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and national origin, (2) District Court rejected Fifth Amendment claim but held for petitioners on APA claim, staying injunctive relief to permit INS to comply with APA, and (3) INS then promulgated a new rule prohibiting consideration of race or national origin, Court of Appeals erred in addressing constitutional issue, since current law provided petitioners with non-discriminatory parole consideration, but properly remanded case to permit review of officials' exercise of discretion under new nondiscriminatory rule. *Jean v. Nelson*, p. 846.

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2. *Death penalty—Validity of state statute.*—Where petitioner was convicted of a capital offense and sentenced to death under an Alabama statute—which required jury that convicted a defendant of any specified aggravated crime to fix punishment at death, but which further provided that notwithstanding jury's "sentence," trial court, after weighing aggra-

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vating and mitigating circumstances presented at required sentencing hearing, could refuse to accept death penalty and, instead, could impose a life sentence—requirement that jury return a death “sentence” along with its guilty verdict did not render unconstitutional petitioner’s death sentence, which trial court imposed after independently considering his background and character and circumstances of crime. *Baldwin v. Alabama*, p. 372.

**II. Due Process.**

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2. *Nationwide class action—State court’s jurisdiction—Applicable state law.*—Where (1) respondents, royalty owners possessing rights to leases from which petitioner produced gas, brought class action against petitioner in a Kansas state court, seeking to recover interest on petitioner’s delayed royalty payments, (2) court certified nationwide class, members of which received notification of action and of right to “opt out” of class, (3) final class consisted of about 28,000 royalty owners, some 97% of which had no connection to Kansas except for lawsuit, and over 99% of gas leases similarly had no other Kansas connection, and (4) court applied Kansas law to every claim and found petitioner liable to all class members, court did not violate Due Process Clause (which does not require that absent class members “opt in” to class rather than “opt out”) in asserting personal jurisdiction over absent class members and their claims, but application of Kansas law to claims that were unrelated to Kansas was so arbitrary and unfair as to exceed constitutional limits. *Phillips Petroleum Co. v. Shutts*, p. 797.

3. *Prisoners’ good time credits—Revocation—Evidence.*—Assuming that a prisoner’s good time credits constitute a protected liberty interest, revocation of such credits by prison administration must be supported by some evidence in order to satisfy minimum due process requirements; requirements were met where a prison disciplinary board, in proceedings resulting in revocation of respondent prisoners’ good time credits, heard a prison guard’s testimony, and received his written report, stating that he heard a commotion in a prison walkway, discovered an inmate who evidently had just been assaulted, and saw three other inmates, including respondents,

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2. *Tax exemption for Vietnam War veterans—State residence requirement.*—Equal Protection Clause was violated by residence requirement of a New Mexico statute exempting from State's property tax \$2,000 of taxable value of property of honorably discharged veterans who served on active duty during Vietnam War for at least 90 continuous days and who were New Mexico residents before May 8, 1976. *Hooper v. Bernalillo County Assessor*, p. 612.

**IV. Freedom of Religion.**

1. *Public schools—Minute of silence—Validity of state statute.*—An Alabama statute that authorized a 1-minute period of silence in all public schools "for meditation or voluntary prayer" was a law respecting establishment of religion and thus violated First Amendment. *Wallace v. Jaffree*, p. 38.

2. *Working on Sabbath—Validity of state statute.*—A Connecticut statute providing that no person who states that a particular day of week is his Sabbath may be required by his employer to work on such day, and that employee's refusal to work on his Sabbath shall not constitute grounds for his dismissal, violated Establishment Clause by providing Sabbath observers with an absolute and unqualified right not to work on their chosen Sabbath. *Estate of Thornton v. Caldor, Inc.*, p. 703.

**V. Freedom of Speech.**

1. *Defamation by credit reporting agency—Showing of "actual malice."*—A State Supreme Court's judgment was affirmed where (1) respondent brought a defamation action against petitioner credit reporting agency for false statements in petitioner's report to certain of its subscribers as to respondent's financial condition, (2) jury returned a verdict in respondent's favor, (3) trial court granted a new trial on ground that it had improperly instructed jury so as to permit a damages award on a lesser showing than "actual malice," court believing that "actual malice" showing was necessary under First Amendment principles, and (4) State Supreme Court



**CONSTITUTIONAL LAW—Continued.**

reversed on ground that such principles applied only to news media defendants. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, p. 749.

2. *Military bases—Open houses for public.*—Where (1) in 1972, respondent received from a commanding officer a letter forbidding him to reenter a military base without written permission, such letter having been issued after respondent had entered base and destroyed Government property, and (2) in 1981, respondent entered base during its Armed Forces Day open house for public, 18 U. S. C. § 1382, which prohibits a person from reentering a military base after having been ordered not to reenter by commanding officer, applied to respondent's conduct, and First Amendment did not bar his conviction for violating § 1382. *United States v. Albertini*, p. 675.

3. *Obscenity—Validity of state statute.*—In an action challenging validity, on First Amendment grounds, of a Montana statute which declared to be a moral nuisance any place where lewd films or publications were publicly exhibited or sold, Court of Appeals erred in facially invalidating statute in its entirety on ground that statute's definition of "prurient" as including "lust" was unconstitutionally overbroad in that it reached constitutionally protected material that merely stimulated normal sexual responses; absent countervailing considerations, statute should have been invalidated only insofar as word "lust" was to be understood as reaching protected materials. *Brockett v. Spokane Arcades, Inc.*, p. 491.

