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# United States Supreme Court Review of Tenth Circuit Decisions

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# UNITED STATES SUPREME COURT REVIEW OF TENTH CIRCUIT DECISIONS

## I. SUPREME COURT REVERSALS

### A. United States v. Ward

In *United States v. Ward*,[1] the Supreme Court reversed the Tenth Circuit Court of Appeals' decision in *Ward v. Coleman*.[2] The Court held that fines, imposed by the United States against owners and operators of onshore facilities from which oil is discharged, in violation of the Federal Water Pollution Control Act (FWPCA),[3] constituted a civil rather than a criminal penalty. The Court thus concluded that a provision in the Act requiring dischargers to report their own violations[4] did not infringe upon a discharger's constitutional right to be protected from compulsory self-incrimination.

By the terms in effect at the time this case arose,[5] section 311(b)(3) prohibited the discharge of oil or hazardous substances in "harmful" quantities into navigable waters or onto adjoining shorelines.[6] Persons in charge of a vessel or responsible for an on-shore or off-shore facility were required to report any such hazardous discharge to the appropriate federal agency.[7] Failure to report the discharge would subject violators to possible fine or imprisonment.[8] A "civil penalty" was imposed against the owner or operator of a facility found to be in violation of the Act.[9] In 1977, a maximum penalty of $5,000 per violation could be assessed.[10]

In March 1975, oil escaped from a retention pit at a drilling facility located in Oklahoma and owned by L.O. Ward Oil and Gas Operations. The oil washed into Boggie Creek, a tributary of the Arkansas River System. Ward cleaned up the oil spill and notified the Environmental Protection Agency that the discharge had occurred. A more complete report was forwarded to the Coast Guard,[11] which assessed a $500 penalty against Ward.[12]

Ward appealed the Coast Guard's ruling, contending that the reporting requirements of the Act violated the fifth amendment privilege against self-incrimination. After the administrative appeal was denied, Ward filed suit

1. 100 S. Ct. 2636 (1980).
2. 598 F.2d 1187 (10th Cir. 1979).
3. 33 U.S.C. §§ 1251-1376 (1976) *as amended by* The Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566, and The Federal Water Pollution Control Act Amendments of 1978, Pub. L. No. 95-576, 96 Stat. 1566.
4. *Id.* § 1321(b)(5).
5. The Clean Water Act of 1977 and the Federal Water Pollution Control Act Amendments of 1978 amended § 311 of the FWPCA. The amendments, however, have no bearing on the case.
6. 33 U.S.C. § 1321(b)(3).
7. *Id.* § 1321(b)(5).
8. *Id.*
9. *Id.* § 1321(b)(6).
10. *Id.*
11. The Coast Guard was responsible for assessing civil penalties under § 311(b)(6).
12. 100 S. Ct. at 2640.

in the United States District Court for the Western District of Oklahoma seeking to enjoin enforcement of the penalty. Ward's action, and a separate action filed by the United States to collect the unpaid penalty, were consolidated for trial.[13]

The district court, on motion for summary judgment, rejected Ward's constitutional claim.[14] The case was thereafter tried to a jury on the sole issue of the occurrence and harmfulness of the discharge. The jury found that Ward's facility did indeed spill oil in harmful quantities into navigable waters. The district court assessed a penalty in the reduced amount of $250.[15]

The Tenth Circuit Court of Appeals found the penalty provision, section 311(b)(6), to be criminal in nature. The appellate tribunal invalidated the self-reporting requirement as violative of Ward's fifth amendment rights.[16]

