some other basis since the trial judge in the speeding case testified at the hearing on petitioner's motion to dismiss the perjury and obstruction of justice charges. He stated:

"The officer testified very specifically that Mr. Briddle had been driving a new model silver Chevrolet. Mr. Briddle was very specific. He was asked the question a number of times about driving his 1973 Cadillac and that he always drove the Cadillac and never borrowed or leased a Chevrolet on that date.

"He was certain he was driving his Cadillac. I felt that there was some possibility at the time that since the officer did not write the ticket until he was at the Forest Preserve meeting that he may have pulled behind the wrong vehicle and written up the wrong car since the specific charge was speeding in a 1978, I believe it was, Chevrolet. That issue was not completely resolved to my satisfaction beyond a reasonable doubt."\*

This testimony makes clear that the trial judge found that there was not proof beyond a reasonable doubt that petitioner was driving the Chevrolet, and that the acquittal rested on that basis. Therefore, a necessary fact to sustain a perjury conviction—that petitioner was really driving the silver Chevrolet—was conclusively rejected at the speeding

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\*In reversing the trial court, the Illinois Appellate Court did not discredit the testimony of the trial judge.

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trial. This conclusion is entitled to collateral-estoppel effect. *Ibid.* Any further prosecution of the perjury count of the indictment would negate the beneficial effect of the factfinding at the speeding trial to which petitioner is constitutionally entitled.

I therefore dissent.

No. 80-6034. *GALL v. KENTUCKY*. Sup. Ct. Ky.; and  
No. 80-6151. *KING v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 80-6034, 607 S. W. 2d 97; No. 80-6151, 390 So. 2d 315.

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. 80-806. *DROCIAK v. SUPREME COURT OF NEW HAMPSHIRE*, 449 U. S. 1106;

No. 80-872. *ILLINOIS v. SAVORY*, 449 U. S. 1101;

No. 80-888. *ROWBOTHAM v. AMERICAN AIRLINES, INC., ET AL.*, 449 U. S. 1084;

No. 80-5674. *HAMILTON v. GEORGIA*, 449 U. S. 1103; and

No. 80-5715. *CLARK v. LOUISIANA*, 449 U. S. 1103. Petitions for rehearing denied.

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#### *Appeals Dismissed*

No. 79-1733. *W. D. R. v. TAYLOR COUNTY CHILD WELFARE UNIT*. Appeal from Ct. Civ. App. Tex., 11th Sup. Jud. Dist., dismissed for want of substantial federal question.

No. 79-6370. *ABLE ET UX. v. DELAWARE*. Appeal from Sup. Ct. Del. dismissed for want of substantial federal question. Reported below: 414 A. 2d 820.

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No. 80-537. *IN RE J. W. B. ET AL.* Appeal from Ct. Civ. App. Tex., 11th Sup. Jud. Dist., dismissed for want of substantial federal question.

No. 80-545. *LOWREY v. MORRIS.* Appeal from Sup. Ct. Miss. dismissed for want of substantial federal question. Reported below: 384 So. 2d 863.

No. 80-5302. *HOWELL v. COSHOCTON COUNTY CHILDREN'S SERVICES BOARD.* Appeal from Ct. App. Ohio, Coshocton County, dismissed, it appearing that the judgment below rests upon independent and adequate state grounds.

No. 80-5492. *WHACK v. MARYLAND.* Appeal from Ct. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 288 Md. 137, 416 A. 2d 265.

No. 80-6090. *STEIN v. FRANK ET UX.* Appeal from Ct. Civ. App. Tex., 11th Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Vacated and Remanded*

No. 80-754. *MISSOURI v. COUNSELMAN*; *MISSOURI v. MCGEE*; *MISSOURI v. PAYNE*; *MISSOURI v. WHITE*; and *MISSOURI v. WILLIAMS.* Ct. App. Mo., Eastern Dist. Motions of respondents Williams and McGee for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Albernaz v. United States*, ante, p. 333. JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS dissent. Reported below: 603 S. W. 2d 3 (first case); 602 S. W. 2d 709 (second case); 607 S. W. 2d 822 (third case); 610 S. W. 2d 646 (fourth case); 610 S. W. 2d 644 (fifth case).

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No. 80-283. DELAWARE *v.* HUNTER. Sup. Ct. Del. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Albernaz v. United States*, ante, p. 333. JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS dissent. Reported below: 420 A. 2d 119.

No. 80-749. DELAWARE *v.* EVANS. Sup. Ct. Del. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Albernaz v. United States*, ante, p. 333. JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS dissent. Reported below: 420 A. 2d 1186.

#### *Miscellaneous Orders*

No. A-687 (80-1569). JOHNSON *v.* UNITED STATES. Application to recall and stay the mandate of the United States Court of Appeals for the Tenth Circuit, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-779. DORTA *v.* FORSHT, UNITED STATES MARSHAL. D. C. S. D. Fla. Application for stay, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. A-785. BP OIL, INC. *v.* DONOVAN, SECRETARY OF LABOR. D. C. E. D. Pa. Application for stay and injunction pending appeal to the United States Court of Appeals for the Third Circuit, presented to JUSTICE BRENNAN, and by him referred to the Court, denied.

No. 80-242. LEHMAN, SECRETARY OF THE NAVY *v.* NAKSHIAN. C. A. D. C. Cir. [Certiorari granted *sub nom. Hidalgo v. Nakshian*, 449 U. S. 1009.] Motion of Claude Pepper et al. for leave to file a brief as *amici curiae* granted.

No. 80-581. COMMONWEALTH EDISON CO. ET AL. *v.* MONTANA ET AL. Sup. Ct. Mont. [Probable jurisdiction noted, 449 U. S. 1033.] Motion of Arizona for leave to adopt the brief *amici curiae* of Wyoming et al. denied.

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No. 78-1088. *KISSINGER v. REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ET AL.*, 445 U. S. 136. Motion of Reporters Committee for Freedom of the Press for clarification of the judgment denied. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 80-396. *CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC., ET AL.* C. A. 1st Cir. [Certiorari granted, 449 U. S. 1060.] Motion of National Institute of Municipal Law Officers for leave to file an untimely brief as *amicus curiae* denied. Motion of Washington et al. for leave to file a brief as *amici curiae* out of time granted.

No. 80-802. *NATIONAL GERIMEDICAL HOSPITAL AND GERONTOLOGY CENTER v. BLUE CROSS OF KANSAS CITY ET AL.* C. A. 8th Cir. [Certiorari granted, 449 U. S. 1123.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument granted, and 15 additional minutes allotted for that purpose. Respondents also allotted an additional 15 minutes for oral argument.

No. 80-824. *POLK COUNTY ET AL. v. DODSON.* C. A. 8th Cir. [Certiorari granted, *ante*, p. 963.] Motion for appointment of counsel granted, and it is ordered that John D. Hudson, Esquire, of Des Moines, Iowa, be appointed to serve as counsel for respondent in this case.

No. 80-1012. *RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA v. NORMAN WILLIAMS CO. ET AL.* Ct. App. Cal., 3d App. Dist.;

No. 80-1030. *BOHEMIAN DISTRIBUTING Co. v. NORMAN WILLIAMS Co. ET AL.* Ct. App. Cal., 3d App. Dist.; and

No. 80-1052. *WINE & SPIRITS WHOLESALERS OF CALIFORNIA v. NORMAN WILLIAMS Co. ET AL.* Ct. App. Cal., 3d App. Dist. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

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No. 80-5887. *WHITE v. NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY ET AL.* C. A. 1st Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-5392. *HOWE v. SMITH, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. [Certiorari granted *sub nom. Howe v. Civiletti*, 449 U. S. 1123.] Motions of Kansas Defender Project and Families & Friends of Prisoners, Inc., et al. for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for divided argument granted.

No. 80-6111. *IN RE DAVIS.* Petition for writ of mandamus denied.

#### *Probable Jurisdiction Noted*

No. 80-767. *UNITED STATES v. LEE.* Appeal from D. C. W. D. Pa. Motion of appellee for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 497 F. Supp. 180.

No. 80-965. *TEXACO, INC., ET AL. v. SHORT ET AL.*; and

No. 80-1018. *POND ET AL. v. WALDEN ET AL.* Appeal from Sup. Ct. Ind. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: — Ind. —, 406 N. E. 2d 625.

#### *Certiorari Granted*

No. 80-1121. *UNITED STATES v. CLARK ET AL.* Ct. Cl. Certiorari granted. Reported below: 220 Ct. Cl. 278, 599 F. 2d 411.

No. 80-5889. *SANTOSKY ET AL. v. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Motion of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 75 App. Div. 2d 910, 427 N. Y. S. 2d 319.

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No. 80-1251. UNITED STATES *v.* VOGEL FERTILIZER Co. Ct. Cl. Certiorari granted. Reported below: 225 Ct. Cl. 15, 634 F. 2d 497.

*Certiorari Denied.* (See also Nos. 80-5492 and 80-6090, *supra.*)

No. 79-1941. DIAMOND, COMMISSIONER OF PATENTS AND TRADEMARKS *v.* SHERWOOD. C. C. P. A. Certiorari denied. Reported below: 613 F. 2d 809.

No. 80-2049. MANN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 668.

No. 80-6682. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 185.

No. 79-6731. CALDWELL *v.* CARROLL COUNTY WELFARE DEPARTMENT. Ct. App. Ohio, Carroll County. Certiorari denied.

No. 79-6860. GUARDIOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 616 F. 2d 185.

No. 80-13. DIAMOND, COMMISSIONER OF PATENTS AND TRADEMARKS *v.* HIRSCHFELD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 199 U. S. App. D. C. 9, 615 F. 2d 1368.

No. 80-816. BOURQUE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 392 So. 2d 686.

No. 80-875. LOUISIANA ET AL. *v.* GARY W. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 804.

No. 80-905. GOMEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 999.

No. 80-937. BAGLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

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No. 80-949. *MICHAEL MOTORS, INC. v. COLORADO DEALER LICENSING BOARD*. Sup. Ct. Colo. Certiorari denied. Reported below: 200 Colo. —, 616 P. 2d 110.

No. 80-950. *NICOLADZE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 225.

No. 80-975. *FEDERATION FOR AMERICAN IMMIGRATION REFORM ET AL. v. BALDRIGE, SECRETARY OF COMMERCE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-977. *HULLUM v. UNITED STATES*; and

No. 80-1009. *LENTZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1280.

No. 80-987. *NEVADA v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

No. 80-994. *DIAMOND v. WALTER, ASSISTANT UNITED STATES ATTORNEY, UNITED STATES DEPARTMENT OF JUSTICE*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1096.

No. 80-1000. *PAYTE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 400.

No. 80-1004. *HAVENS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1311.

