

ORDERS FROM JUNE 1 THROUGH
JUNE 22, 1981

JUNE 1, 1981

Appeals Dismissed

No. 80-1694. *ATWOOD VACUUM MACHINE Co. v. FORD MOTOR Co.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 392 So. 2d 1305.

No. 80-6502. *PRENZLER v. PIKE ET AL.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-6646. *WHITE v. UNITED STATES.* Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Vacated and Remanded on Appeal

No. 80-6280. *HARRIS v. GEORGIA.* Appeal from Sup. Ct. Ga. Motion of appellant for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Steagald v. United States*, 451 U. S. 204 (1981). Reported below: 246 Ga. 759, 272 S. E. 2d 719.

Certiorari Granted—Affirmed in Part and Reversed in Part.
(See No. 80-1205, *ante*, p. 155.)

Miscellaneous Orders

No. A-944. *BUETTNER-JANUSCH v. UNITED STATES.* C. A. 2d Cir. Application for stay and continued bail, addressed to JUSTICE STEVENS and referred to the Court, denied.

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No. A-915. BUREAU OF ECONOMIC ANALYSIS, UNITED STATES DEPARTMENT OF COMMERCE *v.* LONG ET AL. C. A. 9th Cir. Application for stay, presented to JUSTICE REHNQUIST, and by him referred to the Court, granted. The order heretofore entered by JUSTICE REHNQUIST on May 14, 1981, is continued pending the timely filing and disposition of a petition for writ of certiorari.

No. D-221. *IN RE* DISBARMENT OF LEIGHTON. Disbarment entered. [For earlier order herein, see 450 U. S. 976.]

No. D-225. *IN RE* DISBARMENT OF FLORSHEIM. Disbarment entered. [For earlier order herein, see 450 U. S. 977.]

No. D-240. *IN RE* DISBARMENT OF WALSH. It is ordered that John T. Walsh, of Youngstown, 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-241. *IN RE* DISBARMENT OF PRIDE. It is ordered that Hemphill P. Pride II, of Columbia, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 80-327. VALLEY FORGE CHRISTIAN COLLEGE *v.* AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL. C. A. 3d Cir. [Certiorari granted, 450 U. S. 909.] Motion of the Solicitor General for divided argument and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Respondent Americans United for Separation of Church and State also allotted an additional 10 minutes for oral argument.

No. 80-6654. *IN RE* REYNOLDS. Petition for writ of habeas corpus denied.

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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 granted, 450 U. S. 909.] Motion of petitioners for divided argument granted. Request for additional time for oral argument denied.

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. [Certiorari granted, 450 U. S. 964.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

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 appellant for leave to file a supplemental brief after argument granted.

No. 80-1430. ENGLE, CORRECTIONAL SUPERINTENDENT *v.* ISAAC; PERINI, CORRECTIONAL SUPERINTENDENT *v.* BELL; and ENGLE, CORRECTIONAL SUPERINTENDENT *v.* HUGHES. C. A. 6th Cir. [Certiorari granted, 451 U. S. 906.] Motion of respondent Howard Hughes for leave to proceed further herein *in forma pauperis* denied.

No. 80-1695. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* PELAEZ DEL CASAL ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-6645. IN RE GREEN. Petition for writ of mandamus denied.

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No. 80-1586. *IN RE GULF OIL CORP.* Petition for writ of mandamus denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

Probable Jurisdiction Noted

No. 80-1290. *CLEMENTS, GOVERNOR OF TEXAS, ET AL. v. FASHING ET AL.* Appeal from C. A. 5th Cir. Probable jurisdiction noted. Reported below: 631 F. 2d 731.

No. 80-1431. *IN RE R. M. J.* Appeal from Sup. Ct. Mo. Probable jurisdiction noted. Reported below: 609 S. W. 2d 411.

No. 80-1666. *LARSON, COMMISSIONER OF SECURITIES, MINNESOTA DEPARTMENT OF COMMERCE, ET AL. v. VALENTE ET AL.* Appeal from C. A. 8th Cir. Probable jurisdiction noted. Reported below: 637 F. 2d 562.

No. 80-1681. *VILLAGE OF HOFFMAN ESTATES ET AL. v. THE FLIPSIDE, HOFFMAN ESTATES, INC.* Appeal from C. A. 7th Cir. Probable jurisdiction noted. JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 639 F. 2d 373.

Certiorari Granted

No. 80-1556. *CORY, CONTROLLER OF CALIFORNIA, ET AL. v. WHITE, ATTORNEY GENERAL OF TEXAS, ET AL.* C. A. 5th Cir. Certiorari granted. Reported below: 629 F. 2d 397.

No. 80-1562. *MARINE BANK v. WEAVER ET UX.* C. A. 3d Cir. Certiorari granted. Reported below: 637 F. 2d 157.

No. 80-1614. *JEWETT ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari granted. Reported below: 638 F. 2d 93.

Certiorari Denied. (See also No. 80-1205, *ante*, at 157, n. 2; and Nos. 80-1694, 80-6502, and 80-6646, *supra*.)

No. 80-1398. *DOE ET AL. v. GOLDMAN ET AL.* C. A. 1st Cir. Certiorari denied.

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No. 79-1214. IOWA BEEF PROCESSORS, INC., ET AL. *v.* MEAT PRICE INVESTIGATORS ASSN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 167.

No. 80-922. DONOVAN, SECRETARY OF LABOR *v.* ALABAMA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 366.

No. 80-1353. VAN DYK RESEARCH CORP. *v.* XEROX CORP. C. A. 3d Cir. Certiorari denied. Reported below: 631 F. 2d 251.

No. 80-1390. BELLER *v.* LEHMAN, SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 632 F. 2d 788.

No. 80-1450. McLEAN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 392 So. 2d 1384.

No. 80-1512. BRINTON *v.* DEPARTMENT OF STATE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 204 U. S. App. D. C. 328, 636 F. 2d 600.

No. 80-1514. FONTENOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 F. 2d 921.

No. 80-1517. MAZZUCA *v.* UNITED STATES;

No. 80-6307. WILLIAMS *v.* UNITED STATES; and

No. 80-6309. JANOVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 1159.

No. 80-1543. AMDUR *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 638 F. 2d 37.

No. 80-1549. TEXPORTS STEVEDORE CO. ET AL. *v.* WINCHESTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 504.

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No. 80-1558. *LEBEOUF BROTHERS TOWING Co., INC., ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 621 F. 2d 787.

No. 80-1638. *FIRST EMPIRE BANK-NEW YORK, BY ITS SUCCESSOR-IN-INTEREST MANUFACTURERS & TRADERS TRUST COMPANY OF BUFFALO, NEW YORK, ET AL. v. FEDERAL DEPOSIT INSURANCE CORPORATION*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 1222.

No. 80-1665. *RATCLIFF v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1203.

No. 80-1675. *SPECTOR ET AL. v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 289 Md. 407, 425 A. 2d 197.

No. 80-1689. *FITZGERALD v. NATIONS ET AL.* Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 610 S. W. 2d 48.

No. 80-1697. *ST. LOUIS SOUTHWESTERN RAILWAY Co. v. MOSLEY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 942.

No. 80-1780. *SCHWENK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 647 F. 2d 167.

No. 80-1784. *CALHOUN v. BAILAR, POSTMASTER GENERAL OF THE UNITED STATES, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 626 F. 2d 145.

No. 80-1830. *GULF STATES CANNERS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 215.

No. 80-1839. *DAVI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 657 F. 2d 265.

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No. 80-1840. *SASSO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 657 F. 2d 265.

No. 80-1847. *WILSON ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 636 F. 2d 1228.

No. 80-1851. *ALMAGUER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 1265.

No. 80-1856. *MENGRONE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 657 F. 2d 265.

No. 80-1865. *ABESS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 2d 270.

No. 80-6275. *TURNER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 80-6315. *HAYNES v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 89 Ill. App. 3d 231, 411 N. E. 2d 876.

No. 80-6374. *ADLER v. OHIO*. Ct. App. Ohio, Wood County. Certiorari denied.

No. 80-6472. *SINGLETON v. STATE BAR OF WISCONSIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 76.

No. 80-6474. *DAVIS v. McALLISTER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 631 F. 2d 1256.

No. 80-6475. *AYERS v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 642 F. 2d 447.

No. 80-6477. *HIGHT v. BALKCOM, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 1232.

No. 80-6485. *SINGLETON v. STATE BAR OF WISCONSIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 76.

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No. 80-6488. *NASSRALLA v. CIVIL SERVICE BOARD, CITY OF SAN BERNARDINO, CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 80-6489. *MAURER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 80-6490. *HANEY v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 1055.

No. 80-6492. *STEWART v. GEORGIA ET AL.* Sup. Ct. Ga. Certiorari denied.

No. 80-6493. *SNEAD ET AL. v. KIRKLAND ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 443.

No. 80-6496. *JARVIS v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1227.

No. 80-6498. *YOUNG v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 610 S. W. 2d 8.

No. 80-6499. *ARCHER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 607 S. W. 2d 539.

No. 80-6500. *LEWIS v. LOUISIANA STATE PENITENTIARY*. C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 577.

No. 80-6505. *STEVENSON v. ANDERSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1219.

No. 80-6507. *BELL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 80-6510. *SMITH v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 618 S. W. 2d 603.

No. 80-6526. *YOUNG v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

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No. 80-6554. JOHNSON *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 1231.

No. 80-6560. DI CARLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 2d 173.

No. 80-6564. MARQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 80-6599. GORDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 886.

No. 80-6606. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 638 F. 2d 134.

No. 80-6612. LOPEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 652 F. 2d 59.

No. 80-6613. CALLWOOD *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 441.

No. 80-6629. HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 1231.

No. 80-6649. FRANCIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 641 F. 2d 877.

No. 79-2034. BLUM, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK *v.* CALDWELL ET AL. C. A. 2d Cir. Motion of respondents McCullough, Richmond, Grant, Barnett, Perito, Landers, and Maniccia for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 621 F. 2d 491.

No. 80-1627. FLORIDA *v.* BUSCH. Dist. Ct. App. Fla., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 392 So. 2d 272.

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No. 80-1670. DEPARTMENT OF AGRICULTURE OF GEORGIA ET AL. *v.* SMITH. C. A. 5th Cir. Certiorari denied. JUSTICE STEWART and JUSTICE BLACKMUN would grant certiorari. Reported below: 630 F. 2d 1081.

No. 80-1686. MEAD CORP. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS ET AL. (ADAMS EXTRACT CO. ET AL., REAL PARTIES IN INTEREST). C. A. 5th Cir. Certiorari denied. JUSTICE STEWART and JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 80-6483. MATTISON *v.* SEARS, ROEBUCK & Co. C. A. 10th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 80-6506. FLEMING *v.* AUSTIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 80-1381. CISSNA ET UX. *v.* AMMAN ET AL., 450 U. S. 1042;

No. 80-1415. MURPHY *v.* EAGEN, JUSTICE, PENNSYLVANIA SUPREME COURT, ET AL., 451 U. S. 910;

No. 80-1473. STEVENSON *v.* STEVENSON, 451 U. S. 911;

No. 80-5757. DAVIS *v.* GEORGIA, 451 U. S. 921;

No. 80-6211. MAKARA *v.* BRITISH PETROLEUM CORP., 451 U. S. 914;

No. 80-6300. JOHN *v.* JOSEPH, 451 U. S. 941; and

No. 80-6428. HEIMERLE *v.* UNITED STATES, 451 U. S. 942.
Petitions for rehearing denied.

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No. 79-1128. MONTANA ET AL. *v.* UNITED STATES ET AL., 450 U. S. 544. Motion of respondent United States for modification of opinion denied. Motion of National Tribal Chairmen's Association et al. for leave to file a brief as *amici curiae* granted. Petition for rehearing denied.

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Appeals Dismissed

No. 80-1716. LABOVE ET UX. *v.* CITY OF GROVES. Appeal from Sup. Ct. Tex. dismissed for want of jurisdiction. Reported below: 608 S. W. 2d 162.

No. 80-6515. CROSS *v.* SUNDIN ET AL. Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 221 Va. 232, 269 S. E. 2d 787.

No. 80-6541. PRENZLER *v.* STATE BAR OF ARIZONA. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this case.

Vacated and Remanded on Appeal

No. 80-1509. THONE, GOVERNOR OF NEBRASKA, ET AL. *v.* WOMENS SERVICES, P. C., ET AL. Appeal from C. A. 8th Cir. Judgment vacated and case remanded for further consideration in light of *H. L. v. Matheson*, 450 U. S. 398 (1981). JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN dissent and would affirm the judgment. Reported below: 636 F. 2d 206.

