

# Supreme Court of the United States

## OCT. TERM 1968

In the Matter of:

BERNARD SHAPIRO, Welfare Commissioner  
of Connecticut, et al,

Appellant,

vs.

VIVIAN THOMPSON, et al.

Appellee

Docket No.

33,34  
9 et al

Duplication or copying of this transcript  
by photographic, electrostatic or other  
facsimile means is prohibited under the  
order form agreement.

Place Washington, D. C.

Date October 24, 1968

**ALDERSON REPORTING COMPANY, INC.**

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

# C O N T E N T S

P A G E

1			
2	Oral Argument of Archibald Cox		
	on behalf of Appellers(Resumed)	68	
3			
	Rebuttal Argument of William C. Sennett, Esq,		
4	on behalf of Appellants	99	

\*\*\*\*\*

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

BERNARD SHAPIRO, Welfare Commissioner  
of Connecticut,

Appellant;

vs.

No. 9

VIVIAN THOMPSON,

Appellee.

WALTER E. WASHINGTON, et al.,

Appellants;

vs.

No. 33

MINNIE HARRELL, et al.,

Appellees.

ROGER A. REYNOLDS, et al.,

Appellants;

vs.

No. 34

JUANITA SMITH, et al.,

Appellees.

Washington, D. C.

Wednesday, October 24 1968

The above-entitled matter came on for argument at

10:15 a.m.

1 (The argument was resumed at 10:15 a.m., on  
2 Thursday Morning, October 24, 1968.)

3 MR. CHIEF JUSTICE WARREN: Numbers 9, 33, and 34  
4 on the docket.

5 Mr. Cox, you may continue with your argument.

6 ORAL ARGUMENT OF ARCHIBALD COX

7 ON BEHALF OF APPELLEES

8 (Resumed)

9 MR. COX: Mr. Chief Justice, may it please the  
10 Court, yesterday I sought to show that the classification  
11 made by the one year prior residence requirement between old  
12 residents on the one hand and new residents on the other  
13 not only operates in relation to the fundamental necessities  
14 and rudiments of life, but also that it is utterly unrelated  
15 to any of the avowed purposes of the public assistance laws  
16 because the favored and disfavored are identically situated  
17 as to the extent and kind of their need or the suitability  
18 of the ADC program and parallel programs as a remedy.

19 In the absence of rational relation to some other  
20 other state policy, therefore, that is enough to make, we  
21 submit, an equal protection case in the classic sense of  
22 the distinction between red-headed men or brown-headed men  
23 or any other capricious classification.

24 Now I go on first this morning to point out that  
25 our case is stronger still because we had a situation in

1 which the State has singled out for the purposes of disfavor  
2 and hostile treatment those who exercise the fundamental  
3 liberty of moving to a new residence in pursuance of better  
4 opportunities and a better life or what else they consider  
5 to be an advantage.

6 That discrimination, we say, is not merely  
7 capricious, but it is invidious in the same sense that dis-  
8 crimination on grounds of race or religion is invidious,  
9 and it also operates to deter the exercise of a right which  
10 underlies a number of the provisions of the Constitution.

11 Of course those provisions in turn help to show  
12 that this is an invidious distinction, that is one that our  
13 fundamental constitutional principles condemn.

14 I do want to emphasize that this line of thought,  
15 while it relies on the constitutional provisions dealing  
16 with freedom of migration, brings me back ultimately to the  
17 equal protection clause and to the equal protection clause  
18 cases.

19 I stress that because I think this analysis eases  
20 the Court's problem of decision and makes it unnecessary  
21 to break new constitutional ground in these cases.

22 For example, one doesn't have under these circum-  
23 stances to face up to the question of what exact clause of  
24 the Constitution do you find this in.

25 Equally, the fact that a District of Columbia

statute is involved is not relevant when one is talking about a classification as invidious as this, whereas, technically, it might be of significance if one were relying on Article IV, Section 2, alone or on the privileges and immunities clause of the Fourteenth Amendment.

Again one doesn't have to consider precisely how far Congress is entitled to define or limit the privileges or immunities of United States citizens because certainly again it is subject in its legislation to the due process clause.

Now we find the constitutional recognition or reflection of this basic provision, the constitutional condemnation, underlying condemnation of discrimination between old and new residents in three or four familiar clauses of the Constitution.

The first is Article IV, Section 2, which guarantees that the citizen from any State shall be entitled to the privileges and immunities of the several States.

In *Blake and McCune* this Court pointed out that the underlying thesis of that clause was that a citizen of one state should not be in a condition of alienage when he is within or when he removes to another state.

I suggest the old notion of the Elizabethan settlement laws is that one is in a condition of alienage when he comes to the new community.

1           The commerce clause as interpreted in Crandall  
2 and Nevada in the Edwards case incorporates or reflects at  
3 least to some extent this fundamental notion. Indeed, it is  
4 interesting to recall that while in the Edwards case the  
5 majority opinion of the Court did not consider how far a  
6 state was under an obligation to accord the same benefits  
7 to immigrants as it accorded to older residents, because  
8 that wasn't in front of them, it did point out that the  
9 philosophy of the Elizabethan settlement laws, as the majority  
10 opinion said, is no longer in accordance with the fact.

11           Third, we find this basic notion again reflected  
12 in the privileges and immunities clause of the Fourteenth  
13 Amendment. There was considerable discussion when the  
14 Fourteenth Amendment was under deliberation by the Congress  
15 about the right to move freely from place to place, freedom  
16 of locomotion.

17           I am not aware, Justice Fortas, although I haven't  
18 recently made a detailed search I must confess, of any explicit  
19 mention of going from one state to another. The discussion  
20 clearly did take place in terms of movement, where you went,  
21 and I suppose that, fairly interpreted, that meant going from  
22 state to another.

23           But I am not aware of any explicit mention of this  
24 before the Slaughterhouse case. There in the majority opinion  
25 it is stated with reference to the privileges and immunities

1 clause of the Fourteenth Amendment that one of the rights  
2 is this: It is that a citizen of the United States can, of  
3 his own volition, become a citizen of any State of the Union  
4 by bona fide residence therein, with the same rights as  
5 other citizens of that state.

6 In a sense, of course, this is history, because  
7 the opinion was written within the memory of men who had  
8 been alive and taken part in affairs at the time the Four-  
9 teenth Amendment was under consideration.