In examining the statute, the court of appeals focused on the legislative aim in imposing the sanction. The court asserted that a determination of whether Congress sought primarily to punish violators or to regulate and clean up oil spills was significant. Legislative intent was analyzed by reference to the plain language of the statute, and by an examination of the enforcement mechanism established by the Coast Guard pursuant to the statute. A punitive intent was indicated by the fact that the penalty was assessed automatically; that the amount of the penalty was determined by a consideration of the size of the business, the effect of the penalty on the owner or operator's ability to continue in business, and the gravity of the violation[17] further evidenced a punitive intent. The court of appeals believed that these statutory factors bore no relation to the government's purported goal of maintaining an adequate clean-up fund. A violator's removal efforts and expenses could not be considered in fixing the amount of the penalty. Furthermore, under Coast Guard order, intentional discharges, and those discharges resulting from gross negligence, were to result in the most severe penalties.[18] The Tenth Circuit Court of Appeals concluded that this statutory and administrative enforcement scheme lacked any semblance of regulatory or remedial intent.[19]

The court of appeals confirmed this conclusion by examining the statute in light of an often used, but erratically applied test, set forth by the Supreme Court in *Kennedy v. Mendoza-Martinez*.[20] The test requires the application of seven "indicators of congressional intent" to a statute as a means of determining whether the statute is criminal (punitive) or civil (regulatory) in nature.[21] The court declared that application of the *Mendoza-Martinez* in-

13. *Id.*
14. Ward v. Coleman, 423 F. Supp. 1352 (W.D. Okla. 1976).
15. 100 S. Ct. at 2640.
16. 598 F.2d at 1194. *See* Overview, *Lands and Natural Resources, Sixth Annual Tenth Circuit Survey*, 57 DEN. L.J. 293, 297-99 (1980).
17. 33 U.S.C. § 1321(b)(6).
18. United States Coast Guard Commandant Instruction 5922.11A (Feb. 23, 1973).
19. 598 F.2d at 1190-92.
20. 372 U.S. 144 (1963).
21. A sanction may be deemed punitive if it: (1) involves an affirmative disability or re-

dicators to section 311(b)(6) of the FWPCA revealed a punitive intent. The section 311(b)(6) factors used to determine the amount of the penalty indicated the presence of a scienter requirement. The court emphasized that a party could act in good faith and undertake clean-up measures, yet that party would still be penalized for even an unavoidable discharge. The appellate court felt that these facts indicated that the statute promoted the traditional aims of punishment; namely, retribution and deterrence. The court also noted that the behavior to which the statute applied was already a crime under section 13 of the Rivers and Harbors Act of 1899.[22]

Whereas the legislative aim in adopting the section 311(b)(6) sanction was to punish, rather than to regulate, a water polluter, the Tenth Circuit Court of Appeals held that the sanction actually imposed a criminal penalty for the discharge of oil and hazardous substances into navigable waters. The court therefore declared that information obtained through the statutorily required notification procedure could not be used by the government to determine liability for violations of section 311(b)(3). The court of appeals added that self-reported information could not be used in the calculation of the amount of a violator's penalty under section 311(b)(6). The Tenth Circuit court declared that evidence to establish the existence of an illegal discharge had to be derived from an independent source.[23]

The Supreme Court, in an opinion written by Justice Rehnquist, overruled the court of appeals' decision without fully addressing many of the issues raised by the lower court. The Court's inquiry as to whether the statutory penalty was criminal in nature proceeded in two stages. Justice Rehnquist looked for either an express or an implied congressional preference for a civil or criminal penalty. The labelling of the sanction as a "civil penalty," in juxtaposition with the criminal penalties set forth in the immediately preceding subparagraph,[24] was considered by the Court as a sufficient indication of a congressional intent to impose a civil sanction.[25]

The Court's second level of analysis focused on whether the statutory scheme was so punitive in nature, either in purpose or effect, as to negate the legislature's express intention. In searching for a punitive effect, the Court failed to assess the section 311(b)(6) factors considered by the government in determining the amount of the penalty.[26] Justice Rehnquist also failed to set forth his assessment of the *Mendoza-Martinez* criteria.[27] The criteria were

straint, (2) has historically been regarded as punishment, (3) comes into play only on a finding of scienter, (4) promotes the traditional aims of punishment, namely retribution and deterrence, (5) applies to behavior which is already a crime, (6) may rationally be connected to an alternative purpose, or (7) is excessive in relation to its alternative assigned purpose. 372 U.S. at 168-69.

