U. S. SUPREME COURT REVIEW

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I. The "Hit Parade" of Top Decisions.

A. New Jersey v. T.L.O., 53 L.W. 4982 (1985). A teacher discovered a teen smoking in the lavatory in violation of a school rule. The teen denied smoking and was taken to a vice-principal who demanded to see her purse. In it, cigarettes and rolling papers were discovered and a thorough search followed during which marijuana, a ripe, plastic bags, money and index cards were found. The teen is charged.

Held: While the Fourth Amendment applies to school officials who are agents of the state and not just surrogates of parents and while kids have legitimate expectations of privacy, school officials don't need a warrant before searching a student under their authority; they need reasonable belief. Measures must be reasonably related to objectives of the search and not excessively intrusive.

Brennan (dissent): The Court's decision jettisons the probable cause standards on the basis of its Forschach-like balancing test.

Stevens: The Court has unnecessarily and inappropriately reached out to decide a constitutional question, which was not raised by the state.

B. Supreme Court of New Hampshire v. Piper, 53 L.W. 4988 (1985). A Vermonter took and passed the New Hampshire bar, but was not allowed to be sworn in because she was a non-resident. She claimed the rule violated Privileges and Immunities. Held: Privileges and Immunities clause is intended to create a national economic union. While an attorney is an officer of the court he or she is not an officer of the state, and the state must have substantial reasons to discriminate against a non-resident. (Here the state claimed the applicant would lack
knowledge of local rules, there would be ethics enforcement
problems and trouble with availability, etc.) None of these
is a sufficient reason to bar the lawyer.

Brennan dissents: New Hampshire has an interest in maximiz-
ing the number of resident lawyers to increase the quality of
its lawmakers. (In fact, only 8 of 444 lawmakers are attorneys
and one does not need to be a lawyer to sit on the state sup-
reme court).

probable cause (but had no warrant) to search a mobile home
located in a public parking lot from which dope-sex trans-
actions were emanating. Held: The search was proper under
the "automobile exception" to the Fourth Amendment's warrant
requirement. Here, the mobile home was found stationary in
a place not usually used for residential purposes.

Stevens dissents: Much of the Court's burdensome workload
is a product of its own aggressiveness in this area.

D. Wayte v. United States, 53 L.W. 4319 (1985). Draft regis-
tration has been required since 1980, but petitioned didn't
register. The government adopted a policy that it would pro-
secute only "hell-raisers" and he was one. District Court
ruled that he was selectively (and improperly) prosecuted.

Held: There are no First or Fifth Amendment violations in
the policy and petitioner has not shown that the policy was
motivated by a discriminatory purpose or had a discriminatory
holding that registration furthers important governmental in-
terests unrelated to the suppression of free speech.

Marshall dissents: The real issue here is whether petitioner
is entitled to discover government documents.

Under RICO (18 U.S.C. 1961-68) there is no requirement for a prior conviction or for a racketeering injury (as opposed to an injury resulting from the predicate acts themselves) in order to sustain a civil, treble damage action against a perpetrator. A prior conviction requirement would be inconsistent with Congress' policy concerns, e.g., the Government might choose only to pursue civil remedies. Sec. 1962 requires (1) conduct; (2) of an enterprise; (3) through a pattern (4) of racketeering activity.

Marshall dissents: The decision quite simply revolutionizes private litigation.


An equally divided Court, with no opinion, upheld the Tenth Circuit decision striking down an Oklahoma law prohibiting teachers from engaging in public homosexuality activity, defined as "advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity," as a violation of the First Amendment.


The schools adopted a shared time and community education program in which classes were offered for non-public students in non-public schools. Held: This has the primary or principal effect of advancing religion as it amounts to indoctrination, is a symbolic union of church and state and is a subsidy of religious functions.