Certiorari Granted—Vacated and Remanded

No. 80-526. MURRAY *v.* BRANCH MOTOR EXPRESS CO. ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Clay-*

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ton v. Automobile Workers, 451 U. S. 679 (1981). Reported below: 622 F. 2d 585.

No. 80-1166. *MISSOURI v. SINCLAIR*. Ct. App. Mo., Southern Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Albernaz v. United States*, 450 U. S. 333 (1981). Reported below: 606 S. W. 2d 271.

No. 80-1561. *MISSOURI v. LOWERY*. Ct. App. Mo., Eastern Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Albernaz v. United States*, 450 U. S. 333 (1981). Reported below: 608 S. W. 2d 445.

No. 80-1741. *GLITSCH, INC. v. JONES*. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Texas Dept. of Community Affairs v. Burdine*, 450 U. S. 248 (1981). Reported below: 634 F. 2d 1353.

Miscellaneous Orders

No. A-918. *BECKER ET AL. v. UNITED STATES ET AL.* D. C. E. D. Cal. The temporary stay heretofore entered by JUSTICE REHNQUIST is continued pending further order of the Court.

No. A-923. *DONOHUE v. UNITED STATES*. D. C. Md. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-229. *IN RE DISBARMENT OF LISNER*. Disbarment entered. [For earlier order herein, see 450 U. S. 1038.]

No. D-230. *IN RE DISBARMENT OF CONROY*. Disbarment entered. [For earlier order herein, see 450 U. S. 1038.]

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No. 84, Orig. UNITED STATES *v.* ALASKA. Motion of Inupiat Community of the Arctic Slope for leave to intervene referred to the Special Master. [For earlier order herein, see, *e. g.*, 445 U. S. 914.]

No. 80-419. ARIZONA *v.* MARICOPA COUNTY MEDICAL SOCIETY ET AL. C. A. 9th Cir. [Certiorari granted, 450 U. S. 979.] Motion of the Solicitor General as *amicus curiae* for divided argument and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Respondents also allotted an additional 10 minutes for oral argument.

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, 450 U. S. 979.] Motion of American Insurance Association for leave to file a brief as *amicus curiae* granted.

No. 80-689. WIDMAR ET AL. *v.* VINCENT ET AL. C. A. 8th Cir. [Certiorari granted, 450 U. S. 909.] Motions for leave to file briefs as *amici curiae* by the following are granted: United States Catholic Conference; Bible Study; Center for Constitutional Studies et al.; Regents of the University of California; National Association of Evangelicals; and Association for the Coordination of University Religious Affairs.

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

No. 80-1067. FEDERAL ELECTION COMMISSION *v.* AMERICANS FOR CHANGE ET AL. D. C. D. C. [Probable jurisdiction noted, 450 U. S. 908.] Motions of appellants for divided argument and for additional time for oral argument granted. A total of one and one-half hours is allotted for oral argument to be divided as follows: 25 minutes for Federal Election Commission; 20 minutes for Common Cause et al.; and 45 minutes for appellees.

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No. 80-846. ROSE, WARDEN *v.* LUNDY. C. A. 6th Cir. [Certiorari granted, 450 U. S. 910.] Motion of William M. Leech, Jr., Attorney General of Tennessee, to permit John C. Zimmermann, Esquire, to present oral argument *pro hac vice* granted.

No. 80-1575. CRAIG ET AL. *v.* BICKEL ET AL. Appeal from Sup. Ct. Mich. Motion of appellants to expedite consideration of the appeal denied.

No. 80-1777. DAVID ORGELL, INC. *v.* JOSIAH WEDGWOOD & SONS, INC., ET AL. C. A. 9th Cir.; and

No. 80-1829. AUSTIN, STATE ATTORNEY, FOURTH JUDICIAL CIRCUIT OF FLORIDA, ET AL. *v.* ROBERTS ET AL. C. A. 5th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 80-6439. IN RE McCRARY. Petition for writ of mandamus denied.

Certiorari Granted

No. 80-1240. FRANZEN, CORRECTIONS DIRECTOR *v.* WILLIAMS ET AL. C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 633 F. 2d 71.

Certiorari Denied. (See also Nos. 80-6515 and 80-6541, *supra.*)

No. 80-1254. MICHIGAN *v.* SMITH. Ct. App. Mich. Certiorari denied. Reported below: 89 Mich. App. 478, 280 N. W. 2d 862.

No. 80-1379. LOUISIANA DEPARTMENT OF LABOR, OFFICE OF EMPLOYMENT SECURITY *v.* ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 387 So. 2d 1248.

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No. 80-1300. LOUISIANA DEPARTMENT OF HIGHWAYS ET AL. *v.* CRADOR, EXECUTRIX. C. A. 5th Cir. Certiorari denied. Reported below: 625 F. 2d 1227.

No. 80-1356. RHOADES ET AL. *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 270 Ark. 962, 607 S. W. 2d 76.

No. 80-1419. HAMILTON *v.* STOVER. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1217.

No. 80-1502. FISHMAN ET AL. *v.* TEACHERS' RETIREMENT SYSTEM OF ILLINOIS ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 86 Ill. App. 3d 649, 408 N. E. 2d 113.

No. 80-1525. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY *v.* GENERAL RAILWAY SIGNAL Co. C. A. D. C. Cir. Certiorari denied. Reported below: 214 U. S. App. D. C. 170, 664 F. 2d 296.

No. 80-1544. BLUE GRASS PROVISION Co., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 636 F. 2d 1127.

No. 80-1547. ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 766.

No. 80-1563. HOWARD TRUCKING Co., INC., ET AL. *v.* BOUDLOCHE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 1346.

No. 80-1569. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 80-1579. KURZ-KASCH, INC. *v.* METAL POLISHERS, BUFFERS, PLATERS & ALLIED WORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL 11, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 452.

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No. 80-1600. *HOLMES v. UNION GOSPEL PRESS ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 64 Ohio St. 2d 187, 414 N. E. 2d 415.

No. 80-1629. *NATIONAL LABOR RELATIONS BOARD v. MANHATTAN CORP., MANHATTAN GUEST HOUSE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 620 F. 2d 53.

No. 80-1642. *ROBINSON ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 2d 363.

No. 80-1658. *JACOBS ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 639 F. 2d 770.

No. 80-1698. *BLOCH v. BLOCH ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 771.

No. 80-1711. *STRUTHERS WELLS CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 2d 1210.

No. 80-1715. *KUHN ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 17.

No. 80-1717. *READING INDUSTRIES, INC. v. KENNECOTT COPPER CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 631 F. 2d 10.

No. 80-1720. *PEOPLE VERSUS PORN (PROFIT OF RICHARD NIXON) ET AL. v. NIXON.* C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 635.

No. 80-1721. *PEEK, DISTRICT ATTORNEY, STONE MOUNTAIN JUDICIAL CIRCUIT v. FITZGERALD ET UX.* C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 2d 943.

No. 80-1728. *YEOHAM ET AL. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 2d 391.

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No. 80-1742. *BALTIMORE & OHIO RAILROAD Co. v. R. J. DICKEY Co., INC.* C. A. 3d Cir. Certiorari denied. Reported below: 636 F. 2d 1207.

No. 80-1753. *TEXTRON, INC. v. CICCONE.* C. A. 1st Cir. Certiorari denied. Reported below: 651 F. 2d 1.

No. 80-1757. *MITAN v. ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 76.

No. 80-1773. *AUFIERO v. CLARKE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 639 F. 2d 49.

No. 80-1820. *MARCELLO v. DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, NEW ORLEANS, LOUISIANA.* C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 964.

No. 80-1825. *GRACE ET AL. v. BUTTERWORTH, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 635 F. 2d 1.

No. 80-1881. *RUSH v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 666 F. 2d 10.

No. 80-1898. *CROFT METALS, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 2d 492.

No. 80-1915. *DELAGARZA v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 650 F. 2d 1166.

No. 80-6181. *BISHOP v. MAZURKIEWICZ ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 634 F. 2d 724.

No. 80-6208. *CARTER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 450.

No. 80-6264. *AINSWORTH v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

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No. 80-6270. *LAFFITTE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied.

No. 80-6311. *COLANDER v. SHIELDS*. C. A. 4th Cir. Certiorari denied. Reported below: 644 F. 2d 877.

No. 80-6336. *RIOS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 637 F. 2d 728.

No. 80-6378. *OBREGON v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 423 A. 2d 200.

No. 80-6379. *BUSIC v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 940.

No. 80-6389. *COLE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 866.

No. 80-6403. *SAUNDERS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 641 F. 2d 659.

No. 80-6408. *SNYDER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 644 F. 2d 883.

No. 80-6464. *THOMAS v. HILL ET AL.* C. A. 9th Cir. Certiorari denied.

No. 80-6469. *FORD ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 644 F. 2d 882.

No. 80-6471. *LOWE v. PARKER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 2d 788.

No. 80-6511. *LEVARIO v. STATE BAR OF CALIFORNIA, COMMITTEE OF BAR EXAMINERS*. Sup. Ct. Cal. Certiorari denied.

No. 80-6512. *KINNEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 638 F. 2d 941.

No. 80-6513. *NEUMANN v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 658, 417 N. E. 2d 69.

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No. 80-6524. *MILLER v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 79 App. Div. 2d 687, 434 N. Y. S. 2d 36.

No. 80-6525. *HINKLE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. ci.

No. 80-6530. *TILLEY v. HILLIARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 783.

No. 80-6534. *SILLO v. KELLY, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-6535. *LAWSON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 412 N. E. 2d 759.

No. 80-6536. *McCLAIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 643 F. 2d 911.

No. 80-6538. *HIGGINS v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 492 Pa. 343, 424 A. 2d 1222.

No. 80-6539. *SYKES v. STEPHENS, ATTORNEY GENERAL OF KENTUCKY*. C. A. 6th Cir. Certiorari denied. Reported below: 652 F. 2d 59.

No. 80-6542. *COLLIER v. LOS ANGELES SOUTHWEST COLLEGE*. C. A. 9th Cir. Certiorari denied.

No. 80-6590. *LANIER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 647 F. 2d 167.

No. 80-6597. *DAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 640 F. 2d 384.

No. 80-6611. *DUCKETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 783.

No. 80-6627. *J. B. v. DISTRICT OF COLUMBIA*. Ct. App. D. C. Certiorari denied.

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No. 80-6634. *BROUSSARD v. LIPPMAN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 643 F. 2d 1131.

No. 80-6640. *KENNY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 645 F. 2d 1323.

No. 80-6660. *RENNIE ET AL. v. KLEIN, COMMISSIONER, DEPARTMENT OF HUMAN SERVICES OF NEW JERSEY, ET AL.* C. A. 3d Cir. Certiorari before judgment denied.

No. 80-6663. *RUBEN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 647 F. 2d 174.

No. 80-6672. *SONDERUP v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 639 F. 2d 294.

No. 80-1099. *ALABAMA v. BATTLES.* Ct. Crim. App. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 389 So. 2d 957.

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

I

On September 19, 1979, the Governor of Florida sent to the State of Alabama a demand for respondent's extradition. The demand consisted of four documents: (a) a verified information; (b) an affidavit; (c) a warrant for respondent's arrest; and (d) a formal request for extradition.

The information, dated August 20, 1979, charges that on or about July 1, 1979, respondent was present in Bay County, Fla., and obtained an automobile from one Stimmitt by issuing a personal check for \$1,300 drawn upon a closed account at an Alabama bank. After describing this transaction in detail and alleging that respondent acted with knowledge that there were insufficient funds on deposit to cover his check, the information charges that respondent thereby

committed two felonies: (a) obtaining a motor vehicle with intent to defraud and (b) passing a worthless check.¹ The information is verified by an oath in which the prosecutor swears that the charges "are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged," and also that the information "is filed in good faith."

The affidavit, sworn to before a Magistrate on August 31, 1979, avers: the affiant is an investigator with the office of the State Attorney in Panama City, Bay County, Fla.; the affiant has investigated the offense; and "during the course of my investigation, I obtained the following facts," at which point the affidavit substantially repeats the facts charged in each count of the information.

The arrest warrant, pursuant to Florida law, was automatically issued by the Clerk of the Circuit Court of Bay County upon the filing of the verified information.

The request for extradition is signed by the Governor and Secretary of State of Florida and bears the seal of the State of Florida. It certifies that respondent "was present in [Florida] at the time of the commission of said crime and thereafter fled from the justice of this State"; that respondent has taken refuge in Alabama; and that the other extradition documents are "authentic and duly authenticated in accordance with the laws of the State of Florida."