No. 80-1016. *BOISE CASCADE CORP. v. UNION PACIFIC RAILROAD Co. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 630 F. 2d 720.

No. 80-1021. *WOOD v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (FIVE POINTS SHOPPING CENTER, REAL PARTY IN INTEREST)*. C. A. 9th Cir. Certiorari denied.

No. 80-1022. *PASCO PETROLEUM Co., INC. v. UNITED STATES ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 633 F. 2d 956.

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No. 80-1048. *KARLIN v. ORR, SECRETARY OF THE AIR FORCE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1347.

No. 80-1061. *WATERS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1204.

No. 80-1069. *LAY FACULTY ASSN., LOCAL 1261 v. BISHOP FORD CENTRAL CATHOLIC HIGH SCHOOL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 623 F. 2d 818.

No. 80-1077. *FACTOR ET AL. v. COMMISSIONER OF PATENTS AND TRADEMARKS.* C. C. P. A. Certiorari denied.

No. 80-1085. *UNION CARBIDE AGRICULTURAL PRODUCTS CO., INC., ET AL. v. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 1014.

No. 80-1096. *AIKEN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 639 F. 2d 769.

No. 80-1110. *SAND v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1220.

No. 80-1130. *PEOPLES BANK OF INDIANOLA v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 366.

No. 80-1135. *HEDSTROM Co., A SUBSIDIARY OF BROWN GROUP, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 305.

No. 80-1140. *THOMAS v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 192.

No. 80-1180. *McCALL ET AL. v. WATT, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1185.

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No. 80-1181. *McCALL ET AL. v. WATT, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 192.

No. 80-1189. *BUMPUS ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 867.

No. 80-1191. *BURT v. JUSTICES OF THE SUPREME COURT OF IDAHO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 2d 787.

No. 80-1195. *SEWELL v. PHILLIPS PETROLEUM Co.* C. A. 10th Cir. Certiorari denied.

No. 80-1206. *GRCICH, ADMINISTRATOR v. PITTSBURGH NATIONAL BANK.* Sup. Ct. Pa. Certiorari denied. Reported below: 492 Pa. 210, 423 A. 2d 347.

No. 80-1214. *COMPTON v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 607 S. W. 2d 246.

No. 80-1215. *AMERICAN FRUIT PURVEYORS, INC. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 370.

No. 80-1219. *PURVIS v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 223.

No. 80-1220. *RAY v. FREEMAN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 439.

No. 80-1225. *MANSFIELD v. STATE BAR OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 80-1226. *STADLER v. CITY OF PHILADELPHIA.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 173 N. J. Super. 235, 413 A. 2d 996.

No. 80-1229. *EHRMAN v. CITY OF PHILADELPHIA.* Super. Ct. N. J., App. Div. Certiorari denied.

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No. 80-1230. *NEWMAN ET AL., Co-EXECUTRIXES v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1096.

No. 80-1232. *THILL SECURITIES CORP. ET AL. v. NEW YORK STOCK EXCHANGE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 633 F. 2d 65.

No. 80-1238. *CAROTHERS ET AL. v. RICE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 7.

No. 80-1241. *BINKOWSKI v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 80-1242. *MISSOURI PACIFIC RAILROAD Co. v. ALCORN*. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 598 S. W. 2d 352.

No. 80-1250. *BROWN v. BROWN ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 388 So. 2d 1151.

No. 80-1255. *FIRESTONE v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 386 So. 2d 1329.

No. 80-1259. *VON BARTA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 635 F. 2d 999.

No. 80-1263. *DUNIVANT ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 155 Ga. App. 884, 273 S. E. 2d 621.

No. 80-1272. *COUNTY OF SAN MATEO ET AL. v. CANTWELL*. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 2d 631.

No. 80-1273. *McILROY ET AL. v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 80-1283. *THORNTON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 390 So. 2d 1093.

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No. 80-1287. *INEXCO OIL Co. v. WALTERS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 891.

No. 80-1288. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, ET AL. v. IBERIA AIR LINES OF SPAIN.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1201.

No. 80-1292. *JOHNSON ET AL. v. TRUEBLOOD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 629 F. 2d 287.

No. 80-1293. *JOHN L. SCHULZ PLUMBING & HEATING v. PRATTE ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 80-1307. *CAMACHO v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 98 Wis. 2d 751, 297 N. W. 2d 517.

No. 80-1327. *HUNTER v. NEW YORK STATE DEPARTMENT OF CIVIL SERVICE ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 80-1337. *McCORSTIN v. U. S. DEPARTMENT OF LABOR ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 630 F. 2d 242.

No. 80-1351. *BERAN v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 80-1352. *BOLLOTIN v. KAUFMAN, TAYLOR, KIMMEL & MILLER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1200.

No. 80-1371. *WEGNER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 622 F. 2d 1042.

No. 80-1378. *CASAREZ-ULLOA, AKA MOLINA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1357.

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No. 80-1411. *BASKES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 649 F. 2d 471.

No. 80-1418. *STEVILICH ET AL. v. UNITED STATES*; and  
No. 80-6242. *KAVAJA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 639 F. 2d 786.

No. 80-1424. *CANTERA-DUYOS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 1161.

No. 80-1428. *ROSARIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 638 F. 2d 460.

No. 80-1440. *BAPTISTE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 666.

No. 80-1448. *BURNS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

No. 80-5214. *WALKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 163.

No. 80-5752. *WILKEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 868.

No. 80-5763. *COUCH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1347.

No. 80-5793. *COOPER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 85 Ill. App. 3d 153, 405 N. E. 2d 1202.

No. 80-5796. *TABB v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 491 Pa. 372, 421 A. 2d 183.

No. 80-5864. *KETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1096.

No. 80-5888. *SMOTHERS v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 605 S. W. 2d 128.

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No. 80-5899. *EADES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 633 F. 2d 1075.

No. 80-5908. *JUREK v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 623 F. 2d 929.

No. 80-5914. *SHELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 633 F. 2d 77.

No. 80-5938. *GOOLSBY v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. xciii.

No. 80-5953. *HACKETT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 2d 1179.

No. 80-5954. *OWENSBY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 80-6005. *OUTING v. SMITH, ATTORNEY GENERAL, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 632 F. 2d 1144.

No. 80-6038. *GALVAN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 85 Ill. App. 3d 800, 407 N. E. 2d 558.

No. 80-6067. *LAURENTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 1352.

No. 80-6069. *BONEY v. ITT COMMUNITY DEVELOPMENT CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1006.

No. 80-6071. *FORMAN v. SMITH, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 634.

No. 80-6074. *RICHEY v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

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No. 80-6077. *WILLIAMS v. EVANGELICAL RETIREMENT HOMES OF GREATER ST. LOUIS, DBA FRIENDSHIP VILLAGE*. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 1225.

No. 80-6080. *SHELDON v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 301 N. W. 2d 604.

No. 80-6084. *BURTON v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 228 Kan. exciii, 621 P. 2d 436.

No. 80-6085. *HOCKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-6087. *BARHAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1221.

No. 80-6088. *DAVIS v. WARDEN, CENTRAL PRISON, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 642 F. 2d 447.

No. 80-6092. *CALDWELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 625 F. 2d 144.

No. 80-6097. *MACON v. MITCHELL, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 781.

No. 80-6098. *AKBAR v. CANNERY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 634 F. 2d 339.

No. 80-6100. *LOMAX v. ALABAMA*. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 413.

No. 80-6101. *MABRY v. CENLA FINANCE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 893.

No. 80-6106. *HAYTON v. ANDERSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-6110. *MCDONALD v. METROPOLITAN AIRPORT AUTHORITY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1218.

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No. 80-6114. MARSHALL *v.* DISTRICT OF COLUMBIA ET AL.  
Ct. App. D. C. Certiorari denied.

No. 80-6115. FRIEDMAN *v.* JEWISH FAMILY SERVICES. Ct.  
App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-6116. NYLON *v.* WYRICK, WARDEN, ET AL. C. A.  
8th Cir. Certiorari denied.

No. 80-6117. RICHARDS *v.* PARSONS ET AL. C. A. 8th Cir.  
Certiorari denied.

No. 80-6119. DUKES *v.* DARCY ET AL. C. A. 2d Cir.  
Certiorari denied. Reported below: 634 F. 2d 618.

No. 80-6121. BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist.  
Certiorari denied. Reported below: 85 Ill. App. 3d 1196, 413  
N. E. 2d 1386.

No. 80-6124. BUMPUS *v.* GUNTER ET AL. C. A. 1st Cir.  
Certiorari denied. Reported below: 635 F. 2d 907.

No. 80-6128. HOUSTON *v.* LANE, WARDEN, ET AL. C. A.  
6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-6130. McMILLIAN *v.* INDIANA. Sup. Ct. Ind.  
Certiorari denied. Reported below: — Ind. —, 409 N. E.  
2d 612.

No. 80-6132. GRICE *v.* ILLINOIS. App. Ct. Ill., 2d Dist.  
Certiorari denied. Reported below: 87 Ill. App. 3d 718, 410  
N. E. 2d 209.

No. 80-6133. ZDANIS *v.* CONNECTICUT. Sup. Ct. Conn.  
Certiorari denied. Reported below: — Conn. —, 438 A.  
2d 696.

No. 80-6134. DEPAUL *v.* PENNSYLVANIA. Sup. Ct. Pa.  
Certiorari denied. Reported below: 491 Pa. 417, 421 A. 2d  
207.

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No. 80-6143. *MARTIN v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 631 F. 2d 728.

No. 80-6156. *LAKE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 390 So. 2d 1088.

No. 80-6172. *JOHNSON v. OVERBERG, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-6173. *STANMORE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 2d 1228.

No. 80-6176. *DEJARNETTE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 73.

No. 80-6180. *WATSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 80-6183. *STACKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 1347.

No. 80-6185. *BERTRAND v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 634 F. 2d 338.

No. 80-6187. *PUCHALA v. COINTELPRO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 73.

No. 80-6189. *WHITNEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 902.

No. 80-6201. *SPARROW v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 635 F. 2d 794.

No. 80-6203. *HOLLAND v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 210 U. S. App. D. C. 48, 654 F. 2d 763.

No. 80-6204. *GABBARD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 453.

No. 80-6207. *McWILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 453.

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No. 80-6215. *WILLIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 453.

No. 80-6218. *FELICIANO v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 441.

No. 80-6220. *CIMINO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 57.

No. 80-6221. *FRANCIS v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 2d 1208.

No. 80-6230. *KELLEY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 80-6238. *HAYMES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 74.

No. 80-6251. *DE VINCENT v. PUTNAM, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 633.

No. 80-299. *JOHN NUVEEN & Co., INC., ET AL. v. SANDERS ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 619 F. 2d 1222.

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, dissenting.