H. Walters v. National Assn. of Retired Individuals, 52 L.W. 4947 (1985). 38 U.S.C. 2404(c) limits to $10 the fee for seeking benefits from the V.A. for service-connected death or disability. Held: This limit is no Due Process violation. Congress' goal of wanting veterans to get benefits without sharing it with lawyers, as well as an informal process, is appropriate. (6-3, per Rehnquist).

Brennan, dissent: The exercise of jurisdiction here is wrong, for this is supposed to be a 38 U.S.C. matter, an interlocutory review of a preliminary injunction, but this case is not such.

Stevens: The Court does not appreciate the value of individual liberty; the fee, set in 1864, would be $380 today. Literary aside: Stevens again clears up the oft-misused Jack Cade quote in Henry VI Pt. 2, Act IV, Sc. 3, line 78, "The first thing we do, let's kill all the lawyers...." Disposing of lawyers, Stevens opines, is a step in the direction of a totalitarian form of government.

I. Harper & Row, Publishers, Inc. v. Nation Enterprises, 52 L.W. 4568 (1985). President Ford and Harper contracted to publish his memoirs. Time got the right to excerpt 7,500 words, but before Time could publish, The Nation, through an unauthorized source, produced a 3,500-word article (200-400 words were verbatim) timed to scoop Time, which cancelled the contract with Harper and refused to pay a second installment. Harper sued The Nation. Held: The Fair Use doctrine does not allow The Nation's actions, nor should it be extended to include a public figure exception to general copyright rules.

K. Wallace v. Jaffree, 52 L.W. An Alabama law authorized a one-minute period of silence in public schools for meditation or voluntary prayer. It was motivated by a legislative purpose to endorse religion and no clearly secular purpose. Held: It is a law respecting establishment of religion violative of the First Amendment. A law must have a secular legislative purpose to survive scrutiny. Lemon v. Kurtzman, 403 U.S. 602 (1971).

Rehnquist dissents, taking the position that the Establishment Clause has been wrongly interpreted for 40 years, in that the First Amendment forbade the establishment of a national religion and preferences among sects. He charges the Lemon test has no more grounding in the First Amendment's history than the wall of separation theory.

L. Garcia v. San Antonio Metropolitan Transit Authority, 53 L.W. 4185 (1985). A public transit authority which has received mass transit money challenged a ruling that it was not exempt from the wage and hour law under National League of Cities v. Usery, 426 U.S. 833 (1976). Held: Usery overruled. Drawing lines of immunity on the basis of "traditional governmental functions" test is unworkable and inconsistent with principles of federalism.
M. Northeast Bancorp v. Board of Governors of the Federal Reserve System, 53 L.W. 4699 (1985). The Bank Holding Company Act of 1956 requires bank holding companies to get Fed approval before acquiring a bank and bans approval of an application from a holding company in one state acquiring a bank located in another unless the acquisition is specifically authorized by the statutes in the state in which such bank is located. Connecticut and Massachusetts statutes allow such acquisitions, if reciprocity is present. Petitioners complained that the state laws discriminated against non-New England out-of-state bank holding companies, thus violating the Commerce, Compact and Equal Protection Clauses. Held: The process is constitutional, as it encourages state flexibility; the process meets the rational basis test, which is all that is required.

II. Attorneys, Fees and Litigation.

A. Attorneys

1. In re Snyder, 53 L.W. 4822 (1985). A North Dakota lawyer wrote a letter to a federal district judge's secretary in which he refused to submit additional documentation to support a fee request under the Criminal Justice Act and criticized administration of the act. He refused to apologize for what Chief Judge Lay called a "disrespectful" letter; Lay and a panel barred him from practice in the federal courts for six months. Held: The lawyer's conduct does not constitute conduct unbecoming a member of the bar under F.R. App. P. 46; thus, the conduct does not warrant a six-month suspension.

2. Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 53 L.W. 4587 (1985). In this case the lawyer had "solicited" Dalkon Shield clients with an advertisement
which was truthful. Held: The state may not, consistent with the first amendment, discipline him for this. It may discipline him if he does not disclose that in contingent fee cases the client will owe costs.

