

ORDERS FROM OCTOBER 4, 1982, THROUGH
FEBRUARY 22, 1983

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Affirmed on Appeal

No. 81-2302. *GIACOBBE v. ANDREWS ET AL.* Affirmed on appeal from C. A. 2d Cir. Reported below: 688 F. 2d 815.

No. 81-2385. *KING, GOVERNOR OF NEW MEXICO, ET AL. v. SANCHEZ ET AL.* Affirmed on appeal from D. C. N. M. Reported below: 550 F. Supp. 13.

No. 82-39. *HISPANIC COALITION ON REAPPORTIONMENT ET AL. v. LEGISLATIVE REAPPORTIONMENT COMMISSION ET AL.* Affirmed on appeal from D. C. E. D. Pa. Reported below: 536 F. Supp. 578.

No. 82-55. *CITY OF WEST HELENA, ARKANSAS, ET AL. v. PERKINS ET AL.* Affirmed on appeal from C. A. 8th Cir. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 675 F. 2d 201.

Appeals Dismissed

No. 81-2019. *COUNTY OF ARLINGTON, VIRGINIA v. UNITED STATES ET AL.* Appeal from C. A. 4th Cir. 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 MARSHALL, and JUSTICE STEVENS would affirm the judgment. Reported below: 669 F. 2d 925.

No. 81-2077. *THOMPSON v. INDIANA.* Appeal from Ct. App. Ind. dismissed for want of substantial federal question. Reported below: 425 N. E. 2d 167.

No. 81-2176. *FISHER v. ANDERSON.* Appeal from Ct. App. Mich. dismissed for want of substantial federal question.

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No. 81-2197. *KRANDA v. HOUSER-NORBORG MEDICAL CORP. ET AL.* Appeal from Ct. App. Ind. dismissed for want of substantial federal question. Reported below: 419 N. E. 2d 1024.

No. 81-2310. *ELLERBE v. OTIS ELEVATOR Co.* Appeal from Ct. App. Tex., 1st Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 618 S. W. 2d 870.

No. 81-2377. *GIANECHINI, TUTRIX OF THE ESTATE OF GIANECHINI v. CITY OF NEW ORLEANS ET AL.* Appeal from Ct. App. La., 4th Cir., dismissed for want of substantial federal question. Reported below: 410 So. 2d 292.

No. 81-2383. *BOSWELL, INC., DBA BROADACRES v. HARKINS, SECRETARY, KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT; and BOSWELL, INC., DBA RENO COUNTY ADULT CARE HOME v. HARKINS, SECRETARY, KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT.* Appeals from Sup. Ct. Kan. dismissed for want of substantial federal question. Reported below: 230 Kan. 738, 640 P. 2d 1208 (first case); 230 Kan. 610, 640 P. 2d 1202 (second case).

No. 81-2403. *THRELKELD ET AL. v. ROBBINSDALE FEDERATION OF TEACHERS, LOCAL 872, AFL-CIO, ET AL.* Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 316 N. W. 2d 551.

No. 81-6818. *CHRISTENSEN v. UTAH.* Appeal from Sup. Ct. Utah dismissed for want of substantial federal question. Reported below: 639 P. 2d 205.

No. 82-5. *SUPERIOR OIL Co. v. CITY OF PORT ARTHUR, TEXAS, ET AL.* Appeal from Ct. App. Tex., 9th Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 628 S. W. 2d 94.

No. 82-77. *GRIFFIN ET AL. v. SIMS ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 249 Ga. 293, 290 S. E. 2d 433.

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No. 82-135. SEARS, ROEBUCK & Co. *v.* WASHINGTON DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 97 Wash. 2d 260, 643 P. 2d 884.

No. 82-159. SYRACUSE SAVINGS BANK ET AL. *v.* TOWN OF DEWITT. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 56 N. Y. 2d 671, 436 N. E. 2d 1315.

No. 82-5022. FLOWERS *v.* COLORADO. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. Reported below: 644 P. 2d 916.

No. 82-5046. CRUMPACKER *v.* INDIANA SUPREME COURT DISCIPLINARY COMMISSION. Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. Reported below: 431 N. E. 2d 91.

No. 81-2084. IZZARD ET AL. *v.* FLORIDA. Appeal from Dist. Ct. App. Fla., 4th Dist., dismissed for want of jurisdiction. Reported below: 412 So. 2d 501.

No. 81-2113. COOPER *v.* CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 81-2213. WAKE COUNTY HOSPITAL SYSTEM, INC., ET AL. *v.* NEWS & OBSERVER PUBLISHING CO. ET AL. Appeal from Ct. App. N. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 55 N. C. App. 1, 284 S. E. 2d 542.

No. 81-2217. RACER ET VIR *v.* JOHNSON & JOHNSON. Appeal from Ct. App. Mo., Eastern Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 629 S. W. 2d 387.

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No. 81-2236. *LOCKWOOD v. JEFFERSON AREA TEACHERS ASSN.* Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 69 Ohio St. 2d 671, 433 N. E. 2d 604.

No. 81-2281. *RIVOLI TRUCKING CORP. ET AL. v. NEW YORK SHIPPING ASSN., INC., ET AL.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 697 F. 2d 296.

No. 81-2389. *STEPAK v. RUTGERS MEDICAL SCHOOL ET AL.* Appeal from Super. Ct. N. J., App. Div., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 81-2395. *KALIN v. AEROSPACE CORP. ET AL.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 672 F. 2d 922.

No. 81-6710. *MICHAELIS v. NEBRASKA STATE BAR ASSN.* Appeal from Sup. Ct. Neb. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 210 Neb. 545, 316 N. W. 2d 46.

No. 81-6839. *WAYLAND v. O'BRIEN.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 81-6871. *GIFFORD v. TIERNAN, CHAIRMAN, FEDERAL ELECTION COMMISSION.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers

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whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 670 F. 2d 882.

No. 81-6912. *SCHOLL v. ANSELM ET AL.* Appeal from Sup. Ct. Wyo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 640 P. 2d 746.

No. 81-6917. *HANSON v. UNITED STATES.* 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. 81-6947. *VELASQUEZ v. COLORADO.* Appeal from Sup. Ct. Colo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 641 P. 2d 943.

No. 81-6970. *BUGG v. INTERNATIONAL UNION OF ALLIED INDUSTRIAL WORKERS OF AMERICA, LOCAL 507, AFL-CIO, ET AL.* Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 674 F. 2d 595.

No. 81-6998. *OGROD ET AL. v. SCHOOL DISTRICT OF PHILADELPHIA.* Appeal from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 676 F. 2d 687.

No. 82-8. *CALIFORNIA STATE BOARD OF EQUALIZATION v. WESTERN MARINA CORP., DBA SHELTER ISLAND INN.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 672 F. 2d 921.

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No. 82-107. *MILES v. SHUR-GOOD BISCUIT CO., INC., ET AL.* Appeal from Ct. App. Ohio, Hamilton County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-193. *LAMPKIN-ASAM v. MIAMI DAILY NEWS, INC., DBA THE MIAMI NEWS, ET AL.* Appeal from Dist. Ct. App. Fla., 3d Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 408 So. 2d 666.

No. 82-5064. *ROBINSON v. BERG ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-5089. *JONES v. FREDERICKSBURG DEPARTMENT OF PUBLIC WELFARE AND SOCIAL SERVICES.* 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.

No. 82-5102. *JOHNSON v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO; and JOHNSON v. MARSHALL.* Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 703 F. 2d 563 (second case).

No. 82-5105. *PHILLIPS, AKA HASLEM v. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-5112. *ALFONSO v. BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY OF NEW JERSEY.* Appeal

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from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 89 N. J. 41, 444 A. 2d 1075.

No. 82-5179. KINNEY, DBA MEDIA GRAPHICS *v.* KOTLER EXTERMINATING CO., INC. Appeal from Sup. Ct. Tenn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 81-2127. VINCENT B. *v.* JOAN R. ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: 126 Cal. App. 3d 619, 179 Cal. Rptr. 9.

No. 81-2144. GODWIN *v.* EAST BATON ROUGE PARISH SCHOOL BOARD ET AL. Appeal from Sup. Ct. La. dismissed for want of substantial federal question. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 408 So. 2d 1214.

No. 81-2174. QUEENSGATE INVESTMENT CO., DBA HOLIDAY INN *v.* LIQUOR CONTROL COMMISSION OF OHIO. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 69 Ohio St. 2d 361, 433 N. E. 2d 138.

No. 81-2225. COLUMBIA GAS TRANSMISSION CORP. *v.* ROSE, TAX COMMISSIONER OF WEST VIRGINIA. Appeal from Cir. Ct. W. Va., Kanawha County, dismissed for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

No. 81-2244. GOOCHER *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal

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question. JUSTICE BRENNAN would reverse the conviction. Reported below: 633 S. W. 2d 860.

No. 81-2352. *JOFFIN v. SPAIN*. Appeal from Ct. App. Ohio, Trumbull County, dismissed for want of substantial federal question. JUSTICE WHITE would note probable jurisdiction and set case for oral argument.

No. 82-5100. *GHOLSTON v. MARTIN ET AL.* Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. JUSTICE WHITE would note probable jurisdiction and set case for oral argument.

No. 81-2375. *EVANS v. ARIZONA CORPORATION COMMISSION ET AL.* Appeal from Ct. App. Ariz. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this case. Reported below: 131 Ariz. 569, 643 P. 2d 14.

No. 81-6779. *WILLIAMS v. INDIANA*. Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. Reported below: 430 N. E. 2d 759.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Vacated and Remanded on Appeal

No. 81-2080. *RUSSELL STOVER CANDIES, INC. v. DEPARTMENT OF REVENUE OF MONTANA*. Appeal from Sup. Ct. Mont. Judgment vacated and case remanded for further consideration in light of *F. W. Woolworth Co. v. Taxation and Revenue Dept. of N. M.*, 458 U. S. 354 (1982), and *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U. S. 307 (1982). Reported below: 196 Mont. 87, 638 P. 2d 1053.

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Vacated and Remanded After Probable Jurisdiction Postponed or Certiorari Granted

No. 81-1282. NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. *v.* IDAHO ET AL. Appeal from D. C. Idaho. [Probable jurisdiction postponed, 455 U. S. 918];

No. 81-1283. NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. *v.* IDAHO ET AL. C. A. 9th Cir. [Certiorari before judgment granted, 455 U. S. 918];

No. 81-1312. CARMEN, ADMINISTRATOR OF GENERAL SERVICES *v.* IDAHO ET AL. Appeal from D. C. Idaho. [Probable jurisdiction postponed, 455 U. S. 918]; and

No. 81-1313. CARMEN, ADMINISTRATOR OF GENERAL SERVICES *v.* IDAHO ET AL. C. A. 9th Cir. [Certiorari before judgment granted, 455 U. S. 918.] Upon consideration of the memorandum for the Administrator of General Services suggesting mootness, filed July 9, 1982, and the responses thereto, the judgment of the United States District Court for the District of Idaho is vacated and the cases are remanded to that court with instructions to dismiss the complaints as moot. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950).

Certiorari Granted—Vacated and Remanded

No. 81-1653. UNIVERSITY OF HOUSTON ET AL. *v.* WILKINS ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pullman-Standard v. Swint*, 456 U. S. 273 (1982), and *General Telephone Co. of Southwest v. Falcon*, 457 U. S. 147 (1982). Reported below: 654 F. 2d 388 and 662 F. 2d 1156.

No. 81-1778. CALIFORNIA *v.* RUGGLES. Ct. App. Cal., 2d App. Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ross*, 456 U. S. 798 (1982). Reported below: 125 Cal. App. 3d 473, 178 Cal. Rptr. 231.

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No. 81-2049. UNITED STATES *v.* ARMIJO-MARTINEZ ET AL. C. A. 6th Cir. Motions of respondents Carlos Armijo-DeLeon and Carlos Armijo-Martinez for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Valenzuela-Bernal*, 458 U. S. 858 (1982). Reported below: 669 F. 2d 1131.

No. 81-2189. COUNTY OF LOS ANGELES *v.* JORDAN. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *General Telephone Co. of Southwest v. Falcon*, 457 U. S. 147 (1982). JUSTICE WHITE dissents. Reported below: 669 F. 2d 1311.

No. 81-2283. WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND *v.* MUSIC. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *UMWA Health & Retirement Funds v. Robinson*, 455 U. S. 562 (1982). JUSTICE WHITE and JUSTICE BLACKMUN dissent and would deny certiorari. Reported below: 660 F. 2d 400.

No. 81-6713. BRITT *v.* SIMI VALLEY UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Patsy v. Florida Board of Regents*, 457 U. S. 496 (1982). Reported below: 676 F. 2d 708.

Miscellaneous Orders

No. — — —. FOWLER *v.* TUCKER. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. — — —. SUMNER ET AL. *v.* UNITED STATES. Motion to direct the Clerk to file the petition for writ of certiorari denied.

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No. — — ——. ZERMAN *v.* JACOBS ET AL. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. — — ——. SOUZA ET AL. *v.* TRUSTEES OF THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. A-172. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* BASS. Application to vacate the stay of execution of sentence of death, presented to JUSTICE REHNQUIST, and by him referred to the Court, denied.

No. A-279. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Application for stay, addressed to JUSTICE POWELL and referred to the Court, denied.

No. D-274. IN RE DISBARMENT OF KLEINDIENST. Disbarment entered. JUSTICE REHNQUIST and JUSTICE O'CONNOR took no part in the consideration or decision of this order. [For earlier order herein, see 456 U. S. 1004.]

No. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Motion of Pyramid Lake Indian Tribe for leave to file a brief as *amicus curiae* granted. Exceptions to the Report of the Special Master are set for oral argument in due course. Motion of Arizona et al. for leave to file a brief in response to the reply briefs of the United States et al. granted. JUSTICE MARSHALL took no part in the consideration or decision of these motions and this order. [For earlier order herein, see, *e. g.*, 456 U. S. 912.]

No. 67, Orig. IDAHO EX REL. EVANS, GOVERNOR OF IDAHO, ET AL. *v.* OREGON ET AL. Final Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies to such Exceptions, with supporting briefs, may be filed within 30 days. [For earlier decision herein, see, *e. g.*, 444 U. S. 380.]

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No. 73, Orig. CALIFORNIA *v.* NEVADA. It is ordered that the Honorable Robert Van Pelt be discharged as Special Master in this case. [For earlier decision herein, see, *e. g.*, 456 U. S. 867.]

No. 93, Orig. OKLAHOMA *v.* ARKANSAS ET AL. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 80-1074. VELDE ET AL. *v.* NATIONAL BLACK POLICE ASSN., INC., ET AL., 458 U. S. 591. Motion of respondents to defer taxation of costs denied. JUSTICE POWELL and JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 80-1735. FEDERAL BUREAU OF INVESTIGATION ET AL. *v.* ABRAMSON, 456 U. S. 615. Motion of respondent for reconsideration of taxation of costs denied.

No. 80-1991. OREGON *v.* KENNEDY, 456 U. S. 667. Motion of respondent to retax costs denied.

No. 81-1. GOLDSBORO CHRISTIAN SCHOOLS, INC. *v.* UNITED STATES; and

No. 81-3. BOB JONES UNIVERSITY *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, 454 U. S. 892.] Motions of National Association of Independent Schools, Lawrence E. Lewy, Independent Sector, International Human Rights Law Group, and Anti-Defamation League of B'nai B'rith for leave to file briefs as *amici curiae* granted. Motions for divided argument and for additional time for oral argument granted, and a total of one hour and 15 minutes allotted for oral argument to be divided as follows: 15 minutes for Goldsboro Christian Schools, Inc.; 15 minutes for Bob Jones University; 15 minutes for the United States; and 30 minutes for William T. Coleman, Jr., Esquire, as *amicus curiae*.

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No. 81-150. NORTHERN PIPELINE CONSTRUCTION CO. *v.* MARATHON PIPE LINE CO. ET AL.; and

No. 81-546. UNITED STATES *v.* MARATHON PIPE LINE CO. ET AL., 458 U. S. 50. Upon consideration of the motion of the Solicitor General to extend stay of judgment and the responses thereto, it is ordered that the Clerk shall further stay the sending of the certified copy of the judgment to the United States District Court for the District of Minnesota to and including December 24, 1982.

No. 81-185. SIMOPOULOS *v.* VIRGINIA. Sup. Ct. Va. [Probable jurisdiction noted, 456 U. S. 988.] Motions of American Public Health Association and Women Lawyers of Sacramento et al. for leave to file briefs as *amici curiae* granted. Motion of Legal Defense Fund for Unborn Children for leave to participate in oral argument as *amicus curiae* denied.

No. 81-523. CONTAINER CORPORATION OF AMERICA *v.* FRANCHISE TAX BOARD. Ct. App. Cal., 1st App. Dist. [Probable jurisdiction noted, 456 U. S. 960.] Motion of International Bankers Association in California et al. for leave to file a brief as *amici curiae* granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 81-596. SPRINGDALE SCHOOL DISTRICT No. 50 OF WASHINGTON COUNTY *v.* GRACE ET AL., 458 U. S. 1118. Motion of state respondents to retax costs denied.

No. 81-680. HERMAN & MACLEAN *v.* HUDDLESTON ET AL.; and

No. 81-1076. HUDDLESTON ET AL. *v.* HERMAN & MACLEAN ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 914.] Motion of Arthur Andersen & Co. for leave to participate in oral argument as *amicus curiae* denied.

No. 81-857. MARTINEZ, AS NEXT FRIEND OF MORALES *v.* BYNUM, TEXAS COMMISSIONER OF EDUCATION, ET AL. C. A. 5th Cir. [Certiorari granted *sub nom.* Martinez *v.*

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Brockette, 457 U. S. 1131.] Motion of respondents for divided argument denied.

No. 81-746. CITY OF AKRON *v.* AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., ET AL.; and

No. 81-1172. AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., ET AL. *v.* CITY OF AKRON ET AL. C. A. 6th Cir. [Certiorari granted, 456 U. S. 988.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Francois Seguin, M. D., et al. for divided argument and for additional time for oral argument denied. Motion of Legal Defense Fund for Unborn Children for leave to participate in oral argument as *amicus curiae* denied.

No. 81-1020. EXXON CORP. ET AL. *v.* EAGERTON, COMMISSIONER OF REVENUE OF ALABAMA, ET AL.; and

No. 81-1268. EXCHANGE OIL & GAS CORP. ET AL. *v.* EAGERTON, COMMISSIONER OF REVENUE OF ALABAMA. Sup. Ct. Ala. [Probable jurisdiction noted, 456 U. S. 970.] Motion of appellants for divided argument granted. Request for additional time for oral argument denied.

No. 81-1180. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* NEW BANNER INSTITUTE, INC. C. A. 4th Cir. [Certiorari granted, 455 U. S. 1015.] Motion of National Rifle Association of America for leave to participate in oral argument as *amicus curiae* denied.

No. 81-1255. PLANNED PARENTHOOD ASSOCIATION OF KANSAS CITY, MISSOURI, INC., ET AL. *v.* ASHCROFT, ATTORNEY GENERAL OF MISSOURI, ET AL.; and

No. 81-1623. ASHCROFT, ATTORNEY GENERAL OF MISSOURI, ET AL. *v.* PLANNED PARENTHOOD ASSOCIATION OF KANSAS CITY, MISSOURI, INC., ET AL. C. A. 8th Cir. [Certiorari granted, 456 U. S. 988.] Motion of Legal Defense Fund for Unborn Children for leave to participate in oral argument as *amicus curiae* denied.

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No. 81-1304. NATIONAL ASSOCIATION OF GREETING CARD PUBLISHERS *v.* UNITED STATES POSTAL SERVICE ET AL.; and

No. 81-1381. UNITED PARCEL SERVICE OF AMERICA, INC. *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 2d Cir. [Certiorari granted, 456 U. S. 925.] Motion of petitioners for divided argument granted. Request for additional time for oral argument denied. Motion of American Newspaper Publishers Association et al. for leave to file a brief as *amici curiae* granted. Motion of Direct Mail/Marketing Association, Inc., for divided argument denied.

No. 81-1314. W. R. GRACE & CO. *v.* LOCAL UNION 759, INTERNATIONAL UNION OF THE UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA. C. A. 5th Cir. [Certiorari granted, 458 U. S. 1105.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted.

No. 81-1335. DISTRICT OF COLUMBIA COURT OF APPEALS ET AL. *v.* FELDMAN ET AL. C. A. D. C. Cir. [Certiorari granted, 458 U. S. 1105.] Motion of Conference of Chief Justices for leave to file a brief as *amicus curiae* granted.

No. 81-1370. ENERGY RESERVES GROUP, INC. *v.* KANSAS POWER & LIGHT Co. Sup. Ct. Kan. [Probable jurisdiction noted, 456 U. S. 904.] Motion of Energy Consumers & Producers Association et al. for leave to file a brief as *amici curiae* denied.

No. 81-1574. LOCAL 926, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, ET AL. *v.* JONES. Ct. App. Ga. [Probable jurisdiction postponed, 456 U. S. 987.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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No. 81-1613. MEMPHIS BANK & TRUST CO. *v.* GARNER, SHELBY COUNTY TRUSTEE, ET AL. Sup. Ct. Tenn. [Probable jurisdiction noted, 456 U. S. 943.] Motion of appellees for divided argument granted.

No. 81-1618. WEYERHAEUSER CO. ET AL. *v.* LYMAN LAMB CO. ET AL.; and

No. 81-1619. GEORGIA-PACIFIC CORP. *v.* LYMAN LAMB CO. ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 971.] Motions of Business Roundtable et al. and City Investing Co. et al. for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument granted, and 10 additional minutes allotted for that purpose. JUSTICE WHITE took no part in the consideration or decision of these motions.

No. 81-1627. SHEPARD *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. [Certiorari granted, 456 U. S. 970.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 81-1661. GENERAL MOTORS CORP. *v.* DEVEX CORP. ET AL. C. A. 3d Cir. [Certiorari granted, 456 U. S. 988.] Motion of the Bar Association of the District of Columbia for leave to file a brief as *amicus curiae* granted. Motion of the Bar Association of the District of Columbia for leave to participate in oral argument as *amicus curiae* denied.

No. 81-1664. METROPOLITAN EDISON CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. [Certiorari granted, 457 U. S. 1116.] Motion of the Solicitor General for divided argument granted.

No. 81-1748. UNITED STATES *v.* MITCHELL ET AL. Ct. Cl. [Certiorari granted, 457 U. S. 1104.] Motion of the parties to dispense with printing the joint appendix granted.

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No. 81-1863. UNITED STATES ET AL. *v.* GRACE ET AL. C. A. D. C. Cir. [Probable jurisdiction noted, 457 U. S. 1131.] Motion of the parties to dispense with printing the joint appendix granted.

No. 81-1756. LEHR *v.* ROBERTSON ET AL. Ct. App. N. Y. [Probable jurisdiction postponed, 456 U. S. 970.] Motions of Community Action for Legal Services, Inc., et al. and National Committee For Adoption, Inc., for leave to file briefs as *amici curiae* granted.

No. 81-1774. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* BULLARD. C. A. 5th Cir. [Certiorari granted, 457 U. S. 1116.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* denied.

No. 81-1802. UNITED STATES *v.* KNOTTS. C. A. 8th Cir. [Certiorari granted, 457 U. S. 1131.] Motion for appointment of counsel granted, and it is ordered that Mark W. Peterson, Esquire, of Minneapolis, Minn., be appointed to serve as counsel for respondent in this case. Motion of the parties to dispense with printing the joint appendix denied.

No. 81-1938. UNITED STATES *v.* BAGGOT. C. A. 7th Cir. [Certiorari granted, 457 U. S. 1131.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 81-1945. PACIFIC GAS & ELECTRIC CO. ET AL. *v.* STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ET AL. C. A. 9th Cir. [Certiorari granted, 457 U. S. 1132.] Motions of New England Legal Foundation and Fusion Energy Foundation for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 81-1966. BELKNAP, INC. *v.* HALE ET AL. Ct. App. Ky. [Certiorari granted, 457 U. S. 1131.] Motions of

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American Federation of Labor and Congress of Industrial Organizations and Chamber of Commerce of the United States for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 81-2159. SILKWOOD, ADMINISTRATOR *v.* KERR-MCGEE CORP. ET AL. Appeal from C. A. 10th Cir.;

No. 81-2278. UNION ELECTRIC CO. *v.* CITY OF KIRKWOOD, MISSOURI. C. A. 8th Cir.;

No. 81-2359. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* PHONETELE, INC. C. A. 9th Cir.;

No. 82-116. GREATER WASHINGTON CENTRAL LABOR COUNCIL *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C.; and

No. 82-146. FOOD & ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 81-2249. SUMNER, WARDEN, SAN QUENTIN PRISON *v.* MAXWELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 81-6737. IN RE JAFFER; and

No. 81-6916. IN RE WEIGANG. Petitions for writs of common-law certiorari denied.

No. 81-6878. IN RE JONES;

No. 81-6898. IN RE DONNELSON;

No. 82-5016. IN RE SULLIVAN;

No. 82-5166. IN RE HOOVER;

No. 82-5172. IN RE VON LUDWITZ;

No. 82-5193. IN RE MCGOURTY;

No. 82-5221. IN RE KULIK; and

No. 82-5326. IN RE BARNEY. Petitions for writs of habeas corpus denied.

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No. 81-6633. *BEARDEN v. GEORGIA*. Ct. App. Ga. [Certiorari granted, 458 U. S. 1105.] Motion for appointment of counsel granted, and it is ordered that James H. Lohr, Esquire, of Chattanooga, Tenn., be appointed to serve as counsel for petitioner in this case.

No. 81-2153. *IN RE FEINSTEIN ET AL.*;

No. 81-2319. *IN RE PICKERING*;

No. 81-6693. *IN RE PARKER*;

No. 81-6729. *IN RE BARNEY*;

No. 81-6776. *IN RE CAVALLARO*;

No. 81-6831. *IN RE CARTER*;

No. 81-6889. *IN RE KALEC*;

No. 81-6909. *IN RE LE GRAND*;

No. 81-6997. *IN RE WESTOVER*;

No. 82-5137. *IN RE POOLE*;

No. 82-5168. *IN RE ALOI*; and

No. 82-5184. *IN RE VELILLA*. Petitions for writs of mandamus denied.

No. 82-440. *IN RE FARMERS UNION CENTRAL EXCHANGE, INC., ET AL.* Motion of petitioners to expedite consideration of the petition for writ of mandamus denied. Petition for writ of mandamus denied. JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition.

No. 81-2205. *IN RE LIEBER*. Petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 81-2338. *REGAN, SECRETARY OF THE TREASURY, ET AL. v. TAXATION WITH REPRESENTATION OF WASHINGTON*. Appeal from C. A. D. C. Cir. Probable jurisdiction noted. Reported below: 219 U. S. App. D. C. 117, 676 F. 2d 715.

No. 82-65. *BROWN ET AL. v. THOMSON, SECRETARY OF STATE OF WYOMING, ET AL.* Appeal from D. C. Wyo. Probable jurisdiction noted. Reported below: 536 F. Supp. 780.

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Certiorari Granted

No. 81-2125. BELL, SECRETARY OF EDUCATION *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 662 F. 2d 208.

No. 81-2337. BLOCK, SECRETARY OF AGRICULTURE, ET AL. *v.* NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS. C. A. 8th Cir. Certiorari granted. Reported below: 671 F. 2d 271.

No. 82-63. CITY OF REVERE *v.* MASSACHUSETTS GENERAL HOSPITAL. Sup. Jud. Ct. Mass. Certiorari granted. Reported below: 385 Mass. 772, 434 N. E. 2d 185.

No. 82-195. MUELLER ET AL. *v.* ALLEN ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 676 F. 2d 1195.

No. 81-1889. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-1958. ARIZONA ELECTRIC POWER COOPERATIVE, INC. *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-2042. MICHIGAN *v.* MID-LOUISIANA GAS CO. ET AL.; and

No. 82-19. FEDERAL ENERGY REGULATORY COMMISSION *v.* MID-LOUISIANA GAS CO. ET AL. C. A. 5th Cir. Motion of Public Utilities Commission of California et al. for leave to file a brief as *amici curiae* in Nos. 81-1889, 81-1958, and 81-2042 granted. Motion of Associated Gas Distributors for leave to file a brief as *amicus curiae* in No. 81-1889 granted. Motions of National Rural Electric Cooperative Association and Edmund G. Brown, Jr., Governor of California, for leave to file briefs as *amici curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 664 F. 2d 530.

No. 81-1891. MORRISON-KNUDSEN CONSTRUCTION CO. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION

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PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. D. C. Cir. Motions of American Insurance Association, Alliance of American Insurers et al., and National Association of Stevedores for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 216 U. S. App. D. C. 50, 670 F. 2d 208.

No. 81-1893. CALIFORNIA *v.* RAMOS. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 30 Cal. 3d 553, 639 P. 2d 908.

No. 81-2147. ARIZONA ET AL. *v.* SAN CARLOS APACHE TRIBE OF ARIZONA ET AL.; ARIZONA ET AL. *v.* NAVAJO TRIBE OF INDIANS ET AL.; and

No. 81-2188. MONTANA ET AL. *v.* NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one and one-half hours allotted for oral argument. Reported below: No. 81-2147, 668 F. 2d 1093 (first case), 668 F. 2d 1100 (second case); No. 81-2188, 668 F. 2d 1080.

No. 81-2318. FLORIDA *v.* CASAL ET AL. Sup. Ct. Fla. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 410 So. 2d 152.

No. 82-131. JONES & LAUGHLIN STEEL CORP. *v.* PFEIFER. C. A. 3d Cir. Motion of Keystone Shipping Co. et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Questions I and II presented by the petition. Reported below: 678 F. 2d 453.

Certiorari Denied. (See also Nos. 81-2019, 81-2113, 81-2213, 81-2217, 81-2236, 81-2281, 81-2389, 81-2395, 81-6710, 81-6839, 81-6871, 81-6912, 81-6917, 81-6947, 81-6970, 81-6998, 82-8, 82-107, 82-193, 82-5064, 82-5089, 82-5102, 82-5105, 82-5112, 82-5179, 81-2375, 81-6737, and 81-6916, *supra.*)

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No. 81-1688. *GERBER v. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 81-1755. *DOLLAR v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 160 Ga. App. 759, 288 S. E. 2d 42.

No. 81-1760. *MULLIGAN v. VETERANS ADMINISTRATION*. C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 2d 492.

No. 81-1808. *MOORE v. EL PASO COUNTY, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 660 F. 2d 586.

No. 81-1819. *NAVASKY v. CENTRAL INTELLIGENCE AGENCY*. C. A. 2d Cir. Certiorari denied. Reported below: 679 F. 2d 873.

No. 81-1828. *VAVRA ET AL. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 659 F. 2d 1349.

No. 81-1861. *WILKINS ET AL. v. UNIVERSITY OF HOUSTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 654 F. 2d 388 and 662 F. 2d 1156.

No. 81-1876. *DAVIS v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 359, 672 F. 2d 893.

No. 81-1880. *HALL v. BOARD OF TRUSTEES OF ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 269.

No. 81-1894. *CAPPUCCILLI ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 668 F. 2d 138.

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No. 81-1906. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* SADLOWSKI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 666 F. 2d 845.

No. 81-1910. SOUTH DAKOTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 665 F. 2d 837.

No. 81-1936. APODACA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 2d 89.

No. 81-1961. IDAHO EX REL. TROMBLEY, DIRECTOR, IDAHO DEPARTMENT OF LANDS, ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 666 F. 2d 444.

No. 81-1962. REGENTS OF THE UNIVERSITY OF CALIFORNIA *v.* LYNN; and

No. 81-2005. LYNN *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 656 F. 2d 1337.

No. 81-1965. BRAMSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 162, 673 F. 2d 553.

No. 81-1970. SAMUEL T. ISAAC & ASSOCIATES, INC. *v.* GOVERNMENT NATIONAL MORTGAGE ASSOCIATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 2d 1330.

No. 81-1976. WALTERS *v.* TENNESSEE VALLEY AUTHORITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1225.

No. 81-1978. FREEMAN ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 660 F. 2d 1030.

No. 81-1986. ATTORNEY GENERAL OF OHIO *v.* KRAUSE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 671 F. 2d 212.

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No. 81-2004. *PALM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 924.

No. 81-2014. *BREWER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 670 F. 2d 1369.

No. 81-2030. *EDGEWOOD SCHOOL DISTRICT ET AL. v. HOOTS ET AL.*;

No. 81-2032. *HALLENBERG, PRESIDENT OF THE ALLEGHENY COUNTY BOARD OF SCHOOL DIRECTORS v. HOOTS ET AL.*;

No. 81-2034. *ALLEGHENY COUNTY SCHOOL BOARD ET AL. v. HOOTS ET AL.*;

No. 81-2037. *SWISSVALE AREA SCHOOL DISTRICT v. HOOTS ET AL.*; and

No. 81-2038. *PENNSYLVANIA ET AL. v. HOOTS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 672 F. 2d 1107.

No. 81-2051. *PETITO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 2d 68.

No. 81-2054. *SECHAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1383.

No. 81-2061. *NEW JERSEY v. DEPARTMENT OF HEALTH AND HUMAN SERVICES*. C. A. 3d Cir. Certiorari denied. Reported below: 670 F. 2d 1284.

No. 81-2064. *NICHOL v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 55 Ore. App. 162, 637 P. 2d 625.

No. 81-2067. *HAWAII v. BLOSS*; and *HAWAII v. HAWKINS*. Sup. Ct. Haw. Certiorari denied. Reported below: 64 Haw. 148, 637 P. 2d 1117 (first case); 64 Haw. 499, 643 P. 2d 1058 (second case).

No. 81-2068. *RUTUELO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 2d 784, 449 N. Y. S. 2d 372.

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No. 81-2069. *ASSOCIATED GROCERS v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 358, 672 F. 2d 892.

No. 81-2072. *RUBUSH ET AL. v. BEMIS CO., INC., ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: 427 N. E. 2d 1058.

No. 81-2073. *THEVIS ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 665 F. 2d 616.

No. 81-2075. *WOLD v. WOLD ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 100 Ill. App. 3d 1200, 429 N. E. 2d 929.

No. 81-2078. *AMON ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 669 F. 2d 1351.

No. 81-2083. *ITT CONTINENTAL BAKING CO. v. WILLIAM INGLIS & SONS BAKING CO. ET AL.; and*

No. 81-2289. *WILLIAM INGLIS & SONS BAKING CO. ET AL. v. ITT CONTINENTAL BAKING CO., INC.* C. A. 9th Cir. Certiorari denied. Reported below: 668 F. 2d 1014.

No. 81-2089. *PHILLIPS PETROLEUM CO. v. ASHLAND OIL, INC., ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-2090. *CITY OF SAULT STE. MARIE, MICHIGAN v. WATT, SECRETARY OF THE INTERIOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 359, 672 F. 2d 893.

No. 81-2093. *COUNTY OF IMPERIAL ET AL. v. MUNOZ ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 667 F. 2d 811.

No. 81-2100. *STEPHENS v. LOWERY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 657 F. 2d 1250.

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No. 81-2094. CLANCY ET AL. *v.* JARTECH, INC., ET AL.;
and

No. 81-2096. CLANCY ET AL. *v.* JARTECH, INC., ET AL.
C. A. 9th Cir. Certiorari denied. Reported below: 666 F.
2d 403.

No. 81-2098. SUNTEX DAIRY ET AL. *v.* BLOCK, SECRETARY OF AGRICULTURE. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 2d 158.

No. 81-2102. HUSTLER MAGAZINE, INC., ET AL. *v.* GUCCIONE. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 81-2106. JOHNSON *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1338.

No. 81-2107. MILLER ET AL. *v.* CURRY, DISTRICT ATTORNEY, TARRANT COUNTY, ET AL. Ct. App. Tex., 2d Sup. Jud. Dist. Certiorari denied. Reported below: 625 S. W. 2d 84.

No. 81-2108. CORCHADO *v.* PUERTO RICO MARINE MANAGEMENT, INC. C. A. 1st Cir. Certiorari denied. Reported below: 665 F. 2d 410.

No. 81-2109. DOHAISH *v.* TOOLEY. C. A. 10th Cir. Certiorari denied. Reported below: 670 F. 2d 934.

No. 81-2111. COLUMBIA BROADCASTING SYSTEM, INC. *v.* ROY EXPORT COMPANY ESTABLISHMENT OF VADUZ, LIECHTENSTEIN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 672 F. 2d 1095.

No. 81-2112. PETERS ET AL. *v.* HEALTH AND HOSPITALS GOVERNING COMMISSION OF COOK COUNTY. Sup. Ct. Ill. Certiorari denied. Reported below: 88 Ill. 2d 316, 430 N. E. 2d 1128.

No. 81-2114. GUNTER ET UX. *v.* HUTCHESON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 2d 862.

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No. 81-2116. *PETTIBONE CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 894.

No. 81-2119. *AXELROD, NEW YORK STATE COMMISSIONER OF HEALTH v. COE ET AL.*; and

No. 81-6511. *COE ET AL. v. AXELROD, NEW YORK STATE COMMISSIONER OF HEALTH, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 669 F. 2d 67.

No. 81-2120. *DURHAM INDUSTRIES, INC. v. NORTH RIVER INSURANCE CO.* C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 37.

No. 81-2121. *BOLL v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 81-2122. *WISCONSIN AVENUE ASSOCIATES, INC., ET AL. v. 2720 WISCONSIN AVENUE COOPERATIVE ASSN., INC., ET AL.*; and

No. 81-2179. *GOLD DEPOSITORY & LOAN CO., INC. v. 2720 WISCONSIN AVENUE COOPERATIVE ASSN., INC., ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 441 A. 2d 956.

No. 81-2124. *BOSTON ASSOCIATION OF SCHOOL ADMINISTRATORS & SUPERVISORS, AFL-CIO v. MORGAN ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 671 F. 2d 23.

No. 81-2126. *FIELDS, ACTING WARDEN, JOSEPH HARP CORRECTIONAL CENTER, ET AL. v. PAUL M.* C. A. 10th Cir. Certiorari denied. Reported below: 668 F. 2d 1127.

No. 81-2129. *EISENBERG v. CROWLEY*. Ct. App. Wis. Certiorari denied. Reported below: 103 Wis. 2d 691, 310 N. W. 2d 652.

No. 81-2130. *JOSEPH ET AL. v. BOND ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 436.

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No. 81-2131. *HILL v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 669 F. 2d 23.

No. 81-2132. *CORY, STATE CONTROLLER v. CAMPBELL*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 125 Cal. App. 3d 1044, 178 Cal. Rptr. 823.

No. 81-2136. *TEXACO, INC. v. HASBROUCK, DBA RICK'S TEXACO, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 663 F. 2d 930.

No. 81-2137. *ARCO POLYMERS, INC. v. LOCAL 8-74, AFFILIATED WITH THE OIL, CHEMICAL & ATOMIC WORKERS' INTERNATIONAL UNION*. C. A. 3d Cir. Certiorari denied. Reported below: 671 F. 2d 752.

No. 81-2138. *PARKER ET AL. v. ANDERSON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 667 F. 2d 1204.

No. 81-2139. *TYLER v. HARTFORD INSURANCE GROUP ET AL.* Ct. App. Colo. Certiorari denied.

No. 81-2140. *STEWART v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 296, 295 S. E. 2d 627.

No. 81-2142. *LINDQUIST ET AL. v. FOWLER*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 922.

No. 81-2143. *THOMPSON v. COVINGTON HOUSING DEVELOPMENT CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1223.

No. 81-2145. *ARRANDALE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 688.

No. 81-2146. *SINGLETON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 924.

No. 81-2154. *CURRIER v. FOGEL ET AL.*; and

No. 81-2163. *CHESTNUTT ET AL. v. FOGEL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 668 F. 2d 100.

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No. 81-2155. *VARNEY ET AL. v. SMIDDY*; and

No. 81-2382. *SMIDDY v. VARNEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 665 F. 2d 261.

No. 81-2157. *CAROLINA CASUALTY INSURANCE CO. v. TRANSPORT INDEMNITY CO.* C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 690.

No. 81-2158. *SKAINES, DBA WYATT TIRE DISTRIBUTORS v. UNIROYAL, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 2d 1330.

No. 81-2160. *AGRILLO-LADLAD ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 675 F. 2d 905.

No. 81-2161. *GRIFFITH v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 181.

No. 81-2165. *KENNETH M. M. v. CLAIRE A. M.* Sup. Ct. Del. Certiorari denied. Reported below: 450 A. 2d 893.

No. 81-2166. *BARBER v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 668 F. 2d 778.

No. 81-2167. *SEEKONK WATER DISTRICT v. HERITAGE HOMES OF ATTLEBORO, INC.* C. A. 1st Cir. Certiorari denied. Reported below: 670 F. 2d 1.

No. 81-2170. *HASER v. WISKOWSKI, DIRECTOR, DIVISION OF MOTOR VEHICLES OF NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 400, 446 A. 2d 135.

No. 81-2173. *GRABINSKI v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 2d 677.

No. 81-2178. *THOMPSON ET AL. v. WOOD.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1223.

No. 81-2180. *STEED v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 674 F. 2d 284.

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No. 81-2182. *GANA v. HAWAII*. Sup. Ct. Haw. Certiorari denied. Reported below: 64 Haw. 407, 642 P. 2d 933.

No. 81-2183. *RUFFIN v. CASEY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 161, 673 F. 2d 552.

No. 81-2185. *GIBSON v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 89 Ill. 2d 322, 433 N. E. 2d 629.

No. 81-2186. *M. R. YUDOFKY & ASSOCIATES ET AL. v. KENTUCKY DEPARTMENT OF FINANCE*. Ct. App. Ky. Certiorari denied.

No. 81-2187. *GUTHERY v. GUTHERY*. Ct. Civ. App. Ala. Certiorari denied. Reported below: 409 So. 2d 844.

No. 81-2190. *HALL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1340.

No. 81-2191. *MAYBERRY v. DEES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 663 F. 2d 502.

No. 81-2192. *MORRAN v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 412 So. 2d 487.

No. 81-2193. *HERN IRON WORKS, INC. v. DONOVAN, SECRETARY OF LABOR; and YOUNGSTROM, DBA YOUNGSTROM'S LOG HOMES v. U. S. DEPARTMENT OF LABOR*. Certiorari (first case) and certiorari before judgment (second case) to C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 2d 838 (first case).

No. 81-2196. *COUNCIL OF NORTH ATLANTIC SHIPPING ASSNS. ET AL. v. FEDERAL MARITIME COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 318, 672 F. 2d 171.

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No. 81-2200. MINERS & MERCHANTS BANK OF ROUNDUP, MONTANA *v.* STENSVAD ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 196 Mont. 193, 640 P. 2d 1303.

No. 81-2201. KEEFE *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 228 Ct. Cl. 493, 657 F. 2d 1194.

No. 81-2203. GIOVANAZI *v.* GIOVANAZI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1337.

No. 81-2207. C. B. FOODS, INC. *v.* UNITED STATES DEPARTMENT OF AGRICULTURE. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 804.

No. 81-2208. INTERCOLLEGIATE (BIG TEN) CONFERENCE OF FACULTY REPRESENTATIVES ET AL. *v.* WILSON. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 2d 962.

No. 81-2210. GREYHOUND LINES, INC. *v.* PRICE. C. A. 4th Cir. Certiorari denied.

No. 81-2212. KAYE *v.* LUCE, FORWARD, HAMILTON & SCRIPPS ET AL. C. A. 9th Cir. Certiorari denied.

No. 81-2214. ANDRUS ENERGY CORP. ET AL. *v.* UNITED STATES ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 678 F. 2d 1081.

No. 81-2216. BYRD *v.* SAN FRANCISCO UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1336.

No. 81-2220. UNITED STATES EX REL. PATRICK *v.* HILTON, WARDEN, TRENTON STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 81-2222. SWEATT ET AL. *v.* PLUMBAGO MINING CORP. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 444 A. 2d 361.

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No. 81-2223. *KELTNER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 675 F. 2d 602.

No. 81-2227. *JONES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 2d 327.

No. 81-2228. *SOOJIAN v. COUNTY OF FRESNO ET AL.* Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 81-2229. *CHIAFARI v. U. S. DEPARTMENT OF INTERIOR ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1307.

No. 81-2230. *MCGOUGH v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 407 So. 2d 622.

No. 81-2232. *BRUCE v. KOSNOSKI*. C. A. 4th Cir. Certiorari denied. Reported below: 669 F. 2d 944.

No. 81-2233. *VALDES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 661 F. 2d 436.

No. 81-2234. *ACME QUILTING CO., INC. v. PERFECT FIT INDUSTRIES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 53.

No. 81-2235. *GARCIA v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 666 F. 2d 960.

No. 81-2238. *PARSONS, DBA EXECUTIVE MOTORS UNLIMITED ET AL. v. FORD MOTOR CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 2d 308.

No. 81-2241. *KEMBER ET AL. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 222 U. S. App. D. C. 1, 685 F. 2d 451.

No. 81-2246. *CONSTANT v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 645 P. 2d 843.

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No. 81-2247. *MCCARTHY ET AL. v. MENSCH ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 412 So. 2d 343.

No. 81-2248. *BERNS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1224.

No. 81-2250. *HARVEY ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 661 F. 2d 767.

No. 81-2251. *WILLIAMS v. COOK COUNTY CIVIL SERVICE COMMISSION ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied.

No. 81-2253. *VINSTON v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 274 Ark. 452, 625 S. W. 2d 533.

No. 81-2255. *CHECKRITE PETROLEUM INC. v. AMOCO OIL CO.* C. A. 2d Cir. Certiorari denied. Reported below: 678 F. 2d 5.

No. 81-2256. *JEFFERSON COUNTY, KENTUCKY, ET AL. v. HAYS ET AL.*; and

No. 82-28. *HAYS ET AL. v. JEFFERSON COUNTY, KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 668 F. 2d 869 and 673 F. 2d 152.

No. 81-2259. *MISSOURI PACIFIC RAILROAD CO. v. BOUBEL.* C. A. 5th Cir. Certiorari denied. Reported below: 670 F. 2d 183.

No. 81-2260. *S. A. R. L. DE GESTION PIERRE CARDIN v. MORSE.* C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 816.

No. 81-2261. *KIM ET AL. v. TAYLOR ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 81-2262. *SUTTON ET AL. v. SOUTHERN NATURAL GAS CO.*; and *SUN FRESH FARMS OF LOUISIANA ET AL. v. SOUTHERN NATURAL GAS CO.* Ct. App. La., 2d Cir. Cer-

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tiorari denied. Reported below: 406 So. 2d 657 (first case); 406 So. 2d 669 (second case).

No. 81-2263. *UZZOLINO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 81-2264. *LONEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 688.

No. 81-2265. *KELLY v. WARMINSTER TOWNSHIP BOARD OF SUPERVISORS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 806.

No. 81-2267. *FIRST NATIONAL BANK OF SCOTIA ET AL. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 815.

No. 81-2269. *BERGER v. BERGER*. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 3 Ohio App. 3d 125, 443 N. E. 2d 1375.

No. 81-2270. *GUSTAFSON ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 675 F. 2d 965.

No. 81-2271. *SCHOOL BOARD OF DADE COUNTY, FLORIDA v. TRAVELERS INDEMNITY CO.* C. A. 11th Cir. Certiorari denied. Reported below: 666 F. 2d 505.

No. 81-2274. *JONNET DEVELOPMENT CORP. v. CALIGUIRI ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 686.

No. 81-2277. *NORTH STATE CHEMICALS, INC. v. STRICKLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 885.

No. 81-2282. *COUGHLIN ET AL. v. JACOBSON*. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 815.

No. 81-2286. *SARMIENTO-PEREZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 667 F. 2d 1239.

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No. 81-2287. *WOOLERY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 670 F. 2d 513.

No. 81-2288. *SPECKTER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 1377.

No. 81-2290. *CINCINNATI ASSOCIATION FOR THE BLIND v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 672 F. 2d 567.

No. 81-2291. *ALEXANDRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 34.

No. 81-2292. *AIR EXPRESS INTERNATIONAL CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 11th Cir. Certiorari denied. Reported below: 659 F. 2d 610 and 670 F. 2d 512.

No. 81-2293. *CONNECTICUT LIGHT & POWER CO. ET AL. v. NUCLEAR REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 134, 673 F. 2d 525.

No. 81-2295. *BONELLO v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 3 Ohio App. 3d 365, 445 N. E. 2d 667.

No. 81-2297. *WARD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 94.

No. 81-2298. *WILLIAMS v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1320.

No. 81-2300. *CONSIDINE ET VIR v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 227 Ct. Cl. 77, 645 F. 2d 925.

No. 81-2301. *BRENNER, DBA TEDDY BRENNER ENTERPRISES v. WORLD BOXING COUNCIL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 445.

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No. 81-2304. *UNITED STATES STEEL CORP. v. GAUDIANO ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 811.

No. 81-2308. *CAPPS v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied.

No. 81-2311. *KERSEY ET AL. v. SHIPLEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 730.

No. 81-2312. *MISSOURI PACIFIC RAILROAD CO. v. UNITED STATES STEEL CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 668 F. 2d 435.

No. 81-2314. *TAYLOR v. KENTUCKY EX REL. MAY.* Sup. Ct. Ky. Certiorari denied.

No. 81-2315. *DEL RE v. PRUDENTIAL LINES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 669 F. 2d 93.

No. 81-2317. *RANGER FUEL CORP. v. YOUGHIOGHENY & OHIO COAL CO.* C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 2d 378.

No. 81-2320. *DAZZO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 672 F. 2d 284.

No. 81-2321. *WAIDE v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 229 Ct. Cl. 833.

No. 81-2323. *W. H. MOSELEY CO., INC. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 405, 677 F. 2d 850.

No. 81-2325. *ATLANTA GAS LIGHT CO. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 666 F. 2d 1359.

No. 81-2327. *DEBATTISTA v. ARGONAUT-SOUTHWEST INSURANCE CO. ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 410 So. 2d 279.

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No. 81-2329. UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORP., ET AL. *v.* CORPORATION COMMISSION OF OKLAHOMA ET AL.; and

No. 81-2330. HARPER OIL CO. *v.* CORPORATION COMMISSION OF OKLAHOMA ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 651 P. 2d 652.

No. 81-2335. BROWNING, ADMINISTRATRIX *v.* B. F. DIAMOND CONSTRUCTION CO., INC., ET AL. Ct. App. Ga. Certiorari denied. Reported below: 161 Ga. App. 73, 289 S. E. 2d 268.

No. 81-2339. BUCHANON *v.* MACON COUNTY COMMUNITY ACTION COMMITTEE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 185.

No. 81-2341. KUDLER ET AL. *v.* SMITH. Ct. App. Colo. Certiorari denied. Reported below: 643 P. 2d 783.

No. 81-2342. GONSALVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 675 F. 2d 1050.

No. 81-2345. LYLE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1326.

No. 81-2346. REXROAT *v.* THORELL. Sup. Ct. Ill. Certiorari denied. Reported below: 89 Ill. 2d 221, 433 N. E. 2d 235.

No. 81-2347. BODDICKER ET AL. *v.* ARIZONA STATE DENTAL ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 66.

No. 81-2348. AETNA LIFE & CASUALTY CO. ET AL. *v.* GURNEE ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 184, 433 N. E. 2d 128.

No. 81-2350. MOFFET ET AL. *v.* STONE MOUNTAIN MEMORIAL ASSN. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1383.

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No. 81-2351. *SCHREFFLER v. PENNSYLVANIA LABOR RELATIONS BOARD ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 58 Pa. Commw. 78, 427 A. 2d 305.

No. 81-2353. *GRACE v. SANTA FE PACIFIC RAILROAD CO. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 668 F. 2d 1140.

No. 81-2354. *UNIFORMED FIREFIGHTERS ASSN., LOCAL 94, IAFF, AFL-CIO, ET AL. v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 676 F. 2d 20.

No. 81-2356. *GRANT v. ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION.* Sup. Ct. Ill. Certiorari denied. Reported below: 89 Ill. 2d 247, 433 N. E. 2d 259.

No. 81-2357. *JOHN G. RINALDO LIMITED PARTNERSHIP NUMBER 14 ET AL. v. ROADRUNNER LAKE PARKS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1338.

No. 81-2360. *MOELLER ET AL. v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 186 Conn. 547, 442 A. 2d 939.

No. 81-2361. *GROSSMAN v. FIDELITY MUNICIPAL BOND FUND, INC., ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 674 F. 2d 115.

No. 81-2364. *GEE v. GEE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 922.

No. 81-2365. *FITZPATRICK v. NEW YORK.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 290.

No. 81-2367. *SOLITRON DEVICES, INC., ET AL. v. SIROTA ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 566.

No. 81-2368. *ARMIJO, COMMISSIONER OF PUBLIC LANDS FOR NEW MEXICO v. JENSEN ET AL.* Sup. Ct. N. M. Cer-

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tiorari denied. Reported below: 97 N. M. 630, 642 P. 2d 1089.

No. 81-2372. *DELESDERNIER v. PORTERIE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 2d 116.

No. 81-2374. *FERGUSON v. UNION MUTUAL STOCK LIFE INSURANCE COMPANY OF AMERICA.* C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 2d 253.

No. 81-2378. *YACHTS AMERICA, INC., ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 26, 673 F. 2d 356.

No. 81-2379. *PROCTOR ET AL. v. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 289, 675 F. 2d 308.

No. 81-2380. *PENNAVARIA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 81-2387. *RESTAURANT EMPLOYEES, BARTENDERS & HOTEL SERVICE EMPLOYEES WELFARE AND PENSION TRUST ET AL. v. GATEWAY CAFE, INC., ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 95 Wash. 2d 791, 630 P. 2d 1348.

No. 81-2392. *PHILLIPS PETROLEUM Co. v. SAUCEDO.* C. A. 5th Cir. Certiorari denied. Reported below: 670 F. 2d 634.

No. 81-2393. *MUNOZ v. DEPARTMENT OF REGISTRATION AND EDUCATION OF ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 101 Ill. App. 3d 827, 428 N. E. 2d 1137.

No. 81-2396. *BENJAMIN v. UNITED STATES;*

No. 82-5228. *FEENEY v. UNITED STATES;* and

No. 82-5252. *ROSTEN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 46.

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No. 81-2397. *PRIDDY v. PRIDDY*. Sup. Ct. Tex. Certiorari denied.

No. 81-2398. *PERKINS v. CATERPILLAR TRACTOR CO.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 699.

No. 81-2400. *CAPITOL AGGREGATES, INC. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 1377.

No. 81-2401. *YOUNG ET AL. v. FIDELITY UNION LIFE INSURANCE CO. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-2405. *PASS WORD, INC., ET AL., DBA COEUR D'ALENE ANSWERING SERVICE v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 181, 673 F. 2d 1363.

No. 81-2410. *GEE v. GEE*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 81-2411. *GEE v. DAWSON ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 81-2412. *GULF OIL CORP. ET AL. v. FISHER*. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 904.

No. 81-2413. *VALENTINE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 81-6183. *JONES v. CITY OF ST. LOUIS, MISSOURI, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 81-6309. *PICKENS v. BRAND, SHERIFF OF JOHNSON COUNTY, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-6356. *HERNANDEZ v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 408 So. 2d 911.

No. 81-6361. *WIGGINS v. NEW MEXICO SUPREME COURT CLERK ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 664 F. 2d 812.

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No. 81-6453. *MULDER v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 313 N. W. 2d 885.

No. 81-6473. *CHAKA v. DEROBERTIS ET AL.* C. A. 7th Cir. Certiorari denied.

No. 81-6480. *FIELDS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 627 S. W. 2d 714.

No. 81-6497. *LEWIS v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 410 So. 2d 1308.

No. 81-6518. *STEERMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 2d 505.

No. 81-6533. *ALDRIDGE v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 81-6534. *CLEVELAND v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 81-6572. *WILLIAMSON v. FLORIDA DEPARTMENT OF CORRECTIONS*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 411 So. 2d 268.

No. 81-6581. *SIMMS v. PATALINGHUG ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 672 F. 2d 913.

No. 81-6582. *GUICHARD v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 2d 801.

No. 81-6583. *LIPPERT v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 89 Ill. 2d 171, 432 N. E. 2d 605.

No. 81-6597. *DROKE v. GOLDSBY, CLERK OF GENERAL SESSIONS COURT OF SHELBY COUNTY, TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1218.

No. 81-6612. *ARNOLD v. OHIO*. Ct. App. Ohio, Lucas County. Certiorari denied.

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No. 81-6621. *ANDERSON v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 96 Wash. 2d 739, 638 P. 2d 1205.

No. 81-6628. *FLENORY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 688.

No. 81-6636. *WILLIAMS v. BRADLEY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1225.

No. 81-6639. *MARSHALL v. COOMBE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 816.

No. 81-6659. *TAYLOR v. UNITED STATES*; and
No. 81-6899. *SIMMONS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 2d 426.

No. 81-6669. *FRIAS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 2d 849.

No. 81-6674. *MORGAN v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 2d 218.

No. 81-6681. *ADDICKS v. CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY*. Ct. App. Ore. Certiorari denied. Reported below: 54 Ore. App. 830, 636 P. 2d 454.

No. 81-6683. *TAVASSOLI ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 714.

No. 81-6687. *RENFRO v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 96 Wash. 2d 902, 639 P. 2d 737.

No. 81-6689. *STURM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 671 F. 2d 749.

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No. 81-6703. *WEAVER v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 100 Ill. App. 3d 512, 426 N. E. 2d 1227.

No. 81-6706. *GATEWOOD v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 81-6707. *DICKINSON v. VAUGHN*. C. A. 11th Cir. Certiorari denied.

No. 81-6714. *BARNETT v. ALFORD, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-6716. *LURZ v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 666 F. 2d 69.

No. 81-6717. *CODA v. MARKS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 805.

No. 81-6720. *PARK v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 81-6722. *EBERSOLE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 81-6723. *WILLIAMS v. YEAGER*. C. A. 5th Cir. Certiorari denied.

No. 81-6726. *MADRID v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 2d 1114.

No. 81-6727. *CHATFIELD v. RICKETTS ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 2d 330.

No. 81-6733. *WILLIAMS v. TOUCHTON*. C. A. 5th Cir. Certiorari denied.

No. 81-6734. *HOLDEN v. COMMISSION AGAINST DISCRIMINATION OF MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 671 F. 2d 30.

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No. 81-6735. *BATTLE v. SUTTON*. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 690.

No. 81-6736. *DONNELL v. GENERAL MOTORS CORP. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 2d 705.

No. 81-6739. *MADON v. LONG ISLAND UNIVERSITY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 2d 802.

No. 81-6740. *HOLLAND v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1318.

No. 81-6742. *DEMPS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 666 F. 2d 224.

No. 81-6744. *WILSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1291.

No. 81-6745. *WALTON v. JAGO*. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 182.

No. 81-6747. *THOMAS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 275 Ark. xxi.

No. 81-6751. *LYNN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 81-6753. *MUNGO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 695.

No. 81-6758. *CRUZ v. HAMMOCK, CHAIRMAN OF THE NEW YORK STATE DEPARTMENT OF PAROLE*. C. A. 2d Cir. Certiorari denied. Reported below: 669 F. 2d 872.

No. 81-6759. *SMITH v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 101 Ill. App. 3d 1197, 432 N. E. 2d 396.

No. 81-6761. *HUTCHISON v. OHIO*. Ct. App. Ohio, Montgomery County. Certiorari denied.

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No. 81-6762. *GLEICHER v. TURNER*. Ct. App. D. C. Certiorari denied.

No. 81-6763. *GLEICHER v. HAWKINS*. Ct. App. D. C. Certiorari denied.

No. 81-6764. *GLEICHER v. HINCKLEY*. Ct. App. D. C. Certiorari denied.

No. 81-6766. *SUDRANSKI v. VETERANS ADMINISTRATION*. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1317.

No. 81-6770. *FIELDS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 81-6772. *HOWLAND v. FAIRMAN, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 701.

No. 81-6774. *FREEMAN v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 409 So. 2d 581.

No. 81-6775. *JACKSON v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 230 Kan. ix, 643 P. 2d 197.

No. 81-6778. *JERRY v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 497 Pa. 422, 441 A. 2d 1210.

No. 81-6781. *KAUFMAN v. CHILDREN'S HOME SOCIETY OF NEW JERSEY ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 403, 446 A. 2d 137.

No. 81-6784. *WILLIAMS v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 97 N. M. 634, 642 P. 2d 1093.

No. 81-6785. *DOSS v. BREWER, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 1003.

No. 81-6788. *BROWN v. LEAVITT, SHERIFF, NORFOLK CITY JAIL*. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1307.

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No. 81-6789. *FORD v. U-HAUL COMPANY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 81-6790. *PARKER ET AL. v. PARRATT, WARDEN, NEBRASKA PENAL AND CORRECTIONAL COMPLEX.* C. A. 8th Cir. Certiorari denied. Reported below: 662 F. 2d 479.

No. 81-6791. *MERRILL v. GROUNDS, JUDGE OF THE SUPERIOR COURT, MARICOPA COUNTY, ARIZONA, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 81-6792. *SMITH v. ESTELLE.* C. A. 5th Cir. Certiorari denied.

No. 81-6794. *CHAGRA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 2d 241.

No. 81-6795. *JONES v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 50 Md. App. 743.

No. 81-6796. *WILSON v. BROWN, WARDEN, ET AL.* C. A. 1st Cir. Certiorari denied.

No. 81-6798. *BOSTIC v. GARRISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 876.

No. 81-6799. *JACKSON v. SEEDCO'S LBDO.* C. A. 11th Cir. Certiorari denied.

No. 81-6800. *CHAKA v. WELCH ET AL.* C. A. 7th Cir. Certiorari denied.

No. 81-6801. *HAWKINS v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 474, 435 N. E. 2d 376.

No. 81-6802. *PIGEE v. ISRAEL, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, WAUPUN, WISCONSIN.* C. A. 7th Cir. Certiorari denied. Reported below: 670 F. 2d 690.

No. 81-6805. *THOMAS v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

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No. 81-6808. *CARROLL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 102 Ill. App. 3d 1198, 434 N. E. 2d 1200.

No. 81-6809. *MALLOY v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 296, 434 N. E. 2d 237.

No. 81-6811. *WILLEY v. MICHIGAN*. Ct. App. Mich. Certiorari denied. Reported below: 103 Mich. App. 405, 303 N. W. 2d 217.

No. 81-6814. *FLORIAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 81-6815. *CARTER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 81-6816. *HARRISON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 1159.

No. 81-6817. *DICKERSON v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 415 So. 2d 1371.

No. 81-6819. *ALBERT v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 81-6822. *LORENTZEN v. TRUSTEES OF BOSTON COLLEGE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 676 F. 2d 682.

No. 81-6824. *OMERNICK v. LAROCQUE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 700.

No. 81-6826. *TYLER ET AL. v. BOND, GOVERNOR OF MISSOURI, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 436.

No. 81-6829. *BLOUNT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 101 Ill. App. 3d 443, 428 N. E. 2d 621.

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No. 81-6830. *GADOMSKI v. COMMON PLEAS COURT OF PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 685.

No. 81-6832. *JOHNSON v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 318 N. W. 2d 417.

No. 81-6833. *HAZEEM v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 770.

No. 81-6834. *SANFORD v. LIPPMAN, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 81-6835. *VETETO v. PAYNE.* C. A. 11th Cir. Certiorari denied.

No. 81-6836. *WADE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 667 F. 2d 95.

No. 81-6837. *JOHN v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 821.

No. 81-6840. *SWINNEY v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1325.

No. 81-6841. *YOUNG v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 419, 434 N. E. 2d 1068.

No. 81-6842. *PAREZ v. HOGAN ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 900.

No. 81-6843. *SMITH ET AL. v. SOWDERS, SUPERINTENDENT, KENTUCKY STATE PENITENTIARY.* C. A. 6th Cir. Certiorari denied. Reported below: 671 F. 2d 986.

No. 81-6846. *BUIE v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 740, 449 N. Y. S. 2d 819.

No. 81-6847. *HARRIS v. LEZAK.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 898.

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No. 81-6848. *BALOGH v. HILTON ET AL.* C. A. 3d Cir. Certiorari denied.

No. 81-6850. *BUTHY v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 1040, 434 N. E. 2d 1083.

No. 81-6852. *POSEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 81-6855. *MARTINEZ v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 51.

No. 81-6856. *CONTRERAS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 667 F. 2d 976.

No. 81-6859. *ARELLANES v. HADDEN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-6860. *BOAG v. CHIEF OF POLICE OF PORTLAND, OREGON, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 669 F. 2d 587.

No. 81-6863. *WHITE v. OHIO.* Ct. App. Ohio, Portage County. Certiorari denied.

No. 81-6864. *EDWARDS v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 126 Cal. App. 3d 447, 178 Cal. Rptr. 876.

No. 81-6865. *REITER v. CROSIER, JUDGE, 18TH DISTRICT COURT, JOHNSON COUNTY, TEXAS.* Sup. Ct. Tex. Certiorari denied.

No. 81-6866. *SETTLE ET AL. v. ESPIEFS, TRUSTEE.* C. A. 1st Cir. Certiorari denied.

No. 81-6867. *STRADER v. BUNCH, ASSISTANT SOLICITOR, HORRY COUNTY, SOUTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1317.

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No. 81-6869. *THRAILKILL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 436.

No. 81-6874. *TUNSIL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 2d 879.

No. 81-6876. *BLUE THUNDER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 81-6877. *ECHOLS v. ANDERSON*. C. A. 6th Cir. Certiorari denied.

No. 81-6879. *NEWTON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 677 F. 2d 16.

No. 81-6880. *MANYPENNY v. ARIZONA*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 761.

No. 81-6884. *MARTIN v. SAMPLE ET AL.* C. A. 3d Cir. Certiorari denied.

No. 81-6885. *MARTIATO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 81-6886. *WASKIEWICZ v. SHIELDS, CHAIRMAN, VIRGINIA STATE PAROLE BOARD*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 891.

No. 81-6887. *LAMB DIN v. SUPERINTENDENT, CALIFORNIA CORRECTIONAL INSTITUTION*. C. A. 9th Cir. Certiorari denied. Reported below: 661 F. 2d 940.

No. 81-6888. *FULTZ v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 2d 815.

No. 81-6890. *HEDRICK v. ALLSBROOK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 81-6892. *COOPER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 682 F. 2d 114.

No. 81-6893. *LONG v. BALKCOM, WARDEN, GEORGIA STATE PRISON*. C. A. 11th Cir. Certiorari denied.

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No. 81-6895. *PAGE v. CARLSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 565.

No. 81-6896. *LONG v. SOWDERS.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 178.

No. 81-6897. *BEALS v. KELLER.* App. Ct. Ill., 4th Dist. Certiorari denied.

No. 81-6900. *JOHNSON v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 251.

No. 81-6901. *DELIC v. HAYWARD, SHERIFF, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 81-6902. *CLAYBORN v. KENTUCKY.* Ct. App. Ky. Certiorari denied.

No. 81-6906. *MORGAN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 81-6907. *MCLAIN v. HARRIS.* C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 816.

No. 81-6910. *HALIBURTON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 181.

No. 81-6911. *DAMMONS v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 879.

No. 81-6913. *BERNHARD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 713.

No. 81-6914. *DRUCKER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 81-6915. *WEIGANG v. SMITH, ATTORNEY GENERAL.* C. A. D. C. Cir. Certiorari denied.

No. 81-6918. *KNOTT v. MABRY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 1208.

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No. 81-6919. *GUNN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1325.

No. 81-6920. *FIELDS v. FLORIDA*. Sup. Ct. Ohio. Certiorari denied.

No. 81-6921. *BARROW v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 410 So. 2d 1070.

No. 81-6923. *WRENN v. AMERICAN CAST IRON PIPE CO.* C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 185.

No. 81-6924. *SYROVATKA ET AL. v. NEBRASKA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 2d 706.

No. 81-6925. *MCCULLEY ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 346.

No. 81-6926. *MARTIN v. KISER*. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1313.

No. 81-6927. *SEVERA v. RESPOND, INC., ET AL.* C. A. 3d Cir. Certiorari denied.

No. 81-6928. *FOSTER v. GREER, WARDEN, MENARD CORRECTIONAL CENTER*. C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 699.

No. 81-6930. *DIN v. LONG ISLAND LIGHTING CO.* C. A. 2d Cir. Certiorari denied.

No. 81-6931. *BOLES v. GUILFORD TECHNICAL INSTITUTE*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 876.

No. 81-6932. *EVANS v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 31 Wash. App. 330, 641 P. 2d 722.

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No. 81-6933. HUMPHRIES *v.* CITY OF CHESAPEAKE. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 692.

No. 81-6934. REYES-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 81-6935. MALHOTRA *v.* DOW CHEMICAL CO. C. A. 10th Cir. Certiorari denied.

No. 81-6939. CORNISH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 81-6940. FEISTMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 81-6941. JOHANSON ET AL. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 81-6943. ERICKSON ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 676 F. 2d 408.

No. 81-6944. GIBSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 2d 783, 449 N. Y. S. 2d 553.

No. 81-6945. MCMILLAN *v.* OSBORNE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1313.

No. 81-6946. WRIGHT *v.* GARRISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1320.

No. 81-6949. WALKER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 67, 675 F. 2d 1292.

No. 81-6950. ADKINS *v.* BORDENKIRCHER, SUPERINTENDENT, WEST VIRGINIA STATE PENITENTIARY. C. A. 4th Cir. Certiorari denied. Reported below: 674 F. 2d 279.

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No. 81-6951. *MINTZ v. BLOCK, SHERIFF, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 81-6954. *MARSH v. MICHIGAN.* Ct. App. Mich. Certiorari denied. Reported below: 108 Mich. App. 659, 311 N. W. 2d 130.

No. 81-6956. *WELSH v. ST. JOSEPH HOSPITAL, INC.* Sup. Ct. N. M. Certiorari denied.

No. 81-6957. *PENIX v. TAYLOR.* Sup. Ct. Ohio. Certiorari denied.

No. 81-6958. *MATTHEWS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 81-6959. *WILLIAMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 2d 394.

No. 81-6960. *JOHANNING v. NEW JERSEY.* C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 2d 424.

No. 81-6961. *JOHNSON v. BAUCUM ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 178.

No. 81-6962. *GARZA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 2d 396.

No. 81-6963. *BROADWELL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 713.

No. 81-6964. *SCOTT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 659 F. 2d 585.

No. 81-6965. *MILLER v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 664 F. 2d 94.

No. 81-6967. *BROWN v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 83, 679 F. 2d 260.

No. 81-6969. *LACE ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 669 F. 2d 46.

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No. 81-6971. *ROBERTS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 2d 1185.

No. 81-6972. *PINERO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 81-6973. *MOUSSALLIE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 81-6975. *RUDMAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 81-6977. *VANN v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 81-6979. *SHAPIRO v. UNITED STATES VETERANS ADMINISTRATION*. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 816.

No. 81-6980. *RUBIN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 81-6981. *MCKEOWN v. PIGG ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 2d 1334.

No. 81-6982. *MEDDOWS v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 100 Ill. App. 3d 576, 427 N. E. 2d 219.

No. 81-6984. *VINSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 81-6985. *LEDBETTER v. REGAN, SECRETARY OF THE TREASURY*. C. A. D. C. Cir. Certiorari denied.

No. 81-6986. *BROWN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 677 F. 2d 26.

No. 81-6987. *CHURCH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 436.

No. 81-6988. *BUCKMORE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

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No. 81-6989. *MONTROYA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 676 F. 2d 428.

No. 81-6990. *WILLIFORD v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 672 F. 2d 552.

No. 81-6991. *GOSS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 81-6992. *KIRBY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 81-6993. *ARREDONDO v. ESTELLE*. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1326.

No. 81-6995. *BHOJWANI v. ILLINOIS STATE BOARD OF LAW EXAMINERS*. Sup. Ct. Ill. Certiorari denied.

No. 81-6996. *VELEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

No. 81-6999. *COMER v. PARRATT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 2d 734.

No. 81-7000. *ROE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 956.

No. 81-7001. *WEXLER v. LOWER MORELAND TOWNSHIP POLICE DEPARTMENT ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 811.

No. 81-7002. *THOMPSON-EL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 924.

No. 81-7003. *MILLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 359.

No. 81-7004. *CONRAD ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 82-2. *E. J. T. CONSTRUCTION CO., INC., ET AL. v. UNITED STATES EX REL. BILLOWS ELECTRIC CO., INC.*

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C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 827.

No. 82-6. *KYPTA v. McDONALD'S CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1282.

No. 82-7. *HEIMBACH, ORANGE COUNTY EXECUTIVE, ET AL. v. HUDSON VALLEY FREEDOM THEATRE, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 2d 702.

No. 82-9. *SAADON v. UNITED STATES*; and
No. 82-202. *BEN-NATAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-10. *CINCINNATI MILACRON CHEMICALS, INC., ET AL. v. BLANKENSHIP ET AL.; MINSTER MACHINE CO. v. KNITZ*; and *ST. VINCENT HOSPITAL & MEDICAL CENTER ET AL. v. ZAK ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 2d 608, 433 N. E. 2d 572 (first case); 69 Ohio St. 2d 460, 432 N. E. 2d 814 (second case); 69 Ohio St. 2d 471, 433 N. E. 2d 162 (third case).