10 Finally, I recall to the Court that the guarantee  
11 of liberty in the due process clause has been cited by  
12 such distinguished scholars as Zachariah Chafee, as a source  
13 of the right to move from state to state, and as a limitation  
14 on the power of the Federal Government to curtail that right.

15 In view of the fact that this discrimination not  
16 only is capricious in the sense that I argued yesterday,  
17 but operates to the disadvantage of those who are exercising  
18 a constitutional liberty. But I suggest that a decision  
19 condemning that discrimination would be in accordance with  
20 settled constitutional principles unless, of course, and  
21 I now come to the last point, unless it can be shown to  
22 bear a rational relationship to some state objective other  
23 than that set forth in the legislation, because it is per-  
24 fectly clear that this discrimination does not fulfill any  
25 objective set forth in the legislation.



1 In considering the various justifications that  
2 have been advanced, I would like to start by clearing the  
3 underbrush.

4 There are a number that seem to me one can dispose  
5 of very quickly, and there are others that perhaps require  
6 somewhat further discussion.

7 First, it is said that this one year's delay,  
8 this discrimination, is an aid in budgeting for a subsequent  
9 year. No one has suggested how this aids budgeting, and I  
10 must confess, although I may be wrong, as I have never made  
11 up a welfare budget, I can't see how it would aid budgeting.

12 No one has a census of the people who come in  
13 during a year who may go on welfare which they can later  
14 use as a basis for knowing who will be added to the rolls  
15 for next year.

16 Indeed it is my impression that no one has a census  
17 of the number of people who move into a state in any particular  
18 year, even in. So that the figures that might make the  
19 projection somewhat easier simply aren't available.

20 Second, there are other elements that enter into  
21 the prediction of the size of the welfare rolls, such as  
22 volume of employment, and other things of that kind, that  
23 would overwhelm the significance of this relatively small  
24 figure of the number of people who have become bona fide  
25 residents but haven't been there a year.

1 Finally, I suggest that under Carrington v. Rash,  
2 and similar decisions of this Court, the slight administra-  
3 tive aid and convenience in budgeting, even if it existed,  
4 would not be adequate to justify discrimination as severe  
5 and hostile as this.

6 Second, it is said that this discrimination is  
7 justified because it will prevent people from presenting  
8 fraudulent claims to two or more states. There is absolutely  
9 no showing of any likelihood of this kind of this kind of  
10 fraud. The total year's checks indicat in ADC payments  
11 for all kinds of eligibility run around three per cent.

12 Well, the number of errors in fraud by making  
13 claims on two states would be fantastically small, and I may  
14 add that there are other checks on sources of money which  
15 are made and this would be checked along with that.

16 A way to tell, I think, to illustrate how far-  
17 fetched this argument is, is to suppose that a state would  
18 make it a crime, and I guess it is, to seek welfare in two  
19 jurisdictions, and then to enact a subsection saying, "Whoever  
20 applies for aid within one year of moving into the state  
21 shall be presumed to be committing fraud by seeking payments  
22 from two states."

23 Even a prima facie or rebuttal presumption of that  
24 kind would unquestionably be struck down as arbitrary and  
25 capricious, the same way as in Tot v. United States and other

1 cases of that kind.

2 Finally, on this point, I suggest to you that this  
3 is in principle squarely the kind of thing that Oyama  
4 forbids. There, there was created an arbitrary presumption,  
5 and it wasn't circumventing the California laws with respect  
6 to who may hold agricultural premises and the Court said  
7 that California could not create an invidious discrimination  
8 against American citizens of Japanese descent in order to  
9 deal with a few cases of fraud that might otherwise be in-  
10 volved.

11 Third, it is suggested that this rule provides an  
12 objective test of residence. This is in the District of  
13 Columbia brief, and it was suggested by Judge Holtzoff.

14 I think at this point one has to be very careful  
15 about what he means when he says the requirement of one year's  
16 residence provides an objective test of residence. Residence  
17 under the Social Security laws means presence in the State,  
18 living there, not for a temporary purpose.

19 In other words, it is without the intention of  
20 going somewhere else.

21 Q Suppose he wanted to stay in Massachusetts  
22 six months and live there as a resident?

23 A He would then be a resident there.

24 Q And live in Florida for six months as a  
25 resident?

1           A     Well, it would then be a little hard for  
2 me to think of someone doing that, and still qualifying  
3 for aid to dependant children, Your Honor.

4           Q     You can't laugh at that proposition at all,  
5 because that is a common thing in America, and it pertains  
6 to California and Florida.

7           A     I suggest it isn't a common thing in relation  
8 to the types of people we are talking about here, but in  
9 that event, I would say that --

10          Q     I doubt if you could prove that.

11          A     Well, perhaps I am wrong. But I am prepared  
12 to answer your question.

13          Q     How long must be the residence if a man  
14 claims relief?

15          A     Such a person under our position, and I am  
16 going to answer you squarely, such a person would be entitled  
17 to aid six months in Massachusetts and six months in Florida.  
18 That is squarely the argument that we make.

19               And it seems to me that that is entirely appropriate  
20 that that should be so.

21          Q     That is subject to the right of each State  
22 to take a reasonable time to authenticate the bona fide  
23 residence in the State, and the means test and the various  
24 other things?

25          A     Oh, quite, and to make sure that this is a

1 case that is suitable to the kind of aid that is being  
2 talked about.

3 But once those facts appeared, as Justice Black  
4 states, and also I think they would be most extraordinary --  
5 I don't mean to shrink from answering -- they would be  
6 entitled to aid in both States.

7 Q I know some who do.

8 A The point that I want to emphasize with  
9 respect to this test of residence is that one must ask what  
10 is it that you are trying to test.

11 I think that there lurks behind that expression,  
12 and it seems to me that this came out in Mr. Barton's  
13 argument yesterday, the notion that we are really asking  
14 more permanency than being in the State voluntarily with no  
15 intention of leaving.

16 To the extent that something more lurks there,  
17 then our answer is that requiring something more is in the  
18 arbitrary and capricious classification. To the extent that  
19 this is meant, the justification is alleged as providing  
20 a test of who is a resident in the sense that HEW uses  
21 the term and welfare laws use the term, that is voluntary  
22 presence with no intention to go, then we say again it  
23 isn't a good test. It is utterly arbitrary and capricious  
24 to say that whoever hasn't lived in a State must be presumed  
25 to have an intention of presently leaving the State.

11. 1 We just know that isn't so.