P. Fees

1. Kentucky v. Graham, 53 L.W. 4966 (1985). This was a 1983 suit against the police for violation of civil rights. Held: where an action is against an official only in his personal capacity, attorney fees may not be assessed against the government under 1983.


2. Webb v. County Board of Education of Dyer Co., Tenn., 53 L.W. 4477 (1985). An attorney represented a plaintiff in a claim over racially motivated discharge. After administrative handling, a suit was filed alleging a 1983 violation. The lawyer received fees for the suit but not for the administrative handling. Held: he is not entitled to a fee because he was not required to pursue administrative remedies before filing suit. For conflicting signals see New York Gaslight Club v. Carey, 447 U.S. 54 (1980) and Hensley v. Eckerhart, 461 U.S. 424 (1983).
3. Marek v. Chesny, 53 L.V. 4902 (1985). Police killed a boy and the father brought a 1983 and state case. A settlement offer of $100,000 made before trial was rejected and the trial award was $60,000. Respondent asked for attorney fees under 1983. Held: Under Rule 68, no fees are recoverable.

Frennan, dissents: This case will produce absurd variations in Rule 68's operations.

4. Spencer v. South Carolina Tax Commissioner, 53 L.V. 4431 (1985). An equally divided Court, with no opinion, affirms a decision that a Privileges and Immunities claimant against a state may not receive fees under 1983 because state law prohibits such an award and the 1983 claim was advanced solely to justify a fee.

C. Litigation.


Last term, in Flanagan v. United States, 463 U.S. 853 (1984) the Court held that pretrial orders disqualifying counsel in criminal cases are not subject to immediate appeal under 1291.

2. United States v. Shearer, 53 L.V. 4917 (1985). The decedent was off base and off duty when kidnapped and killed by another serviceman; his representative brought a Federal Tort Claims Act suit against the Army claiming it was negligent in failing to control the perpetrator and warning others the bad guy was at large and dangerous. Held: Recovery is barred by Feres v. United States, 340 U.S. 125 (1950),
because of the special relation between a soldier and the Army; suits such as this require the civil courts to second-guess military decisions.

3. Wilson v. Garcia, 53 L.V. 4481 (1985). Held that 1983 claims must be treated as personal injury actions for determining which statute of limitations is to be applied. Here, the action was filed 2 years and 3 months after the alleged unlawful arrest and beating and the defendant said the limit was New Mexico's 2 year statute. The Court ruled that federal rather than state law governs the characterization of a 1983 claim for this purpose.


4. City of Oklahoma City v. Tuttle, 53 L.V. 4633 (1985). A killing victim's wife sued a police officer and his employer under 1983. Trial court held the city would be liable only if it had a policy causing the deprivation, but that the jury could infer such a policy from a single incident. Held: the widow loses; it is too late for her to raise the issue of whether the city preserved the right to raise the question. A plaintiff in cases like this must show at least a single action by the city to recover and the widow did not. See, Monell.

5. CIA v. Sims, 53 L.V. 4453 (1985). The CIA sponsored a project called MKULTRA to counter alleged communist advances in brainwashing and subcontracted with universities, etc., to investigate. Respondents sought to require disclosure of
the subcontractors' names and the CIA cited the National Security Act of 1947 in refusing to disclose under the FOIA. Held: The CIA director may withhold all sources of intelligence information.

6. Brandon v. Holt, 52 L.V. 4168 (1985). Plaintiffs below brought 1983 actions against a Memphis police officer alleging assault and a history of violent behavior. Compensatory damages were awarded against the Director of the Department in his official capacity on the basis that he should have known of the officer's propensities. The city had not been named a defendant below because the case was filed before Monell. Held: It is now clear that the action was against the director in his official capacity and the Court may decide the legal issue without a formal amendment.

Rehnquist dissents: The Court is wrong in letting a plaintiff amend pleadings in the Supreme Court.

