

Supreme Court of the United States

LIBRARY

Supreme Court, U. S.

DEC 1 1970

OCTOBER TERM, 1970

In the Matter of:

Docket No. 27

----- X
 :
 GLADYS BODDIE, et al., :
 :
 Appellants :
 :
 vs. :
 :
 CONNECTICUT, et al., :
 :
 Appellees :
 :
 ----- X

RECEIVED
 SUPREME COURT, U.S.
 MARSHALL'S OFFICE
 DEC 1 9 59 AM '70

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 November 17, 1970

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

TABLE OF CONTENTS

	<u>ARGUMENT OF:</u>	<u>P A G E</u>
1		
2	Arthur B. La France, Esq., on behalf of Appellants	2
3		
4	Raymond J. Cannon, Assistant Attorney General of Conn., on behalf of the Appellees	19
5		
6		
7		
8	* * * * *	
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

)	
GLADYS BODDIE, ET AL.,)	
)	
Appellants)	
)	
vs)	No. 27
)	
CONNECTICUT, ET AL.,)	
)	
Appellees)	
)	

The above-entitled matter came on for argument at 1:30 o'clock p.m. on Tuesday, November 17, 1970.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

ARTHUR B. LA FRANCE, ESQ.
 College of Law
 Arizona State University
 Tempe, Arizona 85281
 Attorney for Appellants

RAYMOND J. CANNON,
 Assistant Attorney General,
 State of Massachusetts
 30 Trinity Street
 Hartford, Connecticut 06115
 Attorney for Appellees

P R O C E E D I N G S

1
2 MR. CHIEF JUSTICE BURGER: We will hear argument in
3 Number 27: Boddie against Connecticut.

4 Mr. La France.

5 ORAL ARGUMENT BY ARTHUR B. LA FRANCE, ESQ.

6 ON BEHALF OF APPELLANTS

7 MR. LA FRANCE: Thank you, Mr. Chief Justice, and
8 may it please the Court: I am a counsel for the Appellants in
9 this proceeding, which involves a direct appeal from the Dis-
10 trict Court for the District of Connecticut where the Three-Judge
11 panel dismissed Appellants' complaint.

12 Appellants had alleged that they are welfare
13 recipients who seek to divorce their husbands in the courts of
14 Connecticut, but could not afford to pay the court costs imposed
15 by the State of Connecticut, of roughly \$60.

16 They further allege that the Connecticut Court
17 officials had refused to waive those costs. Appellants sought
18 an injunction on the basis that the fee statute was unconstitu-
19 tional, requested the District Court to order the Connecticut
20 Courts to accept Appellants' divorce papers for filing and to
21 arrange service of process.

22 Q When were these papers originally filed;
23 approximately?

24 A At the end of March in 1968, Your Honor.

25 Q From March of '68 until now I suppose we must

1 assume they have not been able to accumulate \$60?

2 A That is correct with at least five of them,
3 Your Honor. As to two of the original nine plaintiffs, their
4 participation in this proceeding has been withdrawn.

5 Before appearing here today I asked one of the
6 people attached to the Neighborhood Office where I was
7 formerly employed, to check with the Appellants to make certain
8 that they are, in fact, still interested in this proceeding.
9 Because of the shortage of time, only four of the remaining
10 seven were contacted. They are still married, after a fashion
11 and still, emphatically, undivorced, and still unable to raise
12 the fees necessary to initiate a divorce proceeding in
13 Connecticut.

14 Q How much of a showing have they made with
15 respect to their indigency, if you wish to call it that, and
16 second: has any showing been brought up to date from March of
17 1968 until now?

18 A With response to the first, or in response to
19 the first question, Your Honor, the showing which was submitted
20 to the courts of Connecticut and to the District Court, con-
21 sisted of affidavits which appear in the appendix in this
22 Court indicating their family situation and income situation
23 and economic responsibilities of the Appellants, and we would
24 argue clearly establishing indigency at that time.

25 Now, we have never had an evidentiary hearing on the

1 issue of indigency because this case was resolved in the
2 District Court on the pleadings and for the purpose of this
3 appeal and for the purposes of the District Court, indigency
4 was conceded.

5 At the present time there is nothing before this
6 Court, updating that showing of some two-and-a-half years ago.
7 I suppose if this Court were to hold in favor of the Appellants
8 a remand would be appropriate and at that time as to any of
9 the Appellants in the case, the state would have an opportunity
10 to challenge their indigency.