2 And of course there is no better proof that it  
3 isn't so in many, many instances than these records. Certainly  
4 little Shawn Brown, the baby who hadn't been born a year ago,  
5 had no greater intention to leave the District of Columbia  
6 than his mother, and the oldest member of the family who  
7 qualified for the aid.

8 Certainly Juanita Smith, the young woman whose  
9 family for generations had lived in Pennsylvania, and who had  
10 gone away for a few years, and then came back to rejoin  
11 her own family, which had promised to look out for her, can't  
12 be said to have been likely to be planning to leave Pennsyl-  
13 vania just because she had been away for a short time.

14 I mention one other case because it seems to me  
15 to not only bear out this point but illustrates some others.

16 The other plaintiff in the Pennsylvania case was  
17 Jose Foster. She had four children and had been on aid in  
18 Pennsylvania. The reason she left to go to South Carolina  
19 was to take care of some old, aged and sick parents, which,  
20 incidentally, involved a cut in any welfare benefits.

21 After they reached the point where she could no  
22 longer help them, she went back to Pennsylvania. Now to  
23 presume because she hadn't been back a year that she intended  
24 to leave again is, I submit to you, utterly absurd.

25 Again I think if this were stated in the form of a

1 presumption, that it shall be presumed that any person who  
2 hasn't been a resident for a year intends to leave or is a  
3 drifter, one would say of course that is arbitrary and capri-  
4 cious, and it is equally arbitrary and capricious when it is  
5 advanced as a test.

6 I would add two more points, also, although I  
7 think they are unnecessary.

8 It must be remembered that we are dealing with a  
9 statute where there is an elaborate process of verification  
10 with respect to other conditions of eligibility involving  
11 not only elaborate questionnaires, visits to the home,  
12 surveillance in many jurisdictions, checking on references --  
13 if that can be done with respect to other conditions of  
14 eligibility, it certainly can be done with equal ease with  
15 respect to this matter of whether the person intends to  
16 leave.

17 Again I suggest that in cases like Carrington v.  
18 Rash, Oyama v. California, Harmon v. Forssenius, all sustain  
19 our position that this won't do as a justification.

20 Q Mr. Cox, perhaps another peculiarity, or so  
21 it seems to me, is that in these circumstances the State's  
22 payments cease when the person goes ahead with this, by  
23 hypothesis, surreptitious, concealed intention to leave the  
24 State. So that the State's interest perhaps in continuation  
25 of residence may be less than it is in some other circumstances.



3  
1 A That is a point, I confess, Your Honor,  
2 that I hadn't thought of, but it seems to me to be entirely  
3 valid. It does recall to my mind another point, and that is,  
4 of course, the person who does leave the former State, if  
5 this rule can stand, is likely to fall into a gap and not  
6 get welfare anyway.

7 This isn't a matter of retaining your rights in  
8 the place that you left.

9 The last of the arguments that I regard as very  
10 easily brushed aside is the suggestion that the purpose is  
11 to limit assistance to those who have made a contribution  
12 to the community or who have some investment in the community.

13 Well, I don't know how we measure the matter of  
14 contribution or investment in the community. I suggest that  
15 this is really a euphemistic way of expressing the same  
16 discrimination against strangers or outsiders. I don't see  
17 how in the Brown family anybody can say that one of the  
18 children and the mother had an investment in Washington, or  
19 had made a contribution to Washington, and the others hadn't.

20 But remember we are talking basically here about  
21 aid to dependent children and the whole notion of investment,  
22 it seems to me, as I said before, to be simply a euphemism.

23 Q Do you think that sort of consideration might  
24 ever be a constitutional basis for resident requirement for  
25 other purposes? I suppose in thinking about this case you



1 have thought about the impact of a decision that you urge  
2 upon other State residence requirements with respect to  
3 voting.

4 A Yes, we have, with respect to voting and  
5 eligibility for professions which presents a different  
6 problem, and I don't mean by my tone of voice to imply that  
7 they are constitutional. Some of them have been held un-  
8 constitutional.

9 I haven't thought of a case where there would be a  
10 permissible consideration, but it may be that there is one.

11 Q I thought that that was at least one of the  
12 supports reportedly asserted for voting residence requirements --  
13 a knowledge of the community and knowledge of the people and  
14 knowledge of the problem and an investment in the community  
15 and a knowledge about it.

16 A I think I was using investment more in the  
17 sense of what one had contributed to the community and was  
18 not focusing, as you suggest, on concern for the community,  
19 interest in the character of the community.

20 I would certainly agree in the latter case this  
21 might well be a justifying consideration, but I suggest it  
22 is not relevant here because there I don't think one can  
23 use this kind of benefit any more than one may use schools  
24 or fire or police protection as a reward for what people  
25 have been supposedly contributing.

1 I would say the emphasis was on the knowlauge  
2 and familiarity with the problems that you are to express  
3 an opinion on, to choose candidates to deal with, that was  
4 relevant in the voting residence requirement as to be  
5 justified.

6 Q I suppose, also, if you look at this from the  
7 point of view of a right to travel or the right to migrate,  
8 that the denial of welfare benefits for a year could be  
9 considered to be much more of a discouragement or much more  
10 of a burden than the constitutional right.

11 A We would stress that point in addition to  
12 the one which has already been mentioned.

13 Q That goes to the very first point that you  
14 made that this is very basic to life, itself?

15 A It does.

16 Q I haven't quite followed that there is a  
17 right here precisely the same as the right to live where you  
18 please.

19 A Well, I think I have sought to stress as the  
20 basic right, the right to live where you please. It seems  
21 to me that the right to journey, to make a pleasure-swing  
22 around the country or go to Europe raises different problems  
23 and is a lesser right, I would think.

24 In my case, Your Honor emphasizes the point I  
25 should have made more sharply perhaps, our case deals with

1 the right to live where you please, to seek better opportuni-  
2 ties.

3 Q I think this resolves into that instead of  
4 the right to travel.

5 A I agree, and I would urge that that is a very  
6 important aspect of our submission.

7 Q I suppose on the right to vote wherever one  
8 happens to be, there is no distinction as between people  
9 who are temporarily in a community and lived there a long  
10 time, as far as voting for President of the United States  
11 is concerned?

12 A Except that the Constitution, itself, intro-  
13 duces that distinction. It occurred to me, and perhaps it  
14 will occur to Your Honor, that this is rather like the  
15 arguments that were made in connection with the apportionment  
16 cases about the Senate of the United States.

17 The fact is that the Constitution, itself, says  
18 that qualification to vote for local people shall be the  
19 standard of qualification to vote for the President.