III. Business

A. Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 52 L.V. 4818 (1985). This is a treble damages action under Section 2 of the Sherman Act by one ski operator against another which refused to include the plaintiff in a ski lift ticket package. Held: There is no general duty to engage in a joint marketing program. The question of intent is properly raised relevant to the offense of monopolization to determine whether the conduct is exclusionary, anticompetitive or predatory.

B. Landreth Lumber Co. v. Landreth, 52 L.V. 4602 (1985). A father and son, who owned all of a lumber company, offered their stock for sale through brokers. There was a fire on the premises and the offerors promised a full rebuilding.
After the acquisition was completed, the mill did not live up to the purchasers' expectations and they ultimately sued alleging violation of the registration provisions of the Securities Acts of 1933 and 1934. **Held:** the stock of the father and son is a security within the definition of the Acts.

A violation of Sec. 14 (e) of the 1934 Securities Act, prohibiting any manipulative acts or practice in connection with tender offers, requires misrepresentation or non-disclosure. **Held:** Where an open, non-deceptive recision of a tender offer occurs and there is substitution of a new, friendly one (even though it results in diminished payment to shareholders) there is no violation of the Act.

_D. Love v. S.F.C., 53 L.V. 4705 (1935)._ Petitioner is president of a corporation that was a registered investment adviser. He was convicted of investment offenses and not supposed to give advice. He continued to publish for paid subscribers advice newsletters and the S.F.C. sought to enjoin him. **Held:** The issuing of publications does not make him an "investment adviser," since his newsletters are not personalized investment advice.

_D. Air France v. Saks, 53 L.V. 4270 (1935)._ Plaintiff below felt an ear pain as his plane landed in Los Angeles; he claimed it was due to negligent maintenance of the plane's pressurization system and sued under the Warsaw Convention. **Held:** To recover under the Convention, the injury must be caused by an unexpected or unusual event external to the
passenger. A plaintiff may not recover under the Convention for injury resulting from one's internal reaction to the usual, normal and expected operations of the air craft.

IV. Cities and Municipal Powers.

A. Hillsborough County, Fla. v. Automated Medical Laboratories, Inc., 53 L.W. 4613 (1985). The county adopted an ordinance relating to blood plasma centers, requiring a test for hepatitis, a breath analysis for alcohol, etc. At the same time the Food and Drug Administration has standards for the collection of plasma. The challenger asserts the county's ordinances violate the Supremacy Clause. Held: There is no federal pre-emption: the federal regulations have not grown so comprehensive since 1973 as to justify an inference of complete pre-emption. Moreover, health and safety regulation is primarily and historically a matter of local concern.

B. City of Cleburne, Tex. v. Cleburne Living Center, Inc., 53 L.W. 5022 (1985). Zoning law required that special use permits be issued for group homes for the retarded. The city denied such a permit. Held: even though mental retardation is not a quasi-suspect class, the city has to have a rational basis for believing such homes pose a special threat to local interests.

Cf. Williamson Co. Regional Planning Commn. v. Hamilton Bank of Johnson City, 53 L.W. 4969 (1985): a 1983 action claiming an unconstitutional taking by local authority's refusal to approve a development is not ripe, since no variance was sought nor was inverse condemnation attempted.
The U.S. condemned 50 acres of land owned by the city for a
flood control project. This land housed a project the city was
required to maintain. The jury awarded reasonable costs of
replacement for a larger and better facility. Held: The Fifth
Amendment's Taking Clause does not require any award greater
than fair market value. While the U.S. might have provided
a better site or more money, it did not need to do so. Cf.

V. Criminal Law and Procedure.

A. Crimes.

2114 proscribes assault and robbery of mail matter or money
or property of the U.S. Here, the defendant below assaulted
a Secret Service agent with a pistol in an attempt to rob him
of $1,800 "flash money" (to be used in a drug transaction),
and was charged under 2114. Held: this statute is not limited
to Post Office offenses. Note that the statute carries a
35-year sentence.