11 It is Appellants' contention that the conduct of the
12 Appellees has denied them due process rights, specifically and
13 particularly with respect to the rights to petition for re-
14 dress of grievances. This is a right which appears in the
15 First Amendment; is incorporated into the Due Process Clause
16 of the 14th Amendment, as reflected in decisions of this Court
17 such as N.A.C.C.P. versus Button, the United Mine Workers
18 versus Illinois decision; Railway Trainmen versus Virginia.

19 The right to petition, as this Court has recognized,
20 is a fundamental right. As long ago as Chambers versus
21 Baltimore and Ohio Railway, this Court said that the right to
22 sue and defend in the courts is the alternative of force. In
23 an organized society it is the right conservative of all other
24 rights. It lies at the foundations of orderly government.

25 Since this case was argued last year, two decisions

1 of this Court have been rendered, which I feel bear upon the
2 position of the Appellants, at least with respect to their
3 due process argument. I refer to Sniadach versus Family
4 Finance and Goldberg versus Kelly.

5 Essentially, both of those cases held that before
6 the property interests of a citizen can be impaired or affec-
7 ted by state action, a hearing must be afforded. The Appel-
8 lants seek that very same hearing and yet their position is
9 more critical than that of the position of the Appellants in
10 Goldberg versus Kelly and in Sniadach, because in this instance,
11 not only have the Appellants been denied a prior hearing, which
12 was the issue in Sniadach and Goldberg, but they have been
13 denied any hearing. They have simply been denied the oppor-
14 tunity to seek a divorce in the courts of Connecticut.

15 For this reason Appellants maintain that the rights
16 to due process have been denied. Of equal importance, is the
17 other aspect of our argument which relates to the right to
18 equal protection as guaranteed by the 14th Amendment to the
19 United States Constitution.

20 As long ago as 1941 Mr. Justice Jackson wrote, in
21 Edwards versus California: "The mere state of being without
22 funds is a neutral fact. Constitutionally an irrelevance, like
23 race, creed or color." More recent decisions of this court
24 have indicated that poverty, likewise is a suspect criterion
25 and when a state discriminates among its citizens upon the

1 basis of poverty that it must make the same showing to justify
2 that discrimination as would be required if the discrimination
3 were racial.

4 Q Mr. LaFrance, let me follow through a little
5 bit on your equal protection argument. Suppose, instead of
6 wanting a divorce, your clients wanted to get married, and
7 the marriage license were \$3. Would you say that equal pro-
8 tection demands that they be given the marriage license with-
9 out payment of a fee?

10 A I would, Your Honor, if the demonstration were
11 made that in point of fact they could not afford that fee. And
12 the reason is simply this: although a dog license, for example,
13 may not affect a matter of constitutional import, this court
14 has said that marriage and procreation are basic civil liber-
15 ties of man and I refer to Loving versus Virginia; Skinner
16 versus Oklahoma and Griswold versus Connecticut.

17 And so the Appellants' position would be that
18 whenever a fee is attached to a state franchise of activity
19 which is of constitutional magnitude, then that fee must be
20 raised on behalf of an indigent.

21 Q Well, then you draw no distinction between the
22 need for a divorce and the desire to marry?

23 A That is, within limitations, correct. We are
24 primarily concerned with -- particularly concerned about di-
25 vorces in this case because it carries with it the right to

1 marry, or remarry, I should say; the right to procreate with
2 someone other than the present spouse so that in the context
3 of this case, divorce and remarriage are very closely linked.

4 Q And does your record show in any that remarriage
5 was contemplated by the parties, or any of them?

6 A No, it does not, Your Honor. I believe the
7 structure of Connecticut and of most states is such that
8 divorce carries with it the right to remarry.

9 Q Then let me ask the next question which you indicated:
10 can you carry your Equal Protection Clause to a
11 fishing license or a dog license?

12 A No, I would not.

13 Q And you draw the line then where?

14 A I draw the line with respect to constitutionally
15 protected interests. For example: we are here not talking
16 simply about divorce; we're here talking about the right to
17 have access to the courts.

18 The First Amendment speaks about this specifically.
19 It says nothing about fishing licenses or dog licenses. You
20 asked me a moment ago about marriage. This Court has said
21 that marriage is a basic civil liberty. Taking that statement
22 as a given and accepting it, then I would argue further that
23 conditioning a basic civil liberty on the ability to pay for
24 it is an impermissible state regulation of constitutional
25 rights.