20 Now, whether the Congress could change that or not  
21 I am not prepared to say.

22 Q Does that mean that they could have discrimina-  
23 tion and invidious qualifications under that section of the  
24 Constitution?

25 A Oh, no.

1           Q     You base your argument on the fact that this  
2 in discrimination because they don't like people and they  
3 are not of their own, and so forth.

4           A     But I don't think that I can argue that  
5 the equal protection clause repeals the provision of the  
6 Constitution dealing with the qualifications of electors for  
7 the Presidency.

8           The Constitution, itself, says that those shall  
9 be qualified to vote for President shall be those qualified  
10 to vote for the most numerous branch of the State legislature.

11           In terms of that consideration, as suggested in  
12 the colloquy with Justice Stewart, it does seem to me that  
13 there is an argument, and I don't have to either espouse  
14 or reject it, there is an argument not present here that  
15 goes to justify the rationality of the classification for  
16 that purpose, and the other clause about qualifications  
17 for President operates automatically.

18           I think that Your Honor's case, Mr. Chief Justice,  
19 would be a very analogous one, if it weren't for perhaps what  
20 today seems like an odd constitutional quirk, and my answers,  
21 were it not for that quirk, would have to be quite different.

22           Now there are a group of reasons that I want to  
23 lump together because, once again, I think it is very important  
24 to be exact about this in our terminology.

25           It is said in this group of reasons that the State

1 may protect its financial position, that it may deter the  
2 poor from entering the State, and that it may prevent the  
3 movement of indigents into the State for the purpose of  
4 securing welfare payments.

5         Again I think one has to be exact about what he  
6 means. To the extent that this is simply an argument that  
7 it would cost us additional money to give welfare to residents  
8 for less than a year, the answer is that the cost won't  
9 excuse a classification which otherwise violated the Constitu-  
10 tion.

11         A State could say that discrimination against  
12 black mothers and children would save us money. Nobody would  
13 think of advancing that as a justification for the invidious  
14 and hostile classification, or discrimination on grounds of  
15 religion might save money. It would probably save South  
16 Carolina a little bit of money.

17         Q       Or you could take care of every other one in  
18 the alphabet.

19         A       Yes, and ours isn't merely capricious, it is  
20 invidious and hostile. But the point Your Honor makes is,  
21 of course, true.

22         I do think in view of the figures that have been  
23 cited in the Court, however, it might be pertinent for me  
24 to take just a minute to say something about the matter of  
25 cost here, although I don't want to retreat from my position

1 that it is constitutionally irrelevant, in view of the arguments  
2 that the Court might be concerned with.

3 The effect of the deletion of the residence require-  
4 ment obviously will differ very greatly from State to State,  
5 because of the current trend of migration.

6 I must also make it very clear that in my judgment  
7 the figures on this are hard to come by and are not altogether  
8 reliable. I don't want to seem to be saying to the Court  
9 anything more than, "Here is the best indication we have."

10 In Pennsylvania the welfare authorities estimated  
11 that the elimination of the requirement would add one-half  
12 of one per cent in public assistance, chiefly ADC.

13 In point of fact during the period in which the  
14 injunction was operating, and therefore the requirement  
15 couldn't be applied, the increase I am told ran to only  
16 half of that, one-quarter of one per cent.

17 In Connecticut, the figures are somewhat more.  
18 That is a State where Pratt & Whitney and other concerns  
19 advertise very widely all over New England looking for  
20 people to work there, and people are coming into Connecticut  
21 and getting jobs, and then having misfortune. There the  
22 figures seem to be slightly less than 2 per cent. It is 1.7  
23 on one period of time we considered no residence requirement,  
24 and 1.9 on another set of figures.

25 Illinois, our information is that during two months

1 in which the operation of the residence requirement was  
2 stayed, it was something less than 3 per cent of the applica-  
3 tions -- not the people on the rolls, but the applications --  
4 which would be a much lesser figure. It came from people  
5 who hadn't been resident for a year.

6 In the District of Columbia the applications of  
7 people who hadn't been in the District a year during the  
8 past nine months have run in the neighborhood of 3 per cent,  
9 a little over 3 per cent, so --

10 Q How many did you say for the District of  
11 Columbia?

12 A The percentage of new applicants has run to  
13 a little more than 3 per cent.

14 Q I saw somewhere a figure of four hundred  
15 applications of people.

16 A I have the exact figures. It would take me  
17 a minute to dig them out. It is running about one thousand  
18 a year, but this is out of the total new applications during  
19 the year, it is 3 and a fraction per cent.

20 Q Are these figures in your brief?

21 A No, they were put together very recently.  
22 I would be glad to supply them or you can find them in the  
23 morning paper, I believe; when it is not too exact but it  
24 is a general thing.

25 Q You mean there are one thousand new applications



1 a year, and since the suspension of the residence requirement  
2 in the District, one thousand of them have been filed?

3 A Oh, no, many more than one thousand. I must  
4 have misspoken myself. I meant to say there have been 745  
5 applications from those who had not been resident a year  
6 in the first eight months of 1968.

7 Q And this represents 8 per cent of all new  
8 applications?

9 A This is about 8 per cent of all new applica-  
10 tions during that period, and of those 745 about half were  
11 approved.

12 Now if you move to another State, Maryland, the  
13 reported figures there are away down in the order of something  
14 around 2 per cent.

15 Q Do you have figures for Florida and California?

16 A I don't have any for those States. I doubt  
17 very much that there are any, because remember these are  
18 figures that have been hastily put together in an effort  
19 to make a guess as to what the impact of this would be.

20 Q That would be one of the poles. If you  
21 take the other pole, California, Arizona, and some of the  
22 western States, and Florida, you will find the opposite  
23 condition now.

24 In my own State, in California, when I came from  
25 there fifteen years ago, the State had twelve million people.



1 It has twenty million people today, and there has been an  
2 influx of people at the rate of 1500 a day, presumably for  
3 permanent residence ever since the day I left.

4 A We are talking, I think, about two different  
5 sets of figures, Mr. Chief Justice.

6 Q I know they are not all indigents, I don't  
7 suggest that, but most of them come looking for jobs and  
8 they don't have jobs when they come.

9 A I think Your Honor would find that in terms  
10 of people who end up with ADC care, it is the District of  
11 Columbia and New York City that would be the high States,  
12 because there the flow of migration of the people who end  
13 up with ADC care is, for the most part, from the rural  
14 areas, and very largely from the South into those areas.