844(i) makes it a crime to maliciously damage or destroy by
fire or explosives a building used in commerce. Defendant
below was charged under it with attempting to burn a two-unit
apartment building used as rental property. Convicted, he
urged that the statute was never intended to encompass such
acts. Held: Congress intended to exercise its full power to
protect business property and local rental of an apartment
is merely an element of a much broader commercial market in
real estate.
3. Dowling v. United States, 53 L.V. 4978 (1985). 18 U.S.C. 2314 criminalizes transporting in commerce goods, wares, merchandise, securites or money worth $5,000 and knowing the same to have been stolen, converted or taken by fraud. Here, the issue was whether bootleg phonograph records manufactured and distributed without the consent of the copyright owners were covered. Held: no. A physical taking is essential under this statute. Copyright infringement implicates a more complex set of property interests than run-of-the-mill theft, conversion or fraud.

4. Pull v. United States, 53 L.V. 4235 (1985). Held: a convicted felon who possesses a firearm cannot be convicted and concurrently sentenced both for receiving a firearm in violation of 18 U.S.C. 922 (h) and possessing it in violation of 18 U.S.C. 1803 (a). Congress knew that one who receives also possesses; ergo, it is the same act.

E. Arrest, Search and Seizure.

1. Tennessee v. Garner, 53 L.V. 4410 (1985). State law allows use of all necessary means to effect after arrest after officer gives notice and suspect flees. Here a 15-year-old burglary suspect fled over a fence and was killed by the officer who was reasonably sure the slightly-built youth was unarmed. The boy’s father brought a 1983 action and the defendant responded asserting the state law. Held: the law is unconstitutional insofar as it authorizes the use of deadly force against an unarmed, non-dangerous suspect. Apprehension by use of deadly force is a seizure subject to Fourth Amendment’s reasonableness requirement.
2. Hayes v. Florida, 53 L.V. 4682 (1985). Police, without a warrant, went to petitioner's home to get fingerprints and said if he did not go with them, they would arrest him. He was taken to the station and printed. It was determined his prints matched those at the crime scene and he was arrested. Held: There is no probable cause to arrest, no consent and no prior judicial authority for detention, Fourth Amendment rights are violated. Cf. Davis v. Mississippi, 394 U.S. 721 (1969).

3. United States v. Sharpe, 53 L.V. 4346 (1985). A DEA agent noticed an overloaded pickup and a car in tandem and pursued. A South Carolina agent is assisting, and the truck is held for 15 minutes until the other officer returns. Applying Terry v. Ohio standards, Held: the detention is permissible. Detention is not to be measured arbitrarily and a court must consider the purpose of the stop.

Brennan and Stevens, dissent: The Court makes of Terry's brevity requirement an accordion-like concept that may be expanded overnight. This is another case where the Court reaches out to decide an issue not before it, for this is not really a Terry-type case, and the lower courts did not find the defendants' actions constituted evasion or flight.

4. United States v. Johns, 53 L.V. 4138 (1985). Officers saw two pickups travel to a remote airstrip, smelled marijuana and saw packages wrapped in dark green plastic with tape sealing them. Arrests were made and truck taken to headquarters; three days later, without a warrant, the packages were opened. Held: There is no requirement that a warrantless search occur simultaneously with the seizure.
Brennan says the issue is not before the Court; the Appeals Court rejected the government's argument that the "plain odor" obviated the need for a warrant. The case contradicts the only precedent, Johnson v. U.S., 333 U.S. 10, 13 (1948) that "odors alone do not authorize a search without a warrant."

5. Maryland v. Macon, 53 L.W. 4783 (1985). Plainclothesmen entered an adult book store, browsed, and bought 3 magazines with a $50 marked bill. They left the store, showed the magazines to two other police and determined they were obscene. Back in the store, they arrested the clerk and retrieved the $50 bill, neglecting to return the change. Held: No unreasonable search and seizure occurred; here there was a purchase and no legitimate expectation of privacy. Moreover, the exclusionary rule does not reach backwards to taint information in official hands prior to any illegality.