This securities controversy, which has been in litigation for 11 years, involves sales of commercial paper in the 1960's. The Court of Appeals for the Seventh Circuit has heard the case four times on various issues over the years, and the present petition for certiorari is the third to come before the Supreme Court. The Court today denies further review, and it is indeed long past time that this litigation should come to rest. I dissent from the denial of certiorari, however, because I believe that the Court of Appeals has seriously misapplied the Securities Act of 1933. Its decision could

affect adversely the efficiency of the Nation's short-term financing markets.

I

John Nuveen & Co. (hereinafter petitioner) is a broker and dealer registered with the Securities and Exchange Commission (SEC). In the late 1960's, petitioner undertook to sell the short-term promissory notes—commercial paper—of Winter & Hirsch, Inc. (W&H), a consumer finance company. Relying on (i) the company's certified financial statements, (ii) responses to inquiries from banks, and (iii) a brief inspection of company records, petitioner issued a "Commercial Paper Report," similar to a prospectus, on W&H commercial paper. The report reviewed the data in certified financial statements and noted that "[t]he ratio of debt to capital funds came to 311%—Excellent! . . . Bad debts charged off came to \$375,000, and recoveries in relation were \$173,000—46%, an excellent showing." Respondents and other customers of petitioner made purchases.

Unknown to petitioner and to the public, W&H at the time was in serious financial trouble. W&H officers had conspired with auditors from the certified public accounting firm of Lieber, Bleiweis & Co. to tamper with the company's financial statements to make the company appear profitable. Its financial statement for 1968 showed that W&H had earned \$500,000; in fact, it had lost about \$1 million.

When the fraud was discovered in 1970, officials from W&H and Lieber, Bleiweis were convicted of federal fraud charges. Holders of W&H commercial paper were paid about 65 cents on the dollar. A class of plaintiffs, respondents here, sued under a variety of theories to recover the remainder. The issue presently before the Court concerns liability under § 12 (2) of the Securities Act of 1933, 48 Stat. 84, as amended, 15 U. S. C. § 77l (2), which provides, in pertinent part:

"Any person who—

"(2) offers or sells a security . . . by means of a pro-

spectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact . . . and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him . . . .”

The District Court held that petitioner was liable under § 12 (2) because it had failed to use “reasonable care” when it issued the misleading report and recommended orally to some individuals that they buy W&H paper. The Court of Appeals affirmed. *Sanders IV*, 619 F. 2d 1222 (1980).<sup>1</sup> It reasoned that petitioner had failed to use “reasonable care” because petitioner had not made a reasonable *investigation* of W&H’s financial health. Instead, petitioner had relied principally on the certified financial statements.<sup>2</sup> Its inde-

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<sup>1</sup> The District Court also found petitioner liable under § 12 (1) of the Act, 15 U. S. C. § 77l (1). The Court of Appeals did not decide whether petitioner was liable under this theory, 619 F. 2d, at 1224, n. 1, although in a prior opinion it had expressed “great doubt” about the validity of that legal theory, *Sanders III*, 554 F. 2d 790, 794 (1977).

<sup>2</sup> The Court of Appeals noted that petitioner had an “honest belief that [the] financial statements . . . correctly represented” W&H’s financial condition. *Sanders IV*, 619 F. 2d, at 1224, quoting *Sanders II*, 524 F. 2d 1064, 1066 (1975). The court assumed for purposes of its decision that the audit reports and certified financial statements were not defective on their face and that nothing in them gave petitioner any reason to question their accuracy. *Sanders IV, supra*, at 1227, n. 10. Lieber, Bleiweis represented that its audit had been conducted “in accordance with generally accepted auditing standards applicable in the circumstances and comprised such tests of the accounting records and supporting evidence and such other procedures as we considered necessary.” The auditor’s opinion also noted that no “detailed audit” of certain transactions had been performed. Petitioner erroneously stated in its Commercial Paper Report that Lieber, Bleiweis had performed a detailed audit. The Court of Appeals did not suggest that petitioner’s error in this respect was relevant to the question of petitioner’s care in relying on the data.

pendent investigation consisted of inquiries to banks and a one-day spot check of company records. The Court of Appeals thought that petitioner also should have examined the company's tax returns, its minute books, and the workpapers of the independent accountants. *Id.*, at 1228, citing *Sanders II*, 524 F. 2d 1064, 1069 (1975).

## II

Although the opinion of the Court of Appeals is not explicit, it appears to impose a duty of "reasonable investigation" rather than § 12 (2)'s requirement of "reasonable care."

### A

Section 11 (a) of the 1933 Act, 15 U. S. C. § 77k (a), imposes liability on certain persons for selling securities in a registered public offering pursuant to a materially false or misleading registration statement. A registered offering is the class of financial transactions for which Congress prescribed the most stringent regulation. The standard of care imposed on an underwriter is that it must have "had, after *reasonable investigation*, reasonable ground to believe and did believe" that the registration statement was accurate. § 11 (b)(3)(A) of the Act, 15 U. S. C. § 77k (b)(3)(A) (emphasis added).

Liability in this case was not imposed on petitioner under § 11, but under § 12 (2). Under the latter section, it is necessary for sellers to show only that they "did not know, and in the exercise of *reasonable care* could not have known," that their statements were false or misleading. (Emphasis added.)

In providing standards of care under the 1933 Act, Congress thus used different language for different situations. "Reasonable *investigation*" is required for registered offerings under § 11, but nothing more than "mer[e] . . . 'reasonable *care*'" is required by § 12 (2). *Douglas & Bates, The Fed-*

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eral Securities Act of 1933, 43 Yale L. J. 171, 208 (1933). The difference in language is significant, because in the securities Acts Congress has used its words with precision. See, e. g., *Ernst & Ernst v. Hochfelder*, 425 U. S. 185, 198-201 (1976); *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 755, 756 (1975) (POWELL, J., concurring). "Investigation" commands a greater undertaking than "care." See Douglas & Bates, *supra*, at 208, n. 205.

In a brief filed in this case with the Court of Appeals, the SEC expressly stated that the standard of care under § 12 (2) is less demanding than that prescribed by § 11:

"[I]t would be inconsistent with the statutory scheme to apply precisely the same standards to the scope of an underwriter's duty under Section 12 (2) as the case law appropriately has applied to underwriters under Section 11. Because of the vital role played by an underwriter in the distribution of securities, and because the registration process is integral and important to the statutory scheme, we are of the view that a higher standard of care should be imposed on those actors who are critical to its proper operations. Since Congress has determined that registration is not necessary in certain defined situations, we believe that it would undermine the Congressional intent—that issuers and other persons should be relieved of registration—if the same degree of investigation were to be required to avoid potential liability whether or not a registration statement is required." Brief for SEC in Nos. 74-2047 and 75-1260 (CA7), *Sanders III*, p. 69.

The Court of Appeals' opinion may be read as holding that petitioner's duty of "reasonable care" under § 12 (2) required it independently to *investigate* the accuracy and completeness of the certified financial statements. It was customary, however—and in my view entirely reasonable—for petitioner to rely on these statements as accurately reflecting W&H's finan-

cial condition.<sup>3</sup> Even under § 11 of the Act, an underwriter is explicitly absolved of the duty to investigate with respect to "any part of the registration statement purporting to be made on the authority of an expert" such as a certified accountant if "he had no reasonable ground to believe and did not believe" that the information therein was misleading. § 11 (b)(3)(C) of the Act, 15 U. S. C. § 77k (b)(3)(C); see § 11 (a)(4), 15 U. S. C. § 77k (a)(4). This provision is in the Act because, almost by definition, it is reasonable to rely on financial statements certified by public accountants.<sup>4</sup> Yet, in this case, the Court of Appeals nevertheless seems to have imposed the higher duty prescribed by § 11 to investigate, but denied petitioner the right to rely on "the authority of an expert" that also is provided by § 11.<sup>5</sup>

<sup>3</sup> Although it appears that petitioner, in accord with general custom, relied primarily on the financial statements of the independent auditors, petitioner did take an additional precaution: it checked with the major banks that extended millions of dollars of credit to W&H. The Court of Appeals held that this inquiry was insufficient because the banks themselves may not have acted with "prudence." See *Sanders II*, 524 F. 2d, at 1071, and n. 20. In my view, the fact that petitioner ascertained that banks with national and international reputations were extending credit to W&H is highly relevant to whether petitioner exercised reasonable care even assuming, *arguendo*, that petitioner was not entitled simply to rely on the certified financial statements.

<sup>4</sup> Reliance upon facially unexceptionable certified financial statements, as to the correctness of the financial data shown therein, is essential to the proper functioning of securities marketing, to the trading in securities, to the lending of money by banks and financial institutions, and to the reliance by stockholders on the reports of their corporations. For the most part, certified public accountants faithfully have fulfilled the trust placed on them. But where breaches by accountants occur, it is the accountants themselves—not those who rely in good faith on their professional expertise—who are at fault and who should be held responsible.

<sup>5</sup> Moreover, the duty to investigate imposed by the Court of Appeals rarely would uncover the type of fraud involved in this case. According to the Court of Appeals, petitioner would have learned of the fraud if it had examined W&H's minute books, the accountant's workpapers, and company tax returns. *Sanders II*, *supra*, at 1069. I accept this

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## B

The Solicitor General at this Court's request has filed a brief *amicus curiae*. He does not embrace the decision of the Court of Appeals, see *supra*, at 1009, but nevertheless suggests that we deny certiorari because, *inter alia*, courts in the future "will undoubtedly recognize" that the decision in this case is confined to its "unusual fact situation." Brief for United States as *Amicus Curiae* 7.

If it were clear that the decision fairly must be read as thus limited, I would not dissent from denial of certiorari. My concern is that the opinion of the Court of Appeals will be read as recognizing no distinction between the standards of care applicable under §§ 11 and 12 (2), and particularly as casting doubt upon the reasonableness of relying upon the expertise of certified public accountants. Dealers may believe that they must undertake extensive independent financial investigations rather than rely on the accuracy of the certified financial statements. If this is so, the efficiency of the short-term financial markets will be impaired.<sup>6</sup> I would grant certiorari.

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finding, but observe that this would be most unusual. What one normally finds in minute books sheds no light whatever on the accuracy of audited financial statements. Nor would it be enlightening to examine the workpapers of the certified public accountants. The drafters of corporate minutes and accountants bent on fraud hardly are likely to reflect the fraud in records or papers that are easily subpoenaed. Similarly, information can be gleaned from tax returns only if they are honestly prepared. The Court of Appeals itself noted: "Experience teaches us that fraud can be skillfully hidden." *Sanders II, supra*, at 1071.