15 Q New York population and New England popula-  
16 tions is not increasing.

17 A But this shows, I think, or I suggest to  
18 you that the explanation is that the general movement of  
19 population is not the same as the movement of the population  
20 that ends up, as I put it, on the ADC rolls.

21 I can't help suggesting that this has something  
22 to do with the character of this discrimination against new  
23 residents.

24 The story from the New York Times that was distributed  
25 by Counsel for the Appellees yesterday has as its headline,

1 "South Fostering Relief Rise Here." And I think the implica-  
2 tion or the effect of "South Fostering Relief Rise Here",  
3 the connection between this and the residence requirement in  
4 many jurisdictions is quite clear.

5 Q Mr. Cox, if you had one thousand units of  
6 some kind of relief to put out to twenty thousand people,  
7 would you say it was invidious discrimination to use as  
8 one of the divisions, the division between the newcomers  
9 and the oldtimers?

10 A Well, I would think that that was a different  
11 case, but my answer would be the same. In other words, I do  
12 recognize the difference between a resource that is fixed  
13 and there can be only so many, and I can imagine cases  
14 where that might be a permissible consideration.

15 But my answer as applied to Your Honor's case  
16 would be just the same as here.

17 Q If you had one thousand units throughout  
18 the year, you would preserve it for the people of the State?

19 A No, we are getting very close to Toomer v.  
20 Witsell. And when you say for the people of the State,  
21 Your Honor is suggesting the distinction that we aren't  
22 concerned with. You are suggesting a distinction between  
23 residents and non-residents. We are saying you may not draw  
24 a distinction between two kinds of residents.

25 But the State's resources and keeping the State's

1 natural resources within the State, it seems to me, to be a  
2 somewhat different problem.

3 I think our case is more like the case put by  
4 Justice Douglas yesterday of saying we are going to exclude  
5 the children of newcomers from the school. But the point  
6 I want to make --

7 Q Or out-of-state tuition.

8 A I think out-of-state tuition differs in a  
9 number of respects. In the first place if you are dealing  
10 not with one of the basic necessities of life, a college  
11 education, important as it is, is not in that classification.

12 Second, you are dealing with a group of people --

13 Q Why isn't it as necessary?

14 A I think whether you preserve the family,  
15 or whether people have food, shelter over their head, or  
16 whether they go free, is more fundamental and more important  
17 to human existence than whether one has the benefit of a  
18 college education.

19 Q Perhaps it is more that way, but is it  
20 constitutionally different, if both of them are a right?

21 A I suggest it may be, although I don't have  
22 to decide the college education case. Then I think there  
23 are two other factors in the college education case.

24 Q You do have to consider what ramifications  
25 are involved.

1           A       I suggest that that is one possible dis-  
2     tinction, and an entirely tenable one. I think the Constitu-  
3     tion is concerned with differences of degree.

4           I think a second possible distinction is that when  
5     you are talking of college students, you are talking of people  
6     who go into the State. It is rather like the non-resident  
7     hunter that Justice White and I were describing. The student  
8     goes in simply for the purpose of picking up this education.

9           Q       Does he necessarily, though, and suppose he  
10    says, "I am coming to the university of this State, and I  
11    expect to live here the rest of my life"?

12          A       If he has such a case, and there are students  
13    who have such a case, then I think that he may well be able  
14    to attack successfully the discrimination against him,  
15    and there are cases cited in our brief, including a case in  
16    Iowa, which holds that that kind of discrimination is un-  
17    constitutional.

18          But that is different from the man who goes to  
19    Berkeley, or UCLA, or Harvard solely for the purpose of  
20    getting the education.

21          Q       Before you get too far away from it, it  
22    would be very helpful to me if you would furnish us with a  
23    memorandum setting forth the figures that you gave us, as  
24    to the increase that occurred in these various jurisdictions.

25          A       We will where we have them. They are hard to

1 come by.

2 Q Whatever you have, would you give us a  
3 memorandum giving us the basis for that?

4 Q Will you try to put in some States like  
5 California, Arizona, and Florida, please? I would think  
6 that they would be as available as those of the States you  
7 are speaking of.

8 A The availability of the figures that we are  
9 speaking about, Mr. Chief Justice -- we will try to get them --  
10 depends on there having been an injunction staying the  
11 application of the resident requirements and then on the  
12 people having kept the figures in the welfare agency.

13 Q Mr. Cox, I have come across statements to  
14 the effect that some of these States that have fair employ-  
15 ment sections, the far western States, the children of migrants  
16 are not allowed into the public schools because they don't  
17 satisfy the residence requirement, and also the same sort  
18 of statement with respect to access to State health facilities.

19 Assuming that that is so, is that a conceptual  
20 problem?

21 A I would think the genuine migrant presented  
22 a different problem, that here we are talking about someone  
23 who is not moving from place to place. I don't mean to  
24 suggest, Your Honor, that there isn't ground for a constitu-  
25 tional attack in those cases, but I do suggest that at least

27 1 from the standpoint of what we are dealing with --

2 Q But a negative answer here would indicate  
3 a fortiori a negative answer in those cases. If you were  
4 to lose these cases, would that indicate a negative answer  
5 to the migrants who are denied an opportunity to go to school?

6 A I would think clearly it would enable  
7 Connecticut to say that it would not admit to the schools  
8 in Greenwich and other places near New York the children of  
9 people who move out from New York to Greenwich because there  
10 are better schools there.

11 Q You have been talking about education. Some  
12 of them require you to have residence.

13 A I wonder if that isn't related to the school  
14 system which I am familiar with, where perhaps in my town I  
15 don't think well of the public school, and I want to send my  
16 child to the public school in the next town. There I think  
17 another factor comes into play, and that is in that case the  
18 payment may be regarded, and there is another application of  
19 the college case, as roughly related to the amount of con-  
20 tribution that I and my family would make directly or in-  
21 directly in taxes to the schools in this other town, and  
22 I ought to do something roughly equal if I am going to send  
23 my child there.

24 Again, of course, it is a distinction between  
25 residents and non-residents, and not what we have, a

-1 discrimination between residents.

2 Since my time is jumping ahead, we have spent so  
3 much time on the figures.

4 Q If a person lives nine months a year in one  
5 area, and I pay to send my children to the school, more than  
6 other people -- with them is six months a correct rule?