Brennan, dissenting: An official seizure of presumptively protected books is not reasonable unless a neutral and detached magistrate has issued a warrant. Lo-Ji Sales, Inc.v. New York, 442 U.S. 319 (1979). "The Court today sanctions an end run around constitutional requirements carefully crafted to guard our liberty of expression."

6. Mitchell v. Forsyth, 53 L.W. 4798 (1985). John Mitchell authorized warrantles s taps for purposes of intelligence gathering against radical groups. In U.S. v. U.S.D.C., 407 U.S. 297 (1972), it was held that the Fourth Amendment does not permit warrantless taps in cases involving domestic threats to national security. Held: Mitchell entitled to qualified immunity since at the time of his actions they did not vio-
late clearly established law.

7. **Winston v. Lee**, 53 L.W. 4287 (1985). A bullet was removed from a suspect's chest under general anesthetic. This was radical surgery, potentially life-threatening. Held: Improper, since state doesn't need the bullet and the respective interests weigh in favor of non-intrusion.

C. Confessions.

1. **Oregon v. Elstad**, 53 L.W. 4944 (1985). When arrested, defendant below made incriminating statements without being Mirandized. At the station, he was Mirandized and executed a confession. The Oregon court held that because of the brief period between the unconstitutional confession and the subsequent one, the act was sufficiently out of the bag to exert a coercive influence. Held: The Fifth Amendment does not require suppression solely because the police had obtained an earlier and unwarned confession. Absent deliberate coercion, a careful and thorough administration of Miranda cures the condition that rendered the unwarned statement inadmissible.

2. **Luce v. United States**, 53 L.W. 4007 (1984). In this drug case, defendant below moved to preclude the government from using a prior statement and conviction to impeach him if he testified. He did not testify. Held: to raise and preserve the claim, a defendant must testify.

D. Capital Punishment.

1. **Wainwright v. Witt**, 53 L.W. 4108 (1985). A death-sentence recipient complains that prospective jurors had been excluded because of their opposition to capital punishment. Held: The proper standard for exclusion is whether the juror's
views would "prevent or substantially impair the performance of his duties." Adams v. Texas, 448 U.S. 38 (1980). The question of challenge of a prospective juror under 28 U.S.C. 2254 (Habeas Corpus relief) is "factual" and a federal court must accord a state court's finding a presumption of correctness.

Prewner dissent: Here the Court departs from Winterspoon v. Illinois, 391 U.S. 510 (1968) in an unforthright manner. The question is a mixed one of law and fact; see Adams v. Texas, 448 U.S. 38 (1980). "We have lost our sense of the transcendent importance of the Bill of Rights. ... this Court increasingly acts as the adjunct of the State and its prosecutors in facilitating the efficient conviction and expedient execution irrespective of the Constitution's fundamental guarantees."

2. Caldwell v. Mississippi, 53 L.W. 4742 (1985). The state's attorney at sentencing urged the jury not to view itself as finally determining whether the petitioner would die, because the sentence would be reviewed. Held: It is impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of death rests elsewhere.

3. Heckler v. Cheney, 53 L.W. 4285 (1985). Prison inmates wanted to challenge the use of lethal injection drugs as unsafe before the F.D.A., which refused to take enforcement actions. Held: The F.D.A.'s decision is not subject to review under Sec. 701 (a)(2) of the Administrative Procedures Act. Decision making in this arena is committed to the agency's discretion.
But see Florida Power & Light Co. v. Lorion, 52 L.W. 4260 (1985) regarding review of final orders of the Nuclear Regulatory Agency in the Courts of Appeal.

E. Miscellaneous.

1. Ake v. Oklahoma, 52 L.W. 4179 (1985). A judge ordered a defendant to be examined by a psychiatrist who found the defendant incompetent to stand trial. After commitment, he was found competent. Before trial defense counsel asked for a state-paid psychiatrist and was refused. Held: When a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires the state to provide access to a psychiatrist's services if the defendant cannot afford one.