<sup>6</sup> Commercial paper, for example, normally is issued for periods of 30 to 90 days, and in no event more than 270 days. It is useful for borrowers with fluctuating temporary cash needs. Dealers such as petitioner buy commercial paper from issuers and resell it to investors. A dealer's compensation is the "spread" between the price at which he buys the paper from the issuer and the price charged the investor. Comment, *The Commercial Paper Market and the Securities Acts*, 39 U. Chi. L. Rev. 362, 367-368 (1972). The dealer's "spread" historically has been rela-

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No. 80-653. ALIOTO ET AL. v. WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 625 F. 2d 845.

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins, dissenting.

This case presents the question whether attorney's fees may be awarded under 42 U. S. C. § 1988 to plaintiffs in a civil rights action who obtain a preliminary injunction against a city when the city is later denied the right to appeal the issuance of the injunction because of mootness. In my view, the award of attorney's fees in such a situation is not authorized by any statute, and I dissent from the denial of the petition for a writ of certiorari.

Respondents brought this action under 42 U. S. C. §§ 1981 and 1983 against officials of the city of San Francisco and its police department challenging certain police practices which took place in April 1974 during what became known as "Operation Zebra." Beginning in late 1973, a series of vicious random killings and attempted killings took place on the streets of San Francisco. These murders became known as the "Zebra" killings. Between December 1973 and April 1974, 12 persons were murdered and 6 others were wounded. The police department of San Francisco responded to this violence by initiating a special investigatorial procedure known as "Operation Zebra" to attempt to identify and capture the killers. Police directives and memoranda authorized officers to stop and frisk black males resembling two composite drawings and having described physical characteristics. Over 600 persons were stopped and "pat searched" in the course of the operation.

Respondents brought two separate actions seeking declaratory and injunctive relief on behalf of black males who were stopped or were subject to being stopped pursuant to Opera-

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tively small. *Id.*, at 368; see Pet. for Cert. 17, n. 20. The additional expense and legal exposure made necessary by the Court of Appeals' decision will increase the "spread," and hence also the cost of borrowing.

tion Zebra practices. The District Court preliminarily enjoined the police procedure and also concluded that respondents were entitled to attorney's fees. Petitioners appealed the entry of the preliminary injunction but before the appeal was heard the Zebra killers were apprehended, convicted, and sentenced. The police investigation of the Zebra killings having ceased, the Court of Appeals dismissed the appeal as moot and the judgment of the District Court was vacated. *Williams v. Alioto*, 549 F. 2d 136 (CA9 1977). Subsequently, the District Court entered an order awarding respondents a total of \$45,000 in attorney's fees. The Court of Appeals affirmed that order, finding that "by obtaining the preliminary injunction [respondents] 'prevailed on the merits of at least some of their claims.' . . . The preliminary injunction prevented [petitioners] from continued enforcement of their original guidelines, which is precisely the relief [respondents] sought." 625 F. 2d 845, 847 (1980).

In my view, an award of attorney's fees under these circumstances is not authorized by 42 U. S. C. § 1988. That section provides in pertinent part:

"In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

To treat respondents as "prevailing parties" under § 1988 because they secured a preliminary injunction is to ignore the fact that petitioners exercised their right to appeal the entry of that order and the fact that the propriety of the injunction was being challenged on appeal at the time the case became moot and the appeal dismissed. No permanent injunction ever issued and there has been no settlement or consent decree.

The question raised here is of significance because liability for attorney's fees inflicts severe financial penalties. Expo-

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sure of any party to such penalties when mootness deprives him of the appeal authorized by law which he had already initiated should result only from a clear authorization by Congress or settled precedent of this Court. Here the settled precedent is exactly contrary to what was done by the court below. Over three decades ago we explained in *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950), that the practice of this Court in dealing with a civil case which has become moot is to reverse or vacate the judgment below. That is exactly what the Court of Appeals did here. However, we also explained in *Munsingwear* that when the procedure of vacating the judgment is followed, "the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary." *Id.*, at 40. The Court of Appeals failed to follow this rule and petitioners have unquestionably been "prejudiced by a decision which in the statutory scheme was only preliminary."

The decision below has spawned harsh consequences which are contrary to the policy espoused in *Munsingwear, supra*. Accordingly, I would grant the petition for a writ of certiorari and reverse the judgment of the Court of Appeals.

No. 80-763. ESTELLE, CORRECTIONS DIRECTOR *v.* JUREK. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 623 F. 2d 929.

JUSTICE REHNQUIST, dissenting.

In light of the facts of this case and the legal issues it presents, it is inexplicable to me why this Court fails to grant the petition for certiorari and give the case plenary consideration. Against the backdrop of a death sentence, this case involves the voluntariness of a series of confessions, the proper standard of review of state and federal lower court determinations of "voluntariness" in a habeas corpus proceeding, and the applicability of the harmless-error doctrine. To be sure, the issues presented are difficult. But that is

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surely no reason for this Court to avoid its responsibility of resolving a case as important to the integrity of our judicial system as this.

Jurek is no stranger to this Court. In early 1974, Jurek was convicted by a jury of the murder of a 10-year-old girl and sentenced to death. The Texas Court of Criminal Appeals affirmed, rejecting Jurek's contention that his oral and two written confessions were involuntary and should not have been admitted into evidence. *Jurek v. State*, 522 S. W. 2d 934 (1975). We granted certiorari to decide only whether Texas' death penalty statute was constitutional and affirmed, finding that the statute satisfied the principles announced in *Furman v. Georgia*, 408 U. S. 238 (1972). *Jurek v. Texas*, 428 U. S. 262 (1976). Jurek then unsuccessfully sought a writ of habeas corpus in the state courts. We denied his petition for a writ of certiorari, after granting a temporary stay of execution pending timely filing for that writ. *Jurek v. Estelle*, 430 U. S. 951 (1977).

But, as in so many criminal cases these days, Jurek's conviction was still not final. He next commenced habeas corpus proceedings in the *federal* courts, again challenging the voluntariness of his confessions. The District Court held an exhaustive evidentiary hearing and—like the jury, the state trial court and the state appellate court before it—found the confessions to be voluntary. A panel of the Court of Appeals for the Fifth Circuit nevertheless reversed, concluding that the confessions were involuntary. The 25 judges of the Court of Appeals sitting en banc also reversed, albeit on somewhat different grounds. 623 F. 2d 929 (1980). Judge Garza's opinion, embraced in its entirety by only three other judges, represents the result reached by a majority of the court. The majority found that although the oral confession and the first written confession were voluntary, the second written confession was involuntary. Judge Godbold, joined by one other judge, would have found both written confessions involuntary. Judge Frank M. Johnson, joined by six judges,

would have held all of the confessions involuntary. Judges Brown and Reavely filed separate opinions, joined by 10 and 8 judges respectively, which would have held all of the confessions voluntary.

Briefly stated, these are the facts surrounding the confessions. Jurek was arrested late at night in Cuero, Tex., in connection with the disappearance of Wendy Adams. He was taken to police headquarters, given *Miranda* warnings and questioned for 45 minutes. He was not questioned again until 9 o'clock the next morning. He asked to take a polygraph test and was driven to Austin, Tex., for that purpose.\* When confronted with the results of the test, he orally admitted killing Wendy and told the police where the body might be found. The police then returned Jurek to Cuero and immediately took him before a Magistrate where Jurek declined a request for counsel. After searching unsuccessfully for the body, the police again questioned Jurek and late that night took a written confession from Jurek, witnessed by two members of the community, in which he stated he killed Wendy because she made disparaging remarks about his family. For security reasons, the police then transferred Jurek for the night to a jail in Victoria, Tex., about 50 miles away. The next day the police found Wendy's body and that afternoon again questioned Jurek. In a second written confession, again witnessed by two other members of the community, Jurek stated that he killed

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\*To be sure, there is some dispute as to the facts. The panel found that Jurek was questioned throughout the first night and criticized the police for taking Jurek to Austin, Tex. 593 F.2d 672 (1979). The Texas Court of Criminal Appeals and the United States District Court, however, found that Jurek was left alone during the night and that Jurek was transferred to Austin at his own request. Thus, the panel clearly ignored the requirement of 28 U. S. C. § 2254 (d) that state-court findings of fact are to be presumed correct. See *Sumner v. Mata*, 449 U. S. 539 (1981). To the extent Judge Garza's opinion relied on the panel's findings of facts, it too erred.

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Wendy because she refused to have sexual relations with him.

There are several reasons why this case is worthy of review. In the first place, Judge Garza's attempt to distinguish between the first and second written confessions is, to me, wholly unpersuasive. Indeed, other than Judge Garza and the three judges who joined him, no one had ever suggested that the second confession was less voluntary than the first. In cases involving multiple confessions, we have held that some of the confessions may be found involuntary and others not only if such a distinction is justified by a sufficiently isolating "break in the stream of events." *Darwin v. Connecticut*, 391 U. S. 346, 349 (1968). There is no such break here.

Judge Garza attempted to distinguish the second confession on the ground that the police were motivated by a desire to secure a death sentence for Jurek. But, as even Judge Johnson recognized in his separate opinion, the record reveals that the prosecutors believed they already had enough evidence to obtain a death verdict. 623 F. 2d, at 943. The record shows that the prosecutors sought the second confession simply because they wanted a signed statement of the "true" events. Each time the police learned of something new relating to Wendy's disappearance, they went to Jurek to confirm it. Surely nothing in the Constitution prevents the police from asking questions to discern the facts and solve a crime. Judge Garza also relied heavily on the alleged difference in "style" between the two confessions, that Jurek had less input in the second confession because it contained some "legalese." But even if there is a significant difference in style between the confessions—which I doubt—that may well be explained simply by the fact that the confessions were "transcribed" by two different persons. And all of the witnesses to the second confession have testified that they believed the confession to be voluntary. The opinion also relies on the fact that there was a 16-hour time

difference between the two confessions, but such reliance is misplaced in light of our decisions holding that even a 6-month time difference is not enough to constitute a sufficiently isolating break between two confessions. *United States v. Bayer*, 331 U. S. 532 (1947). Finally, Judge Garza criticized the police for not informing Jurek that if he admitted to attempting to have sexual relations with Wendy, he "was in effect" signing his "death warrant." 623 F. 2d, at 935. But even if it were true that the police were seeking the death sentence, our cases have never required the police to give such unsolicited legal advice. In short, nothing in the record reveals any police misconduct or any "coercion" visited upon Jurek. Quite the contrary, their performance strikes me as commendable. The evidence simply does not establish that Jurek's will was overborne or that his confession was not the product of a rational intellect and a free will.