On October 11, 1979, the Governor of Alabama ordered extradition "in obedience to the Constitution and the laws of the United States and the laws of the State of Alabama" and issued a rendition warrant. Pursuant to that warrant, Alabama placed respondent under arrest.

Respondent immediately sought habeas corpus in the Circuit Court of Etowah County, Ala. At the habeas hear-

¹ Each of these offenses is punishable as a felony in the third degree, subject to a fine of up to \$5,000 and a term of imprisonment not exceeding five years. Fla. Stat. §§ 817.52, 832.05; and §§ 775.082 (3)(d), 775.083 (1)(c) (1979).

ing, respondent admitted that he was the person sought in the extradition papers; that he had traveled to Florida on the date in question; that he had issued the check to Stimmett in return for the car; that there had not been sufficient funds in the account at the time he issued the check; that he had taken the car to Alabama and sold it; and that he still owed the money for which his check was tendered. Tr. 5-7.² Respondent argued, however, that the "certification" of the Florida extradition documents failed to comply with the Alabama extradition statute. The Circuit Court denied the writ.

The Alabama Court of Criminal Appeals reversed. 389 So. 2d 957 (1980). That court reasoned that the papers submitted by the Florida authorities did not meet procedural requirements purportedly implied by language of the Alabama extradition statute. This statute (Uniform Criminal Extradition Act) provides:

"No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth." Ala. Code § 15-9-31 (1975).

² Respondent testified that the account "wasn't supposed to be a closed bank account" at the time he wrote the check and that he had told Stimmett that there were insufficient funds in the account and that he would have to return to Alabama and put more money in the bank. Tr. 6, 8.

The statute also requires in pertinent part that the documents supporting the demand must show that the accused

“is lawfully charged by indictment or by an information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state . . .” Ala. Code § 15-9-33 (1975).

The Court of Criminal Appeals interpreted these statutory provisions to require that an affidavit, based upon personal knowledge, must coincide with and be attached to the information. The court concluded that Florida had failed to satisfy the Alabama statute because the affidavit “is not sufficient in law to support the information which is dated some eleven days earlier,” because it “is not attached” to the information, and because “there is no showing of any personal knowledge on [the affiant’s] part of the source, or reliability of the facts asserted in the affidavit.” 389 So. 2d, at 960. It is uncontroverted that Florida law imposes none of these requirements,³ and that under Florida law, respondent will be accorded a nonadversary probable-cause hearing within 72 hours of the time Florida takes custody.⁴

II

Article IV, § 2, cl. 2, of the United States Constitution provides:

“A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered

³ See Fla. Rule Crim. Proc. 3.140 (g); *State v. Bacon*, 385 So. 2d 1160, 1163 (Fla. App. 1980).

⁴ See Fla. Rule Crim. Proc. 3.131 (a). This Rule allows a finding of probable cause to be based upon “sworn complaint, affidavit, deposition under oath, or, if necessary, upon testimony under oath properly recorded.”

up, to be removed to the State having Jurisdiction of the Crime.”

The Extradition Clause expressly turns on the existence of a “charge,” not on what types or quantities of proof support the charge. It mandates that extradition shall be “a summary and mandatory executive proceeding.” *Michigan v. Doran*, 439 U. S. 282, 288 (1978). The Clause does not permit the asylum state’s courts to weigh the evidence upon which the “Demand of the executive Authority” of a sister state is based. Instead, the asylum state may consider only

“(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.” *Pacileo v. Walker*, 449 U. S. 86, 87 (1980), quoting *Doran*, *supra*, at 289.

The decision of the Court of Criminal Appeals plainly exceeds the permissible scope of determining “whether the extradition documents on their face are in order” and “whether the defendant has been charged with a crime in the demanding state.” Under the guise of simply considering whether the documents were facially in order, the Alabama court actually imposed a requirement that Florida’s documents must satisfy the Alabama court’s particular view of probable cause to arrest. Although *Doran* involved a situation in which the demanding state had already made a judicial determination that probable cause existed, see 439 U. S., at 284, I perceive no material difference between that case and the present case. In either situation, an asylum state must look to the “charge”; it is not free to substitute its own judgment for the probable-cause determination to be made by the demanding state’s courts. “To allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of the summary and man-

datory procedures authorized by Art. IV, § 2.' " *Pacileo v. Walker, supra*, at 88, quoting *Doran, supra*, at 290.

Florida's demand was supported by a verified information charging respondent with felonies allegedly committed by him while he was present in Florida, an arrest warrant, and the affidavit made before the Magistrate. These documents more than satisfied Florida requirements for the commencement of a prosecution, and respondent makes no argument that those requirements are unconstitutional. Although we would have no occasion in this case to decide whether Alabama could constitutionally require all of these papers,⁵ it is certain that Alabama was entitled to no more. In overturning an order of the Governor of Alabama which expressly rested on the United States Constitution and which was *prima facie* evidence "that the constitutional and statutory requirements have been met," *Doran, supra*, at 289, the Alabama court based its decision on a strained view of the relevant law. In *Doran*, we took pains to emphasize that the purpose of the Extradition Clause "was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states." 439 U. S., at 287.

The papers submitted by Florida plainly show that respondent is charged with a crime in Florida and that he is a fugitive from justice. Notwithstanding our heavy workload, the conflict between this decision and *Doran* is so obvious as to warrant a grant of certiorari and summary reversal of the judgment.⁶

⁵ In particular, we need not decide whether an asylum state may constitutionally insist that the demanding state must, in every case in which prosecution is initiated by information, produce some sort of affidavit in addition to a verified information.

⁶ The decision of the Alabama court is particularly egregious when viewed in light of respondent's testimony at the habeas hearing in the Alabama Circuit Court. Respondent expressly admitted that he was the person named in the extradition papers, that he had gone to Florida and

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No. 80-1123. SAYE ET AL. v. WILLIAMS. C. A. 5th Cir. Certiorari denied. Reported below: 629 F. 2d 993.

JUSTICE REHNQUIST, dissenting.

Respondent was an officer in a university police department. Over the objections of petitioners, his superiors, respondent desired to run for the office of County Sheriff. The chief of the local police force, Chief Brown, also desired to run for that office. Chief Brown was involved in an accident, and respondent approved an accident report which stated among other things that Brown had been drinking. The next morning petitioners, at the request of Chief Brown, had the accident report changed so as to read "Not known if drinking." Respondent objected to the modified accident report, and disclosed these events to his father, who in turn leaked the original and altered accident reports to the press. When petitioners learned of the leak, they fired respondent. Respondent subsequently filed suit alleging that he had been fired for engaging in protected First Amendment activity.

After a jury trial, respondent was awarded compensatory and punitive damages against both petitioners. Relying on the so-called *Pickering* defenses, see *Pickering v. Board of Education*, 391 U. S. 563 (1968), petitioners had sought to defend the discharge on the grounds that respondent, by leaking confidential police material for his own political ends, had destroyed a harmonious working relationship with his superiors. Petitioners also contended that they were entitled to "official immunity" from damages, in that they had in good faith discharged respondent for violating the department's policy against disclosing confidential police investigative reports. See *Wood v. Strickland*, 420 U. S. 308 (1975);

committed the *actus reus* alleged, and that he had returned to Alabama after doing so. In other words, with the sole exception of state of mind, respondent admitted every element of the offenses charged, and he also admitted having crossed the state line afterward.

Scheuer v. Rhodes, 416 U. S. 232 (1974). The District Court, however, held that evidence of these defenses was inadmissible into evidence, and it declined to instruct the jury as to "qualified or good-faith" immunity.

The Court of Appeals for the Fifth Circuit affirmed. *Williams v. Board of Regents of the University System of Georgia*, 629 F. 2d 993. It first held that evidence of the confidentiality policy, which went directly to the issue of official immunity, could only be admitted if the policy

"(1) factually existed, (2) was consistent with other state statutes and regulations, (3) was not vague, (4) did not proscribe protected first amendment speech overbroadly, (5) was communicated to the appellee and (6) was not void as a matter of public policy in its instant application." *Id.*, at 1000 (footnotes omitted).

Although the court conceded that petitioners had shown enough evidence of the existence of a confidentiality policy to establish a jury question, the court held that the other factors were not present, namely, that the confidentiality policy conflicted with state regulations. Because the evidence of the confidentiality policy was inadmissible, the court concluded that there was insufficient evidence to warrant a jury instruction as to the existence of "good-faith" immunity.

It seems to me that the Court of Appeals' six-prong "test" unjustifiably expands the principles announced in such cases as *Wood* and *Scheuer*. In those cases, we held that official immunity is available where there is evidence that the official has a subjective good-faith belief in the lawfulness of his action and where the action is not inconsistent with undisputed and settled law. Accordingly, I believe that the novel test announced by the Court of Appeals warrants review.

The court next rejected petitioners' contention that the District Court erred in refusing to permit petitioners to introduce evidence and to charge the jury as to their "*Pickering*

defenses," based on this Court's decision in *Pickering v. Board of Education*, *supra*. Petitioners argued that they should have been permitted to show the necessity of maintaining discipline in an organization such as a police department and to show how respondent's conduct leads to a breakdown of that discipline. The Court of Appeals disagreed, finding that the District Court correctly found that respondent's First Amendment interests outweighed petitioners' interests in maintaining discipline. 629 F. 2d, at 1003.

I disagree. In *Pickering*, the Court held that whether speech of a public employee is protected depends upon "a balance between the interests of the [employee] as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U. S., at 568. But we also recognized that even accurate public criticism of a superior by a subordinate might warrant dismissal where the relationship between superior and subordinate is of such a nature that public criticism would seriously impair the working relationship between them. *Id.*, at 570, n. 3. As the late Judge Leventhal explained in *Meehan v. Macy*, 129 U. S. App. D. C. 217, 230, 392 F. 2d 822, 835 (1968), cited with approval in *Arnett v. Kennedy*, 416 U. S. 134, 161-162 (1974):

"We think it is inherent in the employment relationship as a matter of common sense if not common law that an employee in appellant's circumstances cannot reasonably assert a right to keep his job while at the same time he inveighs against his superiors in public with intemperate and defamatory lampoons. We believe that Meehan cannot fairly claim that discharge following an attack like that presented by this record comes as an unfair surprise or is so unexpected and uncertain as to chill his freedom to engage in appropriate speech." (Footnote omitted.)

In this case, I believe that the Court of Appeals struck the wrong balance. As it itself acknowledged:

“Viewed in the light most favorable to [petitioners], it was established that the ‘leak’ of the altered report would irreparably damage the working relationship between [petitioners] and Williams. Although Saye was not Williams’ immediate superior, there was frequent communication and necessity for working together. It is clear, therefore, that disharmony would result. Additionally, as [petitioners] argue, discipline is a necessary component of a smoothly-operating police force. Although this necessity of discipline does not rise to the same level as required by the military, see *Parker v. Levy*, 417 U. S. 733 . . . (1974), discipline must be maintained between police officers during periods of active duty.” 629 F. 2d, at 1003.

Though the court observed that “disharmony would result,” it nevertheless concluded that evidence of “this very real threat of disruption, disharmony and breakdown of discipline” was properly excluded by the trial court, not only as an absolute defense but even as a basis of a good-faith “official immunity.” *Ibid.* In my view, the court gave too little weight to the need for maintaining a close working relationship in a quasi-military organization like a police department. And quite unlike the situation in *Pickering*, respondent’s actions here called into question the integrity of his immediate superiors with whom he worked daily.

More significantly, I believe that the decision here conflicts with those of other Circuits. In *Sprague v. Fitzpatrick*, 546 F. 2d 560 (CA3 1976), cert. denied, 431 U. S. 937 (1977), the court took a much broader view of the *Pickering* defenses than did the court here. It concluded that the public criticism of the District Attorney by his first assistant precluded any future working relationship between the parties and hence was unprotected. See *Clark v. Holmes*, 474 F. 2d 928

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(CA7 1972), cert. denied, 411 U. S. 972 (1973). Likewise in this case, I believe petitioners should have been permitted to introduce evidence as to the breakdown of a minimally acceptable working relationship between the parties as well as to the maintenance of necessary police department discipline.

Viewed in one context, I can understand why this case is not a particularly attractive candidate for review. Like so many other cases, it involves a number of factual disputes, with conflicting evidence on both sides. Nonetheless, the legal issues presented by the case—whether the trial court erred in refusing to admit into evidence material going to “qualified immunity” and *Pickering* defenses—are sufficiently isolated from the factual controversies so as to make this case a suitable vehicle for review. I would grant certiorari to consider those legal issues.