No. 82-12. *CHOCALLO, ADMINISTRATIVE LAW JUDGE v. PROKOP, CHAIRWOMAN, MERIT SYSTEMS PROTECTION BOARD, ET AL.* C. A. D. C. Cir. Petition for certiorari and certiorari before judgment denied. Reported below: 218 U. S. App. D. C. 160, 673 F. 2d 551.

No. 82-13. *RANDOLPH v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 98 Ill. App. 3d 696, 424 N. E. 2d 893.

No. 82-14. *SHIRLEY ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-16. *BALL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-17. *COUCH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 599.

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No. 82-20. *SANZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 64.

No. 82-21. *CARSWELL v. MILGRIM ET AL.* Sup. Ct. Va. Certiorari denied.

No. 82-26. *FIRST STATE BANK OF MIAMI v. GOTHAM PROVISION CO., INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 2d 1000.

No. 82-27. *MARINA POINT, LTD. v. WOLFSON ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 3d 721, 640 P. 2d 115.

No. 82-30. *PAYNE ET AL. v. BOBBIE BROOKS, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 180.

No. 82-31. *SABET v. AMERICAN EXPRESS INTERNATIONAL BANKING CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 287.

No. 82-32. *LEVIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 82-35. *REISNER, DBA INTERMECCANICA AUTOMOBILI, ET AL. v. GENERAL MOTORS CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 2d 91.

No. 82-36. *SHIELDS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 675 F. 2d 1152.

No. 82-37. *JANOWSKI ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 710 PENSION FUND ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 2d 931.

No. 82-40. *SUNCREST ENVIRONMENTAL RESOURCES CORP. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

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No. 82-42. *BACA ET AL. v. WALGREEN CO.* Sup. Ct. Kan. Certiorari denied. Reported below: 230 Kan. 443, 638 P. 2d 898.

No. 82-43. *ASAM v. STANLEY, DBA POODLE PALACE, ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 413 So. 2d 1056.

No. 82-44. *BOTHKE v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 667 F. 2d 1030.

No. 82-45. *MILLER v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 296 Pa. Super. 596, 438 A. 2d 653.

No. 82-46. *CATHOLIC BISHOP OF CHICAGO v. F.E.L. PUBLICATIONS, LTD.* C. A. 7th Cir. Certiorari denied.

No. 82-49. *FEDERATED DEPARTMENT STORES, INC., DBA I. MAGNIN v. CANCELLIER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 1312.

No. 82-50. *SMITH ET AL. v. AHR.* Sup. Ct. Mo. Certiorari denied.

No. 82-51. *LEITCH ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied.

No. 82-58. *GRAND FALOON TAVERN, INC. v. WICKER, CHIEF OF COCOA BEACH, FLORIDA, POLICE DEPARTMENT, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 943.

No. 82-64. *PARMLEY v. STATE BAR OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 82-66. *MAZALESKI v. MAY.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1313.

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No. 82-68. SWIFT AGRICULTURAL CHEMICALS CORP. *v.* FARMLAND INDUSTRIES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 674 F. 2d 1351.

No. 82-69. MID-AMERICA REGIONAL BARGAINING ASSN. ET AL. *v.* WILL COUNTY CARPENTERS DISTRICT COUNCIL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 675 F. 2d 881.

No. 82-70. CHIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 817.

No. 82-71. COCHRANE *v.* MARX ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 684.

No. 82-73. CRAIG ET AL. *v.* BARNEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 678 F. 2d 1200.

No. 82-76. SHAPIRO *v.* COOKE, CHIEF JUDGE, COURT OF APPEALS OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied.

No. 82-78. CALIFORNIA *v.* SHIRLEY. Sup. Ct. Cal. Certiorari denied. Reported below: 31 Cal. 3d 18, 641 P. 2d 775.

No. 82-82. MCKEE ET AL. *v.* COUNTY OF RAMSEY ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 316 N. W. 2d 555.

No. 82-83. STEPENY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 297.

No. 82-85. CAVALIER *v.* T. SMITH & SON, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 668 F. 2d 861.

No. 82-89. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 182.

No. 82-90. SARGENT *v.* MAYER. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1339.

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No. 82-92. *PICCOLO v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-93. *STICH v. NATIONAL TRANSPORTATION SAFETY BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 446.

No. 82-95. *NORDASILLA CORP. v. NORFOLK SHIPBUILDING & DRYDOCK CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 885.

No. 82-96. *SINAI TEMPLE ET AL. v. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES (SMOTRICH, REAL PARTY IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-100. *PEAT MANUFACTURING CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1339.

No. 82-102. *DAWKINS ET AL. v. FENSLAGE*. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1325.

No. 82-104. *PENSION PLAN OF THE CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA v. BRUG*. C. A. 9th Cir. Certiorari denied. Reported below: 669 F. 2d 570.

No. 82-108. *TYLER v. HARTFORD FIRE INSURANCE CO. ET AL.* C. A. 10th Cir. Certiorari before judgment denied.

No. 82-110. *ORSINI v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 187 Conn. 264, 445 A. 2d 887.

No. 82-111. *PROVENZANO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 82-112. *IN RE NEAMON*. C. A. D. C. Cir. Certiorari denied.

No. 82-113. *TUTINO v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 56 N. Y. 2d 815, 437 N. E. 2d 1171.

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No. 82-115. *CERVANTES v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 632 S. W. 2d 368.

No. 82-119. *AMERICAN LAUNDRY PRESS CO. ET AL. v. REXRODE*. C. A. 10th Cir. Certiorari denied. Reported below: 674 F. 2d 826.

No. 82-120. *GREYHOUND LINES, INC. v. TRAILWAYS, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 218 U. S. App. D. C. 123, 673 F. 2d 514.

No. 82-123. *TIMMONS v. ANDREWS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1317.

No. 82-127. *JENNINGS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 217, 633 S. W. 2d 373.

No. 82-128. *RUNCK ET AL. v. PHOENIX ASSURANCE COMPANY OF CANADA ET AL.* Sup. Ct. N. D. Certiorari denied. Reported below: 317 N. W. 2d 402.

No. 82-129. *DALTON v. EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 671 F. 2d 835.

No. 82-133. *PATEL ET AL. v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 1377.

No. 82-136. *AMBASSADOR COLLEGE v. GEOTZKE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 675 F. 2d 662.

No. 82-138. *HOWELL v. MANAGEMENT ASSISTANCE, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 2d 424.

No. 82-140. *SUAREZ ET AL. v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied.

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No. 82-142. *NEWMAN ET AL. v. TIDWELL, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA.* C. A. 11th Cir. Certiorari denied.

No. 82-143. *COLE ET AL. v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 91 Ill. 2d 172, 435 N. E. 2d 490.

No. 82-144. *HARRIS ET AL. v. RESEARCH FEDERAL CREDIT UNION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1219.

No. 82-147. *MUZII v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 676 F. 2d 919.

No. 82-150. *RETAIL CLERKS UNION LOCAL 648 ET AL. v. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION (EXXON CORP. ET AL., REAL PARTIES IN INTEREST).* C. A. 9th Cir. Certiorari denied.

No. 82-153. *JOHNSTON ET AL. v. NYBERG ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 900.

No. 82-160. *JONES v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 115.

No. 82-163. *INTERSTATE COMMERCE COMMISSION v. CITY OF CHEROKEE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 1080.

No. 82-165. *SPEED v. GOODNER, A MINOR, BY HER GUARDIAN AD LITEM, HADLEY, ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 96 Wash. 2d 838, 640 P. 2d 13.

No. 82-170. *FESSLER ET UX. v. REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 805.

No. 82-171. *MARINE TERMINALS CORP. ET AL. v. KELLY.* C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 830.

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No. 82-172. *TOMARGO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 2d 887.

No. 82-173. *WASHINGTON STATE CHARTERBOAT ASSN. v. HOH INDIAN TRIBE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 710.

No. 82-176. *AMADA ENTERPRISES, DBA VIEW HEIGHTS CONVALESCENT HOSPITAL, ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 444.

No. 82-180. *RASKY v. COLUMBIA BROADCASTING SYSTEM, INC., AKA CBS-WBBM, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 577, 431 N. E. 2d 1055.

No. 82-182. *MALDONADO ET AL. v. RODRIGUEZ ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 292.

No. 82-189. *WARNER ET AL. v. SOVEREIGN NEWS CO.* C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 484.

No. 82-190. *MCDERMOTT v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 679 F. 2d 873.

No. 82-199. *VALERINO v. VALERINO*. Ct. Sp. App. Md. Certiorari denied.

No. 82-203. *SAVOY ET AL. v. MASSACHUSETTS*; and

No. 82-5159. *ALDOUPOLIS v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 386 Mass. 260, 435 N. E. 2d 330.

No. 82-208. *KOLOJAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 82-210. *CITY OF FORT WORTH, TEXAS v. GARRIS*. C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 2d 1264.

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No. 82-216. *MIRKIN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 421.

No. 82-223. *CORTINAS v. PEOPLES SECURITY BANK OF MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 691.

No. 82-225. *MANNING v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 890.

No. 82-232. *DEL RIO FLYING SERVICES, INC. v. MANJE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 443.

No. 82-244. *GARDNER v. BRADENTON HERALD, INC.* Sup. Ct. Fla. Certiorari denied. Reported below: 413 So. 2d 10.

No. 82-249. *CENTURY FOREST INDUSTRIES, INC. v. DURAWOOD TREATING CO., A DIVISION OF ROY O. MARTIN LUMBER CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 675 F. 2d 745.

No. 82-255. *PARK PLACE, INC. v. CITY OF CLEVELAND ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1222.

No. 82-257. *RESENDE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 251.

No. 82-264. *GRAVISS ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-279. *MARTIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 899.

No. 82-285. *WYLER ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

No. 82-295. *PLATER v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 930.

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No. 82-297. *MELLI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 677 F. 2d 264.

No. 82-307. *MASTRANGELO v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 402.

No. 82-318. *STROOM v. CARTER*. C. A. D. C. Cir. Certiorari denied.

No. 82-320. *HARRINGTON ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 359.

No. 82-321. *PAULK v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 82-324. *COLLINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-339. *MARTELL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-5002. *WALTERS v. JAGO*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 569.

No. 82-5003. *DAVID L. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 56 N. Y. 2d 698, 436 N. E. 2d 1324.

No. 82-5004. *BLAINE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 82-5005. *BRYANT v. UNITED STATES* (two cases). C. A. 4th Cir. Certiorari denied. Reported below: 665 F. 2d 1042 (first case); 679 F. 2d 877 (second case).

No. 82-5006. *BORRELLI v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5007. *BROWN v. LEAVITT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 877.

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No. 82-5008. *GAUVAIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 82-5009. *LAWSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 433.

No. 82-5011. *JOLIVETTE v. CITY OF LAFAYETTE ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 413 So. 2d 495.

No. 82-5013. *MAZUR v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-5015. *WARD v. OHIO*. Ct. App. Ohio, Hancock County. Certiorari denied.

No. 82-5017. *SELLERS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 890.

No. 82-5018. *WILLIAMS v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 82-5019. *BEACHBOARD v. BELL, SECRETARY OF EDUCATION*. C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 509, 684 F. 2d 1031.

No. 82-5021. *BUMGARDNER v. THOMAS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 877.

No. 82-5023. *PERRY v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-5025. *ROSARIO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 614.

No. 82-5026. *BARBEE v. RUTH ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 2d 634.

No. 82-5027. *HUDAK v. CURATORS OF THE UNIVERSITY OF MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied.

No. 82-5031. *WILSON v. SOWDERS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 569.

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No. 82-5032. *PEISTER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 82-5034. *DEGRAFFENREID v. ORR ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 879.

No. 82-5035. *HOLT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 182.

No. 82-5036. *BRYAN v. U. S. OFFICE OF PERSONNEL MANAGEMENT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 877.

No. 82-5037. *ELLERY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 678 F. 2d 674.

No. 82-5039. *STODDARD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 890.

No. 82-5040. *GISH v. GAGNON*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 82-5042. *PARKER ET AL. v. MYERS ET AL.* Sup. Ct. S. C. Certiorari denied.

No. 82-5043. *NEWELL v. MIZELL ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 667 F. 2d 1247.

No. 82-5044. *McMURRY v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 228 Ct. Cl. 897.

No. 82-5047. *HARRIS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 82-5048. *HARRIS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 82-5049. *BRAWER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 82-5050. *BREESE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 251.

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No. 82-5051. JUDD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 82-5052. BAMOND ET AL. *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 287.

No. 82-5054. ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-5055. MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 675 F. 2d 772.

No. 82-5056. ANTONELLI *v.* LIPPMAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 82-5057. FIELDS *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 675 F. 2d 219.

No. 82-5058. BLAIR *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 82-5060. S. D. S. *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 1008, 431 N. E. 2d 759.

No. 82-5061. WOJIE *v.* HUTSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 811.

No. 82-5062. HUSSEIN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 2d 114.

No. 82-5063. DECKER, ADMINISTRATOR *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 176.

No. 82-5065. MAYES *v.* ROSE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 179.

No. 82-5066. DANCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

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No. 82-5067. CAMERON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5068. DAWSON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 82-5069. STOKES *v.* ARTHUR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 695.

No. 82-5070. WALL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 413 So. 2d 1014.

No. 82-5072. HANKERSON ET AL. *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 2d 87, 434 N. E. 2d 1362.

No. 82-5075. JONES *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 633 S. W. 2d 756.

No. 82-5076. BORRELLI *v.* CICCITTO ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-5077. BORRELLI *v.* CAVANAUGH ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-5078. CAMILLO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-5079. LYNCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5081. HOLSEY *v.* MARYLAND PAROLE COMMISSION. Ct. App. Md. Certiorari denied.

No. 82-5091. BEARD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82-5095. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 607 F. 2d 1010.

No. 82-5097. PEACOCK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

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No. 82-5099. *ECCLESTON v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 289.

No. 82-5101. *BARBOUR v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 661 F. 2d 917.

No. 82-5103. *WHITED v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 963.

No. 82-5106. *PIROLI v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 1200.

No. 82-5107. *SANDERS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 700, 431 N. E. 2d 1145.

No. 82-5110. *GLENN v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

No. 82-5111. *BRAYTON v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 421.

No. 82-5113. *GLENN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-5114. *ALVAREZ-RODRIGUEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 82-5117. *BANKS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 102 Ill. App. 3d 877, 430 N. E. 2d 602.

No. 82-5118. *BRINGLOE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 447.

No. 82-5120. *KING v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

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No. 82-5121. *BALL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 1200, 435 N. E. 2d 1383.

No. 82-5122. *HADDIX v. OHIO LIQUOR CONTROL COMMISSION*. Sup. Ct. Ohio. Certiorari denied.

No. 82-5123. *KRALOWEC v. PRINCE GEORGE'S COUNTY, MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 883.

No. 82-5124. *FERGUSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 102 Ill. App. 3d 702, 429 N. E. 2d 1321.

No. 82-5125. *FREZZELL v. ZIMMERMAN ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5127. *ROBINSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 278, 432 N. E. 2d 937.

No. 82-5130. *UNITED STATES EX REL. WOODS v. DEROBERTIS ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-5132. *DICKEY v. CALIFORNIA*. App. Dept., Super. Ct. Cal., Los Angeles County. Certiorari denied.

No. 82-5134. *TOMLIN v. MCDANIEL ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 446.

No. 82-5135. *RUCKER v. REGAN, SECRETARY OF THE TREASURY, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 82-5138. *RODZIEWICZ v. DEGNAN, ATTORNEY GENERAL OF NEW JERSEY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-5140. *NADEMI v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 10th Cir. Certiorari denied. Reported below: 679 F. 2d 811.

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No. 82-5141. *BRAWNER ET AL. v. MLEKUSH ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 114, 675 F. 2d 1339.

No. 82-5142. *DRUMMOND v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

No. 82-5143. *CLARK v. CHRYSLER CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 2d 921.

No. 82-5144. *GORNICK v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1203, 437 N. E. 2d 944.

No. 82-5145. *GAINES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-5149. *LYSIAK v. FIRST SECURITIES INSURANCE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-5150. *ROYSTER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5151. *RABB v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 680 F. 2d 294.

No. 82-5152. *NESBY v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 565.

No. 82-5153. *MCLAIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5154. *ROOT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5155. *SMITH v. FRANZEN, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 82-5156. *PERRY v. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 894.

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No. 82-5158. *COBB v. SUN PAPERS, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 337.

No. 82-5161. *LYNN v. AUSTIN, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 112.

No. 82-5162. *FARBER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 679 F. 2d 733.

No. 82-5163. *BRAGGS v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 559.

No. 82-5164. *JONES v. ROSE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 563.

No. 82-5165. *BARBER v. TEXAS.* Ct. App. Tex., 4th Sup. Jud. Dist. Certiorari denied. Reported below: 628 S. W. 2d 104.

No. 82-5167. *CARTER v. ANDERSON, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 559.

No. 82-5171. *WHITE v. UNITED STATES.* C. A. 1st Cir. Certiorari denied.

No. 82-5173. *HOWARD-ARIAS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 363.

No. 82-5174. *CRAWFORD v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5176. *HAEFNER v. COUNTY OF LANCASTER, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 806.

No. 82-5178. *GLEN-ARCHILA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 809.

No. 82-5180. *PALMERE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 252.

No. 82-5187. *QUINONES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 714.

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No. 82-5189. *CARMACK v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 1027, 432 N. E. 2d 282.

No. 82-5195. *IN RE MARSHALL*. Ct. App. D. C. Certiorari denied. Reported below: 445 A. 2d 5.

No. 82-5198. *DILLENSCHNEIDER v. SAMUELSON*, POSTMASTER, BROCKTON, MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 420.

No. 82-5199. *OLDEN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 2d 793, 451 N. Y. S. 2d 330.

No. 82-5205. *UNDERWOOD v. LAGAN*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 567.

No. 82-5206. *GIDDEN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 19.

No. 82-5208. *SCHAFER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 433.

No. 82-5212. *CASTRANOVA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 421.

No. 82-5219. *HUFF v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5220. *HUNTER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-5226. *KIRK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 890.

No. 82-5227. *DICKERSON v. JOHNSON*, ADMINISTRATOR, VETERANS ADMINISTRATION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-5233. *GIFFORD v. UNITED STATES*; and

No. 82-5254. *GIFFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

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No. 82-5243. *ALEXANDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 287.

No. 82-5245. *FARMER ET AL. v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-5246. *LIVINGSTON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 668 F. 2d 535.

No. 82-5248. *LONG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-5256. *DAVIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 889.

No. 82-5257. *BLACK v. TRIPLE U. ENTERPRISES*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 82-5258. *THIBODEAUX v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied.

No. 82-5261. *ALLEN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 2d 114.

No. 82-5267. *MATTHEWS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5270. *SALES v. HARRIS, SUPERINTENDENT, GREENHAVEN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 532.

No. 82-5282. *ROYSTER v. BALLANTINE BOOKS, A DIVISION OF RANDOM HOUSE, INC.* C. A. D. C. Cir. Certiorari denied.

No. 82-5289. *DAWSON ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 82-5291. *GENOVESE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-5297. *THOMAS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

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No. 82-5299. *WILEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

No. 82-5303. *EDWARDS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 249.

No. 82-5309. *LIPSCOMB v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 503.

No. 82-5310. *JAMES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5316. *CONLON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5322. *ATTIA v. INTERNAL REVENUE SERVICE*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 451.

No. 82-5327. *ADAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 1371.

No. 81-1963. *CITRONELLE-MOBILE GATHERING, INC., ET AL. v. UNITED STATES*. Temp. Emerg. Ct. App. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 669 F. 2d 717.

No. 81-2231. *MCLEOD v. CHILTON ET AL.* Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 132 Ariz. 9, 643 P. 2d 712.

No. 81-2015. *CHURCHILL AREA SCHOOL DISTRICT v. HOOTS ET AL.* C. A. 3d Cir. Motion of Pennsylvania School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 672 F. 2d 1107.

No. 81-2022. *MISSOURI ET AL. v. LIDDELL ET AL.* C. A. 8th Cir. Motion of respondents Craton Liddell et al. for

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leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 677 F. 2d 626.

No. 81-2040. MOORE *v.* MOORE. Super. Ct. Ga., Fulton County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 81-2164. BORDENKIRCHER, SUPERINTENDENT, WEST VIRGINIA PENITENTIARY *v.* ADKINS. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 674 F. 2d 279.

No. 81-2184. PARRATT, WARDEN *v.* FORD. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 673 F. 2d 232.

No. 81-2206. ALABAMA *v.* DICKERSON. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 667 F. 2d 1364.

No. 81-2285. CONNECTICUT *v.* OSTROSKI. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 186 Conn. 287, 440 A. 2d 984.

No. 81-2307. ILLINOIS *v.* TOWNES. Sup. Ct. Ill. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 91 Ill. 2d 32, 435 N. E. 2d 103.

No. 81-2309. WAINWRIGHT *v.* ROBERTS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 666 F. 2d 517.

No. 81-2046. SCHENBERG ET AL. *v.* BOND, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Motion of New Jersey Motor Vehicle Agents Association for leave to file a brief as

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amicus curiae granted. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 669 F. 2d 542.

No. 81-2088. PINTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 681 F. 2d 810.

No. 81-6881. MCCLAIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 676 F. 2d 915.

No. 81-2095. CLANCY ET AL. *v.* JARTECH, INC., ET AL. C. A. 9th Cir. Motion of petitioners for leave to enlarge questions presented for review denied. Certiorari denied. Reported below: 666 F. 2d 403.

No. 81-2198. CHEMICAL MANUFACTURERS ASSN. ET AL. *v.* U. S. ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 218 U. S. App. D. C. 9, 673 F. 2d 400.

No. 81-2226. PROCTER & GAMBLE MANUFACTURING CO. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 658 F. 2d 968.

No. 81-2279. BEST ET AL. *v.* UNITED VIRGINIA BANK/NATIONAL ET AL. Sup. Ct. Va. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 223 Va. 112, 286 S. E. 2d 221.

No. 81-2211. McDONALD *v.* HAMILTON ELECTRIC, INC. OF FLORIDA. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 666 F. 2d 509.

No. 81-6494. STAWICKI *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 105 Wis. 2d 762, 318 N. W. 2d 22.

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No. 81-2215. H. L. MOORE DRUG EXCHANGE, A DIVISION OF LEVITT INDUSTRIES, INC. *v.* ELI LILLY & CO. C. A. 2d Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 662 F. 2d 935.

No. 81-2218. UNITED STATES EX REL. LAPIN *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 673 F. 2d 1340.

No. 81-2224. CURTIS ET AL. *v.* LEWIS. C. A. 3d Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 671 F. 2d 779.

No. 81-2237. NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP. ET AL. *v.* ATARI, INC., ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 672 F. 2d 607.

No. 82-169. CENCO INC. *v.* SEIDMAN & SEIDMAN. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 686 F. 2d 449.

No. 81-2252. HONDA MOTOR CO., LTD., ET AL. *v.* DORSEY ET AL. C. A. 11th Cir. Motion of Product Liability Advisory Council of the Motor Vehicle Manufacturers Association of the United States, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 655 F. 2d 650 and 670 F. 2d 21.

No. 81-2266. TUROSO ET AL. *v.* CLEVELAND MUNICIPAL COURT ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE

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BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and vacate the convictions. Reported below: 674 F. 2d 486.

No. 81-2272. HAPPY DAY, INC., ET AL. *v.* KENTUCKY. Cir. Ct. Ky., Campbell County. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and vacate the convictions.

No. 81-2299. HARRY'S HARDWARE, INC. *v.* PARSONS, SUPERINTENDENT OF POLICE, ET AL. Sup. Ct. La. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 410 So. 2d 735.

No. 81-2322. FISHER *v.* CITY OF TUCSON. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 663 F. 2d 861.

No. 81-2366. FIGUEREDO ET AL. *v.* SOUTH FLORIDA BEVERAGE CORP. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 409 So. 2d 490.

No. 81-2306. LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO *v.* BOSTON SCHOOL COMMITTEE ET AL. C. A. 1st Cir. Motions of American Federation of Teachers, AFL-CIO, A. Philip Randolph Institute, and University Centers for Rational Alternatives, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 671 F. 2d 23.

No. 81-2316. BOARD OF EDUCATION OF THE NORTH LITTLE ROCK, ARKANSAS, SCHOOL DISTRICT, ET AL. *v.* DAVIS ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE REHNQUIST would grant certiorari for the reasons set forth in his dissent from denial of certiorari in *Board of Education of North Little Rock v. Davis*, 454 U. S. 904 (1981). JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 674 F. 2d 684.

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No. 81-5634. *TISON v. ARIZONA* (two cases). Sup. Ct. Ariz.;

No. 81-6536. *AUTRY v. TEXAS*. Ct. Crim. App. Tex.;

No. 81-6711. *HILL v. ARKANSAS*. Sup. Ct. Ark.;

No. 81-6777. *CAPE v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County;

No. 81-6861. *WHITLEY v. VIRGINIA*. Sup. Ct. Va.;

No. 81-6976. *RUIZ ET AL. v. ARKANSAS*. Sup. Ct. Ark.;

No. 81-6978. *SMITH v. BALKCOM, WARDEN, GEORGIA STATE PRISON*. C. A. 11th Cir.;

No. 82-5001. *SMITH v. GEORGIA*. Sup. Ct. Ga.;

No. 82-5020. *ADAMS v. FLORIDA*. Sup. Ct. Fla.;

No. 82-5086. *MESSER v. ZANT, WARDEN*. Super. Ct. Ga., Butts County;

No. 82-5088. *JOHNSON v. TENNESSEE*. Sup. Ct. Tenn.;

No. 82-5090. *BROOKS v. ZANT, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County;

No. 82-5093. *MASON v. MORRIS*. Sup. Ct. Va.;

No. 82-5147. *SINGLETON v. ARKANSAS*. Sup. Ct. Ark.;

No. 82-5170. *BLAZAK v. ARIZONA*. Sup. Ct. Ariz.;

No. 82-5183. *EVANS v. MACDOUGALL, DIRECTOR OF ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 9th Cir.; and

No. 82-5188. *BREEDLOVE v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 81-5634, 129 Ariz. 526, 633 P. 2d 335 (first case), 129 Ariz. 546, 633 P. 2d 355 (second case); No. 81-6536, 626 S. W. 2d 758; No. 81-6711, 275 Ark. 71, 628 S. W. 2d 284; No. 81-6861, 223 Va. 66, 286 S. E. 2d 162; No. 81-6976, 275 Ark. 410, 630 S. W. 2d 44; No. 81-6978, 660 F. 2d 573, 671 F. 2d 858, and 677 F. 2d 20; No. 82-5001, 249 Ga. 228, 290 S. E. 2d 43; No. 82-5020, 412 So.

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2d 850; No. 82-5088, 632 S. W. 2d 542; No. 82-5170, 131 Ariz. 598, 643 P. 2d 694; No. 82-5188, 413 So. 2d 1.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 81-2326. *SOVEREIGN NEWS CO. v. CORRIGAN ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and vacate the judgment. Reported below: 674 F. 2d 484.

No. 81-2336. *LINNAS v. UNITED STATES.* C. A. 2d Cir. Motion of American East European Ethnic Conference for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 685 F. 2d 427.

No. 81-2376. *MERTZ ET AL. v. DENNY.* Sup. Ct. Wis. It appearing the judgment below is not final, the petition for writ of certiorari is denied. Reported below: 106 Wis. 2d 636, 318 N. W. 2d 141.

No. 81-2388. *CANINO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 681 F. 2d 809.

No. 82-194. *INTERNATIONAL RECTIFIER CORP. v. COHEN ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 685 F. 2d 436.

No. 81-6828. *THOMPSON v. SCURR, WARDEN, IOWA STATE PENITENTIARY; and LONG v. BREWER, WARDEN, IOWA STATE PENITENTIARY.* C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would

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grant certiorari. Reported below: 668 F. 2d 999 (first case); 667 F. 2d 742 (second case).

No. 81-6660. *NEWLON v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 627 S. W. 2d 606.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is under all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments, I would vacate the judgment of the Supreme Court of Missouri insofar as it left undisturbed the death sentence imposed in this case. However, even if I believed that the death penalty could constitutionally be imposed under certain circumstances, I would grant certiorari and vacate the death sentence imposed here.

On August 4, 1978, petitioner Rayfield Newlon was indicted in St. Louis County, Mo., for capital murder. The evidence at trial was that Newlon, along with two others, Franz Williams and Walter West, agreed to rob a "convenience" store. Petitioner and Williams entered the store while West parked the car in front of the building. During the attempted robbery, the proprietor of the store, Mansfield Dave, was shot twice with a sawed-off shotgun. Newlon and Williams then ran from the store. Dave died from the gunshot wounds.

There was disputed testimony at trial as to whether Newlon or Williams fired the shots. West testified that petitioner had done the shooting, though there was considerable question whether West could possibly have seen what was happening inside the store from his position across the street. In a videotaped statement made prior to trial, Newlon said that he had gone to the back of the store to get a soda and to divert Dave's attention, and that while he was there, Williams had fired the shots. Newlon testified at trial and again denied responsibility for the shooting.

In his argument on summation, the prosecutor stressed that even if Newlon did not fire the shots, he was still guilty of capital murder as an accomplice of Williams. The trial judge instructed the jury as follows with respect to the elements of capital murder:

"If you find and believe from the evidence beyond a reasonable doubt:

"First, that on or about April 24, 1978, in the County of St. Louis, State of Missouri, the defendant *or another* caused the death of Mansfield Dave by shooting him, and

"Second, that the defendant *or another* intended to take the life of Mansfield Dave, and

"Third, that the defendant *or another* knew they were practically certain to cause the death of Mansfield Dave, and

"Fourth, that the defendant *or another* considered taking the life of Mansfield Dave and reflected upon this matter coolly and fully before doing so, and

"Fifth, that the defendant acted either alone or knowingly and with common purpose together with another in the conduct referred to in the above paragraphs, then you will find the defendant guilty of capital murder." (Emphasis added.)

The jury returned a guilty verdict.

A separate sentencing hearing was then held before the same jury. Under Missouri law the death penalty may be imposed for capital murder if the trier of fact finds aggravating circumstances that warrant the imposition of death and the absence of sufficient countervailing mitigating circumstances. Mo. Rev. Stat. §565.012 (1978). In this case the jury was instructed to consider two aggravating circumstances alleged by the prosecution. First, it was instructed to decide whether petitioner murdered Mansfield Dave for the purpose of receiving money. Second, it was instructed to decide whether the murder involved "depravity of mind and . . . as a result thereof . . . was outrageously or wantonly

horrible or inhuman." See § 565.012(2)(7). The jury found the second alleged aggravating circumstance to be applicable and imposed the death sentence. On appeal the Missouri Supreme Court affirmed, with two judges dissenting. 627 S. W. 2d 606 (1982).

Even accepting, *arguendo*, the prevailing view that there are circumstances in which the death sentence may constitutionally be imposed, I would grant certiorari and set aside the sentence imposed in this case. First, the Missouri Supreme Court's decision is inconsistent with this Court's decision last Term in *Enmund v. Florida*, 458 U. S. 782 (1982). *Enmund* established that a State may not punish by death one "who neither took life, attempted to take life, nor intended to take life." *Id.*, at 787. The Court observed:

"For purposes of imposing the death penalty, Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt. Putting Enmund to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts." *Id.*, at 801.

We concluded that death is a disproportionate penalty for one who neither killed nor intended to kill.

The instructions in the guilt phase of petitioner's trial were impermissible under *Enmund*. A reasonable juror might have understood from the instructions that petitioner could be found guilty of capital murder even if he neither killed Dave nor intended to kill him. The instructions told the jury that it could find petitioner guilty *as an accomplice* if it found that Williams killed Dave with the requisite intent and that petitioner knowingly assisted Williams in the attempted robbery. Given the conflict in the evidence as to who fired the shots, it is not unlikely that the jury's verdict was in fact premised on a finding that petitioner acted as Williams' ac-

complice. In any event, since the jury's guilty verdict may have been based solely on the theory of accomplice liability, and since such liability does not provide a constitutionally sufficient basis for the death penalty, petitioner's death sentence must be set aside. See, *e. g.*, *Stromberg v. California*, 283 U. S. 359, 367-368 (1931). At the very least, the judgment upholding the sentence should be vacated and remanded for reconsideration in light of our decision in *Enmund*, which was announced five months after the Missouri Supreme Court's decision in the instant case.

Even if the trial judge had properly charged in the guilt phase of the trial that petitioner could be convicted as an accomplice only if he intended to take life, imposition of the death sentence would still have been improper because the instructions in the punishment phase of the trial permitted the jury to impose the death sentence solely on the basis of the conduct and mental state of the principal. The sole aggravating circumstance found by the jury—that the murder involved “depravity of mind and . . . as a result thereof . . . was outrageously or wantonly horrible or inhuman”—did not include a finding that *petitioner's* conduct involved “depravity of mind.” The jury was required to find only that the murder itself involved “depravity of mind.” It is irrational to sentence an accomplice to death on the ground that the principal's conduct evidenced “depravity of mind.” The State must prove that the accomplice himself deserves the death penalty, and it cannot do so simply by attributing to him the conduct and mental state of the principal. “[P]unishment must be tailored to [the defendant's] personal responsibility and moral guilt.” *Enmund v. Florida*, *supra*, at 801. Because the jury did not find that petitioner's actions demonstrated that he was more culpable than any other murderer, “[t]here is no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not.” *Godfrey v. Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion).

Petitioner's death sentence should also be set aside because the sentencing standards applied in this case completely failed to "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process for imposing a sentence of death.'" *Godfrey v. Georgia*, 446 U. S., at 428 (footnotes omitted). The jury in *Godfrey* was instructed, in the terms of the Georgia statute, that it could impose the death sentence if it found that the offense was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." *Id.*, at 422. A plurality of this Court held that the discretion of the sentencer has to be narrowed when it is instructed to consider this alleged aggravating circumstance, since "[a] person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'" *Id.*, at 428-429. The plurality recognized that "[t]here is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the death sentence." *Id.*, at 428. Since the jury in *Godfrey* had not been given any narrowing construction of the open-ended statutory language, the plurality concluded that the death sentence had to be vacated.

The death sentence imposed here must be vacated for the same reason. The aggravating circumstance found applicable by the jury here—that the murder "involved depravity of mind and . . . as a result thereof . . . was outrageously or wantonly horrible or inhuman"—is almost identical to that found applicable by the jury in *Godfrey*. Here, as in *Godfrey*, the sentencer was not provided with any narrowing construction of the statute to channel its discretion; the judge "gave the jury no guidance concerning the meaning of any of [the statute's] terms," *id.*, at 429, and indeed refused a request by the jury for an explanation of the statutory language. As a result, the decision whether the

defendant would live or die was similarly left to "the uncontrolled discretion of a basically uninstructed jury." *Ibid.*

The Missouri Supreme Court made an unconvincing attempt to distinguish *Godfrey* on the ground that that decision "rests on its unique facts." 627 S. W. 2d, at 621. The court explained at some length why, in its view, Newlon's conduct was more culpable than Godfrey's. *Id.*, at 621-622. This distinction of *Godfrey* clearly cannot withstand scrutiny. As the plurality stated in *Godfrey*, a State must "define the crimes for which death may be the sentence in a way that obviates 'standardless [sentencing] discretion.'" 446 U. S., at 428, quoting *Gregg v. Georgia*, 428 U. S. 153, 196, n. 47 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.) (brackets supplied in *Godfrey*). It is the discretion of the *sentencer* that must be channeled. In capital murder cases in the State of Missouri, only the trier of fact may impose a sentence of death; if the trier of fact imposes a life sentence or cannot agree on the appropriate sentence, the death penalty may not be imposed. Mo. Rev. Stat. § 565.006(2) (1978). Since under Missouri law the trier of fact is the sentencer, it is the discretion of the trier of fact—in this case, the jury—that must be channeled. The impermissibly vague and broad instructions given to the jury here cannot be cured by distinctions drawn by the Missouri Supreme Court on appeal. Nothing that the Missouri Supreme Court can say about its own view of the record can change the fact that the critical sentencing decision was left to "the uncontrolled discretion of a basically uninstructed jury." *Godfrey v. Georgia*, *supra*, at 429. See *Zant v. Stephens*, 456 U. S. 410, 424-428 (1982) (MARSHALL, J., dissenting); *Brooks v. Georgia*, 451 U. S. 921 (1981) (MARSHALL, J., dissenting from denial of certiorari); *Godfrey v. Georgia*, *supra*, at 436-437 (MARSHALL, J., concurring in judgment).

Finally, I would grant certiorari and vacate the death sentence on the additional ground that the prosecutor's improper arguments to the jury denied petitioner a fair sentencing pro-

ceeding. The prosecutor's arguments at the sentencing proceeding dealt only briefly with the facts of the case as they related to the aggravating and mitigating circumstances submitted to the jury. As Judge Seiler set forth in greater detail in his dissenting opinion below, 627 S. W. 2d, at 633-634, the thrust of the prosecutor's remarks concerned wholly extraneous matters. For example, the prosecutor argued that the death penalty should be imposed on petitioner because there was no one on death row in Missouri;¹ because the jury would be cowardly if it imposed the lesser sentence of life without parole for 50 years;² and because anything but a death sentence was forever subject to change.³ The prosecutor also suggested to the jury that the death penalty was appropriate solely because the defendant had been convicted of capital murder;⁴ and that the availability of post-trial procedures relieved the jury of the full responsibility for its decision.⁵

This Court's decisions speak of the "vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.'" *Beck v. Alabama*, 447 U. S. 625, 637-638 (1980), quoting *Gardner v. Florida*, 430 U. S. 349, 357-358 (1977) (opinion of STEVENS, J.). The Court has also emphasized that juries may not be given

¹"Do you know how many people are on death row in this State? None. We've got the death penalty, but how many are there? None. Mr. Newlon will be the first one, if you put him on death row."

²"As sure as he sits there, he doesn't think you have the guts to do it. . . . Once again, I hope you have the courage to do that because it's tough."

³"[W]hat assurances do you have that he'll be there fifty years? The legislature could change the law. All it says is no parole. It doesn't say it can't be commuted. There's no assurance of that at all."

⁴"[I]f somebody is guilty of capital murder, the ultimate crime, why should they get anything other than death?"

⁵"Now, if you say he deserves the death penalty, under the law, Judge Ruddy must review it and if he agrees, then his decision is reviewed by the Supreme Court."

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standardless discretion to impose capital sentences. See, e. g., *Woodson v. North Carolina*, 428 U. S. 280, 302 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.). In this case the trial judge allowed the prosecutor to exhort the jury to depart from the statutory sentencing standards and to impose the death sentence based on entirely improper considerations. I believe the prosecutor's remarks, which invited an unreasoned imposition of the death sentence, so far exceeded the bounds of proper argument as to deprive petitioner of the fair sentencing proceeding guaranteed by the Eighth and Fourteenth Amendments. Cf. *Donnelly v. DeChristoforo*, 416 U. S. 637, 645 (1974) (suggesting that prosecutorial remarks in closing argument may be sufficiently prejudicial to deprive the defendant of his constitutional right to a fair trial).

For these reasons, I dissent from the denial of certiorari.

No. 81-6854. *DAVIS v. GEORGIA*. Sup. Ct. Ga.; and

No. 81-6891. *JONES v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 81-6891, 411 So. 2d 165.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I continue to adhere to my view that the death penalty is unconstitutional in all circumstances. I would therefore grant certiorari and vacate the death sentences on this basis alone. However, even if I believed that the death penalty could constitutionally be imposed under certain circumstances, I would grant certiorari in these cases to resolve a substantial question left open by this Court's decision in *Bullington v. Missouri*, 451 U. S. 430 (1981): whether, on resentencing, the prosecution may be given a second chance to prove a statutory aggravating circumstance that it failed to prove in the prior capital sentencing proceeding.

We held in *Bullington* that the Double Jeopardy Clause is fully applicable to capital sentencing proceedings that are patterned after trials on the question of guilt or innocence.

The state law considered in *Bullington*, like the state law in each of these cases, provides that the death penalty may be imposed only after a trier of fact finds at least one statutory aggravating circumstance. The determination by the trier of fact is made at a separate sentencing hearing at which evidence is presented in aggravation and mitigation of punishment. To obtain a death sentence the prosecution must prove the existence of one or more aggravating circumstances beyond a reasonable doubt. The trier of fact is instructed to identify the aggravating circumstance or circumstances it finds applicable. We concluded in *Bullington* that "[b]ecause the sentencing proceeding at [Bullington's] first trial was like the trial on the question of guilt or innocence, the protection afforded by the Double Jeopardy Clause to one acquitted by a jury is also available to him, with respect to the death penalty, at his retrial." *Id.*, at 446 (footnote omitted). Like an acquittal, a decision not to impose the death penalty is absolutely final. "Having received 'one fair opportunity to offer whatever proof it could assemble,' the State is not entitled to another." *Ibid.*, quoting *Burks v. United States*, 437 U. S. 1, 16 (1978).

In the instant cases, petitioners were convicted of capital murder and were then sentenced to death following separate sentencing hearings authorized by state statutes similar to the one involved in *Bullington*. In each case, the prosecution failed to prove one or more statutory aggravating circumstances,¹ but the trier of fact found at least one other ag-

¹ In No. 81-6891, the sentencing judge found that two of the aggravating circumstances alleged by the prosecution were not supported by the evidence. In No. 81-6854, the sentencing judge's failure to submit to the jury an aggravating circumstance rested on finding that it was not supported by the evidence. Under Ga. Code Ann. §§ 17-10-30(b) and (c) (1982), the sentencing judge "shall" submit to the jury any statutory aggravating circumstance "supported" and "warranted by the evidence." Because such a submission is required where the evidence is sufficient, see *Williams v. State*, 237 Ga. 399, 228 S. E. 2d 806 (1976), the trial judge's decision not to submit a particular aggravating circumstance to the jury

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gravating circumstance and recommended a sentence of death. In each case the sentence was later vacated.² On remand, new sentencing proceedings were held and death sentences were again imposed, but this time they were based at least in part upon aggravating circumstances that the prosecution had been unable to prove at the first sentencing proceedings. In each case, the State Supreme Court upheld the sentence, rejecting the argument that the Double Jeopardy Clause bars the imposition of the death sentence on the basis of a statutory aggravating circumstance that the prosecution previously had failed to prove.

The conclusion of the state courts in these cases is at odds with that of another state court of last resort. In *State v. Silhan*, 302 N. C. 223, 267-271, 275 S. E. 2d 450, 480-483 (1981), the North Carolina Supreme Court noted that the prosecution's effort to prove the existence of statutory aggravating circumstances at the sentencing proceeding is, for double jeopardy purposes, analogous to the prosecution's effort to prove the crimes charged at the guilt-innocence phase of a criminal trial. Moreover, the court observed, a determination that an aggravating circumstance does not apply is analogous to a determination that the accused is not guilty of an offense. Since the Double Jeopardy Clause protects a de-

was necessarily based on a conclusion that there was insufficient evidence to support a jury verdict finding that circumstance to be applicable. Under the Double Jeopardy Clause, a dismissal for insufficient evidence constitutes a judgment of acquittal that bars reprosecution. *Burks v. United States*, 437 U. S. 1, 10-11 (1978); *Fong Foo v. United States*, 369 U. S. 141 (1962).

²In No. 81-6854, petitioner Davis' conviction was affirmed by the Supreme Court of Georgia, but his death sentence was vacated because of the trial court's failure to make clear to the jury that it might in its discretion recommend a life sentence even if it found the existence of a statutory aggravating circumstance. 240 Ga. 763, 243 S. E. 2d 12 (1978). In No. 81-6891, the Supreme Court of Florida reversed petitioner Jones' conviction because of the trial court's error in denying the defense's motion for a psychiatric examination to determine Jones' sanity at the time of the alleged offense. 362 So. 2d 1334 (1978).

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fendant from being retried for an offense of which he has been acquitted, it should also protect him from being resented to death on the basis of an aggravating circumstance that a jury previously found inapplicable. The court concluded that the Double Jeopardy Clause, therefore, precludes the State from relying, at a new sentencing hearing, on an aggravating circumstance that the jury found inapplicable at the first sentencing hearing.

In *Bullington* this Court made clear that double jeopardy principles which apply to determinations of guilt or innocence also apply to capital sentencing proceedings at which the prosecution must prove the existence of statutory aggravating circumstances. *Bullington* did not address whether and to what extent the Double Jeopardy Clause precludes a second effort to prove an aggravating circumstance that the State failed to prove in a prior proceeding. There is disagreement on this question in the state courts, and the question is sufficiently important to warrant this Court's review.

No. 82-67. *CHAPMAN v. CARDARELLI ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and vacate the conviction. Reported below: 701 F. 2d 175.

No. 82-106. *GLEN CORP. ET AL. v. O.C. ASSOCIATES ET AL.* C. A. 1st Cir. Motion of Continental Mortgage Investors, Debtor, for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 679 F. 2d 264.

No. 82-125. *CHANCELLOR ET AL. v. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE (BAKER, REAL PARTY IN INTEREST).* Ct. App. Cal., 4th App. Dist. Motion of respondent Mark Jay Baker for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 82-200. *WIDGERY v. UNITED STATES.* C. A. 8th Cir. Motion of petitioner to defer consideration of the peti-

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tion for writ of certiorari denied. Certiorari denied. Reported below: 674 F. 2d 710.

No. 82-5096. QUINCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 414 So. 2d 185.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that capital punishment is unconstitutional under all circumstances, I would grant certiorari and vacate the death sentence on this basis alone. However, even if I believed that the death penalty could constitutionally be imposed under certain circumstances, I would grant certiorari because the decision below undermines a critical premise of this Court's conclusion that Florida's capital sentencing procedures adequately guard against the "arbitrary or capricious" imposition of death sentences. *Proffitt v. Florida*, 428 U. S. 242, 253 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.).

Petitioner pleaded guilty to burglary and felony murder in the first degree. As part of the plea bargain, petitioner waived his right to a sentencing recommendation by a jury and agreed that the sentence would be determined solely by the trial judge. After conducting a sentencing hearing, the judge found three aggravating circumstances and one mitigating circumstance. The judge found as aggravating circumstances that the murder was heinous, that it was committed for pecuniary gain, and that it was committed during the commission of a rape. He found as a mitigating circumstance that "[t]he capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired." Fla. Stat. § 921.141(6)(f) (1981). The judge concluded, however, that this mitigating circumstance was "not entitled to a great deal of weight," and was outweighed by the aggravating circumstances. Accordingly, he imposed the death sentence. Petitioner appealed to the Florida Supreme Court, contending

that the trial court erred in giving too little weight to the mitigating circumstance.

In its decision affirming the death sentence, the Florida Supreme Court declined to make an independent evaluation of the evidence concerning aggravating and mitigating circumstances. The court explained that its statutory duty to review death sentences does not require it to make such an evaluation:

"Our sole concern on evidentiary matters is to determine whether there was sufficient competent evidence in the record from which the judge . . . could properly find the presence of appropriate aggravating or mitigating circumstances. If the findings of aggravating and mitigating circumstances are so supported, . . . and if the death sentence is not disproportionate to others properly sustainable under the statute, the trial court's sentence must be sustained even though, had we been triers and weighers of fact, we might have reached a different result in an independent evaluation.'" 414 So. 2d 185, 187 (1982), quoting *Brown v. Wainwright*, 392 So. 2d 1327, 1331 (Fla.) (footnote omitted), cert. denied, 454 U. S. 1000 (1981).

Applying its deferential standard of review, the court affirmed the death sentence on the ground that "[t]he trial judge was not unreasonable in failing to give great weight" to petitioner's diminished capacity. 414 So. 2d, at 187. In the court's view it was significant that "[t]he trial judge clearly did not ignore every aspect of the medical testimony as the judge did in *Huckaby v. State*, 343 So. 2d 291 (Fla.), cert. denied, 434 U. S. 920 . . . (1977)." *Ibid*.

The decision below undermines a fundamental premise of this Court's decision in *Proffitt v. Florida* upholding Florida's death penalty statute. The Florida statute, which was enacted in response to *Furman v. Georgia*, 408 U. S. 238 (1972), provides for automatic review by the Florida Supreme Court of all death sentences. Fla. Stat. §921.141(4)

(1981). In rejecting a constitutional challenge to the statute, this Court assumed in *Proffitt* that the Florida Supreme Court's obligation to review death sentences encompasses two functions.¹ First, death sentences must be reviewed "to ensure that similar results are reached in similar cases." 428 U. S., at 258 (opinion of Stewart, POWELL, and STEVENS, JJ.); see also *id.*, at 251, 253 (same). In addition,

"the evidence of the aggravating and mitigating circumstances is *reviewed and reweighed* by the Supreme Court of Florida 'to determine *independently* whether the imposition of the ultimate penalty is warranted.' *Songer v. State*, 322 So. 2d 481, 484 (1975). See also *Sullivan v. State*, 303 So. 2d 632, 637 (1974)." *Id.*, at 253 (same) (emphasis added).

On the basis of this understanding of the Florida Supreme Court's duty to review death sentences, this Court concluded that the risk of "arbitrary or capricious" imposition of death sentences was "minimized by Florida's appellate review system." *Ibid.*² The Florida Supreme Court subsequently confirmed this Court's understanding of the standard of review when it stated that its "responsibility [is] to *evaluate anew* the aggravating and mitigating circumstances of the case to determine whether the punishment is appropriate."

¹ Since the statute does not specify the standard of review, the Court relied in *Proffitt* on Florida Supreme Court decisions interpreting and applying the mandatory review provision.

² There can be little doubt that the joint opinion of Justices Stewart, POWELL, and STEVENS placed particular emphasis on the independent evidentiary review performed by the Florida Supreme Court. The opinion stresses that the Florida Supreme Court "has not hesitated to vacate a death sentence when it has determined that the sentence should not have been imposed." 428 U. S., at 253. In one of the cases cited in support of this assertion, *Halliwell v. State*, 323 So. 2d 557, 561 (1975), the Florida Supreme Court stated: "As required by statute, we have *weighed* both the aggravating and the mitigating circumstances as shown in the record, and we conclude that the death penalty is not warranted." (Emphasis added.)

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Harvard v. State, 375 So. 2d 833, 834 (1977) (emphasis added), cert. denied, 441 U. S. 956 (1979).

This is no longer a correct statement of Florida law. The decision below indicates that the Florida Supreme Court now employs a far more restricted standard of review in capital cases. So long as "sufficient competent evidence," 414 So. 2d, at 187, supports the death sentence, the Florida Supreme Court will uphold the sentence even if its "independent evaluation" would "have reached a different result." *Ibid*.

In light of the Florida Supreme Court's abandonment of its previously recognized duty to make an independent determination of whether a death sentence is warranted, the constitutionality of the Florida death penalty statute should be reappraised by this Court. It is simply no longer the case that "evidence of the aggravating and mitigating circumstances is reviewed and reweighed by the Supreme Court of Florida 'to determine independently whether the imposition of the ultimate penalty is warranted.'" 428 U. S., at 253 (opinion of Stewart, POWELL, and STEVENS, JJ.) (citation omitted). Therefore, even if I believed that the death penalty could constitutionally be imposed under certain conditions, I would grant certiorari to decide whether Florida's death penalty statute, as reinterpreted by the Florida Supreme Court, "serves to assure that sentences of death will not be 'wantonly' or 'freakishly' imposed." *Id.*, at 260, quoting *Furman v. Georgia*, *supra*, at 310 (Stewart, J., concurring).

Rehearing Denied

No. 81-202. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ET AL. *v.* CLAIBORNE HARDWARE CO. ET AL., 458 U. S. 886. Motion for leave to file petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 81-5036. ROGERS *v.* NEW YORK, 454 U. S. 898. Motion for leave to file petition for rehearing denied.

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No. 81-1882. *TOWN OF CHINO VALLEY ET AL. v. CITY OF PRESCOTT*, 457 U. S. 1101. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 80-1798. *WOELKE & ROMERO FRAMING, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.*, 456 U. S. 645;

No. 80-1808. *PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.*, 456 U. S. 645;

No. 81-91. *OREGON-COLUMBIA CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.*, 456 U. S. 645;

No. 80-2100. *ROGERS ET AL. v. LODGE ET AL.*, 458 U. S. 613;

No. 80-2134. *FOREMOST INSURANCE CO. ET AL. v. RICHARDSON ET AL.*, 457 U. S. 668; and

No. 81-395. *UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC v. SADLOWSKI ET AL.*, 457 U. S. 102. Petitions for rehearing denied.

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Appeals Dismissed

No. 82-240. *THEOHAROUS v. DEER RUN SHORES PROPERTY OWNERS ASSN., INC.* Appeal from Super. Ct. Conn., Small Claims Sess., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-5204. *WAYLAND v. REGISTRY OF DEEDS, SALEM, ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-245. *JALIFI v. INDUSTRIAL COMMISSION OF ARIZONA ET AL.* Appeal from Ct. App. Ariz. dismissed for want of substantial federal question. JUSTICE WHITE would note

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probable jurisdiction and set case for oral argument. Reported below: 132 Ariz. 233, 644 P. 2d 1319.

No. 82-288. *KLEINER ET AL. v. SANDERSON ET AL.* Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. JUSTICE BLACKMUN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 413 Mich. 96, 321 N. W. 2d 565.

Certiorari Granted—Vacated and Remanded

No. 81-6782. *MACK v. OKLAHOMA.* Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Johnson*, 457 U. S. 537 (1982). Reported below: 641 P. 2d 1122.

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST joins, dissenting.

By its action today, the Court vacates the judgment of the state court and remands this case in light of *United States v. Johnson*, 457 U. S. 537 (1982). Because I believe that *Johnson* is not applicable to the present case, I respectfully dissent.

The petitioner in this case was convicted in Oklahoma state court of robbery with a firearm, Okla. Stat., Tit. 21, §801 (1981). The petitioner did not testify at trial, and his trial counsel orally requested a jury instruction cautioning the jury to draw no inference from petitioner's failure to testify at trial. The instruction was not given. While petitioner's direct appeal to the Oklahoma Court of Criminal Appeals was pending, this Court announced its decision in *Carter v. Kentucky*, 450 U. S. 288 (1981). In *Carter*, we held that a failure to give a requested instruction on a defendant's failure to testify is a violation of the defendant's Fifth Amendment privilege against self-incrimination, made applicable to the States by the Fourteenth Amendment. See *Malloy v. Hogan*, 378 U. S. 1, 6 (1964). The Oklahoma Court of Criminal

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Appeals determined that *Carter* was not to be given retroactive effect. The petitioner now argues that our recent decision in *United States v. Johnson*, *supra*, requires that the Oklahoma judgment be vacated.

In *Johnson*, we were faced with deciding whether *Payton v. New York*, 445 U. S. 573 (1980), was to be applied retroactively to a defendant whose appeal was pending when *Payton* was announced. The majority in *Johnson* decided, as a general proposition, that "a decision of this Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered." 457 U. S., at 562. The Court's opinion in *Johnson* stated that it was intended to "leave undisturbed our precedents in other areas" and "express[ed] no view on the retroactive application of decisions construing any constitutional provision other than the Fourth Amendment." *Ibid.* (footnote omitted). The constitutional violation in this case involves the Fifth Amendment privilege against self-incrimination, which was not covered by the Court's holding in *Johnson*.

I would not extend our holding in *United States v. Johnson* to cases arising under the Fifth Amendment without plenary review and full consideration of the appropriate principles. The court below will be understandably confused by the Court's action in vacating the judgment, and remanding to determine the applicability of a decision that by its explicit terms is restricted to the Fourth Amendment.

I respectfully dissent.

Miscellaneous Orders

No. — — —. *HULL v. CITY OF DUNCANVILLE*. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. — — —. *OKLAHOMA v. CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO.* Motion to direct the Clerk to file the petition for writ of certiorari denied.

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No. A-281. *FILIPAS ET AL. v. LEMONS*. C. A. 6th Cir. Application for further extension of time within which to file a petition for writ of certiorari, presented to JUSTICE O'CONNOR, and by her referred to the Court, is granted and the time for filing a petition for writ of certiorari is extended to and including November 26, 1982.

No. A-283. *MASHPEE TRIBE ET AL. v. WATT, SECRETARY OF THE INTERIOR, ET AL.* D. C. Mass. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-294. *MCDONALD v. BRANIFF AIRWAYS, INC., ET AL.* Bkrcty. Ct. N. D. Tex. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 81-802. *CITY OF LOCKHART v. UNITED STATES ET AL.* D. C. D. C. [Probable jurisdiction noted, 455 U. S. 987.] Motion of the Solicitor General for divided argument denied.

No. 81-1314. *W. R. GRACE & CO. v. LOCAL UNION 759, INTERNATIONAL UNION OF THE UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA*. C. A. 5th Cir. [Certiorari granted, 458 U. S. 1105.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 81-1636. *FLORIDA v. BRADY ET AL.* Sup. Ct. Fla. [Certiorari granted, 456 U. S. 988.] Motion of Western Growers Association for leave to file a brief as *amicus curiae* granted.

No. 81-2101. *PENNHURST STATE SCHOOL AND HOSPITAL ET AL. v. HALDERMAN ET AL.* C. A. 3d Cir. [Certiorari granted, 457 U. S. 1131.] Motion of respondents Halderman et al. to dismiss the writ of certiorari as improvidently granted is denied.

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No. 82-227. PROVIDENCE JOURNAL CO. *v.* HOME PLACEMENT SERVICE, INC., ET AL. C. A. 1st Cir.; and

No. 82-282. MCCAIN ET AL. *v.* LYBRAND ET AL. D. C. S. C. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 82-287. ARIZONA ET AL. *v.* ASH GROVE CEMENT CO. ET AL. C. A. 9th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari granted. Motion of respondents for leave to file typewritten supplemental brief in opposition to petition for writ of certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 82-392. MONEX INTERNATIONAL, LTD., ET AL. *v.* COMMODITY FUTURES TRADING COMMISSION ET AL. C. A. 6th Cir. Motion of petitioners for simultaneous consideration of this case with No. 82-24, *Federal Trade Commission v. Francis Ford, Inc.*, denied.

No. 82-5419. IN RE CONRAD ET AL.; and

No. 82-5420. IN RE CONRAD ET AL. Petitions for writs of habeas corpus denied.

No. 82-88. IN RE RICE. Petition for writ of mandamus denied.

No. 82-5104. IN RE ROBINSON. Petition for writ of mandamus and/or certiorari denied.

No. 82-5240. IN RE DEMOS; and

No. 82-5264. IN RE SIMS. Petitions for writs of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 82-11. MENNONITE BOARD OF MISSIONS *v.* ADAMS. Appeal from Ct. App. Ind. Probable jurisdiction noted. Reported below: 427 N. E. 2d 686.

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Certiorari Granted

No. 81-1843. ILLINOIS *v.* ANDREAS. App. Ct. Ill., 1st Dist. Certiorari granted. Reported below: 100 Ill. App. 3d 396, 426 N. E. 2d 1078.

No. 81-2169. HARING, LIEUTENANT, ARLINGTON COUNTY POLICE DEPARTMENT, ET AL. *v.* PROSISE. C. A. 4th Cir. Certiorari granted. Reported below: 667 F. 2d 1133.

No. 82-52. ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS ET AL. *v.* NORRIS. C. A. 9th Cir. Certiorari granted. Reported below: 671 F. 2d 330.

No. 82-256. MICHIGAN *v.* LONG. Sup. Ct. Mich. Certiorari granted. Reported below: 413 Mich. 461, 320 N. W. 2d 866.

No. 81-2245. NEVADA *v.* UNITED STATES ET AL.;

No. 81-2276. TRUCKEE-CARSON IRRIGATION DISTRICT *v.* UNITED STATES ET AL.; and

No. 82-38. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 649 F. 2d 1286 and 666 F. 2d 351.

No. 81-1985. EDWARD J. DEBARTOLO CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Motion of American Retail Federation for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 662 F. 2d 264.

No. 82-34. AMERICAN PAPER INSTITUTE, INC. *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL.; and

No. 82-226. FEDERAL ENERGY REGULATORY COMMISSION *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE

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O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 219 U. S. App. D. C. 1, 675 F. 2d 1226.

No. 81-6756. TUTEN *v.* UNITED STATES. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 440 A. 2d 1008.

Certiorari Denied. (See also Nos. 82-240, 82-5204, and 82-5104, *supra*.)

No. 81-1784. AMERICAN CYANAMID CO. *v.* OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 137, 671 F. 2d 643.

No. 81-2331. PENNSYLVANIA ET AL. *v.* DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAN AIR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 674 F. 2d 976.

No. 81-2371. AMIS *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 1343.

No. 81-2384. GENERAL LONGSHORE WORKERS, ILA, LOCALS 1418 ET AL. *v.* BENTZ, ACTING REGIONAL DIRECTOR OF THE FIFTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1325.

No. 81-2391. KNAPP *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 299.

No. 81-6462. LOPEZ *v.* FLORIDA PAROLE AND PROBATION COMMISSION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 410 So. 2d 1354.

No. 81-6812. HYDABURG COOPERATIVE ASSN. ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 229 Ct. Cl. 250, 667 F. 2d 64.

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No. 81-6851. *GARRETT v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 627 S. W. 2d 635.

No. 81-6868. *PLATSHORN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 664 F. 2d 971.

No. 81-6936. *PINSON v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 82-54. *MCCABE v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 102.

No. 82-57. *HOBSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 2d 825.

No. 82-59. *BROCK v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 2d 655.

No. 82-72. *WILKINSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 2d 998.

No. 82-74. *ANTELMAN v. DECATALDO, REVENUE AGENT, ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-79. *D'AMBROSIO v. BOARD OF EDUCATION OF THE WARREN HILLS REGIONAL SCHOOL DISTRICT*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-81. *CABLEVISION SYSTEMS DEVELOPMENT CO. ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 2d 737.

No. 82-84. *GENS ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 42, 673 F. 2d 366.

No. 82-87. *PUERTO RICO MARITIME SHIPPING AUTHORITY v. FEDERAL MARITIME COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 13, 678 F. 2d 327.

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No. 82-97. *AMUSEMENT & MUSIC OPERATORS ASSN. v. COPYRIGHT ROYALTY TRIBUNAL ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 1144.

No. 82-103. *RANK ET AL. v. NIMMO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 677 F. 2d 692.

No. 82-109. *ZUCKERMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 699.

No. 82-114. *OLIVA-CANTU v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 82-117. *NUNZIATA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-126. *SOOJIAN ET AL. v. DONALDSON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 712.

No. 82-161. *SHORTBULL v. LOOKING ELK ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 2d 645.

No. 82-162. *HILTON ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 2d 316.

No. 82-191. *WHITE TOOL & MACHINE Co. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari denied. Reported below: 677 F. 2d 528.

No. 82-196. *CIRAMI ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 298.

No. 82-197. *MARESSA v. NEW JERSEY MONTHLY ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 176, 445 A. 2d 376.

No. 82-205. *RESORTS INTERNATIONAL, INC., ET AL. v. NJM ASSOCIATES, DBA NEW JERSEY MONTHLY, ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 212, 445 A. 2d 395.

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No. 82-212. *J. TRUETT PAYNE CO., INC. v. CHRYSLER MOTORS CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 575.

No. 82-214. *CAFFALL BROS. FOREST PRODUCTS, INC. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 517, 678 F. 2d 1071.

No. 82-219. *SECRETARY OF COMMERCE OF PUERTO RICO ET AL. v. VILLANUEVA.* Sup. Ct. P. R. Certiorari denied. Reported below: — P. R. R. —.

No. 82-221. *INNKEEPERS OF NEW CASTLE, INC. v. MALEY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 671 F. 2d 221.

No. 82-230. *POMANOWSKI v. MONMOUTH COUNTY BOARD OF REALTORS ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 306, 446 A. 2d 83.

No. 82-231. *MOTHON v. UNITED STATES ET AL.*; and

No. 82-416. *TWOMBLY, INC. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 685 F. 2d 793.

No. 82-234. *LEE v. SHIELD PETROLEUM CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 178.

No. 82-236. *LOUIS STERNBACH & CO. v. SIROTA ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 566.

No. 82-238. *FLEWALLEN v. FAULKNER.* C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 610.

No. 82-239. *ARTUSO ET AL. v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 873, 449 N. Y. S. 2d 513.

No. 82-248. *NORBERG, TAX ADMINISTRATOR OF RHODE ISLAND v. GEORGE, INC.* Sup. Ct. R. I. Certiorari denied. Reported below: — R. I. —, 444 A. 2d 868.

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No. 82-250. *TRULY v. MADISON GENERAL HOSPITAL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 763.

No. 82-251. *ESTATE OF WRIGHT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 677 F. 2d 53.

No. 82-253. *PHELPS CEMENT PRODUCTS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 295.

No. 82-258. *ARIZONA ET AL. v. MCGRAW-HILL, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 680 F. 2d 5.

No. 82-266. *MICHELIN TIRE CORP. ET AL. v. FALLAW ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 880.

No. 82-269. *POLLARD ET AL. v. CITY OF DETROIT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1222.

No. 82-273. *OLD MOUNTAIN PROPERTIES, LTD. v. APRIL INVESTMENTS, INC.* Sup. Ct. Ala. Certiorari denied. Reported below: 415 So. 2d 1048.

No. 82-275. *MIENER, BY AND THROUGH HER NEXT FRIEND AND PARENT, MIENER v. MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 2d 969.

No. 82-278. *JACKSON v. WASHINGTON MONTHLY CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 115, 675 F. 2d 1340.

No. 82-283. *ANDREWS ET UX. v. DISTRICT OF COLUMBIA.* Ct. App. D. C. Certiorari denied. Reported below: 443 A. 2d 566.

No. 82-286. *OREGON DEPARTMENT OF REVENUE v. PACIFIC FIRST FEDERAL SAVINGS & LOAN ASSN.* Sup. Ct.

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Ore. Certiorari denied. Reported below: 293 Ore. 138, 645 P. 2d 27.

No. 82-291. DOLLAR ELECTRIC CO. *v.* SYNDEVCO, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 688 F. 2d 429.

No. 82-292. CONSULTANTS & ADMINISTRATORS, INC. *v.* ILLINOIS DEPARTMENT OF INSURANCE ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 920, 431 N. E. 2d 1306.

No. 82-296. WHALEN, T/A TOWSON ASSOCIATES LIMITED PARTNERSHIP ET AL. *v.* FORD MOTOR CREDIT CO. C. A. 4th Cir. Certiorari denied. Reported below: 684 F. 2d 272.

No. 82-301. SOLARGEN ELECTRIC MOTOR CAR CORP. ET AL. *v.* GENERAL MOTORS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 297.

No. 82-302. HODGE *v.* SOUTH CAROLINA; and

No. 82-351. MCLEOD *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: No. 82-302, 278 S. C. 110, 292 S. E. 2d 600; No. 82-351, 278 S. C. 112, 293 S. E. 2d 699.

No. 82-304. SONA FOOD PRODUCTS CO. *v.* HAIN PURE FOOD CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 898.

No. 82-306. NORRIS *v.* JACKSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 565.

No. 82-311. BURLINGTON NORTHERN INC. *v.* BUSKIRK. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 414, 431 N. E. 2d 410.

No. 82-361. COLACURCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 82-377. FAIRCLOTH ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 678 F. 2d 1202.

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No. 82-380. *STRAUSS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 886.

No. 82-388. *IPPOLITO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 299.

No. 82-391. *WAXMAN v. CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 819.

No. 82-405. *HAMILTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-406. *AUERBACH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 2d 735.

No. 82-410. *CAWTHON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 252.

No. 82-420. *PATTERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 774.

No. 82-430. *LATTIMORE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 292.

No. 82-5029. *OCHOA-SANCHEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 1283.

No. 82-5033. *PHILSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 82-5045. *JONES v. ARIZONA*. Ct. App. Ariz. Certiorari denied.

No. 82-5059. *J. P. v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 102 Ill. App. 3d 1205, 434 N. E. 2d 1206.

No. 82-5073. *COWLING v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 632 S. W. 2d 367.

No. 82-5085. *REGNER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 677 F. 2d 754.

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No. 82-5108. *PUGH v. JONES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 296.

No. 82-5175. *JOHNSON v. CLAWSON*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 82-5185. *BRYANT v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-5186. *SARACHO v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 82-5190. *WENDT v. MACDOUGALL*. C. A. 9th Cir. Certiorari denied.

No. 82-5194. *CLINGER ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 221.

No. 82-5197. *SERE ET AL. v. GROUP HOSPITALIZATION, INC., ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 443 A. 2d 33.

No. 82-5202. *BORRELLI v. CUYLER*. C. A. 3d Cir. Certiorari denied.

No. 82-5207. *PELCZARSKI v. FRIEDLAND ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-5209. *BUCHANAN v. JEFFERSON COUNTY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 559.

No. 82-5213. *MITCHELL v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 77.

No. 82-5214. *McFALL v. PARKE ET AL.* C. A. 6th Cir. Certiorari denied.

No. 82-5217. *DOWLEARN v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 415 So. 2d 959.

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No. 82-5218. *COLLINS v. CHICAGO BOARD OF EDUCATION*. C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 82-5225. *PENICK v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-5230. *TOSON v. ANDALE CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5231. *WEST v. FINANCIAL CORP.* Sup. Ct. La. Certiorari denied. Reported below: 414 So. 2d 390.

No. 82-5232. *TROP ET AL. v. ORANGE COUNTY MUNICIPAL COURT*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 901.

No. 82-5234. *JOHL v. TOWN OF GROTON ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5235. *STONEMAN v. AURELIUS*. C. A. 9th Cir. Certiorari denied.

No. 82-5241. *DRUMHELLER v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 223 Va. 695, 292 S. E. 2d 602.

No. 82-5244. *HOLSEY v. D'ALESSANDRO, COMMISSIONER, MARYLAND PAROLE BOARD, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 82-5250. *RAJAN v. NEW YORK STATE BOARD OF LAW EXAMINERS*. Ct. App. N. Y. Certiorari denied.

No. 82-5255. *BULLOCK v. NATIONAL RAILROAD ADJUSTMENT BOARD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 821.

No. 82-5259. *JONES v. GARRISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 814.

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No. 82-5262. *CHOW v. SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 441.

No. 82-5263. *MARSHALL v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 82-5265. *SALAHUDDIN v. WRIGHT ET AL.*; and *SALAHUDDIN v. GOLD ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5268. *WOJIE v. FRANCIS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 828.

No. 82-5269. *BLOW ET AL. v. LASCARIS, COMMISSIONER, ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES.* C. A. 2d Cir. Certiorari denied. Reported below: 668 F. 2d 670.

No. 82-5273. *ROSS v. MCLEOD, ATTORNEY GENERAL OF SOUTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 431.

No. 82-5274. *ROBINSON v. MATNEY.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 886.

No. 82-5278. *STUMHOFFER v. ROSS, INDUSTRIAL COMMISSIONER OF NEW YORK.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 82-5294. *DICKINSON v. TEXAS.* Ct. App. Tex., 11th Sup. Jud. Dist. Certiorari denied.

No. 82-5300. *MCCORD v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 849.

No. 82-5311. *LEWINGDON v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 82-5321. *BRASSELL v. CITY OF MONTGOMERY, ALABAMA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 251.

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No. 82-5337. *MITCHELL v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 51 Md. App. 347, 443 A. 2d 651.

No. 82-5338. *DEGIDEO v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 3d Cir. Certiorari denied.

No. 82-5340. *BUTTERY v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 2d 987, 449 N. Y. S. 2d 552.

No. 82-5354. *VESPUCCI v. NEW YORK*. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 82-5355. *DOANE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-5361. *JANOVICH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 1227.

No. 82-5362. *DIXON v. MACDOUGALL*. C. A. 9th Cir. Certiorari denied.

No. 82-5363. *LEWIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 418.

No. 82-5366. *BURKHART v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 682 F. 2d 589.

No. 82-5368. *HOLLY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-5369. *REYES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 421.

No. 82-5381. *REAM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.

No. 82-5390. *MANOS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5393. *MEISNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

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No. 82-5394. BRIONES-GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 417.

No. 82-5396. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 680 F. 2d 731.

No. 81-1798. LARRY V. MUKO, INC. *v.* SOUTHWESTERN PENNSYLVANIA BUILDING & CONSTRUCTION TRADES COUNCIL ET AL. C. A. 3d Cir. Motions of Center on National Labor Policy and Associated Builders & Contractors, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 670 F. 2d 421.

No. 81-1852. MONTANA ET AL. *v.* CROW TRIBE OF INDIANS. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 650 F. 2d 1104 and 665 F. 2d 1390.

No. 81-6966. STOICA *v.* STEWART ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 672 F. 2d 309.

No. 82-61. SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY, MISSOURI, ET AL. *v.* MIENER, BY AND THROUGH HER NEXT FRIEND AND PARENT, MIENER, ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 673 F. 2d 969.

No. 82-5148. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 441 A. 2d 255.

No. 81-2012. ELBY'S BIG BOY OF STEUBENVILLE, INC., ET AL. *v.* FRISCH'S RESTAURANTS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 670 F. 2d 642.

JUSTICE WHITE, dissenting.

