

Per Curiam

CONSOLIDATED FREIGHTWAYS CORPORATION OF
DELAWARE v. KASSEL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 79-1618. Argued November 9, 1981—Decided February 23, 1982
Certiorari dismissed.

John H. Lederer argued the cause for petitioner. With him on the briefs were *John Duncan Varda*, *Anthony R. Varda*, and *William C. Lewis, Jr.*

Mark E. Schantz, Solicitor General of Iowa, argued the cause for respondents. With him on the brief were *Thomas J. Miller*, Attorney General, *Robert W. Goodwin*, Special Assistant Attorney General, and *Lester A. Paff*, Assistant Attorney General.

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

JUSTICE O'CONNOR took no part in the consideration or decision of this case.

JUSTICE WHITE, dissenting.

We granted certiorari in this case to decide one very narrow question: "May a court, without articulating its rationale, summarily deny an application for attorneys' fees under 42 U. S. C. § 1988?" Petitioner concedes that "not . . . all cases require opinions," Brief for Petitioner 6, n. 6, but argues that with respect to an application for fees under § 1988 "[t]he combination of discretion and a standard for the exercise of that discretion necessitates a statement of reasons to determine whether the decision is proper." *Id.*, at 12. In my view, such an application is not sufficiently distinguishable

from numerous other motions and applications that a court may concedely decide without opinion. Whether this is a good or bad method of exercising discretion in a particular case, or even in general, is not at issue in this case. Because I do not believe that there is any *per se* rule that a court may never summarily deny an application for fees, I would affirm the decision below.

Accordingly, I dissent from the majority's disposition of this case.