No. 80-1589. BROWN BOVERI ELECTRIC, INC., SWITCHGEAR SYSTEMS DIVISION *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 10th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 638 F. 2d 159.

No. 80-1687. WESTERN UNION TELEGRAPH Co. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 80-1667. MANSON *v.* VILLAFANE. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE would grant the writ and summarily reverse the Court of Appeals’ judgment. Reported below: 639 F. 2d 770.

No. 80-1764. FLORIDA *v.* MORSMAN. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 394 So. 2d 408.

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No. 80-1783. CALIFORNIA *v.* CHADD. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 28 Cal. 3d 739, 621 P. 2d 837.

No. 80-1806. HARRIS, CORRECTIONAL SUPERINTENDENT, ET AL. *v.* BERMUDEZ ET AL. C. A. 2d Cir. Motions of respondents Jose Laurenó, Jose Bonilla, and Fernando Bermudez for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 657 F. 2d 262.

No. 80-2035. ELECTRONIC DATA SYSTEMS CORPORATION IRAN *v.* SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN ET AL. C. A. 5th Cir. Motion of Citibank, N. A., et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner for an expedited briefing schedule and oral argument denied. Certiorari before judgment denied.

No. 80-5693. CRAWFORD *v.* TEXAS. Ct. Crim. App. Tex.;

No. 80-6322. SKILLERN *v.* TEXAS. Ct. Crim. App. Tex.;

No. 80-6345. BULLOCK *v.* MISSISSIPPI. Sup. Ct. Miss.;
and

No. 80-6401. YOUNG *v.* ZANT, WARDEN. Super. Ct. Ga., Butts County. Certiorari denied. Reported below: No. 80-5693, 617 S. W. 2d 925; No. 80-6322, 609 S. W. 2d 762; No. 80-6345, 391 So. 2d 601.

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. 80-660. SILVER SPUR CASINO ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL., 451 U. S. 906. Petition for rehearing denied.

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No. 80-1083. *BARNEY'S CLUB, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*, 451 U. S. 906;

No. 80-5775. *SPRAGGINS v. GEORGIA*, 451 U. S. 921;

No. 80-5850. *BROOKS v. GEORGIA*, 451 U. S. 921;

No. 80-5918. *LEACH v. GRECO, WARDEN, ET AL.*, 451 U. S. 972;

No. 80-5933. *HILL v. GEORGIA*, 451 U. S. 923;

No. 80-5972. *RUHL v. ALABAMA STATE BAR*, 451 U. S. 901;

No. 80-6030. *WILLIS v. BALKCOM, WARDEN*, 451 U. S. 926;

No. 80-6285. *WHITELAW v. MWP LIMITED PARTNERSHIP*, 451 U. S. 916;

No. 80-6327. *PIERCE ET AL. v. YOCHUM ET AL.*, 451 U. S. 973; and

No. 80-6330. *SEGARRA v. SEA-LAND SERVICE OF PUERTO RICO, INC., ET AL.*, 451 U. S. 973. Petitions for rehearing denied.

No. 80-1360. *GENERAL ATOMIC CO. v. UNITED NUCLEAR CORP. ET AL.*, 451 U. S. 901. Petition for rehearing denied. *JUSTICE STEWART* took no part in the consideration or decision of this petition.

No. 80-5992. *HUGHES v. HOPPER ET AL.*, 450 U. S. 933. Motion for leave to file petition for rehearing denied.

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Certiorari Granted

No. 80-2078. *DAMES & MOORE v. REGAN, SECRETARY OF THE TREASURY, ET AL.* C. A. 9th Cir. Motion of Sperry Corp. et al. for leave to file a brief as *amici curiae* granted. Motion of Bank Markazi Iran for leave to intervene granted. Motion of the Islamic Republic of Iran and the Atomic Energy Organization of the Government of Iran for leave to intervene as respondents granted. Motion of the Solicitor

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General to expedite consideration of the petition for writ of certiorari before judgment granted. Certiorari before judgment granted. Request of the Solicitor General to expedite the schedule for briefing and oral argument granted. The parties shall exchange and file opening briefs by 3:00 p.m. on June 19, 1981, and any reply briefs shall be exchanged and filed by 3:00 p.m. on June 23, 1981. Oral argument is set for June 24, 1981, at 10:00 a.m. JUSTICE REHNQUIST dissents.

JUNE 12, 1981

Dismissal Under Rule 53

No. 80-1836. DELAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 638 F. 2d 1232.

JUNE 15, 1981

Appeals Dismissed

No. 80-1738. CHEN *v.* SUPREME COURT OF NEW JERSEY. Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

No. 80-1766. COLUMBUS & SOUTHERN OHIO ELECTRIC Co. *v.* PUBLIC UTILITIES COMMISSION OF OHIO. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 64 Ohio St. 2d 175, 413 N. E. 2d 1208.

No. 80-1769. WESTINGHOUSE BROADCASTING Co., INC. *v.* COMMISSIONER OF REVENUE OF MASSACHUSETTS. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. JUSTICE STEWART took no part in the consideration or decision of this case. Reported below: 382 Mass. 354, 416 N. E. 2d 191.

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No. 80-1940. *LONG v. DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE, PHOENIX, ARIZONA.* Appeal from C. A. 10th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 80-6576. *PRENZLER v. SPENCER & SPENCER.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Vacated and Remanded

No. 80-1374. *RHODE ISLAND v. DEMASI ET AL.* Sup. Ct. R. I. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Cortez*, 449 U. S. 411 (1981). JUSTICE BRENNAN, JUSTICE STEWART, JUSTICE WHITE, and JUSTICE MARSHALL dissent. Reported below: — R. I. —, 419 A. 2d 285.

No. 80-1550. *UNITED PARCEL SERVICE, INC. v. TINSLEY ET AL.* C. A. 7th Cir. Motion of respondent Paul E. Tinsley, Jr., for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Clayton v. Automobile Workers*, 451 U. S. 679 (1981). JUSTICE STEVENS dissents and would deny certiorari. Reported below: 635 F. 2d 1288.

No. 80-1668. *MICHIGAN v. PEQUES.* Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the Supreme Court of Michigan to consider whether its judgment is based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). Reported below: 410 Mich. 894, 304 N. W. 2d 455.

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No. 80-6600. WILLIAMS *v.* OHIO. Ct. App. Ohio, Hamilton County. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Edwards v. Arizona*, 451 U. S. 477 (1981).

Miscellaneous Orders

No. A-918. BECKER ET AL. *v.* UNITED STATES ET AL. D. C. E. D. Cal. The order heretofore entered on June 8, 1981 [*ante*, p. 912], is vacated and the application for stay is denied.

No. D-226. IN RE DISBARMENT OF KUMAR. Disbarment entered. [For earlier order herein, see 450 U. S. 1037.]

No. D-233. IN RE DISBARMENT OF BARBARA. Disbarment entered. [For earlier order herein, see 451 U. S. 903.]

No. D-242. IN RE DISBARMENT OF CASKEY. It is ordered that William J. Caskey, of West Columbia, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 83, Orig. MARYLAND ET AL. *v.* LOUISIANA. Motion of the Special Master for compensation granted, and it is ordered that plaintiffs and intervenor-plaintiffs compensate the Special Master in the total amount of \$25,000 and that the defendant compensate the Special Master in the total amount of \$25,000. JUSTICE POWELL took no part in the consideration or decision of this motion. [For decree herein, see *ante*, p. 456.]

No. 80-689. WIDMAR ET AL. *v.* VINCENT ET AL. C. A. 8th Cir. [Certiorari granted, 450 U. S. 909.] Motions of Holy Spirit Association for the Unification of World Christianity and National Jewish Commission on Law and Public Affairs for leave to file briefs as *amici curiae* granted.

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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. [Certiorari granted, 450 U. S. 910.] Motion of Sunnyside Eggs, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 80-1070. RIDGWAY ET AL. *v.* RIDGWAY ET AL. Sup. Jud. Ct. Me. [Certiorari granted, 450 U. S. 979.] Motion of the Solicitor General as *amicus curiae* for divided argument and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. Respondents also allotted an additional 10 minutes for oral argument. Motion of petitioners for divided argument and for additional time for oral argument denied.

No. 80-1350. COMMUNITY COMMUNICATIONS CO., INC. *v.* CITY OF BOULDER, COLORADO, ET AL. C. A. 10th Cir. [Certiorari granted, 450 U. S. 1039.] Motion of Alaska et al. for divided argument in support of petitioner as *amici curiae* granted, and 10 minutes of petitioner's one-half hour allotted for that purpose. Motion of petitioner for additional time for oral argument denied.

No. 80-1727. IN RE BLOCH; and

No. 80-6328. IN RE HEGWOOD. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 80-1749. FEDERAL ENERGY REGULATORY COMMISSION ET AL. *v.* MISSISSIPPI ET AL. Appeal from D. C. S. D. Miss. Motion of Louisiana Public Service Commission for leave to file a brief as *amicus curiae* granted. Probable jurisdiction noted.

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No. 80-1934. TEXAS ET AL. *v.* CERTAIN NAMED AND UN-NAMED UNDOCUMENTED ALIEN CHILDREN ET AL. Appeal from C. A. 5th Cir. Motion of appellant Texas to expedite consideration of the appeal granted. Motion of appellees Sandra and Maria Cardenas for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted, case consolidated with No. 80-1538, *Plyer, Superintendent, Tyler Independent School District, et al. v. Doe, Guardian, et al.* [probable jurisdiction noted, 451 U. S. 968], and a total of one hour allotted for oral argument.

Certiorari Granted

No. 80-1199. AMERICAN TOBACCO CO. ET AL. *v.* PATTERSON ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 634 F. 2d 744.

No. 80-1730. LUGAR *v.* EDMONDSON OIL Co., INC., ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 639 F. 2d 1058.

No. 80-1765. AMERICAN SOCIETY OF MECHANICAL ENGINEERS, INC. *v.* HYDROLEVEL CORP. C. A. 2d Cir. Certiorari granted. Reported below: 635 F. 2d 118.

No. 80-1735. FEDERAL BUREAU OF INVESTIGATION ET AL. *v.* ABRAMSON. C. A. D. C. Cir. Certiorari granted. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 212 U. S. App. D. C. 58, 658 F. 2d 806.

No. 80-1781. McNICHOLS, MAYOR OF DENVER, ET AL. *v.* BALDRIGE, SECRETARY OF COMMERCE, ET AL. C. A. 10th Cir. Motion of the Solicitor General to expedite consideration of the petition for writ of certiorari granted. Upon consideration of the petition for writ of certiorari, certiorari granted. Reported below: 644 F. 2d 844.

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Certiorari Denied. (See also Nos. 80-1940 and 80-6576, *supra.*)

No. 79-1061. MAEHREN ET AL. *v.* CITY OF SEATTLE ET AL. Sup. Ct. Wash. *Certiorari* denied. Reported below: 92 Wash. 2d 480, 599 P. 2d 1255.

No. 79-1080. DETROIT POLICE OFFICERS' ASSN. ET AL. *v.* YOUNG, MAYOR OF DETROIT, ET AL. C. A. 6th Cir. *Certiorari* denied. Reported below: 608 F. 2d 671.

No. 80-29. CITY OF ST. LOUIS, MISSOURI, ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. *Certiorari* denied. Reported below: 616 F. 2d 350.

No. 80-1010. CURREY ET AL., DBA CURREY & CURREY *v.* CORPORATION COMMISSION OF OKLAHOMA ET AL. Sup. Ct. Okla. *Certiorari* denied. Reported below: 617 P. 2d 177.

No. 80-1518. DAVIS *v.* MAINE ENDWELL CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. *Certiorari* denied. Reported below: 646 F. 2d 560.

No. 80-1541. EAST CARROLL PARISH POLICE JURY ET AL. *v.* MARSHALL. C. A. 5th Cir. *Certiorari* denied. Reported below: 629 F. 2d 425.

No. 80-1609. PROLERIZED NEW ENGLAND CO. ET AL. *v.* BENEFITS REVIEW BOARD, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. 1st Cir. *Certiorari* denied. Reported below: 637 F. 2d 30.

No. 80-1615. BENDETTI ET AL. *v.* UNITED STATES. C. A. 3d Cir. *Certiorari* denied. Reported below: 642 F. 2d 444.

No. 80-1616. TAKIZAWA *v.* UNITED STATES. C. A. 2d Cir. *Certiorari* denied. Reported below: 646 F. 2d 563.

No. 80-1619. WHITE *v.* UNITED STATES. C. A. 6th Cir. *Certiorari* denied. Reported below: 642 F. 2d 453.

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No. 80-1621. *ATCHISON, TOPEKA & SANTA FE RAILWAY Co. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 224.