22. 33 U.S.C. § 407 (1976).

23. 598 F.2d at 1194.

24. 33 U.S.C. § 1321(b)(5). *See* text accompanying note 8 *supra*.

25. 100 S. Ct. at 2641.

26. *See* text accompanying note 17 *supra*. Justice Stevens, the lone dissenter, agreed with the Tenth Circuit's opinion that the failure to calculate penalties on the basis of the government's actual clean-up costs indicated a lack of remedial intent. Justice Stevens noted that, in light of the *Mendoza-Martinez* criteria, the section 311(b)(6) factors indicated a legislative intent to create a criminal sanction. 100 S. Ct. at 2646-47.

27. The majority acknowledged that the behavior to which the sanction applied is already

believed to be "neither exhaustive nor conclusive on the issue," and therefore were "in no way sufficient to render unconstitutional the congressional classification of the penalty established in section 311(b)(6) as civil."[28] Based on this limited examination, the Court found no punitive effect which might render the sanction criminal.

Respondent Ward's alternative claim, that the sanction was "quasi-criminal," and therefore sufficient to invoke the protection of the fifth amendment, was also rejected. Ward attempted to draw support for this claim from *Boyd v. United States*.[29] In the *Boyd* case, the Court had held that forfeiture proceedings, held as a result of a violation of a revenue statute, were sufficiently criminal in nature for the purpose of the fifth amendment. The majority found *Boyd*, and other similar cases, readily distinguishable on the basis that the penalty involved in those cases was not related to damage sustained by society or to the cost of enforcing the law. The FWPCA penalty involved in the *Ward* case was considered more analogous to traditional civil damages.[30] Weight was again given to the existence of separate statutory criminal remedies to punish similar activities.[31]

As the penalty imposed on discharges of oil and hazardous substances was neither criminal nor "quasi-criminal" in nature, Ward's fifth amendment privilege against compulsory self-incrimination did not relieve him of the duty to comply with the statutory notification procedure. A violator's own report of an illegal discharge, which is required by law, can be used as a means of determining liability for the violation, and the facts contained in the report may be used to determine the amount of the violator's penalty.

*Dan Scheid*

## B. Andrus v. Utah

In *Andrus v. Utah*,[32] the Supreme Court reversed the Tenth Circuit Court of Appeals' decision in *Utah v. Kleppe*[33] wherein the Tenth Circuit court had held that section 7 of the Taylor Grazing Act, as amended,[34] did not empower the Secretary of the Interior (Secretary) to classify land as eligible for indemnity selection pursuant to the school indemnification selection statutes. The court of appeals had ruled that the selection of school indem-

a crime (the fifth indicator), but considered the point to be of little significance. Justice Blackmun, in a concurring opinion, joined by Justice Marshall, applied the *Mendoza-Martinez* factors and found that they indicated a remedial intent. 100 S. Ct. at 2644-45.

28. 100 S. Ct. at 2642.

29. 116 U.S. 616 (1886).

30. No explanation was offered as to why the money penalty involved in the *Ward* case is "much more analogous" to a civil penalty than to a criminal fine.

31. 100 S. Ct. at 2643-44.

32. 100 S. Ct. 1803 (1980).

33. 586 F.2d 756 (10th Cir. 1978). For a discussion of the Tenth Circuit's opinion, see Overview, *Lands and Natural Resources, Fifth Annual Tenth Circuit Survey*, 56 DEN. L.J. 517-23 (1979).

34. 43 U.S.C. § 315f (1976).

nity lands was to be based on equal *acreage*—not equal *value*—with the lost base lands.