If the issue in this case was only whether Jurek's confessions were voluntary, I might acquiesce in the denial of certiorari because of the impracticality of this Court's reviewing such fact-specific questions. But this case involves far more than simply whether a particular confession is voluntary. The decision below reveals tremendous confusion as to the proper standard of review in a federal habeas proceeding after a jury, a state trial court, a state appellate court, and a federal district court have determined a confession to be voluntary. Relying on *Beckwith v. United States*, 425 U. S. 341, 348 (1976), Judge Garza held that a court of appeals in a federal habeas case must "examine the entire record and make an independent determination of the ultimate issue of voluntariness." 623 F. 2d, at 931. Judge Brown, on the other hand, found that Jurek's confessions were admissible under even the "independent review" standard, and thus found it unnecessary to choose between that standard and the "clearly erroneous" test. *Id.*, at 962. This issue is important and should be resolved by the Court. As Judge Brown recognized, we have never explicitly applied the "in-

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dependent review" test in the federal habeas corpus context, and even in those cases where we have suggested that a broader standard of review might be appropriate we have made clear that "great weight, of course, is to be accorded to the inferences which are drawn by the state courts. In a dubious case, it is appropriate, with due regard to federal-state relations, that the state court's determination should control." *Culombe v. Connecticut*, 367 U. S. 568, 605 (1961). In this case, the Court of Appeals gave little deference to findings of historical facts, see n.\*, *supra*, much less to the lower court's inferences as to the ultimate issue of voluntariness.

In my view, the Court of Appeals also erred in ignoring the applicability of the harmless-error doctrine to the facts of this case. In *Milton v. Wainwright*, 407 U. S. 371 (1972), we clearly held that the harmless-error doctrine should be applied in cases involving multiple confessions. We explained:

"The writ of habeas corpus has limited scope; the federal courts do not sit to re-try state cases *de novo* but, rather, to review for violation of federal constitutional standards. In that process we do not close our eyes to the reality of overwhelming evidence of guilt fairly established in the state court 14 years ago by use of evidence not challenged here; the use of the additional evidence challenged in this proceeding and arguably open to challenge was, beyond reasonable doubt, harmless." *Id.*, at 377-378.

What is particularly troubling about this case is that I have no doubt that the decision below was colored by the fact that this is a capital punishment case. The severity of a defendant's punishment, however, simply has no bearing on whether a particular confession is voluntary or on the extent to which federal habeas courts should defer to state-court findings. Following the decision in *Furman v. Georgia*, 408 U. S. 238 (1972), holding invalid a state capital punish-

ment statute, the State of Texas, like 34 other States, enacted new death penalty statutes. Those States determined that capital punishment, though an extreme form of punishment, is a suitable sanction for the most extreme of crimes. One of the principal goals of our Federal Government, set forth in the preamble to the Constitution, is "[to] insure domestic Tranquility." Whether as means of deterring future crimes or as means of retribution, these States believed that a carefully designed and limited system of capital punishment would be one way of ensuring domestic tranquility.

In a series of decisions handed down in 1976 this Court upheld the constitutionality of those statutes, *Gregg v. Georgia*, 428 U. S. 153; *Proffitt v. Florida*, 428 U. S. 242, including the statute at issue here. *Jurek v. Texas*, 428 U. S. 262. The opinion announcing the judgment in *Gregg v. Georgia* reasoned that "[c]onsiderations of federalism, as well as respect for the ability of a legislature to evaluate, in terms of its particular State, the moral consensus concerning the death penalty and its social utility as a sanction, require us to conclude, in the absence of more convincing evidence, that the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe." 428 U. S., at 186-187 (opinion of STEWART, POWELL, and STEVENS, JJ.). The opinion also squarely rejected the notion that "standards of decency" rendered the death penalty unconstitutional, noting that "it is now evident that a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction." *Id.*, at 179.

The murder in this case was committed in 1973. For eight years, the State of Texas has repeatedly presented its case against Jurek to state and federal courts. Yet, despite the fact that every court has concluded that at least one of Jurek's written confessions was voluntary, the people of the State of Texas now find themselves no closer to enforcing

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their capital punishment statute than they were when they began eight years ago. By overturning Jurek's conviction on the basis of a procedural nicety, the decision below not only renders Texas' death penalty statute an ineffective deterrent, it also frustrates society's compelling interest in having its constitutionally valid laws swiftly and surely carried out. A potential murderer will know that even if he is convicted and sentenced to death, he will very likely not be put to death. If he litigates the case long enough, the odds favor his finding some court which will accept a legal theory previously rejected by other courts.

As Judge Brown put it:

"This case presents in dramatic terms the tensions between promoting thorough and efficient enforcement of the laws and ensuring that the rights of the accused are scrupulously guarded. We have on the one hand a murder which could hardly have been more reprehensible; the violent, senseless slaying of a young girl. On the other hand, we have a decision by a panel of this Court throwing out Jurek's two written confessions on the grounds of voluntariness, making it very unlikely that Jurek could again be convicted on retrial." 623 F. 2d, at 956.

I agree with Judge Brown that the decision below makes it "very unlikely that Jurek could again be convicted on retrial." Even though Jurek has made at least one "voluntary" confession, he may well escape all punishment for his violent, senseless slaying of a young girl. I, for one, am unwilling to subscribe to a decision of this Court which sanctions such an outcome. I do not think that this Court can, like Pontius Pilate, wash its hands of the numerous issues presented in this case, issues which are bound to arise not merely in this case, but in countless others. I would therefore grant the petition for certiorari and set the case for argument.

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No. 80-794. *BLEWS v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 379 So. 2d 677.

No. 80-840. *WEBER ET AL. v. BARRETT*. C. A. 5th Cir. Certiorari denied. Reported below: 615 F. 2d 916.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE STEWART join, dissenting.

Respondent is a former employee of the Sheriff of Dallas County, Tex., who brought suit against the Sheriff on behalf of himself and others to enjoin the enforcement of certain of the Sheriff's rules on the grounds that they infringed certain First Amendment rights. Petitioners, Dallas County and various county officials, sought leave to intervene in this litigation because county funds might be liable for a judgment against the Sheriff. The trial court denied intervention and the United States Court of Appeals for the Fifth Circuit affirmed. The Court of Appeals then granted the respondent's motion for an award of attorney's fees under 42 U. S. C. § 1988, which provides in pertinent part:

"In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The Court of Appeals stated that respondent was a clear winner on the intervention issue and then explained:

"[Respondent] has prevailed on his underlying claim against defendant Sheriff Thomas. Part of the cost involved in so prevailing was the devotion of his attorney's time and effort in successfully preventing the initial judgment against Thomas from being derailed as a result of [petitioners'] attempts to intervene. [Petitioners] cannot now be excused from bearing the burden of these

costs simply because we did not hold they were liable for the judgment on the merits against Sheriff Thomas, an issue never raised or considered by the trial court."

The decision of the Court of Appeals relies in part on the fact respondent prevailed in the trial court on his underlying civil rights claim against the Sheriff. The Court of Appeals, however, ignores the fact respondent has only prevailed in the trial court on this claim. Appeal from that decision is still pending in the Court of Appeals. The Court of Appeals therefore has authorized an award of attorney's fees prior to there being a final determination that respondent prevailed in "an action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 . . ." Petitioners are being prejudiced by a decision which in the statutory sense was only preliminary. *United States v. Munsingwear, Inc.*, 340 U. S. 36, 40 (1950). The merits of the denial of the motion to intervene, which are entirely separate from the civil rights claim, is the only issue dealt with by the Court of Appeals in its opinion affirming the denial. See *Railroad Trainmen v. Baltimore & Ohio R. Co.*, 331 U. S. 519, 524 (1947). Only last Term we explained in *Hanrahan v. Hampton*, 446 U. S. 754 (1980):

"Congress intended to permit the interim award of counsel fees only when a party has prevailed on the merits of at least some of his claims. For only in that event has there been a determination of the 'substantial rights of the parties,' which Congress determined was a necessary foundation for departing from the usual rule in this country that each party is to bear the expense of his own attorney." *Id.*, at 758.

The award of attorney's fees under § 1988 against the petitioners who were not defendants in this civil rights litigation is permissible, if at all, only after there has been a final determination that the respondent has prevailed on the merits on at least some of his claims against the Sheriff. Conceivably,

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the judgment against the Sheriff could be reversed and in that case § 1988 would provide no authorization for an award of fees against the petitioners. Because I think the award of such fees for successfully defending an appeal of a collateral order having nothing to do with civil rights is not authorized by § 1988 at this interim stage of the litigation, I dissent from the denial of the petition for a writ of certiorari.

No. 80-924. SHELL OIL CO. ET AL. *v.* DEPARTMENT OF ENERGY ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 231.

JUSTICE POWELL, dissenting.

The Energy Information Administration of the Department of Energy (DOE) compels 27 energy-producing companies, including petitioners, to submit data in response to 7,200 individual requests for information about their operations. These data concern virtually all aspects of these companies' finances. Upon request, DOE releases data submitted under this compulsion to other federal departments and agencies, including the offices in the Department of Justice and the Federal Trade Commission charged with enforcing the antitrust laws.

The dissemination of this extraordinary volume of data to those prosecutorial Government agencies raises a serious question, as these agencies thereby may obtain information that statutory and constitutional safeguards would bar them from obtaining directly in antitrust enforcement actions. The likelihood that rights of potential antitrust defendants will be violated increases as DOE demands increasingly more data from companies subject to its regulation and then disseminates the information to prosecutorial agencies. Congress has given DOE an investigative power that appears to be intrusive as well as excessively burdensome in its own right. But that power should not become a blanket discovery authority for the use of the Department of Justice and the

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Federal Trade Commission without the safeguards provided by law against abuse of legal rights.

Because of the seriousness of the question whether Congress intended that information obtained by DOE be put to such use, I would grant the petition for certiorari and set the case for plenary consideration.

No. 80-947. *CHANEY v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 80-1204. *ANDERSON v. NEBRASKA*. Sup. Ct. Neb.;

No. 80-5862. *HOCHSTEIN v. NEBRASKA*. Sup. Ct. Neb.;  
and

No. 80-6127. *MCDOWELL v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: No. 80-947, 612 P. 2d 269; Nos. 80-1204 and 80-5862, 207 Neb. 51, 296 N. W. 2d 440; No. 80-6127, 301 N. C. 279, 271 S. E. 2d 286.

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. 80-972. *OLDAG v. CATHOLIC CHARITIES OF THE DIOCESE OF GALVESTON-HOUSTON ET AL.* Sup. Ct. Tex. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 603 S. W. 2d 793.

No. 80-1137. *APPALACHIAN INSURANCE CO. ET AL. v. UNITED STATES*;

No. 80-1145. *AID INSURANCE CO. ET AL. v. UNITED STATES*; and

No. 80-1178. *AETNA INSURANCE CO. ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 628 F. 2d 1201.

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No. 80-1221. *RIGGS v. BOARD OF TRUSTEES OF THE OHIO STATE UNIVERSITY*. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 634 F. 2d 621.