No. 80-1631. *GIRESI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 642 F. 2d 444.

No. 80-1677. *GREGORY v. WHITE, ATTORNEY GENERAL OF TEXAS, ET AL.* Ct. Civ. App. Tex., 4th Sup. Jud. Dist. Certiorari denied. Reported below: 604 S. W. 2d 402.

No. 80-1696. *HARING v. REGAN, SECRETARY OF THE TREASURY*. C. A. D. C. Cir. Certiorari denied.

No. 80-1708. *DOW CHEMICAL CO. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 635 F. 2d 559.

No. 80-1712. *SOUTH DAKOTA ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 636 F. 2d 241.

No. 80-1722. *SHARROW v. HOLTZMAN*. C. A. 2d Cir. Certiorari denied. Reported below: 646 F. 2d 562.

No. 80-1726. *BRICE-NASH v. BRICE-NASH*. Ct. App. Kan. Certiorari denied. Reported below: 5 Kan. App. 2d 332, 615 P. 2d 836.

No. 80-1734. *MARGOLES v. TORMEY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 2d 1292.

No. 80-1736. *LaFARGUE v. SUPREME COURT OF LOUISIANA*. C. A. 5th Cir. Certiorari denied. Reported below: 634 F. 2d 315.

No. 80-1739. *STELLY v. ATLANTIC PACIFIC MARINE CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 246.

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No. 80-1743. *CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK ET AL. v. GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 630 F. 2d 79.

No. 80-1747. *BETHLEHEM STEEL CORP. ET AL. v. GRANT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 635 F. 2d 1007.

No. 80-1750. *31.72 ACRES OF LAND ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 644 F. 2d 887.

No. 80-1754. *COLLINS ET AL. v. JOHNSTON ET AL.*; and
No. 80-1755. *FULK ET AL. v. JOHNSTON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 636 F. 2d 1213.

No. 80-1760. *BRUDER v. TEXAS.* Ct. Civ. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 601 S. W. 2d 102.

No. 80-1767. *STUMBO v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 612 S. W. 2d 137.

No. 80-1768. *LANCI v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 80-1774. *INDEPENDENT PARTY OF GEORGIA v. AMERICAN PARTY OF GEORGIA ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 247 Ga. 3, 275 S. E. 2d 657.

No. 80-1779. *ELLIS v. ELLIS ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 612 S. W. 2d 747.

No. 80-1786. *BROWN v. LOUISIANA, THROUGH THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF LOUISIANA STATE POLICE.* Sup. Ct. La. Certiorari denied. Reported below: 392 So. 2d 415.

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No. 80-1790. LAKE CHARLES AMERICAN PRESS ET AL. *v.* McHALE. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 390 So. 2d 556.

No. 80-1793. WATSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 398 So. 2d 320.

No. 80-1809. GUZZARDO *v.* BENGSTON, SHERIFF, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 2d 1300.

No. 80-1814. CITY OF CINCINNATI *v.* JONES ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 80-1815. CASTRO *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILROAD Co. Sup. Ct. Ill. Certiorari denied. Reported below: 83 Ill. 2d 358, 415 N. E. 2d 365.

No. 80-1854. BENJAMIN *v.* MACCHIAROLA, CHANCELLOR, BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 652 F. 2d 53.

No. 80-1869. INTERNATIONAL ORDER OF JOB'S DAUGHTERS *v.* LINDEBURG & Co. C. A. 9th Cir. Certiorari denied. Reported below: 633 F. 2d 912.

No. 80-1878. BURGENDORF *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 639 F. 2d 787.

No. 80-1921. DISTILLERY, RECTIFYING, WINE & ALLIED WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL UNION 38, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 642 F. 2d 185.

No. 80-1941. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 652 F. 2d 58.

No. 80-6342. HAYES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 640 F. 2d 280.

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No. 80-6473. *BLACK v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 78 App. Div. 2d 778, 432 N. Y. S. 2d 974.

No. 80-6480. *WEDRA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 652 F. 2d 55.

No. 80-6482. *FURMAN v. UNITED STATES*; and

No. 80-6651. *SIMPSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 647 F. 2d 163.

No. 80-6547. *CHILDS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 47 Md. App. 739.

No. 80-6551. *RUCKER v. CITY OF ST. LOUIS ET AL.* C. A. 8th Cir. Certiorari denied.

No. 80-6556. *THORNE v. WARDEN, VIRGINIA STATE PENITENTIARY*. Sup. Ct. Va. Certiorari denied. Reported below: 221 Va. cli.

No. 80-6557. *ROBERTS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 640 F. 2d 225.

No. 80-6559. *JOHNSON v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 183 Conn. 148, 438 A. 2d 851.

No. 80-6561. *BROWN v. MARYLAND*. Ct. App. Md. Certiorari denied.

No. 80-6567. *WEHRLI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 2d 408.

No. 80-6569. *HAMPTON v. COLORADO*. Ct. App. Colo. Certiorari denied.

No. 80-6570. *TAYLOR v. HARRIS, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 640 F. 2d 1.

No. 80-6574. *TYLER v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 635 F. 2d 752.

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No. 80-6575. *WILLIAMS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 90 Ill. App. 3d 524, 413 N. E. 2d 60.

No. 80-6577. *CURRY v. STATE BAR OF WISCONSIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 645 F. 2d 77.

No. 80-6588. *EVANS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 635 F. 2d 1124.

No. 80-6592. *ROSS v. BROWN, ATTORNEY GENERAL OF OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 80-6598. *ROSS v. DENTON*. C. A. 6th Cir. Certiorari denied.

No. 80-6617. *WHYTE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 80-6630. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 1231.

No. 80-6648. *STEFFEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 641 F. 2d 591.

No. 80-6669. *WEEKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 638 F. 2d 1232.

No. 80-6679. *CORBITT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 659 F. 2d 1071.

No. 80-6690. *DAVIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 649 F. 2d 858.

No. 80-6695. *BENTLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 645 F. 2d 70.

No. 80-6706. *WHITE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 645 F. 2d 599.

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No. 80-1474. WINSTON, SHERIFF, ET AL. v. MOORE. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 639 F. 2d 781.

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

The respondent was charged with feloniously breaking and entering with intent to commit larceny, and was tried by the Circuit Court of the city of Richmond, Va., on March 10, 1980. At approximately 4:30 p.m., the presentation of evidence and arguments of counsel having been completed, the jury retired to deliberate. At approximately 6 p.m., the jury recessed for the evening. The next morning the trial court gave the jury its version of an "Allen" charge because it sensed that the jury was having difficulty reaching a verdict. The jury again began deliberating, but after a little less than an hour the foreman notified the trial court that the jury had not been able to reach a verdict. The court then excused the jury and declared a mistrial, all without objection from the respondent. At the same time, the court set the case down for retrial the following month, on April 16, 1980.

On April 15, 1980, the trial court denied respondent's motion to dismiss the indictment on the ground that a retrial would violate the Double Jeopardy Clause of the Fifth Amendment. Respondent sought the same relief from the Supreme Court of Virginia, which was summarily denied on April 16, 1980. App. to Pet. for Cert. 6a. Respondent then filed a federal habeas petition in the Eastern District of Virginia, likewise seeking to enjoin a retrial. Respondent contended that the trial court erred when it declared a mistrial at the March 10, 1980, trial because there was an insufficient showing of "manifest necessity," as required by this Court's ruling in *United States v. Perez*, 9 Wheat. 579 (1824). On April 17, 1980, the District Court held a hearing, apparently on the basis of sworn allegations and responses, see App. to

Pet. for Cert. 6a, and issued a writ of habeas corpus directing that respondent "shall be free from any further jeopardy on the charges set forth in the indictment against him set forth in the record in this case." *Id.*, at 8a. This determination was in turn affirmed on the basis of the "reasons adequately stated by the district court" by a divided Court of Appeals on December 18, 1980. 639 F. 2d 781 (CA4).

The reasoning of the District Court seems to have been that the jury had deliberated for a relatively short period of time: approximately 1½ hours on March 10th, and approximately an hour the following day. The state judge, however, had given the jury his version of an "Allen" charge before they commenced deliberations on the second day, and the District Court in its findings of fact and conclusions of law stated that "[t]here is, of course, no magic number of hours." App. to Pet. for Cert. 7a. The second critical flaw which the federal habeas court found in the state-court proceedings was that the foreman of the jury had not specifically informed the judge that the jury was deadlocked, but instead simply stated "the jurors have not been able to reach a verdict." Thereafter, the trial judge failed to inquire of the jury as a whole. *Ibid.* The federal habeas judge explained: "I think that such an inquiry by the court is required by the law, and in the absence of such an inquiry there is no record which would support a finding that a mistrial was manifestly necessary." *Id.*, at 8a.

Certainly the "law" upon which the federal habeas judge relied is not law which has emanated from this Court. We have recognized that the determination of "manifest necessity" is one which a trial court is uniquely capable of making, and said as much in *United States v. Perez, supra*:

"We think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opin-

ion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes But, after all, they [the courts] have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office." *Id.*, at 580.

Over a century later, this Court noted in a somewhat different context:

"Where, for reasons deemed compelling by the trial judge, who is best situated intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment." *Gori v. United States*, 367 U. S. 364, 368 (1961).

The classical case of "manifest necessity" in this Court, and so far as I know in other court systems, has been the case of the "hung jury." The federal habeas court gave a tip of its hat to the *Perez* case, went on to state that "this question of manifest necessity has been interpreted by the Third Circuit in *Rusoe* and in *Webb*," App. to Pet. for Cert. 7a, and the remainder of its two-page opinion seems to consist of the federal judge's own opinion of what the law of double jeopardy should be.

I know of no case in this Court imposing on a trial judge a

requirement that each individual juror be interrogated as to the possibility of reaching a verdict before a mistrial is declared, nor do I know of a single case from this Court which has ever overturned a trial court's declaration of a mistrial after a jury was unable to reach a verdict on the ground that the "manifest necessity" standard had not been met. This Court reiterated in *Wade v. Hunter*, 336 U. S. 684, 692 (1949), what it had stated in *Perez*, that "the sound discretion of a presiding judge should be accepted as to the necessity of discontinuing a trial." And in our most recent foray into the area of "manifest necessity," *Arizona v. Washington*, 434 U. S. 497, 506 (1978), we stated that these words did not "describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge."

In sum, I am reluctantly led to the conclusion that the District Court did one of two things in order to grant the relief that it did, and that either of them merit review by this Court. Either it simply "second-guessed" the state trial judge as to whether this particular jury could, after further deliberation, reach a verdict, or it created a principle of law that has never been sanctioned by this Court to the effect that a trial judge must interrogate each juror as to the possibility of reaching a verdict before it may declare a mistrial because the jury has "hung." Either one of these actions, with their concomitant affirmation by the Court of Appeals, merits plenary review here.

In my view, the determination of "manifest necessity" is one uniquely vested in the discretion of a trial judge, and particularly should not be subject to attack by a habeas action after trial counsel had failed to object to the declaration of a mistrial. Accordingly, I dissent from the denial of the petition for a writ of certiorari to review the action of the Court of Appeals for the Fourth Circuit which summarily affirmed the action of the District Court in releasing respondent from custody and preventing a retrial.

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No. 80-1650. ILLINOIS v. ZEGART. Sup. Ct. Ill. Certiorari denied. Reported below: 83 Ill. 2d 440, 415 N. E. 2d 341.

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

I dissent from the denial of certiorari because the decision of the Supreme Court of Illinois is directly contrary to *Illinois v. Vitale*, 447 U. S. 410 (1980), and other decisions of this Court.

Respondent drove her eastbound automobile over a highway dividing median, striking a westbound car head on and killing two 13-year-old girls who were passengers in the westbound car. An Illinois State Police officer at the scene cited respondent for the traffic offense of crossing the median.¹ In January 1976, she pleaded guilty to that offense and she was convicted and fined.

In May 1976, following an investigation of the collision, a state grand jury indicted respondent on two counts of reckless homicide.² The State subsequently filed a bill of particulars indicating that in order to show that respondent's conduct leading up to the collision was reckless, it would

¹ Ill. Rev. Stat., ch. 95½, § 11-708 (d) (1979). This statute provides: "Whenever any highway has been divided into 2 or more roadways by leaving an intervening space or by a physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle must be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. *No vehicle may be driven over, across, or within any such dividing space, barrier, or section, except through an opening in the physical barrier, or dividing section, or space, or at a cross-over or intersection as established by public authority.*" (Emphasis supplied.)