Between 1965 and 1971, the State of Utah exercised its right, granted under the Utah Enabling Act of 1894[35] and the federal school indemnification statutes,[36] to select indemnity lands in lieu of original school land grants which Utah never received due to federal preemption or private entry prior to survey. Utah selected 194 parcels of land, embracing approximately 157,255.9 acres, all of which were located within federal grazing districts created under the Taylor Grazing Act. The selections included extremely valuable oil shale lands while the original land grants were of significantly lesser mineral value. Utah filed its selection lists with the Secretary for approval, but the Secretary responded that he would not approve any indemnity applications that involved "grossly disparate values."[37] The Secretary added that although the land values of the lost base lands and the indemnity lands had not been precisely determined, it appeared that they involved grossly disparate values as judged by departmental guidelines.[38] The State of Utah filed suit in the federal district court seeking injunctive relief. The state sought a court order directing the Secretary to approve or disapprove Utah's indemnity selections by December 15, 1976. The district court granted Utah's motion for summary judgment, and the Tenth Circuit Court of Appeals affirmed.[39]

The controversy in this statutory construction case turned upon whether the 1936 amendment[40] to section 7 of the Taylor Grazing Act or sections 851 and 852 of the federal statutes governing state land grants[41] controlled the disposition of school indemnity lands. As amended, section 7 authorizes the Secretary to compare the selected lands with the original school land grants on an equal *value* basis and to refuse the exchange if the selected lands are grossly higher in value than the original grants. Section 851, on the other hand, specifically states that whenever a state does not receive its allotted school land grant due to federal preemption or private entry, then the state is entitled to "other lands of equal *acreage*" selected in accordance with the provisions of section 852.[42] Section 852 provides, in part, that lands "mineral in character" cannot be selected as in lieu lands unless the lost base lands were also "mineral in character."[43]

The Tenth Circuit court reasoned that section 7 of the Taylor Grazing Act, as amended, was not applicable to school indemnity lands as neither the Act, nor its legislative history, evidenced an intent that section 7 was to ap-

35. Ch. 138, 28 Stat. 107.
36. 43 U.S.C. §§ 851-852 (1976).
37. 100 S. Ct. at 1805.
38. Department of Interior guidelines provided that the grossly disparate value policy would only be applied in cases where the estimated value of the selected lands exceeded that of the base lands by the greater of $100 per acre or 25%. *Id.* at 1805 n.3.
39. 586 F.2d 756 (10th Cir. 1978).
40. Act of June 26, 1936, ch. 842, § 7, 49 Stat. 1976 (codified at 43 U.S.C. § 315f (1976)).
41. 43 U.S.C. §§ 851-852 (1976).
42. *Id.* § 851 (emphasis added).
43. *Id.* § 852(a)(1).

ply to selected school lands.[44] Rather, after examining the legislative history and the express language of sections 851 and 852, the court of appeals found that school indemnity lands were governed by sections 851 and 852.[45] Consequently, the court of appeals concluded that once it was determined that both the original grants and the indemnity lands were mineral in character, the indemnity lands were to be selected on an equal acreage basis and not on the equal value basis mandated by section 7.[46] The court of appeals viewed the Secretary's function as ministerial, requiring that he approve indemnity applications upon a showing of compliance with sections 851 and 852.[47]

Reversing the Tenth Circuit Court of Appeals, the Supreme Court held that section 7 of the Taylor Grazing Act, as amended, confers broad discretion on the Secretary to classify lands within a federal grazing district as eligible for school indemnity selection and that the grossly disparate value policy was a lawful exercise of the Secretary's discretion when applied to school indemnity lands.[48] Thus, under the Court's view, the correct standard for school indemnity lands is the equal *value* principle—not the equal *acreage* principle.