One of the questions presented by this case is whether a district court's finding of a likelihood of confusion for pur-

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poses of § 43(a) of the Lanham Act, 15 U. S. C. § 1125(a), is reviewable under the "clearly erroneous" standard, as a question of fact, or *de novo*, as a legal conclusion. Because there is a split in the lower courts on this question, compare *Sun Banks of Florida, Inc. v. Sun Federal Savings & Loan Assn.*, 651 F. 2d 311, 314-315 (CA5 1981) (applying "clearly erroneous" standard); *Squirtco v. Seven-Up Co.*, 628 F. 2d 1086, 1091 (CA8 1980) (same); *Keebler Co. v. Rovira Biscuit Corp.*, 624 F. 2d 366, 377 (CA1 1980) (same), with *Alpha Industries, Inc. v. Alpha Steel Tube & Shapes, Inc.*, 616 F. 2d 440, 443-444 (CA9 1980) (reviewing *de novo* court's conclusion that there was a likelihood of confusion); *Blue Bell, Inc. v. Jaymar-Ruby, Inc.*, 497 F. 2d 433, 435, n. 2 (CA2 1974) (same), I would grant certiorari to resolve the conflict.

No. 81-2027. CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES JOINT APPRENTICESHIP & TRAINING COMMITTEE & TRAINING BOARD *v.* ELDREDGE ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 662 F. 2d 534.

JUSTICE REHNQUIST, dissenting.

This case raises a question of the proper application of Rule 19 of the Federal Rules of Civil Procedure.¹ Because I believe the Court of Appeals seriously misapprehended the import of the Rule, I respectfully dissent.

Petitioner Joint Apprenticeship & Training Committee (JATC) is the board of trustees for the Carpenters Ap-

¹ Rule 19(a) provides in pertinent part:

"A person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring . . . inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

prenticeship and Training Trust Fund for Northern California. The labor-management agreement that created JATC requires it to establish and maintain programs for training apprentices. Respondents, two women who sought unsuccessfully to become carpentry apprentices, sued JATC in the District Court, claiming its selection process discriminates against women in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-2 *et seq.* The District Court set out the facts in detail in its first opinion, 440 F. Supp. 506, 510-514 (ND Cal. 1977).

JATC's program provides four years of classroom instruction for apprentices, who receive on-the-job training from an employer. In theory, applicants can become indentured apprentices in one of two ways. First, they can wait in line at a local JATC office to obtain a place on a referral list. Employers can call the local office, which will refer to them the applicant at the top of the list. Employers are entitled under their collective-bargaining agreements to reject referred applicants "for any reason." If the employer hires the referred applicant, he or she is indentured and thus admitted to the training program.

Second, local JATC offices will give anyone a "hunting license," which enables the holder to hunt for jobs directly from employers. If the applicant obtains a job, he or she is indentured without regard to the referral list. In practice, very few employers use the referral list and virtually all apprentices obtain their jobs through a hunting license.

As the Court of Appeals found, the essence of respondents' amended complaint is that JATC adopted the hunting license system knowing it has a discriminatory effect on women. Respondents claim that employers discriminate against women when hiring applicants with hunting licenses, and that JATC's use of the system therefore violates Title VII. 662 F. 2d 534, 536 (CA9 1981). Respondents sought injunctive relief requiring JATC to adopt some other system. As the District Court noted:

"[Respondents] have not specified the precise system they seek to have instituted, but it is plain that they envision a system requiring an employer who wishes to hire a beginning apprentice to contact the union local and enter a request without naming any individual, whereupon the union would be required to dispatch an applicant selected by the JATC by means of one of a number of non-discriminatory techniques." 440 F. Supp., at 514 (footnote omitted).

The District Court held that the employers are necessary parties under Rule 19(a)(1). It reasoned that any relief it might grant against JATC alone would be ineffective. Although more women might obtain referrals, they would not be any more successful in becoming apprentices. "There is no evidence that the change in referral system sought here will have any effect on the apparent source of the discrimination alleged—the absent employers."² 440 F. Supp., at 521.

Furthermore, the District Court reasoned, employers have a substantial interest in selecting their own apprentices. Even if the court could affect employers' hiring decisions by a decree entered only against petitioner, it would be unfair to do so without affording them an opportunity to contest the allegations. Thus the employers are also necessary parties under Rule 19(a)(2)(i).³ 440 F. Supp., at 522–523.

²The District Court acknowledged that it could order JATC to include women in its classroom programs, but noted that such an order would not help any woman obtain the on-the-job training that is a prerequisite for employment as a journeyman carpenter. "Thus the relief obtained in this lawsuit would serve only to swell the ranks of unemployed apprentices. This surely cannot be the 'complete relief' contemplated by Rule 19(a)." 440 F. Supp., at 520.

See generally *Gilmore v. Kansas City Terminal R. Co.*, 509 F. 2d 48, 52–53 (CA8 1975); *Evans v. Sheraton Park Hotel*, 164 U. S. App. D. C. 86, 90, 503 F. 2d 177, 181 (1974).

³The District Court found the employers' interests were not sufficiently similar to JATC's interests for a decree against JATC to bind the employ-

The District Court applied the balancing process established by Rule 19(b)⁴ and concluded that the employers are indispensable parties. Respondents were unable to join the 4,500 employers, so the District Court dismissed the action without prejudice under Rule 41(b). 83 F. R. D. 136 (ND Cal. 1979).

The Court of Appeals reversed. 662 F. 2d, at 537-538. Although the Court of Appeals claimed "the district court misapprehended the legal inquiry required by rule 19(a)(1)," it did not state what form of inquiry would be appropriate. It believed the court has "both the power and the duty to enjoin" activities that violate Title VII. "[R]elief on plaintiffs' claims against JATC as an entity could be afforded by an injunction against JATC alone." *Id.*, at 537. This seems to mean that since plaintiffs have sought only an injunction against JATC, the District Court can afford the complete relief contemplated by Rule 19(a)(1) by granting only what the plaintiffs seek, regardless of whether the order would have any impact on the discrimination that was apparently the reason for the lawsuit. This approach is hardly the "pragmatic" reasoning this Court commended in *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U. S. 102, 106-107, 116-117, n. 12 (1968).

ers as nonparty participants under Rule 65(d). This ruling was apparently not challenged on appeal.

⁴Rule 19(b) provides:

"If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

Although the Court of Appeals thought there was "no evidence" that "employers would refuse to hire women admitted to the apprentice program pursuant to any judgment that may be entered against JATC," 662 F. 2d, at 537, the substance of respondents' complaint is that *employers* discriminate against women. See 83 F. R. D., at 138. The District Court correctly perceived the dilemma it and respondents faced. If it ordered relief against JATC alone, it could not affect the alleged discriminatory practices. Rule 19(a)(1). If it ordered relief against the employers, it would almost certainly affect their right to select apprentices without affording them an opportunity to rebut the charge that they discriminate. Rule 19(a)(2)(i).⁵

The Court of Appeals sought to avoid the force of this argument by claiming that because the agreement that created JATC grants it "full authority to structure the apprenticeship program and to select the apprentices . . . the employers have by contract ceded to JATC whatever legally protectible interest they may have had in selecting apprentices to be trained." 662 F. 2d, at 538. This is simply not correct. The agreement gives JATC authority only to select persons to refer to employers; an applicant does not become an apprentice and begin the training program until and unless an employer hires him. 440 F. Supp., at 510-512; 83 F. R. D., at 137. And, as noted above, employers have bargained to retain their right to reject any applicant for any reason. Yet the Court of Appeals rather cavalierly found, in a proceeding to which the employers were not parties, that the employers have ceded these rights.

The impropriety of the Court of Appeals' ruling is demonstrated by *General Building Contractors Assn., Inc. v. Pennsylvania*, 458 U. S. 375 (1982), in which we considered a similar apprenticeship system. We held that a district

⁵ See *NLRB v. Doug Neal Management Co.*, 620 F. 2d 1133, 1139-1140 (CA6 1980) (adopting the approach of and quoting extensively from the opinion of the District Court in this case).

court cannot issue an injunction against employers in an employment discrimination case under 42 U. S. C. § 1981 when the employers are not guilty of intentional discrimination. In that case there apparently was no hunting license system, and the discrimination was caused by the JATC and the union, but the bar to an injunction was the same as the bar that will face the District Court on remand in this case: it is improper for a court to act against a person who has not been found to have violated the law.

The Court of Appeals, as if recognizing the unsatisfactory posture of the litigation for providing meaningful adjudication and relief, commented that "on remand it is possible that some employers . . . may move to intervene." 662 F. 2d, at 538. But to secure full participation only by torturing the meaning of Rule 19 to avoid dismissal, in the hopes that the absent parties will then take it upon themselves to protect their interests, is not an appealing basis for the result reached by the Court of Appeals. It is respondents who have sought to affect the hiring practices of some 4,500 employers; it is respondents, and not the absent employers, who should shoulder the responsibility of joining the necessarily affected employers or suffering dismissal of their lawsuit.

If I only disagreed with the Court of Appeals' conclusion, this case would not merit this Court's attention. However, in choosing this approach over the District Court's reasoned, pragmatic path, the Court of Appeals has, I believe, embraced a significant departure from the meaning of Rule 19. Since courts will not, I am confident, begin issuing injunctions against nonparties, the approach of the Court of Appeals will tend to reduce the district courts to issuers of "paper" decrees which neither adjudicate nor, in the end, protect rights." *Schutten v. Shell Oil Co.*, 421 F. 2d 869, 874 (CA5 1970). This is hardly a sound way to expend the energies of overburdened district judges. Furthermore, plaintiffs will be frustrated by their failure to obtain effective relief, but will gain this frustration only after lengthy litigation and the

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attendant inconvenience and expense, instead of reaching the same practical result after relatively brief proceedings. Indeed, the only genuine beneficiaries of the Court of Appeals' approach are attorneys who may be able to collect statutory attorney's fees from defendants on the basis of a legal "success," without having gained anything of practical value for their clients.

Since the Court of Appeals held the employers were not necessary parties, it did not reach the question whether they were also indispensable parties under Rule 19(b). It will thus suffice for me to indicate my agreement with the reasoning of the District Court on this question as well. I would grant the petition for certiorari.

No. 81-2105. MIZELL, WARDEN, VIENNA CORRECTIONAL CENTER *v.* WELSH. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of respondent to strike material in petition denied. Certiorari denied. Reported below: 668 F. 2d 328.

No. 81-2358. AMERICAN NATIONAL BANK *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 652 F. 2d 1176.

No. 81-2407. MISKOVSKY *v.* OKLAHOMA PUBLISHING CO. Sup. Ct. Okla. Certiorari denied. Reported below: 654 P. 2d 587.

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins, dissenting.

In the midst of the 1978 campaign for the Democratic nomination for United States Senator from Oklahoma, petitioner, a candidate for that office, repeated charges made by a second candidate for the office against still a third candidate. As a result of these charges, respondent, publisher of two daily newspapers in Oklahoma City, published three news

stories, an editorial, and an editorial cartoon castigating petitioner for his role in the imbroglio. In the editorial, respondent stated that petitioner "has sunk to a new low in Oklahoma political rhetoric—and for him that takes some doing."

Petitioner brought suit in the Oklahoma state trial court asserting that respondent by these publications had libeled him. Following a trial on the merits, at the close of which the jury was instructed that it must find actual malice under the rule of *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), the jury deliberated for six hours and awarded petitioner \$35,000 actual damages and \$965,000 punitive damages. On appeal to the Supreme Court of Oklahoma, the judgment was reversed by that court.

Whether or not these particular statements in respondent's newspapers were actionable under state and federal constitutional law is not clear to me. What is clear is that the Supreme Court of Oklahoma, apparently feeling itself bound by the decisions of this Court in cases such as *New York Times Co. v. Sullivan*, *supra*, and *Gertz v. Robert Welch, Inc.*, 418 U. S. 323 (1974), said categorically that several of respondent's statements were simply statements of opinion, and that "[a]s opinions they are not statements of fact, and therefore *cannot* be false." 654 P. 2d 587, 593 (1982) (emphasis supplied).

The Supreme Court of Oklahoma also said:

"Like the U. S. Supreme Court, we also, in proper cases, must review the evidence to make certain that constitutional principles have been correctly applied.

The case before us is such an instance." *Id.*, at 591.

From this and similar statements in its decision, it is quite possible to conclude that the Supreme Court of Oklahoma thought that the entire law of defamation, hitherto the province of the States, had been pre-empted by federal constitutional standards. This, of course, is not the case, as we have made clear in *Gertz v. Robert Welch, Inc.*, *supra*, and succeeding cases. If statements in the decision of the Supreme

Court of Oklahoma such as that quoted above with respect to "opinion" not forming the basis of a libel action were applications of Oklahoma law, they would of course present no federal question. But it seems probable to me that the Supreme Court of Oklahoma in discussing the subject was relying on the following dicta in *Gertz v. Robert Welch, Inc.*, *supra*:

"Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Id.*, at 339-340 (footnote omitted).

A respected commentator on the subject has stated with respect to this quotation that "[t]he problem of defamatory opinion was not remotely in issue in *Gertz*, and there is no evidence that the Court was speaking with an awareness of the rich and complex history of the struggle of the common law to deal with this problem." Hill, *Defamation and Privacy Under the First Amendment*, 76 Colum. L. Rev. 1205, 1239 (1976).

Examples of the "rich and complex history" of the common law's effort to deal with the question of opinion are found in an entire chapter headed "Opinion" in R. Sack, *Libel, Slander, and Related Problems* 153-185 (1980). I am confident this Court did not intend to wipe out this "rich and complex history" with the two sentences of dicta in *Gertz* quoted above. The Supreme Court of Oklahoma's statement that opinion was not actionable may fairly be read to suggest that the court felt this result to be compelled by the United States Constitution, rather than merely being a statement of Oklahoma law. Under these circumstances, we have jurisdiction to review the judgment of the Supreme Court of Oklahoma, *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562 (1977), and I would exercise that jurisdiction by granting the petition for certiorari in this case.

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No. 81-6463. *ROMERO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 817.

JUSTICE WHITE, dissenting.

This petition seeks review of the Second Circuit's minimum standard of competence for an attorney to satisfy the Sixth Amendment's requirement that a defendant receive effective assistance of counsel. More than 30 years ago, the Second Circuit formulated what has become known as the "farce and mockery" test: "A lack of effective assistance of counsel must be of such a kind as to shock the conscience of the Court and make the proceedings a farce and mockery of justice." *United States v. Wight*, 176 F. 2d 376, 379 (1949), cert. denied, 338 U. S. 950 (1950). Since that time, every other Federal Court of Appeals has adopted a "reasonable competence" standard or some variation thereof. *United States v. DeCoster*, 159 U. S. App. D. C. 326, 331, 487 F. 2d 1197, 1202 (1973); *United States v. Bosch*, 584 F. 2d 1113, 1121 (CA1 1978); *Moore v. United States*, 432 F. 2d 730, 736 (CA3 1970); *Marzullo v. Maryland*, 561 F. 2d 540, 543 (CA4 1977), cert. denied, 435 U. S. 1011 (1978); *Akridge v. Hopper*, 545 F. 2d 457, 459 (CA5), cert. denied, 431 U. S. 941 (1977); *United States v. Toney*, 527 F. 2d 716, 720 (CA6 1975), cert. denied *sub nom. Pruitt v. United States*, 429 U. S. 838 (1976); *United States ex rel. Williams v. Twomey*, 510 F. 2d 634, 641 (CA7), cert. denied, 423 U. S. 876 (1975); *Reynolds v. Mabry*, 574 F. 2d 978 (CA8 1978); *Cooper v. Fitzharris*, 586 F. 2d 1325, 1328 (CA9 1978), cert. denied, 440 U. S. 974 (1979); *Dyer v. Crisp*, 613 F. 2d 275, 278 (CA10) (en banc), cert. denied, 445 U. S. 945 (1980). Despite the rejection of the "farce and mockery" standard by the rest of the Nation's federal courts, the Second Circuit has remained steadfast in its adherence to the test. Indeed, it has "reaffirmed this standard numerous times." *Rickenbacker v. Warden*, 550 F. 2d 62, 65 (1976) (citing cases).

In this case, a panel of the Second Circuit has applied the "farce and mockery" test in rejecting petitioner's claim that

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he was denied effective assistance of counsel. Petitioner's contention of ineffective assistance is not frivolous. His trial attorney failed to offer exculpatory testimony given at a suppression hearing and failed to call witnesses to testify at trial who exonerated petitioner at the hearing. Perhaps the performance of petitioner's counsel satisfied the more exacting standard that the Court of Appeals has rejected, but there was no holding to that effect, and that question should be answered by the Court of Appeals after the level of minimum competence required by the Sixth Amendment has been determined by this Court. Unfortunately, despite conflicts among the Courts of Appeals, we have long refused to consider whether the "farce and mockery" test satisfies the constitutional imperative of effective assistance of counsel, or to otherwise clearly articulate what level of effectiveness is required by the Constitution. A more fundamental question to the administration of criminal justice in the state and federal courts can scarcely be envisioned. I have previously argued that the Court should review this issue, *Maryland v. Marzullo*, 435 U. S. 1011 (1978) (WHITE, J., joined by REHNQUIST, J., dissenting from the denial of certiorari), and I remain of that view.

I respectfully dissent.

No. 81-6894. *SHAW v. SHAW ET AL.* Ct. App. Tex., 9th Sup. Jud. Dist. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE O'CONNOR would grant certiorari. Reported below: 623 S. W. 2d 148.

No. 81-6942. *BARRY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 673 F. 2d 912.

No. 82-33. *HELEN MINING CO. ET AL. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. D. C. Cir. Motions of American Mining Congress and Cedar Coal Co. et al. for leave to file briefs as *amici curiae* granted. Certiorari de-

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nied. Reported below: 217 U. S. App. D. C. 109, 671 F. 2d 615.

No. 81-6952. *TUCKER v. ZANT, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County;

No. 82-5012. *KING v. TEXAS*. Ct. Crim. App. Tex.;

No. 82-5084. *SPRAGGINS v. ZANT, WARDEN*. Super. Ct. Ga., Butts County;

No. 82-5275. *EDWARDS v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 82-5306. *SHAW v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: No. 82-5012, 631 S. W. 2d 486; No. 82-5275, 413 So. 2d 1007; No. 82-5306, 636 S. W. 2d 667.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 82-48. *CASTORR ET AL. v. BRUNDAGE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 531.

Opinion of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

It is, of course, not possible to explain the reasons supporting every order denying a petition for a writ of certiorari. An occasional explanation, however, may allay the possible concern that this Court is not faithfully performing its responsibilities. Cf. *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912, 917-918 (1950) (opinion of Frankfurter, J., respecting the denial of the petition for writ of certiorari). In this case petitioners request the Court to resolve the conflict among the Circuits on the question whether constitutional claims not actually litigated in earlier state proceedings are barred in a subsequent action under 42 U. S. C. § 1983.

The general phrasing of the issue in the petition reflects the wholly unrealistic assumption that neither the character of the federal constitutional claim¹ nor the character of the earlier state proceeding² can affect its answer.

The case that gives rise to this petition does not squarely conflict with any previous decision. The Sixth Circuit wrote:

"We do not hold that the application of the principles of res judicata and collateral estoppel is mandatory in every case. They are an expression of the policy of federal courts preferring finality, *i. e.*, that litigation at some time must become final. In the face of more important federal policies, however, the preference for fi-

¹ The § 1983 cases petitioners cite to demonstrate a conflict among Circuits range from alleged employment discrimination, *Jennings v. Caddo Parish School Board*, 531 F. 2d 1331 (CA5 1976), to alleged First Amendment violations by a mobile home park owner, *Lovely v. Laliberte*, 498 F. 2d 1261 (CA1), cert. denied, 419 U. S. 1038 (1974), to procedural due process claims arising in different contexts: termination of parental rights, *Robbins v. District Court*, 592 F. 2d 1015 (CA8 1979), conveyance of real property to the city for failure to pay a property assessment, *Scoggin v. Schrunk*, 522 F. 2d 436 (CA9 1975), cert. denied, 423 U. S. 1066 (1976), and discharge from public employment, *Spence v. Latting*, 512 F. 2d 93 (CA10), cert. denied, 423 U. S. 896 (1975). This Court has previously recognized the importance of differing contexts in determining whether negligence would support a § 1983 action. See *Parratt v. Taylor*, 451 U. S. 527, 534 (1981), citing *Baker v. McCollan*, 443 U. S. 137, 139-140 (1979).

² Prior state proceedings involved in cases cited by petitioner include a landlord's action for possession, *Lovely v. Laliberte*, *supra*; a state hearing on termination of parental rights, *Robbins v. District Court*, *supra*; a state action to regain title to property, *Scoggin v. Schrunk*, *supra*; a suit to challenge termination of employment, *Lombard v. Board of Education of New York City*, 502 F. 2d 631 (CA2 1974), cert. denied, 420 U. S. 976 (1975); and a state challenge to the validity of regulations, *New Jersey Education Assn. v. Burke*, 579 F. 2d 764 (CA3), cert. denied, 439 U. S. 894 (1978). Differences in procedures and in standard of review in prior state proceedings in different cases may affect the degree to which federal courts should apply res judicata. Compare *Kremer v. Chemical Construction Corp.*, 456 U. S. 461, 480-485 (1982) (majority opinion), with JUSTICE BLACKMUN's dissenting opinion, *id.*, at 490-493.

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nality might be outweighed by more compelling considerations. We do not foreclose the possibility that certain § 1983 claims might not be barred by res judicata under proper circumstances. We hold only that the facts of this case do not present a proper situation in which to find an exception to the principles of res judicata." 674 F. 2d 531, 536 (1982).

This case, as the Court of Appeals recognized, arises out of a dispute over termination of parental rights, a domestic relations matter in which "the importance of finality is compelling." The record strongly suggests that prolongation of this litigation might have a serious adverse effect on the emotional and physical health of the child. See generally Brief for Guardian Ad Litem in Opposition. Nothing in the petition indicates that the child's interests would be served by this Court's intervention in this family law matter. There does not appear to be any conflict among the Circuits regarding the application of res judicata in challenges to state decisions terminating parental rights. See *Robbins v. District Court*, 592 F. 2d 1015 (CA8 1979) (res judicata bars § 1983 action challenging parental rights termination on constitutional grounds not raised in state-court proceedings). In my judgment it would be an abuse of our discretion to use this case as a vehicle for addressing the somewhat abstract question that is advanced by counsel for the petitioners.

JUSTICE WHITE, dissenting.

In this case brought under 42 U. S. C. § 1983 the Sixth Circuit held that res judicata principles barred the petitioner from presenting a constitutional claim because she had failed to present the claim in previous state litigation. The issue of whether constitutional claims not actually litigated in earlier state proceedings are barred in a subsequent federal suit is of considerable importance to § 1983 litigants and has divided the Federal Courts of Appeals. The First, Fifth, Eighth, Ninth, and Tenth Circuits, and now the Sixth Circuit, have

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held that a § 1983 claimant is precluded by *res judicata* from relitigating not only the issues which were actually decided in the state proceeding, but also the issues which he might have presented. See *Lovely v. Laliberte*, 498 F. 2d 1261 (CA1), cert. denied, 419 U. S. 1038 (1974); *Jennings v. Caddo Parish School Bd.*, 531 F. 2d 1331 (CA5 1976); *Robbins v. District Court*, 592 F. 2d 1015 (CA8 1979); *Scoggin v. Schrunck*, 522 F. 2d 436 (CA9 1975), cert. denied, 423 U. S. 1066 (1976); *Spence v. Latting*, 512 F. 2d 93 (CA10), cert. denied, 423 U. S. 896 (1975). The Second and Third Circuits hold that a litigant is not precluded from asserting later such claims in federal court. See *Lombard v. Board of Ed. of New York City*, 502 F. 2d 631 (CA2 1974), cert. denied, 420 U. S. 976 (1975); *New Jersey Ed. Assn. v. Burke*, 579 F. 2d 764 (CA3), cert. denied, 439 U. S. 894 (1978). This conflict—which has been recognized by petitioners, by respondents, by the court below, and even by this Court, *Allen v. McCurry*, 449 U. S. 90, 97, n. 10 (1980)—should now be resolved. I would grant certiorari.

No. 82-56. *SIMMONS ET AL. v. SEA-LAND SERVICES, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 106.

JUSTICE WHITE, with whom JUSTICE O'CONNOR joins, dissenting.

Under § 33(b) of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1440, as amended, 33 U. S. C. § 933(b), the 6-month period within which an injured longshoreman must commence a third-party negligence action against a shipowner begins upon his "[a]cceptance of . . . compensation under an award in a compensation order." In this case, the Fourth Circuit held that, in effect, this period begins whenever an injured longshoreman accepts a compensation payment from his employer, even if he does not know at that time what his ultimate recovery will be. This approach conflicts with that of the Second Circuit, which has

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held that the 6-month period begins only when the total amount of compensation benefits to be received by the injured worker is fixed, either by order, stipulation of the parties, or informal award. See *Verderame v. Torm Lines, a/s*, 670 F. 2d 5, 7 (CA2 1982). See also *D'Amico v. Cia de Nav. Mar. Netumar*, 677 F. 2d 249 (CA2 1982). I would grant certiorari in order to resolve the conflict.

No. 82-5028. *BUTLER v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 277 S. C. 452, 290 S. E. 2d 1.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

Adhering to my view that capital punishment is unconstitutional under all circumstances, I would grant certiorari and vacate petitioner's death sentence. However, even if I believed that the death penalty could constitutionally be imposed under certain circumstances, I would vacate the death sentence in this case because both the trial court's instructions concerning the standard of proof and the State Supreme Court's standard for reviewing the sufficiency of the evidence failed to assure a reliable sentencing determination.

Following petitioner Horace Butler's conviction for murder, the trial court conducted a separate sentencing proceeding in accordance with South Carolina law, S. C. Code § 16-3-20(B) (Supp. 1981). In order to impose the death penalty, the State was required to prove beyond a reasonable doubt the existence of at least one statutory aggravating circumstance. § 16-3-20(C). The State alleged two aggravating circumstances: that the murder occurred during the commission of a rape and that the murder occurred during the

commission of a kidnaping. See §§ 16-3-20(C)(a)(1)(a) and (c). The trial judge initially stated that he was "extremely dubious" whether the State had presented sufficient evidence of either rape or kidnaping.¹ He subsequently changed his mind concerning the sufficiency of the evidence of rape and submitted that aggravating circumstance to the jury, but he ruled that the evidence of kidnaping did not suffice as a matter of law. The jury then found that the State had established the aggravating circumstance of rape, and sentenced petitioner to death. The South Carolina Supreme Court affirmed the conviction and sentence. 277 S. C. 452, 290 S. E. 2d 1 (1982).

Recognizing the extraordinary consequences of the capital sentencing process, this Court has stressed "the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.) (footnote omitted). See *Lockett v. Ohio*, 438 U. S. 586, 604 (1978) (opinion of BURGER, C. J.). Accordingly, "we have invalidated procedural rules that tended to diminish the reliability of the sentencing determination." *Beck v. Alabama*, 447 U. S. 625, 638 (1980). In this case, errors committed by the trial judge at the sentencing stage and by the State Supreme Court on appeal seriously undermined the reliability of the sentencing determination.

The sentencing court's instructions to the jury concerning reasonable doubt impermissibly lowered the standard of proof required to establish the aggravating circumstance of rape. South Carolina's death penalty statute requires that proof of aggravating circumstances be established beyond a

¹ Petitioner, a Negro, had stated to the police that he had met the white victim on her way home, that she had agreed to accompany him to a secluded area, that she had voluntarily engaged in sexual relations with him, that she had then told him she would claim that he had raped her, and that he had panicked and shot her. There was evidence that the victim had received a blow to the head before being shot.

reasonable doubt. In my view the reasonable-doubt standard is constitutionally mandated. We have previously recognized that a capital sentencing proceeding is in many respects analogous to a trial on the issue of guilt or innocence. *Bullington v. Missouri*, 451 U. S. 430, 438 (1981). Since the death penalty may be imposed only if the State proves at least one aggravating circumstance, an aggravating circumstance is functionally an element of the crime of capital murder and, like any other element of a crime, its existence must be proved beyond a reasonable doubt. *In re Winship*, 397 U. S. 358, 364 (1970). The magnitude of the individual interest at stake in a capital sentencing proceeding requires a standard of proof "designed to exclude as nearly as possible the likelihood of erroneous judgment." *Addington v. Texas*, 441 U. S. 418, 423 (1979).

Here the sentencing judge's instructions significantly undercut the full constitutional protection afforded by the reasonable-doubt standard. The jury was told that reasonable doubt means "a substantial doubt for which an honest person seeking the truth can give a real reason," and is "not a weak or slight doubt, but . . . a serious or strong or substantial well-founded doubt as to the truth of the matters asserted by the state." See 277 S. C., at 458, 290 S. E. 2d, at 4. At a minimum, instructions equating reasonable doubt with "substantial doubt" can confuse the jury about the proper standard of proof. See *Taylor v. Kentucky*, 436 U. S. 478, 488 (1978). When the instructions also define reasonable doubt as a "serious or strong or substantial well-founded doubt," they create a serious danger that the jury may have found the existence of the aggravating circumstance on a lesser showing than "beyond a reasonable doubt."² The danger is

²The term "reasonable doubt" conveys its own "unmistakable meaning," while "the cumulative effect resulting from the reiteration of the same idea by the use of the words and phrases 'well founded doubt,' 'substantial doubt,' and others of like meaning, is well calculated to fritter away

exacerbated when the jurors are told that they must be able to articulate a "real reason" for the substantial doubt. "The ability to give sound reasons for their doubts or their beliefs is not given to many men, and . . . doubts for which [a person] can formulate no convincing reason often induce him to act or to refuse to act." *Pettine v. Territory of New Mexico*, 201 F. 489, 496 (CA8 1912).³

Viewed in their entirety, the instructions substantially reduced the reliability of the jury's finding of the aggravating circumstance of rape. "Such a risk cannot be tolerated in a case in which the defendant's life is at stake." *Beck v. Alabama, supra*, at 637 (discussing failure to give a jury the option of convicting of a lesser included offense).

The errors in the jury instructions were compounded by the South Carolina Supreme Court's failure to ensure the existence of a sufficient evidentiary basis for the jury's determination. South Carolina law requires the State Supreme Court to review all death sentences and to determine whether the evidence supports the jury's finding of the existence of one or more statutory aggravating circumstances. §§ 16-3-25(A) and (C)(2). In this case, the court rejected petitioner's argument that the evidence of rape was insufficient to submit the aggravating circumstance to the jury. The court stated: "Any evidence direct or circumstantial reasonably tending to prove the guilt of the accused creates a jury issue." 277 S. C., at 457, 290 S. E. 2d, at 4 (emphasis in

and destroy all benefit to be derived from this important rule of law." *Frazier v. State*, 117 Tenn. 430, 467, 100 S. W. 94, 103 (1906).

The "substantial doubt" instruction has been widely criticized. *E. g.*, *United States v. Zimeri-Safie*, 585 F. 2d 1318 (CA5 1978); *United States v. Wright*, 542 F. 2d 975 (CA7 1976), cert. denied, 429 U. S. 1073 (1977); *Laird v. State*, 251 Ark. 1074, 476 S. W. 2d 811 (1972); *State v. Thorpe*, — R. I. —, 429 A. 2d 785 (1981).

³ Many courts have disapproved the requirement that a juror be able to articulate a reason for his doubt. *E. g.*, *Dunn v. Perrin*, 570 F. 2d 21 (CA1), cert. denied, 437 U. S. 910 (1978); *Commonwealth v. Robinson*, 382 Mass. 189, 415 N. E. 2d 805 (1981).

original), citing *State v. Hill*, 268 S. C. 390, 234 S. E. 2d 219, cert. denied, 434 U. S. 870 (1977). Applying this standard, the court found sufficient evidence to submit the aggravating circumstance to the jury.

The South Carolina Supreme Court's use of the "any evidence" rule to review death sentences is inconsistent with this Court's decision in *Jackson v. Virginia*, 443 U. S. 307 (1979). *Jackson* established a constitutional standard of review for criminal convictions, holding that due process requires a reviewing court to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt. *Id.*, at 318-319.⁴ We rejected the "no evidence" rule of *Thompson v. Louisville*, 362 U. S. 199 (1960), as "simply inadequate to protect against misapplications of the constitutional standard of reasonable doubt" *Jackson v. Virginia*, 443 U. S., at 320. We noted that while the "no evidence" rule could be satisfied by "[a]ny evidence that is relevant," such a bare showing could not "rationally support a conviction beyond a reasonable doubt." *Ibid.*

The State as respondent does not dispute the applicability of *Jackson*. Instead, it argues that the standard of review utilized by the state court was "equivalent to that required in *Jackson*." Brief in Opposition 6. Indeed, according to the State, "the South Carolina Supreme Court has fully embraced, and in fact anticipated the standard of review required by this Court in *Jackson*." *Ibid.* These assertions are simply inaccurate. The South Carolina Supreme Court's "any evidence" standard is substantively identical to the "no evidence" rule of *Thompson*, and the state court itself has long equated the two formulations. In *State v. Bailey*, 253

⁴ While *Jackson* involved habeas corpus review by a federal court of a state-court conviction, "[t]he implications of *Jackson* are not limited to the habeas corpus context." The Supreme Court, 1978 Term, 93 Harv. L. Rev. 60, 215 (1979). Because the standard outlined in *Jackson* is constitutionally required, state courts are obligated to apply it on direct review.

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S. C. 304, 170 S. E. 2d 376 (1969), the court held that "if there is any evidence which tends to establish the guilt of the defendant on the charges alleged a refusal to direct a verdict of acquittal is not an error of law. . . . There is no such error unless there is a *total failure* of competent evidence as to the charges alleged." *Id.*, at 308-309, 170 S. E. 2d, at 378 (emphasis added). Moreover, the state court continues to apply the equivalent of a "no evidence" rule even after *Jackson*. *E. g.*, *State v. Halyard*, 274 S. C. 397, 400, 264 S. E. 2d 841, 842-843 (1980) ("The rule is that unless there is a failure of competent evidence tending to prove the charge in the indictment, a trial judge should refuse a defendant's motion for a directed verdict of acquittal"); *State v. Tyner*, 273 S. C. 646, 657, 258 S. E. 2d 559, 565 (1979).

In short, the procedures employed at both the trial and appellate levels did not adequately ensure the reliable imposition of the death sentence. Under these circumstances, the death sentence must be vacated.

No. 82-5272. *GENSON v. RIPLEY ET AL.* C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 681 F. 2d 1240.

Assignment Order. (For Court's order assigning THE CHIEF JUSTICE to the Federal Circuit as Circuit Justice, see *ante*, p. II.)

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Appeals Dismissed

No. 82-105. *CALIFORNIA ET AL. v. KEENAN.* Appeal from Sup. Ct. Cal. Motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of substantial federal question. Reported below: 31 Cal. 3d 424, 640 P. 2d 108.

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No. 82-381. BETHLEHEM STEEL CORP. ET AL. *v.* RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY. Appeal from Sup. Ct. R. I. dismissed for want of substantial federal question. Reported below: — R. I. —, 446 A. 2d 752.

Miscellaneous Orders

No. A-299. HAYES *v.* JUSTICES OF THE SUPREME COURT OF NEVADA ET AL. C. A. 9th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-307 (82-477). HERZOG *v.* DAYTON BAR ASSN. ET AL. Sup. Ct. Ohio. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-344 (82-55). CITY OF WEST HELENA, ARKANSAS, ET AL. *v.* PERKINS ET AL., *ante*, p. 801. Application for the issuance of the judgment forthwith, presented to JUSTICE BLACKMUN, and by him referred to the Court, is granted and the judgment is to issue forthwith.

No. D-260. IN RE DISBARMENT OF BUSSEY. Disbarment entered. [For earlier order herein, see 455 U. S. 1012.]

No. D-265. IN RE DISBARMENT OF GRANT. Disbarment entered. [For earlier order herein, see 456 U. S. 956.]

No. D-269. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see 456 U. S. 957.]

No. D-273. IN RE DISBARMENT OF MICUN. Disbarment entered. [For earlier order herein, see 456 U. S. 987.]

No. D-276. IN RE DISBARMENT OF HUBBARD. Disbarment entered. [For earlier order herein, see 457 U. S. 1103.]

No. D-282. IN RE DISBARMENT OF LEVINE. Due to mistaken identity, the Appellate Division of the Supreme Court of New York, First Judicial Department, having two attor-

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neys on its roster with identical names, the rule to show cause is discharged and the order entered September 9, 1982 [458 U. S. 1126], is vacated.

No. D-293. *IN RE DISBARMENT OF DOYLE*. It is ordered that Eugene William Doyle, of San Francisco, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-294. *IN RE DISBARMENT OF WOLFF*. It is ordered that Peter Wolff, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-295. *IN RE DISBARMENT OF MOYER*. It is ordered that J. Hudson Moyer, of Amarillo, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-296. *IN RE DISBARMENT OF COLEMAN*. It is ordered that Frederick L. Coleman, Jr., of Big Spring, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-297. *IN RE DISBARMENT OF JEFFCOAT*. It is ordered that Lynn R. Jeffcoat, of Richardson, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-298. *IN RE DISBARMENT OF BURGER*. It is ordered that George Ralph Burger, of Sandy Springs, Ga., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 8, Orig. *ARIZONA v. CALIFORNIA ET AL.* Joint motion for additional time for oral argument and for divided argument granted, and a total of one and one-half hours allotted for oral argument and no more than two counsel per side shall present oral argument. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, *ante*, p. 811.]

No. 65, Orig. *TEXAS v. NEW MEXICO*. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies to such Exceptions, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 454 U. S. 1076.]

No. 92, Orig. *ARKANSAS v. MISSISSIPPI*. Answer to the Counterclaim referred to the Special Master. [For earlier order herein, see, *e. g.*, 458 U. S. 1122.]

No. 81-395. *UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC v. SADLOWSKI ET AL.*, 457 U. S. 102. Motion of respondents to dispense with taxation of costs denied.

No. 81-460. *MIDDLESEX COUNTY ETHICS COMMITTEE v. GARDEN STATE BAR ASSN. ET AL.*, 457 U. S. 423. Motion of respondents to retax costs denied.

No. 81-746. *CITY OF AKRON v. AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., ET AL.*; and

No. 81-1172. *AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., ET AL. v. CITY OF AKRON ET AL.* C. A. 6th Cir. [Certiorari granted, 456 U. S. 988.] Motion of The Board of Church and Society of the United Methodist Church

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et al. for leave to join the brief, *amicus curiae*, of Certain Religious Organizations denied.

No. 81-878. LARKIN ET AL. *v.* GRENDAL'S DEN, INC. C. A. 1st Cir. [Probable jurisdiction noted, 454 U. S. 1140.] Motion of appellee for leave to file supplemental statement after argument granted.

No. 81-1055. POYTHRESS, SECRETARY OF STATE OF GEORGIA, ET AL. *v.* DUNCAN ET AL. C. A. 11th Cir. [Certiorari granted, 455 U. S. 937.] Oral argument in this case, presently scheduled for November 1, 1982, is hereby postponed and the case of *Federal Election Commission et al. v. National Right to Work Committee et al.*, No. 81-1506 [certiorari granted, 456 U. S. 914], is set for oral argument in its stead.

No. 81-1120. UNITED STATES ET AL. *v.* RYLANDER ET AL. C. A. 9th Cir. [Certiorari granted, 456 U. S. 943.] Motion of respondents for leave to argue points not raised by petitioners denied.

No. 81-1536. COMMISSIONER OF INTERNAL REVENUE *v.* TUFTS ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 960.] Motion of Wayne G. Barnett for leave to file a brief as *amicus curiae* granted.

No. 81-1717. AMERICAN BANK & TRUST CO. ET AL. *v.* DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. *v.* CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. *v.* CHILDS ET AL. Ct. App. Tex., 5th Sup. Jud. Dist. Motion of Texas Association of Appraisal Districts et al. for leave to file a brief as *amici curiae* denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 82-488. IN RE HOPFMANN. Petition for writ of habeas corpus denied.

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Certiorari Granted

No. 81-984. *FIRST NATIONAL CITY BANK v. BANCO PARA EL COMERCIO EXTERIOR DE CUBA*. C. A. 2d Cir. Certiorari granted. Reported below: 658 F. 2d 913.

No. 81-2257. *BILL JOHNSON'S RESTAURANTS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari granted. Reported below: 660 F. 2d 1335.

No. 82-242. *GORSUCH, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY v. SIERRA CLUB ET AL.* C. A. D. C. Cir. Certiorari granted. Reported below: 217 U. S. App. D. C. 180, 672 F. 2d 33, and 221 U. S. App. D. C. 450, 684 F. 2d 972.

Certiorari Denied

No. 81-2242. *SEIBEL v. WHITLEY*. C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 245.

No. 81-2294. *MADONNA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 293.

No. 81-2369. *JOHNSON v. SPALDING ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 669 F. 2d 589.

No. 81-2370. *LASCANO v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 275 Ark. 346, 631 S. W. 2d 258.

No. 81-6704. *ARTIS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 81-6708. *GRIFFIN v. WARDEN, C. C. I., COLUMBIA, SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 277 S. C. 288, 286 S. E. 2d 145.

No. 81-6725. *NELSON v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 101 Ill. App. 3d 1198, 432 N. E. 2d 398.

No. 81-6768. *CART v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 102 Ill. App. 3d 173, 429 N. E. 2d 553.

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No. 81-6872. *MCGAHEE v. MASSEY, SUPERINTENDENT, UNION CORRECTIONAL INSTITUTION*. C. A. 11th Cir. Certiorari denied. Reported below: 667 F. 2d 1357.

No. 81-6929. *AICE v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied.

No. 81-6968. *JONES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 82-60. *DOZIER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 672 F. 2d 531.

No. 82-121. *HAWKINS ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1383.

No. 82-122. *CENTURY AIR FREIGHT, INC. v. CIVIL AERONAUTICS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 84, 679 F. 2d 261.

No. 82-124. *ROSSANO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-166. *ZENITH RADIO CORP. v. UNITED STATES ET AL.* C. C. P. A. Certiorari denied. Reported below: 69 C. C. P. A. (Cust.) 96, 673 F. 2d 1254.

No. 82-213. *CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL UNION NO. 633 OF NEW HAMPSHIRE, ET AL. v. JONES MOTOR Co., INC.* C. A. 1st Cir. Certiorari denied. Reported below: 671 F. 2d 38.

No. 82-305. *FARMERS BANK & TRUST COMPANY OF WINCHESTER, TENNESSEE v. TRANSAMERICA INSURANCE CO.* C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 548.

No. 82-312. *OHIO-SEALY MATTRESS MANUFACTURING CO. ET AL. v. SEALY, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 669 F. 2d 490.

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No. 82-323. *FISHER ET UX. v. WEST VIRGINIA DEPARTMENT OF HIGHWAYS ET AL.* Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 289 S. E. 2d 213.

No. 82-325. *LAWSON v. BURLINGTON INDUSTRIES, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 2d 862.

No. 82-330. *JADAIR, INC. v. WALT KEELER CO., INC.* C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 131.

No. 82-334. *GINTHER-DAVIS CONSTRUCTION CO., INC., ET AL. v. TEXAS COMMERCE BANK NATIONAL ASSN. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 249.

No. 82-336. *STRICKLER ET AL. v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 293 Pa. Super. 605, 435 A. 2d 646.

No. 82-338. *SUN PUBLISHING CO., INC. v. JONES.* Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 12, 292 S. E. 2d 23.

No. 82-340. *GLADSTONE ET AL., DBA ARTHUR YOUNG & CO., ET AL. v. M. BRYCE & ASSOCIATES, INC.* Ct. App. Wis. Certiorari denied. Reported below: 107 Wis. 2d 241, 319 N. W. 2d 907.

No. 82-343. *ROBINSON BUS SERVICE, INC., ET AL. v. WILLETT MOTOR COACH CO. ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 760, 431 N. E. 2d 1190.

No. 82-345. *COOPER, CITY ATTORNEY OF SANTA ANA, CALIFORNIA v. MITCHELL BROTHERS' SANTA ANA THEATER ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 128 Cal. App. 3d 937, 180 Cal. Rptr. 728.

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No. 82-348. *CPC INTERNATIONAL, INC., ET AL. v. GOLDBERG ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 1365.

No. 82-369. *GULF OFFSHORE CO., A DIVISION OF POOL CO. v. MOBIL OIL CORP.* Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 628 S. W. 2d 171.

No. 82-375. *LOUIS N. RITTEN & Co. v. COMMISSIONER OF REVENUE OF MINNESOTA.* Sup. Ct. Minn. Certiorari denied. Reported below: 319 N. W. 2d 421.

No. 82-417. *HOLCOMBE v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 416 So. 2d 1121.

No. 82-421. *LABAR ENTERPRISES, INC., ET AL. v. UNITED STATES;* and

No. 82-431. *LABAR ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-429. *HONICKER v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 84, 679 F. 2d 261.

No. 82-449. *DALY ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 504.

No. 82-454. *PATE ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 2d 776.

No. 82-465. *TAYLOR ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 683 F. 2d 18.

No. 82-514. *MORTON v. PROVIDENCE HOSPITAL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5030. *CHAVIS-EL v. GREER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 82-5115. *LABOW v. MALL.* Sup. Ct. Conn. Certiorari denied.

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No. 82-5126. *VAUGHAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 290.

No. 82-5287. *HOWARD v. OHIO*. Ct. App. Ohio, Greene County. Certiorari denied.

No. 82-5288. *SELLARS v. CITY OF LOS ANGELES, CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 901.

No. 82-5292. *FLOWERS v. FAIR*. C. A. 1st Cir. Certiorari denied. Reported below: 680 F. 2d 261.

No. 82-5293. *JONES v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 941, 451 N. Y. S. 2d 843.

No. 82-5295. *PHEGLEY v. GREER, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 435.

No. 82-5296. *GARY v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 435.

No. 82-5301. *WEINRAUCH v. UNIVERSITY OF THE STATE OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

No. 82-5307. *IN RE GANEY*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 813.

No. 82-5312. *WRIGHT v. EDWARDS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 432.

No. 82-5318. *ANDREWS v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 306 N. C. 144, 291 S. E. 2d 581.

No. 82-5320. *KAUFMAN, AKA OJO v. TEXAS*. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied.

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No. 82-5323. *TREADWAY v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 298 Pa. Super. 640, 445 A. 2d 202.

No. 82-5324. *FARRAKHAN v. MCKESSON CHEMICAL CO.* C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 503.

No. 82-5325. *CROOKS v. CITY OF AKRON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 176.

No. 82-5330. *STANDARD v. REES, WARDEN, KENTUCKY STATE REFORMATORY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 566.

No. 82-5380. *MCCLELLAN v. SMITH, ATTORNEY GENERAL, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 416.

No. 82-5399. *STAGO v. FAUST, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-5402. *WILSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

No. 82-5404. *DI PIETRO ET AL. v. DISTRICT DIRECTOR OF INTERNAL REVENUE*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 813.

No. 82-5406. *LAFFERTY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 503.

No. 82-5412. *TANNENBAUM v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-5414. *MORGAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-5415. *ROMIEH v. REAGAN, PRESIDENT OF THE UNITED STATES, ET AL.* C. A. D. C. Cir. Certiorari denied.

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No. 82-5429. *NOVAK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 1384.

No. 82-5445. *HASSAIN, AKA FLETCHER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 81-2343. *SHOEMAKER, CHIEF, OHIO ADULT PAROLE AUTHORITY v. RILEY*. C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 522.

JUSTICE WHITE, dissenting.

In *Stone v. Powell*, 428 U. S. 465 (1976), the Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.*, at 494. Since then, the Courts of Appeals have divided as to the meaning of the phrase "an opportunity for full and fair litigation." The Fifth Circuit has held that "an opportunity for full and fair litigation" of Fourth Amendment claims is provided if "the processes provided by a state to fully and fairly litigate fourth amendment claims are [not] routinely or systematically applied in such a way as to prevent the actual litigation of fourth amendment claims on their merits." *Williams v. Brown*, 609 F. 2d 216, 220 (1980). The Tenth Circuit has taken the position that the *Stone v. Powell* standard requires a determination that the state court made "at least [a] colorable application of the correct Fourth Amendment constitutional standards." *Gamble v. Oklahoma*, 583 F. 2d 1161, 1165 (1978) (allowing adjudication of Fourth Amendment claim because a controlling United States Supreme Court case was neither recognized nor applied by the state courts). The Third Circuit, as well as the Sixth Circuit in the case below, has held that *Stone v. Powell* does not deprive the federal courts of jurisdiction when "the state provides the process but in fact the defendant is precluded from utilizing it by

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reason of an unconscionable breakdown in that process.” *Boyd v. Mintz*, 631 F. 2d 247, 250 (1980) (quoting *Gates v. Henderson*, 568 F. 2d 830, 840 (CA2 1977) (en banc) (dictum)). The issue is obviously important and recurring. I would grant certiorari to settle it.

No. 81-6773. *KIME ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1318.

JUSTICE BRENNAN, dissenting.

On March 27, 1980, petitioners, Teresa Kime and Donald Bonwell, participated in a peaceful political protest on a public sidewalk in front of the Federal Building in Greensboro, N. C. The stated purposes of the demonstration were to call attention to a planned May Day demonstration and to protest the prosecution of a leader of the political party to which petitioners belonged. During the demonstration, petitioners set fire to a privately owned United States flag.

The United States Attorney filed an information in the United States District Court for the Middle District of North Carolina, charging petitioners with casting contempt on a United States flag by publicly burning it, in violation of 18 U. S. C. § 700. That statute prohibits “*knowingly cast[ing] contempt upon any flag of the United States* by publicly mutilating, defacing, defiling, burning, or trampling upon it” (emphasis added).

Petitioners filed motions to dismiss the information on the ground that § 700 is unconstitutional on its face and as applied to them. The motions were denied after an evidentiary hearing. Petitioners were tried by jury before a United States Magistrate. They were convicted and sentenced to eight months’ imprisonment each. The District Court affirmed the convictions in an unpublished opinion, and the Court of Appeals for the Fourth Circuit affirmed for the reasons stated in the District Court’s opinion (affirmance order reported at 673 F. 2d 1318 (1982)).

I would grant certiorari and set this case for oral argument because I feel sure the Court would be persuaded after full briefing and oral argument that petitioners' convictions violate their First Amendment rights under the principles established in *Spence v. Washington*, 418 U. S. 405 (1974); *Schacht v. United States*, 398 U. S. 58 (1970); *Street v. New York*, 394 U. S. 576 (1969); *United States v. O'Brien*, 391 U. S. 367 (1968); and *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943).

It is not seriously contested that petitioners' action in burning a flag was, at a minimum, expressive conduct "sufficiently imbued with elements of communication to fall within the scope of the First . . . Amendmen[t]," *Spence v. Washington*, 418 U. S., at 409. This Court has repeatedly recognized the communicative connotations of the use of flags, including the United States flag. *Id.*, at 410; *Stromberg v. California*, 283 U. S. 359 (1931). It is likewise clear from the context of petitioners' act that in burning a flag they were making a statement of political protest; here, as in *Spence*, "it would have been difficult for the great majority of citizens to miss the drift of [petitioners'] point." 418 U. S., at 410.¹ Indeed, the Government could hardly contend otherwise. The statute under which petitioners were convicted requires, as an element of the offense, that they "knowingly cast contempt" on the flag by burning it. See *infra*, at 954-956. Thus, if the Government were to contend that petitioners were not engaged in expressive conduct, it would be con-

¹ Petitioners, over their own objection, were forbidden to introduce any evidence or argument at trial as to the purposes of the March 27 demonstration or as to their intent in burning a flag. Indeed, the trial Magistrate refused even to allow petitioners to make an offer of proof for appellate purposes. The Government, however, does not contradict petitioners' statement of their own intent, nor is there any room on the present record to doubt their statements. Certainly the courts below credited petitioners with communicative intent, see n. 2, *infra*.

fessing that petitioners did not commit the crime charged.² Cf., e. g., *Smith v. Goguen*, 415 U. S. 566, 588 (1974) (WHITE, J., concurring in judgment); *id.*, at 593 (REHNQUIST, J., dissenting).

Nor can there be any doubt that the subject matter of petitioners' communication is well within the core of the First Amendment's protection. Nearly four decades ago, this Court held that the First Amendment does not permit a legislature to require a person to show his respect for the flag by saluting it. *West Virginia State Board of Education v. Barnette*, *supra*. The same constitutional principle applies when the legislature, instead of compelling respect for the flag, forbids disrespect. As we said in *Street v. New York*, *supra*:

"We have no doubt that the constitutionally guaranteed 'freedom to be intellectually . . . diverse or even contrary,' and the 'right to differ as to things that touch the

² Besides raising the First Amendment point, petitioners contend that their convictions are infirm because there was no evidence on the record that would show that, by burning the flag, they intended thereby to cast contempt on it. This alleged absence of evidence is compounded, they argue, by the trial Magistrate's refusal to allow them to testify or argue as to their purpose. The District Court, affirming the convictions, rejected this argument, stating that "the Court has difficulty imagining a situation in which someone could burn a flag as a means of doing anything other than casting contempt unless it was done inadvertently or to dispose of a soiled or worn flag." App. to Pet. for Cert. 28. Although I express no opinion on this point in the case's present posture, I suggest that petitioners' contention is not frivolous. The District Court's reasoning amounts to a virtual presumption that petitioners intended to express a contemptuous message about the flag (a crucial element of the offense) based on nothing more than the bare act of burning. Yet one can conceive of other messages that petitioners might have intended to convey. For example, petitioners point out that a person might burn a flag to vilify particular policies with which the flag is identified, rather than to cast contempt on the flag itself. Pet. for Cert. 11. Whether the jury would have accepted this explanation is unknown; petitioners' point is that they were not even allowed to make it.

heart of the existing order,' encompass the freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous." 394 U. S., at 593, quoting *West Virginia State Board of Education v. Barnette*, *supra*, at 641-642.

The only difference between this case and *Street* is that petitioners here communicated their contempt for the flag through expressive conduct rather than through spoken or written words (or through both words and conduct, as in *Street*). The First Amendment standard for government regulations of expressive conduct is the now-familiar four-part test first announced in *United States v. O'Brien*, *supra*, at 377:

"[A] government regulation [of expressive conduct] is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; *if the governmental interest is unrelated to the suppression of free expression*; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." (Emphasis supplied.)

It is the third branch of the *O'Brien* test (here italicized) that is dispositive of this case. The Government suggests only one possible "substantial governmental interest" underlying § 700—"preservation of the flag, not as a mere chattel, but as the 'visible embodiment of the Nation.'" Brief in Opposition 4. Not surprisingly, however, the cases that the Government cites for this proposition all predate our decision in *Spence v. Washington*, *supra*.³ In *Spence*, we expressly *rejected* this alleged governmental interest as a basis for meeting the "unrelated to expression" branch of the *O'Brien*

³ *United States v. Crosson*, 462 F. 2d 96 (CA9), cert. denied, 409 U. S. 1064 (1972); *Joyce v. United States*, 147 U. S. App. D. C. 128, 454 F. 2d 971 (1971), cert. denied, 405 U. S. 969 (1972); *Hoffman v. United States*, 144 U. S. App. D. C. 156, 445 F. 2d 226 (1971).

test. We assumed, *arguendo*, that the State has a valid interest in protecting the integrity of the flag as a national patriotic symbol. Even if that interest exists, we held, such an interest is directly related to expression, at least where it is invoked against one who would use the flag to make a political statement. 418 U. S., at 413-414, and n. 8. There is nothing surprising about that conclusion; it follows from the nature of the alleged governmental interest at stake. The Government has no esthetic or property interest in protecting a mere aggregation of stripes and stars for its own sake; the only basis for a governmental interest (if any) in protecting the flag is precisely the fact that the flag has substantive meaning as a political symbol. Thus, assuming that there is a legitimate interest at stake, it can hardly be said to be one divorced from political expression. Hence, the one governmental interest suggested as support for this statute, and these convictions, is one clearly foreclosed by both precedent and basic First Amendment principles.

The Government attempts to distinguish *Spence* on the ground that the defendant in that case merely displayed a flag in his own window with a peace symbol superimposed, whereas petitioners "contumaciously burned [the flag] in a public place." Brief in Opposition 6, n. 5.⁴ It is true that we noted the absence of physical destruction of the flag in *Spence*, 418 U. S., at 415. Yet that fact does not dispose of the key principle at stake—that any governmental interest in protecting the flag's symbolism is one that cannot pass muster under the third branch of the *O'Brien* test. So long as petitioners were engaged in expressive conduct, and so long as their conduct impaired no *non-speech-related* governmental interest, it is entirely irrelevant what specific physical medium petitioners chose for their expression. See also *Spence, supra*, at 420-421 (REHNQUIST, J., dissenting);

⁴The courts below were not similarly troubled at the need to distinguish *Spence*. On the contrary, they dealt with the case by ignoring it entirely. It is not cited in the opinions of the District Court or Court of Appeals.

Cline v. Rockingham County Superior Court, 502 F. 2d 789 (CA1 1974). Section 700 is neither an arson statute nor a breach-of-the-peace statute; the Government does not and cannot suggest that the statute's prohibition is directed at any interest other than enforcing respect for the flag.⁵

So far I have analyzed this case simply as one governed by *Spence*. But even if that case were somehow distinguishable (on the basis of burning or otherwise), there is an entirely independent reason why the Court, after argument, would be persuaded that § 700 is flagrantly unconstitutional on its face—indeed, a ground much stronger than anything in *Spence*. For § 700 contains an odious feature not shared by the statute in *Spence*.⁶ Section 700 makes it a crime “*knowingly [to] cas[t] contempt upon any flag of the United States by publicly . . . burning . . . it.*” Thus, it is an indispensable element of the offense under § 700 that one intend to engage in political expression—and not just any political expression, but only that espousing a particular, unpopular point of view. This is indeed a narrowly drawn statute; it is drawn so that everything it might possibly prohibit is constitutionally protected expression. This statute is thus different from one that simply outlawed any public burning or mutilation of the flag, regardless of the expressive intent or

⁵In *Spence*, we mentioned four factors important to our decision. First, the flag was privately owned; second, the defendant displayed the flag on private property, so that he committed no trespass or disorderly conduct; third, there was no evidence of breach of the peace; and fourth, the defendant was engaged in communication. 418 U. S., at 408–410. All of those factors are present here as well. Petitioners, unlike *Spence*, made their demonstration on public property, but in both cases there was no suggestion of trespass or disorderly conduct. Petitioners were where they had a right to be, and they were not charged with violating any regulation purporting to regulate use of public areas.

⁶The statute at issue in *Spence*, in fact, was not a flag desecration statute at all, but a so-called “improper use” statute, forbidding the superimposition of any advertising or other extraneous matter onto a flag. Wash. Rev. Code § 9.86.020; see 418 U. S., at 406–407, and n. 1.

nonintent of the actor.⁷ To put it bluntly, one literally cannot violate § 700 *without* espousing unpopular political views.⁸ That is the very definition of a censorship statute.

In *Schacht v. United States*, 398 U. S., at 62–63, this Court unanimously struck down an actor's conviction for the unauthorized wearing of a military uniform. The statute in question contained an exception to the prohibition for theatrical productions—but only those productions that did not tend to discredit the Armed Forces. We held that such a content-based exception constituted impermissible censorship.

The same principle applies in the context of selective flag desecration statutes. In his opinion concurring in the judgment in *Smith v. Goguen*, JUSTICE WHITE succinctly and soundly stated the reasons why such a statute is impermissible:

“To violate the statute in this respect, it is not enough that one ‘treat’ the flag; he must also treat it ‘contemptuously,’ which, in ordinary understanding, is the expression of contempt for the flag. In the case before us, . . . the jury must have found that Goguen not only wore the flag on the seat of his pants but also that the act—and hence Goguen himself—was contemptuous of the flag.

⁷ I do not mean to be read as suggesting that such a statute would be constitutional. On the contrary, it would be invalid for the reasons stated in my discussion of *Spence, supra*. My present point is that even if we had reached the opposite conclusion in *Spence* from the one we stated, there would be an independent fatal flaw in § 700.

⁸ The Government's brief gives the game away when it argues that “‘the legislation was enacted to prohibit the physical act of contemptuously burning a flag, rather than to in any way suppress free speech.’” Brief in Opposition 5, quoting *United States v. Crosson*, 462 F. 2d, at 102. There is no such thing as a “physical act of contemptuously burning a flag.” As JUSTICE REHNQUIST said in *Smith v. Goguen*, 415 U. S. 566, 593 (1974) (dissenting opinion), “I have difficulty seeing how Goguen could be found by a jury to have treated the flag contemptuously by his act and still not to have expressed any idea at all.”

To convict on this basis is to convict not to protect the physical integrity or to protect against acts interfering with the proper use of the flag, but to punish for communicating ideas about the flag unacceptable to the controlling majority in the legislature.

“ . . . It would be difficult . . . to believe that the conviction in *O'Brien* would have been sustained had the statute proscribed only contemptuous burning of draft cards.” 415 U. S., at 588–590 (emphasis supplied; footnote omitted).

See also, *e. g.*, *id.*, at 591 (BLACKMUN, J., dissenting); *id.*, at 597–598 (REHNQUIST, J., dissenting); *Spence v. Washington*, 418 U. S., at 422–423 (REHNQUIST, J., dissenting).

In short, § 700 constitutes overt content-based censorship, pure and simple. Under this statute, one may freely burn, mutilate, or otherwise abuse a flag for any reason in the world, *except* for the purpose of stating a contemptuous political message about the flag and what it stands for. This censorship goes to the heart of what the First Amendment prohibits. Of course, § 700 does not bar petitioners from seeking to express their message by other means; but that is immaterial. It has long been settled that a government may not justify a content-based prohibition by showing that speakers have alternative means of expression.⁹ This statute is unconstitutional on its face. I would grant certiorari because I am confident the Court after argument would reverse these convictions and uphold the vital constitutional principle forbidding government censorship of unpopular political views.

⁹*E. g.*, *Consolidated Edison Co. v. Public Service Comm'n*, 447 U. S. 530, 541, n. 10 (1980), and cases cited.

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No. 82-211. *BORTON v. UNITED PARCEL SERVICE, INC.* C. A. 7th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 679 F. 2d 893.

No. 82-349. *NEW YORK v. WILLETTE.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 87 App. Div. 2d 642, 448 N. Y. S. 2d 210.

No. 82-5109. *RIVERA v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner was arrested on August 13, 1980, after one Francis J. Kelley reported that petitioner had taken his motorcycle from him at knife point earlier that day, along with title to the motorcycle and some cash. On August 26, two weeks later, a Cuyahoga County grand jury handed down a one-count indictment charging petitioner with receiving stolen property. Petitioner appeared on the following September 26, pleaded guilty to the charge, and received a sentence. Then, on October 7, the grand jury returned a second indictment that charged petitioner with receiving stolen property, aggravated robbery, and intimidating a witness. The receiving and aggravated robbery counts were based upon the same theft of Mr. Kelley's belongings for which petitioner had already been convicted. Petitioner moved to dismiss the second indictment on the ground that it violated the Double Jeopardy Clause of the Fifth Amendment as applied to the States under the Fourteenth Amendment. The trial court dismissed the receiving count in the second indictment at the State's request, but overruled petitioner's motion to dismiss the remaining counts.

Petitioner took an interlocutory appeal. With one judge dissenting, the Ohio Court of Appeals, Eighth District, affirmed the trial court's ruling. It held:

"The intimidation and aggravated robbery charges raise no double jeopardy issue. . . . [T]he aggravated robbery count implicates not a duplicate, but an allied offense. . . .

"The allied offense issue will arise only if the defendant is found guilty of aggravated robbery. He may be tried, but cannot be convicted, for both the aggravated robbery and for receiving the stolen property acquired in the theft offense, *Maumee v. Geiger* (1976), 45 Ohio St. 2d 238, 244. Accordingly, the error assigned is without merit." App. to Pet. for Cert. 17-18.

The Ohio Supreme Court overruled petitioner's motion for leave to appeal, and this petition followed.

We have jurisdiction to review final judgments by state courts denying a defendant's pretrial motion to dismiss an indictment on former jeopardy grounds. *Harris v. Washington*, 404 U. S. 55, 56 (1971); see *Abney v. United States*, 431 U. S. 651, 656-661 (1977). I would grant the petition for certiorari and set the case for oral argument. The Double Jeopardy Clause prohibits "a second prosecution for the same offense after conviction," *North Carolina v. Pearce*, 395 U. S. 711, 717 (1969), and I adhere to the view that this prohibition requires States to prosecute in one proceeding "all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Brooks v. Oklahoma*, 456 U. S. 999 (1982) (BRENNAN, J., dissenting from denial of certiorari); *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting from denial of certiorari), and cases cited therein. Petitioner's indictment for aggravated robbery manifestly arose from the selfsame criminal act supporting his earlier conviction for receiving stolen property. None of the exceptions discussed in my opinion in *Ashe v. Swenson*, *supra*, at 453, n. 7, and 455, n. 11, excuse the State's failure to prose-

cute petitioner in a single proceeding.¹ I therefore conclude that trying petitioner on an aggravated robbery charge after he has been convicted and sentenced on the receiving charge violates the Double Jeopardy Clause as applied to the States.²

In addition, any offense that requires proof of all the facts necessary to obtain a conviction for receiving is the "same offense" as receiving for purposes of the Double Jeopardy Clause. See *Illinois v. Vitale*, 447 U. S. 410, 416 (1980); *Brown v. Ohio*, 432 U. S. 161 (1977); cf. *Harris v. Oklahoma*, 433 U. S. 682 (1977). In Ohio, the crime of receiving stolen property is complete if a person retains or disposes of the property of another knowing or having reason to believe that it was acquired through theft. See Ohio Rev. Code Ann. § 2913.51 (1982). Aggravated robbery is defined as the use of a weapon or the infliction of harm in the course of committing, attempting, or fleeing after one of a series of "theft offenses" defined by statute, including receiving stolen goods. See §§ 2911.01, 2913.01(K). Thus, to convict petitioner of aggravated robbery in the current prosecution, the State must prove that he committed a "theft offense." As the court below implicitly recognized, petitioner cannot be retried for receiving stolen goods. See *Illinois v. Vitale*, *supra*. Yet, on the allegations in the indictment now outstanding, the State will be unable to prove that petitioner committed aggravated robbery without proving at the same

¹ Nor does the authority cited by the Ohio Court of Appeals support its holding. It stands merely for the correct proposition that the State could have prosecuted petitioner on both charges at the same time, as long as he was convicted only of one.

² I express no opinion as to the propriety of indicting petitioner for intimidating a witness. The intimidation charge stems from a telephone call petitioner allegedly made shortly after his arrest threatening Mr. Kelley with retribution should he cooperate with the police in prosecuting petitioner. It thus arguably relates to a criminal transaction between petitioner and Mr. Kelley separate from the theft at issue in the receiving and aggravated robbery charges.

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time that he retained or disposed of Mr. Kelley's property with knowledge that it was obtained by theft.³ Since prosecuting petitioner for aggravated robbery will therefore require the State to prove every fact necessary to convict petitioner of receiving stolen goods, a charge on which he has already been convicted, the current prosecution violates the Double Jeopardy Clause. See *Illinois v. Vitale*, *supra*, at 426-428 (STEVENS, J., dissenting).

No. 82-5280. *STRICKLAND v. ZANT*, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Super. Ct. Ga., Butts County; and

No. 82-5305. *HITCHCOCK v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 82-5305, 413 So. 2d 741.

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

³ All but three of the "theft offenses" listed in § 2913.01(K), besides receiving stolen goods itself, are not even arguably relevant to petitioner's crime. For instance, he has not been charged with burglary, tampering with coin machines, impersonating an officer, or corrupting sports events, all of which constitute "theft offenses." The three relevant possibilities are robbery, theft, and unauthorized use. As a matter of law, the only way petitioner could have committed aggravated robbery on the basis of these crimes without also committing the crime of receiving stolen goods would be if he had merely attempted robbery, theft, or unauthorized use, without actually obtaining another's property. But there is no such attempt allegation in this case, and petitioner was in possession of some of the stolen property when he was arrested.

The situation in this case is different from that before the Court in *Illinois v. Vitale*, 447 U. S. 410 (1980). The Court in *Vitale* found that the State might conceivably prove the crime of reckless vehicular manslaughter without resorting to the same facts that had supported Vitale's earlier conviction for failing to reduce speed to avoid a collision, and it allowed the prosecution to proceed subject to a later double jeopardy challenge if the State in fact relied on failure to reduce speed. In this case, the State cannot conceivably convict petitioner of aggravated robbery without proving facts sufficient to obtain a conviction for receiving stolen goods.

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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. 80-1745. *F. W. WOOLWORTH CO. v. TAXATION AND REVENUE DEPARTMENT OF NEW MEXICO*, 458 U. S. 354; and

No. 80-2015. *ASARCO INC. v. IDAHO STATE TAX COMMISSION*, 458 U. S. 307. Motion of Multistate Tax Commission et al. for leave to file a brief as *amici curiae* denied. Petition for rehearing denied.

OCTOBER 28, 1982

Dismissal Under Rule 53

No. 82-483. *ARIZONA ET AL. v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA (KAISER CEMENT & GYPSUM CORP. ET AL., REAL PARTIES IN INTEREST)*. C. A. 9th Cir. Certiorari before judgment dismissed under this Court's Rule 53.

OCTOBER 29, 1982

Miscellaneous Order

No. A-396. *ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS v. O'BRYAN*. Application to vacate the stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE REHNQUIST would grant the application.

NOVEMBER 1, 1982

Affirmed on Appeal

No. 82-360. *BURTON ET AL. v. HOBIE ET AL.* Affirmed on appeal from D. C. M. D. Ala. Reported below: 543 F. Supp. 235.

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Appeals Dismissed

No. 82-139. *JACOBY & MEYERS v. SUPREME COURT OF NEW JERSEY ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. JUSTICE WHITE and JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. JUSTICE POWELL took no part in the consideration or decision of this appeal. Reported below: 89 N. J. 74, 444 A. 2d 1092.

No. 82-309. *SMITH ET AL. v. BRANDT, PRESIDENT, NEW JERSEY STATE BOARD OF EDUCATION, ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 89 N. J. 514, 446 A. 2d 501.

No. 82-347. *WISER v. HUGHES, GOVERNOR OF MARYLAND*; and

No. 82-5360. *ANDREWS v. HUGHES, GOVERNOR OF MARYLAND.* Appeals from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 299 Md. 658, 475 A. 2d 428.

No. 82-402. *DURNING, TRUSTEE v. CITY OF LOUISVILLE ET AL.* Appeal from Ct. App. Ky. dismissed for want of substantial federal question.

No. 82-5372. *MA v. COMMUNITY BANK.* Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 686 F. 2d 459.

No. 82-5376. *LATENDRESSE v. LATENDRESSE.* Appeal from Sup. Ct. N. D. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Reversed and Remanded. (See No. 81-2066, *ante*, p. 4.)

Miscellaneous Orders

No. A-325. *GIFFORD v. UNITED STATES.* Application for bail, addressed to JUSTICE STEVENS and referred to the Court, denied.

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No. A-390. CEPULONIS ET AL. *v.* CONNOLLY ET AL. Application for injunction, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D-285. IN RE DISBARMENT OF GLOECKNER. Disbarment entered. [For earlier order herein, see 458 U. S. 1127.]

No. D-297. IN RE DISBARMENT OF JEFFCOAT. Lynn R. Jeffcoat, of Richardson, Tex., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on October 18, 1982 [*ante*, p. 939], is hereby discharged.

No. 9, Orig. UNITED STATES *v.* LOUISIANA ET AL. Petition of the Special Master, Walter P. Armstrong, Jr., for allowance of interim compensation and expenses, as set forth in the petition filed October 18, 1982, is granted, and it is ordered that the United States bear one-half the costs and the States of Mississippi and Alabama each bear one-quarter of the costs. JUSTICE MARSHALL took no part in the consideration or decision of this petition. [For earlier order herein, see, *e. g.*, 457 U. S. 1115.]

No. 88, Orig. CALIFORNIA *v.* TEXAS ET AL. It is ordered that the Honorable Wade H. McCree, Jr., of Ann Arbor, Mich., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his technical, stenographic, clerical, and legal assistants, the cost of printing his report, and all other proper expenses shall be charged against and be

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borne by the parties in such proportion as the Court may hereafter direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of the Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein.

The notice of dismissal of certain defendants is referred to the Special Master. [For earlier order herein, see, *e. g.*, 458 U. S. 1131.]

No. 81-3. BOB JONES UNIVERSITY *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, 454 U. S. 892.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 81-920. VERLINDEN B. V. *v.* CENTRAL BANK OF NIGERIA. C. A. 2d Cir. [Certiorari granted, 454 U. S. 1140.] Stephen N. Shulman, Esquire, of Washington, D. C., a member of the Bar of this Court, is invited to argue this case as *amicus curiae* in support of the judgment below.

No. 81-1320. KOLENDER, CHIEF OF POLICE OF SAN DIEGO, ET AL. *v.* LAWSON. C. A. 9th Cir. [Probable jurisdiction noted, 455 U. S. 999.] Treating appellee's letter of October 19, 1982, as a motion for leave to present oral argument *pro se*, the motion is denied. Mark D. Rosenbaum, Esquire, of Los Angeles, Cal., a member of the Bar of this Court, is invited to argue this case as *amicus curiae* in support of the judgment below.