² Ill. Rev. Stat., ch. 38, § 9-3 (a) (1979). This statute provides: "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle, in which case the person commits reckless homicide."

prove that she drove too fast for conditions; failed to reduce speed to avoid an accident; failed to drive her vehicle in the proper lane of the roadway; failed to exercise due care for the safety of persons rightfully on the highway; improperly passed on the right; improperly passed on the left; and failed to wear corrective lenses as required by her driver's license. The State explained that it would use the fact that respondent had driven across the center line of the highway only "in order to show the causal nexus between [respondent's] conduct prior to actually crossing the median strip and the death of the two victims."³

The trial court granted respondent's motion to dismiss the indictment on double jeopardy grounds, and the Appellate Court affirmed. The divided Supreme Court of Illinois also affirmed, reasoning that "the State intends to use the factual basis which led to the first conviction as the basis for the second conviction." 83 Ill. 2d 440, 445, 415 N. E. 2d 341, 343 (1980).

Illinois v. Vitale, supra, involved strikingly similar facts. The respondent's automobile struck and killed two children; a police officer at the scene issued a traffic citation charging the respondent with failing to reduce speed to avoid an accident; the respondent was convicted and fined; the State then charged him with involuntary manslaughter under the statute involved in the present case.⁴ The Supreme Court of Illinois, by precisely the same division as that presented here, held that the second prosecution was barred by the Double Jeopardy Clause of the Federal Constitution. Noting that "[t]he sole question before us is whether the offense of failing

³ App. to Pet. for Cert. 2d. The State's first bill of particulars listed "driving across the center line and median strip" as reckless conduct. However, the trial court granted the State leave to amend that bill, and the State struck that item except with respect to causation.

⁴ At the time *Vitale* was prosecuted, the statute treated reckless homicide as an optional lesser included offense in cases involving involuntary manslaughter by automobile. 447 U. S., at 413, n. 4.

to reduce speed to avoid an accident is the 'same offense' for double jeopardy purposes as the manslaughter charges brought against Vitale," *id.*, at 415-416, we held:

"[T]he *Blockburger* test [*Blockburger v. United States*, 284 U. S. 299 (1932)] focuses on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial. Thus [in *Brown v. Ohio*, 432 U. S. 161, 166 (1977),] we stated that if 'each statute requires proof of an additional fact which the other does not,' . . . the offenses are not the same under the *Blockburger* test." *Id.*, at 416, quoting 432 U. S., at 166 (emphasis supplied by Vitale Court).

We amplified this by example. *Brown v. Ohio*, we explained, depended on the fact that a prosecutor who has established the offense of "joyriding" need only prove the requisite intent in order to establish auto theft, and "the prosecutor who has established auto theft necessarily has established joyriding as well." *Vitale, supra*, at 417, quoting *Brown, supra*, at 168. If proof of auto theft had not necessarily involved proof of joyriding, "the successive prosecutions would not have been for the 'same offense' within the meaning of the Double Jeopardy Clause." 447 U. S., at 417. We concluded, in a holding directly controlling in the case at bar:

"[I]f manslaughter by automobile does not always entail proof of a failure to slow, then the two offenses are not the 'same' under the *Blockburger* test. *The mere possibility that the State will seek to rely on all of the ingredients necessarily included in the traffic offense to establish an element of its manslaughter case would not be sufficient to bar the latter prosecution.*" *Id.*, at 419 (emphasis supplied).

In the present case, the proof necessary to establish the first offense was that respondent drove across the median. The proof necessary to establish the second offense was that respondent acted recklessly and that the reckless acts caused

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deaths. The State Supreme Court has—inexplicably, even incredibly—relied on *Vitale* to hold that simply because crossing the median was necessarily proved in order to convict respondent of the traffic offense of driving across the median, the State was barred from proving in the present case that there was a *causal connection* between respondent's alleged recklessness and the deaths of the victims. This is but another example of judicial analysis carrying a sound principle beyond the outer limits of logic and producing an irrational result.

Our cases, particularly *Vitale* and *Brown*, require the courts to look to the *statutory* elements of the first and second charges, not to the similarities of facts in the government's proof.⁵ The Supreme Court of Illinois plainly failed to do so in this case. I would grant certiorari and summarily reverse.⁶

No. 80-1659. DUCKWORTH, WARDEN *v.* OWEN. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 645 F. 2d 74.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

The question presented in this habeas corpus case is whether the Court of Appeals for the Seventh Circuit correctly held that respondent's challenges to his conviction should be governed by the Federal Rules of Evidence rather than state criminal law. Because I believe that the Court of Appeals has confused the applicability of the Federal Rules of Evi-

⁵ See also *Iannelli v. United States*, 420 U. S. 770, 785, n. 17 (1975): "If each [offense] requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes."

⁶ In *Vitale*, we remanded for a determination of whether manslaughter by automobile always requires proof of failure to slow. There is no occasion for a remand in this case because, as the State Supreme Court's certification in *Vitale* plainly shows, proof of crossing the median is not always necessary to establish the homicide offense.

dence with the permissible limits of its inquiry in a federal habeas proceeding, I dissent from the denial of the petition for certiorari.

During the course of respondent's criminal trial, one of the jurors received an anonymous telephone call that she considered threatening. She reported this call to the trial judge who conducted an *in camera* hearing and determined that she was capable of rendering an impartial verdict. In a post-conviction proceeding, respondent asserted that the juror subsequently told other jurors about this call, which constituted juror misconduct and introduced a prejudicial influence into the deliberations. The Public Defender, who had contacted 10 of the 12 jurors, testified that 8 jurors responded to questions regarding their knowledge of a telephone threat during the trial. The trial court refused to grant a mistrial based on these allegations. The Supreme Court of Indiana affirmed. *Owen v. State*, 269 Ind. 513, 381 N. E. 2d 1235 (1978). It relied on Indiana state law which prohibits the interrogation of jurors for the purpose of impeaching a jury verdict.

Respondent then petitioned for a writ of habeas corpus. The District Court denied the writ, finding no constitutional error in the state-court ruling or procedure. The Court of Appeals for the Seventh Circuit reversed. 645 F. 2d 74 (1980). It concluded that the Federal Rules of Evidence govern federal habeas proceedings, not Indiana law. Fed. Rule Evid. 1101 (c). The evidentiary question is thus governed by Federal Rule of Evidence 606 (b), which permits a juror to testify as to whether prejudicial information was brought to bear on any juror, not the contrary Indiana law.*

*Rule 606 (b) of the Federal Rules of Evidence provides in pertinent part:

"Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to . . . the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify

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It concluded that respondent "may be able to prove facts which would entitle him to habeas relief by use of permissible means and that, through no fault of [respondent], the pertinent factual issues were not fully and adequately litigated in state court." App. to Pet. for Cert. A-5. Accordingly, the court held that respondent was entitled to an evidentiary hearing.

In my view, the Court of Appeals confused the rules of evidence which are applicable in a federal habeas proceeding with the rules of law which may properly be applied by a state court on direct review. No one would disagree with the conclusion of the Court of Appeals that Indiana rules of evidence do not apply in a federal habeas proceeding. But the question is not whether Indiana rules of law govern a federal habeas proceeding, but whether Indiana is bound by the United States Constitution to apply the Federal Rules of Evidence in its own courts. In my view, unless a state rule of law violates the Constitution, a federal habeas court is without authority to invalidate it. Rules of evidence in state criminal trials are matters of state law and therefore questions to be determined solely by state courts. See, *e. g.*, *Monk v. Blackburn*, 605 F. 2d 837 (CA5 1979). The fundamental error of the court below here is that it never squarely addressed the question whether the Indiana rule prohibiting the impeachment of a verdict by a juror violates the Constitution, and hence should be invalidated. Nor does the court explain why, if the Indiana state rule is *not* unconstitutional, the federal habeas court is entitled to circumvent it.

Indeed, in asserting the applicability of Rule 606 (b), the court states that the Rule "tracks the pre-existing case law, which embodied a flexible approach to the evidentiary prob-

on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes."

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lem to which the rule is addressed.” App. to Pet. for Cert. A-8. The only case from this Court cited for that proposition is *Parker v. Gladden*, 385 U. S. 363 (1966), in which the state trial court, on a petition for postconviction relief, heard testimony from a juror and found that an “unauthorized communication was prejudicial and that such conduct materially affected the rights of the [petitioner].” *Id.*, at 364. Though the Supreme Court of Oregon reversed, this Court in turn reversed that holding in a three-page *per curiam* opinion. It is clear from that case that Oregon law, unlike Indiana law, *did* permit a juror to impeach a jury verdict under certain circumstances. *Id.*, at 363, n. 1. Thus, all *Parker* establishes is that Indiana follows a stricter view of the right of a juror to impeach a verdict than Oregon: it does not establish that the Federal Rules of Evidence are constitutionally mandated in a trial conducted in the Indiana state courts.

In sum, the decision below can be read as establishing a constitutional requirement that the Federal Rules of Evidence apply to criminal trials in the 50 state courts. Because I doubt the validity of that requirement, I would grant the petition for certiorari to review the judgment of the Court of Appeals.

No. 80-1684. PEAT, MARWICK, MITCHELL & CO. ET AL. *v.* WACHOVIA BANK & TRUST Co., N. A., ET AL.;

No. 80-1691. WHITE & CASE ET AL. *v.* WACHOVIA BANK & TRUST Co., N. A., ET AL.; and

No. 80-1802. JOY ET AL. *v.* WACHOVIA BANK & TRUST Co., N. A., ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART would grant certiorari. Reported below: 209 U. S. App. D. C. 9, 650 F. 2d 342.

No. 80-1688. BADONI ET AL. *v.* BROADBENT, COMMISSIONER, BUREAU OF RECLAMATION, ET AL. C. A. 10th Cir. Motion of American Baptist Churches in the U. S. A. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 638 F. 2d 172.

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No. 80-1859. *BALTER v. ETHYL CORP.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 386 So. 2d 1220.

Rehearing Denied

No. 79-621. *ARIZONA v. MANYPENNY*, 451 U. S. 232;

No. 79-1176. *CITY OF MEMPHIS ET AL. v. GREENE ET AL.*, 451 U. S. 100;

No. 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.*, 451 U. S. 909;

No. 80-1470. *PENNINGTON ET AL. v. UNITED STATES*, 451 U. S. 938;

No. 80-5980. *COLEMAN v. BALKCOM, WARDEN*, 451 U. S. 949; and

No. 80-6293. *IN RE JONES*, 451 U. S. 936. Petitions for rehearing denied.

JUNE 18, 1981

Miscellaneous Order

No. A-1046 (80-2078). *DAMES & MOORE v. REGAN, SECRETARY OF THE TREASURY, ET AL.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 932.] Joint application for waiver of the page limitation of the parties' briefs on the merits, addressed to CHIEF JUSTICE BURGER and referred to the Court, granted. Motion of petitioner to dispense with printing the joint appendix denied.

JUNE 19, 1981

Dismissal Under Rule 53

No. 80-2040. *NATIONAL LABOR RELATIONS BOARD v. LEONARD CREATIONS OF CALIFORNIA, INC.* C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 638 F. 2d 111.

JUNE 22, 1981

Appeals Dismissed

No. 80-1805. *BOSWORTH, DBA GULF TO BAY TITLE Co. v. COONEY, EXECUTOR*. Appeal from Ct. App. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 156 Ga. App. 274, 274 S. E. 2d 604.

No. 80-1818. *McLENDON v. ALABAMA DEPARTMENT OF REVENUE*. Appeal from Ct. Civ. App. Ala. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 395 So. 2d 71.

No. 80-6657. *PATTERSON v. ABERNATHY 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.

No. 80-1861. *DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE ET AL. v. RODGERS ET AL.*; and

No. 80-1862. *WILLIAMS v. KRUEGER*. Appeals from Sup. Ct. Mich. dismissed for want of jurisdiction. Reported below: 410 Mich. 144, 300 N. W. 2d 910.

No. 80-6355. *MORRIS v. CALIFORNIA*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

No. 80-6607. *RAY v. ILLINOIS*. Appeal from App. Ct. Ill., 5th Dist., dismissed for want of substantial federal question. Reported below: 88 Ill. App. 3d 1010, 411 N. E. 2d 88.

No. 80-6618. *BARTUS v. WISCONSIN*. Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. Reported below: 98 Wis. 2d 758, 305 N. W. 2d 146.

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Certiorari Granted—Reversed and Remanded. (See No. 80-813, *ante*, p. 714.)

Certiorari Granted—Vacated and Remanded

No. 80-1013. FORD MOTOR CREDIT CO. ET AL. *v.* MURPHY. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Anderson Bros. Ford v. Valencia*, *ante*, p. 205. Reported below: 629 F. 2d 556.