1 Q And you wouldn't put the right to fish in that
2 lake of Connecticut, as a civil liberty right, if there are any
3 lakes in Connecticut with fish left in them?

4 A There are some. I would say that it is a
5 right. I suppose the distinction which becomes important is
6 the distinction, let us say, between Shapiro versus Thompson
7 on the one hand and Williams versus Dandridge on the other.

8 In Williams versus Dandridge maximum grants were
9 upheld in welfare cases by this Court. In Shapiro versus
10 Thompson, in welfare cases residency restrictions were stricken
11 down. The difference was not that there weren't rights or
12 interests in both cases, but that the right in Shapiro versus
13 Thompson was deemed to be a constitutional right: the right of
14 free travel in the United States, whereas in Williams versus
15 Dandridge the majority of this Court concluded that although
16 there were interests being affected by the state's economic
17 regulation, they were not of constitutional dimension and as
18 a consequence, the showing by the state of a reasonable pur-
19 pose for regulation, was sufficient to justify maximum grants.
20 I don't know if this is responsive, but it would be the dis-
21 tinction which I would draw, for example, between access to
22 the courts and a fishing license.

23 Q Mr. LaFrance, what do you do about the man who
24 wants to sue to prevent pollution of the air by the electric
25 company in New Haven? Would he have to pay fees?

1 A Not if he is indigent, Your Honor.

2 Q Well, you want the same indigent protection
3 you have in criminal prosecutions. Do you really go that far
4 in this case?

5 A I don't believe so. We at least want the same
6 protection that is afforded in criminal cases as to the oppor-
7 tunity for a hearing. We would not go beyond that and maintain
8 that the criminal protections, for example, involving appoin-
9 ted counsel, are necessary in civil cases. And there are a
10 number of distinctions which are relevant.

11 For example --

12 Q Well, suppose the person files on air pollution
13 and some legal aid society takes over the lawyer part; he
14 doesn't pay fees and then he wants to appeal. Who takes care
15 of that?

16 A I'm sorry, Your Honor, I didn't understand the
17 question. With respect to the appeal who would take care of
18 the costs?

19 If the state could make a showing that the costs
20 were necessary to maintain the appellate system, then I suppose
21 as a matter of equal protection that it could require appellate
22 costs of an indigent.

23 Q I honestly don't know of any system where the
24 court costs take care of the court. They never do. I mean
25 they always need that money.

1 A I agree and one of the positions which the
2 Appellants have maintained in their brief is that the justifi-
3 cation offered by the state for imposing costs on indigents
4 simply is inadequate for the burden that results. For example,
5 in terms of producing revenues, it doesn't make sense to re-
6 quire that revenues be generated by the poor who simply are
7 unable to produce them.

8 Q You would make much more sense with me if you
9 could draw a line other than saying that in all civil actions
10 the person without income can file without payment of fees,
11 which is a pretty broad hump of litigation.

12 A And yet, Your Honor, in roughly half of the
13 states, the very same type of *informa pauperis* litigation
14 which we are arguing here today is provided as a matter of
15 statute and yet those states by their court systems don't seem
16 to be crumbling under the burden.

17 Q To -- draw up a contract?

18 A I have not surveyed the exact dimensions but
19 of these provisions but at least as to some of the states the
20 door is that wide open. That is, an indigent may simply file
21 an action.

22 Q Without the payment of any fees at all?

23 A Yes, Your Honor.

24 Q Suppose he wins? Suppose he sued for a million
25 dollars and gets a million dollars; can the state get its \$20

1 filing fee that way?

2 A I would think that it could do that.

3 Q I would hope so.

4 Q While we have you interrupted, counsel, you
5 spoke in terms of a right that comes by way of franchise.
6 Would you say that a man who seeks a license to practice to
7 carry on the business of being a barber or an electrician or
8 a plumber, one of the licensed activities, that had a substan-
9 tial license fee of a sum due up to \$100 or more. Is he in the
10 same category as your client here?

11 A I don't think that he is, Your Honor. Now, as
12 a matter of equal protection --

13 Q Well, isn't there an inherent right, a con-
14 stitutional right to engage in an occupation if you can pay the
15 fee?