7 A I think perhaps.

8 There is one point I would like to make, jumping  
9 ahead. We argue two more things with respect to this.  
10 With respect to poor people moving into the State, first,  
11 there is no evidence that people move into States for the  
12 purpose of taking advantage of welfare requirements, and if  
13 Your Honors will look at this newspaper story that was given  
14 to you by Counsel for Appellees, you will see that the main  
15 point it stresses is that there is no evidence. People do  
16 not move for that purpose.

17 Q Do you wish more time?

18 A I hoped I would have had time to develop  
19 the figures. All of the evidence we have tends to show that  
20 there has been very little movement for this purpose, but  
21 the important point to emphasize, I think, is that the  
22 Appellees who invoke this justification have nothing to  
23 support them.

24 I suggest that in dealing with a discrimination  
25 with respect to the fundamental necessities of life, and



1 it runs against the stranger who is likely to be the victim  
2 of invidious treatment, and in dealing with a discrimination  
3 against those who are outside the State and who are, because  
4 of their poverty, not fully represented in the political  
5 process, that something more than common assertion is neces-  
6 sary to show that people go into the State for this purpose.

7 I would like, if I may, to say two more sentences.

8 Q You may have five minutes more.

9 A Thank you very much, Mr. Chief Justice.

10 The additional point that I would make is that,  
11 while I think no discrimination can be justified on the  
12 assumption that the higher relief payment operates as a  
13 magnet, and I would stick on that ground, I do suggest to  
14 the Court that even if it be assumed for the purposes of  
15 argument that a State might deal with this problem in an  
16 appropriate way, that this way of dealing with it is un-  
17 constitutional because it is excessively broad, and not the  
18 measure least restricted with the exercise of constitutional  
19 liberty.

20 I point out it is excessively broad in a number  
21 of respects.

22 First, it applies the one-year-residence requirement  
23 to people who have come from States with lower or equal  
24 benefit levels, even to people who have come from States with  
25 higher or equal benefit levels. And indeed one finds the



1 residence requirements more uniform in the States that have  
2 the lowest benefit level.

3 Second, it applies to people who come for reasons  
4 that demonstrably are unrelated to the benefit level, and  
5 the fact of these cases are the best illustration of that.  
6 Five out of seven were coming back where they had lived  
7 before. Another five out of seven were coming to join families,  
8 and of course most people move for hoped-for jobs.

9 Q Do you recall that the Secretary of HEW  
10 recently proposed that there be a national fixed amount,  
11 the same in every State, with perhaps variations for differences  
12 in the cost of living?

13 A I think that is true. There is no doubt  
14 it is a political matter or policy matter, a uniform payment  
15 would be highly desirable.

16 Q The Secretary of HEW, I believe, has made  
17 a tentative proposal for discussion of that.

18 A Of course, that in itself would eliminate  
19 any problem of this kind.

20 The third respect in which I suggest that this  
21 particular requirement is demonstrably too broad is that in  
22 addition to the other two, if one really were concerned  
23 with this, it could be cured by saying that the newcomer  
24 shall be entitled to receive only the benefits of the State  
25 from which he came.

1 Q Have you really thought that through?

2 A I think it is thoroughly undesirable.

3 Q That is at the top of page 32 of your brief,  
4 and I must confess I was quite shocked when I read that  
5 sentence, not emotionally shocked, but it just seems to me  
6 that that would have extraordinarily difficult constitutional  
7 problems, the same kind of equal protection problems.

8 A If the problem of dealing with people who  
9 come from another State is a justification for classifications  
10 which would otherwise be impermissible, then I suggest that  
11 it will justify the other kind of classification that you  
12 call attention to and is not as severe as the one that is  
13 being imposed.

14 Q Your argument is that if that were a real  
15 purpose, it would be unconstitutional in a different way?

16 A I think that that is what it comes to, but  
17 if I assume the reverse of my basic contention, I do suggest  
18 seriously that this is on the whole a less restrictive measure  
19 that raises no other constitutional problems.

20 I take advantage of the five minutes just to call  
21 the Court's attention to one other fact, although I have  
22 really completed my argument. There was talk yesterday  
23 about the welfare freeze that takes effect with respect  
24 to ADC aid July 1, 1969, unless it is put off again, as it has  
25 been before.

1 Without going into all of the complexities,  
2 Congress made two exceptions to that. One was to cover  
3 people added to the rolls because of the decision of this  
4 Court in Smith and King, or King against Smith.

5 Second, it provided an exception to take care of  
6 the residence cases in the event that the judgments of the  
7 District Court should be affirmed. So that there is no prob-  
8 lem of the operation of the freeze, and the decision in  
9 these cases created a need for new legislation.

10 Also, I don't think really that would justify a  
11 violation of the Constitution.

12 Thank you.

13 MR. CHIEF JUSTICE WARREN: General Sennett.

14 REBUTTAL ARGUMENT OF WILLIAM C. SENNETT, ESQ.

15 ON BEHALF OF APPELLANTS

16 MR. SENNETT: Mr. Chief Justice, and may it please  
17 the Court, if I understand correctly the entire scope of  
18 the argument which has been presented on behalf of the  
19 Appellees in this case, it is to end finally and completely  
20 for all purposes really residency as a distinction capacity  
21 whereby the States can determine who can and who cannot  
22 qualify in certain areas.

23 I think that what has been suggested to this Court  
24 is that residency for purposes perhaps of voting, residency  
25 as a condition before a person may file a complaint for

1 divorce, residency as a condition whereby certain students  
2 pay tuition to public schools and universities and certain  
3 do not, perhaps even residency requirements to the extent  
4 that a State has a legitimate interest in knowing who is  
5 going to be a hunter and who can operate an automobile in  
6 the State are to be now ended.

7 That certainly is the logical conclusion of the  
8 argument which has here been presented.

9 Q You are talking about residency or are you  
10 talking about the duration of residency?

11 A That is right, and duration of residency  
12 has been an historic basis whereby the States have been  
13 able to determine who can and who cannot participate and the  
14 extent that they can participate in activities within the  
15 State.

16 Q Mr. Attorney General, I gather you say that  
17 in Pennsylvania, the so-called residency requirement says  
18 it is only if the person resided there for one year, and  
19 it means that a person has to become a resident in the  
20 sense of not intending to leave, and he has to remain in  
21 that condition for a year. Is that the meaning of the  
22 Pennsylvania law?

23 A I think that the Pennsylvania law, as does  
24 the Federal statute, suggests that there is residency and  
25 there also is a year requirement. I believe that is right.