No. 80-1269. *GIDDENS v. GEORGIA*. Ct. App. Ga. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 156 Ga. App. 258, 274 S. E. 2d 595.

No. 80-1222. *JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE, TENTH JUDICIAL DISTRICT v. KOFFLER ET AL.* Ct. App. N. Y. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 51 N. Y. 2d 140, 412 N. E. 2d 927.

No. 80-1234. *SHAW v. UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT DALLAS*. C. A. 5th Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 625 F. 2d 1013.

No. 80-1235. *MOODY v. FORRESSTER, COMMISSIONER OF INSURANCE OF ALABAMA, ET AL.* C. A. 5th Cir. Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 620 F. 2d 548 and 632 F. 2d 1351.

No. 80-6073. *GROOMS v. SLABAUGH ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 636 F. 2d 1221.

#### *Rehearing Denied*

No. 80-5161. *JOHNSON v. OKLAHOMA*, 449 U. S. 1132; and

No. 80-5692. *BOYD v. CITY AND COUNTY OF DENVER, COLORADO, ET AL.*, 449 U. S. 1089. Petitions for rehearing denied.

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No. 79-700. WALTER FLEISHER CO., INC. *v.* COUNTY OF LOS ANGELES ET AL., 449 U. S. 608. Petition for rehearing denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 79-1171. MINNESOTA *v.* CLOVER LEAF CREAMERY CO. ET AL., 449 U. S. 456. Petition for rehearing denied. JUSTICE REHNQUIST took no part in the consideration or decision of this petition.

No. 80-887. BURNS ET AL. *v.* DIOCESE OF NEWARK ET AL., 449 U. S. 1131. Petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

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*Dismissal Under Rule 53*

No. 87, Orig. CALIFORNIA *v.* TEXAS. Motion to dismiss the application of California Avocado Commission et al. for a preliminary injunction or temporary restraining order and motion to intervene were dismissed under this Court's Rule 53. [For earlier order herein, see, *e. g., ante*, p. 977.]

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*Appeal Dismissed*

No. 80-6161. STEIN *v.* HILL, JUDGE, 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: 627 F. 2d 237.

*Certiorari Granted—Vacated and Remanded*

No. 80-1368. MISSOURI *v.* BROWN; MISSOURI *v.* COLLINS; MISSOURI *v.* GREER; MISSOURI *v.* HAWKINS; and MISSOURI *v.* MARTIN. Ct. App. Mo., Western Dist. Motions of respondents for leave to proceed *in forma pauperis* and certiorari

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granted. Judgments vacated and cases remanded for further consideration in light of *Albernaz v. United States*, ante, p. 333. JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE STEVENS dissent. Reported below: 607 S. W. 2d 801 (first case); 607 S. W. 2d 781 (second case); 609 S. W. 2d 423 (third case); 608 S. W. 2d 496 (fourth case); 610 S. W. 2d 18 (fifth case).

### *Miscellaneous Orders*

No. A-795. LEVINSON *v.* FINLEY, CLERK, CIRCUIT COURT OF COOK COUNTY, ET AL. Cir. Ct., Cook County, Ill. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 79-1420. FIRESTONE TIRE & RUBBER Co. *v.* RISJORD, 449 U. S. 368. Motion of respondent to retax costs denied.

No. 80-328. NEW YORK *v.* BELTON. Ct. App. N. Y. [Certiorari granted, 449 U. S. 1109.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument granted, and 15 additional minutes allotted for that purpose. Respondent also allotted an additional 15 minutes for oral argument.

No. 80-396. CITY OF NEWPORT ET AL. *v.* FACT CONCERTS, INC., ET AL. C. A. 1st Cir. [Certiorari granted, 449 U. S. 1060.] The order heretofore entered on March 23, 1981 [ante, p. 992], is vacated, and the brief *amicus curiae* of National Institute of Municipal Law Officers is ordered filed.

No. 80-780. ROWAN COS., INC. *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 449 U. S. 1109.] Motion of Mountain States Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 80-1365. CONNECTICUT *v.* MOHEGAN TRIBE. C. A. 2d 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. 80-901. DONOVAN, SECRETARY OF LABOR *v.* DEWEY ET AL. D. C. E. D. Wis. [Probable jurisdiction noted *sub nom. Marshall v. Dewey*, 449 U. S. 1122.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 80-6139. IN RE GRIFFIN. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 80-1045. JACKSONVILLE BULK TERMINALS, INC., ET AL. *v.* INTERNATIONAL LONGSHOREMEN'S ASSN. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 626 F. 2d 455.

No. 80-1285. BROWN *v.* HARTLAGE. Ct. App. Ky. Certiorari granted. Reported below: 618 S. W. 2d 603.

*Certiorari Denied.* (See also No. 80-6161, *supra.*)

No. 79-2010. MARK-GARNER ASSOCIATES, INC. *v.* BENSALEM TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 2d 680.

No. 80-798. MCFARLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

No. 80-928. PARKS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. 492, 270 S. E. 2d 755.

No. 80-941. LOMAS & NETTLETON FINANCIAL CORP. ET AL. *v.* CLARK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 49.

No. 80-991. GEORGE *v.* KAY. C. A. 4th Cir. Certiorari denied. Reported below: 632 F. 2d 1103.

No. 80-993. PATTERSON ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 862.

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No. 80-1017. *LOUCAS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 629 F. 2d 989.

No. 80-1024. *NEWTON v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-1075. *JENKINS v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied.

No. 80-1107. *CAULFIELD ET AL. v. BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 632 F. 2d 999.

No. 80-1119. *RAMAPURAM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 632 F. 2d 1149.

No. 80-1126. *TAGGART CORP. ET AL. v. EFROS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 617 F. 2d 1208.

No. 80-1127. *C-F AIR FREIGHT, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1203.

No. 80-1210. *BURLINSON ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 627 F. 2d 119.

No. 80-1245. *SELCO SUPPLY CO. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY*. C. A. 10th Cir. Certiorari denied. Reported below: 632 F. 2d 863.

No. 80-1297. *DUGAS v. KELLY ET AL.* C. A. 5th Cir. Certiorari denied.

No. 80-1298. *GILMER ET AL. v. TRUCK DRIVERS, OIL DRIVERS, FILLING STATION & PLATFORM WORKERS UNION, LOCAL 705, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 505.

No. 80-1304. *PAGE AIRWAYS, INC., ET AL. v. ASSOCIATED RADIO SERVICE Co.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1342.

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No. 80-1312. *ELBERT v. BOARD OF EDUCATION OF LANARK COMMUNITY UNIT SCHOOL DISTRICT #305, CARROLL COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 509.

No. 80-1316. *BAUER v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 627 F. 2d 745.

No. 80-1318. *GODEK v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: — Conn. —, 438 A. 2d 114.

No. 80-1321. *METROPOLITAN DETROIT AREA HOSPITAL SERVICES, INC. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 634 F. 2d 330.

No. 80-1347. *DIORIO ET AL. v. KREISLER-BORG CONSTRUCTION Co., INC.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 75 App. Div. 2d 1029, 427 N. Y. S. 2d 896.

No. 80-1357. *WINSTON, SHERIFF, ET AL. v. EBY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 2d 1212.

No. 80-1370. *PETERSON v. SORLIEN ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 299 N. W. 2d 123.

No. 80-1387. *TANN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

No. 80-1409. *NEW YORK v. WARNER-LAMBERT CO. ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 295, 414 N. E. 2d 660.

No. 80-1412. *IHLE ET AL v. FLORIDA PUBLISHING Co.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 399 So. 2d 136.

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No. 80-1425. *WEISENSEE v. SUPREME COURT OF SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 296 N. W. 2d 717.

No. 80-1427. *DIZAK ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 563.

No. 80-1455. *COTTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 63.

No. 80-1459. *GREEN v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-1467. *PALADINO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 637 F. 2d 941.

No. 80-1475. *HORTON ET VIR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

No. 80-1493. *CHAGRA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 2d 311.

No. 80-5884. *DAVIS v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 47 Ore. App. 3, 613 P. 2d 110.

No. 80-5916. *SPENCER v. ISRAEL, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 636 F. 2d 1222.

No. 80-5932. *HINKLE v. MUNICIPALITY OF ANCHORAGE*. Sup. Ct. Alaska. Certiorari denied. Reported below: 618 P. 2d 1069.

No. 80-5966. *ILLSLEY v. UNITED STATES PAROLE AND PROBATION DEPARTMENT ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 636 F. 2d 1.

No. 80-6008. *GRAY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 87 Ill. App. 3d 142, 408 N. E. 2d 1150.

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No. 80-6131. *RICHARD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 236.

No. 80-6144. *LOGAN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 87 Ill. App. 3d 351, 408 N. E. 2d 1086.

No. 80-6148. *McKINNIE v. WISCONSIN*; and

No. 80-6149. *JONES v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 98 Wis. 2d 749, 297 N. W. 2d 515.

No. 80-6150. *BRYANT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 85 Ill. App. 3d 836, 407 N. E. 2d 597.

No. 80-6152. *LEACHMAN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 80-6157. *RUTLEDGE v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1200.

No. 80-6158. *UNWIN v. VERMONT*. Sup. Ct. Vt. Certiorari denied. Reported below: 139 Vt. 186, 424 A. 2d 251.

No. 80-6160. *SEVERA v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 775.

No. 80-6163. *JOHNS v. KING, LIEUTENANT GOVERNOR OF HAWAII, ET AL.* Sup. Ct. Haw. Certiorari denied.

No. 80-6170. *RHODES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 892.

No. 80-6171. *TAYLOR v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 394 So. 2d 1153.

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No. 80-6174. *WEXLER v. INDUSTRIAL VALLEY BANK & TRUST Co.* C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 446.

No. 80-6177. *CASTELLO v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 397 So. 2d 777.

No. 80-6179. *DORTY v. HAYES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 779.

No. 80-6222. *THINGVOLD v. FRANZEN ET AL.* C. A. 7th Cir. Certiorari denied.

No. 80-6227. *POWERS v. BUCHANAN.* C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 2d 1214.

No. 80-6239. *GUNSTON v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-6248. *GRAHAM v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 638 F. 2d 1111.

No. 80-6250. *CHRISMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 75.

No. 80-6261. *STREETS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 783.

No. 80-6266. *SUTTON ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 245.

No. 80-6279. *WHITE ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 75.

No. 80-1331. *FLORIDA v. MALONE.* Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. *JUSTICE BLACKMUN* and *JUSTICE POWELL* would grant certiorari. Reported below: 390 So. 2d 338.

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No. 80-1268. *MONONGAHELA POWER CO. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 633 F. 2d 960.