Justice Stevens, writing for the majority, capsulized the majority opinion by stating that the district court and the Tenth Circuit Court of Appeals had misinterpreted the congressional policy underlying the provision for indemnity selection and had misconstrued section 7 of the Taylor Grazing Act.[49] Justice Stevens emphasized that the history of the general statutes relating to school indemnity grants repeatedly demonstrated that the purpose of these statutes was to provide the states with lands roughly equivalent to the lost original lands.[50] No evidence suggested that Congress intended the states to select lands of substantially greater value than the original grants.[51] Rather, the entire history of these statutes evidenced a congressional intent only to make the western states whole for the forfeited original grants.[52]

The Court further reasoned that the Taylor Grazing Act, as amended, and Executive Order 6910[53] had the effect of withdrawing all unappropriated federal lands in the western states from entry or selection pending subsequent congressional or presidential action except, at the Secretary's discretion, for the purposes specified in section 7.[54] Consequently, indemnity lands were only available as permitted by the Secretary in the exercise of his discretion under section 7. Therefore, Justice Stevens concluded that

44. 586 F.2d at 767.
45. *Id.*
46. *Id.*
47. *Id.* at 760-61.
48. 100 S. Ct. at 1813.
49. *Id.* at 1806.
50. *Id.* at 1807.
51. *Id.* at 1808.
52. *Id.*
53. Executive Order 6910, issued by President Roosevelt in 1934, withdrew all unappropriated and unreserved public lands in twelve western states from all forms of entry and selection pending further determination of the best use of the land. 54 Interior Dec. 539 (1934).
54. 100 S. Ct. at 1813.

the grossly disparate value policy employed by the Secretary was wholly consistent with the congressional intent underlying indemnity selections of giving the states a rough equivalent of the lost school grants.[55]

Justice Powell, joined by Chief Justice Burger, Justice Blackmun, and Justice Rehnquist, raised a vigorous dissent. Justice Powell perceived the majority opinion as resting on three fundamental misconceptions: 1) that the states had no right to equal acreage since the indemnity lands were given as compensation to the states; 2) that the creation of grazing districts under the Taylor Grazing Act had the same effect as a withdrawal of lands under the Pickett Act;[56] and 3) that the Secretary had authority under the Taylor Grazing Act to reject indemnity selections by applying standards which were inconsistent with the standards enunciated in the indemnity selection statutes.[57]

Justice Powell noted that the majority's first misconception could not stand in light of the long line of statutes dating from the early 1800's which demonstrated that Congress specifically adopted an equal acreage standard to compensate the states for the lost base lands.[58] Justice Powell viewed the majority's second misconception as displaying a serious misunderstanding of the history of federal land management and the language of the Taylor Grazing Act.[59] Moreover, Justice Powell stated that withdrawals under the Pickett Act of 1910[60] had the effect of halting entry on and selection of public lands pending further determination of the best use of the land.[61] Since Taylor Grazing Act lands were exempted from Executive Order 6910[62] by Executive Order 7274,[63] such lands were limited solely by the Taylor Grazing Act which allowed entry or selection upon classification of the land by the Secretary.[64] The majority's third misconception also could not stand, reasoned Justice Powell, as section 1[65] of the Taylor Grazing Act exempts school grant indemnity rights from the Act.[66] Furthermore, even if indemnity rights are not exempted from the Act, section 7 does not authorize the Secretary to apply the equal value standard when the school indemnification statutes specify that the proper standard is the equal acreage standard.[67]

In concluding his dissent, Justice Powell implied that the application of the equal value standard rather than the equal acreage standard results in a

55. *Id.* at 1813-14.

56. Pickett Act of 1910, ch. 421, 36 Stat. 847. The Pickett Act was repealed by the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, tit. VII, § 704(a), 90 Stat. 2792.

57. 100 S. Ct. at 1814 (Powell, J., dissenting).

58. *Id.* at 1815.

59. *Id.* at 1814.

60. *See* note 56 *supra*.

61. 100 S. Ct. at 1820.

62. *See* note 53 *supra*. Executive Order 6910 was a Pickett Act withdrawal. 100 S. Ct. at 1819-20.