1 Q You could be there a year and still not  
2 receive benefits?

3 A I suppose under certain circumstances.

4 Q You have to be a resident?

5 A If it were determined that you were not a  
6 resident, I would say that certainly the administrators  
7 of the Federal and State programs would be justified in coming  
8 to the conclusion that a person who had been there a year  
9 and in almost all circumstances would be a resident.

10 Q A person could prove he is a resident and  
11 he is still not entitled to benefits?

12 A If he has not resided in the Commonwealth  
13 for a year.

14 Q I gather the justifications for the Pennsyl-  
15 vania law are primarily relating to limiting the necessary  
16 outlay for ADC and it has nothing to do with checking  
17 residency and things like that?

18 A I think the primary purpose for which the  
19 law was passed -- and I think this is one of the things that  
20 the argument which has been presented by the Appellees has  
21 not mentioned at all actually -- what is the purpose, or  
22 what was the purpose, legislative purpose for enacting these  
23 welfare statutes in the first place? Was the legislative  
24 purpose simply to give out money? It is not. The legislative  
25 purpose as is spelled out in the Pennsylvania law is of course

1 to encourage self-respect, self-dependency, and the desire  
2 to motivate the individual to be a good and useful citizen  
3 in society.

4 It is to encourage him to go to work, and not --

5 Q Why wait one year?

6 A That is the judgment which both the Congress  
7 and the legislatures of the States have made, that one year  
8 is an adequate time in order to determine this.

9 Q General, really, in terms of the legislative  
10 history of the Pennsylvania law, would you say that the  
11 primary purpose of the one-year requirement in Pennsylvania  
12 was to avoid the burden that the in-migration of indigents  
13 created on the treasury of the State?

14 A I don't think I would admit that that is the  
15 primary purpose.

16 Q I am not asking you what you would admit,  
17 but what does the legislative history add up to?

18 A I suggest to the Court that the primary  
19 purpose is what I have just indicated, that the legislature  
20 has determined that there should be this welfare program.

21 Q I am asking about the one-year limitation  
22 only, what is the purpose of the one-year limitation?

23 A The purpose is to encourage the individual  
24 who comes into Pennsylvania to be a citizen and contribute  
25 to the society of the State, to contribute to the economy of

1 the State, and to become a permanent part of that State's  
2 economy and social life.

3 Q For one year?

4 A Yes, that is what the legislature has  
5 determined.

6 Now, on the one hand it is admitted that the States  
7 apparently could adopt or pass legislation which would  
8 allow them a reasonable time to determine whether or not  
9 a person is a resident -- reasonable time. What is a  
10 reasonable time?

11 Is this Court now going to state that a court  
12 could have a reasonable time to determine residency and  
13 that that reasonable time might be three or four months but  
14 not one year, in the face of the almost unanimous judgment  
15 of the legislatures of forty States and of the Congress that  
16 one year --

17 Q Is there anything anywhere in the literature  
18 that indicates that it takes a year to determine the bona  
19 fides of the claim of residence? This is a new way to hear  
20 the argument, and it is the first time that I have heard  
21 this one. Are you suggesting that the justification for  
22 the legislation is that it takes a year to check the bona  
23 fides of non-residents?

24 A On the one hand it is admitted that the States  
25 should have a reasonable time within which to determine



37 1 whether or not a person is a resident, and they admit that.  
2 But on the other hand, it is unreasonable, capricious and  
3 arbitrary for the States to say because a person hasn't been  
4 in a year that welfare payments can be denied.

5 I think that is an inconsistent position. That  
6 inconsistency should not be the basis for this Court's  
7 determination that the statute is unconstitutional.

8 Q The form of your law seems to assume the  
9 responsibility of determining residency if more than a year,  
10 because you have to stay there a year, and so before the  
11 term starts to run, you are a resident. I thought you indi-  
12 cated that this year was not for the purpose of some adminis-  
13 trative aid in determining residency, but really had a sub-  
14 stantive purpose of encouraging people to go to work.

15 A That is right. The only reason I am mentioning  
16 that is to show that in my judgment it is inconsistent on  
17 the one hand to say that the State should have a reasonable  
18 time, and on the other hand to say that a one-year is  
19 completely arbitrary and capricious.

20 But I do think it is important to emphasize that  
21 the States do have a legitimate purpose in encouraging  
22 people to participate in the community, and certainly the  
23 legislatures in furthering that have determined that an  
24 individual should be in the society for a year in order to  
25 fulfill that particular purpose.



1           That is a purpose in my judgment which goes beyond  
2 the other purposes which have been mentioned here today.

3           Q     Might I ask you how this money has been  
4 raised in Pennsylvania?

5           A     Through the general appropriation raising  
6 measures. It is a part of the general budget.

7           Q     It is based on income tax?

8           A     We have no income tax. We have a general  
9 sales tax, and a corporate income tax, and estate taxes,  
10 but this is a part of the general fund budget which is raised  
11 in the general revenue raising measure of the State.

12          Q     On a year-by-year basis?

13          A     Yes, one year at a time, our budget is  
14 for one year at a time.

15          Q     When is that amount fixed?

16          A     The amount is fixed, for example, for the  
17 fiscal year, which begins July 1, 1969, the amount is fixed  
18 by the General Assembly in the early part of 1969 when it  
19 approves the budget submitted by the Governor, generally  
20 runs a month or so, or maybe two to three months ahead of  
21 the beginning of the fiscal year. It is not a very long  
22 time.

23          Q     It is based on residence in the State?

24          A     Yes.

25          Q     Of people who own property within the State?

1 A Yes.

2 Q It is payable when?

3 A It is payable currently.

4 Q What part of the year?

5 A Well, since we don't have a time -- property  
6 taxes are payable at different times throughout the year,  
7 depending upon the counties in which you reside. There is  
8 no State real property tax as such. There is a personal  
9 property tax and corporate income tax payable, of course,  
10 in the year in which the budget is determined.

11 The corporate income tax is due quarterly, it is  
12 paid quarterly the same as Federal income tax returns are  
13 paid quarterly.

14 Q In advance, are they?

15 A Yes, in advance.

16 Might I also suggest to the Court that in order  
17 to strike down the statutory determination of the legisla-  
18 tures in these cases, it is going to be necessary, as I  
19 indicated, to strike down Section 402(B) of the Social  
20 Security Act.