No. 81-1493. GILLETTE CO. *v.* MINER. Sup. Ct. Ill. [Certiorari granted, 456 U. S. 914.] Motion of Consumer Coalition for leave to participate in oral argument as *amicus curiae* denied.

No. 81-1893. CALIFORNIA *v.* RAMOS. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 821.] Motion for appointment of counsel granted, and it is ordered that Ezra Hendon, Es-

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quire, of San Francisco, Cal., be appointed to serve as counsel for respondent in this case.

No. 81-1618. WEYERHAEUSER CO. ET AL. *v.* LYMAN LAMB CO. ET AL.; and

No. 81-1619. GEORGIA-PACIFIC CORP. *v.* LYMAN LAMB CO. ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 971.] Motion of Alaska et al. for leave to participate in oral argument as *amici curiae* and for additional time for oral argument denied. Motion of National Lumber & Building Material Dealers Association for leave to file a brief as *amicus curiae* granted. JUSTICE WHITE took no part in the consideration or decision of these motions.

No. 82-233. BROOKS ET AL. *v.* WINTER, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 82-413. WINTER, GOVERNOR OF MISSISSIPPI, ET AL. *v.* BROOKS ET AL. D. C. N. D. Miss. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 82-610 (A-388). IN RE HOPFMANN ET AL. Motion of petitioner to expedite consideration of the petition for writ of prohibition and/or mandamus and/or injunction denied. Application for stay, addressed to JUSTICE POWELL and referred to the Court, denied.

No. 82-5358. IN RE PENA-PEREZ. Petition for writ of mandamus denied.

Certiorari Granted

No. 82-25. JONES, A MINOR CHILD, BY HIS MOTHER AND NEXT FRIEND, JONES, ET AL. *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari granted. Reported below: 668 F. 2d 755.

No. 82-91. IMMIGRATION AND NATURALIZATION SERVICE *v.* PHINPATHYA. C. A. 9th Cir. Certiorari granted. Reported below: 673 F. 2d 1013.

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No. 82-401. RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA *v.* REHNER. C. A. 9th Cir. Certiorari granted. Reported below: 678 F. 2d 1340.

No. 81-1717. AMERICAN BANK & TRUST CO. ET AL. *v.* DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. *v.* CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. *v.* CHILDS ET AL. Ct. App. Tex., 5th Sup. Jud. Dist. Motions of American Bankers Association and Dale National Bank for leave to file briefs as *amici curiae* granted. Certiorari granted limited to Question 1 presented by the petition. JUSTICE O'CONNOR took no part in the consideration or decision of these motions and this petition. Reported below: 615 S. W. 2d 810 (second case).

No. 81-1857. OREGON *v.* BRADSHAW. Ct. App. Ore. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 54 Ore. App. 949, 636 P. 2d 1011.

No. 81-2399. METROPOLITAN EDISON CO. ET AL. *v.* PEOPLE AGAINST NUCLEAR ENERGY ET AL.; and

No. 82-358. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. *v.* PEOPLE AGAINST NUCLEAR ENERGY ET AL. C. A. D. C. Cir. Motions of Atomic Industrial Forum, American Mining Congress, and Chamber of Commerce of the United States for leave to file briefs as *amici curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 219 U. S. App. D. C. 358, 678 F. 2d 222.

No. 82-23. MARSH, NEBRASKA STATE TREASURER, ET AL. *v.* CHAMBERS. C. A. 8th Cir. Certiorari granted limited to Question 4 presented by the petition. Reported below: 675 F. 2d 228.

No. 82-167. CHAPPELL ET AL. *v.* WALLACE ET AL. C. A. 9th Cir. Motion of respondents Vernon Wallace et al.

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for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 661 F. 2d 729.

No. 82-185. BOSTON FIREFIGHTERS UNION, LOCAL 718 v. BOSTON CHAPTER, NAACP, ET AL.;

No. 82-246. BOSTON POLICE PATROLMEN'S ASSN., INC. v. CASTRO ET AL.; and

No. 82-259. BEECHER ET AL. v. BOSTON CHAPTER, NAACP, ET AL. C. A. 1st Cir. Motion of International Association of Fire Fighters, AFL-CIO, for leave to file a brief as *amicus curiae* in No. 82-185 granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 679 F. 2d 965.

Certiorari Denied. (See also Nos. 82-5372 and 82-5376, *supra.*)

No. 81-2026. UNCLE BEN'S, INC. v. JOHNSON. C. A. 5th Cir. Certiorari denied. Reported below: 657 F. 2d 750.

No. 81-2195. KINSEL v. WOLFE. Dist. Ct. Hot Springs County, Wyo. Certiorari denied.

No. 81-2258. HELLENIC LINES LTD. v. INCORVAIA. C. A. 2d Cir. Certiorari denied. Reported below: 668 F. 2d 650.

No. 81-2275. CARDIN v. DE LA CRUZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 2d 363.

No. 81-2280. CALLAWAY v. WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 106 Wis. 2d 503, 317 N. W. 2d 428.

No. 81-2303. FABERGE, INC. v. CHESEBROUGH-POND'S, INC. C. A. 9th Cir. Certiorari denied. Reported below: 666 F. 2d 393.

No. 81-2349. JAPAN LINE, LTD. v. TURNER ET AL.; and
No. 82-99. PHILIPPINE PRESIDENT LINES, INC., MANILA v. TURNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 651 F. 2d 1300.

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No. 81-2404. *GOLD BONDHOLDERS PROTECTIVE COUNCIL, INC. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 307, 676 F. 2d 643.

No. 81-6823. *MINOR v. TEXAS*. Ct. App. Tex., 8th Sup. Jud. Dist. Certiorari denied. Reported below: 624 S. W. 2d 702.

No. 81-6838. *HICKS v. NIX, WARDEN, IOWA STATE PENITENTIARY*. C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 255.

No. 81-6849. *ALVAREZ v. WAINWRIGHT*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 81-6853. *STAPLES v. ISRAEL*. C. A. 7th Cir. Certiorari denied.

No. 81-6858. *DANIELS v. MAGGIO, WARDEN, ANGOLA STATE PENITENTIARY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 2d 1075.

No. 81-6903. *HARRELL v. JAGO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1219.

No. 81-6904. *ANONYMOUS v. O'BRIEN ET AL.* C. A. 1st Cir. Certiorari denied.

No. 81-6948. *VELASQUEZ v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 81-6974. *WEDDLE v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 51 Md. App. 756.

No. 82-62. *DAVIS CO. v. UNITED FURNITURE WORKERS OF AMERICA, AFL-CIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 557.

No. 82-80. *KING v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 82-141. *JACOBO MARTI & SONS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 975.

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No. 82-152. *HALL v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 51 Md. App. 745.

No. 82-187. *LUJAN v. UNITED STATES DEPARTMENT OF THE INTERIOR ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 2d 1165.

No. 82-204. *ORDERS ET AL. v. STOTTS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 2d 579.

No. 82-222. *1616 REMINC LIMITED PARTNERSHIP v. UNITED STATES ELEVATOR CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 816.

No. 82-237. *MONTANA EX REL. INTAKE WATER CO. v. BOARD OF NATURAL RESOURCES AND CONSERVATION OF MONTANA ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: 197 Mont. 482, 645 P. 2d 383.

No. 82-254. *HOSPITALITY MOTOR INN, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 6th Cir. Certiorari denied. Reported below: 667 F. 2d 562.

No. 82-274. *PENNSYLVANIA ET AL. v. DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAN AIR ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 678 F. 2d 470.

No. 82-310. *SKIPPY, INC. v. CPC INTERNATIONAL, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 674 F. 2d 209.

No. 82-316. *COSTANTINI, DBA UNITED TRAVEL SERVICE ET AL. v. CIVIL AERONAUTICS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 896.

No. 82-350. *DARVILLE ET AL. v. TEXACO, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 2d 443.

No. 82-359. *INUPIAT COMMUNITY OF THE ARCTIC SLOPE v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 647, 680 F. 2d 122.

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No. 82-363. *BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL 70 v. CALIFORNIA TRUCKING ASSN. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 1275.

No. 82-364. *NEUMAIER v. ANIMAL MATTERS HEARING BOARD.* Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 82-366. *LOUISIANA v. WALGAMOTTE.* Sup. Ct. La. Certiorari denied. Reported below: 415 So. 2d 205.

No. 82-367. *MILLER, TRUSTEE IN BANKRUPTCY v. HAYNES.* C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 718.

No. 82-371. *BEHAR v. SOUTHEAST BANK TRUST CO., N.A., PERSONAL REPRESENTATIVE OF THE ESTATE OF BEHAR.* C. A. 11th Cir. Certiorari denied.

No. 82-373. *LAZZARA v. PLAINTIFF'S LEGAL COMMITTEE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 249.

No. 82-379. *COASTAL PETROLEUM CO. v. MOBIL OIL CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 419.

No. 82-382. *ROBINSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 675 F. 2d 774.

No. 82-385. *O'BANNON, SECRETARY OF PUBLIC WELFARE OF PENNSYLVANIA, ET AL. v. SHADIS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 685 F. 2d 824.

No. 82-387. *CONROD v. JEEP CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 175.

No. 82-389. *LEASURE v. CONNOR.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 819.

No. 82-390. *BAILEY ET AL. v. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.* Sup. Jud. Ct. Mass.

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Certiorari denied. Reported below: 386 Mass. 367, 436 N. E. 2d 139.

No. 82-394. *BELLASSAI ET AL. v. MCAVOY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 558.

No. 82-395. *DILL ET AL. v. DAVIES NITRATE CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 709.

No. 82-400. *KARAPINKA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 82-403. *COUGAR BUSINESS OWNERS ASSN. ET AL. v. WASHINGTON ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 466, 647 P. 2d 481.

No. 82-407. *KATZMAN v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 297 Pa. Super. 612, 442 A. 2d 336.

No. 82-408. *GEORGIA RESIDENTIAL FINANCE AUTHORITY ET AL. v. JEFFRIES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 919.

No. 82-415. *ROBINSON v. MAGOVERN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-419. *OWENS-ILLINOIS, INC. v. WILLIAMS ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 665 F. 2d 918.

No. 82-433. *LINMARK ASSOCIATES, INC. v. ROBERT E. LIPSCHUTZ ASSOCIATES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-436. *IRWIN v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 415 So. 2d 1181.

No. 82-443. *JOHNSON & SON ERECTORS CO. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 753.

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No. 82-457. *VIESTENZ v. FLEMING COS., INC.* C. A. 10th Cir. Certiorari denied. Reported below: 681 F. 2d 699.

No. 82-464. *COLEMAN v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 923.

No. 82-484. *ALBAUGH v. WOOD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 883.

No. 82-487. *STULBACH v. UNITED STATES PATENT AND TRADEMARK OFFICE.* C. C. P. A. Certiorari denied. Reported below: 681 F. 2d 823.

No. 82-506. *SAFIR v. LEWIS, SECRETARY OF TRANSPORTATION, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-522. *KOVIC v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 2d 512.

No. 82-535. *FRENCH v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 1189.

No. 82-544. *TRAYNOR v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.

No. 82-547. *JANSSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-553. *SCOTT ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 2d 603.

No. 82-559. *DEVITO v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 56 N. Y. 2d 846, 438 N. E. 2d 874.

No. 82-560. *KANELOPOULOS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 871.

No. 82-562. *GIBSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 2d 825.

No. 82-569. *PEDERSEN ET UX. v. SOUTH WILLIAMSPORT AREA SCHOOL DISTRICT ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 677 F. 2d 312.

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No. 82-570. *HIRSH v. MARTINDALE-HUBBELL, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 674 F. 2d 1343.

No. 82-5010. *BIZZARD v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 2d 1382.

No. 82-5080. *GAVIN v. ANDERSON, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 561.

No. 82-5092. *HADDIX v. OHIO LIQUOR CONTROL COMMISSION.* Sup. Ct. Ohio. Certiorari denied.

No. 82-5129. *VANN v. HARDING.* C. A. 2d Cir. Certiorari denied. Reported below: 698 F. 2d 301.

No. 82-5133. *PILCHER v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 2d 875.

No. 82-5139. *MUCCI v. UNITED STATES;* and

No. 82-5181. *BENDIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 561.

No. 82-5177. *CELESTINE v. CROWN CENTER HOTEL.* C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 438.

No. 82-5237. *MURR v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 246.

No. 82-5284. *SMOKES v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 827.

No. 82-5329. *MILLER v. MILLER.* Ct. App. Ohio, Sandusky County. Certiorari denied.

No. 82-5333. *GUMSEY v. CRAWFORD.* C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 2d 666.

No. 82-5334. *AIKEN v. CITIZENS & SOUTHERN BANK OF COBB COUNTY.* Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 481, 291 S. E. 2d 717.

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No. 82-5336. *PATRICK ET UX. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 1343.

No. 82-5342. *HAYES v. CREDIT BUREAU OF GEORGIA, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 881.

No. 82-5343. *GRAHAM v. MARSHALL*. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 177.

No. 82-5344. *MALLOY v. SULLIVAN*. Sup. Ct. Ala. Certiorari denied. Reported below: 415 So. 2d 1059.

No. 82-5345. *NOONE v. PETTINATO*. Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 82-5349. *CRAFT v. CHOATE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-5351. *BENARD v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-5357. *GRANT v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 55 Ore. App. 741, 643 P. 2d 421.

No. 82-5359. *RUSSELL v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 416 So. 2d 1283.

No. 82-5364. *ROYSTER v. FEDERAL BUREAU OF INVESTIGATION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5365. *CROMARTIE v. MACK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 879.

No. 82-5367. *MAGGARD v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 411 So. 2d 200.

No. 82-5370. *WILLIAMS v. BANK OF NOVA SCOTIA*. C. A. 3d Cir. Certiorari denied.

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No. 82-5377. *DAVIS v. GREER, WARDEN, MENARD CORRECTIONAL CENTER, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 675 F. 2d 141.

No. 82-5379. *LOPES v. HOWARD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 822.

No. 82-5383. *WALKER v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 434, 637 S. W. 2d 528.

No. 82-5384. *NOWELS v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 56 Ore. App. 396, 643 P. 2d 424.

No. 82-5385. *PHILLIPS v. DUCKWORTH, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 841.

No. 82-5386. *RESPRES v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 731, 293 S. E. 2d 319.

No. 82-5387. *MEDLIN v. MANN.* Super. Ct. Alaska, 1st Jud. Dist. Certiorari denied.

No. 82-5389. *WATSON v. DEFANCES.* C. A. 11th Cir. Certiorari denied.

No. 82-5391. *WASSON v. ENGLE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 569.

No. 82-5397. *ABBITT v. JORDAN; and ABBITT v. SAIED.* C. A. 10th Cir. Certiorari denied.

No. 82-5400. *SANCHEZ ET AL. v. EGGER, COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied.

No. 82-5424. *GROOMS ET AL. v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 435.

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No. 82-5439. *MCCARTY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 82-5451. *HALL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-5455. *YATES v. MEDICAL COLLEGE OF PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 811.

No. 82-5477. *HAMILTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 380.

No. 82-5481. *LEWIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 508.

No. 82-5485. *POLANSKY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 491.

No. 81-1591. *CHASE MANHATTAN BANK, N.A. v. VISHIPCO LINE ET AL.* C. A. 2d Cir. Motions of New York Clearing House Association and Federal Reserve Bank of New York for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE WHITE and JUSTICE POWELL would grant certiorari. Reported below: 660 F. 2d 854.

No. 81-2249. *SUMNER, WARDEN, SAN QUENTIN PRISON v. MAXWELL*. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 673 F. 2d 1031.

No. 81-2273. *CAMINITA v. LOUISIANA*. Sup. Ct. La. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 411 So. 2d 13.

No. 82-181. *PELTZMAN v. FEDERAL MARITIME COMMISSION ET AL.* C. A. D. C. Cir. Motion of petitioner for leave to proceed as a seaman granted. Certiorari denied.

No. 82-207. *EASTSIDE MENTAL HEALTH CENTER, INC. v. WILLIAMS*. C. A. 11th Cir. Motion of respondent for

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leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 669 F. 2d 671.

No. 81-2406. CITY OF POLSON, MONTANA *v.* CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, ET AL.; and

No. 82-22. NAMEN ET AL. *v.* CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 665 F. 2d 951.

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins, dissenting.

In deciding these cases, the Court of Appeals for the Ninth Circuit held that (1) the historic Flathead Reservation was not terminated by an Act of Congress in 1904; (2) by virtue of the Treaty of Hell Gate the title to the bed and banks of the south half of Flathead Lake, a large inland lake in northwestern Montana, was retained by the United States as trustee for respondent Tribes, rather than passing to the State of Montana at the time the latter was admitted to the Union; and (3) respondent Tribes have the authority to regulate the riparian rights of non-Indian owners of land abutting Flathead Lake. In my opinion, the decision of the Court of Appeals with respect to the "termination" issue was based on principles derived from cases such as *Rosebud Sioux Tribe v. Kneip*, 430 U. S. 584 (1977), *DeCoteau v. District County Court*, 420 U. S. 425 (1975), and *Mattz v. Arnett*, 412 U. S. 481 (1973), and does not warrant review here. With respect to the "ownership" issue and the "regulatory" issue, as they were described by the Court of Appeals, however, I believe there is reason to think that the Court of Appeals incorrectly applied our decisions in *Montana v. United States*, 450 U. S. 544 (1981), *Oliphant v. Suquamish Indian Tribe*, 435 U. S. 191 (1978), and *United States v. Wheeler*, 435 U. S. 313 (1978), and I would grant certiorari to review these determinations.

The "ownership" issue. This requires deciding who owns the southern half of the bed and banks of Flathead Lake. The Court of Appeals relied on its own decision 40 years ago in *Montana Power Co. v. Rochester*, 127 F. 2d 189 (1942). Petitioners contended in the Court of Appeals that *Rochester* had been significantly undercut by our decision in *Montana v. United States, supra*, where we held that the treaty establishing the Crow Indian Reservation had not conveyed to the Indians beneficial ownership of the bed of the Big Horn River flowing through the Reservation. The Court of Appeals advanced several factual distinctions between the execution of the treaty in *Montana* and the execution of the Treaty of Hell Gate involved in these cases. But the Court of Appeals apparently also disagreed with a portion of this Court's reasoning in *Montana*. In its opinion, the Court of Appeals stated:

"The *Montana* Court emphasized that 'Congress was, of course, aware of this presumption once it was established by this Court.' [Citation omitted.] There is no evidence, however, that the presumption against pre-statehood federal grants of land under navigable waters had been established at the time the Hell Gate Treaty was negotiated and ratified. The earliest statement of the presumption appeared seven decades later. . . ." 665 F. 2d 951, 961, n. 27 (1982).

While this may be a proper statement of the chronology, it would surely be as applicable to the Crow Treaty involved in *Montana* as to the Treaty of Hell Gate involved in this case.

It would appear that the Court of Appeals decision in *Rochester, supra*, was a dispute between a licensee under the Federal Power Commission which had built a dam at the outlet of Flathead Lake and a non-Indian owner of patented land. But the *Rochester* court did not even purport to discuss the principle laid down in *United States v. Holt State Bank*, 270 U. S. 49 (1926), and reaffirmed in *Montana, supra*, that there is no conveyance of ownership where there

is nothing in a treaty "which even approaches a grant of rights in lands underlying navigable waters; nor anything evincing a purpose to depart from the established policy . . . of treating such lands as held for the benefit of the future State." *United States v. Holt State Bank, supra*, at 58-59, quoted in *Montana v. United States, supra*, at 552-553.

While it may be understandable why the Court of Appeals treated its decision in *Rochester* as *stare decisis* in these cases, the same is obviously not true so far as this Court is concerned. Because after *Montana* there is substantial doubt as to whether the Court of Appeals reached the right conclusion on the "ownership" issue, I would grant certiorari to review its judgment on that point.

The "regulatory" issue. The Court of Appeals also decided that a tribal ordinance regulating the riparian rights of owners of fee lands abutting Flathead Lake could be applied to non-Indian owners. The Court of Appeals saw, perhaps quite rightly, conflicting indications from our decisions in *Montana v. United States, supra*, *Oliphant v. Suquamish Indian Tribe, supra*, and *United States v. Wheeler, supra*, on the one hand, and *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U. S. 134 (1980), on the other hand.

In *Oliphant, supra*, we acknowledged that Indian tribes retain elements of "quasi-sovereign" authority after ceding their lands to the United States, but went on to observe:

"The tribes' retained powers are not such that they are limited only by specific restrictions in treaties or congressional enactments. As the Court of Appeals recognized, Indian tribes are prohibited from exercising both those powers of autonomous states that are expressly terminated by Congress and those powers 'inconsistent with their status.'" 435 U. S., at 208.

In *Wheeler, supra*, we further observed that "[t]he areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an

Indian tribe and nonmembers of the tribe." 435 U. S., at 326.

The Court of Appeals saw an inconsistency between these statements and the statement contained in *Washington v. Confederated Tribes, supra*, that "[t]ribal powers are not implicitly divested by virtue of the tribe's dependent status." 447 U. S., at 153. But the Court of Appeals also recognized that the most recently decided of these cases, *Montana v. United States, supra*, cited *Wheeler* with complete approval. In *Montana*, we went on to say:

"Thus, in addition to the power to punish tribal offenders, the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. [Citation omitted.] But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation. [Citations omitted.] Since regulation of hunting and fishing by nonmembers of a tribe on lands no longer owned by the tribe bears no clear relationship to tribal self-government or internal relations, the general principles of retained inherent sovereignty did not authorize the Crow Tribe to adopt Resolution No. 74-05." 450 U. S., at 564-565 (footnote omitted).

Nevertheless, the Court of Appeals felt that even under the more recently expressed doctrines reaffirmed in *Montana*, the ordinance regulating non-Indian lands abutting Flathead Lake was authorized because the southern half of the lake, in its view, was owned by the United States in trust for the Tribes. The correctness of that conclusion obviously depends upon the Court of Appeals' resolution of the "ownership" issue; if upon review of this latter determination we were to decide that the southern half of Flathead Lake

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passed to the State of Montana under our decision in *Montana v. United States*, the Court of Appeals' justification for its decision of the "regulatory" issue would likewise fail.

The "ownership" and "regulatory" issues present important questions having ramifications throughout the many Western States within the jurisdiction of the Court of Appeals for the Ninth Circuit. I would grant certiorari to review that court's decision of both issues.

No. 81-6813. *ELLEDGE v. FLORIDA*. Sup. Ct. Fla.;
No. 82-5317. *BERRYHILL v. GEORGIA*. Sup. Ct. Ga.;
No. 82-5348. *RILEY v. FLORIDA*. Sup. Ct. Fla.; and
No. 82-5373. *BROWN v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County. Certiorari denied. Reported below: No. 81-6813, 408 So. 2d 1021; No. 82-5317, 249 Ga. 442, 291 S. E. 2d 685; No. 82-5348, 413 So. 2d 1173.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 82-393. *WESTERN ELECTRIC CO., INC. v. HILL ET AL.* C. A. 4th Cir. Certiorari denied. JUSTICE POWELL would grant the petition for certiorari, vacate the judgment, and remand the case for further consideration in light of *General Telephone Co. of Southwest v. Falcon*, 457 U. S. 147 (1982). Reported below: 672 F. 2d 381.

No. 82-399. *SPAN-DECK, INC. v. FABCON, INC., ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 667 F. 2d 1237.

No. 82-5083. *MCDOWELL v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 312 N. W. 2d 301.

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No. 82-5328. THOMAS v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Super. Ct. Ga., Butts County. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that capital punishment is unconstitutional in all circumstances, I would grant certiorari and vacate the death sentence on this basis alone. However, even if I believed that the death sentence could constitutionally be imposed under certain circumstances, I would grant certiorari and vacate the death sentence imposed here. The decision below is inconsistent with this Court's decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980).

At the sentencing proceeding which followed petitioner's conviction of murder, the trial court instructed the jury, in the terms of the Georgia death penalty statute, that it could impose the death sentence if it found "that the offense of murder for which the accused has been convicted was outrageously and wantonly vile, horrible and inhuman in that it involved torture and depravity of mind." Ga. Code §27-2534.1(b)(7) (1978). The jury instruction did not in any way clarify or narrow the words of the statute.

The Court recognized in *Godfrey* that an instruction reciting this statutory language does not provide a constitutionally adequate "restraint on the arbitrary and capricious infliction of the death sentence," because it fails to "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process for imposing a sentence of death.'" 446 U. S., at 428 (plurality opinion) (footnotes omitted). Although the instruction in this case, like the instruction in *Godfrey*, did no more than restate the broad statutory language, the Georgia Supreme Court affirmed petitioner's death sentence without requiring a new sentencing proceeding. In failing to require resentencing, the Georgia

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Supreme Court disregarded the clear mandate of *Godfrey*. Although the state appellate court concluded, upon reviewing the trial record, that petitioner deserved the death sentence, the fact remains that the critical sentencing decision was left to "the uncontrolled discretion of a basically uninstructed jury," *id.*, at 429 (plurality opinion). See *Newlon v. Missouri*, *ante*, at 888-889 (MARSHALL, J., dissenting from denial of certiorari); *Brooks v. Georgia*, 451 U. S. 921 (1981) (MARSHALL, J., dissenting from denial of certiorari); *Godfrey v. Georgia*, *supra*, at 436-437 (MARSHALL, J., concurring).

Rehearing Denied

No. 81-6606. *FRANCOIS v. FLORIDA*, 458 U. S. 1122; and
No. 82-120. *GREYHOUND LINES, INC. v. TRAILWAYS, INC., ET AL.*, *ante*, p. 862. Petitions for rehearing denied.

No. 81-5243. *COTNER v. OKLAHOMA*, 454 U. S. 1100. Motion for leave to file petition for rehearing denied.

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Dismissal Under Rule 53

No. 82-243. *IMMIGRATION AND NATURALIZATION SERVICE v. PEREZ ET UX.* C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 643 F. 2d 640 and 665 F. 2d 269.

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Affirmed on Appeal

No. 82-284. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL. v. FEDERAL ELECTION COMMISSION ET AL.* Affirmed on appeal from C. A. D. C. Cir. Reported below: 220 U. S. App. D. C. 45, 678 F. 2d 1092.

Appeals Dismissed

No. 82-290. *EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES v. FINANCE ADMINISTRATION OF THE*

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CITY OF NEW YORK ET AL. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Reported below: 54 N. Y. 2d 533, 430 N. E. 2d 1290.

No. 82-293. NORTH SHORE UNIVERSITY HOSPITAL ET AL. *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of jurisdiction. JUSTICE BLACKMUN would dismiss the appeal for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 82 App. Div. 2d 799, 439 N. Y. S. 2d 408.

No. 82-5488. WAYLAND *v.* INTERNAL REVENUE SERVICE ET AL. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Reversed. (See No. 82-29, *ante*, p. 14.)

Miscellaneous Orders

No. — — —. ROSS *v.* WOODARD, CHAIRMAN, NORTH CAROLINA PAROLE COMMISSION. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. D-262. IN RE DISBARMENT OF AUWAERTER. Disbarment entered. [For earlier order herein, see 456 U. S. 902.]

No. D-267. IN RE DISBARMENT OF DEFazio. Disbarment entered. [For earlier order herein, see 456 U. S. 956.]

No. D-286. IN RE DISBARMENT OF NADLER. Disbarment entered. [For earlier order herein, see 458 U. S. 1127.]

No. D-290. IN RE DISBARMENT OF SPIRO. Demetri M. Spiro, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be

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stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on September 9, 1982 [458 U. S. 1128], is hereby discharged.

No. D-299. IN RE DISBARMENT OF OLKON. It is ordered that Ellis Olkon, of St. Louis Park, Minn., 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-300. IN RE DISBARMENT OF GRUBOR. It is ordered that John M. Grubor, of Pittsburgh, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-301. IN RE DISBARMENT OF BONNIN. It is ordered that Robbin James Bonnin, of Amherst, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-302. IN RE DISBARMENT OF JOHNSON. It is ordered that Richard Vernon Johnson, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 81-1618. WEYERHAEUSER CO. ET AL. *v.* LYMAN LAMB CO. ET AL.; and

No. 81-1619. GEORGIA-PACIFIC CORP. *v.* LYMAN LAMB CO. ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 971.] Motion of respondents for relief from compliance with Rule 28.1 granted. JUSTICE WHITE, JUSTICE POWELL, and JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

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No. 81-1636. *FLORIDA v. BRADY ET AL.* Sup. Ct. Fla. [Certiorari granted, 456 U. S. 988.] The parties are directed to file supplemental memoranda addressing the present posture of the cases in the state courts, the status of the charges against each respondent and how any change, if there be any change, affects the case pending in this Court. Oral argument in this case, presently scheduled for December 8, 1982, is postponed and the case of *District of Columbia Court of Appeals et al. v. Feldman et al.*, No. 81-1335 [certiorari granted, 458 U. S. 1105], is set for oral argument in its stead.

No. 82-171. *MARINE TERMINALS CORP. ET AL. v. KELLY*, ante, p. 863. Motion of respondent for reimbursement of costs denied.

No. 82-446. *DALLAS COUNTY HOSPITAL DISTRICT v. DALLAS ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ET AL.* C. A. 5th Cir. Motion of respondent Leon Gowans for leave to proceed *in forma pauperis* denied.

No. 82-667. *FLORIDA v. ZAFRA*. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner to expedite consideration of the petition for writ of certiorari denied.

Certiorari Granted

No. 82-118. *CROWN, CORK & SEAL CO., INC. v. PARKER*. C. A. 4th Cir. Certiorari granted. Reported below: 677 F. 2d 391.

No. 82-372. *FEDERAL TRADE COMMISSION ET AL. v. GROLIER INC.* C. A. D. C. Cir. Certiorari granted. Reported below: 217 U. S. App. D. C. 47, 671 F. 2d 553.

No. 81-1859. *ILLINOIS v. LAFAYETTE*. App. Ct. Ill., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 99 Ill. App. 3d 830, 425 N. E. 2d 1383.

No. 82-492. *SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY v. HELM*. C. A. 8th Cir. Motion of re-

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spondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 684 F. 2d 582.

No. 82-271. CHARDON ET AL. *v.* FUMERO SOTO ET AL. C. A. 1st Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 681 F. 2d 42.

No. 82-354. MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.;

No. 82-355. CONSUMER ALERT ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.; and

No. 82-398. UNITED STATES DEPARTMENT OF TRANSPORTATION ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. D. C. Cir. Motion of Automotive Occupant Protective Association for leave to file a brief as *amicus curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 220 U. S. App. D. C. 170, 680 F. 2d 206.

No. 81-6908. BARCLAY *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 411 So. 2d 1310.

Certiorari Denied. (See also No. 82-5488, *supra.*)

No. 81-2199. JAMES *v.* TEXAS. Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 629 S. W. 2d 92.

No. 81-2221. RUTLEDGE *v.* SMALL BUSINESS ADMINISTRATION. C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 2d 732.

No. 81-2243. FINCHER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 161 Ga. App. 556, 288 S. E. 2d 643.

No. 81-2254. GELVIN *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 318 N. W. 2d 302.

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No. 81-2373. *GAZIANO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 81-5912. *WOOD v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 648 P. 2d 71.

No. 81-6882. *EPHRAIM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 82-94. *LOCAL 282, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. NATIONAL LABOR RELATIONS BOARD ET AL.*; and

No. 82-424. *FRANK MASCALI CONSTRUCTION G.C.P. CO. ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 294.

No. 82-154. *BRANDSTETTER v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 259, 430 N. E. 2d 731.

No. 82-217. *STOVER ET AL. v. RAU ET AL.*;

No. 82-608. *CROWN CENTER REDEVELOPMENT CORP. ET AL. v. STOVER ET AL.*;

No. 82-616. *JOHNSON ET AL. v. STOVER ET AL.*; and

No. 82-626. *RAU v. STOVER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 680 F. 2d 1175.

No. 82-224. *AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 3486 v. NEW JERSEY AIR NATIONAL GUARD, 177TH FIGHTER INTERCEPTOR GROUP, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 677 F. 2d 276.

No. 82-241. *MOBAY CHEMICAL CORP. ET AL. v. GORSUCH, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY*. C. A. 3d Cir. Certiorari denied. Reported below: 682 F. 2d 419.

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No. 82-270. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* ERKINS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 663 F. 2d 1048.

No. 82-308. DELPRO Co. *v.* BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 960.

No. 82-383. FUMERO SOTO ET AL. *v.* CHARDON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 681 F. 2d 42.

No. 82-384. STACK *v.* CAPITAL-GAZETTE NEWSPAPERS, INC. Ct. App. Md. Certiorari denied. Reported below: 293 Md. 528, 445 A. 2d 1038.

No. 82-412. AMFAC FOODS, INC. *v.* ORE-IDA FOODS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 896.

No. 82-426. SNELL ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 680 F. 2d 545.

No. 82-434. NORTHERN UTILITIES, INC. *v.* KERR-MCGEE CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 2d 323.

No. 82-439. HARDY ET UX. *v.* HOUSING MANAGEMENT Co. ET AL. Ct. App. Md. Certiorari denied. Reported below: 293 Md. 394, 444 A. 2d 457.

No. 82-441. FAULKNER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 82-442. CALVO *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 440.

No. 82-448. CREATIVE ENVIRONMENTS, INC., ET AL. *v.* ESTABROOK ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 680 F. 2d 822.

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No. 82-456. *GREENFIELD v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 82-460. *DUNNING v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA (DUNNING, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 82-463. *MCNEA ET AL. v. VOINOVICH ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 2d 117, 435 N. E. 2d 420.

No. 82-466. *CURRY v. STATE BAR OF WISCONSIN ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-470. *CITY OF LOS ANGELES v. SOCIETA PER AZIONI DE NAVIGAZIONE ITALIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 31 Cal. 3d 446, 645 P. 2d 102.

No. 82-471. *JORDAN ET AL. v. MANEIKIS*. C. A. 7th Cir. Certiorari denied. Reported below: 678 F. 2d 720.

No. 82-474. *SAFEWAY STORES, INC. v. DOGHERRA*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 1293.

No. 82-478. *RECORA Co., INC. v. TAPESWITCH CORPORATION OF AMERICA*. C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 821.

No. 82-510. *FINCH ET AL. v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 644 P. 2d 1378.

No. 82-515. *MURPHY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-539. *FIBERGLASS SPECIALTY CO., INC. v. BOR-SON CONSTRUCTION, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 2d 78.

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No. 82-558. *LUCERNE PRODUCTS, INC. v. SKIL CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 346.

No. 82-590. *KURTZ v. UNITED STATES ON BEHALF OF SMALL BUSINESS ADMINISTRATION.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 827.

No. 82-591. *ZERO ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 689 F. 2d 238.

No. 82-602. *LAWSON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 682 F. 2d 480.

No. 82-606. *SAAD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-613. *PERL v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 82-615. *JERSEY SANITATION CO., INC., ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-627. *THOMSEN ET AL. v. WESTERN ELECTRIC CO., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 1263.

No. 82-5041. *WASILOWSKI v. DIETZ, CHAIRMAN, NEW JERSEY STATE PAROLE BOARD, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 811.

No. 82-5169. *JOHNSON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 82-5216. *SWAIN ET AL. v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 543.

No. 82-5223. *BROWN v. WARDEN, GREAT MEADOW CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 348.

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No. 82-5224. *BUSH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 680 F. 2d 468.

No. 82-5229. *SULLIVAN ET AL. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 2d 1131.

No. 82-5382. *HUNSBERGER v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 211 Neb. 667, 319 N. W. 2d 757.

No. 82-5388. *WIREMAN v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 432 N. E. 2d 1343.

No. 82-5398. *TIPPETT v. WYRICK, WARDEN, MISSOURI STATE PENITENTIARY*. C. A. 8th Cir. Certiorari denied. Reported below: 680 F. 2d 52.

No. 82-5401. *HARRELL v. INGRAM, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 881.

No. 82-5403. *SIMPSON v. WYRICK, WARDEN, MISSOURI STATE PENITENTIARY*. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 2d 438.

No. 82-5405. *MCPEEK ET AL. v. YOUNG, UNITED STATES DISTRICT JUDGE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 815.

No. 82-5407. *JOSHUA v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 2d 376.

No. 82-5410. *MCCLANAHAN v. COMMUNITY ACTION COMMITTEE OF THE LEHIGH VALLEY, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 822.

No. 82-5413. *HEIRENS v. HOUSEWRIGHT, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 841.

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No. 82-5416. *SMITH v. AVANCE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 415.

No. 82-5421. *DOUGLAS v. SMITH.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 452.

No. 82-5422. *HOUSTON v. HOUSEWRIGHT, COMMISSIONER, ARKANSAS DEPARTMENT OF CORRECTIONS.* C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 2d 757.

No. 82-5425. *KOMOROWSKI v. COLUMBIA GAS OF OHIO, INC.* Sup. Ct. Ohio. Certiorari denied.

No. 82-5430. *NAYLOR v. DIXON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 833.

No. 82-5435. *MONTGOMERY v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 82-5436. *VIPPERMAN v. NEVADA DEPARTMENT OF PAROLE.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 450.

No. 82-5437. *PELCZARSKI v. GRANT ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-5447. *STOVALL v. PATTERSON ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-5449. *MILLER v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 823.

No. 82-5486. *BUIE v. MARBLE.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 830.

No. 82-5499. *BERTMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 2d 889.

No. 82-5502. *MATTHEWS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

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No. 82-5508. *BROADWAY v. BOGAN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 82-5510. *HAWKINS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 1343.

No. 82-5532. *MCNEIL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-5535. *VICCARONE v. UNITED STATES BOARD OF PAROLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 460.

No. 82-5536. *CONYERS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 835.

No. 82-5537. *AUSTIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 287.

No. 82-5545. *LONG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 848.

No. 81-2103. *PENNCO, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 340.

JUSTICE WHITE, with whom JUSTICE BLACKMUN and JUSTICE REHNQUIST join, dissenting.

Section 8(a)(5) of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. § 158(a)(5), makes an employer's refusal to collectively bargain with the representative of its employees an unfair labor practice. A union certified as the exclusive representative of an employer's workers enjoys an irrebuttable presumption that it has the loyalty of the majority of an employer's workers, and is thus the legal representative of the employer's workers, for one year after certification. *Brooks v. NLRB*, 348 U. S. 96, 98-104 (1954). Upon the expiration of that period, the presumption becomes a rebuttable one, and an employer may then withdraw recogni-

tion of the union and refuse to bargain with the union if it has a doubt, "reasonably grounded" and "based on objective considerations," that the union no longer has the support of a majority of the employer's workers. See, *e. g.*, *Soule Glass & Glazing Co. v. NLRB*, 652 F. 2d 1055, 1110 (CA1 1981); *NLRB v. Windham Community Memorial Hospital*, 577 F. 2d 805, 811 (CA2 1978).

In this case, as in several others, the employer attempted to withdraw recognition from a union because the composition of the employer's work force had significantly changed as a result of the employer's hiring of permanent replacements for striking workers. In such cases, the National Labor Relations Board has consistently relied on a presumption that striker replacements support the union in the same ratio as those whom they have replaced. *E. g.*, *Windham Community Memorial Hospital*, 230 N. L. R. B. 1070 (1977).

Several Circuits appear to presume that striker replacements do not support the certified union, and refuse to enforce NLRB decisions grounded on the Board's contrary presumption. While these Circuits have to some extent pointed to specific facts of the cases before them in relying on a presumption antithetical to that of the Board, all three, the First, *Soule Glass & Glazing Co. v. NLRB*, *supra*, at 1110, the Fifth, *NLRB v. Randle-Eastern Ambulance Service, Inc.*, 584 F. 2d 720, 728 (1978), and the Eighth, *National Car Rental System, Inc. v. NLRB*, 594 F. 2d 1203, 1206 (1979), seem to rely heavily on the statement, made by one commentator, R. Gorman, *Labor Law* (1976), that "if a new hire agrees to serve as a replacement for a striker . . . , it is generally assumed that he does not support the union and that he ought not to be counted toward a union majority." *Id.*, at 112 (citing only *Titan Metal Manufacturing Co.*, 135 N. L. R. B. 196 (1962), a case that has neither been cited by the NLRB for the proposition Gorman states nor been expressly overruled).

The Second Circuit has also had occasion to review a decision in which the NLRB has relied on its presumption. *NLRB v. Windham Community Memorial Hospital*, *supra* (NLRB suit to enforce its order in *Windham Community Memorial Hospital*, *supra*). It avoided the question of the validity of the NLRB's presumption that replacement workers supported the certified union in the same ratio as did the strikers. It did, however, clearly reject the presumption that "no replacement employee supports the Union," describing it as "equally, if not more, assailable than the NLRB's [presumption]." 577 F. 2d, at 813. The Second Circuit ultimately decided that the employer's withdrawal of recognition was unjustified, not because the NLRB's presumption was valid, but because the employer did not present any evidence supporting a basis for its belief that the certified union no longer enjoyed the support of a majority of its workers.

The Sixth Circuit, in the decision below, rejected both the presumption that striker replacements do not support the union and the presumption that the striker replacements support the union in the same ratio that the strikers support the union. The Sixth Circuit held the employer's withdrawal of recognition unlawful because the employer simply did not establish any basis, aside from an invalid presumption, for believing that the certified union was not the choice of the majority.

The questions of whether presumptions can properly be used to determine whether a union has the support of striker replacements, and whether replacements should be presumed to oppose the certified union or favor the certified union, have produced conflict among the Courts of Appeals and between the Courts of Appeals and the agency charged with enforcing the National Labor Relations Act. The questions are of obvious significance to national labor policy. The need for a uniform approach to these questions is equally obvious. I would grant certiorari to resolve this controversy.

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No. 81-2313. AVENUE BOOK STORE *v.* CITY OF TALLMADGE, OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

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

In a common-law public nuisance action instituted by the city of Tallmadge, Ohio, petitioner Avenue Book Store was found to have been selling obscene material. The trial court concluded that the operation of the bookstore constituted a public nuisance as "a danger to the public morals and to the community welfare." The rear portion of petitioner's bookstore, where the obscene material had been displayed and sold, was ordered permanently closed.

On appeal, the Ohio Court of Appeals upheld the injunction with some modifications. The injunction currently in effect provides:

"In abatement of the nuisance, defendant is enjoined from utilizing the rear section of the store for the exhibition, display or sale of materials which display or depict sexual conduct (activity) that is obscene as defined by R. C. 1907.01 and interpreted by the Ohio Supreme Court in *State v. Burgun* (1978), 56 Ohio St. 2d 354." *City of Tallmadge, Ohio v. Avenue Book Store*, No. 10038 (Ohio App., Summit County, Oct. 28, 1981) (unreported); App. to Pet. for Cert. 47.

The Court of Appeals held that the injunction, as modified, did not constitute a prior restraint of protected communicative material in violation of the First and Fourteenth Amendments because "no punishment will be imposed until it is proven that obscene material was indeed involved." *Id.*, at 48. Assuming the injunction was a prior restraint, the court held it was not an unconstitutional one because it did not "carry with it any of the dangers of a censorship system" against which the First Amendment protects. *Id.*, at 49. Petitioner challenges both aspects of this holding.

In *Vance v. Universal Amusement Co.*, 445 U. S. 308 (1980), this Court upheld a finding that a Texas public nuisance statute authorized an unconstitutional "prior restraint of indefinite duration on the exhibition of motion pictures without a final judicial determination of obscenity and without any guarantee of prompt review of a preliminary finding of probable obscenity." *Id.*, at 309. Fatal to that statute were particular procedural infirmities of the Texas nuisance scheme whereby the subject of an abatement order or injunction "would be subject to contempt proceedings even if the film [was] ultimately found to be nonobscene." *Id.*, at 316.

The Court has never determined, however, whether abatement orders, such as the one involved in the present case, will pass constitutional muster when they permanently enjoin the use of a business premises for the sale or display of obscene material, but do not subject the owner to contempt sanctions unless there has been a judicial determination of obscenity. Various state courts have held that the exhibition, display, or sale of obscene material may not be enjoined unless there has been a prior judicial determination on the obscenity of the particular materials sought to be enjoined regardless of the procedural safeguards employed. See, e. g., *People ex rel. Busch v. Projection Room Theatre*, 17 Cal. 3d 42, 59, 550 P. 2d 600, 610 (exhibition or sale of magazines or films not specifically determined to be obscene may not be enjoined), cert. denied, 429 U. S. 922 (1976); *State ex rel. Cahalan v. Diversified Theatrical Corp.*, 59 Mich. App. 223, 242, 229 N. W. 2d 389, 398 (1975) (upholding one-year closure but rejecting permanent injunction on use of building for exhibition of lewd films—only films already adjudged obscene may be enjoined).

Other state courts have upheld such injunctions against a constitutional challenge. The present case is such a decision. See also *State ex rel. Andrews v. Chateau X, Inc.*, 296 N. C. 251, 250 S. E. 2d 603 (1979), vacated and remanded, 445 U. S. 947 (1980), reaffirmed, 302 N. C. 321, 330, 275 S. E. 2d

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443, 449 (1981) (upholding injunction against sale or exhibition of obscene material because there is no possibility of punishment for sale or exhibition of nonobscene material); *State ex rel. Kidwell v. U. S. Marketing, Inc.*, 102 Idaho 451, 458, 631 P. 2d 622, 629 (1981) (one-year closure of business premises is not an unconstitutional prior restraint), appeal dism'd by stipulation of parties, 455 U. S. 1009 (1982).

The extent to which States may use nuisance statutes and common-law nuisance actions to control obscenity and the nature of the procedural safeguards necessary to avoid constitutional problems are important unsettled questions which this Court should address. Accordingly, I dissent from the denial of certiorari.

No. 82-24. *FEDERAL TRADE COMMISSION v. FRANCIS FORD, INC.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 673 F. 2d 1008.

No. 82-130. *LAWRENCE ET AL. v. BAUER PUBLISHING & PRINTING LTD. ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 451, 446 A. 2d 469.

JUSTICE REHNQUIST, dissenting.

Because of the New Jersey Supreme Court's decision in this case, "[t]wo highly motivated senior citizens are left without redress for libelous publications holding them up to contempt and ridicule in the community in which they have lived for many years. This is the result of their sincere attempt to participate in local government." 89 N. J. 451, 446 A. 2d 469 (1982) (Schreiber, J., dissenting). Because I think that the decision of the Supreme Court of New Jersey was based on an erroneous belief that the First and Fourteenth Amendments to the United States Constitution required it, notwithstanding society's "pervasive and strong interest in preventing and redressing attacks upon reputation," *Rosenblatt v. Baer*, 383 U. S. 75, 86 (1966), I dissent from the denial of certiorari.

Petitioners, Lawrence and Simpson, were officers of a citizens group called Rahway Taxpayers Association. In 1974, the Association began a petition drive seeking a public referendum on plans to construct a new municipal firehouse. In late December 1974, petitions containing over 5,000 signatures were submitted to the Rahway City Clerk. On January 9, 1975, the Rahway News-Record, a newspaper owned and operated by respondents, printed the following headline across the top of its front page: "City Attorney rules association petitions improper; forgery charges may loom for Lawrence, Simpson." The accompanying article stated in pertinent part:

"In separate actions city attorney Alan Karcher ruled the petitions filed by the officials of the Rahway Taxpayers Association are improper and attorney Theodore J. Romankow was asked to take action by city officials against association leaders because of 'irregularities' in the petitions.

"The Rahway News-Record learned Mr. Romankow was empowered to handle a case against Alonzo W. Lawrence, president of the Association, and James Simpson, the group's secretary-treasurer.

"The case would be based on charges that forgery was involved in the gathering of approximately 5,000 signatures which the two men filed with the city clerk Robert W. Schrof on December 27, the News-Record was told.

"In connection with this the men would also be charged with false swearing of oaths and affidavits, it was asserted." 89 N. J., at 456, 446 A. 2d, at 471.

In response to petitioners' request that the News-Record retract these allegations, the newspaper ran a second front-page story on April 17, 1975. The headline read: "News-Record asked to retract article on firehouse battle." Rather than give a retraction, the newspaper proceeded to reiterate and defend its earlier story claiming that the story was based

on information provided by "a source in the [city] administration." *Id.*, at 456, 446 A. 2d, at 471.

Petitioners brought this libel action, alleging they had been defamed by both of the stories. The trial court ruled that Simpson was not a public figure and allowed his case to go to the jury without instructions on *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), "actual malice." The jury returned a verdict for Simpson in the amount of \$22,500. The trial court ruled that Lawrence was a public figure, and in the first instance ruled that there was insufficient evidence for Lawrence to get to the jury on the *New York Times* "actual malice" issue. Subsequently, the trial court reversed itself on the latter finding and granted Lawrence's motion for a new trial. The New Jersey Supreme Court reversed, holding that both Simpson and Lawrence were "public figures" as defined by *Gertz v. Robert Welch, Inc.*, 418 U. S. 323 (1974), and its progeny, and that "the evidence in the record is 'constitutionally insufficient' to present a jury question of actual malice." 89 N. J., at 468, 446 A. 2d, at 478.

In reaching its conclusion that no jury question was presented, the New Jersey court set out the "actual malice" standard as defined by this Court in *New York Times Co. v. Sullivan*, *supra*, and succeeding cases. The court prefaced its discussion of the facts by saying: "In light of this stringent standard we have carefully examined the record below to determine whether the evidence at trial was sufficient to present a jury question as to actual malice. That examination reveals that there was insufficient evidence of actual malice toward either plaintiff." 89 N. J., at 467, 469 A. 2d, at 477.

The court then proceeded to review the facts of the case *de novo*. The testimony indicated that the newspaper's sole source for the first story was Joseph Hartnett, a recent appointee as City Business Administrator. Hartnett had no official duties in connection with the filing of the petitions. Hartnett testified that he had informed an editor and re-

porter for the News-Record that there was an investigation concerning some signatures on the petitions, but he maintained repeatedly that he had never linked petitioners with the investigation. Hartnett further stated that the forgery claims concerned such instances as a husband signing a petition for his wife or vice versa and that the false swearing claims concerned the formalities of the affidavits submitted by the persons circulating the petitions. The News-Record editor and reporter testified that the information given by Hartnett was identical to that printed in its news stories, *i. e.*, that petitioners were under investigation for forgery and false swearing.

On the basis of its *de novo* review of these facts, the New Jersey court said:

"Here, defendants honestly believed that the concededly misleading statements published in the two articles were true. Their misconceptions arose primarily from their conversation with Hartnett in which he told them that the petitions were under investigation for possible evidence of false swearing and forgery. . . . Neither 'errors of interpretation of judgment' nor 'misconceptions' are sufficient to create a jury issue of actual malice under the *New York Times* standard. See *Time, Inc. v. Pape*, 401 U. S. 279, 290 [1971] There is not 'clear and convincing' evidence that defendants *knew* that the defamatory publications were false, or that they *actually* doubted their accuracy. [Citation omitted.] Rather, . . . defendants published a careless and perhaps irresponsible account of the information received concerning the scope of the City Attorney's investigation. But the evidence in the record is 'constitutionally insufficient' to present a jury question of actual malice. See *New York Times [Co. v. Sullivan]*, 376 U. S., at 288." *Id.*, at 467-468, 446 A. 2d, at 477-478.

My cursory examination of New Jersey precedents suggests to me that New Jersey follows the rule adhered to in almost

all of the States with respect to the ruling of a trial court on a motion for directed verdict. "[T]he trial court cannot weigh the evidence but *must accept as true* all evidence which supports the view of the party against whom the motion is made and must give him the benefit of all legitimate inferences which are to be drawn therefrom in his favor." *Wilson v. Savino*, 10 N. J. 11, 18, 89 A. 2d 399, 402-403 (1952). In reviewing a jury verdict on appeal, the New Jersey courts have held that "it is equally well settled that the court may not set aside a verdict merely because in its opinion the jury upon the evidence might well have found otherwise. The appellate tribunal cannot invade the constitutional office of the jury; it may not merely weigh the evidence where it is fairly susceptible of divergent inferences and substitute its own judgment for that of the jury." *Brendel v. Public Service Electric and Gas Co.*, 28 N. J. Super. 500, 511, 101 A. 2d 56, 61-62 (1953). It seems to me inescapable that the New Jersey Supreme Court in this case felt bound by some invisible radiations from *New York Times Co. v. Sullivan* to reweigh for itself the credibility of interested witnesses who might have been wholly disbelieved by a jury. The above quotation from the New Jersey court's opinion indicates that it felt required to credit the testimony of the defendant's witnesses, all of whom were interested in the outcome of the lawsuit.

That there are no such "invisible radiations" from *New York Times Co. v. Sullivan* is established by our decision in *Hutchinson v. Proxmire*, 443 U. S. 111 (1979). There we said that "[t]he proof of 'actual malice' calls a defendant's state of mind into question . . . and does not readily lend itself to summary disposition." *Id.*, at 120, n. 9. This view was stated another way in *St. Amant v. Thompson*, 390 U. S. 727 (1968):

"The defendant in a defamation action . . . cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine

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whether the publication was indeed made in good faith.”
Id., at 732.

Although post-*New York Times Co. v. Sullivan* decisions from this Court therefore confirm the principle that the jury is to be the judge of the credibility of the witnesses in libel cases as in other lawsuits, it seems clear that the Supreme Court of New Jersey did not follow this principle. There were sharp conflicts in the testimony respecting crucial events in the lawsuit. Hartnett, the City Business Administrator, testified he did not tell the News-Record that petitioners were under investigation. If he is to be believed, then the News-Record, which asserted that Hartnett was their only source, had no basis for stating that petitioners were targets of such an investigation and implying that petitioners were guilty of forgery and false swearing. That the newspaper's editor testified that he “believed” that the stories were true may give the jury additional basis for finding for the defendant, but his testimony does not require any such result as a matter of federal law. The jury as a matter of federal law is at liberty to totally disbelieve him, or to find that his belief was not reasonably justified. *St. Amant v. Thompson*, *supra*.

Repeated citations in the opinion of the Supreme Court of New Jersey to this Court's decisions following *New York Times Co. v. Sullivan* satisfy me that the court is under the impression that as a matter of federal constitutional law it is required to reweigh testimony and reassess the credibility of witnesses in a trial for libel or slander. At the very least, we have jurisdiction on the basis set forth in *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977), and I would exercise that jurisdiction by granting the petition for certiorari.

No. 82-280. SYLVAIN *v.* HENDERSON, EXECUTRIX.
Sup. Ct. N. H. Motion of petitioner for leave to add party as respondent denied. Certiorari denied.

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No. 82-145. SMITH *v.* GONZALES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 670 F. 2d 522.

JUSTICE WHITE, dissenting.

The respondent police officer Lane went to the local District Attorney's office with petitioner Smith's minor daughter, who averred that she had had sexual relations with her father. After hearing her story, an Assistant District Attorney swore out an affidavit and procured an arrest warrant from a judge. Lane, acting pursuant to the warrant, then arrested Smith on incest charges. After being tried and acquitted of these charges, Smith filed a 42 U. S. C. § 1983 damages action for deprivation of his constitutional rights, alleging, *inter alia*, that Lane's involvement in his arrest was malicious, harassing, and in bad faith.¹ After a trial, a jury returned a verdict in favor of Lane.

On appeal, the Court of Appeals held that the claim relating to the incest charges never should have gone to trial, but rather should have been dismissed. Assuming, *arguendo*, that Lane had, as alleged, acted maliciously by withholding evidence of Smith's innocence from the Assistant District Attorney who obtained the arrest warrant,² the court found that the officer was nevertheless insulated from § 1983 liability, because "if the facts supporting an arrest are put before an intermediary such as a magistrate or grand jury, the intermediary's decision to issue a warrant or return an indictment breaks the causal chain" 670 F. 2d 522, 526 (CA5 1982).

¹Smith's complaint also alleged that unconstitutional conduct of Lane caused him to be damaged in a number of other ways that I need not detail here.

²In his brief in opposition to certiorari, Lane argues at length that there was no evidence that he withheld any evidence or acted improperly in any manner. I do not reach this question. Had the Fifth Circuit rested its holding on this basis, this would be a different case. But the court did not do so; it was willing to at least assume that there was sufficient evidence that Lane's actions were wrongful.

The Fifth Circuit thus held that an officer cannot be liable even if, by wrongful means, he taints the independent judgment of the grand jury, magistrate, prosecutor, or other intermediary. This holding appears to conflict with statements of the courts in *Smiddy v. Varney*, 665 F. 2d 261 (CA9 1981), cert. denied, ante, p. 829; *Ames v. United States*, 600 F. 2d 183 (CA8 1979); and *Dellums v. Powell*, 184 U. S. App. D. C. 275, 566 F. 2d 167 (1977), cert. denied, 438 U. S. 916 (1978). The Ninth Circuit determined in *Smiddy* that an intermediary's independent decision breaks the causal chain and insulates the arresting officer from future liability if, but only if, the officer does not color the intermediary's independent judgment by, for example, exerting pressure or presenting false evidence. 665 F. 2d, at 266-267. The District of Columbia Circuit indicated in *Dellums* that pressure, undue influence, or knowing misstatements by the police could rebut the presumption of independent judgment by United States Attorneys and extend the "chain of causation." 184 U. S. App. D. C., at 300-301, 566 F. 2d, at 192-193. Likewise, the Eighth Circuit in *Ames* stated that "the presentation of false evidence or the withholding of evidence" might preclude an immunization of officers from tort liability. 600 F. 2d, at 185. See also Restatement (Second) of Torts § 653 (1977); W. Prosser, *Law of Torts* 836-837 (4th ed. 1971).

The differing approaches to the causation problem are typified by three contrasting opinions in *Rodriguez v. Ritchey*, 556 F. 2d 1185 (CA5 1977) (en banc), cert. denied, 434 U. S. 1047 (1978), which the court below in the present case purported to follow. The six plurality judges in *Rodriguez* reasoned that the defendant officers could not be liable for a wrongful arrest because an indictment by a properly constituted grand jury "conclusively" determined the existence of probable cause. 556 F. 2d, at 1191 (opinion of Tjoflat, J.). Two specially concurring judges indicated that the plurality's rule might not be applicable should an officer "maliciously or in bad faith seek to obtain an indictment from a grand jury."

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Id., at 1195 (opinion of Hill, J.). Six dissenting judges felt that even an officer acting in subjective good faith in procuring an indictment could still be liable if his conduct was not within the "bounds of reason." *Id.*, at 1207 (opinion of Goldberg, J.) (quoting *Wood v. Strickland*, 420 U. S. 308, 321 (1975)).

Section 1983 actions for wrongful arrest and prosecution are frequently brought against police officers. The causation issue will be important, if not dispositive, in many of these cases. I would grant certiorari to resolve this significant, recurring question that has divided the lower courts.

No. 82-277. *SCHWIMMER, DBA SUPERSONIC ELECTRONICS CO. v. SONY CORPORATION OF AMERICA*; and

No. 82-362. *VENTURE TECHNOLOGY, INC. v. NATIONAL FUEL GAS DISTRIBUTION CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: No. 82-277, 677 F. 2d 946; No. 82-362, 685 F. 2d 41.

JUSTICE WHITE, dissenting.

The Court's refusal to review these cases is doubly inexplicable: they pose two substantial issues on which the lower courts are divided.

In both cases, juries found that respondents had conspired to impose a restraint of trade in violation of § 1 of the Sherman Act, 15 U. S. C. § 1. In *Schwimmer v. Sony Corp. of America*, 677 F. 2d 946 (CA2 1982), it was alleged that Sony, in conspiracy with certain retailers, terminated Schwimmer's dealership because it had sold Sony products to other dealers at lower than normal prices. In *Venture Technology, Inc. v. National Fuel Gas Distribution Corp.*, 685 F. 2d 41 (CA2 1982), the complaint was that respondent National Fuel Gas had conspired to prevent Venture Technology from entering the western New York gas production business. There was no direct evidence of conspiracy in either case; rather, the petitioners' cases were based on the respondents refusal to

deal with petitioners after receiving complaints from other companies.

On appeal, different panels of the Second Circuit reversed, holding that the evidence was insufficient as a matter of law to permit a jury to find that respondents had conspired. Relying on an earlier Second Circuit decision, *H. L. Moore Drug Exchange v. Eli Lilly & Co.*, 662 F. 2d 935, 941 (1981), cert. denied, *ante*, p. 880, both panels stated that "[e]ven where a termination follows the receipt of complaints from wholesalers or agents, there is no basis for inferring the existence of concerted action, absent some other evidence of a tacit understanding or agreement with them." *Schwimmer, supra*, at 953; *Venture Technology, supra*, at 45. This view of the evidence necessary to create a jury question under the Sherman Act is shared by the Third Circuit. *Edward J. Sweeney & Sons, Inc. v. Texaco, Inc.*, 637 F. 2d 105 (1980), cert. denied, 451 U. S. 911 (1981). The Seventh and the Eighth Circuits, however, clearly reject this position. *Spray-Rite Service Corp. v. Monsanto Co.*, 684 F. 2d 1226, 1238-1239 (CA7 1982); *Battle v. Lubrizol Corp.*, 673 F. 2d 984 (CA8 1982).¹ Because illegal conspiracies can rarely be proved through evidence of explicit agreement, but must usually be established through inferences from the conduct of the alleged conspirators, this disagreement in the Circuits over the nature of proof required is especially significant.

This first conflict is parlayed by a second concerning the portion of the evidence a court is to consider in ruling upon a

¹The opinion for the Seventh Circuit in *Spray-Rite Service Corp. v. Monsanto Co.*, 684 F. 2d, at 1238-1239, makes the conflict unmistakable:

"We believe . . . that proof of termination following competitor complaints is sufficient to support an inference of concerted action. In *Battle v. Lubrizol Corp.*, 673 F. 2d 984 (8th Cir. 1982), the Eighth Circuit declined to follow *Sweeney* and held that 'proof of a dealer's complaints to the manufacturer about a competitor dealer's price cutting and the manufacturer's action in response to such complaints would be sufficient to raise an inference of concerted action.' *Id.*, at 991 (emphasis in original). We agree" (footnote omitted).

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motion for judgment notwithstanding the verdict. These cases indicate that it is the Second Circuit's practice to examine all of the evidence in a manner most favorable to the non-moving party.² This is also the position of at least the Fifth and Seventh Circuits. *Boeing Co. v. Shipman*, 411 F. 2d 365, 374-375 (CA5 1969); *Panter v. Marshall Field & Co.*, 646 F. 2d 271, 281-282 (CA7 1981). In the Eighth Circuit, however, it appears that only evidence which supports the verdict winner is to be considered. *Simpson v. Skelly Oil Co.*, 371 F. 2d 563 (1967). The First and Third Circuits follow a middle ground: the reviewing court may consider uncontradicted, unimpeached evidence from disinterested witnesses. *Layne v. Vinzant*, 657 F. 2d 468, 472 (CA1 1981); *Inventive Music Ltd. v. Cohen*, 617 F. 2d 29, 33 (CA3 1980). Thus, the Federal Courts of Appeals follow three different approaches to determining whether evidence is sufficient to create a jury issue. See 9 C. Wright & A. Miller, *Federal Practice and Procedure* § 2529, p. 572 (1971). Because the scope of review will often be influential, if not dispositive, of a motion for judgment n.o.v., this disagreement among the Federal Courts of Appeals is of far more than academic interest.

For both these reasons, I would grant the petitions for certiorari.

No. 82-365. LOVE, WARDEN, ET AL. v. STACY. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 679 F. 2d 1209.

No. 82-396. TWIN CITY SPORTSERVICE, INC., ET AL. v. CHARLES O. FINLEY & CO., INC., ET AL. C. A. 9th Cir.

² In *Schwimmer*, the court noted: "If, however, after viewing all the evidence most favorably to plaintiff, we cannot say that the jury could reasonably have returned the verdict in his favor, our duty is to reverse the judgment below.'" 677 F. 2d, at 952, quoting *H. L. Moore Drug Exchange v. Eli Lilly & Co.*, 662 F. 2d 935, 941 (CA2 1981) (emphasis added), cert. denied, *ante*, p. 880.

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Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 676 F. 2d 1291.

No. 82-444. GREITZER & LOCKS ET AL. *v.* JOHNS-MANVILLE CORP. ET AL. C. A. 4th Cir. Motion of respondents to defer consideration of the petition for writ of certiorari denied. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this motion and this petition. Reported below: 681 F. 2d 813.

No. 82-453. FRANCIS OIL & GAS, INC., ET AL. *v.* EXXON CORP. ET AL. Temp. Emerg. Ct. App. Motions of Independent Petroleum Association of America et al. and Texas Independent Producers Legal Action Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 687 F. 2d 484.

No. 82-5053. MCCALLUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 677 F. 2d 1024.

No. 82-5315. JOHN BB ET AL. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 56 N. Y. 2d 482, 438 N. E. 2d 864.

Rehearing Denied

No. 81-2392. PHILLIPS PETROLEUM CO. *v.* SAUCEDO, *ante*, p. 839;

No. 81-6766. SUDRANSKI *v.* VETERANS ADMINISTRATION, *ante*, p. 845;

No. 81-6836. WADE *v.* UNITED STATES, *ante*, p. 848;

No. 81-6854. DAVIS *v.* GEORGIA, *ante*, p. 891; and

No. 81-6931. BOLES *v.* GUILFORD TECHNICAL INSTITUTE, *ante*, p. 852. Petitions for rehearing denied.

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No. 81-6979. *SHAPIRO v. UNITED STATES VETERANS ADMINISTRATION*, *ante*, p. 855;

No. 82-318. *STROOM v. CARTER*, *ante*, p. 866;

No. 82-5006. *BORRELLI v. CUYLER ET AL.*, *ante*, p. 866;

No. 82-5076. *BORRELLI v. CICCITTO ET AL.*, *ante*, p. 870;

No. 82-5166. *IN RE HOOVER*, *ante*, p. 818; and

No. 82-5326. *IN RE BARNEY*, *ante*, p. 818. Petitions for rehearing denied.

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Appeals Dismissed

No. 82-149. *BLACK CONSTRUCTION CORP. v. AGSALUD, DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS OF HAWAII, ET AL.* Appeal from Sup. Ct. Haw. dismissed for want of substantial federal question. Reported below: 64 Haw. 274, 639 P. 2d 1088.

No. 82-482. *HAMILTON ET AL. v. VIRGINIA*. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 82-5433. *CAVANAUGH, DBA TOT COLLEGE v. COLORADO DEPARTMENT OF SOCIAL SERVICES*. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. Reported below: 644 P. 2d 1.

No. 82-519. *COUNIHAN, TEMPORARY ADMINISTRATOR, ET AL. v. DEPARTMENT OF TRANSPORTATION OF GEORGIA ET AL.* Appeal from Ct. App. Ga. dismissed for want of jurisdiction. *JUSTICE BLACKMUN* and *JUSTICE O'CONNOR* would dismiss the appeal for want of a properly presented federal question. Reported below: 162 Ga. App. 374, 290 S. E. 2d 514.

No. 82-592. *FOULDS v. PENNSYLVANIA*. Appeal from Super. Ct. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 297 Pa. Super. 523, 441 A. 2d 452.

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Certiorari Dismissed

No. 81-1055. POYTHRESS, SECRETARY OF STATE OF GEORGIA, ET AL. *v.* DUNCAN ET AL. C. A. 11th Cir. [Certiorari granted, 455 U. S. 937.] Writ of certiorari dismissed as improvidently granted.

Miscellaneous Orders

No. A-392. ALBANO ET AL. *v.* UNITED STATES. C. A. 11th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-402 (82-711). RAILWAY LABOR EXECUTIVES' ASSN. *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY. Sp. Ct. R. R. R. A. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Motion of Quechan Tribe for modification of the order granting divided argument denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, *ante*, p. 940.]

No. 81-89. ZANT, WARDEN *v.* STEPHENS. C. A. 5th Cir. [Certiorari granted, 454 U. S. 814; question certified, 456 U. S. 410.] The parties are invited to file within 30 days supplemental memoranda addressing the opinion of the Supreme Court of Georgia, Case No. 38763, decided October 27, 1982 [250 Ga. 97, 297 S. E. 2d 1], and its effect on the case pending before this Court.

No. 81-1114. ILLINOIS *v.* ABBOTT & ASSOCIATES, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 455 U. S. 1015.] Motion of respondents for divided argument denied.

No. 81-1284. EICKE *v.* EICKE. Ct. App. La., 3d Cir. [Certiorari granted, 456 U. S. 970.] Motion of Martin S. Sanders, Jr., Esquire, to permit Martin S. Sanders III, Esquire, to present oral argument *pro hac vice* on behalf of respondent granted.

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No. 81-1476. UNITED STATES *v.* RODGERS ET AL.; and UNITED STATES *v.* INGRAM ET AL. C. A. 5th Cir. [Certiorari granted, 456 U. S. 904.] Motion of respondents for divided argument granted.

No. 81-1756. LEHR *v.* ROBERTSON ET AL. Ct. App. N. Y. [Probable jurisdiction postponed, 456 U. S. 970.] Motion of New York for leave to file an out-of-time motion for divided argument denied.

No. 81-2150. JIM MCNEFF, INC. *v.* TODD ET AL. C. A. 9th Cir. [Certiorari granted, 458 U. S. 1120.] Motions of American Federation of Labor and Congress of Industrial Organizations et al. and Carpenters Trust Funds of Southern California et al. for leave to file briefs as *amici curiae* granted.

No. 81-2169. HARING, LIEUTENANT, ARLINGTON COUNTY POLICE DEPARTMENT, ET AL. *v.* PROSISE. C. A. 4th Cir. [Certiorari granted, *ante*, p. 904.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 81-2245. NEVADA *v.* UNITED STATES ET AL.;

No. 81-2276. TRUCKEE-CARSON IRRIGATION DISTRICT *v.* UNITED STATES ET AL.; and

No. 82-38. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 904.] Motion of petitioners for divided argument granted.

No. 82-791. TEACHERS INSURANCE & ANNUITY ASSN. ET AL. *v.* SPIRT ET AL. C. A. 2d Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 82-5612. IN RE SEITU; and

No. 82-5616. IN RE JOHNSON. Petitions for writs of habeas corpus denied.

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No. 82-276. *DIRKS v. SECURITIES AND EXCHANGE COMMISSION*. C. A. D. C. Cir. Certiorari granted. Reported below: 220 U. S. App. D. C. 309, 681 F. 2d 824.

No. 82-331. *NEW MEXICO ET AL. v. MESCALERO APACHE TRIBE*. C. A. 10th Cir. Certiorari granted. Reported below: 677 F. 2d 55.

No. 82-502. *PALLAS SHIPPING AGENCY, LTD. v. DURIS*. C. A. 6th Cir. Certiorari granted. Reported below: 684 F. 2d 352.

No. 82-168. *NATIONAL LABOR RELATIONS BOARD v. TRANSPORTATION MANAGEMENT CORP.* C. A. 1st Cir. Motion of Council on Labor Law Equality for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 674 F. 2d 130.

Certiorari Denied. (See also No. 82-592, *supra*.)

No. 81-2152. *WASSERMAN ET AL. v. WASSERMAN*. C. A. 4th Cir. Certiorari denied. Reported below: 671 F. 2d 832.

No. 81-2324. *SMITH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 2d 185.

No. 81-6820. *BORCHERDING v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 1224.

No. 81-6844. *DESANTIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 2d 889.

No. 81-6870. *CHAKA v. MORRIS ET AL.* C. A. 7th Cir. Certiorari denied.

No. 81-6875. *FASICK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 810.

No. 81-6883. *MORALES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 2d 505.

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No. 81-6905. *ROBINSON v. SHEA ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 85, 679 F. 2d 262.

No. 81-6955. *MACDONALD v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 670 F. 2d 910.

No. 81-6983. *QUICK v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 675 F. 2d 1152.

No. 81-6994. *COTTON v. MABRY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 2d 701.

No. 82-47. *GAMBREL v. KENTUCKY BOARD OF DENTISTRY.* Ct. App. Ky. Certiorari denied.

No. 82-101. *TRAVELERS INDEMNITY CO. ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 867.

No. 82-148. *JAMES SNYDER CO., INC., ET AL. v. ASSOCIATED GENERAL CONTRACTORS OF AMERICA ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 677 F. 2d 1111.

No. 82-157. *SMITH v. OLSON, REGISTRAR OF VOTERS, ORANGE COUNTY, CALIFORNIA, ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-179. *SACCHINELLI v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 161 Ga. App. 763, 288 S. E. 2d 894.

No. 82-183. *UNITED STATES v. DOE.* C. A. 3d Cir. Certiorari denied. Reported below: 673 F. 2d 688.

No. 82-186. *SHAHID v. FLORIDA.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 415 So. 2d 1368.

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No. 82-263. *BOULAHANIS ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 586.

No. 82-289. *GREEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 2d 81.

No. 82-322. *ROMANO v. UNITED STATES*; and

No. 82-329. *ROMANO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 2d 1057.

No. 82-392. *MONEX INTERNATIONAL, LTD., ET AL. v. COMMODITY FUTURES TRADING COMMISSION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 677 F. 2d 522.

No. 82-450. *CRAMER v. FAHNER, ATTORNEY GENERAL OF ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 2d 1376.

No. 82-473. *SYMANOWICZ v. ARMY AND AIR FORCE EXCHANGE SERVICE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 672 F. 2d 638.