63. Executive Order 7274, which was issued two years after Executive Order 6910, excluded all grazing district lands from the operation of Executive Order 6910. 100 S. Ct. at 1820.

64. 100 S. Ct. at 1820 & n.21.

65. Section 1, codified at 43 U.S.C. § 315 (1976), specifies that the Act shall not affect "any land . . . which . . . [otherwise] would be a part of any grant to any State . . . ."

66. 100 S. Ct. at 1821.

67. *Id.* at 1822.

breach of the covenant that the United States made with Utah upon Utah's admission to the Union.[68] Consequently, Justice Powell stated that he would have upheld the Tenth Circuit Court of Appeals' affirmance of the district court's decision as he believed that the district court had reached a "just conclusion."[69]

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## II. SUPREME COURT AFFIRMANCES*

### Andrus v. Glover Construction Co.

In *Andrus v. Glover Construction Co.*,[70] the Supreme Court affirmed a 1979 Tenth Circuit decision wherein the court of appeals had held that a federal highway construction contract could not be awarded to an Indian construction company without the government first publicly advertising for bids.[71]

In March 1976, the Commissioner of the Bureau of Indian Affairs (BIA) issued a memorandum interpreting the Buy-Indian Act,[72] said memorandum providing that bidding on contracts with the BIA was restricted to Indian owned companies; non-Indian owned companies were allowed to bid only if Indian owned companies were not available. In an attempt to comply with the Commissioner's directive, the BIA invited three Indian owned construction companies to bid on a contract for the reconstruction of a five-mile segment of road in an area within the jurisdiction of the BIA. The contract was awarded to Indian Nations Construction Company, an Indian owned enterprise, in May, 1977. No public advertising occurred in relation to the bidding. Glover Construction Company, a non-Indian contracting operation, brought suit, alleging that the Federal Property and Administrative Services Act of 1949 (FPASA) requires public advertising for such bids.[73] The district court found that the contract was invalid, and that the government should be enjoined from entering into any future road contracts without complying first with the public advertising requirements of the FPASA.[74]

In affirming the district court's holding, the Tenth Circuit Court of Appeals rejected the government's claim that the Buy-Indian Act was an excep-

68. *Id.* at 1823.
69. *Id.*
70. 100 S. Ct. 1905 (1980).
71. Glover Construction Co. v. Andrus, 591 F.2d 554 (10th Cir. 1979).
72. 25 U.S.C. § 47 (1976). The Act, in relevant part, provides that "[s]o far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market." *Id.*
73. 41 U.S.C. §§ 252-253 (1976).
74. Glover Construction Co. v. Andrus, 541 F. Supp. 1102 (E.D. Okla. 1978).

* Two other decisions of the Tenth Circuit Court of Appeals were affirmed by the United States Supreme Court during the 1980 term. These decisions, Trammel v. United States, 445 U.S. 40 (1980), and Andrus v. Shell Oil Co., 100 S. Ct. 1932 (1980), are discussed in case comments within this Seventh Annual Tenth Circuit Survey.

tion "otherwise authorized by law" under the FPASA,[75] thus rendering public advertising unnecessary. In reaching its decision, the Tenth Circuit Court relied upon rules of statutory construction and upon legislative history indicating a congressional intent to exclude highway construction projects from the operation of the Buy-Indian Act.[76]

The Supreme Court affirmed the Tenth Circuit Court of Appeals.[77] Using the same rules of statutory construction as were employed by the court of appeals, the High Court concluded that the Buy-Indian Act was an exception "otherwise authorized by law," but found it questionable whether a road constructed or repaired by an Indian owned company was "a product of Indian industry" as contemplated by the Act.[78] The Court continued, stating that even if the road were a product of Indian industry, a second provision of the FPASA relating to road construction contracts[79] evinced a congressional intent to bar the negotiation of such contracts under the authority of laws like the Buy-Indian Act. Thus, the Court held that the FPASA required public advertising before such a road construction contract was entered.[80]

*Christine Cooke Parker*

75. The FPASA provides a broad exception to the advertising requirement:
All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if otherwise authorized by law . . . .