21 I refer the Court to *Simpkins versus Moses Cohn*  
22 *Memorial Hospital*, in which this Court denied certiorari,  
23 but in which the Circuit Court had under consideration State  
24 regulations and a Federal statute, and the Federal statute  
25 had to do with providing by the Federal Government of

1 Hill-Burton funds for hospitals in the States.

2 The Federal statute together with the State statute  
3 and the regulations authorized separate but equal hospital  
4 services, and the Court declared the Federal statute un-  
5 constitutional under the Fifth Amendment, citing *Bolling*  
6 *versus Sharpe*, and of course declared the State statute and  
7 regulations unconstitutional under the Fourteenth Amendment.

8 But again that was a discrimination case based  
9 upon race, and I mention the case because I submit it is  
10 authority for the proposition that where we have, as in this  
11 case, a Federal statute which directly authorizes residency  
12 requirements, that it would be necessary for this Court  
13 not only to strike down the legislation of the Commonwealth  
14 of Pennsylvania, but also of the Federal Congress.

15 Q Mr. Attorney General, did I understand you  
16 correctly, that ten States do not have it as of now?

17 A The last figures that I saw, Mr. Justice  
18 Marshall, were that forty States have residency requirements.

19 Q And ten do not?

20 A And I believe that would be correct.

21 Q And that is perfectly legal, is that right?

22 A Certainly.

23 Q So that if we say the other forty are in the  
24 same category as the ten, we don't have to touch the statute?

25 A I don't see how it would be possible for

1 this Court to say that a State cannot have residency require-  
2 ments without declaring the statute unconstitutional.

3 Q The statute doesn't require it. Does the  
4 statute require it?

5 A Our judgment is that the Pennsylvania  
6 statute certainly prohibits, as does the Federal statute,  
7 certainly prohibits granting of welfare if the residency  
8 requirements are not met.

9 Q Is it your position the Federal statute  
10 requires the person to have a one-year residence?

11 A No.

12 Q Why would you have to attack the statute  
13 as far as past statute is concerned?

14 A Because the Federal statute specifically  
15 authorizes Pennsylvania to have a residency requirement.

16 Moreover, it requires the administrator to accept  
17 an aid program in which a residency requirement is included  
18 and requires them to disburse money.

19 Now, certainly if a residency requirement is not  
20 to be allowed, the Court has to meet the mandate of that  
21 statute, because the administrator no longer can do what he  
22 is now required to do by the statute.

23 Q I am talking about the State of Pennsylvania.  
24 Cannot this Court say that as to the statute of the State  
25 of Pennsylvania, you may not put in a one-year requirement

1 and you may put in a legitimate requirement? And I don't  
2 see where we have to even mention the Federal statute.

3 A Well, of course, there is no escaping the  
4 Federal statute when it comes to the District of Columbia  
5 case, and it seems to me that the Congress in the District  
6 of Columbia case has manifested its intention, has clearly  
7 authorized residency requirements in the District of Columbia  
8 case, and so the two statutes are, therefore, analogous,  
9 the Social Security statute, 402, carries that same provision  
10 into effect for all of the legislatures of all of the States.

11 Q In the District of Columbia case, you could  
12 hold the statute unconstitutional and still leave the other  
13 one. Why do we have to get to it?

14 A Well, it is our position that if the Congress  
15 has spoken for the District of Columbia and for all of the  
16 States in this manner, the Court cannot escape coming to  
17 grips with the Federal statute just by saying that the  
18 States have done something wrong.

19 The States have only done what the Congress said  
20 they could do in the first instance.

21 Q What is important to you, or why is it impor-  
22 tant to come to grips with the Federal statute?

23 A Because I think the standard is different  
24 between the Fourteenth and the Fifth Amendments .  
25 I think first of all --

1           Q     Isn't really the point that you are making  
2 that Congress itself has demonstrated what it thought was  
3 consistent with the Constitution?

4           A     That is right.

5           Q     You can make that without holding the Federal  
6 statute in doubt. The Federal statute contains a standard  
7 of judgment. You can still say that Congress has made a  
8 judgment.

9           A     I think that is right, and I think that you  
10 can make that, but I also think that it is a support to our  
11 case to say for this Court, first of all this Court  
12 historically has said it will give greater deference to  
13 acts of the Congress, and secondly, I think the test as  
14 to discrimination is higher in a Fifth Amendment situation  
15 than in a Fourteenth Amendment case.

16                 Finally, just let me say that as we point out in  
17 the very last few pages of our brief, that the logical re-  
18 sult of what Appellees ask this Court to do is to end all  
19 type of discrimination in all types of welfare statutes.

20                 Remember, all of the statutes that we mentioned  
21 yesterday, with regard to all types of welfare programs,  
22 have residency requirements therein.

23                 In addition, is this Court now prepared to establish  
24 that welfare really is a right, and that in making a program  
25 to carry out the distribution of that right as citizens there

1 can be no discrimination at all, the persons under 65 who  
2 are not blind or disabled who do not belong in families  
3 with dependent children but are frequently in dire need,  
4 must the States now provide a welfare for them?

5 What is the result of ending this type of discrimi-  
6 nation?

7 I suggest that the entire welfare program which  
8 has been adopted by the States and the Federal Congress does  
9 have discrimination included therein. We don't give welfare  
10 except if you happen to meet the particular requirements,  
11 if you happen to be blind or disabled or over 65. But what  
12 about the people who are not?

13 Is this Court now prepared to say that the welfare  
14 right must be extended to everyone without any discrimination  
15 whatsoever?

16 I don't think that the Court has ever gone that  
17 far. I am sure it hasn't. I suggest it will not do so in  
18 this case.

19 Finally, I direct the Court's attention to  
20 Katzenbach versus Morgan in which this Court upheld Section  
21 4(E) of the Voting Rights Act, and struck down the New York  
22 statute. But at the same time admitted that Section 4(E)  
23 which referred to American flag schools, was in itself  
24 discriminatory. Nevertheless, it was a valid exercise of  
25 legislative prerogative.



1           Q       Could I ask you -- I still don't under-  
2 stand -- do I understand that this position rests on the  
3 desire to encourage people to work rather than to save  
4 money?

5           A       I think it rests on both grounds. In other  
6 words, we have spelled out that one of the legitimate purposes  
7 of the Pennsylvania statute is the budgetary requirement  
8 that limited resources are available, and these can only be,  
9 should only be distributed in a certain way, and the budgetary  
10 requirements of the Commonwealth, in order for us to determine  
11 how much money is going to be available for welfare, that  
12 is also a legitimate purpose.

13           Thank you.

14           (Whereupon, at 11:25 a.m., the above-entitled  
15 argument was concluded.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25