No. 82-476. *SAUSALITO PHARMACY, INC. v. BLUE SHIELD OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 677 F. 2d 47.

No. 82-477. *HERZOG v. DAYTON BAR ASSN. ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 2d 261, 436 N. E. 2d 1037.

No. 82-491. *UNITED STATES v. RSR CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 664 F. 2d 1249.

No. 82-496. *COFFEY v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES OF WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 82-503. *SHAVER v. HUNTER ET AL.* Ct. App. Tex., 7th Sup. Jud. Dist. Certiorari denied. Reported below: 626 S. W. 2d 574.

No. 82-504. *ARMIJO, PERSONAL REPRESENTATIVE OF THE ESTATE OF ARMIJO v. TANDYSH*. Ct. App. N. M.

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Certiorari denied. Reported below: 98 N. M. 181, 646 P. 2d 1245.

No. 82-507. *EVRA CORP., FORMERLY HYMAN-MICHAELS CO. v. SWISS BANK CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 2d 951.

No. 82-509. *BANKSTON v. TEXAS.* Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied.

No. 82-511. *DRAGAN ET AL. v. MILLER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 712.

No. 82-513. *REICHEL v. SHASTA COUNTY, CALIFORNIA, SUPERIOR COURT JUDGES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 712.

No. 82-518. *ACKERMAN, SUPERINTENDENT, FORT WAYNE STATE HOSPITAL AND TRAINING CENTER v. DELESSTINE.* C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 2d 130.

No. 82-529. *MURILLO v. BAMBRICK, CLERK OF THE SUPERIOR COURT OF NEW JERSEY.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 898.

No. 82-531. *MORGAN WALTON PROPERTIES, INC., ET AL. v. INTERNATIONAL CITY BANK & TRUST CO. ET AL.; and MORGAN ET UX. v. INTERNATIONAL CITY BANK & TRUST CO. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 675 F. 2d 666 (first case); 675 F. 2d 669 (second case).

No. 82-534. *MORRELL v. DUKE UNIVERSITY, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 884.

No. 82-548. *DUSANEK v. O'DONNELL ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 538.

No. 82-609. *SEDCO INTERNATIONAL, S.A., ET AL. v. CORY ET AL., EXECUTORS OF THE ESTATE OF CARVER.* C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 1201.

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No. 82-625. *DEAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 447.

No. 82-634. *CURTIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 683 F. 2d 769.

No. 82-644. *GRAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 898.

No. 82-657. *FRANCO-GOMEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-671. *OGGOIAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 678 F. 2d 671.

No. 82-679. *CAVALE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 1098.

No. 82-5024. *MORGAN v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 476.

No. 82-5087. *CERKONEY v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 292 S. E. 2d 575.

No. 82-5094. *RICKS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 886.

No. 82-5098. *KLEINBART v. SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5116. *MCCASKILL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 2d 995.

No. 82-5136. *MCCOY v. BORDENKIRCHER*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 883.

No. 82-5157. *RANSOM v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied.

No. 82-5196. *ROCHKIND v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 18.

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No. 82-5200. *HARDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-5203. *JONES v. BARTLE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 821.

No. 82-5236. *WEST v. JONES, SUPERINTENDENT, GREAT MEADOWS CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 82-5238. *MOSLEY v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 564.

No. 82-5239. *MANCUSO v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 677 F. 2d 206.

No. 82-5251. *HOLLENBECK v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 672 F. 2d 451.

No. 82-5253. *EICHELBERGER v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 91 Ill. 2d 359, 438 N. E. 2d 140.

No. 82-5286. *WILSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1208, 437 N. E. 2d 947.

No. 82-5302. *PICCIOTTI v. COURT OF APPEALS OF NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 295.

No. 82-5392. *MCCROSKEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 1152.

No. 82-5431. *DAVIS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 416 So. 2d 444.

No. 82-5438. *REITER v. HARDING ET AL.* C. A. 5th Cir. Certiorari denied.

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No. 82-5441. *LARACUENTE-MATOS v. PUERTO RICO DEPARTMENT OF LABOR AND HUMAN RESOURCES ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 420.

No. 82-5446. *HOHMAN v. PRINCE WILLIAM COUNTY, VIRGINIA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 82-5450. *ROSE v. ABSHIRE.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 457.

No. 82-5452. *EMMONS v. WYRICK.* C. A. 8th Cir. Certiorari denied.

No. 82-5453. *PRINCE v. COMMON PLEAS COURT OF ALLEGHENY COUNTY.* C. A. 3d Cir. Certiorari denied.

No. 82-5454. *MOAWAD v. TALLAHATCHIE COUNTY CIRCUIT COURT.* Sup. Ct. Miss. Certiorari denied.

No. 82-5457. *KORDOWER v. BORODINSKY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-5458. *HARVEY v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-5461. *BARBOZA v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 387 Mass. 105, 438 N. E. 2d 1064.

No. 82-5462. *KNEE v. WYRICK, WARDEN, MISSOURI STATE PENITENTIARY.* C. A. 8th Cir. Certiorari denied.

No. 82-5471. *SPEAR v. ROBERTS.* C. A. 8th Cir. Certiorari denied. Reported below: 679 F. 2d 768.

No. 82-5480. *GRUZEN v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 149, 634 S. W. 2d 92.

No. 82-5487. *MILLS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 686 F. 2d 135.

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No. 82-5496. *ALONZO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 2d 997.

No. 82-5506. *COOPER v. REES, SUPERINTENDENT, KENTUCKY STATE REFORMATORY*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 560.

No. 82-5517. *TRUESDALE v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-5520. *ERMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-5533. *YOUNG v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 1105.

No. 82-5555. *NEARIS v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied.

No. 82-5588. *BLACK ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 132.

No. 82-5591. *SINGLETERRY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 122.

No. 82-5592. *POLAND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-5601. *FILLIPPONIO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 844.

No. 81-2344. *A v. X ET AL.* Sup. Ct. Wyo. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE BLACKMUN would grant certiorari. Reported below: 641 P. 2d 1222.

No. 82-184. *L. B. B. CORP. v. CHARLES O. FINLEY & Co., INC.* C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 676 F. 2d 699.

No. 82-228. *BARRETT ET AL. v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. JUSTICE BRENNAN and JUS-

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TICE MARSHALL would grant the petition for writ of certiorari and reverse the convictions. Reported below: 278 S. C. 92, 292 S. E. 2d 590.

No. 82-501. EUSTER ET AL. *v.* PENNSYLVANIA HORSE RACING COMMISSION ET AL. C. A. 3d Cir. Motion of Jockeys' Guild, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 677 F. 2d 992.

No. 82-5378. FORD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 98, 633 S. W. 2d 3.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments, I would grant certiorari and vacate the death sentence on this basis alone. However, even if I accepted the prevailing view that the death penalty can constitutionally be imposed under certain circumstances, I would grant certiorari and vacate petitioner's death sentence on the ground that prior criminal convictions irrelevant to any statutory aggravating circumstance were improperly introduced at the sentencing proceeding.

Petitioner was charged with the murder of a policeman and tried in the Circuit Court of Mississippi County, Arkansas. He was found guilty of capital murder, and a sentencing hearing was held before the same jury. To support its request for a death sentence, the State introduced three prior criminal convictions that were not relevant to any aggravating circumstance set forth in the Arkansas death penalty statute. See Ark. Stat. Ann. § 41-1303 (1977). The jury sentenced petitioner to death by electrocution. On appeal, the Supreme Court of Arkansas affirmed petitioner's conviction and sentence. 276 Ark. 98, 633 S. W. 2d 3 (1982). Although the court acknowledged that the prior convictions had no bearing on any aggravating circumstance and should not have been

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admitted, it concluded that the error was not "prejudicial." *Id.*, at 110, 633 S. W. 2d, at 10.

Under the decisions of this Court, the death sentence imposed in this case must be set aside. The State's use of petitioner's criminal record injected an extraneous factor into the capital sentencing proceeding. In *Furman v. Georgia*, 408 U. S. 238 (1972), this Court concluded that discretionary capital sentencing, unchannelled by legislatively defined criteria, violates the Eighth Amendment because it is "pregnant with discrimination," *id.*, at 257 (Douglas, J., concurring), because it allows the death penalty to be "wantonly" and "freakishly" imposed, *id.*, at 310 (Stewart, J., concurring), and because it affords "no meaningful basis for distinguishing the few cases in which [the death sentence] is imposed from the many cases in which it is not," *id.*, at 313 (WHITE, J., concurring). The Court has held that the death penalty can be imposed only under statutory schemes that limit the sentencer's discretion "by requiring examination of specific factors that argue in favor of or against imposition of the death penalty." *Proffitt v. Florida*, 428 U. S. 242, 258 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.). See also, *e. g.*, *Gregg v. Georgia*, 428 U. S. 153, 189-193 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.).

To be effective, restrictions on sentencing discretion must not only appear in a statute, they must also be enforced. Criteria set forth in a statute serve no purpose if prosecutors are free to ignore them. In this case, the Supreme Court of Arkansas, without discussing any of this Court's decisions, affirmed petitioner's death sentence on the ground that it did not find the prosecutor's blatant disregard of the statutory sentencing criteria "to have been prejudicial." 276 Ark., at 110, 633 S. W. 2d, at 10.

I would grant certiorari and reject this cavalier use of the harmless-error doctrine. The prejudice inherent in the proof of past crimes is the very reason such proof is forbidden in the first place. See, *e. g.*, *Michelson v. United States*, 335

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U. S. 469, 475-476 (1948); *Boyd v. United States*, 142 U. S. 450, 458 (1892). There is certainly no basis for concluding beyond a reasonable doubt that the jury would have sentenced petitioner to death had it not been informed of his prior convictions. See *Chapman v. California*, 386 U. S. 18, 24 (1967).

I therefore dissent.

Rehearing Denied

- No. 81-2040. *MOORE v. MOORE*, *ante*, p. 878;
No. 81-2364. *GEE v. GEE ET AL.*, *ante*, p. 838;
No. 81-2410. *GEE v. GEE*, *ante*, p. 840;
No. 81-2411. *GEE v. DAWSON ET AL.*, *ante*, p. 840;
No. 81-5634. *TISON v. ARIZONA* (two cases), *ante*, p. 882;
No. 81-6660. *NEWLON v. MISSOURI*, *ante*, p. 884;
No. 81-6796. *WILSON v. BROWN, WARDEN, ET AL.*, *ante*, p. 846;
No. 81-6822. *LORENTZEN v. TRUSTEES OF BOSTON COLLEGE ET AL.*, *ante*, p. 847;
No. 81-6855. *MARTINEZ v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.*, *ante*, p. 849;
No. 81-6884. *MARTIN v. SAMPLE ET AL.*, *ante*, p. 850;
No. 81-6917. *HANSON v. UNITED STATES*, *ante*, p. 805;
No. 82-5033. *PHILSON v. UNITED STATES*, *ante*, p. 911;
No. 82-5184. *IN RE VELILLA*, *ante*, p. 819;
No. 82-5230. *TOSON v. ANDALE CO. ET AL.*, *ante*, p. 913;
No. 82-5235. *STONEMAN v. AURELIUS*, *ante*, p. 913;
No. 82-5255. *BULLOCK v. NATIONAL RAILROAD ADJUSTMENT BOARD ET AL.*, *ante*, p. 913;
No. 82-5258. *THIBODEAUX v. COMMISSIONER OF INTERNAL REVENUE*, *ante*, p. 876; and
No. 82-5337. *MITCHELL v. MARYLAND*, *ante*, p. 915.
Petitions for rehearing denied.

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No. 80-812. MESCALERO APACHE TRIBE *v.* O'CHESKEY, COMMISSIONER OF REVENUE OF NEW MEXICO, ET AL., 450 U. S. 959 and 455 U. S. 929. Second motion for leave to file petition for rehearing denied.

NOVEMBER 23, 1982

Dismissal Under Rule 53

No. 81-876. ST. LUKE'S FEDERATION OF NURSES & HEALTH PROFESSIONALS *v.* PRESBYTERIAN/ST. LUKE'S MEDICAL CENTER; BETH ISRAEL FEDERATION OF NURSES & HEALTH PROFESSIONALS *v.* BETH ISRAEL HOSPITAL AND GERIATRIC CENTER; and ST. ANTHONY FEDERATION OF NURSES & HEALTH PROFESSIONALS *v.* ST. ANTHONY HOSPITAL SYSTEMS. C. A. 10th Cir. Stipulation to dismiss the petition for writ of certiorari to review the judgments entered July 8, 1981, July 20, 1981, and August 4, 1981, was filed, and the cases were dismissed pursuant to this Court's Rule 53. Reported below: 653 F. 2d 450 (first case); 677 F. 2d 1343 (second case); 655 F. 2d 1028 (third case).

NOVEMBER 29, 1982

Dismissal Under Rule 53

No. 81-872. TURNER, FORMER DIRECTOR OF CENTRAL INTELLIGENCE *v.* JORDAN. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 212 U. S. App. D. C. 205, 659 F. 2d 251.

Affirmed on Appeal

No. 82-574. STEVENSON ET AL. *v.* SOUTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL. Affirmed on appeal from D. C. S. C. Reported below: 533 F. Supp. 1178.

Appeals Dismissed

No. 82-567. WILLIAMS ET AL. *v.* CHEETWOOD & DAVIES. Appeal from Ct. App. Ohio, Wood County, dismissed for want of substantial federal question.

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No. 82-573. SOUTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL. *v.* RILEY, GOVERNOR OF SOUTH CAROLINA, ET AL. Appeal from D. C. S. C. dismissed for want of jurisdiction. Reported below: 533 F. Supp. 1178.

No. 82-576. PIERCE ET UX. *v.* BIERER ET AL. Appeal from Sup. Ct. Del. dismissed for want of substantial federal question. Reported below: 447 A. 2d 1189.

JUSTICE WHITE, dissenting.

I would note probable jurisdiction. The reasons for doing so which I stated in dissent from dismissal in *Hill v. Garner*, 434 U. S. 989 (1977), are more telling now than they were then.

Certiorari Granted—Reversed and Remanded. (See No. 82-158, *ante*, p. 42.)

Certiorari Granted—Vacated and Remanded. (See also No. 82-5082, *ante*, p. 56.)

No. 82-327. CHICAGO BOARD OPTIONS EXCHANGE, INC. *v.* BOARD OF TRADE OF THE CITY OF CHICAGO; OPTIONS CLEARING CORP. *v.* BOARD OF TRADE OF THE CITY OF CHICAGO; and

No. 82-526. SECURITIES AND EXCHANGE COMMISSION *v.* BOARD OF TRADE OF THE CITY OF CHICAGO ET AL. (two cases). C. A. 7th Cir. Motion of Securities Industry Association for leave to file a brief as *amicus curiae* in No. 82-327 granted. Upon consideration of the suggestions of mootness filed by the petitioners, the petitions for writs of certiorari are granted, the judgments are vacated, and the cases are remanded with directions to dismiss the petitions for review as moot. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). JUSTICE WHITE took no part in the consideration or decision of this motion and these cases. Reported below: Nos. 82-327 (first case) and 82-526 (first case), 677 F. 2d

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1137; Nos. 82-327 (second case) and 82-526 (second case), 679 F. 2d 894.

Vacated and Remanded After Certiorari Granted

No. 81-1998. PRICE WATERHOUSE *v.* PANZIRER ET AL. C. A. 2d Cir. [Certiorari granted, 458 U. S. 1105.] In light of the respondents' suggestion of mootness and the petitioner's response, the judgment is vacated and the case is remanded to the Court of Appeals with directions that it instruct the United States District Court for the Southern District of New York to dismiss the complaint with prejudice.

Miscellaneous Orders

No. — — —. WAMPANOAG INDIAN NATION ET AL. *v.* MASSACHUSETTS. Motion of plaintiffs for leave to proceed *in forma pauperis* denied.

No. A-419 (82-769). TUCKER *v.* UNITED STATES. C. A. 5th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 80-1832. IMMIGRATION AND NATURALIZATION SERVICE *v.* CHADHA ET AL. C. A. 9th Cir. [Probable jurisdiction postponed, 454 U. S. 812];

No. 80-2170. UNITED STATES HOUSE OF REPRESENTATIVES *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 9th Cir. [Certiorari granted, 454 U. S. 812]; and

No. 80-2171. UNITED STATES SENATE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 9th Cir. [Certiorari granted, 454 U. S. 812.] Motion of petitioner in No. 80-2170 for leave to file a supplemental brief on reargument granted. Motion of petitioner in No. 80-2171 for leave to file a supplemental brief on reargument granted.

No. D-292. IN RE DISBARMENT OF FENDLER. Robert Harold Fendler, of Phoenix, Ariz., having requested to resign as a member of the Bar of this Court, it is ordered that

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his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on September 9, 1982 [458 U. S. 1128], is hereby discharged.

No. 81-430. ILLINOIS v. GATES ET UX. Sup. Ct. Ill. [Certiorari granted, 454 U. S. 1140.] Case restored to calendar for reargument. In addition to the question presented in the petition for certiorari and previously argued here, the parties are requested to address the question whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, *Mapp v. Ohio*, 367 U. S. 643 (1961); *Weeks v. United States*, 232 U. S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief that the search and seizure at issue was consistent with the Fourth Amendment.

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Earlier this year the Court decided not to allow the Illinois Attorney General to argue the question it now asks the parties to address. That decision was consistent with the Court's settled practice of not permitting a party to advance a ground for reversal that was not presented below. The reversal today of the Court's earlier decision is not only a flagrant departure from its settled practice, but also raises serious questions concerning the Court's management of its certiorari jurisdiction. I am therefore unable to join the Court's decision to order reargument of this case.

I

As a matter of ordinary procedure, the burdens of litigation are minimized and the decisional process is expedited if a court is consistent in its rulings as a case progresses. We set a poor example for other judges when we suddenly reverse our prior rulings in the same case.

On February 8, 1982, the State of Illinois filed a motion seeking leave to amend or enlarge the question presented for review in this case. The motion asked the Court to incorporate the following question:

"Assuming, *arguendo*, that the information used to obtain the search warrant did not satisfy *Aguilar v. Texas*, 378 U. S. 108 (1964), should the evidence obtained under the warrant nevertheless be admitted at trial because the police acted in a reasonable good faith belief in the validity of the warrant?"

On March 1, 1982, the Court unanimously denied that motion. 455 U. S. 986. On October 13, 1982, the parties presented an hour of argument; they respected our decision and did not attempt to argue the question of good faith. Today, the Court asks the parties to reargue the case in order to address the very question it would not allow the parties to argue last month. This type of inconsistent decisionmaking always imposes unnecessary costs on litigants and is wasteful of the judiciary's most scarce resource—time.

II

As a matter of appellate practice, it is generally undesirable to permit a party to seek reversal of a lower court's judgment on a ground that the lower court had no opportunity to consider.¹ It is especially poor practice to do so when the basis for reversal involves a factual issue on which neither party adduced any evidence. Those considerations apply with added force when the judgment of the highest court of a sovereign State is being reviewed.²

¹Of course, there is no impediment to presenting a new argument as an alternative basis for *affirming* the decision below. *E. g.*, *Hankerson v. North Carolina*, 432 U. S. 233, 240, n. 6 (1977).

²Writing for the Court in *Cardinale v. Louisiana*, 394 U. S. 437 (1969), JUSTICE WHITE made it clear that this view represents the Court's traditional stance.

"The Court has consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions both before

Each of these considerations applies to the additional question on which the Court has ordered reargument. Neither party gave the Circuit Court of Du Page County, the Appellate Court of Illinois, Second District, or the Supreme Court of Illinois an opportunity to consider the question. Neither party offered any evidence concerning the state of mind of the Magistrate when he issued the warrant, the state of mind of the officers who obtained the warrant, or the state of mind of the officers who executed the warrant. In short, the new issue was not "fairly presented" to the state courts. Cf. *Picard v. Connor*, 404 U. S. 270 (1971).

III

As a matter of power, the Court's action is subject to question. That question is serious whether one assumes that the Illinois courts decided the Fourth Amendment question correctly or incorrectly.

On the one hand, if it is assumed that the Supreme Court of Illinois correctly decided the only federal question that was presented to it,³ this Court has a duty to affirm its judgment. See *New York ex rel. Cohn v. Graves*, 300 U. S. 308, 317

[*Crowell v. Randell*, 10 Pet. 368 (1836)], *Miller v. Nicholls*, 4 Wheat. 311, 315 (1819), and since, e. g., *Safeway Stores, Inc. v. Oklahoma Retail Grocers Assn., Inc.*, 360 U. S. 334, 342, n. 7 (1959); *State Farm Mutual Automobile Ins. Co. v. Duel*, 324 U. S. 154, 160-163 (1945); *McGoldrick v. Compagnie General Transatlantique*, 309 U. S. 430, 434-435 (1940); *Whitney v. California*, 274 U. S. 357, 362-363 (1927); *Dewey v. Des Moines*, 173 U. S. 193, 197-201 (1899); *Murdock v. City of Memphis*, 20 Wall. 590 (1875).

"... Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind." *Id.*, at 438-439.

See also *New York ex rel. Cohn v. Graves*, 300 U. S. 308, 317 (1937); *Wilson v. Cook*, 327 U. S. 474, 483-484 (1946); *Lear, Inc. v. Adkins*, 395 U. S. 653, 677-682 (1969) (WHITE, J., concurring in part). See generally R. Stern & E. Gressman, *Supreme Court Practice* 456-465 (5th ed. 1978).

³The Supreme Court of Illinois held that the Fourth Amendment prohibits a magistrate from issuing a search warrant on the basis of an affidavit such as that filed by the police officer in this case.

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(1937). If the only federal question presented by a certiorari petition is unworthy of review, or does not identify a legitimate basis for reversal, this Court has no power to grant certiorari simply because it would like to address some other federal question. For neither Article III of the Constitution nor the jurisdictional statutes enacted by Congress vest this Court with any roving authority to decide federal questions that have not been properly raised in adversary litigation.

On the other hand, if it is assumed that the Supreme Court of Illinois has incorrectly decided the federal question that was presented to it, this Court has a duty to reverse its judgment. That duty could be performed by simply answering the question decided below, without reaching the additional question on which the Court orders reargument today. It is, of course, a settled canon of our constitutional jurisprudence that we do not decide constitutional questions unless it is necessary to do so to resolve an actual case or controversy. See, *e. g.*, *Minnick v. California Dept. of Corrections*, 452 U. S. 105, 122-127 (1981).

Thus, however the Court resolves the merits of the federal question that has already been argued, the action it takes today sheds a distressing light on the Court's conception of the scope of its powers. Accordingly, I respectfully dissent.

No. 81-1114. *ILLINOIS v. ABBOTT & ASSOCIATES, INC., ET AL.* C. A. 7th Cir. [Certiorari granted, 455 U. S. 1015.] Motion of the Solicitor General to permit Richard G. Wilkins, Esquire, to present oral argument *pro hac vice* granted.

No. 81-1476. *UNITED STATES v. RODGERS ET AL.*; and *UNITED STATES v. INGRAM ET AL.* C. A. 5th Cir. [Certiorari granted, 456 U. S. 904.] Motion of the Solicitor General to permit George W. Jones, Jr., Esquire, to present oral argument *pro hac vice* granted.

No. 81-1335. *DISTRICT OF COLUMBIA COURT OF APPEALS ET AL. v. FELDMAN ET AL.* C. A. D. C. Cir. [Cer-

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tiorari granted, 458 U. S. 1105.] Motion of respondents for divided argument granted.

No. 81-1282. NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. *v.* IDAHO ET AL., *ante*, p. 809; and

No. 81-1312. CARMEN, ADMINISTRATOR OF GENERAL SERVICES *v.* IDAHO ET AL., *ante*, p. 809. Motion of appellees to retax costs denied.

No. 81-1284. EICKE *v.* EICKE. Ct. App. La., 3d Cir. [Certiorari granted, 456 U. S. 970.] The parties are directed to file within 30 days supplemental memoranda addressing the Parental Kidnaping Prevention Act, 28 U. S. C. § 1738A (1976 ed., Supp. IV), and its effect on the case pending before this Court. Oral argument in this case, presently scheduled for December 6, 1982, is postponed and the case of *United States v. Knotts*, No. 81-1802 [certiorari granted, 457 U. S. 1131], is set for oral argument in its stead.

No. 81-1463. UNITED STATES *v.* HASTING ET AL. C. A. 7th Cir. [Certiorari granted, 456 U. S. 971.] Motion for appointment of counsel granted, and it is ordered that Paul Victor Esposito, Esquire, of Chicago, Ill., be appointed to serve as counsel for respondent Gable D. Gibson in this case.

No. 81-1889. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-1958. ARIZONA ELECTRIC POWER COOPERATIVE, INC. *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-2042. MICHIGAN *v.* MID-LOUISIANA GAS CO. ET AL.; and

No. 82-19. FEDERAL ENERGY REGULATORY COMMISSION *v.* MID-LOUISIANA GAS CO. ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 820.] Motion of the parties to dispense with printing the joint appendix granted. Motion of Public Utilities Commission of California et al. for leave to file a brief as *amici curiae* granted.

No. 81-1891. MORRISON-KNUDSEN CONSTRUCTION CO. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION

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PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 820.] Motions of Shipbuilders Council of America, Alliance of American Insurers et al., National Association of Stevedores, National Council of Self-Insurers, and American Insurance Association for leave to file briefs as *amici curiae* granted.

No. 82-131. JONES & LAUGHLIN STEEL CORP. *v.* PFEIFER. C. A. 3d Cir. [Certiorari granted, *ante*, p. 821.] Motion of Southeastern Pennsylvania Transportation Authority for leave to file a brief as *amicus curiae* granted.

No. 82-195. MUELLER ET AL. *v.* ALLEN ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motion of Minnesota Association of School Administrators et al. for leave to file a brief as *amici curiae* granted.

No. 82-629. THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION *v.* WOLD ENGINEERING, P.C., ET AL. Sup. Ct. N. D. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-794. PETERS ET AL. *v.* WAYNE STATE UNIVERSITY ET AL. C. A. 6th Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 82-5464. IN RE JOHNSON. Petition for writ of mandamus denied.

No. 82-5522. IN RE DIDIO. Petition for writ of prohibition denied.

No. 82-610. IN RE HOPFMANN ET AL. Application for injunction, presented to JUSTICE BRENNAN, and by him referred to the Court, denied. Petition for writ of prohibition and/or mandamus and/or injunction denied.

Certiorari Granted

No. 82-215. UNITED STATES *v.* WHITING POOLS, INC. C. A. 2d Cir. Certiorari granted. Reported below: 674 F. 2d 144.

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No. 82-486. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL-CIO, ET AL. v. SCOTT ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 680 F. 2d 979.

No. 81-2386. DELCOSTELLO v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. C. A. 4th Cir.; and

No. 81-2408. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL. v. FLOWERS ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 81-2386, 679 F. 2d 879; No. 81-2408, 671 F. 2d 87.

No. 82-524. BALTIMORE GAS & ELECTRIC CO. ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC.;

No. 82-545. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.; and

No. 82-551. COMMONWEALTH EDISON CO. ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. D. C. Cir. Motion of Scientists & Engineers for Secure Energy, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE POWELL took no part in the consideration or decision of this motion and these petitions. Reported below: 222 U. S. App. D. C. 9, 685 F. 2d 459.

No. 82-5119. BELL v. UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 678 F. 2d 547.

Certiorari Denied

No. 81-2381. TODD SHIPYARDS CORP. ET AL. v. ALLAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 666 F. 2d 399.

No. 81-2390. RUTSTEIN v. UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 874.

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No. 81-2409. *SECURITY GAS & OIL INC. ET AL. v. KRAMAS*. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 766.

No. 81-6821. *HAMILTON v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 1325.

No. 81-6938. *RAEEN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 81-6953. *BOYER v. RILEY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 675 F. 2d 185.

No. 82-98. *SCALZITTI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-164. *FELICE v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 918.

No. 82-218. *NIXON v. CARMEN, ADMINISTRATOR OF GENERAL SERVICES, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 216 U. S. App. D. C. 188, 670 F. 2d 346.

No. 82-247. *MANCHESTER ENVIRONMENTAL COALITION ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 672 F. 2d 998.

No. 82-265. *RAINERI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 670 F. 2d 702.

No. 82-313. *PAVONE ET AL. v. GIUFFRIDA, DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 295.

No. 82-341. *NUECES COUNTY NAVIGATION DISTRICT NO. 1 v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 2d 1055.

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No. 82-344. UNITED OIL MANUFACTURING CO., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 672 F. 2d 1208.

No. 82-378. MANDALAY SHORES COOPERATIVE HOUSING ASSN., INC. *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 667 F. 2d 1195.

No. 82-404. HILTON HOTELS CORP., SUCCESSOR TO FLAMINGO RESORT, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 664 F. 2d 1387.

No. 82-414. DEMJANJUK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 680 F. 2d 32.

No. 82-423. KOO ET AL. *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 647 P. 2d 889.

No. 82-425. MCWILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 634 S. W. 2d 815.

No. 82-428. COWDEN, TRUSTEE *v.* CIAFFONI ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 498 Pa. 267, 446 A. 2d 225.

No. 82-447. SENTRY INSURANCE ET AL. *v.* TODD SHIPYARDS CORP. ET AL.; and

No. 82-528. TRAVELERS INSURANCE CO. *v.* TODD SHIPYARDS CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 2d 401.

No. 82-467. SPLIT ROCK NURSING HOME *v.* OFFICE OF HEALTH SYSTEMS MANAGEMENT OF THE DEPARTMENT OF HEALTH OF NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 56 N. Y. 2d 932, 439 N. E. 2d 395.

No. 82-468. AMERICAN TRUCKING ASSNS., INC., ET AL. *v.* LARSON, SECRETARY OF TRANSPORTATION OF PENNSYLVANIA, ET AL.; and

No. 82-505. STEAMSHIP OPERATORS INTERMODAL COMMITTEE *v.* LARSON, SECRETARY OF TRANSPORTATION OF

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PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 683 F. 2d 787.

No. 82-469. FIKE, EXECUTRIX, ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 672 F. 2d 756.

No. 82-475. NORTHERN ELECTRIC CO., A DIVISION OF SUNBEAM CORP. *v.* HARRELL. C. A. 5th Cir. Certiorari denied. Reported below: 672 F. 2d 444 and 679 F. 2d 31.

No. 82-499. COLE *v.* WESTINGHOUSE BROADCASTING CO., INC., ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 386 Mass. 303, 435 N. E. 2d 1021.

No. 82-517. VOLVO PENTA OF AMERICA *v.* KENNEDY ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 544, 647 P. 2d 30.

No. 82-520. BEERY *v.* TURNER. C. A. 10th Cir. Certiorari denied. Reported below: 680 F. 2d 705.

No. 82-525. M. W. ZACK METAL CO. *v.* INTERNATIONAL NAVIGATION CORPORATION OF MONROVIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 525.

No. 82-533. AVCO CORP. *v.* PRECISION AIR PARTS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 494.

No. 82-536. BERGER *v.* BERGER. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-537. JOLLY *v.* LISTERMAN, REGIONAL REPRESENTATIVE, BUREAU OF RETIREMENT AND SURVIVORS, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 373, 672 F. 2d 935, and 219 U. S. App. D. C. 83, 675 F. 2d 1308.

No. 82-542. OHIO EX REL. EARNHART *v.* OHIO POWER SITING BOARD ET AL. Sup. Ct. Ohio. Certiorari denied.

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No. 82-550. *SHOP & SAVE FOOD MARKETS, INC. v. PNEUMO CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 683 F. 2d 27.

No. 82-554. *MCKENZIE ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 2d 629.

No. 82-555. *WATSON ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 765.

No. 82-561. *JOHNSON v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 82-564. *DI IULIO ET AL. v. BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF NORTHLAKE, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 2d 666.

No. 82-568. *COUSINO v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 2d 604.

No. 82-571. *PAYNE ET AL. v. TRAVENOL LABORATORIES, INC., ET AL.; and*

No. 82-589. *TRAVENOL LABORATORIES, INC., ET AL. v. PAYNE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 798.

No. 82-572. *GREAT LAKES PRESS CORP. ET AL. v. HOWES.* C. A. 2d Cir. Certiorari denied. Reported below: 679 F. 2d 1023.

No. 82-578. *BRADY v. ALLSTATE INSURANCE CO.* C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 2d 86.

No. 82-580. *DEMASI ET AL. v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-582. *ASHMORE ET AL. v. TARRANT COUNTY ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 635 S. W. 2d 417.

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No. 82-597. *TREPANY ET AL. v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 409 So. 2d 529.

No. 82-600. *HINSON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 418 So. 2d 980.

No. 82-604. *BLOCH v. COMPTON ET AL.* Sup. Ct. Va. Certiorari denied.

No. 82-607. *DUNN v. NATIONAL RAILROAD PASSENGER CORP., AKA AMTRAK*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 820.

No. 82-617. *PFEIFFER v. ESSEX WIRE CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 2d 684.

No. 82-621. *TOWN CONCRETE PIPE OF WASHINGTON, INC. v. LABORERS INTERNATIONAL UNION LOCAL 252*. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 1284.

No. 82-636. *J. L. LESTER & SON, INC. v. SMITH, ADMINISTRATRIX, ESTATE OF SMITH*. Ct. App. Ga. Certiorari denied. Reported below: 162 Ga. App. 506, 291 S. E. 2d 251.

No. 82-641. *POMPANO v. MICHAEL SCHIAVONE & SONS, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 680 F. 2d 911.

No. 82-652. *CASEY v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 812.

No. 82-653. *WADE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 844.

No. 82-661. *WALKER v. SUN SHIP, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 684 F. 2d 266.

No. 82-668. *GONZALEZ v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 211 Neb. 697, 320 N. W. 2d 107.

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No. 82-683. *MELLIES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.

No. 82-684. *HAYES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 1359.

No. 82-705. *ASTORGA-TORRES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 1331.

No. 82-731. *MCNEELY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 2d 1331.

No. 82-746. *HABIB ET AL. v. RAYTHEON CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 510, 684 F. 2d 1032.

No. 82-5038. *BURKS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 447.

No. 82-5071. *PHILLIPS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 2d 647.

No. 82-5210. *ROBINSON v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 51 Md. App. 752.

No. 82-5211. *ARCHIBONG v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 82-5215. *CARLSON v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 318 N. W. 2d 308.

No. 82-5222. *HINKLE v. SCURR, WARDEN, IOWA STATE PENITENTIARY, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 2d 667.

No. 82-5304. *ROBERTS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 826.

No. 82-5346. *BEECROFT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

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No. 82-5347. *BRUINGTON, BY HIS MOTHER AND NEXT FRIEND, EZELLE, ET AL. v. CONN, SECRETARY, KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 2d 582.

No. 82-5409. *SETZER v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 654 F. 2d 354.

No. 82-5432. *JOHNSON v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 49.

No. 82-5460. *KIRK v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 430.

No. 82-5465. *GREAVES v. WARREN.* Sup. Ct. Ore. Certiorari denied. Reported below: 293 Ore. 340, 648 P. 2d 853.

No. 82-5469. *HOLLAND ET AL. v. HUNTER COLLEGE CAMPUS SCHOOLS ET AL.; and HOLLAND v. RCA CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 291 (first case).

No. 82-5470. *READ v. KUBINSKI ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 452 A. 2d 651.

No. 82-5472. *KYLE v. DONOVAN, SECRETARY OF LABOR.* C. A. 6th Cir. Certiorari denied. Reported below: 671 F. 2d 194.

No. 82-5475. *COTTON v. FEDERAL LAND BANK OF COLUMBIA ET AL.; and*

No. 82-5476. *COTTON v. FEDERAL LAND BANK OF COLUMBIA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 1368.

No. 82-5478. *MOORE v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 415 So. 2d 1210.

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No. 82-5482. *HENRY v. GEORGIA*. Sup. Ct. Ga. Certiorari denied.

No. 82-5484. *SIMON v. REID, SUPERINTENDENT, FISH-KILL CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 82-5489. *WEAVER v. HAYES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 432.

No. 82-5490. *TIPPETT v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 842.

No. 82-5492. *RODRIGUEZ v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 1008, 450 N. Y. S. 2d 643.

No. 82-5493. *THOMAS v. WARDEN, MARYLAND STATE PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 2d 83.

No. 82-5494. *WILLIAMS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 274 Ark. 9, 621 S. W. 2d 686, and 276 Ark. xxiii.

No. 82-5498. *BUNTING v. TARD, SUPERINTENDENT, TRENTON STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5504. *CONNOLLY v. NEW JERSEY ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 91 N. J. 258, 450 A. 2d 573.

No. 82-5505. *CONNOLLY v. NEW JERSEY ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 91 N. J. 258, 450 A. 2d 573.

No. 82-5507. *BOYER v. GUARINI, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 82-5509. *COUNTRY v. PARRATT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 2d 588.

No. 82-5511. *HARGETT v. ANTHONY PLAZA, LTD., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-5512. *CHIN v. NADEL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 289.

No. 82-5514. *FORET v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 1371.

No. 82-5518. *SLOCUM v. GEORGIA STATE BOARD OF PAR-
DONS AND PAROLES ET AL.* C. A. 11th Cir. Certiorari
denied. Reported below: 678 F. 2d 940.

No. 82-5523. *ANDERSON v. BONIN*. C. A. 5th Cir. Cer-
tiorari denied.

No. 82-5525. *TAYLOR v. HOUSEWRIGHT, DIRECTOR, NE-
VADA STATE PRISONS, ET AL.* C. A. 9th Cir. Certiorari
denied. Reported below: 688 F. 2d 848.

No. 82-5530. *HUNTER v. UNITED STATES*. C. A. 7th
Cir. Certiorari denied. Reported below: 685 F. 2d 434.

No. 82-5544. *CHAMORRO, AKA HERNANDEZ v. UNITED
STATES*. C. A. 1st Cir. Certiorari denied. Reported
below: 687 F. 2d 1.

No. 82-5565. *BRADY v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5569. *FOLEY v. UNITED STATES*. C. A. 8th Cir.
Certiorari denied. Reported below: 683 F. 2d 273.

No. 82-5600. *BLACK v. UNITED STATES*. C. A. 7th Cir.
Certiorari denied. Reported below: 684 F. 2d 481.

No. 82-5611. *ROBERTS v. UNITED STATES*. C. A. 6th
Cir. Certiorari denied. Reported below: 673 F. 2d 1331.

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No. 82-5614. *SOEHNLEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-5615. *PERRINE v. MOSSINGHOFF, COMMISSIONER OF PATENTS AND TRADEMARKS*. C. A. D. C. Cir. Certiorari denied.

No. 82-5625. *PURKEYPYLE v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-5627. *FLEISHMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 2d 1329.

No. 82-5634. *DUARTE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

No. 82-5639. *ROSARIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

No. 82-5642. *JACKSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-5643. *HARPER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 851.

No. 82-5645. *DUDLEY v. LAYMAN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 880.

No. 82-5650. *SURRIDGE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 250.

No. 82-5661. *EMERY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 493.

No. 82-5665. *ALLEN, ADMINISTRATRIX OF THE ESTATE OF BROWN v. MCCUTCHEON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 2d 1305.

No. 81-6665. *JAMES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

Opinion of JUSTICE BRENNAN, with whom JUSTICE BLACKMUN joins, respecting the denial of the petition for writ of certiorari.

Opinions supporting denial of petitions for certiorari are understandably seldom filed, but this in my view is one of the

rare cases where the filing of such an opinion is justified. Cf. *Estate of Wilson v. Aiken Industries, Inc.*, 439 U. S. 877 (1978) (BLACKMUN, J., concurring in denial of writ of certiorari); *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912 (1950) (Frankfurter, J., opinion respecting denial of writ of certiorari).

Petitioner, after conviction on federal criminal charges, filed a timely motion for reduction of sentence under Federal Rule of Criminal Procedure 35. The motion was denied on July 7, 1981. For some reason, however, notice of the denial from the Clerk of the District Court was not received by either petitioner or the United States Attorney. Petitioner—who was incarcerated the entire time—first learned of it by happenstance in September 1981. He promptly requested leave from the District Court to appeal out of time, and that court, after due investigation of the circumstances, granted his request.

The Government explicitly refused to contest the propriety of the appeal before the Court of Appeals for the Ninth Circuit. Nevertheless, the Court of Appeals *sua sponte* dismissed the appeal, holding that district courts may not grant leave to appeal after the maximum extension period has passed. See Fed. Rule App. Proc. 4(b). The court implied that the rigidity of Rule 4(b) could not be set aside even though this petitioner was ignorant, through no fault of his own, of the denial of his Rule 35 motion throughout the period of an allowable extension. Cf. Fed. Rule Crim. Proc. 49(c).¹ Petitioner sought certiorari here, and the Solicitor General informed us that he “do[es] not oppose vacation of the judgment of dismissal and remand to the [C]ourt of [A]ppeals.” Memorandum for United States 1.

¹ In response to a letter from petitioner which the Court of Appeals construed as a motion for reconsideration, the court reaffirmed its dismissal, but expressed the view that petitioner could file a new motion under Rule 35, and then perfect an appeal from denial of such a motion. See n. 2, *infra*.

I do not question the correctness of the Court of Appeals' construction of Federal Rule of Appellate Procedure 4(b), nor that its *sua sponte* action is consistent with the plain language of Federal Rule of Criminal Procedure 49(c). Nevertheless, if Rules 4(b) and 49(c) were truly the last word in defining petitioner's opportunity to appeal under our federal system of procedure, I would have serious doubts about the constitutionality of that system of procedure. Simply put, the application of these Rules to penalize an uncounseled and incarcerated criminal defendant for a clerical error that was none of his doing and of which he had no knowledge would seem to me not only unduly harsh but resoundingly unjust. See *Logan v. Zimmerman Brush Co.*, 455 U. S. 422, 433-437 (1982); *Boddie v. Connecticut*, 401 U. S. 371, 377-379 (1971); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313-315 (1950).² But I do not think that the Court of Appeals was precluded by those Rules from affording petitioner redress. For, at least with respect to the pair of Civil Rules that directly parallel the provisions at issue here,³ Courts of Appeals have held that in certain "unique" or "extraordinary" circumstances it would not be inconsistent with the Rules or the intent of Congress for the district court to vacate and reenter the original order to create a fresh judgment from which timely appeals could be perfected.⁴ Au-

² If the Court of Appeals were right that petitioner could file a new motion under Federal Rule of Criminal Procedure 35, see n. 1, *supra*, the problems posed by its decision might be significantly mitigated. But Rule 35 sets a 120-day time limit on motions to reduce a legal sentence, and I do not understand how petitioner could bring a new Rule 35 motion at this time without facing jurisdictional obstacles even more serious than those apparent in the appeal dismissed by the Court of Appeals.

³ See Fed. Rule App. Proc. 4(a); Fed. Rule Civ. Proc. 77(d).

⁴ See, e. g., *Buckeye Cellulose Corp. v. Braggs Electric Construction Co.*, 569 F. 2d 1036, 1038-1039 (CA8 1978); *Fidelity & Deposit Co. of Maryland v. USAFORM Hail Pool, Inc.*, 523 F. 2d 744, 747-751 (CA5 1975), cert. denied, 425 U. S. 950 (1976); *Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institute*, 163 U. S. App. D. C. 140, 500 F. 2d 808 (1974). The Ninth Circuit itself has recognized that district

thority to do this has been found in Federal Rule of Civil Procedure 60(b), which was designed, in large part, to replace the common-law writ of *coram nobis* in civil cases. In criminal cases, the writ of *coram nobis* itself remains available whenever resort to a more usual remedy would be inappropriate.⁵ See *United States v. Morgan*, 346 U. S. 502 (1954). Rather than *sua sponte* dismissing petitioner's appeal, the Court of Appeals might thus have considered whether the circumstances of this case warranted both treating petitioner's request to the District Court for leave to file an out-of-time notice of appeal as a motion for a writ of *coram nobis* to vacate and reenter its July 7 order, and treating the District Court's order allowing the notice of appeal to be filed as having granted such a motion. Cf. *Browder v. Director, Illinois Dept. of Corrections*, 434 U. S. 257, 272 (1978) (BLACKMUN, J., concurring).⁶ Moreover, I would not regard the Court of Appeals' failure to take that course as foreclosing petitioner's right, within a reasonable time after our denial of certiorari today, to apply anew to the District Court for a writ of *coram nobis*. If petitioner successfully files such a motion, the Court of Appeals on appeal may, admittedly, be as inhospita-

courts could employ this procedure under the proper circumstances, although it has not, as best as I can tell, ever actually found such circumstances to have been shown. See *Rodgers v. Watt*, 680 F. 2d 1295, 1298 (1982); *Kramer v. American Postal Workers Union, AFL-CIO*, 556 F. 2d 929 (1977).

⁵Title 28 U. S. C. § 2255, which has taken over most of the function of the writ of *coram nobis* in federal criminal procedure, only applies to collateral attacks on underlying sentences, and could not be employed to vacate and reenter an order denying a motion under Rule 35.

⁶In the alternative, the Court of Appeals might have exercised its own residual appellate jurisdiction and remanded the matter to the District Court to allow it to vacate and reenter the order from which petitioner sought appeal. Cf. *Moody v. Flowers*, 387 U. S. 97, 104 (1967); *Gully v. Interstate Natural Gas Co.*, 292 U. S. 16, 18-19 (1934). Neither of these approaches could possibly have prejudiced the Government, since it has consistently declined to contest the jurisdictional basis of petitioner's appeal.

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able to that motion as it was to his request to file an out-of-time notice of appeal. But consideration of any constitutional implications of such a holding may appropriately await the event.⁷ In light of these possible avenues of relief, I agree that review by this Court at this time is not warranted, and therefore vote to deny the petition for certiorari.

No. 82-235. *MORRIS ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 676 F. 2d 711.

No. 82-267. *MCCARTHY v. HINMAN.* C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 676 F. 2d 343.

No. 82-294. *LOUISIANA v. MARSHALL.* Sup. Ct. La. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 414 So. 2d 684.

No. 82-480. *MCCOMBS, CHAIRMAN, ILLINOIS PRISONER REVIEW BOARD v. SCOTT.* C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 669 F. 2d 1185.

No. 82-521. *JONES, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, ET AL. v. ARROYO.* C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 685 F. 2d 35.

No. 82-346. *SKEHAN v. BOARD OF TRUSTEES OF BLOOMSBURG STATE COLLEGE ET AL.* C. A. 3d Cir. Mo-

⁷ I suppose also that a holding is possible that, although *coram nobis* is an appropriate vehicle for mitigating the harshness of Rule 4(b), petitioner's circumstances are not sufficiently "extraordinary" for him to merit such relief. In that event, what constitutional issues arise in the case will at least be significantly more focused.

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tion of petitioner to amend petition for writ of certiorari granted. Certiorari denied. Reported below: 669 F. 2d 142 and 675 F. 2d 72.

No. 82-386. KERR-MCGEE CHEMICAL CORP. v. ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 571.

Opinion of JUSTICE BLACKMUN respecting the denial of the petition for writ of certiorari.

I realize that it is a tradition here that one seldom writes in support of the Court's decision to deny a petition for a writ of certiorari. See, however, *Castorr v. Brundage*, ante, p. 928 (STEVENS, J.); *James v. United States*, ante, p. 1044 (BRENNAN, J.); *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912 (1950) (Frankfurter, J.).

The reason I write in this case is that I fear that the content of the final paragraphs of the dissent will tend to create confusion in an area of law that seems to me to be fairly clear. It has been well established for many years that federal-question jurisdiction is present "only when the plaintiff's statement of his own cause of action shows that it is based upon [federal] laws or [the Federal] Constitution." *Louisville & Nashville R. Co. v. Mottley*, 211 U. S. 149, 152 (1908). It is insufficient "that the defendant would set up in defense certain laws of the United States." *Id.*, at 153.

The dissent asserts, *post*, at 1051, that the Second Circuit in *North American Phillips Corp. v. Emery Air Freight Corp.*, 579 F. 2d 229 (1978), held that "the lack of reference to federal law in the complaint does not control the determination whether a federal question is presented." It would be more accurate to say that the Second Circuit held that lack of reference to federal law does not control the determination whether a federal *claim* is presented by the complaint. In the present case, as the dissent explains, *post*, at 1052, the issue is whether "a defendant's federal pre-emption claim presents a federal question." In other words, the issue is

whether a federal question is presented by a federal *defense* to a state-law *claim*. If a federal claim is presented by the complaint, there is federal-question jurisdiction even if the complaint is phrased in state-law terms; if, however, the complaint presents only a state-law claim, a federal defense does not create federal-question jurisdiction.

I thus perceive no conflict between the present case and *North American Phillips*, and no conflict between the present case and other cases cited by petitioner. In each of those cases, the courts followed *Mottley* and focused on the federal basis for the plaintiff's claim. Here, in contrast, the plaintiff's claim has no federal basis. The plaintiff could not have stated a federal cause of action no matter how it pleaded its case. Because there is no conflict, the Court, it seems to me, is on sound ground in denying the petition for a writ of certiorari.

JUSTICE WHITE, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner Kerr-McGee Chemical Corp. (Kerr-McGee) owns a facility within the city limits of West Chicago, Ill., that has been used since World War II to produce compounds derived from radioactive natural ores. Since 1956, the facility has been licensed by the Nuclear Regulatory Commission or its predecessor. Although the facility has not been in active operation since 1973, some nuclear materials continue to be stored at the site.

In 1980, respondent State of Illinois filed a complaint against petitioner in an Illinois state court alleging that the operation and maintenance of the facility violate the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111½, ¶1001 *et seq.* (1979), and other state statutes pertaining to the disposal of hazardous wastes. Kerr-McGee petitioned to have the State's case removed to federal court, arguing that the state regulations have been pre-empted by the Atomic Energy Act of 1954, 68 Stat. 921, as amended, 42 U. S. C.

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§ 2011 *et seq.* (1976 ed., Supp. IV), which places the regulation of radioactive materials within the exclusive province of the Nuclear Regulatory Commission. The United States District Court for the Northern District of Illinois denied the State's motion to remand the case to the state court. The District Court found that the complaint necessarily involved the interpretation of federal law and thus was a claim "arising under . . . the laws of the United States" within the meaning of the removal statute, 28 U. S. C. § 1441(b).^{*} The complaint was dismissed by the District Court on pre-emption grounds.

On appeal, the United States Court of Appeals for the Seventh Circuit held that removal was improper. The Court of Appeals found that the State's complaint did not rely on or even allude to federal statutes or case law and that there was no basis for concluding that the State had drafted the complaint in order to defeat removal. 677 F. 2d 571, 577 (1982). The issue of federal pre-emption, the court held, is "merely a defense to state law claims"; a defense based on federal law cannot be a ground for removal. *Id.*, at 578. The District Court's decision was reversed and the case was remanded with instructions to remand it to the state court. Petitioner now seeks review of the Seventh Circuit's decision.

The holding in the present case is in direct conflict with a decision in the Second Circuit, *North American Phillips Corp. v. Emery Air Freight Corp.*, 579 F. 2d 229 (1978). In *North American Phillips*, the Second Circuit found that the lack of reference to federal law in the complaint does not control the determination whether a federal question is presented. The court held that the substance of the allegations

^{*}Section 1441(b) provides:

"Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

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must be reviewed in order to determine "whether a federal law is a pivotal issue in the case, one that is basic in the determination of the conflict between the parties." *Id.*, at 233.

The issue whether, or under what circumstances, a defendant's federal pre-emption claim presents a federal question sufficient to support removal of a state plaintiff's complaint which on its face raises only state claims, is a substantial one going to the heart of the power of federal courts to determine claims raised in state-court proceedings. The Court should grant this petition to resolve the conflict. Accordingly, I dissent from the denial of certiorari.

No. 82-446. DALLAS COUNTY HOSPITAL DISTRICT *v.* DALLAS ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari and give this case plenary consideration. Reported below: 670 F. 2d 629.

JUSTICE REHNQUIST, dissenting.

The Court of Appeals for the Fifth Circuit held in this case that under the First and Fourteenth Amendments a hospital, like city streets and parks, is a "public forum" which must be made available to protestors and demonstrators subject only to reasonable "time, place, and manner" restrictions. 670 F. 2d 629 (1982). I think the Court of Appeals misunderstood the distinction in our cases between public property, such as city streets and parks, which has been historically treated as a "public forum," see *Hague v. CIO*, 307 U. S. 496 (1939), and public property, such as jails, military bases, and postal delivery boxes, which has been held not to be a public forum. See *Adderley v. Florida*, 385 U. S. 39 (1966); *Greer v. Spock*, 424 U. S. 828 (1976); *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U. S. 114 (1981). The decision of the Court of Appeals, mistakenly I believe, thus requires a hospital to promulgate a set of "regulations" which would provide for access to at least a part of its premises by such protest groups as respondents. To say that the deci-

sion severely limits the ability of public hospitals to devote their premises to the purpose of furnishing medical care to the sick would be an understatement.

The Court of Appeals relied primarily on our decisions in *Shuttlesworth v. Birmingham*, 394 U. S. 147 (1969), and *Consolidated Edison Co. v. Public Service Comm'n*, 447 U. S. 530 (1980). Neither one of these cases speaks to the issue here. *Shuttlesworth* involved the public streets of Birmingham, Ala. *Consolidated Edison* represented no effort on the part of private individuals to obtain access to public property; as the Court in that case pointed out:

"Consolidated Edison has not asked to use the offices of the Commission as a forum from which to promulgate its views. Rather, it seeks merely to utilize its own billing envelopes to promulgate its views on controversial issues of public policy." 447 U. S., at 539-540.

We have recently summarized the teachings of this Court's cases as to the kind of government property involved here in *United States Postal Service v. Council of Greenburgh Civic Assns.*, *supra*:

"Indeed, it is difficult to conceive of any reason why this Court should treat a letterbox differently for First Amendment access purposes than it has in the past treated the military base in *Greer v. Spock*, 424 U. S. 828 (1976), the jail or prison in *Adderley v. Florida*, 385 U. S. 39 (1966), and *Jones v. North Carolina Prisoners' Union*, 433 U. S. 119 (1977), or the advertising space made available in city rapid transit cars in *Lehman v. City of Shaker Heights*, 418 U. S. 298 (1974). In all these cases, this Court recognized that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government." 453 U. S., at 129.

The Court of Appeals also expressed dissatisfaction with the "regulation" upon which the hospital had relied to exclude

demonstrators, a regulation which simply prohibited demonstrations without prior written approval of the hospital administrator. While such regulations have been held constitutionally defective because of their potential for discriminatory application when public streets and parks are involved, see *Shuttlesworth v. Birmingham*, *supra*, we have never applied this sort of analysis to "regulations" governing access to government property which was not a public forum. Indeed, it is difficult to know why local government authorities charged with the administration of jails, prisons, and hospitals should be under any obligation to promulgate a detailed code of "regulations" governing access to the premises by outsiders. When confronted with an analogous attack on a congressional statute regulating access to postal boxes in *United States Postal Service*, *supra*, we said:

"It is thus unnecessary for us to examine § 1725 in the context of a 'time, place, and manner' restriction on the use of the traditional 'public forums' referred to above. . . . But since a letterbox is not traditionally such a 'public forum,' the elaborate analysis engaged in by the District Court was, we think, unnecessary. To be sure, if a governmental regulation is based on the content of the speech or the message, that action must be scrutinized more carefully to ensure that communication has not been prohibited "merely because public officials disapprove the speaker's view." *Consolidated Edison Co. v. Public Service Comm'n*, *supra*, at 536, quoting *Niemotko v. Maryland*, 340 U. S. 268, 282 (1951) (Frankfurter, J., concurring in result). But in this case there simply is no question that § 1725 does not regulate speech on the basis of content." 453 U. S., at 132.

Here, as in *United States Postal Service*, there is no tenable claim that the hospital regulation was applied other than in a content-neutral manner. The demonstration which respondents actually conducted in Parkland Hospital was clearly sub-

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ject to the regulation of the hospital, and equally clearly could have been prohibited by the hospital. In the fall of 1978, approximately 45 members of respondents' organization invaded the hospital premises without permission, and proceeded to hold a press conference in the front lobby of Parkland. This "media event" was covered by, among other representatives of the media, two television stations, each with camera equipment in tow. As would be expected, the demonstration also attracted a crowd of the interested and the curious. The congestion engendered by the "event" blocked the flow of patients and their family members and medical personnel in the lobby itself and from the lobby into various clinics.

The Court of Appeals apparently conceded that this particular demonstration could have been constitutionally prohibited by the hospital, but only under a "valid" set of regulations. Unless we are to accede to the idea that hospitals must henceforth retain house counsel whose job shall be to draft, interpret, and aid in the application of detailed regulations such as those contemplated by the Court of Appeals, I think the writ of certiorari should be granted.

No. 82-530. KNAPP ET AL. *v.* CARDWELL ET AL. C. A. 9th Cir.;

No. 82-5319. SIMON *v.* TENNESSEE. Sup. Ct. Tenn.;

No. 82-5519. MORGAN *v.* FLORIDA. Sup. Ct. Fla.; and

No. 82-5534. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 82-530, 667 F. 2d 1253; No. 82-5319, 635 S. W. 2d 498; No. 82-5519, 415 So. 2d 6; No. 82-5534, 415 So. 2d 719.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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No. 82-620. PRICE ET AL. *v.* PITTSBURGH TERMINAL CORP. ET AL.; and

No. 82-622. BALTIMORE & OHIO RAILROAD CO. ET AL. *v.* PITTSBURGH TERMINAL CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 680 F. 2d 933.

No. 82-5335. SMITH *v.* NORTH CAROLINA;

No. 82-5352. WILLIAMS *v.* NORTH CAROLINA; and

No. 82-5353. PINCH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: No. 82-5335, 305 N. C. 691, 292 S. E. 2d 264; No. 82-5352, 305 N. C. 656, 292 S. E. 2d 243; No. 82-5353, 306 N. C. 1, 292 S. E. 2d 203.

Opinion of JUSTICE STEVENS respecting the denial of the petitions for writ of certiorari.

In each of these three capital cases the trial judge instructed the jury that it had a duty to impose the death penalty if it found: (1) that one or more aggravating circumstances existed; (2) that the aggravating circumstances were sufficiently substantial to call for the death penalty; and (3) that the aggravating circumstances outweighed the mitigating circumstances. There is an ambiguity in these instructions that may raise a serious question of compliance with this Court's holding in *Lockett v. Ohio*, 438 U. S. 586 (1978).*

On the one hand, the instructions may be read as merely requiring that the death penalty be imposed whenever the

*"There is no perfect procedure for deciding in which cases governmental authority should be used to impose death. But a statute that prevents the sentencer in all capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation creates *the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty*. When the choice is between life and death, that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments." 438 U. S., at 605 (plurality opinion) (emphasis added).

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aggravating circumstances, discounted by whatever mitigating factors exist, are sufficiently serious to warrant the extreme penalty. Literally read, however, those instructions may lead the jury to believe that it is required to make two entirely separate inquiries: First, do the aggravating circumstances, considered apart from the mitigating circumstances, warrant the imposition of the death penalty? And second, do the aggravating circumstances outweigh the mitigating factors? It seems to me entirely possible that a jury might answer both of those questions affirmatively and yet feel that a comparison of the totality of the aggravating factors with the totality of mitigating factors leaves it in doubt as to the proper penalty. But the death penalty can be constitutionally imposed only if the procedure assures reliability in the determination that "death is the appropriate punishment in a specific case.'" *Lockett, supra*, at 601 (plurality opinion), quoting *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.).

A quotation from a recent opinion by the Utah Supreme Court, which takes a less rigid approach to this issue, will illustrate my point. In *State v. Wood*, 648 P. 2d 71, 83 (1982), that court wrote:

"It is our conclusion that the appropriate standard to be followed by the sentencing authority—judge or jury—in a capital case is the following:

"After considering the totality of the aggravating and mitigating circumstances, you must be persuaded beyond a reasonable doubt that total aggravation outweighs total mitigation, and you must further be persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances.'

"These standards require that the sentencing body compare the totality of the mitigating against the totality of the aggravating factors, not in terms of the relative numbers of the aggravating and the mitigating factors,

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but in terms of their respective substantiality and persuasiveness. Basically, what the sentencing authority must decide is how compelling or persuasive the totality of the mitigating factors are when compared against the totality of the aggravating factors. The sentencing body, in making the judgment that aggravating factors 'outweigh,' or are more compelling than, the mitigating factors, must have no reasonable doubt as to that conclusion, and as to the additional conclusion that the death penalty is justified and appropriate *after considering all the circumstances.*" (Emphasis added.)

The petitions for certiorari in these three cases request the Court to review the decision of the Supreme Court of North Carolina affirming the death penalty in each case. I do not criticize the Court's action in denying certiorari because the question whether the instructions to the juries are consistent with *Lockett* remains open for consideration in collateral proceedings. Moreover, even if relief may not be warranted in these cases, the North Carolina judiciary may find it appropriate to make slight changes in the form of its instructions to avoid the ambiguity I have identified.

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. 81-2015. CHURCHILL AREA SCHOOL DISTRICT *v.* HOOTS ET AL., *ante*, p. 877;

No. 81-2030. EDGEWOOD SCHOOL DISTRICT ET AL. *v.* HOOTS ET AL., *ante*, p. 824; and

No. 81-2094. CLANCY ET AL. *v.* JARTECH, INC., ET AL., *ante*, p. 826. Petitions for rehearing denied.

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No. 81-2095. CLANCY ET AL. *v.* JARTECH, INC., ET AL., *ante*, p. 879;

No. 81-2096. CLANCY ET AL. *v.* JARTECH, INC., ET AL., *ante*, p. 826;

No. 81-2114. GUNTER ET UX. *v.* HUTCHESON ET AL., *ante*, p. 826;

No. 81-2143. THOMPSON *v.* COVINGTON HOUSING DEVELOPMENT CORP. ET AL., *ante*, p. 828;

No. 81-2163. CHESTNUTT ET AL. *v.* FOGEL ET AL., *ante*, p. 828;

No. 81-2210. GREYHOUND LINES, INC. *v.* PRICE, *ante*, p. 831;

No. 81-2306. LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO *v.* BOSTON SCHOOL COMMITTEE ET AL., *ante*, p. 881;

No. 81-2310. ELLERBE *v.* OTIS ELEVATOR CO., *ante*, p. 802;

No. 81-2346. REXROAT *v.* THORELL, *ante*, p. 837;

No. 81-2389. STEPAC *v.* RUTGERS MEDICAL SCHOOL ET AL., *ante*, p. 804;

No. 81-2407. MISKOVSKY *v.* OKLAHOMA PUBLISHING CO., *ante*, p. 923;

No. 81-6480. FIELDS *v.* TEXAS, *ante*, p. 841;

No. 81-6710. MICHAELIS *v.* NEBRASKA STATE BAR ASSN., *ante*, p. 804;

No. 81-6777. CAPE *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC CLASSIFICATION CENTER, *ante*, p. 882;

No. 81-6779. WILLIAMS *v.* INDIANA, *ante*, p. 808;

No. 81-6818. CHRISTENSEN *v.* UTAH, *ante*, p. 802;

No. 81-6837. JOHN *v.* GOVERNMENT OF THE VIRGIN ISLANDS, *ante*, p. 848;

No. 81-6918. KNOTT *v.* MABRY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante*, p. 851; and

No. 81-6930. DIN *v.* LONG ISLAND LIGHTING CO., *ante*, p. 852. Petitions for rehearing denied.

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No. 81-6969. LACE ET AL. *v.* UNITED STATES, *ante*, p. 854;

No. 81-6998. OGROD ET AL. *v.* SCHOOL DISTRICT OF PHILADELPHIA, *ante*, p. 805;

No. 82-5. SUPERIOR OIL CO. *v.* CITY OF PORT ARTHUR, TEXAS, ET AL., *ante*, p. 802;

No. 82-66. MAZALESKI *v.* MAY, *ante*, p. 859;

No. 82-199. VALERINO *v.* VALERINO, *ante*, p. 864;

No. 82-240. THEOHAROUS *v.* DEER RUN SHORES PROPERTY OWNERS ASSN., INC., *ante*, p. 899;

No. 82-279. MARTIN *v.* UNITED STATES, *ante*, p. 865;

No. 82-5001. SMITH *v.* GEORGIA, *ante*, p. 882;

No. 82-5027. HUDAK *v.* CURATORS OF THE UNIVERSITY OF MISSOURI ET AL., *ante*, p. 867;

No. 82-5088. JOHNSON *v.* TENNESSEE, *ante*, p. 882;

No. 82-5090. BROOKS *v.* ZANT, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 882;

No. 82-5188. BREEDLOVE *v.* FLORIDA, *ante*, p. 882;

No. 82-5190. WENDT *v.* MACDOUGALL, *ante*, p. 912;

No. 82-5204. WAYLAND *v.* REGISTRY OF DEEDS, SALEM, ET AL., *ante*, p. 899;

No. 82-5209. BUCHANAN *v.* JEFFERSON COUNTY ET AL., *ante*, p. 912;

No. 82-5225. PENICK *v.* VIRGINIA, *ante*, p. 913;

No. 82-5227. DICKERSON *v.* JOHNSON, ADMINISTRATOR, VETERANS ADMINISTRATION, ET AL., *ante*, p. 875;

No. 82-5234. JOHL *v.* TOWN OF GROTON ET AL., *ante*, p. 913;

No. 82-5264. IN RE SIMS, *ante*, p. 903;

No. 82-5288. SELLARS *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL., *ante*, p. 946; and

No. 82-5362. DIXON *v.* MACDOUGALL, *ante*, p. 915. Petitions for rehearing denied.

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Appeals Dismissed

No. 82-638. *LOUISIANA v. HRYHORCHUK ET AL.* Appeal from Ct. App. La., 3d Cir., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 412 So. 2d 197.

No. 82-5678. *WAYLAND v. UNITED STATES.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Miscellaneous Orders

No. A-453. *STULL ET AL. v. UNITED STATES.* Application for bail, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-504. *BROOKS v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* This matter was presented to JUSTICE WHITE on December 2, 1982, on an application for a stay of execution, and by him referred to the Court.

When the matter came before the Court the opinion of the United States Court of Appeals for the Fifth Circuit dated December 6, 1982, was before us. That opinion after a review of the facts and procedural history concluded as follows:

“Despite the eleventh-hour presentation of new issues, we have reviewed each of the new issues carefully and again reviewed each of the issues previously presented to us. Each member of this panel is acutely aware that Brooks’ life may depend on our action. Each of us is determined to fulfill our sworn obligation to up-

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hold and defend the Constitution and Laws of the United States, doing justice to the rich and to the poor alike, favoring neither the rich because he is rich, nor the poor because he is poor. We have the same duty to act impartially between the condemned and the state, favoring neither the state nor the condemned. That duty compels us to declare that we find no substantial question presented.

“The merits of Brooks’ claims have been presented by a total of twelve lawyers, in nine separate hearings, and have by this time been reviewed by 23 judges, state and federal. Despite this, we would not hesitate to grant the stay were we aware of any argument of substance, any contention that would benefit by further briefing and oral argument. The application for stay has received the sober, reasoned, and deliberate consideration of Brooks’ claim that the irrevocable nature of the penalty demands. Our granting of yet another stay at this late hour for further review of claims so often considered and of such little merit would be abdication of our duty to face and decide the issue before us in accordance with the Constitution and Laws of the United States.

“For these reasons, the application for stay is denied.”

(1) Addressing first the application for a stay of execution, reconsideration of which was denied by the United States Court of Appeals for the Fifth Circuit, the application for a stay of execution is hereby denied.

(2) This Court denied applicant’s petition for a writ of certiorari on June 29, 1981, *Brooks v. Texas*, 453 U. S. 913, and denied rehearing on September 23, 1981, 453 U. S. 950; treating the papers filed since then as a second petition for rehearing of the denial of certiorari, the same is hereby denied.

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(3) Treating the papers filed since December 2, 1982, as a petition for certiorari, or alternatively as a petition for certiorari before judgment, the same is hereby denied.

JUSTICES BRENNAN, MARSHALL, and STEVENS, dissenting.

We would grant petitioner's application for a stay of execution. Our cases make it absolutely clear that where a certificate of probable cause to appeal from the denial of habeas relief has been issued, a court of appeals *must* consider and decide the merits of that appeal. A court of appeals cannot fulfill that obligation if a State is permitted to execute a prisoner prior to the consideration and decision of his appeal.

I

On September 10, 1977, Brooks was indicted in Tarrant County, Tex., for the capital murder of David Gregory. At trial the State presented evidence that Brooks went to a used-car lot and asked to test-drive a car. He was permitted to drive the car accompanied by Gregory, an employee. Brooks picked up a friend, Woody Loudres, and drove to the motel where Loudres lived. Brooks and Loudres took Gregory into a motel room. A single shot was fired, killing Gregory.

The jury returned a verdict of guilty. In the penalty phase of the trial, the judge instructed the jury, pursuant to Tex. Code Crim. Proc. Ann., Arts. 37.071(b)(1) and (2) (Vernon 1981), to give "yes" or "no" answers to the following questions:

(1) "Do you find from the evidence beyond a reasonable doubt that the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result?"

(2) "Do you find from the evidence beyond a reasonable doubt that there is a probability the defendant

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would commit criminal acts of violence that would constitute a continuing threat to society?"

The judge told the jurors that affirmative answers to both questions would result in a death sentence. Over Brooks' objection, the judge also instructed the jurors that they could not consider or discuss the effect of their answers. The jury answered "yes" to both questions, and the court accordingly imposed the mandatory sentence of death.

Following the affirmance of his conviction and sentence on direct appeal, *Brooks v. State*, 599 S. W. 2d 312 (Tex. Crim. App. 1979), cert. denied, 453 U. S. 913 (1981), Brooks filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Texas. On October 28, 1982, the District Court denied the petition. The District Court's order was accompanied by a 26-page opinion discussing Brooks' claims.

On November 9, 1982, the District Court issued a certificate of probable cause to appeal but denied Brooks' application for a stay of execution pending appeal. Brooks immediately filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit, and on November 12 he applied to that court for a stay of execution. In his application he described the constitutional claims that he planned to present on appeal if afforded the opportunity to do so. On November 17 the State filed a brief statement opposing the application. Oral argument on the application was held before the Court of Appeals on November 26. Later that same day, the Court of Appeals denied the application in a five-sentence order that did not dispose of the still pending appeal. Although the Court of Appeals has filed an additional opinion today, it still has not acted on the merits of the appeal.

II

Petitioner is entitled to a stay of execution in order to protect his right to appeal the District Court's denial of habeas corpus relief. This conclusion follows inexorably from the

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District Judge's issuance of a certificate of probable cause to appeal, for "if an appellant persuades an appropriate tribunal that probable cause for an appeal exists, he *must* then be afforded an opportunity to address the underlying merits." *Garrison v. Patterson*, 391 U. S. 464, 466 (1968) (*per curiam*) (emphasis added).

A district judge's order denying an application for habeas corpus "shall be subject to review, on appeal," so long as a judge or Circuit Justice issues a certificate of probable cause. 28 U. S. C. § 2253. In order for the district court to issue a certificate of probable cause, a petitioner must make a "substantial showing of the denial of [a] federal right." *Stewart v. Beto*, 454 F. 2d 268, 270, n. 2 (CA5 1971), cert. denied, 406 U. S. 925 (1972); *Harris v. Ellis*, 204 F. 2d 685, 686 (CA5 1953). Once the certificate has been issued, the habeas petitioner is entitled to a review and decision on the merits of his appeal, according to the decisions of this Court.

In *Nowakowski v. Maroney*, 386 U. S. 542 (1967) (*per curiam*), we reviewed a Court of Appeals' summary denial of a habeas petition after the District Judge had issued a certificate of probable cause under 28 U. S. C. § 2253. We unanimously concluded that the Court of Appeals had erred in denying the right to appeal and held that "when a district judge grants such a certificate, the court of appeals *must* . . . proceed to a disposition of the appeal in accord with its ordinary procedure." *Id.*, at 543 (emphasis added). See *Carafas v. LaVallee*, 391 U. S. 234, 242 (1968) (*Nowakowski* requires that appeal be duly considered on its merits where a certificate of probable cause has been issued).

Our decision in *Garrison v. Patterson*, *supra*, is particularly relevant. There, a habeas petitioner was under sentence of death for murder. The District Court had denied a certificate of probable cause but had granted a stay of execution to allow time to appeal from that denial. The petitioner then requested that the Court of Appeals issue the certificate and also requested from that court a further stay of execu-

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tion. After a hearing, the Court of Appeals issued an order granting the certificate of probable cause. At the same time, however, the court simply affirmed the District Court's denial of habeas corpus without receiving further submissions on the merits. JUSTICE WHITE, sitting as Circuit Justice, granted a stay of execution pending review by this Court. Relying on *Nowakowski*, the full Court reversed the judgment of the Court of Appeals and remanded for further consideration of Garrison's appeal on the merits. Moreover, the Court continued the stay of execution pending the disposition of the appeal. 391 U. S., at 464.