No. 80-1393. MISSOURI *v.* CREWS; MISSOURI *v.* CREWS; MISSOURI *v.* HELTON; and MISSOURI *v.* TUNSTALL. Ct. App. Mo., Eastern Dist. Motions of respondents Timothy Crews, Willie Tunstall, and Terry Gene Crews 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*, 450 U. S. 333 (1981). Reported below: 607 S. W. 2d 759 (first case); 607 S. W. 2d 729 (second case); 607 S. W. 2d 772 (third case); 607 S. W. 2d 809 (fourth case).

Miscellaneous Orders

No. D-111. IN RE DISBARMENT OF CHAPMAN. It having been reported to the Court that Gerald McNamara Chapman has been reinstated on the roll of attorneys admitted to practice in the State of Illinois, it is ordered that the order of this Court entered June 13, 1977 [431 U. S. 962], suspending Gerald McNamara Chapman from the further practice of law in this Court is vacated and that the rule to show cause issued June 13, 1977, is discharged.

No. D-175. IN RE DISBARMENT OF FELDSHUH. Disbarment entered. [For earlier order herein, see 444 U. S. 895.]

No. 85, Orig. TEXAS *v.* OKLAHOMA. Motion for entry of judgment by consent of plaintiff and defendant referred to the Special Master. [For earlier order herein, see, *e. g.*, 450 U. S. 1038.]

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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. [Certiorari granted, 450 U. S. 964.] Motions of Hendricks County Rural Electric Membership Corp. and Malleable Iron Range Co. for divided argument granted. Requests for additional time for oral argument denied.

No. 80-931. CHARLES D. BONANNO LINEN SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 1st Cir. [Certiorari granted, 450 U. S. 979.] Motion of Golden Bear Motors, Inc., et al. for leave to file a brief as *amici curiae* granted.

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

No. 80-1018. POND ET AL. *v.* WALDEN ET AL. Sup. Ct. Ind. [Probable jurisdiction noted, 450 U. S. 993.] Motion of Save Our Cumberland Mountains, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 80-1882. CHAPMAN ET AL. *v.* DOW CHEMICAL Co. ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-5727. EDDINGS *v.* OKLAHOMA. Ct. Crim. App. Okla. [Certiorari granted, 450 U. S. 1040.] Motion of National Council on Crime and Delinquency et al. for leave to file a brief as *amici curiae* granted.

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. [Certiorari granted, 450 U. S. 993.] Motion of H. Randall Bixler to permit Stephen Scavuzzo, Esquire, to present oral argument *pro hac vice* granted.

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No. 80-2078. *DAMES & MOORE v. REGAN, SECRETARY OF THE TREASURY, ET AL.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 932.] Motions for leave to file briefs as *amici curiae* by the following were granted: Daniel, Mann, Johnson & Mendenhall; Chas. T. Main International, Inc.; American Bell International, Inc.; Jerry Plotkin; Sperry Corp. et al.; Reading & Bates Corp. et al.; Morgan Guaranty Trust Co. of New York et al.; Bank Melli Iran et al.; Sylvania Technical Systems, Inc.; Marschalk Co., Inc.; Electronic Data Systems Corporation Iran; and FLAG, Inc. Motion of Bank Melli Iran et al. for leave to intervene denied. Motions of intervenor/respondents Islamic Republic of Iran and Bank Markazi Iran for divided argument and for additional time for oral argument granted, and a total of two hours allotted for oral argument to be divided as follows: one hour for the petitioner, 40 minutes for the Solicitor General, 10 minutes for the Islamic Republic of Iran, and 10 minutes for Bank Markazi Iran. Motions of Reading & Bates Corp. et al. and Electronic Data Systems Corporation Iran for leave to participate in oral argument as *amici curiae* denied. Motion of Marschalk Co., Inc., for leave to participate in oral argument as *amicus curiae* and for additional time for argument denied.

Certiorari Granted

No. 79-1738. *NIXON v. FITZGERALD*; and

No. 80-945. *HARLOW ET AL. v. FITZGERALD.* C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument.

No. 80-1349. *WASHINGTON v. CHRISMAN.* Sup. Ct. Wash. Certiorari granted. Reported below: 94 Wash. 2d 711, 619 P. 2d 971.

No. 80-1804. *LEDBETTER, SHERIFF, ET AL. v. JONES ET AL.* C. A. 5th Cir. Certiorari granted.* Reported below: 636 F. 2d 1364.

*[REPORTER'S NOTE: For amendment of this order, see 453 U. S. 911.]

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No. 80-1925. UNITED TRANSPORTATION UNION *v.* LONG ISLAND RAILROAD CO. ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 634 F. 2d 19.

No. 80-1690. AMERICAN MEDICAL ASSN. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 2d Cir. Certiorari granted. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 638 F. 2d 443.

No. 80-1714. BRITTON, CORRECTIONS COMMISSIONER, ET AL. *v.* EVANS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 628 F. 2d 400 and 639 F. 2d 221.

No. 80-2049. RALSTON, WARDEN *v.* ROBINSON. C. A. 7th Cir. Motion of the Solicitor General to expedite consideration of the petition for writ of certiorari granted. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 642 F. 2d 1077.

No. 80-6045. KREMER *v.* CHEMICAL CONSTRUCTION CORP. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 623 F. 2d 786.

Certiorari Denied. (See also Nos. 80-1805, 80-1818, 80-6657, and 80-6355, *supra*.)

No. 80-1319. FLORIDA *v.* STUART. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 389 So. 2d 4.

No. 80-1338. WATERVAL *v.* DISTRICT COURT IN AND FOR EL PASO COUNTY, COLORADO, ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 620 P. 2d 5.

No. 80-1491. TELTRONICS SERVICES, INC. *v.* L. M. ERICSSON TELECOMMUNICATIONS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 642 F. 2d 31.

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No. 80-1553. *FENDLER v. ARIZONA*. Ct. App. Ariz. Certiorari denied. Reported below: 127 Ariz. 464, 622 P. 2d 23.

No. 80-1588. *JACOBS v. UNITED STATES*; and

No. 80-1788. *SCHOENDORF v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 636 F. 2d 1205.

No. 80-1625. *GRANITE INVESTMENT CO. ET AL. v. FEDERAL SAVINGS AND LOAN INSURANCE CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 630 F. 2d 515.

No. 80-1662. *BARTLETT-COLLINS Co. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 639 F. 2d 652.

No. 80-1679. *SCOTTO v. UNITED STATES*; and

No. 80-1746. *ANASTASIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 641 F. 2d 47.

No. 80-1680. *CHEVRON CHEMICAL Co. v. GORSUCH, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY*. C. A. 3d Cir. Certiorari denied. Reported below: 641 F. 2d 104.

No. 80-1693. *CHURCH OF SCIENTOLOGY OF CALIFORNIA v. FOLEY ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 205 U. S. App. D. C. 364, 640 F. 2d 1335.

No. 80-1700. *THOMPSON ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 631 F. 2d 642.

No. 80-1702. *NICOSIA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 638 F. 2d 970.

No. 80-1706. *LACHANCE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 652 F. 2d 55.

No. 80-1707. *LEVERAGE FUNDING SYSTEMS, INC., ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 645.

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No. 80-1725. *GOLDSTEIN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 635 F. 2d 356.

No. 80-1729. *MAZUR v. PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 649 F. 2d 860.

No. 80-1733. *OHL v. OHL*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 392 So. 2d 87.

No. 80-1761. *DUPLER v. MANSFIELD JOURNAL Co.* Sup. Ct. Ohio. Certiorari denied. Reported below: 64 Ohio St. 2d 116, 413 N. E. 2d 1187.

No. 80-1772. *ALTON & SOUTHERN RAILWAY Co. v. BUCHANAN*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 87 Ill. App. 3d 1199, 414 N. E. 2d 1391.

No. 80-1785. *A & B FREIGHT LINES, INC., ET AL. v. FEDERAL TRADE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 80-1787. *BREWER ET UX. v. MEMPHIS PUBLISHING Co., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1238.

No. 80-1796. *HANTZIS ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 1st Cir. Certiorari denied. Reported below: 638 F. 2d 248.

No. 80-1801. *OVERSEAS RALEIGH MANUFACTURING, LTD. v. PAN AMERICAN WORLD AIRWAYS, INC.* Ct. App. N. Y. Certiorari denied. Reported below: 51 N. Y. 2d 960, 416 N. E. 2d 1039.

No. 80-1803. *TEDESCO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 635 F. 2d 902.

No. 80-1807. *SANCHEZ, ADMINISTRATRIX v. LOFFLAND BROTHERS Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 626 F. 2d 1228.

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No. 80-1819. SWISSVALE AREA SCHOOL DISTRICT ET AL. *v.* HOOTS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 639 F. 2d 972.

No. 80-1821. WEAVER *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 271 Ark. 853, 612 S. W. 2d 324.

No. 80-1826. TRINIDAD *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 388 So. 2d 1063.

No. 80-1833. FAIRCLOTH *v.* NORFOLK & WESTERN RAILWAY Co. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 89 Ill. App. 3d 923, 412 N. E. 2d 634.

No. 80-1845. LENNOX INDUSTRIES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 637 F. 2d 340.

No. 80-1852. MCGOFF ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 207 U. S. App. D. C. 360, 647 F. 2d 185.

No. 80-1853. TAYLOR *v.* ROADWAY EXPRESS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 632 F. 2d 891.

No. 80-1857. CITIZENS CONCERNED FOR SEPARATION OF CHURCH AND STATE *v.* CITY AND COUNTY OF DENVER. C. A. 10th Cir. Certiorari denied. Reported below: 628 F. 2d 1289.

No. 80-1873. FRANK ET AL. *v.* UNITED STATES TRUST COMPANY OF NEW YORK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 637 F. 2d 672.

No. 80-1875. LUPTAK *v.* CENTRAL CARTAGE Co. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 647 F. 2d 165.

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No. 80-1892. *ATKINS v. MICHIGAN*. C. A. 6th Cir. Certiorari denied. Reported below: 644 F. 2d 543.

No. 80-1911. *COLLINS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 642 F. 2d 217.

No. 80-1931. *COOK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 652 F. 2d 55.

No. 80-1936. *LOMBARDO, T/A UMBERTO'S OF NAPLES v. MAYER ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 80-1965. *YEATTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 639 F. 2d 1186.

No. 80-1969. *MACEYAK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 644 F. 2d 882.

No. 80-6317. *ENGLAND v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 395 So. 2d 819.

No. 80-6332. *JONES v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 88 Ill. App. 3d 629, 410 N. E. 2d 1122.

No. 80-6398. *BEVERLY P. v. ANNE B. ET VIR.* Sup. Ct. N. H. Certiorari denied. Reported below: 120 N. H. 791, 424 A. 2d 178.

No. 80-6419. *BARKER v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 83 Ill. 2d 319, 415 N. E. 2d 404.

No. 80-6494. *DELLING v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 647 F. 2d 166.

No. 80-6521. *THOMPSON v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 226 Ct. Cl. 587, 652 F. 2d 68.

No. 80-6523. *BROOKS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 634 F. 2d 636.

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No. 80-6540. *LUNDY v. SALCINES*, STATE ATTORNEY FOR HILLSBOROUGH COUNTY, FLORIDA. C. A. 5th Cir. Certiorari denied.

No. 80-6580. *ZARRILLI v. CAPITOL BANK & TRUST Co. ET AL.* Sup. Jud. Ct. Mass. Certiorari denied.

No. 80-6581. *McDONALD v. DRAPER*, JUDGE. Sup. Ct. Tenn. Certiorari denied.

No. 80-6583. *CONQUEST ET AL. v. HILTON ET AL.* C. A. 3d Cir. Certiorari denied.

No. 80-6589. *JIMENEZ v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 609 S. W. 2d 558.

No. 80-6593. *REITER v. CITY OF KEENE*. Ct. Civ. App. Tex., 10th Sup. Jud. Dist. Certiorari denied. Reported below: 601 S. W. 2d 547.

No. 80-6594. *ALLEN v. CURRY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 659 F. 2d 1057.

No. 80-6595. *ALVAREZ v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 80-6596. *SCHELL v. WARREN*. Ct. App. Ga. Certiorari denied. Reported below: 157 Ga. App. 306, 277 S. E. 2d 346.

No. 80-6601. *STEELE v. CORBITT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 639 F. 2d 782.

No. 80-6602. *LALANDE v. SPALDING ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 651 F. 2d 643.

No. 80-6605. *POWELL v. STATE FARM MUTUAL AUTOMOBILE INSURANCE Co.* C. A. 9th Cir. Certiorari denied.