No. 80-1339. *CLANON, SUPERINTENDENT, CALIFORNIA MEDICAL FACILITY AT VACAVILLE, ET AL. v. GIBSON ET AL.* C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 633 F. 2d 851.

No. 80-5696. *PAYNE v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied. JUSTICE STEWART would grant certiorari.

No. 80-5942. *AMADEO v. RUSSEAU, SHERIFF.* Sup. Ct. Ga.;

No. 80-5969. *MILLER v. ARKANSAS.* Sup. Ct. Ark.; and

No. 80-6155. *JACKSON v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: No. 80-5969, 269 Ark. 341, 605 S. W. 2d 430; No. 80-6155, 28 Cal. 3d 264, 618 P. 2d 149.

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. 80-5633. *BLAND v. TEXAS, ante*, p. 924;

No. 80-5891. *THERIAULT ET AL. v. ESTABLISHMENT OF RELIGION ON TAXPAYERS' MONEY IN THE FEDERAL BUREAU OF PRISONS ET AL., ante*, p. 929;

No. 80-5930. *KEEZER ET AL. v. MINNESOTA, ante*, p. 930; and

No. 80-5964. *PHIPPS v. BROWN ET AL., ante*, p. 932. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 80-1394. *WILSON ET UX. v. CALIFORNIA HEALTH FACILITIES COMMISSION*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. Reported below: 110 Cal. App. 3d 317, 167 Cal. Rptr. 801.

No. 80-6206. *LEE v. BOARD OF OVERSEERS OF THE BAR*. Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. Reported below: 422 A. 2d 998.

No. 80-1422. *REYNOLDS v. REYNOLDS*. 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.

*Certiorari Granted—Vacated and Remanded*

No. 80-602. *UNITED STATES v. HICKS ET AL.* C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Michael M. v. Sonoma County Superior Court*, *ante*, p. 464. Reported below: 625 F. 2d 216.

No. 80-778. *NEW MEXICO ET AL. v. MESCALERO APACHE TRIBE*. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montana v. United States*, *ante*, p. 544. Reported below: 630 F. 2d 724.

No. 80-1264. *GENERAL TELEPHONE COMPANY OF THE SOUTHWEST v. FALCON*. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Texas Dept. of Community Affairs v. Burdine*, *ante*, p. 248. Reported below: 626 F. 2d 369.

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*Certiorari Granted—Reversed.* (See No. 80-1162, *ante*, p. 785.)

*Miscellaneous Orders*

No. A-709 (80-1395). BRADLEY ET AL. *v.* J. F. BATTE & SONS OF RICHMOND, INC., ET AL.; and LAFAYETTE, INC., ET AL. *v.* J. F. BATTE & SONS OF RICHMOND, INC., ET AL. Sup. Ct. Va. Application for stay, addressed to JUSTICE POWELL and referred to the Court, denied.

No. A-794. B. F. ET AL. *v.* COLORADO, IN THE INTEREST OF T. A. F. Ct. App. Colo. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-813. RITZ *v.* NEW YORK. Sup. Ct. N. Y., Bronx County. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-815. STOVALL ET AL. *v.* PATTERSON ET AL. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-832. ZUCCARO *v.* UNITED STATES. Application for an independent determination of bail pending trial, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-226. IN RE DISBARMENT OF KUMAR. It is ordered that Rajeshwar Kumar, of Camp Hill, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-227. IN RE DISBARMENT OF SCHMIDT. It is ordered that Robert M. Schmidt, of Birmingham, 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.

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No. D-228. *IN RE DISBARMENT OF FRY*. It is ordered that Harry A. Fry, of Pasadena, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-229. *IN RE DISBARMENT OF LISNER*. It is ordered that Donald H. Lisner, of Cincinnati, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-230. *IN RE DISBARMENT OF CONROY*. It is ordered that Thomas A. Conroy, of Cincinnati, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-232. *IN RE DISBARMENT OF McCLELLAN*. It is ordered that Howard B. McClellan, of McLean, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 85, Orig. *TEXAS v. OKLAHOMA*. Motion of Texas Power & Light Co. for leave to intervene denied. [For earlier order herein, see, *e. g.*, *ante*, p. 905.]

No. 87, Orig. *CALIFORNIA v. TEXAS*. Motion of Citizens for a Better Environment et al. for leave to file a brief as *amici curiae* granted. Motion of plaintiffs to defer consideration denied. The temporary restraining order entered March 9, 1981 [*ante*, p. 977], is vacated. Motion for leave to file a bill of complaint denied without prejudice. [For earlier order herein, see, *e. g.*, *ante*, p. 1027.]

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No. 80-148. *ROBBINS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. [Certiorari granted, 449 U. S. 1109.] 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 petitioner for divided argument denied.

No. 80-6354. *BESHAW v. FENTON, WARDEN, ET AL.* C. A. 3d Cir. Motion of petitioner to consolidate this case with No. 80-5392, *Howe v. Smith, Attorney General, et al.* [certiorari granted *sub nom. Howe v. Civiletti*, 449 U. S. 1123], denied.

No. 80-1617 (A-814). *IN RE STERRITT*. Application for bail, presented to JUSTICE MARSHALL, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 79-1618. *CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE v. KASSEL ET AL.* C. A. 8th Cir. Certiorari granted.

No. 80-427. *FAIR ASSESSMENT IN REAL ESTATE ASSN., INC., ET AL. v. McNARY ET AL.* C. A. 8th Cir. Certiorari granted. Reported below: 622 F. 2d 415.

No. 80-1350. *COMMUNITY COMMUNICATIONS Co., INC. v. CITY OF BOULDER, COLORADO, ET AL.* C. A. 10th Cir. Certiorari granted. Reported below: 630 F. 2d 704.

No. 80-1377. *WEINBERGER, SECRETARY OF DEFENSE, ET AL. v. CATHOLIC ACTION OF HAWAII/PEACE EDUCATION PROJECT ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 643 F. 2d 569.

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No. 80-1464. WATT, SECRETARY OF THE INTERIOR, ET AL. v. ENERGY ACTION EDUCATIONAL FOUNDATION ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 210 U. S. App. D. C. 20, 654 F. 2d 735.

No. 80-5727. EDDINGS v. OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 616 P. 2d 1159. *Certiorari Denied.* (See also No. 80-1422, *supra.*)

No. 79-6716. FEAR v. VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. lxxxvi.

No. 80-874. MATHEWS v. OREGON. Ct. App. Ore. Certiorari denied. Reported below: 46 Ore. App. 757, 613 P. 2d 88.

No. 80-1035. REDD ET AL. v. LAMBERT, CHAIRMAN, STATE TAX COMMISSION OF MISSISSIPPI, ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 387 So. 2d 712.

No. 80-1036. MACHINE TOOL & GEAR, INC. v. NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 216.

No. 80-1087. ELLIS FISCHER STATE CANCER HOSPITAL v. DONOVAN, SECRETARY OF LABOR. C. A. 8th Cir. Certiorari denied. Reported below: 629 F. 2d 563.

No. 80-1095. BAKER ET AL. v. UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 760, 650 F. 2d 288.

No. 80-1114. GLASSBORO SERVICE ASSN., INC. v. DONOVAN, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 774.

No. 80-1124. BEGAY ET AL. v. UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 224 Ct. Cl. 712, 650 F. 2d 288.

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No. 80-1149. *MARTIN ET AL. v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 626 F. 2d 1165.

No. 80-1153. *HAUGEN v. TAYLOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 624 F. 2d 191.

No. 80-1169. *FAULKNER RADIO, INC. v. FEDERAL COMMUNICATIONS COMMISSION.* C. A. D. C. Cir. Certiorari denied.

No. 80-1171. *ABDELLA v. SHAWANO LAKE SANITARY DISTRICT No. 1 ET AL.* Ct. App. Wis. Certiorari denied. Reported below: 98 Wis. 2d 748, 297 N. W. 2d 514.

No. 80-1216. *RANDELL v. UNITED STATES*; and  
No. 80-5818. *MUMFORD v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 630 F. 2d 1023.

No. 80-1224. *TRANSAMERICAN PRESS, INC., ET AL. v. MILLER*; and

No. 80-1383. *MILLER v. TRANSAMERICAN PRESS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 721.

No. 80-1329. *RAMOS ET AL. v. LAMM, GOVERNOR OF COLORADO, ET AL.*; and

No. 80-1340. *LAMM, GOVERNOR OF COLORADO, ET AL. v. RAMOS ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 639 F. 2d 559.

No. 80-1336. *CLOUD v. BYRD, SHERIFF.* C. A. 5th Cir. Certiorari denied. Reported below: 627 F. 2d 742.

No. 80-1361. *M/G TRANSPORT SERVICES, INC. v. CITIZENS FIDELITY BANK & TRUST Co., EXECUTOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1218.

No. 80-1362. *RONWIN v. SEGAL ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

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No. 80-1363. *WILLIAMSON v. KIMBROUGH, ZONING ADMINISTRATOR, DALLAS, TEXAS.* C. A. 5th Cir. Certiorari denied. Reported below: 624 F. 2d 1097.

No. 80-1366. *CALIFORNIA v. SCHUSTER ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 109 Cal. App. 3d 887, 167 Cal. Rptr. 447.

No. 80-1367. *NIEDERMEYER v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 48 Ore. App. 665, 617 P. 2d 911.

No. 80-1372. *ROBERT E. KURZIUS, INC., ET AL. v. INCORPORATED VILLAGE OF UPPER BROOKVILLE.* Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 338, 414 N. E. 2d 680.

No. 80-1373. *UTILITY CONSUMERS COUNCIL OF MISSOURI, INC. v. PUBLIC SERVICE COMMISSION OF MISSOURI ET AL.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 606 S. W. 2d 222.

No. 80-1381. *CISSNA ET UX. v. AMMAN ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 628 F. 2d 1355.

No. 80-1386. *FRENCH v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 79 App. Div. 2d 615, 434 N. Y. S. 2d 1013.

No. 80-1391. *FIRST NATIONAL BANK OF OMAHA ET AL. v. MARQUETTE NATIONAL BANK OF MINNEAPOLIS.* C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 195.

No. 80-1397. *CARABBIA ET AL. v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-1460. *SCHWALLIER v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 2d 887.

No. 80-1478. *WHITTED v. LYALL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 784.

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No. 80-1492. *SHELTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 80-1521. *GREENBERG v. SAN JUAN HOTEL CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 562.

No. 80-5028. *ARECHIGA v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 80-5945. *McFADDEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 630 F. 2d 963.

No. 80-6056. *COLE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 897.

No. 80-6082. *PETTY v. JACKSON, CORRECTIONS DIRECTOR*. C. A. D. C. Cir. Certiorari denied.

No. 80-6113. *WILLIAMS v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 427 A. 2d 901.