The Courts of Appeals have consistently followed the mandate of *Nowakowski* that a court of appeals must review the merits of an appeal when a certificate of probable cause has been issued. See, e. g., *Dobbert v. Strickland*, 670 F. 2d 938, 939 (CA11 1982) (upon issuance of the certificate "[a] review on the merits is required"); *Gross v. Bishop*, 377 F. 2d 492, 492 (CA8 1967) (when the certificate is issued, the court of appeals "must review"). As then-Judge Blackmun stated, *Nowakowski* requires that "when the district court issue[s] the certificate *the appellate court must indulge in a full review.*" Allowance of In Forma Pauperis Appeals in § 2255 and Habeas Corpus Cases, 43 F. R. D. 343, 351 (1967) (emphasis added).

As previously noted, in this case the District Court granted a certificate of probable cause to appeal on November 9, 1982. On November 12 petitioner applied to the Fifth Circuit for a stay of execution pending his appeal to that court. On November 17 the State opposed the stay of execution. The State also requested that the court require an expedited briefing schedule and determine the merits of the appeal as soon as possible, but the Court of Appeals did not grant the request. Instead, after hearing oral argument on the application for stay on November 26, the court that same day simply denied the stay in a one-paragraph order.

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On this record it is manifest that the Court of Appeals did not "proceed to a disposition of the appeal," *Nowakowski, supra*, at 543, and that it clearly failed to afford petitioner an opportunity "to make his argument on the underlying issues in full." *Garrison, supra*, at 467, n. 2. Indeed, the lower court did not even order briefing on the merits under an expedited schedule as permitted by its own rules. In the absence of the appellate review that must follow from the grant of a certificate of probable cause, a stay of execution is required. Any other conclusion would eviscerate the prior holdings of this Court as to the significance of the issuance of a certificate of probable cause. "[I]f there is probable cause for the appeal it would be a mockery of federal justice to execute [petitioner] pending its consideration." *Fouquette v. Bernard*, 198 F. 2d 96, 97 (CA9 1952) (Denman, C. J.).

III

For the foregoing reasons, we would grant the application for a stay of execution.

No. 88, Orig. CALIFORNIA *v.* TEXAS ET AL. Motion of plaintiff for issuance of a preliminary injunction granted. Comments by counsel for the defendants concerning the form of the proposed order submitted by the plaintiff are to be filed with the Court and served upon opposing counsel and the Special Master on or before December 8, 1982. [For earlier order herein, see, *e. g.*, *ante*, p. 963.]

No. 81-1889. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-1958. ARIZONA ELECTRIC POWER COOPERATIVE, INC. *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-2042. MICHIGAN *v.* MID-LOUISIANA GAS CO. ET AL.; and

No. 82-19. FEDERAL ENERGY REGULATORY COMMISSION *v.* MID-LOUISIANA GAS CO. ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 820.] Motion of Edmund G.

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Brown, Jr., Governor of California, for leave to file a brief as *amicus curiae* granted.

No. 81-2337. BLOCK, SECRETARY OF AGRICULTURE, ET AL. *v.* NORTH DAKOTA EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS. C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motion of North Dakota and *amicus curiae* California for divided argument to permit California to present oral argument as *amicus curiae* and for additional time for argument denied.

No. 82-56. SIMMONS ET AL. *v.* SEA-LAND SERVICES, INC., ET AL., *ante*, p. 931. Respondents are requested to file a response to the petition for rehearing within 30 days.

No. 82-131. JONES & LAUGHLIN STEEL CORP. *v.* PFEIFER. C. A. 3d Cir. [Certiorari granted, *ante*, p. 821.] Motion of Alcoa Steamship Co., Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 82-167. CHAPPELL ET AL. *v.* WALLACE ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 966.] Motion for appointment of counsel granted, and it is ordered that John Murcko, Esquire, of Oakland, Cal., be appointed to serve as counsel for respondents in this case.

No. 82-268. FIRST PENNSYLVANIA BANK, N.A. *v.* LANCASTER COUNTY TAX CLAIM BUREAU ET AL. Sup. Ct. Pa. Motion of appellee Della Becker to expedite consideration of the statement as to jurisdiction denied.

No. 82-5580. IN RE DAVIS. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 82-5576. PICKETT ET AL. *v.* BROWN ET AL. Appeal from Sup. Ct. Tenn. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 638 S. W. 2d 369.

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No. 82-411. NEWPORT NEWS SHIPBUILDING & DRY DOCK Co. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 4th Cir. Certiorari granted. Reported below: 682 F. 2d 113.

No. 82-342. PHILKO AVIATION, INC. v. SHACKET ET UX. C. A. 7th Cir. Certiorari granted limited to Question A presented by the petition. Reported below: 681 F. 2d 506.

Certiorari Denied. (See also Nos. 82-638, 82-5678, and A-504, *supra*.)

No. 81-2219. TRAN QUI THAN v. REGAN, SECRETARY OF THE TREASURY. C. A. 9th Cir. Certiorari denied. Reported below: 658 F. 2d 1296.

No. 82-137. LAMMERS v. BOYDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 443.

No. 82-188. OKLAHOMA v. HARRIS. Ct. Crim. App. Okla. Certiorari denied. Reported below: 645 P. 2d 1036.

No. 82-260. ELLIS ET AL. v. JUDGE OF THE PUTNAM CIRCUIT COURT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 669 F. 2d 510.

No. 82-303. CALLICO v. UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 249.

No. 82-326. MAHANNA v. FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 415 So. 2d 1386.

No. 82-368. HUDSON FARMS, INC. v. NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 681 F. 2d 1105.

No. 82-422. BIERWIRTH ET AL. v. DONOVAN, SECRETARY OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 680 F. 2d 263.

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No. 82-437. COUNTY OF MAHNOMEN, MINNESOTA, ET AL. *v.* WHITE EARTH BAND OF CHIPPEWA INDIANS ET AL.; and

No. 82-635. ALEXANDER ET AL. *v.* WHITE EARTH BAND OF CHIPPEWA INDIANS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 1129.

No. 82-489. TEMORA TRADING CO., LTD. *v.* PERRY, TRUSTEE. Sup. Ct. Nev. Certiorari denied. Reported below: 98 Nev. 229, 645 P. 2d 436.

No. 82-498. ALVESTAD, REPRESENTATIVE OF THE ESTATE OF ALVESTAD, ET AL. *v.* MONSANTO CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 908.

No. 82-595. DEAN *v.* ST. BERNARD PARISH SCHOOL BOARD. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 414 So. 2d 862.

No. 82-642. FRANKS *v.* NATIONAL RAILROAD PASSENGER CORP., AKA AMTRAK. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 820.

No. 82-645. REPUBLIC NATIONAL LIFE INSURANCE CO. ET AL. *v.* SPARKS ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 132 Ariz. 529, 647 P. 2d 1127.

No. 82-656. POMEROY *v.* SOUTHERN BELL TELEPHONE & TELEGRAPH CO. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 410 So. 2d 647.

No. 82-663. KARAM ET AL. *v.* ALLSTATE INSURANCE CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 70 Ohio St. 2d 227, 436 N. E. 2d 1014.

No. 82-664. KARAPINKA *v.* UNION CARBIDE CORP. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 822.

No. 82-669. SOFFER *v.* CITY OF COSTA MESA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 901.

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No. 82-670. *HOWARD v. CENTRAL OF GEORGIA RAILROAD Co.* Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 713, 293 S. E. 2d 346.

No. 82-673. *GIANNI v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 956.

No. 82-697. *O'CONNOR v. NEVADA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 749.

No. 82-700. *BURRUS v. UNITED TELEPHONE COMPANY OF KANSAS, INC.* C. A. 10th Cir. Certiorari denied. Reported below: 683 F. 2d 339.

No. 82-723. *MCCLATCHY NEWSPAPERS, DBA THE SACRAMENTO BEE v. CENTRAL VALLEY TYPOGRAPHICAL UNION No. 46, INTERNATIONAL TYPOGRAPHICAL UNION.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 731.

No. 82-726. *CEL-A-PAK v. CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 664.

No. 82-730. *EAGLE v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA (AMERICAN TELEPHONE & TELEGRAPH Co., REAL PARTY IN INTEREST).* C. A. 9th Cir. Certiorari denied.

No. 82-757. *COTHRAN ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

No. 82-763. *PROVENZANO v. UNITED STATES;* and

No. 82-765. *COTLER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 194.

No. 82-769. *TUCKER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 686 F. 2d 230.

No. 82-780. *REAGAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 843.

No. 82-5146. *KING v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied.

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No. 82-5160. *CONNOR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 889.

No. 82-5192. *DREW v. U. S. DEPARTMENT OF THE NAVY ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 217 U. S. App. D. C. 344, 672 F. 2d 197.

No. 82-5247. *GREEN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 2d 520.

No. 82-5313. *GRIFFIN v. ROSE, WARDEN, TENNESSEE STATE PENITENTIARY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 561.

No. 82-5314. *BRAMBLE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 590.

No. 82-5339. *BOWMAN v. UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEM*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 876.

No. 82-5440. *SISK ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 685 F. 2d 993.

No. 82-5443. *EVANS v. FENTON, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5529. *CRUZ v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5538. *PAGE v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 648, 292 S. E. 2d 850.

No. 82-5540. *MILLER v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 2d 1080.

No. 82-5543. *LEGG v. FAYETTE COUNTY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 883.

No. 82-5546. *KNIGHT v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

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No. 82-5547. *CHRISTIAN v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 82-5548. *WHITE v. ELLISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 836.

No. 82-5551. *HERMAN v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 435.

No. 82-5553. *IN RE FIACCO*. C. C. P. A. Certiorari denied. Reported below: 681 F. 2d 823.

No. 82-5554. *CRONIC v. CHAMBERS LUMBER CO.* Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 722, 292 S. E. 2d 852.

No. 82-5557. *SALAH v. REDMAN, SUPERINTENDENT, DELAWARE CORRECTIONAL CENTER, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5561. *MILLER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-5563. *ROBINSON v. JEFFES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5568. *READ v. DELAWARE STATE BAR ASSN. ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 452 A. 2d 651.

No. 82-5572. *BRYANT v. CHERRY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 687 F. 2d 48.

No. 82-5636. *DANIELS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 418 So. 2d 185.

No. 82-5653. *ANTONELLI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 82-5656. *SLOAN v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

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No. 82-5658. *MULVILLE v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 504.

No. 82-5659. *LAY v. BETHLEHEM STEEL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 814.

No. 82-5662. *HEGWOOD v. MARTIN, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 82-5667. *SEIDERS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 82-5669. *MAURICIO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 143.

No. 82-5671. *DUARTE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

No. 82-5674. *VALDOVINOS-CORTEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 509.

No. 82-5677. *HILL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 688 F. 2d 18.

No. 82-5691. *HANSEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

No. 81-2296. *NATIONAL FOOTBALL LEAGUE ET AL. v. NORTH AMERICAN SOCCER LEAGUE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 670 F. 2d 1249.

JUSTICE REHNQUIST, dissenting.

This lawsuit is an attack under § 1 of the Sherman Act, 26 Stat., as amended, 15 U. S. C. § 1, by the North American Soccer League (NASL) and most of its member teams on the cross-ownership rule imposed by the National Football League (NFL) on the owners of its member teams. The rule, in essence, prohibits NFL owners from obtaining a controlling interest in any other major league professional sports team. The Court of Appeals found that the rule violates § 1 under the Rule of Reason, and enjoined the NFL from enforcing it.

The NASL's complaint alleged that the cross-ownership rule excludes it from a substantial share of the market for "professional sports capital and entrepreneurial skill." The NFL contended that the relevant market was for capital generally, and that the rule does not exclude anyone from a significant share of the capital market. The District Court decided that the relevant market is in between—a market for "sports capital"—but did not define precisely the extent of this market. It then decided that any competition between the NFL and the NASL in that market is competition between two single economic entities. 505 F. Supp. 659 (SDNY 1980). It thus held that § 1 of the Sherman Act does not apply because the NFL is a single economic entity that cannot combine or conspire with itself. *Id.*, at 689.

The Court of Appeals rejected this view. 670 F. 2d 1249 (CA2 1982). It thought "[t]he characterization of NFL as a single economic entity does not exempt from the Sherman Act an agreement between its members to restrain competition." *Id.*, at 1257. See *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U. S. 134, 141–142 (1968); *Timken Roller Bearing Co. v. United States*, 341 U. S. 593, 598 (1951). The Court of Appeals thought the objective of the cross-ownership rule is to protect individual teams as well as the league from competition.

At this point, the Court of Appeals had dealt with the District Court's entire holding. The District Court expressly declined to consider whether the cross-ownership rule violates the Rule of Reason. 505 F. Supp., at 689. The application of the Rule of Reason is to be made by "the factfinder [who] weighs all of the circumstances of a case." *Continental T. V., Inc. v. GTE Sylvania Inc.*, 433 U. S. 36, 49 (1977). See, e. g., *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F. 2d 263, 302 (CA2 1979). The proper course for the Court of Appeals thus would have been to remand for findings by the District Court. However, it proceeded to decide the merits on its own.

The Court of Appeals first decided that there is a market for "sports capital and skill," which is a submarket of the capital market. 670 F. 2d, at 1260. "[A]n owner may in practice sell his franchise only to a relatively narrow group of eligible purchasers, not to any financier." *Ibid.* It did not define this market except to say that it is "not limited to existing or potential major sports team owners," but "is relatively limited in scope and is only a small fraction of the total capital funds market." *Ibid.* It is not clear whether the Court of Appeals was attempting to define the relevant market differently than did the District Court. If it was, it should have applied the clearly-erroneous standard to the District Court's finding rather than substituting its own judgment. *Associated Radio Service Co. v. Page Airways, Inc.*, 624 F. 2d 1342, 1348-1349 (CA5 1980); *Martin B. Glauser Dodge Co. v. Chrysler Corp.*, 570 F. 2d 72, 82, n. 18 (CA3 1977); *Telex Corp. v. International Business Machines Corp.*, 510 F. 2d 894, 915 (CA10 1975) (*per curiam*). See *Pullman-Standard v. Swint*, 456 U. S. 273, 287 (1982).

The Court of Appeals then proceeded to apply the Rule of Reason. There is no dispute as to the proper statement of the Rule. "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." *Chicago Board of Trade v. United States*, 246 U. S. 231, 238 (1918).

On the basis of the facts as described by the Court of Appeals I seriously doubt whether the Rule of Reason was violated. The Court of Appeals held the cross-ownership rule is anticompetitive because it restricts the access of NASL teams to sports capital, and that this anticompetitive effect outweighs any procompetitive effects of the rule. It rejected the argument that the rule enables NFL owners to compete effectively in the entertainment market by assuring them of the undivided loyalty of fellow owners.

I believe the Court of Appeals gave too little weight to the procompetitive features of the cross-ownership rule and engaged in excessive speculation as to its anticompetitive effect.

The NFL owners are joint venturers who produce a product, professional football, which competes with other sports and other forms of entertainment in the entertainment market. Although individual NFL teams compete with one another on the playing field, they rarely compete in the marketplace. The NFL negotiates its television contracts, for example, in a single block. The revenues from broadcast rights are pooled. Indeed, the only interteam competition occurs when two teams are located in one major city, such as New York or Los Angeles. These teams compete with one another for home game attendance and local broadcast revenues. In all other respects, the league competes as a unit against other forms of entertainment.

This arrangement, like the arrangement in *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U. S. 1 (1979), is largely a matter of necessity. If the teams were entirely independent, there could be no consistency of staffing, rules, equipment, or training. All of these are at least arguably necessary to permit the league to create an appealing product in the entertainment market. Thus, NFL football is a different product from what the NFL teams could offer independently, and the NFL, like ASCAP, is "not really a joint sales agency offering the individual goods of many sellers, but is a separate seller offering its [product], of which the individual [teams] are raw material. [The NFL], in short, made a market in which individual [teams] are inherently unable to compete fully effectively." *Id.*, at 22-23.

The cross-ownership rule, then, is a covenant by joint venturers who produce a single product not to compete with one another. The rule governing such agreements was set out over 80 years ago by Judge (later Chief Justice) Taft: A covenant not to compete is valid if "it is merely ancillary to the

main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party." *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 282 (CA6 1898), *aff'd* as modified, 175 U. S. 211 (1899).

The cross-ownership rule seems to me to meet this test. Its purposes are to minimize disputes among the owners and to prevent some owners from using the benefits of their association with the joint venture to compete against it. Participation in the league gives the owner the benefit of detailed knowledge about market conditions for professional sports, the strength and weaknesses of the other teams in the league, and the methods his co-venturers use to compete in the marketplace. It is only reasonable that the owners would seek to prevent their fellows from giving these significant assets, which are in some respects analogous to trade secrets, to their competitors.

The courts have not, to my knowledge, prohibited businesses from requiring employees to agree not to compete with their employer while they remain employed. See, *e. g.*, *Lektro-Vend Corp. v. Vendo Co.*, 660 F. 2d 255 (CA7 1981), *cert. denied*, 455 U. S. 921 (1982). I cannot believe the Court of Appeals would expect a law firm to countenance its partners working part time at a competing firm while remaining partners. Indeed, this Court has noted that the Rule of Reason does not prohibit a seller of a business from contracting not to compete with the buyer in a reasonable geographic area for a reasonable time *after* he has terminated his relationship with the business. *National Society of Professional Engineers v. United States*, 435 U. S. 679, 688-689 (1978) (citing *Mitchel v. Reynolds*, 1 P. Wms. 181, 24 Eng. Rep. 347 (1711)). It is difficult for me to understand why the cross-ownership rule is not valid under this standard.

The anticompetitive element of the restraint, as found by the Court of Appeals, is that competitors are denied access

to "sports capital and skill." In defining this market, the Court of Appeals noted that although capital is fungible, the skills of successful sports entrepreneurs are not. This entrepreneurial skill, however, is precisely what each NFL owner, as co-venturer, contributes to every other owner.

The validity of covenants not to compete does not depend upon the availability to competing firms of similarly qualified individuals, but rests on the principle that competitors may seek to maintain their ability to compete effectively without running afoul of the antitrust laws. The Court of Appeals seems to me to have implicitly adopted the view that businesses must arrange their affairs so as to make it possible for would-be competitors to compete successfully. This Court has explicitly stated the contrary: The inquiry under the Rule of Reason is concerned only with "impact on competitive conditions." *Professional Engineers, supra*, at 688, 690. "The antitrust laws . . . were enacted for 'the protection of competition, not competitors.'" *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U. S. 477, 488 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U. S. 294, 320 (1962)) (emphasis in original). Indeed, the Second Circuit has applied this principle in the past: "We should always be mindful lest the Sherman Act be invoked perversely in favor of those who seek protection against the rigors of competition." *Berkey Photo*, 603 F. 2d, at 273. The Court of Appeals should have been more mindful of its own admonition.

The Court of Appeals also faulted the NFL for failing to show that its restriction was as narrow as possible. Although the Court of Appeals did not cite any authority for this objection, it seems to be relying on the requirement of *Addyston, supra*, that the restraint be "necessary to protect the covenantee." 85 F., at 282. The Court of Appeals has taken this statement too far by adopting the least restrictive alternative analysis that is sometimes used in constitutional law. The antitrust laws impose a standard of reasonableness, not a standard of absolute necessity. The Court of Ap-

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peals ignored its own holding that the proper standard is that the constraint be "reasonably necessary." *Berkey Photo, supra*, at 303 (quoting *American Motor Inns, Inc. v. Holiday Inns, Inc.*, 521 F. 2d 1230, 1249 (CA3 1975)). Accord, *Lektro-Vend, supra*, at 265. The Court of Appeals also ignored its own holding that the possibility of less restrictive alternatives is only one among many proper considerations for the factfinder. *Berkey Photo, supra*, at 303.

In any event, it seems to me that the cross-ownership rule is narrowly drawn to vindicate the legitimate interests described above. The owners are limited only in areas where the special knowledge and skills provided by their co-owners can be expected to be of significant value. They are not prohibited from competing with the NFL in areas of the entertainment market other than professional sports. An owner may invest in television movies, rock concerts, plays, or anything else that suits his fancy.

It simply does not appear that the positive effects of the challenged restraint in helping the NFL to compete in the economic marketplace are outweighed by their negative effects on competition. The antitrust laws do not require the NFL to operate so as to make it easier for another league to compete against it. I fear that, under the decision below, the maxim that the antitrust laws exist to protect competition, not competitors, may be reduced to a dead letter.

I would grant certiorari.

No. 82-5308. *OTey v. Nebraska*. Sup. Ct. Neb.; and No. 82-5542. *Brown v. North Carolina*. Sup. Ct. N. C. Certiorari denied. Reported below: No. 82-5308, 212 Neb. 103, 321 N. W. 2d 453; No. 82-5542, 306 N. C. 151, 293 S. E. 2d 569.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428

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U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

Rehearing Denied. (See also No. A-504, *supra.*)

No. 81-2261. KIM ET AL. *v.* TAYLOR ET AL., *ante*, p. 833;

No. 82-84. GENS ET AL. *v.* UNITED STATES, *ante*, p. 906;

No. 82-487. STULBACH *v.* UNITED STATES PATENT AND TRADEMARK OFFICE, *ante*, p. 972;

No. 82-514. MORTON *v.* PROVIDENCE HOSPITAL, *ante*, p. 945;

No. 82-5372. MA *v.* COMMUNITY BANK, *ante*, p. 962;

No. 82-5386. RESPRES *v.* GEORGIA, *ante*, p. 975; and

No. 82-5488. WAYLAND *v.* INTERNAL REVENUE SERVICE ET AL., *ante*, p. 984. Petitions for rehearing denied.

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Appeals Dismissed

No. 81-583. BENEFICIAL FINANCE OF KANSAS, INC. *v.* UNITED STATES ET AL. Appeal from C. A. 10th Cir. dismissed as moot. Reported below: 642 F. 2d 1193.

No. 82-640. PALMGREN ET AL. *v.* KANSAS EX REL. MURRAY, COUNTY ATTORNEY OF THOMAS COUNTY, KANSAS, ET AL. Appeal from Sup. Ct. Kan. dismissed for want of substantial federal question. Reported below: 231 Kan. 524, 646 P. 2d 1091.

No. 82-691. PERLMAN ET AL. *v.* ATTORNEY GENERAL OF NEW JERSEY ET AL. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 90 N. J. 361, 447 A. 2d 1335.

No. 82-5074. BOVE *v.* NEW JERSEY. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 91 N. J. 216, 450 A. 2d 544.

No. 82-5630. TAYLOR *v.* TEXAS. Appeal from Ct. App. Tex., 2d Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 632 S. W. 2d 697.

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Certiorari Granted—Vacated and Remanded

No. 81-1866. COMMONWEALTH NATIONAL BANK *v.* ASHE ET AL., T/A C&S FUEL SERVICE, ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Security Industrial Bank*, ante, p. 70. Reported below: 669 F. 2d 105.

Miscellaneous Orders

No. — — —. FEDERAL GRAND JURY ET AL. *v.* UNITED STATES ATTORNEY ET AL. Motion to direct the Clerk to file the petition for writ of certiorari that does not comply with the Rules of this Court and to waive payment of docket fee denied.

No. A-469 (82-5772). SHAFFER ET AL. *v.* BOARD OF SCHOOL DIRECTORS OF THE ALBERT GALLATIN AREA SCHOOL DISTRICT ET AL. C. A. 3d Cir. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-268. IN RE DISBARMENT OF CYPHERS. Disbarment entered. [For earlier order herein, see 456 U. S. 957.]

No. D-275. IN RE DISBARMENT OF BOBBITT. Disbarment entered. [For earlier order herein, see 457 U. S. 1103.]

No. D-283. IN RE DISBARMENT OF NADEL. Disbarment entered. [For earlier order herein, see 458 U. S. 1126.]

No. D-287. IN RE DISBARMENT OF BONDS. Disbarment entered. [For earlier order herein, see 458 U. S. 1127.]

No. D-289. IN RE DISBARMENT OF BRISBOIS. Disbarment entered. [For earlier order herein, see 458 U. S. 1127.]

No. D-303. IN RE DISBARMENT OF OTIS. It is ordered that Sheldon P. Otis, of Detroit, Mich., be suspended from

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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-304. IN RE DISBARMENT OF McCONNELL. It is ordered that W. Stephen McConnell, of Annandale, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-305. IN RE DISBARMENT OF WOOD. It is ordered that Gary M. Wood, of Surfside Beach, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-306. IN RE DISBARMENT OF PHILLIPS. It is ordered that Duncan B. Phillips, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 88, Orig. CALIFORNIA *v.* TEXAS ET AL. It is hereby ordered that all parties to this action, and their officers, agents, servants, employees, attorneys, and all people in active concert with them, be and hereby are restrained from instituting or prosecuting any proceeding in any state or United States court, other than this Court, which will or would lead to a determination of the domicile of Howard Robard Hughes, Jr., for death tax purposes pending further order of this Court. [For earlier order herein, see, *e. g.*, *ante*, p. 1067.]

No. 81-523. CONTAINER CORPORATION OF AMERICA *v.* FRANCHISE TAX BOARD. Ct. App. Cal., 1st App. Dist. [Probable jurisdiction noted, 456 U. S. 960.] Motion of ap-

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pellee for divided argument to permit Multistate Tax Commission to present oral argument as *amicus curiae* denied. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 81-1251. CONNICK, DISTRICT ATTORNEY IN AND FOR THE PARISH OF ORLEANS, LOUISIANA *v.* MYERS. C. A. 5th Cir. [Certiorari granted, 455 U. S. 999.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 81-1271. FALLS CITY INDUSTRIES, INC. *v.* VANCO BEVERAGE, INC. C. A. 7th Cir. [Certiorari granted, 455 U. S. 988.] Motion of respondent for leave to file a supplemental brief after argument granted.

No. 81-1891. MORRISON-KNUDSEN CONSTRUCTION CO. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 820.] Motion of the Solicitor General for divided argument granted.

No. 81-2147. ARIZONA ET AL. *v.* SAN CARLOS APACHE TRIBE OF ARIZONA ET AL.; ARIZONA ET AL. *v.* NAVAJO TRIBE OF INDIANS ET AL.; and

No. 81-2188. MONTANA ET AL. *v.* NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 821.] Motion of petitioners in No. 81-2147 for review of Clerk's action granting respondents' request for an extension of time for filing briefs on the merits denied. Motion of the Solicitor General for divided argument granted. Motion of petitioners in No. 81-2188 for divided argument granted. Motion of petitioners in No. 81-2188 for additional time for oral argument denied. Motion of petitioners in No. 81-2147 for divided argument granted, and request for additional time for oral argument denied. Motion of Wyoming for leave to participate in oral argument as *amicus curiae* and for additional time for argument denied.

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No. 81-2408. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL. *v.* FLOWERS ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1034.] Motion of respondents for leave to proceed further herein *in forma pauperis* granted.

No. 82-131. JONES & LAUGHLIN STEEL CORP. *v.* PFEIFER. C. A. 3d Cir. [Certiorari granted, *ante*, p. 821.] Motion of petitioner and *amici curiae* Alcoa Steamship Co., Inc., et al. for additional time for oral argument denied. Motion of *amici curiae* Alcoa Steamship Co., Inc., et al. for divided argument denied.

No. 82-195. MUELLER ET AL. *v.* ALLEN ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motion of United Americans for Public Schools for leave to file a brief as *amicus curiae* granted.

No. 82-5738. IN RE KAHEY ET AL. Petition for writ of habeas corpus denied.

No. 82-5606. IN RE MAGEE. Petition for writ of mandamus denied.

Probable Jurisdiction Postponed

No. 82-695. FRANCHISE TAX BOARD OF CALIFORNIA *v.* CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA ET AL. Appeal from C. A. 9th Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 679 F. 2d 1307.

Certiorari Granted

No. 82-5279. DIXSON *v.* UNITED STATES; and

No. 82-5331. HINTON *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 683 F. 2d 195.

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Certiorari Denied

No. 82-155. CREDITRIFT OF AMERICA, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 674 F. 2d 796.

No. 82-409. HECHT ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 687 F. 2d 577.

No. 82-435. COMMONWEALTH EDISON CO. ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 327, 677 F. 2d 915.

No. 82-445. MIZRAHI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-479. ORR, GOVERNOR OF INDIANA, ET AL. *v.* BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 1185.

No. 82-549. VICTORY BAPTIST TEMPLE, INC. *v.* INDUSTRIAL COMMISSION OF OHIO ET AL. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 2 Ohio App. 3d 418, 442 N. E. 2d 819.

No. 82-552. UNITED STATES *v.* 156.81 ACRES OF LAND, MORE OR LESS, SITUATE IN COUNTY OF MARIN, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 2d 336.

No. 82-631. TIMMS, DBA PETROL EXPRESS, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 831.

No. 82-651. SANTA FE ENGINEERS, INC. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 1048.

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No. 82-672. *BARNES v. SANZO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 680 F. 2d 3.

No. 82-676. *FERREN v. HENRICHSEN.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-678. *ITEL CORP. v. DISTRICT OF COLUMBIA.* Ct. App. D. C. Certiorari denied. Reported below: 448 A. 2d 261.

No. 82-686. *COSTANTINI, DBA UNITED TRAVEL SERVICE ET AL. v. TRANS WORLD AIRLINES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 1199.

No. 82-688. *CAPITOL INDUSTRIES-EMI, INC. v. BENNETT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 1107.

No. 82-689. *COMEAU ET UX. v. CITY OF BROOKSIDE VILLAGE ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 633 S. W. 2d 790.

No. 82-692. *SHELL OIL CO. ET AL. v. WILLIAMS.* C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 2d 506.

No. 82-693. *ILLINOIS v. STRUEBIN, ANCILLARY ADMINISTRATOR OF THE ESTATE OF STRUEBIN, ET AL.* Sup. Ct. Iowa. Certiorari denied. Reported below: 322 N. W. 2d 84.

No. 82-694. *COFFRAN ET VIR v. HITCHCOCK CLINIC, INC.* C. A. 1st Cir. Certiorari denied. Reported below: 683 F. 2d 5.

No. 82-699. *CHAMPION PRODUCTS INC. v. UNIVERSITY OF PITTSBURGH.* C. A. 3d Cir. Certiorari denied. Reported below: 686 F. 2d 1040.

No. 82-710. *KAPLAN v. BLACK.* C. A. 1st Cir. Certiorari denied. Reported below: 692 F. 2d 745.

No. 82-711. *RAILWAY LABOR EXECUTIVES' ASSN. v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AU-*

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THORITY. Sp. Ct. R. R. R. A. Certiorari denied. Reported below: 547 F. Supp. 884.

No. 82-712. IOWA BEEF PROCESSORS, INC. *v.* UNITED FOOD & COMMERCIAL WORKERS, LOCAL No. 222, AFL-CIO. C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 283.

No. 82-717. TERRACE WEST, INC. *v.* CITY OF PLATTSBURGH, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 733, 449 N. Y. S. 2d 343.

No. 82-718. STATE FARM MUTUAL AUTOMOBILE INSURANCE, AKA STATE FARM FIRE & CASUALTY CO. *v.* BELL. C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 435.

No. 82-721. GABRIEL *v.* MISSOURI PACIFIC RAILROAD COMPANY OF MISSOURI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 820.

No. 82-724. CHILDREN OF THE CHIPPEWA, OTTAWA, AND POTAWATOMY TRIBES, ET AL. *v.* REGENTS OF THE UNIVERSITY OF MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 104 Mich. App. 482, 305 N. W. 2d 522.

No. 82-760. BALEJKO ET AL. *v.* MILTON HOSPITAL, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 422.

No. 82-764. WHITE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 450.

No. 82-789. WILKETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 689 F. 2d 154.

No. 82-802. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 506.

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No. 82-806. *WILLIAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 2d 1145.

No. 82-807. *FIELDS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 122.

No. 82-824. *STANSBURY, PERSONAL REPRESENTATIVE OF THE ESTATE OF STANSBURY v. CHEVRON U.S.A. INC.* C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 2d 948.

No. 82-5131. *CONSAGRA v. FLORIDA PAROLE AND PROBATION COMMISSION*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 415 So. 2d 1363.

No. 82-5271. *ARMSTRONG v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 31 Wash. App. 1031.

No. 82-5283. *GOLDBERG v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 2d 622, 450 N. Y. S. 2d 642.

No. 82-5290. *WATTS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 891.

No. 82-5375. *GOODWIN v. DAVIS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 813.

No. 82-5423. *LEVESQUE ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 681 F. 2d 75.

No. 82-5427. *PRIDE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 82-5513. *BACHELER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5562. *PATRICK v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 708, 293 S. E. 2d 329.

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No. 82-5577. *TUBWELL v. HARGETT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 1371.

No. 82-5578. *THOMAS v. MANSON.* C. A. 2d Cir. Certiorari denied.

No. 82-5581. *SELLNER v. PRINCE GEORGE'S COUNTY, MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 431.

No. 82-5582. *CANDELARIA v. QUINLAN, CORRECTIONAL OFFICER, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-5584. *CURTIS v. CAMPBELL-TAGGART, INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 687 F. 2d 336.

No. 82-5586. *BRADLEY v. CITY OF BERKELEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 440.

No. 82-5594. *SINGER v. TELE-FEATURES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 446.

No. 82-5596. *SOTO v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-5599. *CLARK ET AL. v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 2d 820, 453 N. Y. S. 2d 525.

No. 82-5602. *JENKINS v. OREGON DEPARTMENT OF ADULT AND FAMILY SERVICES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 846.

No. 82-5603. *HOLSEY v. KELLER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 882.

No. 82-5604. *WILSON v. WHITE.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 836.

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No. 82-5605. *McRORIE v. OSHIRO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 507.

No. 82-5607. *WATERS v. DUCKWORTH, WARDEN, INDIANA STATE PRISON.* C. A. 7th Cir. Certiorari denied.

No. 82-5622. *LIPSCOMB v. STEWART ET AL.* C. A. 11th Cir. Certiorari denied.

No. 82-5640. *RAY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 2d 1116.

No. 82-5655. *STEBBING v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 51 Md. App. 753.

No. 82-5657. *MORROW v. RAINES, SUPERINTENDENT, ARIZONA STATE PRISON, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 847.

No. 82-5664. *LEGATO v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 2d 180.

No. 82-5686. *RUSH v. UNITED STATES DEPARTMENT OF JUSTICE ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5702. *PUCKETT v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 692 F. 2d 663.

No. 82-5710. *KIRSCH v. INTERNAL REVENUE SERVICE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 292.

No. 82-5715. *MAY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 815.

No. 82-5728. *BROWN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

No. 81-982. *FIRST NATIONAL BANK OF BOSTON (INTERNATIONAL) v. BANCO NACIONAL DE CUBA.* C. A. 2d Cir. Certiorari denied. *JUSTICE WHITE* and *JUSTICE POWELL* would grant certiorari. Reported below: 658 F. 2d 895.

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No. 82-335. *PEOPLE FOR FREE SPEECH AT SAC ET AL. v. UNITED STATES AIR FORCE ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 675 F. 2d 1010.

No. 82-497. *ALBERTA GAS CHEMICALS, LTD. v. CELANESE CORP. ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 697 F. 2d 287.

No. 82-659. *PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE v. GARDNER ET AL.* C. A. 3d Cir. Motion of respondent Donald Eugene Gardner for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 685 F. 2d 106.

No. 82-5567. *WILSON v. ZANT.* Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 373, 290 S. E. 2d 442.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 82-5589. *FLORES v. IBM CORP.* C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 685 F. 2d 441.

Rehearing Denied

No. 81-6610. *SCOTT v. UNITED STATES*, 456 U. S. 994;
No. 81-6866. *SETTLE ET AL. v. ESPIEFS, TRUSTEE*, *ante*,
p. 849; and

No. 81-6876. *BLUE THUNDER v. UNITED STATES*, *ante*,
p. 850. Motions for leave to file petitions for rehearing denied.

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No. 81-6904. ANONYMOUS *v.* O'BRIEN ET AL., *ante*, p. 968;

No. 82-88. IN RE RICE, *ante*, p. 903;

No. 82-123. TIMMONS *v.* ANDREWS ET AL., *ante*, p. 862;

No. 82-345. COOPER, CITY ATTORNEY OF SANTA ANA, CALIFORNIA *v.* MITCHELL BROTHERS' SANTA ANA THEATER ET AL., *ante*, p. 944;

No. 82-5344. MALLOY *v.* SULLIVAN, *ante*, p. 974;

No. 82-5425. KOMOROWSKI *v.* COLUMBIA GAS OF OHIO, INC., *ante*, p. 993; and

No. 82-5545. LONG *v.* UNITED STATES, *ante*, p. 994. Petitions for rehearing denied.

No. 82-431. LABAR ET AL. *v.* UNITED STATES, *ante*, p. 945. Petition of LaBar for rehearing denied. Petition of Romanowski for rehearing denied.

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Dismissal Under Rule 53

No. 82-776. PENNSYLVANIA STATE UNIVERSITY ET AL. *v.* AMERICAN FUTURE SYSTEMS, INC., ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 688 F. 2d 907.

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Dismissal Under Rule 53

No. 82-836. HOFF *v.* WASHINGTON. Ct. App. Wash. Certiorari dismissed under this Court's Rule 53. Reported below: 31 Wash. App. 809, 644 P. 2d 763.

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Miscellaneous Orders

No. 82-1022. ALABAMA FURNITURE CO. *v.* STILL, TRUSTEE, ET AL. C. A. 6th Cir. Motion of petitioner to ex-

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pedite consideration of the petition for writ of certiorari denied.

No. 81-150. NORTHERN PIPELINE CONSTRUCTION CO. *v.* MARATHON PIPE LINE CO. ET AL.; and

No. 81-546. UNITED STATES *v.* MARATHON PIPE LINE CO. ET AL., 458 U. S. 50, and *ante*, p. 813. Application of the Solicitor General to further extend the stay of judgment denied.

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Miscellaneous Order

No. A-556 (82-863). HASTINGS, UNITED STATES DISTRICT JUDGE *v.* UNITED STATES ET AL. C. A. 11th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

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Appeals Dismissed

No. 82-563. GRANT-OLIVER CORP. ET AL. *v.* MOON AREA SCHOOL DISTRICT. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 498 Pa. 286, 446 A. 2d 234.

No. 82-743. LINCOLN CREDIT CO. ET AL. *v.* PEACH, CIRCUIT ATTORNEY OF THE CITY OF ST. LOUIS, MISSOURI, ET AL. Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. Reported below: 636 S. W. 2d 31.

No. 82-926. ST. MARIE *v.* IOWA. Appeal from Sup. Ct. Iowa dismissed for want of substantial federal question. Reported below: 322 N. W. 2d 76.

No. 82-5688. SCOTT ET AL. *v.* KIMERLING. Appeal from Sup. Ct. Ala. dismissed for want of substantial federal question.

No. 82-704. CLEVELAND ELECTRIC ILLUMINATING CO. *v.* PUBLIC UTILITIES COMMISSION OF OHIO ET AL. Appeal

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from Sup. Ct. Ohio dismissed for want of properly presented federal question.

No. 82-744. *COWGER v. MONGIN ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 3d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 87 App. Div. 2d 932, 450 N. Y. S. 2d 81.

No. 82-5764. *MEDLIN v. CITY AND BOROUGH OF SITKA.* Appeal from Super. Ct. Alaska, 1st Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Vacated and Remanded on Appeal

No. 82-611. *DONOVAN, SECRETARY OF LABOR v. BLITZ.* Appeal from D. C. D. C. Judgment vacated and case remanded with instructions to dismiss the complaint as moot. Reported below: 538 F. Supp. 1119.

Certiorari Granted—Vacated and Remanded

No. 82-353. *CITY OF LONG BEACH v. BOZEK.* Sup. Ct. Cal. Certiorari granted, judgment vacated, and case remanded to the Supreme Court of California to consider whether its judgment is based upon federal or state constitutional grounds, or both. *California v. Krivda*, 409 U. S. 33 (1972). Reported below: 31 Cal. 3d 527, 645 P. 2d 137.

No. 82-458. *TULARE LAKE CANAL CO. ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari granted, judgment of the Court of Appeals is vacated, and case is remanded to the United States District Court for the Eastern District of California with directions to dismiss the action as moot. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 677 F. 2d 713.

No. 82-820. *BRIGHAM YOUNG UNIVERSITY v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari granted, judg-

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ment vacated, and case remanded to consider the question of mootness presented by the memorandum for respondents filed December 8, 1982. Reported below: 679 F. 2d 1345.

Miscellaneous Orders

No. A-474. *HANLON v. UNITED STATES*. C. A. 2d Cir. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-485 (82-1070). *BENEDETTO v. UNITED STATES*. C. A. 2d Cir. Application for stay, addressed to JUSTICE POWELL and referred to the Court, denied.

No. A-500. *JAMES v. UNITED STATES*. Application for bond, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-523 (82-891). *PHOENIX UNION HIGH SCHOOL DISTRICT ET AL. v. UNITED STATES*. C. A. 9th Cir. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. A-536. *SEVERO v. UNITED STATES*. C. A. 9th Cir. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-544. *SOUTHERN PACIFIC TRANSPORTATION CO. ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.*;

No. A-545. *ATCHISON, TOPEKA & SANTA FE RAILWAY CO. v. INTERSTATE COMMERCE COMMISSION*; and

No. A-546. *KANSAS CITY SOUTHERN RAILWAY CO. ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* Applications for stay of an order of the Interstate Commerce Commission, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. 88, Orig. *CALIFORNIA v. TEXAS ET AL.* Plaintiff having submitted a Notice of Dismissal of Certain Defendants, dated August 12, 1982, and a Notice of Dismissal of an Additional Defendant, dated December 9, 1982, and all par-

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ties having informed the Special Master that they do not oppose the dismissal of the defendants named in the Notices of Dismissal referred to, and the Special Master having recommended said dismissal by letter dated January 3, 1983, it is ordered that defendants William Rice Lummis, individually; Howard Hughes Gano; Doris Gano Wallace; Annette Gano Gragg; Janet Houstoun Davis; Aileen Lummis Russell; Annette Gano Lummis Neff; Frederick Rice Lummis; Sarah Houstoun Lindsey; Mrs. William Kent Gano, Executrix of the Estate of William Kent Gano; John McIntosh Houstoun; Margot Houstoun (Ritchie); James Wilkin Houstoun; Richard Alexander Houstoun; Southern National Bank of Houston, Independent Executor of the Estate of James Patrick Houstoun, Jr.; George Neff, Executor of the Estate of Annette Gano Lummis; Summa Corp.; Barbara Cameron; Elspeth Depould; Agnes Roberts; and Richard C. Gano, individually and as California General Administrator of the Estate of Howard R. Hughes, Jr., are dismissed from this action on the terms and conditions set forth in the Stipulation attached as Exhibit "A" to the Notice of Dismissal of Certain Defendants dated August 12, 1982, said Stipulation providing, *inter alia*, that each of said defendants (other than Summa Corp.) will be bound by a final judgment of this Court on the issue of domicile at death of Howard R. Hughes, Jr., for state death taxation purposes. [For earlier order herein, see, *e. g.*, *ante*, p. 1083.]

No. 80-1832. IMMIGRATION AND NATURALIZATION SERVICE *v.* CHADHA ET AL. C. A. 9th Cir. [Probable jurisdiction postponed, 454 U. S. 812];

No. 80-2170. UNITED STATES HOUSE OF REPRESENTATIVES *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 9th Cir. [Certiorari granted, 454 U. S. 812]; and

No. 80-2171. UNITED STATES SENATE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 9th Cir. [Certiorari granted, 454 U. S. 812.] Motion of the Solicitor

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General for leave to file a third supplemental brief after argument granted.

No. 81-984. *FIRST NATIONAL CITY BANK v. BANCO PARA EL COMERCIO EXTERIOR DE CUBA*. C. A. 2d Cir. [Certiorari granted, *ante*, p. 942.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-256. *MICHIGAN v. LONG*. Sup. Ct. Mich. [Certiorari granted, *ante*, p. 904.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 81-1180. *DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS v. NEW BANNER INSTITUTE, INC.* C. A. 4th Cir. [Certiorari granted, 455 U. S. 1015.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

No. 81-1251. *CONNICK, DISTRICT ATTORNEY IN AND FOR THE PARISH OF ORLEANS, LOUISIANA v. MYERS*. C. A. 5th Cir. [Certiorari granted, 455 U. S. 999.] Motion of respondent for leave to file a supplemental brief after argument granted.

No. 81-1717. *AMERICAN BANK & TRUST CO. ET AL. v. DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. v. CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. v. CHILDS ET AL.* Ct. App. Tex., 5th Sup. Jud. Dist. [Certiorari granted, *ante*, p. 966.] Motions of Dale National Bank and American Bankers Association for leave to file briefs as *amici curiae* granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 81-1985. *EDWARD J. DEBARTOLO CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 4th Cir. [Certiorari granted, *ante*, p. 904.] Motion of the Solicitor General for divided argument denied.

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No. 81-1889. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-1958. ARIZONA ELECTRIC POWER COOPERATIVE, INC. *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-2042. MICHIGAN *v.* MID-LOUISIANA GAS CO. ET AL.; and

No. 82-19. FEDERAL ENERGY REGULATORY COMMISSION *v.* MID-LOUISIANA GAS CO. ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 820.] Motion of Public Service Commission of New York for divided argument denied. Motion of Arizona Electric Power Cooperative, Inc., for divided argument denied.

No. 82-34. AMERICAN PAPER INSTITUTE, INC. *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL.; and

No. 82-226. FEDERAL ENERGY REGULATORY COMMISSION *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 904.] Motion of the Solicitor General for divided argument denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 82-118. CROWN, CORK & SEAL CO., INC. *v.* PARKER. C. A. 4th Cir. [Certiorari granted, *ante*, p. 986.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted.

No. 82-131. JONES & LAUGHLIN STEEL CORP. *v.* PFEIFER. C. A. 3d Cir. [Certiorari granted, *ante*, p. 821.] Motion of International Longshoremen's & Warehousemen's Union for leave to file a brief as *amicus curiae* granted.

No. 82-185. BOSTON FIREFIGHTERS UNION, LOCAL 718 *v.* BOSTON CHAPTER, NAACP, ET AL.;

No. 82-246. BOSTON POLICE PATROLMEN'S ASSN., INC. *v.* CASTRO ET AL.; and

No. 82-259. BEECHER ET AL. *v.* BOSTON CHAPTER, NAACP, ET AL. C. A. 1st Cir. [Certiorari granted, *ante*,

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p. 967.] Motions of Washington Legal Foundation, American Federation of Labor and Congress of Industrial Organizations et al., and Pacific Legal Foundation for leave to file briefs as *amici curiae* granted. JUSTICE MARSHALL took no part in the consideration or decision of these motions.

No. 82-195. MUELLER ET AL. *v.* ALLEN ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motions of Baptist Joint Committee on Public Affairs, Americans United for Separation of Church and State, National School Boards Association, and National Committee for Public Education and Religious Liberty et al. for leave to file briefs as *amici curiae* granted.

No. 82-215. UNITED STATES *v.* WHITING POOLS, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1033.] Motion of the parties to dispense with printing the joint appendix granted.

No. 82-492. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY *v.* HELM. C. A. 8th Cir. [Certiorari granted, *ante*, p. 986.] Motion for appointment of counsel granted, and it is ordered that John Joseph Burnett, Esquire, of Rapid City, S. D., be appointed to serve as counsel for respondent in this case.

No. 82-834. WALCK *v.* AMERICAN STOCK EXCHANGE, INC., ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-5119. BELL *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1034.] Motion for appointment of counsel granted, and it is ordered that Roy W. Allman, Esquire, of Fort Lauderdale, Fla., be appointed to serve as counsel for petitioner in this case.

No. 82-5576. PICKETT ET AL. *v.* BROWN ET AL. Sup. Ct. Tenn. [Probable jurisdiction noted, *ante*, p. 1068.] Motion for appointment of counsel granted, and it is ordered that

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Harold W. Horne, Esquire, of Memphis, Tenn., be appointed to serve as counsel for appellants in this case.

No. 82-5818. IN RE GREEN. Petition for writ of habeas corpus denied.

No. 82-5706. IN RE PITTS. Petition for writ of mandamus denied.

Probable Jurisdiction Noted or Postponed

No. 82-585. ALOHA AIRLINES, INC. v. DIRECTOR OF TAXATION OF HAWAII; and

No. 82-586. HAWAIIAN AIRLINES, INC. v. DIRECTOR OF TAXATION OF HAWAII. Appeals from Sup. Ct. Haw. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 65 Haw. 1, 647 P. 2d 263.

No. 82-500. SOUTHLAND CORP. ET AL. v. KEATING ET AL. Appeal from Sup. Ct. Cal. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 31 Cal. 3d 584, 645 P. 2d 1192.

No. 81-2159. SILKWOOD, ADMINISTRATOR OF THE ESTATE OF SILKWOOD v. KERR-MCGEE CORP. ET AL. Appeal from C. A. 10th Cir. Motion of Wisconsin et al. for leave to file a brief as *amici curiae* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 667 F. 2d 908.

Certiorari Granted

No. 82-374. FLANAGAN ET AL. v. UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 679 F. 2d 1072.

No. 82-472. RUSSELLO v. UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 681 F. 2d 952.

No. 82-618. KOSAK v. UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 679 F. 2d 306.

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No. 82-738. *MIGRA v. WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION ET AL.* C. A. 6th Cir. Certiorari granted. Reported below: 703 F. 2d 564.

No. 82-766. *SECRETARY OF STATE OF MARYLAND v. JOSEPH H. MUNSON CO., INC.* Ct. App. Md. Certiorari granted. Reported below: 294 Md. 160, 448 A. 2d 935.

No. 82-599. *COMMISSIONER OF INTERNAL REVENUE v. ENGLE ET UX.* C. A. 7th Cir.; and

No. 82-774. *FARMAR ET AL. v. UNITED STATES.* C. A. Fed. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 82-599, 677 F. 2d 594; No. 82-774, 231 Ct. Cl. 642, 689 F. 2d 1017.

Certiorari Denied. (See also Nos. 82-744 and 82-5764, *supra.*)

No. 81-839. *SKLAR ET AL. v. SHORES, EXECUTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 647 F. 2d 462.

No. 82-175. *SWAREK v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 2d 41.

No. 82-220. *ARMSTRONG v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 966.

No. 82-252. *DEBENEDICTIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 713.

No. 82-261. *FRIEL v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-317. *KNIGHT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 680 F. 2d 470.

No. 82-332. *FUJIMOTO ET AL. v. CITY OF HAPPY VALLEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 709.

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No. 82-337. *FERRETTI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-356. *STIGLER v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 415 So. 2d 686.

No. 82-376. *WAITE v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 731.

No. 82-427. *GUMBHIR v. KANSAS STATE BOARD OF PHARMACY*. Sup. Ct. Kan. Certiorari denied. Reported below: 231 Kan. 507, 646 P. 2d 1078.

No. 82-451. *COSTELLO ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 1037.

No. 82-459. *PARCINSKI v. OUTLET CO., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 673 F. 2d 34.

No. 82-461. *PHILLIPS PETROLEUM CO. v. DUCKWORTH, DISTRICT JUDGE, 26TH JUDICIAL DISTRICT OF KANSAS, ET AL.* Sup. Ct. Kan. Certiorari denied.

No. 82-462. *INSURANCE & PREPAID BENEFITS TRUST ET AL. v. DONOVAN, SECRETARY OF LABOR*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 443.

No. 82-532. *WEISS v. LEHMAN*. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 2d 1320.

No. 82-543. *NORTH CAROLINA ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 890.

No. 82-546. *BIRCH v. LEHMAN, SECRETARY OF THE NAVY*. C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 2d 1006.

No. 82-565. *MACDONALD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 224.

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No. 82-577. *CAMPBELL INDUSTRIES, INC., ET AL. v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 836.

No. 82-579. *FLORIDA v. COUNTY OF MONROE, NEW YORK.* C. A. 2d Cir. Certiorari denied. Reported below: 678 F. 2d 1124.

No. 82-581. *MILA ET AL. v. DISTRICT DIRECTOR OF THE DENVER, COLORADO, IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 10th Cir. Certiorari denied. Reported below: 678 F. 2d 123.

No. 82-588. *FIRST NATIONAL BANK OF OMAHA, EXECUTOR OF THE ESTATE OF MCININCH v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 681 F. 2d 534.

No. 82-593. *CITY OF BURBANK v. UNITED STATES ET AL.; and*

No. 82-762. *UNITED STATES ET AL. v. CITY OF BURBANK.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 441.

No. 82-596. *BUFALINO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 683 F. 2d 639.

No. 82-614. *REBHAN ET AL. v. FIAT MOTORS OF NORTH AMERICA, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 1234 and 680 F. 2d 105.

No. 82-619. *EXXON CORP. ET AL. v. HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 683 F. 2d 69.

No. 82-632. *AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2017, ET AL. v. WEINBERGER, SECRETARY OF DEFENSE, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 680 F. 2d 722.

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No. 82-637. *SAVE THE VALLEY, INC. v. ENVIRONMENTAL PROTECTION AGENCY*. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 180.

No. 82-658. *CONSOLIDATED SERVICE CORP. ET AL. v. ROBINSON, TRUSTEE IN BANKRUPTCY OF D. C. SULLIVAN & CO., INC., ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 729.

No. 82-680. *FIRE EQUIPMENT MANUFACTURERS' ASSN., INC., ET AL. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 2d 679.

No. 82-682. *RICHARDSON v. REGAN, SECRETARY OF THE TREASURY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 808.

No. 82-685. *CONLEY v. CITY OF MONTGOMERY, ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 414 So. 2d 58.

No. 82-690. *GENERAL MOTORS CORP. v. INTERNATIONAL TRADE COMMISSION ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 687 F. 2d 476.

No. 82-719. *AVONDALE SHIPYARDS, INC. v. KAISER ALUMINUM & CHEMICAL SALES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 2d 1045.

No. 82-728. *COMPUTER SCIENCES CORP. ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 689 F. 2d 1181.

No. 82-733. *PULLMAN STANDARD, INC. v. PINKARD*. C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 1211.

No. 82-735. *GOLDEN STATE TRANSIT CORP., DBA YELLOW CAB OF LOS ANGELES v. CITY OF LOS ANGELES*. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 758.

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No. 82-737. ICE CREAM INDUSTRY DRIVERS & ICE CREAM EMPLOYEES UNIONS PENSION FUND *v.* NOVEMBRE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 491.

No. 82-748. WEIN *v.* COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 435.

No. 82-750. MCCLOUD *v.* NATIONAL RAILROAD PASSENGER CORP. (AMTRAK). Ct. App. D. C. Certiorari denied.

No. 82-752. FERGUS ET AL. *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 418 So. 2d 594.

No. 82-753. FRANKLIN COUNTY SHERIFF'S OFFICE *v.* SELLERS ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 317, 646 P. 2d 113.

No. 82-755. TOOMEY *v.* TOOMEY. Sup. Ct. Mo. Certiorari denied. Reported below: 636 S. W. 2d 313.

No. 82-758. CAMPBELL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 82-761. KUCHTA ET AL. *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 822.

No. 82-767. WILLIAMS *v.* VISION CARE SERVICE, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 511, 684 F. 2d 1033.

No. 82-768. PVM REDWOOD CO., INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 1327.

No. 82-770. BENDA *v.* MEDTRONIC, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 645.

No. 82-775. GREEN BAY PACKAGING INC. ET AL. *v.* TECHNICON MEDICAL INFORMATION SYSTEMS CORP. C. A.

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7th Cir. Certiorari denied. Reported below: 687 F. 2d 1032.

No. 82-778. *JOHNSON v. CENTRAL VALLEY SCHOOL DISTRICT No. 356*. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 419, 645 P. 2d 1088.

No. 82-779. *HOLMES v. J. RAY McDERMOTT & Co., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 1143.

No. 82-781. *WHITE v. BOARD OF TRUSTEES OF WESTERN WYOMING COMMUNITY COLLEGE DISTRICT ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 648 P. 2d 528.

No. 82-782. *OLSEN, AN INCOMPETENT BY OLSEN, HIS GUARDIAN, ET AL. v. FORD MOTOR Co. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 823.

No. 82-783. *DIEFENTHAL ET AL. v. CIVIL AERONAUTICS BOARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 2d 1039.

No. 82-790. *BARTEL v. JOHNSON COUNTY ET AL.* Ct. App. Iowa. Certiorari denied. Reported below: 322 N. W. 2d 901.

No. 82-795. *WATTS v. JOSEPH HORNE Co., INC.* C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 491.

No. 82-801. *HARKINS & Co. ET AL. v. ELLIOTT ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 415 So. 2d 678.

No. 82-808. *SHAY v. TEXAS.* Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied.

No. 82-810. *LANG ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

No. 82-823. *PIELET ET AL. v. PIELET ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 686 F. 2d 1210.

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No. 82-838. *GOTTHEINER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 82-845. *GIELLA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 1075.

No. 82-846. *JONES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 842.

No. 82-847. *TORRES-TORRES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 1331.

No. 82-860. *MADONNA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 293.

No. 82-861. *CARPENTIER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 21.

No. 82-865. *KALISH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 1144.

No. 82-870. *SNOWDEN ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 191.

No. 82-879. *BUTERA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 1376.

No. 82-880. *THOMPSON ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 2d 1145.

No. 82-881. *FORTNER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 498.

No. 82-884. *A & D DAVENPORT TRANSPORTATION, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 844.

No. 82-894. *MASTRO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

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No. 82-899. *PINTO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 82-902. *MIRANNE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 980.

No. 82-921. *EWING ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-923. *NORTHWEST EXCAVATING, INC. v. WAGONER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 1224.

No. 82-941. *PARSONS & WHITEMORE ALABAMA MACHINERY & SERVICE CORP. ET AL. v. YEARGIN CONSTRUCTION CO.* C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1374.

No. 82-956. *HAYES v. VALLEY BANK OF NEVADA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 442.

No. 82-5014. *SANTUCCI ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 2d 624.

No. 82-5191. *HERRERA v. IOWA ET AL.* C. A. 8th Cir. Certiorari denied.

No. 82-5242. *WESER v. ATKINS, DIRECTOR, KANSAS STATE PENITENTIARY, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-5266. *CANNON v. CANNON*. Sup. Ct. N. C. Certiorari denied. Reported below: 292 S. E. 2d 5.

No. 82-5277. *SPENCER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 2d 220.

No. 82-5281. *HALL v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 245, 634 S. W. 2d 115.

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No. 82-5341. *JOHNSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 418.

No. 82-5350. *SMITH v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 680 F. 2d 255.

No. 82-5356. *UNITED STATES EX REL. BASSETT v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 843.

No. 82-5371. *LEMM ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 680 F. 2d 1193.

No. 82-5374. *OWENS v. MARKS*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 823.

No. 82-5395. *LANGONE v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 287 and 688 F. 2d 816.

No. 82-5408. *GANTT v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla. Certiorari denied. Reported below: 419 So. 2d 1197.

No. 82-5411. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 684 F. 2d 296.

No. 82-5418. *MACIAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82-5426. *PAYNE v. COUGHLIN ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5428. *ROGERS v. McMULLEN, SUPERINTENDENT, DESOTO CORRECTIONAL INSTITUTION*. C. A. 11th Cir. Certiorari denied. Reported below: 673 F. 2d 1185.

No. 82-5434. *REGGIE v. ZIMMERMAN*. Sup. Ct. Pa. Certiorari denied.

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No. 82-5442. *JORDAN v. HAMMOCK*, CHAIRMAN, NEW YORK STATE BOARD OF PAROLE. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 52.

No. 82-5456. *SMITH ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 2d 1236.

No. 82-5468. *CRAIG v. DUCKWORTH*, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 842.

No. 82-5473. *LYNCH v. WILSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 564.

No. 82-5479. *SACCO v. KEOHANE*, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 296.

No. 82-5497. *CHODOS v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 289.

No. 82-5526. *SHIGEMURA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 2d 699.

No. 82-5541. *RILEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 2d 542.

No. 82-5573. *ALLARD v. BENNER ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5593. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 504.

No. 82-5595. *KELE v. HANBERRY*, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-5598. *PRINCE v. ESTELLE*, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 837.

No. 82-5610. *MANNING v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 323 N. W. 2d 217.

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No. 82-5613. *COLEMAN, PERSONAL REPRESENTATIVE OF THE ESTATE OF COLEMAN v. CITY OF WINSTON-SALEM ET AL.* Ct. App. N. C. Certiorari denied. Reported below: 57 N. C. App. 137, 291 S. E. 2d 155.

No. 82-5617. *BENNETT v. WHITE ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-5618. *KENNEDY v. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 563.

No. 82-5626. *STEVENS v. HUNT, GOVERNOR OF NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 497.

No. 82-5628. *SMITH v. GOODLANDER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 497.

No. 82-5635. *BOLDER v. WYRICK, WARDEN.* Sup. Ct. Mo. Certiorari denied.

No. 82-5638. *MCDONALD v. DRAPER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 455.

No. 82-5644. *HUNTLEY v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 418 So. 2d 538.

No. 82-5647. *CARTER v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-5651. *WILLIAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 732.

No. 82-5652. *HOWELL v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 386 Mass. 738, 437 N. E. 2d 1067.

No. 82-5654. *TIJERINA v. OVERBERG, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

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No. 82-5660. JONES *v.* KEMP, WARDEN, CHATHAM COUNTY CORRECTIONAL INSTITUTION. C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 929.

No. 82-5663. LAKE *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Ct. Crim. App. Tex. Certiorari denied.

No. 82-5670. TOWNES *v.* WAKE COUNTY EX REL. CARRINGTON. Sup. Ct. N. C. Certiorari denied. Reported below: 306 N. C. 333, 293 S. E. 2d 95.

No. 82-5672. HOLT *v.* WYRICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 82-5673. COOPER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 767.

No. 82-5675. ROSS *v.* HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 296.

No. 82-5676. MILLER *v.* MILLER. Ct. App. Ohio, Sandusky County. Certiorari denied.

No. 82-5679. SMITH *v.* LINAHAN ET AL. C. A. 11th Cir. Certiorari denied.

No. 82-5680. WILLIAMS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 82-5682. ROUGHTON *v.* COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 82-5685. MCQUEEN *v.* STATEN. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1388.

No. 82-5689. WORTHON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 82-5690. TYLER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

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No. 82-5692. *JONES v. CHRYSLER CREDIT CORP.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 417 So. 2d 425.

No. 82-5693. *GARRETT v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 158.

No. 82-5694. *THOMAS v. MISSOURI.* Sup. Ct. Mo. Certiorari denied.

No. 82-5695. *MANIS v. MISSOURI.* Sup. Ct. Mo. Certiorari denied.

No. 82-5696. *POOL v. MISSOURI.* Sup. Ct. Mo. Certiorari denied.

No. 82-5697. *SMITH v. MISSOURI.* Sup. Ct. Mo. Certiorari denied.

No. 82-5699. *OLGUIN v. GRIFFIN, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 82-5701. *JACOBS v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 412 So. 2d 540.

No. 82-5703. *PAUTH-ARZUZA ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 1373.

No. 82-5704. *GADSON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

No. 82-5705. *EVANS v. ZIMMERMAN, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5707. *LOFTON ET AL. v. SCHABARUM ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-5711. *FLYNN v. MAINE EMPLOYMENT SECURITY COMMISSION ET AL.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 448 A. 2d 905.

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No. 82-5712. *SMITH v. SMITH*. Ct. App. D. C. Certiorari denied. Reported below: 445 A. 2d 666.

No. 82-5718. *LONZO v. FRANZEN*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 841.

No. 82-5720. *KENT v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 637 S. W. 2d 119.

No. 82-5722. *RICHARDSON v. RAY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 834.

No. 82-5724. *SANTANA v. FENTON, SUPERINTENDENT, RAHWAY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 685 F. 2d 71.

No. 82-5725. *JONES v. MARKS ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-5726. *MOORE ET AL. v. ROSS, INDUSTRIAL COMMISSIONER OF NEW YORK, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 687 F. 2d 604.

No. 82-5727. *EDWARDS v. JERNIGAN, WARDEN, MACON CORRECTIONAL CENTER*. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 851.

No. 82-5729. *WOLFEL v. SANBORN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 691 F. 2d 270.

No. 82-5730. *HARTMAN, ADMINISTRATRIX OF THE ESTATE OF HARTMAN v. NORTHERN INDIANA PUBLIC SERVICE Co.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 434.

No. 82-5731. *CURTIS v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 837.

No. 82-5732. *QUINONES-NAVARETTE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

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No. 82-5733. *SIMS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 82-5736. *LEUSCHNER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 788.

No. 82-5741. *DOHERTY v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 1027.

No. 82-5742. *CALDWELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 765.

No. 82-5746. *GABRIEL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 759.

No. 82-5749. *PARADISO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 28.

No. 82-5751. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 2d 147.

No. 82-5752. *SHERMAN v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 2d 464.

No. 82-5755. *WEBSTER v. TEXAS*. Ct. App. Tex., 2d Sup. Jud. Dist. Certiorari denied. Reported below: 627 S. W. 2d 818.

No. 82-5765. *HOLT v. MERIT SYSTEMS PROTECTION BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 1388.

No. 82-5766. *LANEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

No. 82-5767. *BAILEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 567.

No. 82-5783. *PETRIE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 300.

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- No. 82-5782. *WRIGHT v. UNITED STATES*; and
No. 82-5788. *SALISBURY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 2d 1262.
- No. 82-5784. *MCGOUGH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.
- No. 82-5792. *WRIGHT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.
- No. 82-5796. *MADISON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 1300.
- No. 82-5797. *ZINERCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.
- No. 82-5798. *GRIFFIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.
- No. 82-5808. *BOLS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.
- No. 82-5810. *ZANI v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.
- No. 82-5815. *GOLDBERG v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 191.
- No. 82-5827. *BANKS v. UNITED STATES*; and
No. 82-5828. *BANKS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 841.
- No. 82-5831. *BLISS v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 445 A. 2d 625 and 452 A. 2d 172.
- No. 82-5843. *SIMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.
- No. 82-5850. *PATTON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

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No. 82-5860. *SLOTCAVAGE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

No. 82-5862. *BOGGS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 2d 481.

No. 81-6937. *WHITE v. ESTELLE*. C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 2d 973.

JUSTICE MARSHALL, dissenting.

The Court of Appeals held that the appropriate standard to be applied to petitioner's due process claim was whether, "[v]iewing the evidence in the light most favorable to the [finding of competence], . . . any rational trier of fact could conclude that the evidence does not predominate in favor of the appellant's claim of incompetence." 669 F. 2d 973, 977 (1982). While noting that "[t]his is, admittedly, a close case," *ibid.*, the appellate court concluded that the evidence was sufficient for a rational trier of fact to find White competent to stand trial. For the reasons set forth below, I would grant the petition for certiorari in order to determine whether petitioner's constitutional claim should be reconsidered under a less deferential standard that until now has been applicable to such claims on federal habeas review.

I

On February 11, 1975, petitioner Robert Lee White was indicted in Lubbock County, Tex., on the charge of capital murder. Shortly thereafter, petitioner's competency to stand trial was called into question by his attorneys. On June 28, 1975, the trial court granted defense counsel's motion for a private psychiatric examination and evaluation of the defendant, directing that White be released from jail for testing at the Southwest Center for Psychological and Vocational Testing. On three occasions, the court granted defense counsel's motions for further neurological and psychiatric examinations. On September 3, 1976, the court ordered an examination by a disinterested, qualified expert

to determine White's competence to stand trial.¹ The appointed psychiatrist reported that White had been psychotic "for at least seven to eight years."

In January 1977, the court, finding that there was some evidence that White was not competent, empaneled a jury to determine White's competency to stand trial. At the competency hearing, defense counsel called the court-appointed psychiatrist and two psychologists who had also previously examined White. Based upon their diagnostic tests and observations, the experts testified that White was "chronically psychotic," that is, he suffered from schizophrenia of long standing, characterized by hallucinations and an inability to distinguish between reality and fantasy. They also testified that petitioner's IQ of 69-75 indicated "borderline mental retardation." The defendant's experts concluded that while he understood the charges against him, White's mental disorders rendered him incompetent to consult with his attorneys. One of the defendant's attorneys gave testimony confirming that White was not able to assist in his defense.

The prosecution called two experts, a neurologist and a radiologist, who testified that they found no evidence of organic brain damage, but expressed no view as to White's competence. The prosecution's remaining witnesses, White's jailer and a Deputy Sheriff, stated that White behaved like other prisoners and appeared to communicate normally with his attorneys. Based primarily upon the testimony of these lay witnesses and his cross-examination of the defense witnesses, the prosecutor urged that the defendant had misled his examiners into believing that he was mentally disturbed.

The judge instructed the jury that "a person is incompetent to stand trial if he does not have sufficient present ability

¹ Texas Code Crim. Proc. Ann., Art. 46.02, § 3(a) (Vernon 1979), permits a court to "appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to his competency to stand trial and to testify at any trial or hearing on this issue."

to consult with his lawyer with a reasonable degree of rational understanding; or, a rational as well as factual understanding of the proceedings against him." The jury returned a verdict that stated simply: "We, the jury, find the defendant, ROBERT LEE WHITE, competent to stand trial at the time of this trial, to-wit: January 5, 1977." White was then tried and convicted of capital murder. On appeal, the Texas Court of Criminal Appeals found that it lacked jurisdiction to consider whether White had properly been found competent to stand trial. *White v. State*, 591 S. W. 2d 851, 854-856 (1979).

White then petitioned for a writ of habeas corpus in the United States District Court for the Northern District of Texas. Relying on the opinion of the Texas Court of Criminal Appeals, the District Court denied the petition on the ground that "[t]he evidence adduced was legally sufficient to enable a rational trier of facts to make the same findings which the jury made."

The Court of Appeals affirmed. In searching for the proper standard of review to be applied to the jury verdict of competency to stand trial, the Court of Appeals noted that in *Drope v. Missouri*, 420 U.S. 162 (1975), this Court found it necessary to undertake its own analysis of the facts concerning the defendant's competency so that "the appropriate enforcement of the federal right may be assured." *Id.*, at 174-175, and n. 10. Nevertheless, the Court of Appeals rejected the "hard look" given the trial court's conclusion in *Drope*. 669 F. 2d, at 976. In its place, the Court of Appeals adopted the more deferential review set forth in *Jackson v. Virginia*, 443 U. S. 307 (1979), which governs claims that the evidence at trial was insufficient to prove the elements of a crime beyond a reasonable doubt. Under *Jackson* a court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*, at 319 (emphasis in original).

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Applying this standard to the issue of competency, the court below determined that there had been sufficient evidence for a rational trier to find White competent to stand trial.

II

Whether a defendant is competent to stand trial is a question of federal constitutional law. Due process forbids a State to try or convict a defendant who is incompetent to stand trial. *Drope v. Missouri*, *supra*; *Pate v. Robinson*, 383 U. S. 375 (1966). To be competent to stand trial for the purposes of the Due Process Clause, the defendant must have the "capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." *Drope v. Missouri*, *supra*, at 171.²

A federal court acting on a petition for a writ of habeas corpus must make an independent decision on the question of competence, see *Drope v. Missouri*, *supra*, at 175, and n. 10, just as it must decide any other federal constitutional question independently of a state-court determination.³ In each case, "the federal habeas petitioner who claims he is detained pursuant to a final judgment of a state court in violation of

² This Court has approved a test of incompetence which seeks to determine whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U. S. 402, 402 (1960). The State of Texas has adopted essentially the same standard. Tex. Code Crim. Proc. Ann., Art. 46.02, § 1(a) (Vernon 1979).

³ Thus, on collateral review of a state conviction, a federal court must independently determine that a defendant's confession was voluntary under the Fifth Amendment, that postindictment delay did not violate the Sixth Amendment right to a speedy trial, that the defendant was provided effective assistance of counsel, or that the right to an impartial jury was not impaired by extraneous influences. See, e. g., *Cuyler v. Sullivan*, 446 U. S. 335, 341–342 (1980); *Brewer v. Williams*, 430 U. S. 387, 401–403 (1977); *Brown v. Allen*, 344 U. S. 443 (1953); *Watts v. Indiana*, 338 U. S. 49, 51–52 (1949) (opinion of Frankfurter, J.).

the United States Constitution is entitled to have the federal habeas court make its own independent determination . . . on the merits of that claim." *Wainwright v. Sykes*, 433 U. S. 72, 87 (1977).

In making an independent appraisal of the habeas petitioner's constitutional claim, a federal district judge must sometimes defer to a state court's resolution of "issues of fact" underlying its determination. 28 U. S. C. §2254(d). Those antecedent findings which a habeas court may be required to accept are limited "to what are termed basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators. . . .'" *Townsend v. Sain*, 372 U. S. 293, 309, n. 6 (1963), quoting *Brown v. Allen*, 344 U. S. 443, 506 (1953) (opinion of Frankfurter, J.). Express factual determinations by a state court after a full and fair evidentiary hearing generally must be accepted unless they are not fairly supported by the record. *Sumner v. Mata*, 449 U. S. 539 (1981); *Townsend v. Sain*, *supra*, at 312-313, 316; 28 U. S. C. §2254(d)(8). Even where the state trier has made no express findings, this presumption of correctness must also be afforded to findings of fact which "the District Court [can] reconstruct" either because the trier's "view of the facts is plain from his opinion or because of other indicia." 372 U. S., at 314-315.