41 U.S.C. § 252(c)(15) (1976).

76. 591 F.2d at 560-61.

77. 100 S. Ct. at 1911.

78. *Id.* at 1910.

79. 41 U.S.C. § 252(e) (1976).

80. 100 S. Ct. at 1911.

## III. DENIALS OF CERTIORARI

| A. Cases from Fifth Annual Survey* | Tenth Circuit Citation | Certiorari Denied |
|---|---|---|
| United States v. Clayborne | 584 F.2d 346 (1978) | 444 U.S. 847 (1979) (*sub nom.* Bruneau v. United States) |
| United States v. Heath | 580 F.2d 1011 (1978) | 439 U.S. 1075 (1979) (*sub nom.* Babb v. United States) |
| United States v. Mireles | 583 F.2d 1115 (1978) | 439 U.S. 936 |

| B. Cases from Sixth Annual Survey | Tenth Circuit Citation | Certiorari Denied |
|---|---|---|
| Century Laminating, Ltd. v. Montgomery | 595 F.2d 563 (1979) | 444 U.S. 987 (1979) (*cert. dismissed*) |
| Coleman v. Darden | 595 F.2d 533 (1979) | 444 U.S. 927 (1979) |
| Deere & Co. v. Hesston Corp. | 593 F.2d 969 (1979) | 444 U.S. 838 (1979) |
| Lindsey v. Dayton-Hudson Corp. | 592 F.2d 1118 (1979) | 444 U.S. 856 (1979) |
| Marshall v. Sun Oil Co. | 592 F.2d 563 (1979) | 444 U.S. 826 (1979) |
| Mac Adjustment, Inc. v. General Adjustment Bureau, Inc. | 597 F.2d 1318 (1979) | 444 U.S. 929 (1979) |
| St. Regis Paper Co. v. Marshall | 591 F.2d 612 (1979) | 444 U.S. 828 (1979) |
| United States v. Askew | 584 F.2d 960 (1978) | 439 U.S. 1132 (1979) |
| United States v. Barron | 594 F.2d 1345 (1979) | 441 U.S. 951 (1979) |
| United States v. Bowers | 593 F.2d 376 (1979) | 444 U.S. 852 (1979) |
| United States v. Brown | 600 F.2d 248 (1979) | 441 U.S. 917 (1979) |
| United States v. Davidson | 597 F.2d 230 (1979) | 444 U.S. 861 (1979) |
| United States v. Erb | 596 F.2d 412 (1979) | 444 U.S. 848 (1979) |
| United States v. Kilburn | 596 F.2d 928 (1979) | 440 U.S. 966 (1979) |
| United States v. Leavitt | 599 F.2d 355 (1979) | 444 U.S. 833 (1979) |
| United States v. New Mexico | 590 F.2d 323 (1978) | 444 U.S. 832 (1979) |
| United States v. Priest | 594 F.2d 1383 (1979) | 444 U.S. 847 (1979) |
| United States v. Roberts | 583 F.2d 1173 (1978) | 439 U.S. 1080 (1979) |
| United States v. Smaldone | 583 F.2d 1129 (1978) | 439 U.S. 1073 (1979) (*sub nom.* La Rocco v. United States) and 439 U.S. 1119 (1979) (*sub nom.* Foderaro v. United States) |
| United States v. Smyer | 596 F.2d 939 (1979) | 444 U.S. 843 (1979) |
| United States v. Watson | 594 F.2d 1330 (1979) | 444 U.S. 840 (1979) (*sub nom.* Brown v. United States) |
| United Telecommunications, Inc. v. Commissioner | 589 F.2d 1383 (1978) | 442 U.S. 917 (1979) |

* Additional cases from the Fifth Annual Tenth Circuit Survey, for which certiorari has been denied, appear at 57 DEN. L.J. 344 (1979).