2. Fvitts v. Lucey, 53 L.W. 4101 (1985). This case holds that the Due Process Clause of the 14th Amendment guarantees a defendant the effective assistance of counsel on his first appeal of right and that nominal representation here is not enough. Douglas v. California, 372 U.S. 353 (1963) must comprehend the right to effective assistance.

Rehnquist and Burger dissent: "Neither the language of the Constitution nor this Court's precedents establish a right of effective assistance of counsel on appeal."

There is, they say, no requirement of appeal at all.

VI. First Amendment.

A. Religion.

requiring a photograph on a driver's license violates the First Amendment rights of a qualified applicant who refuses to be photographed on religious grounds.

2. Estate of Thornton v. Caldor, Inc., 53 L.V. 4852 (1985). Decedent told respondent he would not work on Sundays, invoking a Connecticut law that no one can be forced to work on his/her Sabbath. He refused a transfer but was transferred to a clerical job. Held: By providing Sabbath observers an absolute and unqualified right not to work the law violates the Establishment Clause. See, Lemon v. Kurtzman, 403 U.S. 602 (1971): a law may not have a primary effect that impermissibly advances a particular religious practice.

B. Speech and Press.

1. United States v. Albertini, 53 L.V. 4844 (1985). 18 U.S.C. 1382 makes unlawful re-entry to a military base after one has been order not to return. Here, a person so banned re-entered during an open house and caused no disruption. The Ban and Bar letter had been issued 9 years earlier. Held: Enforcement of the ban does not violate the First Amendment; this base is not a public forum. Cf. Flower v. U.S., 407 U.S. 197 (1972).

2. Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 53 L.V. 4866 (1985). A credit reporting agency sent out a report that respondent had filed bankruptcy. It was false. A correction was issued, but respondent was not satisfied with it and brought a defamation action in Vermont state court, receiving a jury verdict. Held:
Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) is inapplicable to non-media actions. Plurality holds that the First Amendment requirement of actual malice should have no application in this case because the speech involved a subject of purely private concern and was circulated to an extremely limited audience.

3. McDonald v. Smith, 53 L.V. 4793 (1985). Smith alleged that while he was being considered for U.S. Attorney he was slandered and libeled under North Carolina law by McDonald who wrote letters to the President, etc. McDonald defended on the basis of the Petition Clause. Held: The Petition Clause does not provide absolute immunity where libelous and damaging falsehoods are expressed.

Cf. White v. Micholls, 3 Nov. 266 (1845).

4. Brockett v. Spokane Arcades, Inc., 53 L.V. 4793 (1985). Washington law declares to be a moral nuisance a place where lewd films are exhibited or lewd publications constitute a principal part of the stock in trade. Lewd matter equals obscene matter; prurient is defined as that which incites lasciviousness or lust. This latter definition if overbroad, because lust is a normal interest in sex.

VII. Taxes.

A. State.

1. Williams v. Vermont, 53 L.V. 4659 (1985). Vermont collects a use tax when a car is registered, but it is not imposed if the car was bought in the state and a sales tax paid; or it is reduced by the amount of a sales or use tax paid in another state if such state would reciprocally
credit Vermont taxes (but only if the registrant is a Vermont resident at the time of payment). Held: This scheme violates the Equal Protection Clause.

S. Hooper v. Bernadillo Co. Assessor, 52 L.V. 4887 (1985). A New Mexico law gives a property tax exemption to Vietnam War vets who were residents before 5-8-76, but not thereafter. Held: The fixed, permanent distinction between classes of bona fide residents does not pass the minimum rationality test.