In this case, the jury was not asked to make and did not make any express findings to support its legal conclusion. Nor can such findings be fairly reconstructed.⁴ Therefore,

⁴ A federal district court may "reconstruct the findings of the state trier of fact" when the state court's "view of the facts is plain from [its] opinion." *Townsend v. Sain*, 372 U. S. 293, 314 (1963). In addition, when a determination in favor of the constitutional claim follows inexorably from particular findings of fact, a federal district court "may assume that the state trier found the facts against the petitioner" in rejecting the constitutional claim. *Id.*, at 315. In this case, no particular view of the facts can be inferred from the conclusory language of the jury's one-sentence verdict, and there are no findings of fact upon which the competency determination necessarily turned. Therefore, "[t]he federal court cannot exclude the

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the District Court was obligated to make its own factual determinations on the basis of the record of the state proceeding and, if necessary to resolve disputed issues of fact, on an evidentiary hearing. *Townsend v. Sain*, *supra*, at 313-316, 318-319.⁵

This Court's opinion in *Drope v. Missouri*, 420 U. S. 162 (1975), indicates that when a state-court determination of competency is unaccompanied by findings of fact, a federal court must undertake independent factfinding, as it would in comparable "situation[s] in which the 'so-called facts and their constitutional significance [are] . . . so blended that they cannot be severed in consideration.'" *Townsend v. Sain*, *supra*, at 315, quoting *Rogers v. Richmond*, 365 U. S. 534, 546 (1961). The question in *Drope* was whether the defendant "was deprived of due process of law by the failure of the trial court to order a psychiatric examination with

possibility that the [trier] believed facts which showed a deprivation of constitutional rights and yet (erroneously) concluded that relief should be denied." *Id.*, at 315-316.

⁵"In any event, even if it is clear that the state trier of fact utilized the proper standard, a hearing is sometimes required if his decision presents a situation in which the 'so-called facts and their constitutional significance [are] . . . so blended that they cannot be severed in consideration. . . .' Unless the district judge can be reasonably certain that the state trier would have granted relief if he had believed petitioner's allegations, he cannot be sure that the state trier in denying relief disbelieved these allegations. If any combination of the facts alleged would prove a violation of constitutional rights and the issue of law on those facts presents a difficult or novel problem for decision, any hypothesis as to the relevant factual determinations of the state trier involves the purest speculation. The federal court cannot exclude the possibility that the trial judge believed facts which showed a deprivation of constitutional rights and yet (erroneously) concluded that relief should be denied. Under these circumstances it is impossible for the federal court to reconstruct the facts, and a hearing must be held." *Townsend v. Sain*, *supra*, at 315-316. See also Wright & Sofaer, *Federal Habeas Corpus for State Prisoners: The Allocation of Fact-Finding Responsibility*, 75 Yale L. J. 895, 935-946 (1966); Note, *Developments in the Law—Federal Habeas Corpus*, 83 Harv. L. Rev. 1038, 1135-1137 (1970).

respect to his competence to stand trial." 420 U. S., at 163-164. The state courts had "viewed the evidence as failing to show that during trial petitioner had acted in a manner that would cause the trial court to doubt his competence." *Id.*, at 178. This Court did not consider itself bound by the state courts' view of the evidence, for "in such circumstances we believe it is 'incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured.'" *Id.*, at 175. See also *id.*, at 175, n. 10. The Court concluded, based upon its independent examination of the record, that "[n]otwithstanding the difficulty of making evaluations of the kind required in these circumstances, . . . the record reveals a failure to give proper weight to the information suggesting incompetence." *Id.*, at 179.

In the instant case, the constitutional question is somewhat different from the question in *Drope*. The due process question is not whether the evidence of incompetency was such as to require a hearing, but whether the evidence adduced at a hearing indicated that the defendant was incompetent to stand trial. But this difference does not warrant any greater deference to the state conclusion with regard to competency than was accorded by this Court in *Drope*.

Jackson v. Virginia, 443 U. S. 307 (1979), does not call for a more deferential attitude toward state-court conclusions of law than has been required by *Townsend v. Sain* and succeeding cases. *Jackson* involved federal review of a claim that the defendant was convicted in the absence of proof sufficient to convince the trier of fact of guilt beyond a reasonable doubt. See 443 U. S., at 309; *id.*, at 326 (STEVENS, J., concurring in judgment); cf. *In re Winship*, 397 U. S. 358, 361 (1970). The Court concluded that the proper standard of review "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U. S., at 319. When a federal ha-

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beas court makes this legal determination as to the sufficiency of the evidence, it does so independently of the state court's determination of the same legal question. Both the state courts and the federal courts must conduct the same inquiry as to sufficiency. The *Jackson* standard is thus completely consistent with the traditional scope of habeas review. See *id.*, at 318 (citing *Drope v. Missouri* and *Townsend v. Sain*).

III

The courts below faced the difficult question whether petitioner's mental disorders made him unable to consult with his attorney and prepare his defense to the extent required by due process. Unfortunately, such a determination can never be made with certainty or precision. Courts must consider many factors. The testimony of expert witnesses recounting their observations of the defendant's behavior and mental processes, along with their professional diagnoses, is, of course, highly relevant. The court also must take into account the observations of lay witnesses, and particularly the observations of the defendant's counsel, with respect to the defendant's ability to reason, to remember, to cooperate, and to communicate. The court's own observations of the defendant may also be relevant, though even the most irrational individual may appear normal to an untrained observer. The defendant's mental condition must be considered in the context of the totality of the circumstances of the case, including the complexity of the charges and of the defense, and the likely length of the trial.

In this case, the jury initially made the difficult due process determination after a legally correct, though undetailed, instruction on the applicable standard of competency to stand trial. While the jury may be equally qualified to make the findings of fact upon which the determination must be based, I have little doubt that a judge ordinarily is better qualified to resolve the constitutional question on the basis of whatever facts are found. See *Lyles v. United States*, 103 U. S.

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App. D. C. 22, 27, 254 F. 2d 725, 730 (1958) (opinion of Prettyman and Burger, JJ.) ("the competency of the accused at the time of trial to understand the charges against him and to assist in his defense is a legal question for the judge, not for the jury"), cert. denied, 356 U. S. 961 (1958). A judge is generally aware of what a defendant must do to participate in his defense. A judge may be guided by his reading of previous cases resolving questions of competency to stand trial and may develop useful experience in making the competency determination. Yet in this case, every state and federal court that faced the question simply deferred to the jury's application of constitutional law once it was found that there was "sufficient" evidence upon which to conclude that White was competent to stand trial.

The deferential review undertaken by the federal courts below denied petitioner his right to an independent determination of his constitutional claim. It was improper to assume, in the absence of any express findings of fact, that the jury resolved all disputed issues of fact in the manner most favorable to a determination that the defendant was competent to stand trial. Instead, the District Court was required to make an independent resolution of disputed factual issues and then to apply the constitutional standard to the facts that it found. I would grant certiorari to address the lower courts' departure from these accepted principles for collateral review of a state-court conviction. I dissent from the Court's refusal to do so.

No. 82-281. *TREEN, GOVERNOR OF LOUISIANA, ET AL. v. WILLIAMS ET AL.* C. A. 5th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 671 F. 2d 892.

No. 82-352. *PUEBLO AIRCRAFT SERVICE, INC. v. CITY OF PUEBLO, COLORADO, ET AL.* C. A. 10th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 679 F. 2d 805.

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No. 82-494. BATH IRON WORKS CORP. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. 1st Cir. Motion of respondent Donald J. Simpson for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 681 F. 2d 81.

No. 82-512. PUBLIC SERVICE COMPANY OF INDIANA, INC. *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 7th Cir. Motion of Indiana Air Pollution Control Board for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 682 F. 2d 626.

No. 82-628. ENERGY RESERVES GROUP, INC., ET AL. *v.* HODEL, SECRETARY OF ENERGY, ET AL. Temp. Emerg. Ct. App. Certiorari denied. JUSTICE WHITE, JUSTICE POWELL, and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 690 F. 2d 1375.

No. 82-649. FLORIDA BUSINESSMEN FOR FREE ENTERPRISE ET AL. *v.* CITY OF HOMESTEAD, FLORIDA. C. A. 11th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 679 F. 2d 252.

No. 82-727. MUSTANG TRANSPORTATION CO. ET AL. *v.* RYDER TRUCK LINES, INC., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 688 F. 2d 823.

No. 82-754. FLORIDA *v.* COLER. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 418 So. 2d 238.

No. 82-965. LINAHAN, WARDEN *v.* MACHETTI, AKA SMITH. C. A. 11th Cir. Motion of respondent for leave to

proceed *in forma pauperis* granted. Certiorari denied. Reported below: 679 F. 2d 236.

No. 82-787. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* GREAT COASTAL EXPRESS, INC. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE BLACKMUN would grant certiorari. Reported below: 675 F. 2d 1349.

No. 82-796. STONER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 418 So. 2d 171.

No. 82-1022. ALABAMA FURNITURE CO. *v.* STILL, TRUSTEE, ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 82-5444. HARVARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 414 So. 2d 1032.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The issue presented by this case is whether a violation of *Gardner v. Florida*, 430 U. S. 349 (1977), can be remedied by a remand to the original sentencing judge for a limited hearing in which the burden is placed upon the defendant to rebut or explain the information which had not been disclosed to him at the initial sentencing proceeding.

I

In 1974 petitioner was convicted after a jury trial of the first-degree murder of his ex-wife. In a separate sentencing proceeding a majority of the jury voted to recommend a death sentence. Under the Florida capital sentencing statute the jury's verdict in the sentencing proceeding is only advisory; the actual sentence is determined by the judge. See Fla. Stat. § 921.141 (1981). In this case the judge found that

two statutory aggravating circumstances were applicable. He determined that the defendant had previously been convicted of a felony involving the use of violence to the person, and that the murder was especially heinous, atrocious, or cruel. The judge also found that none of the statutorily enumerated mitigating circumstances were applicable. He concluded that a death sentence should be imposed.

On appeal, the Florida Supreme Court affirmed petitioner's conviction and sentence in a brief *per curiam* opinion, with two judges dissenting from the affirmance of the death sentence. 375 So. 2d 833 (1977), cert. denied, 441 U. S. 956 (1979). Petitioner sought rehearing in light of *Gardner v. Florida*, *supra*, suggesting that the trial judge, in making his sentencing decision, may have "considered matters not provided to the jury or defense counsel." The Florida Supreme Court issued an order directing the trial judge to indicate whether he had in fact relied on undisclosed information. In response the judge stated that he had examined a confidential portion of a presentence report as well as information furnished by the United States Marine Corps concerning the defendant's military record. After receiving this response, the Florida Supreme Court vacated petitioner's death sentence and remanded to the trial judge for resentencing following a hearing concerning the previously undisclosed information. 375 So. 2d, at 835 (1978).

On remand the trial judge denied petitioner's motion to substitute another judge. A hearing was held in the trial court on February 9, 1979. The scope of the hearing was narrowly limited. The judge provided petitioner with the previously undisclosed material and invited him to correct or rebut any misstatements. The presentence report discussed a prior assault committed by petitioner against his first wife and her sister. Since one of the aggravating circumstances that the judge had found at the initial sentencing proceeding was that petitioner had previously been convicted of a felony involving violence, petitioner's counsel attempted to show

that the offense in question, for which petitioner had received only a 3-month jail sentence, was not as serious as the presentence report indicated.

Following the hearing the judge took the matter under advisement. More than six months later, on August 22, 1979, he indicated that he would reimpose the death sentence. In March 1980 the judge issued proposed findings of fact and requested comment concerning whether four aggravating circumstances that he proposed to find applicable would "pass appellate review." Following comment by the parties, the judge limited his order to two aggravating circumstances.

The trial court finally issued its sentencing order in May 1980. The order stated that the evidence offered by petitioner at the 1979 hearing "did not contradict the information provided this Court in the confidential portion of the presentence investigation." The court refused to consider evidence and argument presented at the hearing unless it rebutted or explained the previously undisclosed information. In addition, the court made clear that even evidence or argument that was relevant to the previously undisclosed information was "beyond the scope of the resentencing Mandate" and would not be considered if it could have been presented in the initial sentencing proceeding to rebut or explain testimony given in that proceeding. Specifically, the court refused to consider efforts by petitioner to impeach testimony at the first proceeding concerning the assault upon his first wife, ruling that "[s]uch impeachment should have been done at trial and it therefore appears that this was a wrongful attempt to belatedly impeach evidence presented by the State to the advisory jury." The court concluded that "the sentence, as originally imposed, was appropriate."

On appeal, the Florida Supreme Court affirmed the death sentence. 414 So. 2d 1032 (1982). The court rejected petitioner's claim that the proceeding on remand had been inadequate to remedy the earlier due process violation. It emphasized that the trial judge's "conclusion that the death

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sentence was again appropriate clearly indicates that his finding is based upon the failure of the defense to present sufficient evidence at resentencing to rebut the information contained in the confidential portion of the presentence investigation report or in the military records." *Id.*, at 1034. Justice Boyd dissented.

II

I continue to adhere to my view that the death penalty is unconstitutional under all circumstances. I would therefore grant certiorari and vacate the death sentence on this basis alone. If the State is to be permitted to impose this uniquely irreversible penalty, however, it should at least be required to do so through procedures that provide some assurance of fairness and reliability in the sentencing determination. In this case petitioner was initially sentenced to death in 1974 after a proceeding in which the trial judge considered highly material information which he had not disclosed to petitioner or his counsel. The Florida Supreme Court has now held that this clear constitutional violation was remedied by a narrowly circumscribed hearing held by the same trial judge five years later—a hearing at which the burden was shifted to petitioner to explain or rebut the previously undisclosed information and thereby persuade the judge not to reimpose the death sentence. Even accepting the prevailing view that the death penalty can constitutionally be imposed under certain conditions, this restricted hearing was plainly inadequate to remedy the blatant violation of due process at the first sentencing proceeding. For the reasons set forth below, I believe the only adequate remedy would have been a new sentencing proceeding before a different judge.

A

In *Gardner v. Florida*, 430 U. S. 349 (1977), this Court held that it is a denial of due process for the sentencer in a capital case to consider information that the defendant "had no opportunity to deny or explain." *Id.*, at 362. As the plu-

rality opinion in *Gardner* stated, "[o]ur belief that debate between adversaries is often essential to the truth-seeking functions of trials requires us . . . to recognize the importance of giving counsel an opportunity to comment on facts which may influence the sentencing decision in capital cases." *Id.*, at 360. A litigant simply cannot "present his case effectively" unless he is "cognizant of all the facts before the [decisionmaker]." *Gonzalez v. United States*, 348 U. S. 407, 413 (1955).

It is undisputed that the procedure followed in the first sentencing proceeding denied petitioner the right to confront all the evidence against him. In response to the Florida Supreme Court's inquiry, the trial judge explicitly stated that some of the information he had considered had not been disclosed to petitioner. This undisclosed information consisted of petitioner's military record and a portion of a presentence report. At the initial sentencing hearing petitioner had no opportunity whatsoever to rebut or explain this information.

B

The remedy for a *Gardner* violation must take account of the nature of a capital sentencing proceeding. For constitutional purposes, such a proceeding is analogous to a trial. See *Bullington v. Missouri*, 451 U. S. 430, 438 (1981) (a capital sentencing proceeding is "in all relevant respects . . . like the immediately preceding trial on the issue of guilt or innocence"). See also *Green v. Georgia*, 442 U. S. 95, 97 (1979) (defendant is entitled to "a fair trial on the issue of punishment"). The decision whether a defendant shall live or die does not simply depend upon the exercise of discretion based on all the evidence before the sentencer, as does the typical sentencing decision in a noncapital case. It depends instead upon proof of specific facts. Just as the State must prove the elements of the crime to obtain a conviction, it must likewise prove one or more statutory aggravating circumstances to obtain a death sentence. Moreover, the State must convince

the sentencer that the statutory aggravating circumstances, if any, outweigh any mitigating circumstances. Only if the State discharges these burdens can it obtain a death sentence.

Because a capital sentencing proceeding has "the hallmarks of [a] trial on guilt or innocence," *Bullington v. Missouri*, *supra*, at 439, a defendant who has been denied a fair sentencing proceeding is entitled to a new sentencing proceeding, just as a defendant who has been denied a fair trial is entitled to a new trial. A *Gardner* violation is always reversible error, for reliance on information that was not disclosed to the defendant is at odds with the basic premises of the adversary process and thus inevitably denies the defendant a fair sentencing proceeding. See *Gardner v. Florida*, *supra*, at 362 (rejecting the suggestion that it would be a sufficient remedy for the Florida Supreme Court to consider the undisclosed information in reviewing the appropriateness of the death sentence); *Chapman v. California*, 386 U. S. 18, 23 (1967) ("there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error") (footnote omitted). The remedy for a *Gardner* violation must therefore be a new sentencing proceeding.¹

Nothing short of a new sentencing proceeding can afford the defendant the fair sentencing determination to which he is entitled under the Constitution. When a trial court commits reversible constitutional error in the course of a criminal trial, an appellate court does not remand for a hearing in which the correctness of the earlier verdict is presumed and the defendant is saddled with the burden of demonstrating that the verdict should have been different. This Court has never approved such a procedure. To obtain a conviction following reversal on appeal, the State must afford the defendant "a new trial free of constitutional infirmity." *Haynes v. Washington*, 373 U. S. 503, 518-519 (1963) (admis-

¹ Since the undisclosed information was not considered by the advisory jury, there is no need to convene a new jury.

sion of coerced confession). See also, *e. g.*, *Sheppard v. Maxwell*, 384 U. S. 333, 363 (1966) (prejudicial publicity prior to and during trial); *Glasser v. United States*, 315 U. S. 60, 76 (1942) (infringement of right to counsel). To sentence petitioner to death, the State must likewise afford him a new sentencing proceeding free of constitutional infirmity.

C

The narrowly circumscribed hearing held on remand in this case was a poor substitute for a new sentencing proceeding. An opportunity for rebuttal, explanation, and persuasion that comes only after the sentencer has come to a decision, and that is limited to the previously undisclosed information, can scarcely replace an opportunity to address *all* the information to be considered by the sentencer *before* he makes a decision.

First, an opportunity to address the undisclosed information in isolation from all the other evidence in the case cannot be equated with an opportunity to address the information as part of counsel's overall presentation. The presentation made by petitioner's counsel at the initial sentencing proceeding might well have differed in any number of ways had he known that, though his client had received only a 3-month sentence for the prior offense, the judge had in front of him a report that said petitioner "fully intended to kill" his first wife and his sister-in-law. For example, he might have deemed it necessary to subject petitioner's first wife and sister-in-law to more intensive cross-examination. Similarly, he might have chosen to introduce different or additional evidence in an attempt to demonstrate mitigating circumstances.

Second, the hearing on remand was inadequate because the judge had heard all the other pertinent evidence five years earlier. Even if he went back and read the transcript of the earlier proceedings, a cold record cannot recreate testimony. A witness may be credible on paper but not on the stand. In evaluating petitioner's new evidence and argument, and in

considering it in the context of all the evidence introduced with respect to sentencing, the judge could have taken the credibility of the witnesses into account only in the unlikely event that he somehow remembered his impression of the testimony at the first proceeding.

Third, the judge had already decided once that petitioner deserved a death sentence. When a decisionmaker has made so difficult a choice, the natural human tendency is to rationalize it and suppress doubts that the decisionmaker may have had. However fairminded the judge may have been, "a certain reluctance is to be expected after the [judge], albeit on incomplete presentation, has rejected the [defendant's] claim" that he should receive a life sentence. *Gonzalez v. United States*, 348 U. S., at 417.² The Court has recognized in other contexts that, notwithstanding the faith typically placed in trial judges to act impartially, fairness may require that resentencing be entrusted to a different judge. In *Santobello v. New York*, 404 U. S. 257 (1971), where the prosecutor breached a plea bargain by recommending the maximum sentence and the judge imposed such a sentence, the Court held that "the interests of justice" demanded, at a minimum, "resentenc[ing] by a different judge," *id.*, at 262 and 263, even though the original sentencing judge had stated that the prosecutor's recommendation did not influence him and the Court stated that it had "no reason to doubt that," *id.*, at 262.³ In a capital case such as this, the interests of justice surely require no less.

² In *Gonzalez* the Government failed to provide a draft registrant who claimed conscientious objector status with a copy of its recommendation to the Appeal Board. The Court held that the denial of an opportunity to rebut the report was not remedied by a procedure whereby, *after* the Appeal Board made its decision, the registrant could obtain the report and request a reopening of his classification. 348 U. S., at 417.

³ Although in many contexts the law assumes that a judge can fairly reconsider a case even though he has previously reached a decision which for some reason has been set aside on appeal, reliance on information not disclosed to the defendant can be particularly prejudicial where a judge rather

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III

A defendant is denied due process when he is sentenced to death by a judge who relied on information that the defendant had no opportunity to contest or rebut. That denial of due process can only be remedied by a new sentencing proceeding conducted in conformity with the Constitution. It is not remedied by a remand to the original sentencing judge for a hearing in which the defendant bears the burden of rebutting or explaining the information, and in which the judge will not consider any evidence or argument that is not in the nature of rebuttal or that could have been presented at the initial proceeding. This sort of limited hearing might conceivably be appropriate to correct an evidentiary error in a civil antitrust action, but it is scarcely sufficient to correct a due process violation where a man's life is at stake. I therefore dissent.

No. 82-5448. *UNDERWOOD v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

than a jury is the decisionmaker. When a jury considers such information, there may at least be an exchange of views among the jurors as to its significance. There is no opportunity for such an exchange if the information is considered only by the judge. Cf. *Herring v. New York*, 422 U. S. 853, 863-864, n. 15 (1975) (in a bench trial in a criminal case, defense counsel cannot be denied an opportunity to make a closing argument):

"[T]he 'collective judgment' of the jury 'tends to compensate for individual shortcomings and furnishes some assurance of a reliable decision.' Powell, *Jury Trial of Crimes*, 23 Wash. & Lee L. Rev. 1, 4 (1966). In contrast, the judge who tries a case presumably will reach his verdict with deliberation and contemplation, but must reach it without the stimulation of opposing viewpoints inherent in the collegial decisionmaking process of a jury."

In this case the possibility that a different sentence might have been imposed but for the *Gardner* violation is underscored by the fact that in the jury phase of the first sentencing proceeding—the only phase in which petitioner was afforded a fair opportunity to meet the evidence against him—4 of the 12 jurors voted to recommend a life sentence.

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

For the reasons set forth in the dissenting opinion in *Holloway v. Florida*, 449 U. S. 905 (1980), I would grant the petition for certiorari and afford this case plenary consideration. See also *Spaziano v. Florida*, 454 U. S. 1037, 1041 (1981) (dissenting opinions).

No. 82-5648. *BOLDER v. MISSOURI*. Sup. Ct. Mo.; and
No. 82-5698. *MELSON v. TENNESSEE*. Sup. Ct. Tenn.
Certiorari denied. Reported below: No. 82-5648, 635 S. W.
2d 673; No. 82-5698, 638 S. W. 2d 342.

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. 81-2129. *EISENBERG v. CROWLEY*, *ante*, p. 827;
No. 81-2251. *WILLIAMS v. COOK COUNTY CIVIL SERVICE COMMISSION ET AL.*, *ante*, p. 833;
No. 81-6813. *ELLEDGE v. FLORIDA*, *ante*, p. 981;
No. 81-6820. *BORCHERDING v. UNITED STATES ET AL.*, *ante*, p. 1014;
No. 81-6861. *WHITLEY v. VIRGINIA*, *ante*, p. 882;
No. 81-6875. *FASICK v. UNITED STATES*, *ante*, p. 1014;
No. 81-6953. *BOYER v. RILEY ET AL.*, *ante*, p. 1035;
No. 82-145. *SMITH v. GONZALES ET AL.*, *ante*, p. 1005;
No. 82-179. *SACCHINELLI v. GEORGIA*, *ante*, p. 1015;
No. 82-371. *BEHAR v. SOUTHEAST BANK TRUST CO., N.A., PERSONAL REPRESENTATIVE OF THE ESTATE OF BEHAR*, *ante*, p. 970; and
No. 82-442. *CALVO v. LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL.*, *ante*, p. 989. Petitions for rehearing denied.

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No. 82-482. HAMILTON ET AL. *v.* VIRGINIA, *ante*, p. 1011;
No. 82-506. SAFIR *v.* LEWIS, SECRETARY OF TRANSPORTATION, ET AL., *ante*, p. 972;

No. 82-5177. CELESTINE *v.* CROWN CENTER HOTEL, *ante*, p. 973;

No. 82-5317. BERRYHILL *v.* GEORGIA, *ante*, p. 981;

No. 82-5328. THOMAS *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 982;

No. 82-5329. MILLER *v.* MILLER, *ante*, p. 973;

No. 82-5348. RILEY *v.* FLORIDA, *ante*, p. 981;

No. 82-5405. MCPEEK ET AL. *v.* YOUNG, UNITED STATES DISTRICT JUDGE, ET AL., *ante*, p. 992;

No. 82-5471. SPEAR *v.* ROBERTS, *ante*, p. 1020; and

No. 82-5658. MULVILLE *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 1074. Petitions for rehearing denied.

No. 81-2361. GROSSMAN *v.* FIDELITY MUNICIPAL BOND FUND, INC., ET AL., *ante*, p. 838;

No. 81-6947. VELASQUEZ *v.* COLORADO, *ante*, p. 805;

No. 82-5030. CHAVIS-EL *v.* GREER ET AL., *ante*, p. 945; and

No. 82-5218. COLLINS *v.* CHICAGO BOARD OF EDUCATION, *ante*, p. 913. Motions for leave to file petitions for rehearing denied.

No. 82-362. VENTURE TECHNOLOGY, INC. *v.* NATIONAL FUEL GAS DISTRIBUTION CORP. ET AL., *ante*, p. 1007. Motion of petitioner for joint consideration with other cases denied. Petition for rehearing denied.

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Appeals Dismissed. (See also No. 81-2394, *infra*.)

No. 82-639. BOARD OF EDUCATION, CITY SCHOOL DISTRICT, ROCHESTER, NEW YORK, ET AL. *v.* NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.; and

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No. 82-655. BOARD OF EDUCATION, LEVITTOWN UNION FREE SCHOOL DISTRICT, NASSAU COUNTY, ET AL. *v.* NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL. Appeals from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 57 N. Y. 2d 27, 439 N. E. 2d 359.

No. 82-5714. DYER, A MINOR, BY DYER, HER PARENT AND NATURAL GUARDIAN *v.* LOWER BUCKS COUNTY HOSPITAL. Appeal from Super. Ct. Pa. dismissed for want of substantial federal question. Reported below: 298 Pa. Super. 609, 443 A. 2d 398.

No. 82-5773. MOORE *v.* GUILFORD COUNTY DEPARTMENT OF SOCIAL SERVICES. Appeal from Sup. Ct. N. C. dismissed for want of substantial federal question. Reported below: 306 N. C. 394, 293 S. E. 2d 127.

No. 82-5754. BETKA *v.* OREGON 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.

Certiorari Dismissed

No. 81-1284. EICKE *v.* EICKE. Ct. App. La., 3d Cir. [Certiorari granted, 456 U. S. 970.] Writ of certiorari dismissed as improvidently granted.

Vacated and Remanded After Certiorari Granted

No. 81-1774. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* BULLARD. C. A. 5th Cir. [Certiorari granted, 457 U. S. 1116.] Judgment vacated and case remanded for consideration of whether the Texas Constitution, as interpreted by the Court of Criminal Appeals of Texas in *Ex parte Augusta*, 639 S. W. 2d 481 (1982), offers respondent relief on grounds independent of the United States Constitution so as to render inappropriate a decision on federal constitutional grounds. *City of Mesquite v. Aladdin's Cas-*

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tle, Inc., 455 U. S. 283 (1982); *Mills v. Rogers*, 457 U. S. 291 (1982).

Miscellaneous Orders

No. — — —. GUARANTEED INVESTORS CORP. *v.* OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-576. SIMOPOULOS *v.* BALILES, ATTORNEY GENERAL OF VIRGINIA, ET AL. Application for stay of condition imposed on reinstatement of physician's medical license, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-281. IN RE DISBARMENT OF SANDS. Disbarment entered. [For earlier order herein, see 458 U. S. 1126.]

No. D-284. IN RE DISBARMENT OF FISHMAN. Disbarment entered. [For earlier order herein, see 458 U. S. 1126.]

No. D-291. IN RE DISBARMENT OF SUNDOCK. Disbarment entered. [For earlier order herein, see 458 U. S. 1128.]

No. D-300. IN RE DISBARMENT OF GRUBOR. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D-307. IN RE DISBARMENT OF GARY. It is ordered that Benjamin Gary, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-308. IN RE DISBARMENT OF ODENDAHL. It is ordered that Frederick Richard Odendahl, of Monmouth, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-309. IN RE DISBARMENT OF MCCLELLAN. It is ordered that Oliver Barr McClellan, of Houston, Tex., be

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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-310. IN RE DISBARMENT OF TILYOU. It is ordered that Frank Sheridan Tilyou, Jr., of Scottsdale, Ariz., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-311. IN RE DISBARMENT OF MASON. It is ordered that Frank Ebaugh Mason, Jr., of Easton, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-312. IN RE DISBARMENT OF ERGAZOS. It is ordered that John William Ergazos, of Canton, 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-313. IN RE DISBARMENT OF GRIMES. It is ordered that Robert A. Grimes, of Flint, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-315. IN RE DISBARMENT OF COBURN. It is ordered that James L. Coburn, of Freeport, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. 67, Orig. IDAHO EX REL. EVANS, GOVERNOR OF IDAHO, ET AL. *v.* OREGON ET AL. Idaho's Exceptions to the Final Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, *ante*, p. 811.]

No. 81-1717. AMERICAN BANK & TRUST CO. ET AL. *v.* DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. *v.* CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. *v.* CHILDS ET AL. Ct. App. Tex., 5th Sup. Jud. Dist. [Certiorari granted, *ante*, p. 966.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondents for divided argument granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 81-2101. PENNHURST STATE SCHOOL AND HOSPITAL ET AL. *v.* HALDERMAN ET AL. C. A. 3d Cir. [Certiorari granted, 457 U. S. 1131.] Motion of the parties for divided argument granted.

No. 81-2125. BELL, SECRETARY OF EDUCATION *v.* NEW JERSEY ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 820.] Motion of respondents for divided argument granted. Request for additional time for oral argument denied.

No. 81-2245. NEVADA *v.* UNITED STATES ET AL.;

No. 81-2276. TRUCKEE-CARSON IRRIGATION DISTRICT *v.* UNITED STATES ET AL.; and

No. 82-38. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 904.] Motion of the Solicitor General for divided argument granted.

No. 81-2338. REGAN, SECRETARY OF THE TREASURY, ET AL. *v.* TAXATION WITH REPRESENTATION OF WASHINGTON. C. A. D. C. Cir. [Probable jurisdiction noted, *ante*, p. 819.] Motion of Disabled American Veterans et al. for leave to participate in oral argument as *amici curiae*, for divided argu-

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ment, and for additional time for argument denied. Motion of American Legion et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for argument denied.

No. 81-2408. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL. *v.* FLOWERS ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1034.] Motion for appointment of counsel granted, and it is ordered that Isaac N. Groner, Esquire, of Washington, D. C., be appointed to serve as counsel for respondents in this case.

No. 82-23. MARSH, NEBRASKA STATE TREASURER, ET AL. *v.* CHAMBERS. C. A. 8th Cir. [Certiorari granted, *ante*, p. 966.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for argument denied. Motion of Jon Garth Murray et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for argument denied.

No. 82-185. BOSTON FIREFIGHTERS UNION, LOCAL 718 *v.* BOSTON CHAPTER, NAACP, ET AL.;

No. 82-246. BOSTON POLICE PATROLMEN'S ASSN., INC. *v.* CASTRO ET AL.; and

No. 82-259. BEECHER ET AL. *v.* BOSTON CHAPTER, NAACP, ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 967.] Motion of Boston Firefighters Union, Local 718, for divided argument denied. Motion of Boston Firefighters Union, Local 718, for additional time for oral argument denied. Motion of Boston Police Patrolmen's Association, Inc., for divided argument denied. Motion of Boston Police Patrolmen's Association, Inc., for additional time for oral argument denied. Motion of Nancy B. Beecher et al. for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied. JUSTICE MARSHALL took no part in the consideration or decision of these motions.

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No. 82-195. *MUELLER ET AL. v. ALLEN ET AL.* C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motion of respondents for divided argument denied. Motion of Mountain States Legal Foundation et al. for leave to file a brief as *amici curiae* granted.

No. 82-708. *SUMMA CORP. v. CALIFORNIA EX REL. STATE LANDS COMMISSION ET AL.* Sup. Ct. Cal. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-840. *WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS v. HENRY.* C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 82-1066. *UNITED STATES v. PTASYSKI ET AL.* Appeal from D. C. Wyo. Motion of the Solicitor General to expedite consideration of the statement as to jurisdiction denied. JUSTICE BLACKMUN and JUSTICE O'CONNOR would grant this motion.

Probable Jurisdiction Noted

No. 81-2394. *WESTINGHOUSE ELECTRIC CORP. v. TULLY ET AL.* Appeal from Ct. App. N. Y. Probable jurisdiction noted limited to Question 1 presented by the statement as to jurisdiction. With respect to Question 2 presented by the statement as to jurisdiction, the appeal is dismissed for want of substantial federal question. Reported below: 55 N. Y. 2d 364, 434 N. E. 2d 1044.

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

While I agree with the Court's conclusion that the second question in the jurisdictional statement is insubstantial, I do not believe a court of law has the power simultaneously to dismiss and to accept jurisdiction of a single appeal from a single judgment, I therefore do not join the Court's order.

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Certiorari Granted

No. 82-647. KIRKPATRICK *v.* CHRISTIAN HOMES OF ABILENE, INC., ET AL. Ct. App. Tex., 11th Sup. Jud. Dist. Certiorari granted. Reported below: 628 S. W. 2d 261.

No. 82-799. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 672 F. 2d 732.

No. 82-827. MINNESOTA *v.* MURPHY. Sup. Ct. Minn. Certiorari granted. Reported below: 324 N. W. 2d 340.

No. 82-818. NATIONAL LABOR RELATIONS BOARD *v.* BILDISCO & BILDISCO, DEBTOR-IN-POSSESSION, ET AL.; and

No. 82-852. LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 682 F. 2d 72.

No. 81-2332. NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA ET AL. C. A. 4th Cir. Motion of United States Conference of Mayors for leave to file a brief as *amicus curiae* granted. Certiorari granted. JUSTICE POWELL took no part in the consideration or decision of this motion and this petition. Reported below: 674 F. 2d 298.

Certiorari Denied. (See also No. 82-5754, *supra*.)

No. 81-2359. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* PHONETELE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 664 F. 2d 716.

No. 82-198. FEDERAL ELECTION COMMISSION *v.* HALL-TYNER ELECTION CAMPAIGN COMMITTEE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 678 F. 2d 416.

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No. 82-481. COTTON BELT INSURANCE Co., INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 447.

No. 82-541. SAM ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 596, 682 F. 2d 925.

No. 82-654. ATLAS TILE & MARBLE CO. ET AL. *v.* SHAHADY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 19, 682 F. 2d 968.

No. 82-701. NEW CASTLE AREA TRANSIT AUTHORITY *v.* KRAMER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 677 F. 2d 308.

No. 82-714. SEATH *v.* REGULATIONS AND PERMITS ADMINISTRATION ET AL. Sup. Ct. P. R. Certiorari denied.

No. 82-734. DEL JUNCO ET AL. *v.* CONOVER, COMPTROLLER OF THE CURRENCY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 1338.

No. 82-742. FOUNDATION FOR THE HANDICAPPED *v.* DEPARTMENT OF SOCIAL AND HEALTH SERVICES OF WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 691, 648 P. 2d 884.

No. 82-812. STEVENSON ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-813. DUBOIS ET AL. *v.* CITY OF COLLEGE PARK ET AL. Ct. App. Md. Certiorari denied. Reported below: 293 Md. 676, 447 A. 2d 838.

No. 82-826. WALKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 82-828. ARRINGTON *v.* NEW YORK TIMES CO. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 55 N. Y. 2d 433, 434 N. E. 2d 1319.

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No. 82-831. *KOCK v. QUAKER OATS CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 649.

No. 82-842. *RAY v. TENNESSEE VALLEY AUTHORITY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 818.

No. 82-851. *MURRAY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 2d 1320.

No. 82-855. *JORDAN v. BOLGER, POSTMASTER GENERAL OF THE UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 1384.

No. 82-858. *TAYLOR v. HOWARD ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 686 F. 2d 1346.

No. 82-866. *VAUGHN v. HINCHY, WITTE, WOOD, ANDERSON, HODGES & BOSTWICK.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.

No. 82-910. *LINS v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 579, 688 F. 2d 784.

No. 82-942. *DECRAANE ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 951.

No. 82-946. *BOX v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 419 So. 2d 604.

No. 82-5474. *AHRENDT ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 687 F. 2d 1270.

No. 82-5495. *STEVENS v. NORTH CAROLINA.* Super. Ct. N. C., Mecklenburg County. Certiorari denied.

No. 82-5503. *APEL v. WAINWRIGHT.* C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 2d 116.

No. 82-5515. *WENTZEL v. MONTGOMERY GENERAL HOSPITAL, INC., ET AL.* Ct. App. Md. Certiorari denied. Reported below: 293 Md. 685, 447 A. 2d 1244.

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No. 82-5531. THETFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 676 F. 2d 170.

No. 82-5549. REYES-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 82-5556. SMITH *v.* KAYE. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 835.

No. 82-5558. ROLFE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 687 F. 2d 1315.

No. 82-5564. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 460.

No. 82-5566. JORDAN *v.* VETERANS ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 291.

No. 82-5587. CARTER *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 288.

No. 82-5641. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 173.

No. 82-5735. BAINCH *v.* RAINES ET AL. C. A. 9th Cir. Certiorari denied.

No. 82-5740. ALEXANDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 82-5745. THOMAS *v.* GREENSPAN. C. A. D. C. Cir. Certiorari denied.

No. 82-5748. BURCH *v.* HARDEE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 830.

No. 82-5750. SCOTT *v.* PARRATT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 504.

No. 82-5756. SANDS *v.* SANDS. Sup. Ct. Conn. Certiorari denied. Reported below: 188 Conn. 98, 448 A. 2d 822.

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No. 82-5757. *ROGERS v. TRIGG*, SUPERINTENDENT, INDIANA WOMEN'S PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 759.

No. 82-5758. *WILLIAMS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-5759. *WILLIAMS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 400 So. 2d 542.

No. 82-5760. *THOMPSON v. LLOYD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-5761. *TAYLOR v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 438 N. E. 2d 275.

No. 82-5762. *HAUPTMANN v. LACEY*, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 82-5770. *MINER v. WYRICK*, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 82-5775. *FILIPAS ET AL. v. LEMONS*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 561.

No. 82-5776. *HARDEN v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 441 N. E. 2d 215.

No. 82-5777. *GILBERT v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 637 F. 2d 632.

No. 82-5778. *PEVLOR v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 638 S. W. 2d 272.

No. 82-5779. *HOOVER v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 419 So. 2d 590.

No. 82-5780. *HOHMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 836.

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No. 82-5790. *BREWER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 650 P. 2d 54.

No. 82-5802. *KIRK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 498.

No. 82-5805. *ENGELKE v. SHERING, JUDGE OF JUSTICE COURT, CLARK COUNTY, NEVADA*. C. A. 9th Cir. Certiorari denied.

No. 82-5813. *PISKACEK v. ODESSA COLLEGE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 1371.

No. 82-5820. *CALVIN v. RYAN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 751.

No. 82-5829. *ANTONELLI v. ILLINOIS BELL TELEPHONE Co.* Sup. Ct. Ill. Certiorari denied.

No. 82-5848. *PRUNTY v. DEPARTMENT OF THE NAVY*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 764.

No. 82-5871. *GARZA v. MILLER, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 480.

No. 81-1972. *PORCHER, CLAIMS ADJUDICATOR, SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION, ET AL. v. BROWN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 660 F. 2d 1001.

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

Every State in the Union maintains an unemployment compensation system which provides partial wage replacement for the unemployed. The Federal Government credits employer contributions to state unemployment programs meeting certain federal requirements against the amount owing under the Federal Unemployment Tax Act, 26 U. S. C. §3301 *et seq.* One of the requirements which state plans

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must meet is that "no person shall be denied [unemployment] compensation under . . . State law solely on the basis of pregnancy or termination of pregnancy." 26 U. S. C. § 3304(a)(12). The Fourth Circuit, in the opinion below, 660 F. 2d 1001 (1981), held that the South Carolina Unemployment Compensation System did not meet the requirements of § 3304(a)(12), and upheld a District Court order requiring the South Carolina Employment Security Commission (Commission) to make retroactive payments to claimants that had been denied compensation since January 1, 1978. In so doing, the Fourth Circuit decided three issues that merit this Court's attention.

The most important issue now presented for this Court's consideration involves the meaning of § 3304(a)(12). South Carolina Code § 41-35-120 (Supp. 1982) provides that a person will not be eligible for unemployment benefits "if the Commission finds that he has left voluntarily, without good cause, his most recent work." The Commission has determined that resignation due to pregnancy or to an illness unrelated to the claimant's job makes the claimant ineligible for unemployment benefits. The Fourth Circuit held that § 41-35-120, as interpreted, did not satisfy the dictates of § 3304(a)(12). It said: "Regardless of how the Commission treats employees with other disabilities, the mandate of [§ 3304(a)(12)] is clear: the Commission cannot deny compensation 'solely on the basis of pregnancy or termination of pregnancy.'" 660 F. 2d, at 1004.

It is by no means clear, however, that § 3304(a)(12) does not simply provide that pregnancy must be treated like all other disabilities—that pregnancy simply cannot be singled out for unfavorable treatment. The Department of Labor adheres to such an interpretation, and thus disagrees with the Fourth Circuit's interpretation of § 3304(a)(12). The Department of Labor is responsible for annually determining whether state unemployment compensation programs meet the requirements set out in federal law. 26 U. S. C.

§ 3304(c). Moreover, the Department played a role in the development of the 1976 legislation that added § 3304(a)(12) to the Federal Unemployment Tax Act. Unemployment Compensation Amendments of 1976, § 312(a), 90 Stat. 2679. The Department of Labor has repeatedly certified that South Carolina's program, as well as the programs of eight other jurisdictions with provisions similar to that of South Carolina,* meet the requirements of § 3304(a)(12). In addition, the Administrator of the Department's Unemployment Insurance Service submitted, on the Department's behalf, a letter to the District Court reiterating the Department's position with respect to South Carolina's program. The Administrator explained that the South Carolina program was consistent with § 3304(a)(12) because "it does not distinguish between pregnant claimants or any other unemployed individuals whose separation is determined to be due to illness." Brief for United States as *Amicus Curiae* 13 (quoting Administrator's letter).

At the very least then, § 3304(a)(12) is the subject of substantial uncertainty, given the clear and direct conflict between the Fourth Circuit and the Department of Labor—the agency to whom Congress entrusted administration of the statute. The conflict the Court now leaves unresolved makes it difficult for conscientious administrators of unemployment compensation programs to determine what is required of them by the Federal Government. The position of the unemployment insurance administrators in the eight jurisdictions, in addition to South Carolina, that deny benefits both to those who resigned because of pregnancy and to those who resigned because of some non-job-related illness is clearly perplexing. The question presented is of obvious importance to the States; South Carolina is paying additional benefits at a rate of almost \$1.5 million per year as a result of

*The District of Columbia, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, West Virginia, and, to a lesser extent, Vermont. Brief for United States as *Amicus Curiae* 18, and n. 21.

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the decision below. See Application for Stay of Enforcement of Judgment ¶7. The question is also surely important to large numbers of pregnant women for whom unemployment compensation may constitute a substantial portion of their financial resources. Apparently the question is one of "substantial concern" to the Department of Labor as well. Brief for United States as *Amicus Curiae* 7.

The second issue of significance relates to the Eleventh Amendment. This Court has held that the Eleventh Amendment prevents federal courts from entering judgments that are to be satisfied out of the State's general revenues, *Edelman v. Jordan*, 415 U. S. 651 (1974), or out of state segregated tax revenues, *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U. S. 573 (1946), and *Great Northern Life Insurance Co. v. Read*, 322 U. S. 47 (1944). In the decision below the Fourth Circuit concluded that it could award a judgment against the South Carolina unemployment compensation fund because: (1) the fund is "a special fund administered separate and apart from all public moneys or funds of the State," (2) the fund consists of employer contributions, federal funding, investment income, and other receipts, and (3) neither the State nor the Commission is liable for any excess in obligations on the fund over its resources. 660 F. 2d, at 1006. Reliance on these distinctions is certainly questionable under this Court's previous cases. The question of whether there are some state funds that do not enjoy Eleventh Amendment immunity is important, and this case presents the Court with an opportunity to address the issue.

The third issue of significance is whether 42 U. S. C. § 1983 (1976 ed., Supp. IV) provides a cause of action to redress a State's failure to meet the standard set out in § 3304(a) (12). In *Maine v. Thiboutot*, 448 U. S. 1 (1980), the Court held that a plaintiff could sue to enforce a federal statute under § 1983. In *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981), we held that a plaintiff could not use § 1983 to enforce provisions of the Developmentally

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Disabled Assistance and Bill of Rights Act of 1975, 42 U. S. C. § 6001 *et seq.* (1976 ed. and Supp. IV). We explained that a federal statute may be enforced by a § 1983 suit only if Congress has not foreclosed private enforcement of that statute in the enactment itself and if the statute created enforceable "rights" under § 1983. 451 U. S., at 28. In *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U. S. 1 (1981), we reaffirmed our holding in *Pennhurst*, *supra*, refusing to allow a § 1983 suit to enforce provisions of the Federal Water Pollution Control Act, 33 U. S. C. § 1251 *et seq.* (1976 ed. and Supp. V), and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U. S. C. § 1401 *et seq.* (1976 ed. and Supp. V). Consideration of the difficult and unanswered question of whether the Federal Unemployment Tax Act is enforceable by way of § 1983 would provide guidance to the lower federal courts on the application of *Thiboutot*, *Pennhurst*, and *Middlesex County Sewerage Authority*.

I would grant certiorari to consider these issues.

No. 82-490. DAVIS *v.* GOODSON. Sup. Ct. Ark. Certiorari denied. Reported below: 276 Ark. 337, 635 S. W. 2d 226.

JUSTICE STEVENS, concurring.

Because the petition for a writ of certiorari does not affirmatively show that a federal question was presented to or decided by the Supreme Court of Arkansas, I believe the Court correctly denies the writ.

JUSTICE MARSHALL, dissenting.

Petitioner was summarily held in contempt for advising his client that he had a privilege not to submit to a breath-analysis test. In citing petitioner for contempt, the judge made no finding that the advice was given in bad faith. Given the absence of such a finding, I would grant certiorari to decide whether petitioner's conviction and sentence for contempt

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are constitutionally infirm in light of this Court's decision in *Maness v. Meyers*, 419 U. S. 449 (1975), where we held that "an advocate is not subject to the penalty of contempt for advising his client, in good faith, to assert the Fifth Amendment privilege against self-incrimination in any proceeding embracing the power to compel testimony." *Id.*, at 468. See also *id.*, at 472 (Stewart, J., concurring in result); *In re Watts*, 190 U. S. 1, 29 (1903) ("if an attorney acts in good faith and in the honest belief that his advice is well founded and in the just interests of his client, he cannot be held liable for error in judgment").

No. 82-516. SOUTH CAROLINA ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 685 F. 2d 431.

No. 82-788. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 82-5744. MEEKS *v.* FLORIDA. Sup. Ct. Fla.; and

No. 82-5789. PARKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: No. 82-788, 648 P. 2d 1251; No. 82-5744, 418 So. 2d 987; No. 82-5789, 651 P. 2d 686.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 82-805. LUBBOCK INDEPENDENT SCHOOL DISTRICT ET AL. *v.* LUBBOCK CIVIL LIBERTIES UNION. C. A. 5th Cir. Motions of The Freedom Council, Ad Hoc Group of Students and Parents in Lubbock Independent School District, Texas Association of School Boards, National Association of Evangelicals et al., Mark O. Hatfield et al., and National Council of Churches of Christ in the United States of America et al.

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for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 669 F. 2d 1038 and 680 F. 2d 424.

No. 82-822. FORT PIERCE UTILITIES AUTHORITY ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 11th Cir. Motion of Potomac Electric Power Co. for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 82-829. ALASKA ET AL. v. BOISE CASCADE ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 685 F. 2d 810.

No. 82-830. MENORA, ON BEHALF OF MENORA, A MINOR, ET AL. v. ILLINOIS HIGH SCHOOL ASSN. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE MARSHALL and JUSTICE BLACKMUN would grant certiorari. Reported below: 683 F. 2d 1030.

No. 82-833. FLORIDA v. SIMPSON. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 418 So. 2d 984.

No. 82-5285. CHAPARRO-ALMEIDA ET AL. v. UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 679 F. 2d 423.

No. 82-5528. BUTTRUM v. GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 249 Ga. 652, 293 S. E. 2d 334.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

I continue to adhere to my view that the death penalty is unconstitutional in all circumstances, and I would vacate petitioner's death sentence on that basis alone. However, even if I accepted the prevailing view that the death penalty can constitutionally be imposed under certain conditions, I would vacate the death sentence imposed in this case. The trial judge permitted a psychologist who had never examined petitioner to make a prediction as to her future dangerousness that was based in substantial part on hearsay statements that were not in evidence.¹ This was the only testimony presented by the prosecution in the sentencing phase of the trial. It is well recognized that predictions of violent behavior are generally unreliable even under the best of circumstances.² In my view, when this general unreliability is compounded by the obvious risks inherent in relying on hearsay statements that were not made under oath and were not subject to cross-examination, and the person making the prediction has never even examined the individual in question, the State has "introduce[d] a level of uncertainty and unreliability into the factfinding process that cannot be tolerated in a capital case." *Beck v. Alabama*, 447 U. S. 625, 643 (1980).

¹ The psychologist relied on medical and psychiatric reports that he had examined and on out-of-court statements made to him by a guard and by one of petitioner's fellow inmates.

Petitioner was 17 at the time of the offense.

² See, e. g., Cocozza & Steadman, *The Failure of Psychiatric Predictions of Dangerousness: Clear and Convincing Evidence*, 29 Rutgers L. Rev. 1084 (1976) (reviewing the studies on this subject); Report of the Task Force on the Role of Psychology in the Criminal Justice System, 33 Am. Psychologist 1099, 1110 (1978) ("the validity of psychological predictions of violent behavior, at least in the sentencing and release situations . . . is extremely poor").

In *People v. Murtishaw*, 29 Cal. 3d 733, 631 P. 2d 446 (1981), cert. denied, 455 U. S. 922 (1982), the California Supreme Court concluded that predictions of violent conduct are too unreliable to be admissible in capital sentencing proceedings absent a showing of exceptional circumstances supporting the prediction. 29 Cal. 3d, at 767-775, 631 P. 2d, at 466-471.

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No. 82-5590. *MILLER v. FLORIDA*. Sup. Ct. Fla. Motion of Florida Public Defenders Association, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 415 So. 2d 1262.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

I continue to adhere to my view that the death penalty is unconstitutional under all circumstances. I would therefore grant certiorari and vacate the death sentence on this basis alone. However, even if I accepted the prevailing view that the death penalty can constitutionally be imposed under certain circumstances, I would grant certiorari in this case to consider whether a trial judge may reject a jury's recommendation of life imprisonment and impose the death sentence based in part on a different jury's recommendation that the defendant's accomplice be sentenced to death.

Petitioner Ernest Lee Miller and his stepbrother, William Riley Jent, were indicted for first-degree murder. Following trials before the same judge but before separate juries, both defendants were found guilty. The trials were followed by hearings at which each jury was directed to consider "[w]hether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and . . . [b]ased on these considerations, whether the defendant should be sentenced to life imprisonment or death." Fla. Stat. §§ 921.141(2)(b) and (c) (1981). The jury that heard petitioner's case recommended life imprisonment, but in Jent's case the jury recommended a death sentence.

Under the Florida capital sentencing procedure, the jury's sentencing decision is only advisory; the actual sentence is

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determined by the trial judge. Here the judge who conducted both trials sentenced both petitioner and his accomplice Jent. In the case of Jent, the judge accepted the jury's recommendation and imposed a death sentence.

In the case of petitioner, the judge was faced with a jury recommendation of life imprisonment. Under Florida law, a sentencing judge can reject such a recommendation only if "the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ." *Proffitt v. Florida*, 428 U. S. 242, 249 (1976), quoting *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975). In deciding to impose the death sentence despite the jury's recommendation, the judge relied heavily on the fact that in Jent's case the jury recommended a death sentence:

"The United States Supreme Court has determined that if the death penalty is to be imposed by the states, the United States Constitution demands that it be imposed with regularity, rationality and consistency.

"The jury for the defendant Jent has recommended death and this court finds that the weight of the aggravating and mitigating circumstances demand death sentences for both defendants. Therefore, if the recommendation of the jury for the defendant Miller were followed, that would result in two co-perpetrators who participated equally in a crime having disparate sentences. It would cause a hollow ring in the Florida halls of justice if the sentences in these cases were not to be equalized." Findings in Support of Sentences 6 (citations omitted).

"The goal in the law is regularity or uniformity in the application of those available sentences. Now, the Court, our Supreme Court in Florida has also said that . . . [the fact that] two coperpetrators who participated equally in the crime would have [disparate] sentences if the jury recommendation were to be accepted has to be a strong consideration." Tr. 16-17.

In sentencing petitioner to death, the judge expressly relied on the recommendation made by a different jury following the separate trial of a different defendant. There is much force to petitioner's contention that this reliance on the recommendation made by Jent's jury was inconsistent with the judge's constitutional duty to decide whether to impose a death sentence on the basis of an "objective consideration of the *particularized* circumstances of the individual offense and the individual offender." *Jurek v. Texas*, 428 U. S. 262, 274 (1976) (joint opinion of Stewart, POWELL, and STEVENS, JJ.) (emphasis added). See, e. g., *Eddings v. Oklahoma*, 455 U. S. 104, 110-112 (1982); *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (plurality opinion); *Roberts v. Louisiana*, 431 U. S. 633, 637 (1977) (*per curiam*); *Woodson v. North Carolina*, 428 U. S. 280, 303-304 (1976) (plurality opinion of Stewart, POWELL, and STEVENS, JJ.). Our cases make clear that in capital cases "[t]he fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender." *Woodson v. North Carolina*, *supra*, at 304.

Although it is impossible to determine the precise extent to which the recommendation of the jury in Jent's case persuaded the judge to minimize or disregard the differences between petitioner and Jent,* it is undeniable that the judge

*Petitioner had no history of prior criminal activity. In addition, a clinical psychologist testified that petitioner did not have a violent nature, but had "basically a dependent personality." The psychologist testified that petitioner had come under the negative influence of Jent but would respond positively to the influence of "a stronger person [who] is a favorable, community oriented individual." The trial judge gave no weight to this testimony. If the judge who sentenced petitioner had not also sentenced Jent, or if the jury had recommended life imprisonment for Jent, the judge may well have been willing to take this testimony into account.

The court also declined to admit additional testimony offered by the clinical psychologist regarding petitioner's capacity for rehabilitation. The court's exclusion of such mitigating evidence may itself have been a viola-

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allowed that recommendation to influence his choice of petitioner's sentence. There is, at the very least, a substantial question whether the judge thereby relied on a constitutionally impermissible consideration, for the jury that recommended a death sentence for Jent heard none of the mitigating evidence presented by petitioner, and petitioner had no opportunity to challenge the evidence and arguments presented by the State in Jent's trial and sentencing proceeding.

In my view, the trial judge in this case confused his inquiry as sentencer with that undertaken by an appellate court in determining whether a sentence of death was warranted. An appellate court, in the performance of the reviewing function which this Court has held indispensable to a constitutionally acceptable capital punishment scheme, must examine the sentences imposed in all capital cases in the jurisdiction in order "to ensure that similar results are reached in similar cases." *Proffitt v. Florida*, *supra*, at 258 (joint opinion of Stewart, POWELL, and STEVENS, JJ.). See also, *e. g.*, *Godfrey v. Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion). The sentencer has a different role. The sentencer's duty is to determine in the first instance whether a death sentence is warranted for a particular defendant. That determination can only be made on the basis of the evidence that the judge has heard with respect to that defendant, and, under the Florida procedure, on the recommendation made by the jury that heard that evidence. A capital sentencing determination cannot properly be made on the basis of evidence presented in another trial or a recommendation made by another jury.

tion of due process. The sentencer may "not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record . . . that the defendant proffers as a basis for a sentence less than death." *Lockett v. Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion) (emphasis in original) (footnotes omitted). See *Eddings v. Oklahoma*, 455 U. S. 104, 110-112 (1982).

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It is no answer to say that a sentencing judge's failure to consider the recommendations made by juries in other cases will make it difficult or impossible to produce a rational pattern of sentences. If this is true, the fault lies in the capital sentencing scheme itself. The remedy is not to deny a defendant the individualized consideration to which he is entitled, but to review the sentences that are actually imposed and to set aside death sentences in those cases that cannot be distinguished from cases in which life sentences were imposed.

No. 82-5646. *CHASSON v. PONTE ET AL.* C. A. 1st Cir.; and

No. 82-5763. *RIVERA v. COOMBE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: No. 82-5646, 692 F. 2d 745; No. 82-5763, 683 F. 2d 697.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In *Sandstrom v. Montana*, 442 U. S. 510 (1979), this Court held that a defendant's right to due process is violated when the trial judge, charging the jury on the issue of criminal intent, instructs the jury to presume that each person intends the natural consequences of his act. We left open the possibility that the impermissible effects of such a jury instruction might be "removed" by other instructions that are "rhetorically inconsistent with a conclusive or burden-shifting presumption." *Id.*, at 518-519, n. 7. In each of these cases the trial judge gave an instruction concerning intent that was improperly cast in the form of a mandatory presumption. In each case the Court of Appeals held that the improper instruction was cured by other instructions concerning intent, even though the additional instructions were not rhetorically inconsistent with the improper charge. I would grant certiorari in order to address this misinterpretation of this Court's decision in *Sandstrom*.

In No. 82-5763, petitioner Edwin Rivera was convicted in state court of first-degree manslaughter and misdemeanor possession of a weapon. The trial judge's instruction concerning intent began with the following statement: "I shall now define intent for you. A person is presumed to intend the natural consequence of his act." This statement is substantively identical to the instruction in *Sandstrom* which we held improper because "a reasonable juror could have given the presumption conclusive or persuasion-shifting effect." *Id.*, at 519. See *id.*, at 513. Accordingly, on collateral review the District Court granted a writ of habeas corpus. *Rivera v. Coombe*, 534 F. Supp. 980 (SDNY 1982).

The decision of the Court of Appeals for the Second Circuit reversing the District Court, 683 F. 2d 697 (1982), cannot be squared with our holding in *Sandstrom*. The Court of Appeals' conclusion that the charge as a whole was proper rested on the existence of later statements in the charge suggesting that the presumption is permissive, and on boilerplate language concerning the State's burden of proof and the jury's duty to consider all relevant evidence. Conspicuously absent from the lower court's opinion is the conclusion that any of these additional statements were rhetorically inconsistent with the impermissible mandatory-presumption language. The reason is clear: the additional instructions reasonably could have been understood by the jury in a manner entirely consistent with the improper mandatory presumption.¹

¹ Indeed, the trial judge's further instructions reinforced the impermissible presumption:

"Under our law every person is presumed to intend the natural and inevitable consequences of his own voluntary acts and unless such acts were done under circumstances which would preclude the existence of such intent, the jury has a right to infer from the results produced, the intention to effect such result."

The jury reasonably could have interpreted this instruction as a mandatory rebuttable presumption which, like a mandatory conclusive presumption, violates due process. *Sandstrom v. Montana*, 442 U. S. 510, 519

The presence of some arguably permissive-presumption language in the judge's charge on intent merely created the "possibility that some jurors may have interpreted the challenged instruction as permissive." *Sandstrom*, 442 U. S., at 519. As in *Sandstrom*, this possibility did not entitle the court to "discount the [other] possibility that [Rivera's] jurors actually did proceed upon" an impermissible, mandatory presumption.² *Ibid.* Nor were the defective instructions cured by the presence of familiar language concerning the burden of proof and the duty to consider all evidence. As we explained in *Sandstrom*, general instructions such as these are "not rhetorically inconsistent with a conclusive or burden-shifting presumption." *Id.*, at 518, n. 7. Because there were no rhetorically inconsistent instructions that removed the effects of the impermissible mandatory-presumption instructions, the charge as a whole was defective and Rivera's conviction cannot stand.³

(1979). Even if the jury interpreted the latter portion of the instruction as describing only a permissive presumption it would not be rhetorically inconsistent with the earlier defective instructions. See *Rivera v. Coombe*, 534 F. Supp. 980, 991-993 (SDNY 1982). However it was interpreted, this additional instruction clearly did not remove the impermissible effects of the trial judge's initial instruction concerning intent.

²For example, the instruction that "intent may be inferred from all the circumstances of the case," 683 F. 2d 697, 701 (CA2 1982), did not preclude the jury from employing a mandatory presumption to find intent; nor is it inconsistent with such a reliance, since it could reasonably have been interpreted as permitting the jury to consider circumstantial (as opposed to direct) evidence as to Rivera's acts from which intent is automatically presumed. Similarly, the instruction that intent is a "question of fact," *ibid.*, is entirely consistent with a mandatory presumption of intent based on factual findings as to certain acts.

³The Court of Appeals found it significant that the jury acquitted Rivera of second-degree murder. *Id.*, at 702. However, this in no way precludes the possibility that some jurors may have employed the mandatory presumption to find that Rivera intended to cause serious physical injury, an element of the manslaughter conviction. See *id.*, at 704 (Oakes, J., dissenting). The Court of Appeals also suggested in passing that *Sandstrom v. Montana*, *supra*, should be limited to those situations where the only

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For similar reasons, petitioner Chasson's conviction in No. 82-5646 must also be vacated. At Chasson's trial for first-degree murder, the state trial court instructed the jury that "[w]hen one does an unlawful act he is by law presumed to have intended to do it and to have intended its ordinary and natural consequences. . . ." This instruction is substantively identical to the instruction found impermissible in *Sandstrom*. In this case the trial judge also charged with respect to "deliberate premeditation" that the jury must find "the prior formation of a purpose to kill." The District Court denied Chasson's writ of habeas corpus, and the Court of Appeals for the First Circuit affirmed. The Court of Appeals held that *Sandstrom* was not violated because, in light of the charge on premeditation, the improper "instruction by itself [did not] so infec[t] the entire trial that the resulting conviction violates due process," *Cupp v. Naughten*, 414 U. S. 141 (1973); *Henderson v. Kibbe*, 431 U. S. 145, 154 (1977)."

The Court of Appeals' interpretation of *Sandstrom* is clearly improper. The additional instruction in this case was entirely consistent with the impermissible presumption of intent. Indeed, the jury reasonably could have applied the presumption to its finding of premeditation in the belief that when one does the unlawful act of killing he is "presumed" to have formed the prior purpose to kill. 442 U. S., at 525-526. I would grant certiorari to correct the misinterpretation of *Sandstrom*.

Rehearing Denied

No. 82-378. *MANDALAY SHORES COOPERATIVE HOUSING ASSN., INC. v. PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.*, ante, p. 1036; and

No. 82-5475. *COTTON v. FEDERAL LAND BANK OF COLUMBIA ET AL.*, ante, p. 1041. Petitions for rehearing denied.

defense is intent. 683 F. 2d, at 700. Nothing in *Sandstrom* supports such a narrow reading of that decision.

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No. 82-5512. *CHIN v. NADEL ET AL.*, *ante*, p. 1043. Petition for rehearing denied.

No. 82-117. *NUNZIATA v. UNITED STATES*, *ante*, p. 907. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

JANUARY 20, 1983

Dismissal Under Rule 53

No. 82-5631. *BROWN v. GEORGIA*. Ct. App. Ga. Certiorari dismissed under this Court's Rule 53. Reported below: 163 Ga. App. 209, 294 S. E. 2d 305.

JANUARY 24, 1983

Affirmed on Appeal

No. 82-857. *BUSBEE, GOVERNOR OF GEORGIA, ET AL. v. SMITH, ATTORNEY GENERAL, ET AL.* Affirmed on appeal from D. C. D. C. Reported below: 549 F. Supp. 494.

Appeals Dismissed

No. 82-646. *YATEMAN v. YATEMAN*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question.

No. 82-943. *ROSSON ET AL., T/A DOCTOR'S ANSWERING SERVICE ET AL. v. CITY OF MANASSAS ET AL.* Appeal from Sup. Ct. Va. dismissed for want of substantial federal question. Reported below: 224 Va. 12, 294 S. E. 2d 799.

No. 82-5637. *BERRY v. PENNSYLVANIA*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question.

Certiorari Granted—Vacated and Remanded

No. 82-53. *MCCARTHY v. THE BARK PEKING ET AL.* C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Director*,

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OWCP v. Perini North River Associates, ante, p. 297. Reported below: 676 F. 2d 42.

No. 82-333. *MICHIGAN v. MILLER*. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ross*, 456 U. S. 798 (1982), and *New York v. Belton*, 453 U. S. 454 (1981). Reported below: 110 Mich. App. 270, 312 N. W. 2d 225.

No. 82-815. *OHIO v. KOVACS, DBA B & W ENTERPRISES ET AL.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded to consider the question of mootness. Reported below: 681 F. 2d 454.

No. 82-886. *UNITED STATES v. EAGLE ELK*. 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 *Wyrick v. Fields*, ante, p. 42. Reported below: 682 F. 2d 168.

Miscellaneous Orders

No. A-478. *WIDGERY v. UNITED STATES*. Application for bond, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-316. *IN RE DISBARMENT OF HARRIS*. It is ordered that H. Reed Harris, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. *TEXAS v. NEW MEXICO*. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, ante, p. 940.]

No. 82-65. *BROWN ET AL. v. THOMSON, SECRETARY OF STATE OF WYOMING, ET AL.* D. C. Wyo. [Probable juris-

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diction noted, *ante*, p. 819.] Motion of Peter J. Mulvaney, Esquire, to permit Randall T. Cox, Esquire, to present oral argument *pro hac vice* on behalf of appellees granted.

No. 82-185. BOSTON FIREFIGHTERS UNION, LOCAL 718 *v.* BOSTON CHAPTER, NAACP, ET AL.;

No. 82-246. BOSTON POLICE PATROLMEN'S ASSN., INC. *v.* CASTRO ET AL.; and

No. 82-259. BEECHER ET AL. *v.* BOSTON CHAPTER, NAACP, ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 967.] Motion of Thomas R. Kiley, Esquire, to permit Thomas A. Barnico, Esquire, to present oral argument *pro hac vice* on behalf of petitioners in No. 82-259 granted. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 82-905. SOONER FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* OKLAHOMA TAX COMMISSION ET AL. Appeal from Sup. Ct. Okla. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-5279. DIXSON *v.* UNITED STATES; and

No. 82-5331. HINTON *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1085.] Motions for appointment of counsel granted, and it is ordered that Donald V. Morano, Esquire, of Chicago, Ill., be appointed to serve as counsel for petitioners in these cases.

Certiorari Granted

No. 82-15. OLIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 686 F. 2d 356.

No. 82-357. MICHIGAN *v.* CLIFFORD ET AL. Ct. App. Mich. Certiorari granted.

No. 82-432. LOCAL NO. 82, FURNITURE & PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN & PACKERS, ET AL. *v.* CROWLEY ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 679 F. 2d 978.

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No. 82-485. KEETON *v.* HUSTLER MAGAZINE, INC., ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 682 F. 2d 33.

No. 82-556. PRESS-ENTERPRISE CO. *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY. Ct. App. Cal., 4th App. Dist. Certiorari granted.

No. 82-849. UNITED STATES *v.* MENDOZA. C. A. 9th Cir. Certiorari granted. Reported below: 672 F. 2d 1320.

No. 82-940. HISHON *v.* KING & SPALDING. C. A. 11th Cir. Motions of Connecticut Women's Educational and Legal Fund, Inc., et al. and Women's Bar Association of Illinois for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 678 F. 2d 1022.

No. 82-6080. BAREFOOT *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Application for stay of execution of sentence of death was presented to JUSTICE WHITE and referred to the Court. Treating the application as a petition for writ of certiorari before judgment, certiorari granted. The parties are directed to brief and argue the question presented by the application, namely, the appropriate standard for granting or denying a stay of execution pending disposition of an appeal by a federal court of appeals by a death-sentenced federal habeas corpus petitioner, and also the issues on the appeal before the United States Court of Appeals for the Fifth Circuit. Execution and enforcement of the sentence of death set for Tuesday, January 25, 1983, is stayed pending the sending down of the judgment of this Court.

Certiorari Denied

No. 81-1039. WILEY N. JACKSON CO. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 659 F. 2d 54.

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No. 81-1109. ROBERT W. KIRK & ASSOCIATES, INC. *v.* HOLCOMB ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 655 F. 2d 589.

No. 81-2278. UNION ELECTRIC CO. *v.* CITY OF KIRKWOOD, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 2d 1173.

No. 82-4. B. F. DIAMOND CONSTRUCTION CO. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U. S. DEPARTMENT OF LABOR, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 547.

No. 82-523. SANGER BOATS, INC., ET AL. *v.* SCHWABENLAND. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 2d 309.

No. 82-527. HARDLINE ELECTRIC, INC. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 622.

No. 82-557. HANAHAN *v.* LUTHER, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 693 F. 2d 629.

No. 82-566. ZAPATA-HAYNIE CORP. ET AL. *v.* WARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 2d 1114.

No. 82-605. A.W.I., INC. *v.* AMERICAN INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 1034.

No. 82-624. HARTLEY ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 2d 961.

No. 82-709. SCARFO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 685 F. 2d 842.

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No. 82-732. STURMAN ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 840.

No. 82-745. GREYHOUND RENT-A-CAR, INC. *v.* CITY OF PENSACOLA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 2d 1380.

No. 82-751. INTERNATIONAL UNION OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 32, 675 F. 2d 1257.

No. 82-773. BOARD OF PUBLIC UTILITIES OF SPRINGFIELD, MISSOURI, DBA CITY UTILITIES, ET AL. *v.* BILL'S COAL CO., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 682 F. 2d 883.

No. 82-797. BATES ET AL. *v.* BRUNER. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 422.

No. 82-832. SHUPPER *v.* COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 82-854. PECHANGA BAND OF MISSION INDIANS *v.* KACOR REALTY, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 2d 71.

No. 82-856. SCARPELLI *v.* FISCELLA, DIRECTOR OF DEPARTMENT OF PROBATION AND COURT SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 687 F. 2d 1012.

No. 82-868. RECORD WIDE DISTRIBUTORS, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 2d 204.

No. 82-871. A. H. ROBINS CO., INC. *v.* ABED ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 847.

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No. 82-875. *IRISH PEOPLE, INC. v. SMITH, ATTORNEY GENERAL OF THE UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 406, 684 F. 2d 928.

No. 82-885. *PANTOJA ET AL. v. ALL-AMERICAN TRANSPORT, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 759.

No. 82-887. *LOCAL UNION NO. 680, MILK DRIVERS & DAIRY EMPLOYEES v. NOVEMBRE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 491.

No. 82-895. *MARSHALL v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 82-906. *HOWARD v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 324 N. W. 2d 216.

No. 82-907. *PROCTOR v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 58 N. C. App. 631, 294 S. E. 2d 240.

No. 82-909. *INTERNATIONAL RECTIFIER CORP. ET AL. v. PFIZER, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 357.

No. 82-911. *HARVEY v. BARD*; and *HARVEY v. BARD ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 1200, 439 N. E. 2d 1113 (first case); 106 Ill. App. 3d 1150 (second case).

No. 82-917. *CORY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL. v. OLSON ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 134 Cal. App. 3d 85, 184 Cal. Rptr. 325.

No. 82-919. *CITY OF PHILADELPHIA ET AL. v. TACYNEC ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 2d 793.

No. 82-922. *LUTZ v. OHIO*. Ct. App. Ohio, Coshocton County. Certiorari denied.

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No. 82-924. *ROSENFELD ET AL. v. NEW ENGLAND MERCHANTS NATIONAL BANK*. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 467.

No. 82-932. *UITERWYK CORP. v. CTI-CONTAINER LEASING CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1284.

No. 82-938. *PAUER v. OHIO*. Ct. App. Ohio, Geauga County. Certiorari denied.

No. 82-950. *LABORDE v. REGENTS OF THE UNIVERSITY OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 715.

No. 82-988. *DUFRIEND v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 691 F. 2d 948.

No. 82-989. *MANOCCHIO v. RHODE ISLAND*. Sup. Ct. R. I. Certiorari denied. Reported below: — R. I. —, 448 A. 2d 761.

No. 82-995. *SMITH v. LEHMAN, SECRETARY OF THE NAVY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 342.

No. 82-997. *WEARDON, AKA AQUILA, DBA HERBAL EDUCATION CENTER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 119.

No. 82-1015. *DERICKSON ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-1028. *ROMO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 1384.

No. 82-1035. *BURNS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 2d 1056.