No. 80-6123. *MONTELLANO v. UNITED STATES*; and

No. 80-6167. *PORTILLO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 1313.

No. 80-6164. *DAVIS v. NEW YORK*. Sup. Ct. N. Y., Erie County. Certiorari denied.

No. 80-6178. *ROWE v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 271 Ark. 20, 607 S. W. 2d 657.

No. 80-6182. *MOORE v. BAKER*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-6184. *GRAHAM v. MORRIS, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 779.

No. 80-6186. *WILLIAMS v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

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No. 80-6190. *ROBINSON v. ARIZONA*. Ct. App. Ariz. Certiorari denied. Reported below: 127 Ariz. 324, 620 P. 2d 703.

No. 80-6191. *PARSONS v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 85 Ill. App. 3d 1201, 413 N. E. 2d 1390.

No. 80-6193. *GILCRIST ET AL. v. DAVIS, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 80-6195. *HORNICK v. NOYES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1106.

No. 80-6196. *UNDERWOOD v. MORRIS, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

No. 80-6197. *VITORATOS v. ENGLE, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 633 F. 2d 220.

No. 80-6205. *BROUILLETTE v. WOOD, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 215.

No. 80-6236. *ALEEM v. MOORE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 633 F. 2d 579.

No. 80-6246. *MORTON v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 438.

No. 80-6283. *SANGSTER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 644 F. 2d 887.

No. 80-6287. *DEENER v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 64 Ohio St. 2d 335, 414 N. E. 2d 1055.

No. 80-6290. *ALLISON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 634 F. 2d 627.

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No. 80-6304. *BROWN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 783.

No. 80-6306. *DRUMMOND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 633 F. 2d 580.

No. 80-6316. *MOORE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 783.

No. 80-495. *LESTER ET UX. v. ANDERSON, EXECUTRIX*. Ct. App. La., 3d Cir. Motion of Consumer Federation of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 382 So. 2d 1019.

No. 80-1031. *BALDWIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 621 F. 2d 251 and 632 F. 2d 1.

JUSTICE MARSHALL, dissenting.

In 1974, the Memphis Police Department began an investigation of petitioner and his business activities. To further this inquiry, an undercover police officer sought a position as petitioner's handyman and chauffeur. The agent was hired, and from July 1975 to December 1975 lived in petitioner's home. On several occasions during this 6-month period the agent found in the home what he believed to be cocaine. The agent took samples of these substances and gave them to his superior officers. On the basis of this evidence, petitioner was indicted for possession of cocaine and possession with intent to distribute cocaine.

Prior to trial, petitioner moved to suppress the evidence on the ground that it was illegally obtained through a warrantless search of his home. The District Court denied the suppression motion and petitioner was convicted. The Court of Appeals also rejected petitioner's Fourth Amendment claim, concluding that there was no "precedent to support the suggestion that the Fourth Amendment requires law enforcement agencies to seek prior judicial approval in the form

of a warrant before utilizing an undercover agent." 621 F. 2d 251, 252. Two judges dissented from the subsequent denial of petitioner's request for rehearing en banc. 632 F. 2d 1. Because the panel opinion resolves an issue of substantial importance in a manner not supported by our prior decisions, I would grant the petition for certiorari.

The Fourth Amendment accords special protection to a person's expectation of privacy in his own home. *Payton v. New York*, 445 U. S. 573, 585, 589-590 (1980); *United States v. Martinez-Fuerte*, 428 U. S. 543, 561, 565 (1976); *Silverman v. United States*, 365 U. S. 505, 511 (1961). Absent special circumstances not present here,<sup>1</sup> searches of a person's home are constitutionally unreasonable when conducted without probable cause and without a warrant. *Coolidge v. New Hampshire*, 403 U. S. 443 (1971); *Johnson v. United States*, 333 U. S. 10 (1948). We have consistently held that these restrictions do not vanish simply because the government seeks to obtain incriminating evidence through deception rather than through a routine search. In *Gouled v. United States*, 225 U. S. 298, 306 (1921), a Government agent gained admission into the office of a criminal suspect on the pretext of paying a social visit. During the visit, the agent surreptitiously seized incriminating evidence that was later used in a criminal prosecution against the suspect. This Court, in unanimously concluding that the warrantless search and seizure violated the Fourth Amendment, reasoned:

"The prohibition of the Fourth Amendment is against all unreasonable searches and seizures and if for a Government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and there-

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<sup>1</sup> The "exigent circumstances" exception to the warrant requirement is obviously inapplicable to the extensive and planned search at issue here.

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fore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of the papers of the owner would be as much invaded and the search and seizure would be as much against his will in the one case as in the other, and it must therefore be regarded as equally in violation of his constitutional rights." *Id.*, at 305-306.

We have repeatedly indicated that *Gouled v. United States* remains the controlling precedent in this area. *Lewis v. United States*, 385 U. S. 206, 211 (1966); *Hoffa v. United States*, 385 U. S. 293, 301 (1966). The rationale of that decision would appear directly applicable to this case. Indeed, if anything, the conduct here is arguably more objectionable in constitutional terms than that condemned in *Gouled*; the search was of a home rather than a business office, lasted for six months instead of several minutes, and appears to have been undertaken for the general purpose of gathering any incriminating evidence rather than the specific purpose of seizing certain incriminating documents. Yet rather than recognize the significance of *Gouled* or attempt to distinguish it, the Court of Appeals simply overlooks that case in concluding that there is no precedent governing warrantless undercover searches.

This oversight alone is sufficient to warrant review of the decision below by this Court. Moreover, the Court of Appeals in reaching its conclusion—that the Fourth Amendment's probable-cause and warrant requirements never govern the search of a home by undercover agents—incorrectly construed several decisions by this Court that rejected limited constitutional challenges to such investigatory techniques. In the first case, *Lewis v. United States*, *supra*, we rejected the contention that a search warrant must be obtained before

an undercover agent, posing as a drug purchaser, may enter a person's home to make an illegal drug purchase. However, the challenge there was based on the mere entry into the home, rather than a search for evidence there, and the Court specifically noted that it was not addressing the question whether a search could be conducted under such circumstances. *Id.*, at 208. More important, in concluding that a warrant was not necessary, the Court focused on the fact that the defendant had relinquished his expectation of privacy in the home by inviting the agent in *for the purpose of conducting an illegal drug transaction*. We noted:

“[W]hen, as here, the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car, or on the street.” *Id.*, at 211.

Here, in contrast, petitioner neither invited the undercover agent into his home for any illegal purpose nor gave up his expectation of privacy in the home by converting it into a center of unlawful business.<sup>2</sup>

The rationale of the other decision relied on by the Court of Appeals, *Hoffa v. United States*, *supra*, is similarly inapplicable here. In that case, we concluded that the Fourth Amendment was not violated when a Government informant reported conversations he had with a criminal suspect. However, *Hoffa* involved only the limited question whether the Fourth Amendment precluded the Government from benefiting from a “wrongdoer’s misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it.” *Id.*, at 302. In rejecting this contention we made clear

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<sup>2</sup> The Court in *Lewis* further limited its holding by noting that an undercover agent who had gained entry under the pretext of conducting an illegal drug transaction would not be constitutionally empowered “to conduct a general search for incriminating materials.” 385 U.S., at 211.

that the defendant's claim—unlike petitioner's here—was not based on any asserted violation of his right of privacy. *Ibid.*<sup>3</sup>

Despite the care with which this Court in *Lewis* and *Hoffa* sought to define the limited scope of its rulings, the Court of Appeals in the instant case has construed those decisions as removing virtually all constitutional constraints on the use of undercover agents to conduct home searches. If the decision of the Memphis police to place an undercover agent in petitioner's home for a 6-month period, during which the agent rifled through his belongings in the search for incriminating evidence, does not implicate the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," it is hard to imagine what sort of undercover activity would. Indeed, under the Sixth Circuit's approach, the Government need never satisfy the probable-cause and warrant requirements of the Fourth Amendment if, by disguising its officers as repairmen, babysitters, neighbors, maids, and the like, it is able to gain entry into an individual's home by ruse rather than force in order to conduct a search.<sup>4</sup>

By ignoring *Gouled*, and extending *Lewis* and *Hoffa* beyond their plainly intended scope, the decision of the Court of Appeals raises important constitutional concerns. The

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<sup>3</sup> The decision in *Hoffa* is further distinguished from the instant case by the facts that the informant was a friend of the defendant rather than a law enforcement officer, and because the "seizure" of conversations that the defendant sought to suppress took place in a variety of public places rather than solely in the defendant's home.

<sup>4</sup> The potential scope of the Court of Appeals ruling is not limited to searches of a home. For example, while we have recently held that inspectors of the Department of Labor must obtain a search warrant before entering most businesses to search for violations of the Occupational Safety and Health Act, *Marshall v. Barlow's, Inc.*, 436 U. S. 307 (1978), under the Sixth Circuit's rule this search warrant requirement could be circumvented if the inspectors gained entry by representing themselves as employees, labor representatives, and the like.

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decision is probably wrong; at the very least, it warrants review by this Court. I therefore dissent from the denial of the petition for certiorari.

No. 80-1084. MOUNTAIN STATES LEGAL FOUNDATION ET AL. v. COSTLE, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 10th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 630 F. 2d 754.

No. 80-1479. PENNSYLVANIA BOARD OF PROBATION AND PAROLE v. BRONSON. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 Pa. 549, 421 A. 2d 1021.

#### *Rehearing Denied*

No. 80-437. ARSHAL v. UNITED STATES, 449 U. S. 1077;

No. 80-1033. JAMIL v. SOUTHRIDGE COOPERATIVE SECTION 4, INC., *ante*, p. 919;

No. 80-5923. PUSCH ET UX. v. COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 930; and

No. 80-6028. KINNELL v. CLERK OF THE COURT OF APPEALS OF KANSAS ET AL.; KINNELL v. CARLIN ET AL.; and KINNELL v. WILLCOTT ET AL., *ante*, p. 984. Petitions for rehearing denied.

No. 79-1857. ALCOA STEAMSHIP Co., INC. v. M/V NORDIC REGENT ET AL., 449 U. S. 890 and 1103. Motion for leave to file a second petition for rehearing denied.

No. 80-323. COLUMBIA BROADCASTING SYSTEM, INC. v. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL., *ante*, p. 970. Petition for rehearing denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 80-5516. ELCAN v. UNITED STATES, 449 U. S. 1087. Motion for leave to file petition for rehearing denied.

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*Dismissal Under Rule 53*

No. 80-1545. SEARS, ROEBUCK & Co. v. ROSENER ET AL.  
Appeal from Ct. App. Cal., 1st App. Dist., dismissed under  
this Court's Rule 53. Reported below: 110 Cal. App. 3d  
740, 168 Cal. Rptr. 237.