S. Metropolitan Life Ins. Co. v. Ward, 53 L.V. 4229 (1985). Alabama has a lower gross premium tax rate on domestic insurance companies. Out-of-state companies may reduce their tax liability by investing in Alabama assets. Held: Promotion of domestic business by discriminating against non-residents is not a legitimate state purpose. Western & Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 48 (1981), distinguished, for it did not hold that promotion of domestic industry is a legitimate state purpose, but that deterring other states from enacting discriminatory taxes is a legitimate purpose under Equal Protection.

B. Federal.

1. United States v. National Bank of Commerce, 53 L.V. 480 (1985). Sec. 6331(a) of the I.R.C. allows a levy on all property and rights of delinquent taxpayers. Here, the levy was on a joint account for taxes owed by only one of the account holders. Held: I.R.S. has the right to levy, since under state law, the delinquent had an absolute right to withdraw from the account.
8. Tiffany Fine Arts, Inc. v. United States, 53 S.W. 4078 (1985). Under Sec. 7602(e), the I.R.S. summoned, without prior judicial approval, financial statements as well as names of others who had licenses to distribute a certain medical device. Petitioner claimed the I.R.S. would have to use Sec. 7609(f), the John Doe process (requiring prior judicial approval). Held: There there is a dual purpose, there is no need for the John Doe procedure, as long as the information sought is relevant to a legitimate investigation of the summoned taxpayer.

9. United States v. Boyle, 53 S.W. 4079 (1985). An executor of a will hired a lawyer to handle an estate, giving the attorney all necessary information; The lawyer made repeated assurances that an estate tax return would be filed on time, but it was filed three months late. Respondent paid the penalty and filed for a refund because of reasonable cause and not willful neglect. Held: There is no excuse for relying on an agent since it requires no special training or effort to ascertain a deadline and ensure it is met.

VIII. Workers, Labor, Discrimination.

A. Discrimination.

1. Johnson v. Baltimore, 53 S.W. 4754 (1985). A federal statute requiring federal fire fighters to retire at 55 does not, as a matter of law, establish that 55 is a bona fide occupational qualification for non-federal fire fighters within the meaning of the Age Discrimination Law.
2. *Western Air Lines, Inc.* v. *Criswell*, 53 L.W. 4766 (1985). Jury was instructed that for the airline to establish that 60 is a PFQO justifying forced retirement, it must show that it is reasonably necessary to safe transportation, individualized determinations are impractical and some flight engineers over 60 possess traits precluding safe and efficient job performance which cannot be ascertained by means other than knowing their age is appropriate.

3. *Atascadero State Hospital* v. *Scanlon*, 53 L.W. 4985 (1985). An action alleging violation of Sec. 504 of the Rehabilitation Act of 1973, that no handicapped person shall be discriminated against under any program receiving financial aid; the critical issue is whether the state may be sued. Held: The state had not waived; the Act does not abrogate the 11th Amendment and Congress must express its intention to abrogate in unmistakable language; acceptance of funds is not tantamount to waiver.

B. Labor and Workers.


2. *Allis Chalmers Corp.* v. *Lueck*, 53 L.W. 4462 (1985). The bad faith handling of an insurance claim, even one arising out of a labor agreement, is a tort in Wisconsin. Respondent sued in state court, rather than using grievance process, to get relief. Held: The state court claim should be dismissed. Congress has a goal of a unified body of labor contract law, and this includes the central role of arbitration in resolv-
ing labor disputes, even such as these.

2. Pattern Makers League of North America v. N.L.R.B., 53 L.V. 4928 (1985). A union constitution says a member may not resign during a strike; ten members who did quit were fined, and the employer filed charges that this constituted an unfair practice. Held: The employer is sustained, as the union's constitution impairs voluntary unionism.

3. Massachusetts Mutual Ins. Co. v. Russell, 53 L.V. 4938 (1985). An employee had a back ailment and sought benefits. They were terminated and later reinstated, but the employee sued saying the company's delay was a violation of state law and ERISA. Held: Sec. 409(a) of ERISA does not provide an action for the extra-contractual damages caused by improper or untimely processing of claims.