No. 80-6619. *HEFLIN v. FRANZEN*, CORRECTIONS DIRECTOR, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 654 F. 2d 725.

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No. 80-6621. *BEARD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 636 F. 2d 312.

No. 80-6622. *WHITE v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 611 S. W. 2d 529.

No. 80-6632. *HELMICK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 652 F. 2d 59.

No. 80-6638. *PITTS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 613 S. W. 2d 753.

No. 80-6667. *KENNEDY v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 80-6708. *YAGER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 2d 270.

No. 80-6717. *CARTER v. THEUS*. C. A. 10th Cir. Certiorari denied.

No. 80-6718. *ROSE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 2d 270.

No. 80-6735. *CASTLEBERRY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 642 F. 2d 1151.

No. 80-6744. *ANNUNZIATO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 643 F. 2d 676.

No. 80-6745. *BAISDEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 2d 266.

No. 80-6748. *BRIM v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 630 F. 2d 1307.

No. 80-6752. *BENNETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 642 F. 2d 1214.

No. 80-6762. *AGUIRRE-CARRERA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 642 F. 2d 457.

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No. 80-781. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, CLC, ET AL. *v.* WESTINGHOUSE ELECTRIC CORP.; and

No. 80-944. WESTINGHOUSE ELECTRIC CORP. *v.* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, CLC, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 631 F. 2d 1094.

No. 80-955. WESTINGHOUSE ELECTRIC CORP. *v.* WENGER, COMMISSIONER, WEST VIRGINIA DEPARTMENT OF EMPLOYMENT SECURITY, ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 631 F. 2d 729.

No. 80-1635. WESTINGHOUSE ELECTRIC CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 80-1813. DUBNO, COMMISSIONER OF REVENUE SERVICES OF CONNECTICUT, ET AL. *v.* MOBIL OIL CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 639 F. 2d 919.

No. 80-1864. TULLY, COMMISSIONER OF TAXATION AND FINANCE OF NEW YORK, ET AL. *v.* NEW ENGLAND PETROLEUM CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 639 F. 2d 912.

No. 80-1928. GUILD TRUST ET AL. *v.* AMOCO PRODUCTION Co. ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 636 F. 2d 261.

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No. 80-6531. *STEBBINS v. FIREMAN'S FUND INSURANCE CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 80-827. *SCANLON, SECRETARY OF EDUCATION OF PENNSYLVANIA v. BATTLE ET AL.* C. A. 3d Cir. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 629 F. 2d 269.

No. 80-1365. *CONNECTICUT v. MOHEGAN TRIBE.* C. A. 2d Cir. Certiorari denied. Reported below: 638 F. 2d 612.

JUSTICE REHNQUIST, dissenting.

This case involves the scope and applicability of the Non-intercourse statute, first enacted in 1790 and now codified in 25 U. S. C. § 177, which prohibits the sale of Indian land unless conveyed by a treaty approved by the Federal Government. The Court of Appeals for the Second Circuit held that the terms of the Nonintercourse statute apply to all land throughout the United States. Because the decision below casts doubt on the title to land in millions of acres in the eastern part of the United States, I would grant the petition for certiorari.

In 1977, respondent brought suit to obtain possession of approximately 600 acres of land currently in the possession of the State of Connecticut. Respondent claimed that it owned this land from "time immemorial" and that the land was subsequently acquired from respondent without the approval of the United States, in violation of the Nonintercourse statute of 1790 and its successor statutes. The District Court denied petitioner's motion to dismiss, but certified the question for interlocutory appeal pursuant to 28 U. S. C. § 1292 (b).

The Court of Appeals for the Second Circuit affirmed. 638 F. 2d 612 (1980). Petitioner argued that the Nonintercourse

statute applies only to Indian land in "Indian country," which would be primarily western lands as defined in the various Indian Trade and Intercourse Acts, and not to all Indian land. Petitioner also pointed to a provision in several of the Nonintercourse statutes which stated that nothing in the statute prohibited trade or intercourse with Indians living on land "surrounded by settlements." See *id.*, at 618. It was petitioner's view that Indian land in Connecticut was exempt from the provisions of the Nonintercourse statute, since it was clearly "surrounded by settlements." The court observed:

"In these suits, [petitioner] states have marshalled historical evidence which suggests that the eastern Indian tribes and their lands were always understood to be under the jurisdiction of the states. While these arguments have been held to be unavailing in a number of other contexts, such as whether the eastern tribes were properly considered 'tribes' under the protection of the federal government, and whether they were considered 'tribes' for purposes of sovereign immunity to suit, *until this action*, no court has had to address directly the issue of whether the Nonintercourse statute was intended to apply to land held by the eastern tribes. The State's argument is admittedly appealing in that it would explain why both the states and the federal government have ignored so completely what the Indians assert to be the dictates of the Nonintercourse statute." *Id.*, at 615 (footnotes omitted and emphasis added).

Notwithstanding this concession, the Court of Appeals, after canvassing the history of the Indian statutes and relevant aspects of Indian land tenure, ultimately concluded that the Nonintercourse statute applied to all Indian land, whether or not it was in Indian country, and thus included the land claimed by respondent.

There can be little doubt that the Court of Appeals' un-

precedented holding makes millions of acres in the eastern United States vulnerable to Indian land-title claims. For that reason alone, I believe that this Court should grant plenary consideration over this case and determine this vitally important issue. Though I do not propose here to address the merits of the decision below, I do note that the Court of Appeals struggled with two somewhat conflicting decisions of this Court, *Oneida Indian Nation v. County of Oneida*, 414 U. S. 661 (1974), and *Wilson v. Omaha Indian Tribe*, 442 U. S. 653 (1979). The Court of Appeals felt that *Oneida* supported, at least obliquely, the position of respondent here, while *Wilson* supported that of the petitioner.

As support for the proposition that Indian title to land in the 13 original States could not be extinguished without the consent of the Federal Government, the Court of Appeals cited this dicta from *Oneida*:

“The rudimentary propositions that Indian title is a matter of federal law and can be extinguished only with federal consent apply in all of the States, including the original 13. It is true that the United States never held fee title to the Indian lands in the original States as it did to almost all the rest of the continental United States and that fee title to Indian lands in these States, or the pre-emptive right to purchase from the Indians, was in the State, *Fletcher v. Peck*, 6 Cranch 87 (1810). But this reality did not alter the doctrine that federal law, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law.” 414 U. S., at 670 (footnote omitted) (quoted in 638 F. 2d, at 625).

The meaning of this passage is somewhat unclear, since a footnote to that passage, omitted by the Court of Appeals here, suggests that the United States *does* hold fee title to some portion of Indian land. The footnote reads:

“See also *Cherokee Nation v. Georgia*, [5 Pet.], at 38;

Clark v. Smith, 13 Pet. 195 (1839); *Lattimer v. Poteet*, 14 Pet. 4 (1840); *Seneca Nation v. Christy*, 162 U. S. 283 (1896). 'Outside of the territory of the original colonies, the ultimate fee is located in the United States and may be granted to individuals subject to the Indian right of occupancy.' Federal Indian Law 599; *Missouri v. Iowa*, 7 How. 660 (1849)." 414 U. S., at 670, n. 6 (emphasis supplied).

And in a recent decision, *Wilson v. Omaha Indian Tribe*, *supra*, this Court took a more limited view of the territorial applicability of the Trade and Intercourse Acts. The Court held that the present-day descendant of § 22 of the 1834 Act, which establishes the burden of proof in land disputes between Indians and "a white person," did not apply to a suit between the State of Iowa and an Indian tribe. The Court relied on the fact that the original § 22 was incorporated into the 1834 Act which, in our view, was meant to apply only "to the whole Indian country." 442 U. S., at 667, quoting H. R. Rep. No. 474, 23d Cong., 1st Sess., 10 (1834). We explained that "it is apparent that in adopting § 22 Congress had in mind only disputes arising in *Indian country*, disputes that would not arise in or involve any of the States." 442 U. S., at 668 (emphasis supplied). Thus, in *Wilson*, the Court implicitly confirmed that the various versions of the Trade and Intercourse Acts were intended to apply only in Indian country.

I am not at all sure how the issue presented here should be finally resolved. It is clear to me, however, that numerous suits have been brought by Indian tribes in the eastern part of the United States asserting claims to large tracts of lands and that the decision below throws into uncertainty the validity of land titles throughout that area. Accordingly, I believe that the petition for certiorari should be granted in order to at least attempt to rectify that uncertainty.

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No. 80-1529. *NEW YORK v. MACKENZIE*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 78 App. Div. 2d 892, 432 N. Y. S. 2d 901.

No. 80-1601. *CROATAN BOOKS, INC. v. VIRGINIA*. Cir. Ct. Fairfax County, Va. Certiorari denied. JUSTICE BRENNAN, JUSTICE STEWART, and JUSTICE MARSHALL would grant the petition and reverse the judgment of conviction.

No. 80-1884. *MEMOREX CORP. ET AL. v. INTERNATIONAL BUSINESS MACHINES CORP.* C. A. 9th Cir. Motion of Trans-america Computer Co., Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 636 F. 2d 1188.

No. 80-2111. *AMERICAN BELL INTERNATIONAL, INC. v. ISLAMIC REPUBLIC OF IRAN ET AL.* C. A. D. C. Cir. Motion of petitioner to expedite consideration of the petition for writ of certiorari granted. Certiorari before judgment denied. JUSTICE STEWART took no part in the consideration or decision of this motion and this petition.

No. 80-6437. *McMORRIS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 394 So. 2d 392.

No. 80-6740. *BRITZ v. PRESBYTERIAN UNIVERSITY HOSPITAL*. C. A. 3d Cir. Motion of respondent for damages denied. Certiorari denied. Reported below: 649 F. 2d 858.

No. 80-6799. *LAYTON v. UNITED STATES*. C. A. 9th Cir. Motion of petitioner to expedite consideration of the petition for writ of certiorari granted. Certiorari denied. Reported below: 645 F. 2d 681.

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No. 80-6604. THOMAS *v.* GEORGIA. Sup. Ct. Ga.; and
No. 80-6623. COLLINS *v.* ARKANSAS. Sup. Ct. Ark. Cer-
tiorari denied. Reported below: No. 80-6604, 247 Ga. 233,
275 S. E. 2d 318; No. 80-6623, 271 Ark. 825, 611 S. W. 2d 182.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all cir-
cumstances 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 va-
cate the death sentences in these cases.

Rehearing Denied

- No. 79-5269. EDWARDS *v.* ARIZONA, 451 U. S. 477;
No. 80-1073. MARCAL *v.* LOUISIANA, 451 U. S. 977;
No. 80-1310. TRANSWESTERN PIPELINE CO. *v.* FEDERAL
ENERGY REGULATORY COMMISSION, 451 U. S. 937;
No. 80-1461. CLEAR PINE MOULDINGS, INC. *v.* NATIONAL
LABOR RELATIONS BOARD, 451 U. S. 984;
No. 80-1546. ACQUISTO *v.* LEE COUNTY BOARD OF PUBLIC
INSTRUCTION ET AL., 451 U. S. 971;
No. 80-6210. BLOCKER *v.* HERMAN ET AL., 451 U. S. 989;
No. 80-6231. DICK *v.* GEORGIA, 451 U. S. 976;
No. 80-6275. TURNER *v.* UNITED STATES, *ante*, p. 907;
No. 80-6360. MOUNT *v.* CHASE BANK ET AL., 451 U. S.
975;
No. 80-6410. FREE *v.* ALABAMA, 451 U. S. 990;
No. 80-6433. CHICCO *v.* PECK, 451 U. S. 1019;
No. 80-6507. BELL *v.* ILLINOIS, *ante*, p. 908;
No. 80-6528. WINCHELL *v.* SECRETARY OF HEALTH AND
HUMAN SERVICES, 451 U. S. 992;
No. 80-6554. JOHNSON *v.* SCHWEIKER, SECRETARY OF
HEALTH AND HUMAN SERVICES, *ante*, p. 909; and
No. 80-6566. BURROUGHS *v.* SECRETARY OF HEALTH AND
HUMAN SERVICES, 451 U. S. 993. Petitions for rehearing
denied.

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No. 80-6587. *IN RE EL-AMIN*, 451 U. S. 1016; and

No. 80-6654. *IN RE REYNOLDS*, *ante*, p. 902. Petitions for rehearing denied.

No. 80-5746. *WHITE v. UNITED STATES*, 449 U. S. 1114; and

No. 80-6239. *GUNSTON v. UNITED STATES ET AL.*, 450 U. S. 1034. Motions for leave to file petitions for rehearing denied.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 974 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