**VI. Right to Petition Government.**

*Libel—Petitions to Government officials.*—Petition Clause of First Amendment does not provide absolute immunity to defendants charged with expressing libelous and damaging falsehoods in petitions to Government officials; lower courts in respondent's libel action against petitioner properly held that Clause did not grant absolute immunity to petitioner, who allegedly wrote letters to President (and sent copies to other Government officials) knowing that statements concerning respondent were false, and maliciously intending to undermine respondent's prospect of being appointed as a United States Attorney. *McDonald v. Smith*, p. 479.

**VII. Searches and Seizures.**

1. *Adult bookstore—Undercover officer's purchase of obscene magazines.*—Where (1) an undercover officer purchased magazines from respondent salesclerk at an adult bookstore, using a marked bill, (2) officer showed magazines to fellow officers waiting nearby, and, upon concluding that magazines were obscene, officers returned to store, arrested respondent, and retrieved bill (neglecting to return change received at time of purchase), and (3) magazines were admitted in evidence at trial that resulted in respondent's conviction for violating state obscenity statute, officers did not obtain possession of magazines by means of an unreasonable search or

**CONSTITUTIONAL LAW—Continued.**

seizure, and magazines were not fruit of an arrest, lawful or otherwise. *Maryland v. Macon*, p. 463.

2. *Illegal wiretaps—Attorney General's immunity from suit.*—Where (1) petitioner, as Attorney General, authorized a warrantless wiretap to gather intelligence regarding a group that was planning actions threatening national security, (2) Government intercepted conversations between a member of group and respondent, (3) this Court, in another case, held that Fourth Amendment does not permit warrantless wiretaps in cases involving domestic threats to national security, and (4) respondent then filed a damages action against petitioner, alleging that surveillance here violated Fourth Amendment and Omnibus Crime Control and Safe Streets Act, petitioner was not absolutely immune from suit but was entitled to qualified immunity notwithstanding his actions violated Fourth Amendment. *Mitchell v. Forsyth*, p. 511.

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*Multiemployer benefit plans for employees—Employer liability—Audits of employer records.*—Where (1) petitioners, multiemployer benefit plans governed by Act, operated under trust agreements for purpose of providing health, welfare, and pension benefits to employees performing work covered by collective-bargaining agreements that required respondent employers, who agreed to be bound by trust agreements, to make contributions to petitioners for each such employee, (2) petitioners relied on employers' self-reporting to determine their liability for contributions and policed employers by random audits of their records, and (3) when respondents refused to allow a requested audit, petitioners filed suit in District Court for an order permitting audit, respondents were required to allow audit since it was supported by trust agreements' provisions and was reasonable in light of Act's standards and policies. *Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, p. 559.

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2. *Court of Appeals—"Final" judgments—Order disqualifying counsel.*—An order disqualifying counsel in a civil case is not a collateral order subject to immediate appeal as a "final" judgment within meaning of 28 U. S. C. § 1291, and hence Court of Appeals lacked jurisdiction of appeal by a child, who was born with physical defects allegedly caused by drugs manufactured by petitioner and taken by mother during pregnancy, from



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**TELEPHONE-LINE EASEMENTS.** See *Pueblo Lands Act of 1924*.

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**USE TAXES ON AUTOMOBILES.** See *Constitutional Law*, III, 1.

**VERMONT.** See *Constitutional Law*, III, 1.

**VIETNAM WAR VETERANS' TAX EXEMPTION.** See *Constitutional Law*, III, 2.

**WELFARE BENEFITS.** See *Constitutional Law*, II, 1; *Employee Retirement Income Security Act of 1974*.

**WHOLESALE PURCHASING COOPERATIVES.** See *Antitrust Acts*, 2.

**WILLIAMS ACT.** See *Securities Regulation*, 2.

**WIRETAPS.** See *Constitutional Law*, VII, 2; *Jurisdiction*, 1.

**WORDS AND PHRASES.**

1. "*Bona fide occupational qualification.*" § 4(f)(1), *Age Discrimination in Employment Act of 1967*, 29 U. S. C. § 623(f)(1). *Johnson v. Mayor & City Council of Baltimore*, p. 353; *Western Air Lines, Inc. v. Criswell*, p. 400.

**WORDS AND PHRASES—Continued.**

2. "*Final decisions.*" 28 U. S. C. § 1291. *Richardson-Merrell Inc. v. Koller*, p. 424; *Mitchell v. Forsyth*, p. 511.

3. "*Harmful error.*" Civil Service Reform Act of 1978, 5 U. S. C. § 7701(c)(2)(A). *Cornelius v. Nutt*, p. 648.

4. "*Investment adviser.*" § 202(a)(11)(D), Investment Advisers Act of 1940, 15 U. S. C. § 80b-2(a)(11)(D). *Lowe v. SEC*, p. 181.

5. "*Manipulative*" acts. § 14(e), Securities Exchange Act of 1934, 15 U. S. C. § 78n(e). *Schreiber v. Burlington Northern, Inc.*, p. 1.



