No. 82-1055. *WINSLOW v. MORGAN COUNTY COMMISSIONERS ET AL.* Ct. App. Colo. Certiorari denied.

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No. 82-5332. *GRANGER v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 1387.

No. 82-5463. *FITE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 902.

No. 82-5483. *BRAKE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 825.

No. 82-5501. *LOPEZ-GARCIA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 2d 1226.

No. 82-5521. *GUZMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 843.

No. 82-5524. *JONES v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 82-5559. *FAYNE v. MARSHALL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 453.

No. 82-5571. *LEROY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 687 F. 2d 610.

No. 82-5609. *BURNS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 2d 1066.

No. 82-5620. *HABERSKI v. MAINE.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 449 A. 2d 373.

No. 82-5621. *TORRES v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 3d Cir. Certiorari denied. Reported below: 682 F. 2d 109.

No. 82-5629. *ROUSE ET AL. v. LEWIS, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 296.

No. 82-5717. *GRAVES v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

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No. 82-5781. THOMAS *v.* WYRICK, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 235.

No. 82-5785. WOODS *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 499.

No. 82-5786. ROBINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 116.

No. 82-5787. POLLAK *v.* WILLIAM MARSH RICE UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 903.

No. 82-5794. ANDERSON *v.* SPALDING, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 82-5795. TYREE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 387 Mass. 191, 439 N. E. 2d 263.

No. 82-5800. JACKSON *v.* OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 82-5801. HADDIX *v.* OHIO LIQUOR CONTROL COMMISSION. Sup. Ct. Ohio. Certiorari denied.

No. 82-5803. FLEEK *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 787.

No. 82-5804. BENNETT *v.* TULL, DIRECTOR, CAMDEN COUNTY BOARD OF SOCIAL SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 747.

No. 82-5807. LARGEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 82-5811. ORYNICZ *v.* WEST VIRGINIA STATE WORKMEN'S COMPENSATION COMMISSIONER. Sup. Ct. App. W. Va. Certiorari denied.

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No. 82-5814. *TOWNSEND v. HOOD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 835.

No. 82-5817. *ROUTTENBERG v. ALHAMBRA CITY SCHOOL DISTRICT.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-5819. *CUMBER v. CHERRY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 830.

No. 82-5825. *FINNEY v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 638 S. W. 2d 709.

No. 82-5832. *BROWNSTEIN v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 459, 434 N. E. 2d 505.

No. 82-5841. *REYNOLDS v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 698, 434 N. E. 2d 776.

No. 82-5844. *JONES v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 11, 295 S. E. 2d 71.

No. 82-5849. *McMILLAN v. BULLARD, SUPERINTENDENT, WAGRAM CORRECTIONAL CENTER.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 752.

No. 82-5851. *MORROW v. GEM CITY SAVINGS ASSN.* Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 82-5856. *IN RE NEARIS.* C. A. 1st Cir. Certiorari denied.

No. 82-5859. *MARTIN v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW.* Pa. Commw. Ct. Certiorari denied. Reported below: 66 Pa. Commw. 341, 444 A. 2d 819.

No. 82-5865. *NEWCOMB v. NEW YORK STATE BOARD OF PAROLE.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 2d 1098, 452 N. Y. S. 2d 912.

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No. 82-5866. SMITH *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 82-5870. JONES *v.* KEOHANE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 769.

No. 82-5878. DISILVESTRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 289.

No. 82-5891. BEASON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 439.

No. 82-5893. OMERNICK *v.* CAROW ET AL. C. A. 7th Cir. Certiorari denied.

No. 82-5901. RUSSELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5907. PETTEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 498.

No. 82-5908. RAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 250.

No. 82-5917. BAYSDEN *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 829.

No. 82-5927. CARR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 690 F. 2d 678.

No. 81-2362. B. F. DIAMOND CONSTRUCTION Co., INC., ET AL. *v.* LEMELLE ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 674 F. 2d 296.

No. 82-314. WHITE, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN *v.* THOMPSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 680 F. 2d 1173.

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No. 82-603. *NEW YORK v. SAWYER*. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 57 N. Y. 2d 12, 438 N. E. 2d 1133.

No. 82-918. *PENNSYLVANIA v. LOVETTE ET AL.* Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 498 Pa. 665, 450 A. 2d 975.

No. 82-455. *JOHN CUNEO, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 283, 681 F. 2d 11.

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins, dissenting.

In affirming the National Labor Relations Board's decision in this case, the Court of Appeals for the District of Columbia Circuit held, *inter alia*, that (1) a bargaining order to the employer was an appropriate remedy; (2) the bargaining order could be retroactively applied from the date the employer first denied recognition of the Union; and (3) because of the employer's actions during the strike, what began as an economic strike was converted into an unfair labor practices strike *ab initio*, justifying reinstatement of striking employees irrespective of whether the employer had hired replacements for the strikers. *Road Sprinkler Fitters Local Union No. 669 v. NLRB*, 220 U. S. App. D. C. 283, 681 F. 2d 11 (1982). In my opinion, all three of these holdings raise serious and important questions which recur with frequency before the NLRB. Because the NLRB and Court of Appeals, in resolving these questions, have charted new courses in areas previously mapped out only by this Court, I would grant certiorari to review these determinations.

Petitioner, located in Chattanooga, Tenn., manufactures and sells fire protection sprinkler systems. On September 15, 1977, representatives of the Road Sprinkler Fitters Local

Union No. 669 presented to the Company president, Bob Splawn, Union authorization cards signed by 11 of the Company's 14 fabrication shop employees. Splawn refused to recognize the Union. On September 21 the 11 employees went on strike; the strike continued until November 14, when 7 of the strikers made unconditional offers to return to work.

The NLRB determined that the Company committed several unfair labor practices throughout this period in violation of §§ 8(a)(1), 8(a)(3), and 8(a)(5) of the National Labor Relations Act, as amended, 61 Stat. 140, 29 U. S. C. §§ 158(a)(1), (3), and (5). While contested below, these findings of fact are not at issue here. First, on two separate days before the strike, Company officials interrogated a senior employee, Gerald Hall, seeking to ascertain the identities of the employees who signed Union authorization cards; at one point Hall was threatened with discharge if he did not cooperate, but soon thereafter Company officials disclaimed a desire to discharge Hall. Second, the Company created the "impression of surveillance" by two actions: prior to the strike, a Company supervisor was directed to find out who had signed the Union authorization cards; and on two separate days early in the strike, Company officials took photographs of picketing strikers. Third, after the strike was terminated, the Company unnecessarily delayed in reinstating striking employers to available positions. Fourth, when the first two striking employees were reinstated in February 1978, Splawn told them not to talk about the Union on the job. Fifth, in February 1978 the Company promulgated a new rule providing that an employee would be discharged if late for work three times; the new rule was discriminatorily applied against the reinstated strikers.

The Bargaining Order. In *NLRB v. Gissel Packing Co.*, 395 U. S. 575, 614 (1969), this Court held that if "at one point the union had a majority" and the employer has engaged in unfair labor practices "to undermine majority strength and impede the election processes," then the NLRB can consider

issuing a "bargaining order." Such an order requires the employer to negotiate with the union, forgoing the normal election procedures in which the union must demonstrate its majority status. The Court cautioned, however, that this remedy was to be used sparingly, in situations where the NLRB "finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." *Id.*, at 614-615. The Court emphasized that there are "less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order." *Id.*, at 615.

The Court of Appeals' application of these principles is debatable in two respects. First, the court determined the seriousness of the Company's unfair labor practices by focusing on the type of practice committed, rather than the extent to which the practices occurred. The Court of Appeals said that "[c]ourt and [b]oard cases often have viewed unfair labor practices similar to the ones in this case—interrogation, threatened discharge, surveillance, discriminatory application of work rules—as conduct which supports the issuance of a bargaining order." 220 U. S. App. D. C., at 295, 681 F. 2d, at 23. Most any "type" of unfair labor practice would rise to the level of misconduct contemplated by *Gissel* if committed with sufficient frequency; but *Gissel* contemplated that the extent of the practices should be given significant weight in determining the seriousness of an unfair labor practice.

Second, the court ruled that "*Gissel* does not require a finding that no other remedy could suffice, only that the bargaining order better protects employees' expressed union preference." 220 U. S. App. D. C., at 296, 681 F. 2d, at 24 (quoting *Amalgamated Clothing Workers v. NLRB*, 174 U. S. App. D. C. 20, 24, 527 F. 2d 803, 807 (1975), cert. de-

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nied *sub nom. Jimmy-Richard Co. v. NLRB*, 426 U. S. 907 (1976)). The Court spoke plainly in *Gissel*, however, emphasizing that in addition to finding that the employees' union preference would be better protected, before a bargaining order is issued it must be determined that "the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight." 395 U. S., at 614.

The so-called *Gissel* bargaining order was never intended to be used routinely. It is a remedy designed for cases where traditional remedies are insufficient. Since in this case the bargaining order has been sanctioned without a finding that the special circumstances required by *Gissel* exist, we should determine whether this newly adopted approach is a proper one.

Retroactivity of the Bargaining Order. The NLRB and the Court of Appeals determined not only that the facts of this case supported the issuance of a bargaining order, but also that the order should be retroactive from the first time the Company refused to recognize the Union. Prior to 1975 the NLRB did not issue retroactive bargaining orders. See *Trading Port, Inc.*, 219 N. L. R. B. 298 (1975). In its decision below, the Court of Appeals did not purport to accept a new policy which uses retroactive orders only. Rather, the court said it will approve "the issuance of retroactive bargaining orders where, as here, the union had majority support within the bargaining unit, the employer refused to bargain with the union, and the employer engaged in serious and pervasive unfair labor practices sufficient to justify a bargaining order under *Gissel*." 220 U. S. App. D. C., at 297, 681 F. 2d, at 25.

While stated as a limited principle, however, under the standard set forth by the Court of Appeals the NLRB will be at liberty to make all bargaining orders retroactive. Before any bargaining order can issue, all three of the so-called requirements for retroactivity need to be present under *Gissel*.

The hurdle which a "retroactive" bargaining order must clear is therefore no higher than the hurdle which must be cleared by *any* bargaining order.

Reinstatement of the Striking Employees. It is undisputed that the Company did not commit an unfair labor practice by refusing to recognize the Union in September 1977. The Company was free to require the Union to show its majority status in the bargaining unit by an election. See *Linden Lumber Division v. NLRB*, 419 U. S. 301 (1974). In fact, the Court of Appeals affirmed the NLRB's determination that when the strike began on September 21, 1977, it was not in response to unfair labor practices; the employees were not "striking for any reason other than to gain recognition of the Union as their bargaining representative." 220 U. S. App. D. C., at 292, 681 F. 2d, at 20. Therefore, at the inception of their protests, the employees were engaged in an "economic strike" and not an "unfair labor practices" strike.

During an "economic strike," this Court has held that an employer has the right to hire replacements for the striking employees and "he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them." *NLRB v. MacKay Radio & Telegraph Co.*, 304 U. S. 333, 345-346 (1938). Nevertheless, in this case the Court of Appeals affirmed the NLRB's order requiring the Company to rehire the strikers as of the date they offered to return to work, irrespective of whether any replacements were filling the strikers' positions.

To reach this result, the NLRB and the Court of Appeals relied on *Drug Package Co.*, 228 N. L. R. B. 108 (1977). In that case, the NLRB ruled that "when employees strike for recognition which should have been granted at the time they went on strike and where the employer engaged in contemporaneous widespread illegal conduct designed to frustrate the statutory scheme, and bargaining in particular, the striking

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employees are unfair labor practice strikers." *Id.*, at 112 (footnote omitted). As applied in this case, the *Drug Package* rule seems patently contrary to our cases. First, in light of *Linden Lumber Division*, *supra*, there is no legal reason why recognition of the Union "should have been granted at the time [the employees] went on strike." Second, converting an "economic strike" into an "unfair labor practices" strike *ab initio* because of unfair labor practices committed subsequent to the initiation of the strike diminishes the rights of replacement workers, as well as the rights of employers, which this Court established in *MacKay Radio*, *supra*.

All three of these issues present important questions which recur with some frequency in labor disputes. I would grant certiorari to review the Court of Appeals' decision on each issue.

No. 82-623. *TREASURE ISLE, INC. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 678 F. 2d 961.

No. 82-702. *METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, ET AL. v. KELLEY ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 687 F. 2d 814.

No. 82-897. *DOE ET AL. v. KELLY, ATTORNEY GENERAL OF MICHIGAN, ET AL.* Ct. App. Mich. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 106 Mich. App. 169, 307 N. W. 2d 438.

No. 82-5632. *BAKER v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 636 S. W. 2d 902.

JUSTICE BRENNAN, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428

U. S. 153, 227 (1976), I would grant certiorari and vacate the death sentence in this case.

JUSTICE MARSHALL, dissenting.

I continue to adhere to my view that the death penalty is unconstitutional in all circumstances, and would grant certiorari and vacate petitioner's death sentence on this basis alone. However, even if I accepted the prevailing view that the death penalty can constitutionally be imposed under certain circumstances, I would grant certiorari and vacate the death sentence because the Missouri Supreme Court improperly upheld the sentence on the basis of an aggravating circumstance that had never been considered by the sentencer.

I

Petitioner Robert Baker was convicted of capital murder in the Circuit Court of the city of St. Louis. The victim, a police officer assigned as an undercover agent, was dressed in street clothes at the time of the shooting. When his body was discovered in the front seat of his unmarked police car, his police badge was in his wallet.

At the sentencing stage, the jury was instructed that it may impose the death penalty if it found that the murder "was committed against a peace officer while engaged in the performance of his official duty."¹ The jury was not instructed that it also had to find that petitioner knew or should have known that the victim was a police officer. The jury imposed the sentence of death solely on the basis of this aggravating circumstance.²

The Missouri Supreme Court affirmed the conviction and the death sentence, with two judges dissenting. 636 S. W.

¹ The statutory aggravating circumstance at issue in this case was as follows: "The capital murder was committed against any peace officer, corrections employee, or fireman while engaged in the performance of his official duty." Mo. Rev. Stat. § 565.012.2(8) (Supp. 1982).

² The existence of at least one statutory aggravating circumstance is necessary to authorize the imposition of the death sentence. § 565.012.5.

2d 902 (1982). The majority held that based on its review of the record "[t]he evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that appellant knew [the victim] was a police officer. *Jackson v. Virginia*, 443 U. S. 307 [(1979)]." *Id.*, at 907. It therefore "decline[d] to address the inscrutable question of *mens rea*." *Ibid.*, citing *Morissette v. United States*, 342 U. S. 246 (1952); *Powell v. Texas*, 392 U. S. 514 (1968).

II

The Missouri Supreme Court improperly affirmed the death sentence on a ground neither presented to nor found by the sentencing jury. The jury instruction authorized the imposition of the death sentence on the basis of a bare finding that the victim was a police officer on duty. The jury clearly did not base its imposition of the death sentence on a finding that petitioner knew or should have known the identity of his victim. In affirming the death sentence on the ground that there was sufficient evidence for a rational finder to find that petitioner had the requisite knowledge, the Missouri Supreme Court improperly relied on *Jackson v. Virginia*, 443 U. S. 307 (1979), which established a test for reviewing findings actually made, to "affirm" a finding that was not made.³

"[F]undamental principles of procedural fairness" prohibit a reviewing court from affirming a death sentence on the basis of an aggravating circumstance not properly found by the sentencing jury. *Presnell v. Georgia*, 439 U. S. 14, 16

³In so doing, the Missouri Supreme Court completely usurped the sentencing jury's function. Moreover, the reviewing court did not itself find that petitioner had the requisite knowledge, but simply held that if a jury had found that petitioner knew or should have known the identity of the victim, that hypothetical finding would be supported by sufficient evidence. As a result, petitioner's death sentence was imposed without an actual finding by any tribunal, least of all the jury that sentenced him, that petitioner knew or should have known that the victim was a police officer.

(1978).⁴ As Justice Black stated for a unanimous Court in *Cole v. Arkansas*, 333 U. S. 196, 202 (1948), "[t]o conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court." We have stated that this principle applies "with no less force at the penalty phase of a trial in a capital case than [it does] in the guilt-determining phase of any criminal trial." *Presnell v. Georgia*, *supra*, at 16.

Moreover, the death sentence in this case may not be upheld on the ground that it was properly imposed in the absence of a finding that petitioner knew or should have known the identity of his victim. If the Missouri statute does not require knowledge as an element of the aggravating circumstance charged in this case, its application in this case would violate the Constitution.

Petitioner received the death sentence solely because the victim of his crime was by chance an undercover police officer on duty. If his victim had been a private citizen as his appearance indicated,⁵ the death sentence could not have been imposed under Missouri law. Nor can the death sentence be imposed on other persons who have committed or may com-

⁴ Missouri law equally forbids the imposition of a death sentence based on aggravating circumstances that were not found by the jury. The Missouri Supreme Court is authorized to review "[w]hether the evidence supports the jury's or judge's *finding* of a statutory aggravating circumstance as enumerated in section 565.012." § 565.014.3(2) (1978) (emphasis added). Where the jury has not properly found the existence of a statutory aggravating circumstance, nothing in § 565.014 authorizes the Supreme Court to determine *de novo* whether such a finding should be or could have been made.

⁵ It was "a disputed issue of fact" whether petitioner knew the identity of his victim. 636 S. W. 2d 902, 911 (1982) (Seiler, J., dissenting). Petitioner testified at the guilt stage of the trial that he did not know that the victim was a police officer, and "[e]ven in his first taped confession (the second was suppressed because of the beatings), there is *nothing to indicate* that defendant knew that the victim was a police officer on duty." *Ibid.* (emphasis added).

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mit similar acts, and whose *conduct*, and *mens rea* are in all respects identical, but whose victims are private citizens. Petitioner has been singled out to receive the death sentence because of the "entirely fortuitous circumstance that the victim, who was dressed in civilian clothes and who to all appearances was a private citizen, turned out to be, unknown to [him], a police officer." 636 S. W. 2d, at 913 (Seiler, J., dissenting).

We have made clear that a State may not authorize the imposition of a death sentence on the basis of an arbitrary factor. While there is undoubtedly a difference between petitioner's case and cases in which the victims are private citizens, not every difference can justify a State's decision to execute a defendant. Instead, a constitutionally acceptable death penalty scheme must provide a "*principled* way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not." *Godfrey v. Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion) (emphasis added). See also *Proffitt v. Florida*, 428 U. S. 242, 258 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.) ("similar results . . . in similar cases"); *Furman v. Georgia*, 408 U. S. 238, 313 (1972) (WHITE, J., concurring) ("*meaningful* basis for distinguishing the few cases in which it is imposed from the many cases in which it is not") (emphasis added).

In my view the imposition of the death sentence based solely on the identity of the victim, unknown to the accused, would result in the ultimate punishment of death being meted out in an unprincipled fashion. The identity of the victim, standing alone, has nothing to do with an accused's blameworthiness.⁶ In this case the State was not required to prove a single fact about petitioner indicating that he was any more deserving of a death sentence than any defendant convicted of murder. Nor is the goal of deterrence rationally

⁶ Cf. *Enmund v. Florida*, 458 U. S. 782, 801 (1982) (death penalty must be imposed on the basis of "personal responsibility and moral guilt").

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furthered, since the enhanced penalty for the killing of a police officer could not deter an individual who is ignorant of the identity of his victim.⁷

For the foregoing reasons, I would grant certiorari and vacate the death sentence in this case.

No. 82-5793. HORTON v. GEORGIA. Sup. Ct. Ga.;

No. 82-5834. BLAIR v. MISSOURI. Sup. Ct. Mo.; and

No. 82-5861. TRIMBLE v. MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: No. 82-5793, 249 Ga. 871, 295 S. E. 2d 281; No. 82-5834, 638 S. W. 2d 739; No. 82-5861, 638 S. W. 2d 726.

⁷ This view is fully consistent with our decision in *Roberts v. Louisiana*, 431 U. S. 633 (1977) (*per curiam*). In striking down a statute which imposed a mandatory death sentence for the killing of a police officer, we acknowledged in *Roberts* that society has a "special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property." *Id.*, at 636 (footnote omitted). Given the assumption, which I do not share, that the death penalty is constitutional under certain conditions, this interest may justify the State in treating the fact that the defendant knew his victim was a police officer as an aggravating circumstance in order to deter such killings, and to give effect to a State's judgment that the intentional killing of police officers is especially heinous. Yet where the accused had no knowledge that his victim was a police officer, he was not "forewarned," *id.*, at 647 (REHNQUIST, J., dissenting), and therefore could not have been deterred by the possibility of an enhanced penalty for the killing of a police officer. Moreover, it is irrational to treat as equally reprehensible the premeditated murder of a police officer, and the murder of someone who, unbeknownst to the accused, turns out to have been a police officer. It is similarly irrational to treat differently two murderers simply because in one case the victim, unknown to the perpetrator, was a police officer. Although several Members of the Court dissented in *Roberts v. Louisiana* and would have upheld Louisiana's mandatory death penalty statute, the Louisiana statute required that the accused have the "specific intent" to kill or seriously injure a police officer. It was in this context that the dissenting opinions expressed support for a mandatory death penalty when the killing of a peace officer was "intentional," *id.*, at 642 (BLACKMUN, J., dissenting); *id.*, at 644, 648 (REHNQUIST, J., dissenting), or "deliberat[e]," *id.*, at 646, 647, 650; or "premeditated," *id.*, at 644, 649.

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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. 82-43. *ASAM v. STANLEY, DBA POODLE PALACE, ET AL.*, *ante*, p. 859;

No. 82-193. *LAMPKIN-ASAM v. MIAMI DAILY NEWS, INC., DBA THE MIAMI NEWS, ET AL.*, *ante*, p. 806;

No. 82-445. *MIZRAHI v. UNITED STATES*, *ante*, p. 1086;

No. 82-5271. *ARMSTRONG v. WASHINGTON*, *ante*, p. 1089;

No. 82-5352. *WILLIAMS v. NORTH CAROLINA*, *ante*, p. 1056;

No. 82-5353. *PINCH v. NORTH CAROLINA*, *ante*, p. 1056;

No. 82-5476. *COTTON v. FEDERAL LAND BANK OF COLUMBIA ET AL.*, *ante*, p. 1041;

No. 82-5534. *WHITE v. FLORIDA*, *ante*, p. 1055; and

No. 82-5581. *SELLNER v. PRINCE GEORGE'S COUNTY, MARYLAND, ET AL.*, *ante*, p. 1090. Petitions for rehearing denied.

No. 79-1853. *DURHAM DISTRIBUTORS, INC., ET AL. v. BOMBARDIER LTD. ET AL.*, 449 U. S. 890; and

No. 82-5051. *JUDD v. UNITED STATES*, *ante*, p. 869. Motions for leave to file petitions for rehearing denied.

No. 82-277. *SCHWIMMER, DBA SUPERSONIC ELECTRONICS Co. v. SONY CORPORATION OF AMERICA*, *ante*, p. 1007. Motion of petitioner for joint consideration with other cases denied. Petition for rehearing denied.

No. 82-5589. *FLORES v. IBM CORP.*, *ante*, p. 1092. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

January 31, February 9, 17, 22, 1983

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JANUARY 31, 1983

Dismissal Under Rule 53

No. 82-968. *REBSTOCK v. LOUISIANA*. Sup. Ct. La. Certiorari dismissed under this Court's Rule 53. Reported below: 418 So. 2d 1306.

FEBRUARY 9, 1983

Dismissal Under Rule 53

No. 81-2305. *PENNZOIL CO. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* Temp. Emerg. Ct. App. Certiorari dismissed under this Court's Rule 53. Reported below: 680 F. 2d 156.

FEBRUARY 17, 1983

Dismissal Under Rule 53

No. 82-1139. *FORD MOTOR CO. v. HASSON, A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, HASSON, ET AL.* Sup. Ct. Cal. Certiorari dismissed under this Court's Rule 53. Reported below: 32 Cal. 3d 388, 650 P. 2d 1171.

FEBRUARY 22, 1983

Affirmed for Absence of Quorum

No. 82-287. *ARIZONA ET AL. v. ASH GROVE CEMENT CO. ET AL.* C. A. 9th Cir. Four Members of the Court have disqualified themselves in this case. Because of this absence of a quorum, 28 U. S. C. § 1, and since a majority of the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of Court, the judgment and order are affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmation by an equally divided court." Reported below: 673 F. 2d 1020.

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No. 82-675. ARIZONA ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA (KAISER CEMENT & GYPSUM CORP. ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Four Members of the Court have disqualified themselves in this case. Because of this absence of a quorum, 28 U. S. C. § 1, and since a majority of the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of Court, the judgment and order are affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." Reported below: 688 F. 2d 1297.

Appeals Dismissed

No. 82-677. PHILLIPS CRANE & RIGGING OF SAN ANTONIO, INC., ET AL. *v.* SHAW ET AL. Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 636 S. W. 2d 186.

No. 82-835. THOMPSON ET AL. *v.* PEOPLES LIBERTY BANK. Appeal from Ct. App. Ky. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-891. PHOENIX UNION HIGH SCHOOL DISTRICT ET AL. *v.* UNITED STATES. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 681 F. 2d 1235.

No. 82-1037. TROST *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (ROTHBERG, REAL PARTY IN INTEREST). Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 82-1019. QUALITY HEALTH SERVICE, INC., ET AL. *v.* JOHNSTON, CHAIRMAN, INDUSTRIAL COMMISSION OF OHIO, ET AL. Appeal from Ct. App. Ohio, Franklin County, dismissed for want of substantial federal question.

No. 82-1027. GOLDEN RAIN FOUNDATION OF LAGUNA HILLS *v.* LAGUNA PUBLISHING CO. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question. Reported below: 131 Cal. App. 3d 816, 182 Cal. Rptr. 813.

No. 82-1053. HAAS, PERSONAL REPRESENTATIVE OF THE ESTATE OF CATALDI, ET AL. *v.* UNITED TECHNOLOGIES CORP. Appeal from Sup. Ct. Del. dismissed for want of substantial federal question. Reported below: 450 A. 2d 1173.

No. 82-1100. GLUSMAN ET AL. *v.* NEVADA ET AL. Appeal from Sup. Ct. Nev. dismissed for want of substantial federal question. Reported below: 98 Nev. 412, 651 P. 2d 639.

Certiorari Granted—Vacated and Remanded

No. 80-2200. WYRICK, WARDEN *v.* WILLIAMS. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Missouri v. Hunter*, ante, p. 359.

No. 81-625. MISSOURI *v.* HAGGARD; MISSOURI *v.* COLLINS; MISSOURI *v.* HELTON; MISSOURI *v.* SINCLAIR; MISSOURI *v.* CREWS; MISSOURI *v.* TUNSTALL; MISSOURI *v.* CREWS; MISSOURI *v.* LOWERY; MISSOURI *v.* WILLIAMS; MISSOURI *v.* KENDRICK; MISSOURI *v.* WILLIAMS; MISSOURI *v.* COUNSELMAN; MISSOURI *v.* WHITE; MISSOURI *v.* PAYNE; MISSOURI *v.* GREER; MISSOURI *v.* BROWN; MISSOURI *v.* MARTIN; MISSOURI *v.* GREER; MISSOURI *v.* HAWKINS; MISSOURI *v.* FLETCHER; MISSOURI *v.* GASKIN; and MISSOURI *v.* PENNINGTON. Sup. Ct. Mo. Motions of respondents Donnie L. Collins, Eddie Greer, Harold Hawkins, Jackie

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Martin, Terry Gene Crews, Hanford Gaskin, Marlon Payne, Willie Tunstall, Michael White, Robert Lee Haggard, Timothy Crews, Tommy Bryant Kendrick, William Brown, Johnny Williams, Rollan Anthony Williams, Randy Sinclair, Donald Greer, Robert Lowery, Carl Fletcher, Edward H. Pennington, Jr., and Wallace D. Counselman, Jr., for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Missouri v. Hunter*, *ante*, p. 359. Reported below: 619 S. W. 2d 44 (1st case); 619 S. W. 2d 66 (2d case); 619 S. W. 2d 69 (3d case); 619 S. W. 2d 73 (4th case); 619 S. W. 2d 78 (5th case); 619 S. W. 2d 71 (6th case); 619 S. W. 2d 76 (7th case); 619 S. W. 2d 77 (8th case); 619 S. W. 2d 63 (9th case); 619 S. W. 2d 61 (10th case); 619 S. W. 2d 82 (11th case); 619 S. W. 2d 72 (12th case); 619 S. W. 2d 79 (13th case); 619 S. W. 2d 75 (14th case); 619 S. W. 2d 65 (15th case); 619 S. W. 2d 68 (16th case); 619 S. W. 2d 80 (17th case); 619 S. W. 2d 62 (18th case); 619 S. W. 2d 64 (19th case); 619 S. W. 2d 57 (20th case); 618 S. W. 2d 620 (21st case); 618 S. W. 2d 614 (22d case).

No. 81-2117. MISSOURI *v.* KANE; MISSOURI *v.* THOMPSON; and MISSOURI *v.* ARNOLD. Sup. Ct. Mo. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgments vacated and cases remanded for further consideration in light of *Missouri v. Hunter*, *ante*, p. 359. Reported below: 629 S. W. 2d 372 (first case); 629 S. W. 2d 369 (second case); 628 S. W. 2d 665 (third case).

No. 82-3. JOINT COUNCIL OF TEAMSTERS NO. 42 ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Shepard v. NLRB*, *ante*, p. 344. Reported below: 702 F. 2d 168.

No. 82-272. MISSOURI *v.* MCKINNEY. Ct. App. Mo., Western Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated

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and case remanded for further consideration in light of *Missouri v. Hunter*, *ante*, p. 359. Reported below: 633 S. W. 2d 164.

Vacated and Remanded After Certiorari Granted

No. 80-1640. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. *v.* SHOLLY ET AL.; and

No. 80-1656. METROPOLITAN EDISON CO. ET AL. *v.* PEOPLE AGAINST NUCLEAR ENERGY ET AL. C. A. D. C. Cir. [Certiorari granted, 451 U. S. 1016.] Judgment vacated and cases remanded to consider the question of mootness and, should the cases not be moot, for further consideration in light of Pub. L. 97-415.

Miscellaneous Orders

No. A-654. KAVANAGH *v.* COVEN. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-660. CINTOLO *v.* UNITED STATES ET AL. D. C. Mass. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D-299. IN RE DISBARMENT OF OLKON. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D-305. IN RE DISBARMENT OF WOOD. Gary M. Wood, of Surfside Beach, S. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on December 13, 1982 [*ante*, p. 1083], is hereby discharged.

No. D-307. IN RE DISBARMENT OF GARY. Disbarment entered. [For earlier order herein, see *ante*, p. 1140.]

No. 81-430. ILLINOIS *v.* GATES ET UX. Sup. Ct. Ill. [Certiorari granted, 454 U. S. 1140.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral

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argument granted, and 15 additional minutes allotted for that purpose. Respondents also allotted an additional 15 minutes for oral argument. Motion of Florida for leave to participate in oral argument as *amicus curiae* and for additional time for argument denied. Motion of respondents for divided argument to permit American Bar Association to present oral argument as *amicus curiae* denied. JUSTICE BRENNAN and JUSTICE STEVENS would grant this motion.

No. 81-1180. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* NEW BANNER INSTITUTE, INC. C. A. 4th Cir. [Certiorari granted, 455 U. S. 1015.] Motion of the Solicitor General for leave to file a second supplemental brief after argument granted.

No. 81-1717. AMERICAN BANK & TRUST CO. ET AL. *v.* DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. *v.* CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. *v.* CHILDS ET AL. Ct. App. Tex., 5th Sup. Jud. Dist. [Certiorari granted, *ante*, p. 966.] Motion of Texas Association of Appraisal Districts et al. for leave to file a brief as *amici curiae* granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 81-1985. EDWARD J. DEBARTOLO CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 904.] Motion of respondent Florida Gulf Coast Building Trades Council, AFL-CIO, for leave to file motion for divided argument out of time denied.

No. 81-2257. BILL JOHNSON'S RESTAURANTS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. [Certiorari granted, *ante*, p. 942.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 81-2386. DELCOSTELLO *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1034]; and

No. 81-2408. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL. *v.* FLOWERS ET AL. C. A. 2d Cir.

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[Certiorari granted, *ante*, p. 1034.] Motion of Teamsters for a Democratic Union for leave to file a brief as *amicus curiae* in No. 81-2386 granted. Motion of petitioners for divided argument granted, and divided argument on behalf of respondents granted. Motion of respondents in No. 81-2408 for divided argument and for additional time for oral argument denied. Motion of respondents in No. 81-2386 for divided argument denied.

No. 82-34. AMERICAN PAPER INSTITUTE, INC. *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL.; and

No. 82-226. FEDERAL ENERGY REGULATORY COMMISSION *v.* AMERICAN ELECTRIC POWER SERVICE CORP. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 904.] Motion of Edison Electric Institute for leave to file a brief as *amicus curiae* granted.

No. 82-168. NATIONAL LABOR RELATIONS BOARD *v.* TRANSPORTATION MANAGEMENT CORP. C. A. 1st Cir. [Certiorari granted, *ante*, p. 1014.] Motion of New England Legal Foundation et al. for leave to file a brief as *amici curiae* granted.

No. 82-185. BOSTON FIREFIGHTERS UNION, LOCAL 718 *v.* BOSTON CHAPTER, NAACP, ET AL.;

No. 82-246. BOSTON POLICE PATROLMEN'S ASSN., INC. *v.* CASTRO ET AL.; and

No. 82-259. BEECHER ET AL. *v.* BOSTON CHAPTER, NAACP, ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 967.] Motion of National Education Association for leave to file a brief as *amicus curiae* granted. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 82-195. MUELLER ET AL. *v.* ALLEN ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 820.] Motions for leave to file briefs as *amici curiae* by the following were granted: Citizens for Educational Freedom, Catholic League for Religious and Civil Rights, United States Catholic Con-

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ference, Parents Rights, Inc., Council for American Private Education et al., and National Jewish Commission on Law and Public Affairs.

No. 82-242. GORSUCH, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 942.] Motion of respondents for leave to file motion for divided argument out of time denied.

No. 82-331. NEW MEXICO ET AL. *v.* MESCALERO APACHE TRIBE. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1014.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-354. MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.;

No. 82-355. CONSUMER ALERT ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.; and

No. 82-398. UNITED STATES DEPARTMENT OF TRANSPORTATION ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 987.] Motion of respondents for divided argument denied. Motion of the Solicitor General for divided argument granted. Motion of petitioners in No. 82-355 for divided argument denied.

No. 82-438. NATIONAL LABOR RELATIONS BOARD *v.* BEHRING INTERNATIONAL, INC. C. A. 3d Cir. Motion of respondent to expedite consideration of the petition for writ of certiorari and other relief denied.

No. 82-799. BUREAU OF ALCOHOL, TOBACCO AND FIRE-ARMS *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1145.] Motion of the parties to dispense with printing the joint appendix granted.

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No. 82-401. RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA *v.* REHNER. C. A. 9th Cir. [Certiorari granted, *ante*, p. 966.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-599. COMMISSIONER OF INTERNAL REVENUE *v.* ENGLE ET UX. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1102.] Motion of the parties to dispense with printing the joint appendix granted.

No. 82-1166. ZURN INDUSTRIES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Motion of petitioner to expedite briefing denied.

No. 82-5576. PICKETT ET AL. *v.* BROWN ET AL. Sup. Ct. Tenn. [Probable jurisdiction noted, *ante*, p. 1068.] Motion of Children's Defense Fund et al. for leave to file a brief as *amici curiae* granted.

No. 82-6057. IN RE WEST; and

No. 82-6079. IN RE TANNER. Petitions for writs of habeas corpus denied.

No. 82-5806. IN RE DEJARNETTE; and

No. 82-5919. IN RE FARACI. Petitions for writs of mandamus denied.

No. 82-1242. IN RE KEENE CORP. ET AL. Motion of petitioners to expedite consideration of the petition for writ of prohibition and/or mandamus denied. Petition for writ of prohibition and/or mandamus denied.

No. 82-5880. IN RE HANSON. Petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 82-729. REGAN, SECRETARY OF THE TREASURY, ET AL. *v.* TIME, INC. Appeal from D. C. S. D. N. Y. Probable jurisdiction noted. Reported below: 539 F. Supp. 1371.

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No. 82-975. MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES ET AL. *v.* TAXPAYERS FOR VINCENT ET AL. Appeal from C. A. 9th Cir. Probable jurisdiction noted. Reported below: 682 F. 2d 847.

No. 82-1066. UNITED STATES *v.* PTASYSKI ET AL. Appeal from D. C. Wyo. Probable jurisdiction noted. Reported below: 550 F. Supp. 549.

Certiorari Granted

No. 82-687. UNITED STATES *v.* ARTHUR YOUNG & CO. ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 677 F. 2d 211.

No. 82-792. GROVE CITY COLLEGE ET AL. *v.* BELL, SECRETARY OF EDUCATION, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 687 F. 2d 684.

No. 82-825. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* SHELL OIL Co. C. A. 8th Cir. Certiorari granted. Reported below: 676 F. 2d 322 and 689 F. 2d 757.

No. 82-862. CONSOLIDATED RAIL CORPORATION *v.* LE-STRANGE. C. A. 3d Cir. Certiorari granted. Reported below: 687 F. 2d 767.

No. 82-1041. DICKMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari granted. Reported below: 690 F. 2d 812.

No. 82-1047. UNITED STATES *v.* ONE ASSORTMENT OF 89 FIREARMS. C. A. 4th Cir. Certiorari granted. Reported below: 685 F. 2d 913.

No. 82-660. UNITED STATES *v.* CRONIC. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 675 F. 2d 1126.

No. 82-1135. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* WIGGINS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certio-

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rari granted. Reported below: 681 F. 2d 266 and 691 F. 2d 213.

No. 82-874. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* EDWARDS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted.

No. 82-5298. SEGURA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 697 F. 2d 300.

No. 82-5466. WELSH *v.* WISCONSIN. Sup. Ct. Wis. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 108 Wis. 2d 319, 321 N. W. 2d 245.

Certiorari Denied. (See also Nos. 82-835, 82-891, and 82-1037, *supra.*)

No. 81-6661. MOSS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 69 Ohio St. 2d 515, 433 N. E. 2d 181.

No. 82-418. GAIU LOCAL 13-B, GRAPHIC ARTS INTERNATIONAL UNION *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 304.

No. 82-495. CROWN ZELLERBACH CORP. *v.* ARONSEN. C. A. 9th Cir. Certiorari denied. Reported below: 662 F. 2d 584.

No. 82-575. AMERICAN POSTAL WORKERS UNION, AFL-CIO *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 1280.

No. 82-598. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 692 F. 2d 658.

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No. 82-612. *WRAC SARICHT ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 450.

No. 82-633. *LEICHTLING v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 2d 553.

No. 82-662. *MIDDLESEX COUNTY UTILITIES AUTHORITY v. CITY OF NEW BRUNSWICK ET AL.; and*

No. 82-703. *BOROUGH OF MILLTOWN v. CITY OF NEW BRUNSWICK ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 686 F. 2d 120.

No. 82-681. *HORTON v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 676 F. 2d 1165.

No. 82-696. *A. S. HORNER, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 10th Cir. Certiorari denied.

No. 82-706. *TILLMAN v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 275 Ark. 275, 630 S. W. 2d 5.

No. 82-720. *ASHCROFT ET AL. v. UNITED STATES DEPARTMENT OF THE INTERIOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 196.

No. 82-725. *GILBOE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 2d 235.

No. 82-741. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO v. LUBBERS, GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 598.

No. 82-749. *BARABAN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 665 F. 2d 352.

No. 82-756. *ESTATE OF FROCK ET AL. v. UNITED STATES RAILROAD RETIREMENT BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 1041.

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No. 82-759. *KAWASAKI MOTORS CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 507.

No. 82-771. *UNION OIL COMPANY OF CALIFORNIA ET AL. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 688 F. 2d 797.

No. 82-772. *HUBBARD BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 2d 594.

No. 82-784. *JONES v. BIRDSONG ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 24.

No. 82-785. *FORT BELKNAP INDIAN COMMUNITY ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 871.

No. 82-793. *HUDSON v. HUDSON*. Ct. App. Ind. Certiorari denied. Reported below: 434 N. E. 2d 107.

No. 82-798. *COLETTA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 2d 820.

No. 82-800. *WOOTEN, AS FATHER AND NEXT FRIEND OF WOOTEN v. AMERICAN MOTORISTS INSURANCE CO.* C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 712.

No. 82-817. *CARMICHAEL ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 903.

No. 82-821. *STROH v. WASHINGTON STATE BAR ASSN.* Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 289, 644 P. 2d 1161.

No. 82-839. *AMERICANA HEALTHCARE CORP. ET AL. v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 1072.

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No. 82-843. *WHEELING-PITTSBURGH STEEL CORP. v. DONOVAN, SECRETARY OF LABOR*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 828.

No. 82-850. *GORDON v. TERRY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 684 F. 2d 736.

No. 82-863. *HASTINGS, UNITED STATES DISTRICT JUDGE v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 706.

No. 82-864. *IMHOFF ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 491.

No. 82-867. *FAITH CENTER, INC. v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 84, 679 F. 2d 261.

No. 82-872. *LEGNER v. UNION PACIFIC RAILROAD CO.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 899.

No. 82-883. *MICHIGAN v. GALLAGHER*. Ct. App. Mich. Certiorari denied. Reported below: 116 Mich. App. 283, 323 N. W. 2d 366.

No. 82-888. *HART v. UNIVERSITY OF TEXAS AT HOUSTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 1384.

No. 82-890. *CITY OF NEW ORLEANS ET AL. v. MARTIN*. C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 2d 1321.

No. 82-892. *HANIGAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 1127.

No. 82-903. *EMI LTD. v. BENNETT ET AL.* C. A. 9th Cir. Certiorari before judgment denied.

No. 82-908. *REDHEAD, CO-EXECUTRIX OF THE ESTATE OF REDHEAD, ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 686 F. 2d 178.

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No. 82-915. *DONNELL ET AL. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 405, 682 F. 2d 240.

No. 82-916. *HERBERT v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 108 Ill. App. 3d 143, 438 N. E. 2d 1255.

No. 82-920. *CAIN v. MEDTRONIC, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 645.

No. 82-933. *BROOKSIDE LIMITED PARTNERSHIP v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 944.

No. 82-934. *BASIC/FOUR CORP. v. CENTRAL MICROFILM SERVICE CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 2d 1206.

No. 82-937. *ROBINSON, TRUSTEE IN BANKRUPTCY OF D. C. SULLIVAN & Co., INC. v. CONSOLIDATED SERVICE CORP. ET AL.; and*

No. 82-1004. *SULLIVAN v. ROBINSON, TRUSTEE IN BANKRUPTCY OF D. C. SULLIVAN & Co., INC.* C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 729.

No. 82-939. *REQUENA v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 831, 435 N. E. 2d 125.

No. 82-951. *KEITH v. SMITH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 84, 679 F. 2d 261.

No. 82-955. *WOOD ET AL. v. LEIST ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 509.

No. 82-961. *SOUTH DAKOTA EX REL. AURORA COUNTY ET AL. v. OLGILVIE, TRUSTEE OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD Co.* C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 759.

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No. 82-966. *WEST v. ROADWAY EXPRESS, INC.* Ct. App. Ohio, Summit County. Certiorari denied.

No. 82-969. *AERONAUTICAL MACHINISTS LODGE 709, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO v. LOCKHEED GEORGIA Co., DIVISION OF LOCKHEED CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 419.

No. 82-970. *LAGUARDIA v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 302 Pa. Super. 616, 448 A. 2d 1187.

No. 82-971. *HOLWAY v. SMITH.* Sup. Ct. Va. Certiorari denied.

No. 82-980. *SADLAK v. CELESTE, GOVERNOR OF OHIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 457.

No. 82-981. *CLARK OIL & REFINING CORP. v. ALDERSON.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 637 S. W. 2d 84.

No. 82-985. *VIERTHALER ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-987. *MCDONALD ET AL. v. TEXAS.* Ct. App. Tex., 2d Sup. Jud. Dist. Certiorari denied. Reported below: 631 S. W. 2d 222.

No. 82-991. *NATIONAL ASSOCIATION OF HOME HEALTH AGENCIES ET AL. v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 209, 690 F. 2d 932.

No. 82-993. *PATRICK v. OHIO.* Ct. App. Ohio, Summit County. Certiorari denied.

No. 82-1000. *HALSELL v. KIMBERLY-CLARK CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 285.

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No. 82-1002. *CARNATION CO. v. NEW YORK STATE DIVISION OF HUMAN RIGHTS*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 2d 977, 448 N. Y. S. 2d 330.

No. 82-1003. *SWANGER, EXECUTRIX OF THE ESTATE OF SWANGER v. MUTUAL LIFE INSURANCE COMPANY OF NEW YORK*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-1011. *FLEMING v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-1012. *GULDEN ET AL. v. MCCORKLE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 1070 and 685 F. 2d 157.

No. 82-1013. *BROOKLIER ET AL. v. UNITED STATES*;

No. 82-1014. *DRAGNA v. UNITED STATES*;

No. 82-5824. *LOCICERO v. UNITED STATES*; and

No. 82-5988. *RIZZITELLO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 1208.

No. 82-1018. *SHUFFMAN, EXECUTRIX OF THE ESTATE OF SHUFFMAN v. HARTFORD TEXTILE CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 2d 895.

No. 82-1030. *CAMPBELL v. WASHINGTON STATE BAR ASSN.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 762.

No. 82-1034. *CIRILLO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 681 F. 2d 809.

No. 82-1036. *CHRISTOFFERSON v. CHURCH OF SCIENTOLOGY MISSION OF DAVIS ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 57 Ore. App. 203, 644 P. 2d 577.

No. 82-1038. *MICHAELS, TRUSTEE OF MARIN MOTOR OIL, INC. v. OFFICIAL UNSECURED CREDITORS' COMMITTEE*; and

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No. 82-1094. *MARIN MOTOR OIL, INC., ET AL. v. OFFICIAL UNSECURED CREDITORS' COMMITTEE*. C. A. 3d Cir. Certiorari denied. Reported below: 689 F. 2d 445.

No. 82-1040. *NORTH RIVER INSURANCE CO. v. WHITMAN, SHERIFF, BIENVILLE PARISH, LOUISIANA*. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 903.

No. 82-1043. *KELSAW v. UNION PACIFIC RAILROAD CO.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 819.

No. 82-1045. *NEWTON ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 1354.

No. 82-1048. *MORIAL v. COUNCIL OF THE CITY OF NEW ORLEANS ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 413 So. 2d 185.

No. 82-1049. *ERWIN v. TEXAS*. Ct. App. Tex., 10th Sup. Jud. Dist. Certiorari denied.

No. 82-1056. *MARSHALL FIELD & CO. v. ALLEN ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-1058. *SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. v. CONNECTICUT ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 457, 684 F. 2d 979.

No. 82-1061. *BEGASSAT v. COSMOPOLITAN NATIONAL BANK OF CHICAGO, AS TRUSTEE UNDER TRUST NO. 13199, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1199, 437 N. E. 2d 942.

No. 82-1062. *ARMSTRONG v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 2d 845.

No. 82-1063. *COOK v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 420 So. 2d 289.

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No. 82-1064. *MEEKER v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-1067. *GAMBREL ET AL. v. KENTUCKY BOARD OF DENTISTRY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 2d 612.

No. 82-1068. *ALVAREZ v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 419 So. 2d 348.

No. 82-1072. *KOVIC v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 1098.

No. 82-1073. *YOUNG v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 785.

No. 82-1077. *KEYSTONE CABLE-VISION CORP. ET AL. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-1082. *RUPE v. BLAKE ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 651 P. 2d 1096.

No. 82-1087. *INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, LOCAL 1509 v. WATTLETON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 686 F. 2d 586.

No. 82-1091. *THIAN v. RAY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 416.

No. 82-1096. *ZINGER CONSTRUCTION Co., INC. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 926.

No. 82-1099. *FULTON COUNTY JAIL (STAFF), ATLANTA, GEORGIA v. FRYER.* C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

No. 82-1101. *SENTINEL FINANCIAL INSTRUMENTS ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 113.

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No. 82-1102. *GREY v. CITY OF PHILADELPHIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 748.

No. 82-1108. *SIEGEL v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 691 F. 2d 620.

No. 82-1115. *KONDRAT v. CITY OF WILLOUGHBY HILLS.* Ct. App. Ohio, Lake County. Certiorari denied.

No. 82-1116. *ALTMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 449.

No. 82-1120. *TORAASON v. BURKART.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 1207, 439 N. E. 2d 1117.

No. 82-1122. *JOHMANN v. JOHMANN.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-1123. *LABOKE ET AL. v. LOWDERMILK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 717.

No. 82-1136. *CUMIS INSURANCE SOCIETY, INC. v. GOVERNMENT EMPLOYEES CREDIT UNION ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-1140. *MCLEAN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 242.

No. 82-1145. *ROTHBALLER ET AL. v. WANLESS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 106 Ill. App. 3d 1161, 439 N. E. 2d 1331.

No. 82-1151. *LEATHERSMITH OF LONDON, LTD. v. ALLEYN.* C. A. 1st Cir. Certiorari denied. Reported below: 695 F. 2d 27.

No. 82-1170. *STUART-CABALLERO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 686 F. 2d 890.

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No. 82-1176. *BENNETT, ADMINISTRATRIX OF THE ESTATE OF BENNETT v. ENSTROM HELICOPTER CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 2d 630 and 686 F. 2d 406.

No. 82-1197. *WILLIAMS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 730.

No. 82-1210. *GIACOMINO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 760.

No. 82-1232. *BULGATZ ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 728.

No. 82-1239. *DENEEN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-5417. *ANGLE, AKA MCCLURE v. BOWEN ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 89 N. J. 595, 446 A. 2d 871.

No. 82-5467. *COSTANZO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 675 F. 2d 46.

No. 82-5500. *LONG v. UNITED STATES;* and

No. 82-5708. *CROWELL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 848.

No. 82-5516. *BOWMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 798.

No. 82-5552. *GREEN v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 147, 680 F. 2d 183.

No. 82-5570. *BELL v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 322 N. W. 2d 93.

No. 82-5574. *LASWELL ET AL. v. WEINBERGER, SECRETARY OF DEFENSE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 2d 261.

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No. 82-5575. *KELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 687 F. 2d 938.

No. 82-5579. *MATTHEWS v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 686 F. 2d 147.

No. 82-5583. *CUNNINGHAM v. NOVAK*. Sup. Ct. Iowa. Certiorari denied. Reported below: 322 N. W. 2d 60.

No. 82-5608. *FRAZIER v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 493, 647 P. 2d 6.

No. 82-5619. *BANCROFT v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 298 Pa. Super. 614, 446 A. 2d 666.

No. 82-5623. *BONUCHI v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 636 S. W. 2d 338.

No. 82-5624. *CABRERA-MARTINEZ v. UNITED STATES*; and

No. 82-5747. *BAUTISTA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 2d 1286.

No. 82-5633. *KUNITAKE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-5668. *SLOTNICK v. O'LONE, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 683 F. 2d 60.

No. 82-5681. *MINSHEW v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 686 F. 2d 250.

No. 82-5684. *MARTIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 1235.

No. 82-5687. *LINAM v. GRIFFIN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 685 F. 2d 369.

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No. 82-5700. *RUTHERFORD v. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 2d 60.

No. 82-5709. *JESSEN v. CITY OF SPOKANE*. Sup. Ct. Wash. Certiorari denied. Reported below: 97 Wash. 2d 1033.

No. 82-5713. *BROWN v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 636 S. W. 2d 929.

No. 82-5721. *SHARRIEFF v. HILTON, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-5723. *ANDERSON v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-5734. *STONE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 57 N. Y. 2d 762, 440 N. E. 2d 1337.

No. 82-5739. *DAY v. FRANZEN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 844.

No. 82-5743. *MORENO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 82-5753. *MCCRUISTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 687 F. 2d 967.

No. 82-5772. *SHAFFER ET AL. v. BOARD OF SCHOOL DIRECTORS OF THE ALBERT GALLATIN AREA SCHOOL DISTRICT ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 2d 718.

No. 82-5809. *CUNNINGHAM v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 511.

No. 82-5816. *HARRIS v. UNITED STATES DEPARTMENT OF JUSTICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 680 F. 2d 1109.

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No. 82-5823. *LEE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 693, 444 N. E. 2d 1019.

No. 82-5826. *FOSTER v. WAINWRIGHT*. C. A. 11th Cir. Certiorari denied. Reported below: 686 F. 2d 1382.

No. 82-5833. *BELL v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 208, 434 N. E. 2d 35.

No. 82-5835. *WIENER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 784.

No. 82-5836. *BALLENTINE v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 82-5837. *ADAMS v. BALLENTINE*. C. A. 11th Cir. Certiorari denied.

No. 82-5842. *WALKER v. ORKIN EXTERMINATING CO., INC.* C. A. 10th Cir. Certiorari denied.

No. 82-5846. *CARDWELL v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 415.

No. 82-5854. *MORGAN v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 82-5855. *WALKER v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 82-5858. *TARR v. MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY*. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 837.

No. 82-5863. *GADSON v. RIZZO, PHILADELPHIA FIRE COMMISSIONER, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 982.

No. 82-5867. *PIATKOWSKA v. EMPLOYERS INSURANCE OF WAUSAU*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 847.

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No. 82-5869. *JOHNSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 690 F. 2d 60.

No. 82-5872. *CARUTH v. PINKNEY, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 2d 1044.

No. 82-5874. *GARRETT v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 82-5875. *FELTON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 2d 688.

No. 82-5883. *FENG-MING TUNG v. BREWSTER*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 290.

No. 82-5884. *SMITH v. GENERAL MOTORS ACCEPTANCE CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-5885. *WASHINGTON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-5886. *MOODY v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 418 So. 2d 989.

No. 82-5888. *PHILLIPS v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 1033.

No. 82-5889. *PRESLEY v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied.

No. 82-5892. *KRAUS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-5894. *MUNTNER v. CONTROL DATA CORP. ET AL.* C. A. 8th Cir. Certiorari denied.

No. 82-5896. *SCHREIBER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 618, 432 N. E. 2d 1316.

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No. 82-5897. *REESE v. SISTER SUZANNE MARIE ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 297 Pa. Super. 589, 443 A. 2d 367.

No. 82-5898. *THOMPSON v. KESTEN.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-5899. *NASSAR v. REAGAN, PRESIDENT OF THE UNITED STATES, ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-5900. *SMITH v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 820.

No. 82-5903. *BROADWAY v. STAFFORD, U. S. DISTRICT JUDGE.* C. A. 11th Cir. Certiorari denied.

No. 82-5904. *MCFADDEN v. OHIO.* Ct. App. Ohio, Warren County. Certiorari denied. Reported below: 7 Ohio App. 3d 215, 455 N. E. 2d 1.

No. 82-5905. *MCCLAIN v. OKLAHOMA.* C. A. 10th Cir. Certiorari denied.

No. 82-5906. *SHAW v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 686 F. 2d 273.

No. 82-5912. *HENSON v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 689 F. 2d 189.

No. 82-5913. *DILLARD v. WAYNE COUNTY PROSECUTOR.* Sup. Ct. Mich. Certiorari denied. Reported below: 414 Mich. 926.

No. 82-5914. *COMBS v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 82-5918. *ATHERTON v. FALCONE, GARY & ROSENFELD, LTD., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 429.

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No. 82-5923. *WISE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 2d 1113, 452 N. Y. S. 2d 473.

No. 82-5924. *SCOTT v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 500.

No. 82-5925. *MCCOLPIN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 82-5928. *ELENES-CAZARES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5930. *SHAUMYAN ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 297.

No. 82-5931. *WEBSTER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

No. 82-5932. *WATNICK v. ELGIN STATE HOSPITAL*. C. A. 7th Cir. Certiorari denied.

No. 82-5933. *BRIGHT v. GARRISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 751.

No. 82-5937. *FORD v. SUPERINTENDENT, KENTUCKY STATE PENITENTIARY*. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 2d 870.

No. 82-5938. *HIGGINS v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 82-5940. *BAILEY ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 498.

No. 82-5941. *GIPSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 693 F. 2d 109.

No. 82-5942. *BALLANCE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 500.

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No. 82-5943. *KEENE v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 232 Kan. 876.

No. 82-5945. *SULLIVAN ET AL. v. REES, SUPERINTENDENT, KENTUCKY STATE REFORMATORY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

No. 82-5946. *RENE v. FEDERAL BUREAU OF PRISONS*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 116.

No. 82-5947. *PELAEZ-NAVARRO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1234.

No. 82-5949. *SIMS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 781.

No. 82-5951. *DOROSHOW v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 298.

No. 82-5952. *HALL v. KILANIK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5953. *COCKRELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-5954. *BYRD v. CIVIL SERVICE COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 615.

No. 82-5955. *BARKER v. MARINE TRANSPORTATION LINES, INC., ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-5956. *GALLAGHER v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 82-5957. *EASTERWOOD v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 82-5958. *GRAY v. BORDENKIRCHER, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 752.

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No. 82-5959. *BERTIE v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 82-5960. *SMART v. ALLSBROOK, SUPERINTENDENT, ODOM COMPLEX, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 497.

No. 82-5962. *GAMBILL v. MARSHALL*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 723.

No. 82-5964. *ELENES-CARDENAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5966. *WILSON v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 652 P. 2d 595.

No. 82-5967. *WHIDDEN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-5969. *MUMIN ET AL. v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 500.

No. 82-5970. *MACON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

No. 82-5972. *COTE v. EAGLE STORES, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 32.

No. 82-5973. *COOK v. FLORIDA PAROLE AND PROBATION COMMISSION*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 423 So. 2d 492.

No. 82-5975. *KARKENNY v. MARYLAND*. Ct. App. Md. Certiorari denied.

No. 82-5976. *JENKINS v. JAGO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 454.

No. 82-5978. *CUMMINGS v. INDIANA ET AL.* C. A. 7th Cir. Certiorari denied.

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No. 82-5979. *CRABTREE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

No. 82-5980. *LOSINNO ET AL. v. BAY STATE NATIONAL BANK*. Ct. App. Mass. Certiorari denied. Reported below: 14 Mass. App. 1302.

No. 82-5981. *HILSON v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* Ct. Crim. App. Tex. Certiorari denied.

No. 82-5982. *LUCIEN v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 412, 440 N. E. 2d 899.

No. 82-5983. *GADSON v. MELLEBY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 982.

No. 82-5984. *PAPPAGEORGE v. SUMNER, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 1294.

No. 82-5985. *WOJCIK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 500.

No. 82-5986. *PENDARVIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 718.

No. 82-5990. *JOHL v. JOHL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 291.

No. 82-5991. *KLAYER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-5993. *MANKO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 694 F. 2d 1125.

No. 82-5994. *MORRIS v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 224 Ct. Cl. 648, 650 F. 2d 287.

No. 82-5996. *YOUNG v. MIROCK, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, ET AL.*; and

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YOUNG *v.* REED, U. S. DISTRICT JUDGE. C. A. 11th Cir. Certiorari denied.

No. 82-5997. McMILLION *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 788.

No. 82-5998. PAUL *v.* MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY. Sup. Ct. La. Certiorari denied. Reported below: 423 So. 2d 1143.

No. 82-5999. SCARBOROUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1323.

No. 82-6002. COLVIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1000.

No. 82-6010. LOTT *v.* SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 455.

No. 82-6012. FIORINI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-6013. EMANUEL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 98 Mich. App. 163, 295 N. W. 2d 875.

No. 82-6014. HICKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 32.

No. 82-6015. NURSE *v.* DEPARTMENT OF THE AIR FORCE. C. A. D. C. Cir. Certiorari denied.

No. 82-6016. HEATON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1233.

No. 82-6018. BURSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 723.

No. 82-6022. HARP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

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No. 82-6024. *COLLINS, AKA CROSS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-6028. *GREISINGER v. DAVIS, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 82-6029. *SCHARSTEIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 730.

No. 82-6037. *HAYWARD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 113.

No. 82-6038. *MOLOVINSKY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 243.

No. 82-6042. *WADE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 82-6048. *DOVER v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 209, 296 S. E. 2d 710.

No. 82-6053. *HOLLIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 257.

No. 82-6058. *MATHIS v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 504.

No. 82-6061. *BARROS v. UNITED STATES*;

No. 82-6072. *PEREZ-MUNOZ v. UNITED STATES*; and

No. 82-6073. *RIVAS-IGLESIAS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 1372 and 692 F. 2d 116.

No. 82-6063. *SCHLOMANN v. RALSTON, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 401.

No. 82-6065. *SPELLMAN v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

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No. 82-6070. *PYLES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

No. 82-6083. *HUMPHREY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 72.

No. 82-6087. *GUERRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 2d 898.

No. 82-6088. *LYNN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 132.

No. 82-6093. *BELTRAN-PAYAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1004.

No. 82-6094. *CAULEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 486.

No. 82-6096. *HERNANDEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 693 F. 2d 996.

No. 82-6099. *HANSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 82-6100. *YAZZIE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 102.

No. 82-319. *MASSACHUSETTS v. PODGURSKI ET AL.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 386 Mass. 385, 436 N. E. 2d 150.

THE CHIEF JUSTICE, dissenting.

In my view, only the limitations of the Court's time preclude our granting review of this case. I would grant certiorari and summarily reverse the judgment of the Supreme Judicial Court of Massachusetts.

JUSTICE REHNQUIST, dissenting.

This case began when the manager of a clothing store in Canton Center, Mass., observed an unfamiliar blue van in the

rear parking lot, which the store owned. From his vantage point about 15 feet away, the manager saw two men in the van cutting up a suspicious looking substance. He reported his observation to the police. The Canton Police Department dispatched Officer Brown to "check '[t]wo men inside a van acting suspicious.'" 386 Mass. 385, 386, 436 N. E. 2d 150, 151 (1982). When the officer approached within about 10 feet of the van, he noticed two people in the rear of the van and that the sliding door on the passenger side stood approximately 18 inches ajar. Officer Brown then stuck his head through the door. He observed respondents Podgurski and Collins cutting hashish. Respondents were arrested and the hashish was seized.

Respondents were charged with possession of hashish. The trial court granted their motion to suppress the evidence of the hashish and the Commonwealth appealed. The Massachusetts Supreme Judicial Court affirmed. It held that Officer Brown had searched the van before viewing the hashish, and that respondents had a legitimate expectation of privacy in the van, even though the door was open. The court apparently thought that Officer Brown should have tried "to question or communicate with" respondents before putting his head inside the door. *Id.*, at 390, 436 N. E. 2d, at 153. It held that Officer Brown had not conducted a "lawful threshold inquiry" under *Terry v. Ohio*, 392 U. S. 1 (1968), because he was conducting a "search." 386 Mass., at 390, 436 N. E. 2d, at 153. It also thought that there would be no constitutional problem if Officer Brown had looked through the windshield or one of the windows, or had kept his head outside the open door. *Id.*, at 388, 436 N. E. 2d, at 152.

I am not persuaded that the Supreme Judicial Court misconstrued this Court's decisions in finding that respondents had a legitimate expectation of privacy. However, I am concerned that it took too narrow a view of our cases permitting police officers to make brief investigative stops and searches.

In *Terry, supra*, we held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." 392 U. S., at 22. *Terry* approved a search for weapons. In this case, Officer Brown merely sought to initiate a routine investigation by looking in an open door to a van. It is true that the only information available to Officer Brown was the store manager's report of suspicious activity in a van parked on store property, relayed to him by his dispatcher. However, "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U. S. 143, 145 (1972).

Of course, absent probable cause, Officer Brown may not have been permitted to search the glove compartment, or under the seat, or a partitioned section of the interior, but that is not this case. By putting his head inside the door, he intruded only slightly into respondents' "personal security." *Terry, supra*, at 19. The intrusion would not have been materially different if he had kept his head outside the door, as the Supreme Judicial Court indicated would have been permissible.

The police officer in this case had less specific information than did the officers in *Terry* and *Adams*, but he did have a citizen's report of "suspicious activity." This seems to me to be an articulable suspicion that was sufficiently concrete to justify the minimal intrusion at issue here. Officer Brown seems to have engaged in ordinary, everyday police work. Our decisions in *Terry* and *Adams* are by no means limited to "stops"; they embrace searches as well as seizures. In *Terry*, the officer conducted a patdown search. In *Adams*, the officer both searched for and seized the pistol.

We have also held that neither probable cause nor an articulable suspicion is necessary to justify a minimal intrusion

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into individual privacy. In *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976), we held that a regular checkpoint stop near the border might be made without *any* articulated individual suspicion. The Court referred to the visual inspection that accompanied the stop as part of the "objective intrusion," and therefore may have felt it was dealing with a search as well as a seizure.

I think that the facts available to Officer Brown would "warrant a man of reasonable caution in the belief" that the action taken was appropriate." *Terry, supra*, at 22, quoting *Beck v. Ohio*, 379 U. S. 89, 96 (1964). *Terry* and *Adams* permit searches on articulable suspicion in appropriate circumstances. *Martinez-Fuerte* permits minimal intrusions even without an articulable suspicion. I believe that the Court should grant certiorari to further consider the extent to which the *Terry* line of cases applies to minimal intrusions such as this search when they occur in the initial stages of police investigations.

No. 82-601. PARRATT, WARDEN OF THE NEBRASKA STATE PENITENTIARY *v.* HOLTAN. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 683 F. 2d 1163.

No. 82-928. BASKERVILLE *v.* STAMPER. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 82-996. RENT-IT CORP. *v.* CLARK. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 685 F. 2d 245.

No. 82-1009. COLORADO *v.* HENDERSHOTT. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 653 P. 2d 385.

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No. 82-1083. *SOUTH DAKOTA v. LOHNES*. Sup. Ct. S. D. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 324 N. W. 2d 409.

No. 82-715. *BRAINERD v. BURGER, CHIEF JUSTICE OF THE UNITED STATES, ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari.

No. 82-740. *MOODY v. ALABAMA EX REL. FORRESSTER, COMMISSIONER OF INSURANCE OF ALABAMA, ET AL.* Sup. Ct. Ala. Motions of Conservative Caucus, Inc., Washington Legal Foundation, Texas Institute of Government, and American Civil Liberties Union et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 418 So. 2d 93.

No. 82-957. *DOUBLEDAY SPORTS, INC. v. EASTERN MICROWAVE, INC.* C. A. 2d Cir. Motions of CBS, Inc., and Motion Picture Association of America, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 691 F. 2d 125.

No. 82-982. *TRIBUNE PUBLISHING CO., DBA COLUMBIA DAILY TRIBUNE, ET AL. v. HYDE ET AL.* Ct. App. Mo., Western Dist. Motion of respondent Sandra K. Hyde for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 637 S. W. 2d 251.

No. 82-994. *ROBERT WELCH, INC. v. GERTZ*. C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 680 F. 2d 527.

No. 82-1010. *NEUBAUER, PERSONAL REPRESENTATIVE OF THE ESTATE OF NEUBAUER, ET AL. v. OWENS-CORNING FIBERGLAS CORP. ET AL.* C. A. 7th Cir. Certiorari de-

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nied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 686 F. 2d 570.

No. 82-1020. SMITH *v.* SOUTHERN RAILWAY CO. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 691 F. 2d 497.

No. 82-1059. EHMANN *v.* WEBSTER, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 223 U. S. App. D. C. 323, 690 F. 2d 1060.

No. 82-1025. CHURCH OF SCIENTOLOGY MISSION OF DAVIS ET AL. *v.* CHRISTOFFERSON. Ct. App. Ore. Motion of Churches for Fairness for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 57 Ore. App. 203, 644 P. 2d 577.

No. 82-1032. DOUCET *v.* DIAMOND M DRILLING CO. C. A. 5th Cir. Motion of Mississippi Trial Lawyers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 683 F. 2d 886.

No. 82-1075. CPG PRODUCTS CORP. ET AL. *v.* ANTI-MONOPOLY, INC. C. A. 9th Cir. Motions for leave to file briefs as *amici curiae* by the following were granted: United States Trademark Association, Committee on Trademarks and Unfair Competition of the Association of the Bar of the City of New York, Grocery Manufacturers of America, Inc., Bar Association of the District of Columbia et al., Chamber of Commerce of the United States, National Association of Manufacturers, Toy Manufacturers of America, Inc., and Procter & Gamble Co. Certiorari denied. Reported below: 684 F. 2d 1316.

No. 82-1110. ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., ET AL. *v.* CLIPPER EXXPRESS. C. A. 9th Cir.

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Motion of American Trucking Associations, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 690 F. 2d 1240.

No. 82-1125. *HAAS v. HASH ET UX*. Ct. App. Ariz. Certiorari denied. JUSTICE REHNQUIST took no part in the consideration or decision of this petition.

No. 82-5585. *BRUSCINO v. UNITED STATES*. C. A. 7th Cir. Motion of petitioner to strike the brief of the United States denied. Certiorari denied. Reported below: 687 F. 2d 938.

No. 82-5666. *RIDING v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Motion of respondent for damages denied. Certiorari denied.

No. 82-5839. *ROBINSON v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 104 Ill. App. 3d 20, 432 N. E. 2d 340.

No. 82-5853. *FITZGERALD v. VIRGINIA*. Sup. Ct. Va.;

No. 82-5877. *JOHNSON v. ZANT, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Sup. Ct. Ga.;

No. 82-5879. *DAUGHERTY v. FLORIDA*. Sup. Ct. Fla.;

No. 82-5902. *STEVENS v. FLORIDA*. Sup. Ct. Fla.; and

No. 82-5909. *PEEK v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 82-5853, 223 Va. 615, 292 S. E. 2d 798; No. 82-5877, 249 Ga. 812, 295 S. E. 2d 63; No. 82-5879, 419 So. 2d 1067; No. 82-5902, 419 So. 2d 1058; No. 82-5909, 422 So. 2d 843.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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Rehearing Denied

No. 80, Orig. COLORADO *v.* NEW MEXICO ET AL., *ante*, p. 176;

No. 81-1008. BURLINGTON NORTHERN INC. ET AL. *v.* UNITED STATES ET AL., *ante*, p. 131;

No. 82-187. LUJAN *v.* UNITED STATES DEPARTMENT OF THE INTERIOR ET AL., *ante*, p. 969;

No. 82-497. ALBERTA GAS CHEMICALS, LTD. *v.* CELANESE CORP. ET AL., *ante*, p. 1092;

No. 82-615. JERSEY SANITATION CO., INC., ET AL. *v.* UNITED STATES, *ante*, p. 991;

No. 82-640. PALMGREN ET AL. *v.* KANSAS EX REL. MURRAY, COUNTY ATTORNEY OF THOMAS COUNTY, KANSAS, ET AL., *ante*, p. 1081;

No. 82-669. SOFFER *v.* CITY OF COSTA MESA ET AL., *ante*, p. 1070;

No. 82-721. GABRIEL *v.* MISSOURI PACIFIC RAILROAD COMPANY OF MISSOURI ET AL., *ante*, p. 1088;

No. 82-761. KUCHTA ET AL. *v.* ALLSTATE INSURANCE CO. ET AL., *ante*, p. 1106;

No. 82-5266. CANNON *v.* CANNON, *ante*, p. 1109;

No. 82-5426. PAYNE *v.* COUGHLIN ET AL., *ante*, p. 1110;

No. 82-5584. CURTIS *v.* CAMPBELL-TAGGART, INC., ET AL., *ante*, p. 1090;

No. 82-5638. McDONALD *v.* DRAPER ET AL., *ante*, p. 1112;

No. 82-5712. SMITH *v.* SMITH, *ante*, p. 1115;

No. 82-5779. HOOVER *v.* MISSISSIPPI, *ante*, p. 1149; and

No. 82-5834. BLAIR *v.* MISSOURI, *ante*, p. 1188. Petitions for rehearing denied.

OPINIONS OF INDIVIDUAL JUSTICES IN
CHAMBERS

CALIFORNIA'S CASES

ON APPELLATION AND CERT

Vol. 12, 1911-1922. (Revised Edition of 1922.)

This volume contains the opinions of the California Supreme Court and the opinions of the Justices in chambers, as published in the California Reports, from 1911 to 1922. It is a complete and authoritative source of the law of California as reported in the California Reports.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1229 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.

Accordingly, in the printed volume, the page numbers 1229 and 1301 are omitted, in violation of the U. S. Supreme Court's requirements. 20 Cal. 2d 1229, 20 Cal. 2d 1301.

In March 1941, the State of California applied for a writ of habeas corpus to the California Supreme Court's full court. I advised the application to the full court, which denied the writ, 20 Cal. 2d 1311. In April, the State filed a writ of habeas corpus. On October 4, 1941, the court granted the writ. See the court's order, p. 1311, and California law for the writ. The writ was granted. It stated that the writ was granted in violation of the writ of habeas corpus. It stated that the writ was granted in violation of the writ of habeas corpus. It stated that the writ was granted in violation of the writ of habeas corpus.

I have therefore decided that permanent page numbers for a day pending disposition of the case by this Court should be granted.

It is so ordered.

REPORTER'S NOTE

The next page is purposely numbered 1201. The numbers between 1200 and 1201 were intentionally omitted, in order to make it possible to publish in subsequent editions with subsequent page numbers, thus making the off- and on-line available upon publication of the preliminary version of the Federal Rules Reports.