16 A There certainly is that, but there may also be
17 a right on the part of the state legitimately to regulate cer-
18 tain types of activities and there may also be a right on the
19 part of the state to impose licensing fees, examination fees
20 and investigation fees and the like by I'm thinking specifically
21 now of the \$200 I am going to have to repay to the Arizona Bar
22 Association within the next few months, but the situation here
23 is dramatically different because these Appellants are seeking
24 to exercise a right which is specifically protected by the
25 constitution, which has body in the First Amendment. The right

1 of a plumber, I suppose, is assured by the Equal Protection
2 Clause and the Due Process Clauses against arbitrary or
3 capricious discrimination, but the right of the person to go
4 into court is as fundamental as a right of a person to vote or
5 the right of a person to exercise free speech or engage in
6 political activity.

7 And as to these, before the state can impair these
8 rights it must demonstrate a compelling necessity for the
9 regulation which it seeks to impose.

10 Q Well, does not the state in its capacity of
11 parens patriae, if not on broader grounds, have a deep inter-
12 est in regulating the termination of the marriage state?

13 A It certainly does that, Your Honor, but in this
14 instance the regulation involved, imposing a fee upon indigents
15 does not --

16 Q I know, but it's imposed on everyone; isn't it?

17 A Yes, but the only aspect of the fee system
18 which is being challenged here today is that which operates
19 against indigents and bars them from the courts. The regula-
20 tion which is involved is not particularly well-calculated to
21 save the family, since it applies to all types of litigation.

22 In addition, of course, the courts of Connecticut
23 have spoken with respect to divorce. They have said that
24 divorce is permissible; is authorized as a matter of state
25 policy, if grounds are shown; and yet the state has gone farther

1 and said, "We don't mean this with respect to the poor,
2 because as to them we attach a further condition; the condi-
3 tion that they cannot get a divorce unless they somehow abro-
4 gate their condition of poverty.

5 The Court of Appeals for the D. C. Circuit in Parks
6 versus Parks, cited in our last brief which we filed with this
7 Court, noted that if, in the District of Columbia, in addition
8 to the requirements which Congress has imposed for obtaining a
9 divorce, if there were a further requirement that only the
10 wealthy or the affluent could obtain divorces, then there would
11 be issues of serious constitutional dimension raised and I sub-
12 mit that this is the case which is contemplated by that court.

13 Q That hypothetical really isn't worth very much
14 because there is no state in the country that has ever had any
15 such statute.

16 A Except that the effect --

17 Q Negatively; the negative impact is what you are
18 talking about?

19 A Yes, I am, Your Honor.

20 Q Suppose we agreed with you, and decided the
21 case the way you want it decided and a week afterward someone
22 comes in and wants to go to court and they say, "I have plenty
23 of money; if you don't let me file my action without the pay-
24 ment of the fee, you are denying me equal protection as compared
25 with Gladys Boddie and the other people involved here?

1 A I suppose that if that person would like to
2 change places with life with Gladys Boddie, she would be very
3 happy to meet them and change places with them. I don't mean
4 that entirely facetiously, because I don't believe there is an
5 obligation upon the state to equalize all of the inequities of
6 life, but what we do contend here is that the state, when it
7 creates a right or in this instance, when it forces a person to
8 come to it to resolve that person's affairs, cannot create
9 new inequities; cannot impose requirements which, I suppose
10 life itself, does not impose.

11 What we have here is a situation like that in
12 Williams versus Illinois, decided in June of this past year
13 where a person who would not pay a fine was required to work
14 it off in the State of Illinois and this court said that on its
15 face that's a perfectly reasonable, equitable statute except
16 that in operation for the poor it makes an invidious discrimina-
17 tion.

18 Now, I suppose that a prisoner in Illinois might
19 appear some day before this Court and make the same argument
20 that could be made with respect to both Gladys Boddie; that is
21 that the indigent are receiving preferential treatment. But the
22 crux of this case is not that; it is simply that the state
23 cannot discriminate against the poor, in structuring its legal
24 system.

25 With respect to the due process and equal protection

1 arguments, which Appellants have submitted to this Court, I
2 suspect that the comments I have made by this time are at
3 least a survey of our position.

4 There is one other aspect of our position which I
5 would like to turn to and that is the arguments -- that is
6 with reference to the arguments which the state has put forward
7 to justify its fee system. The fee system does not deter
8 frivolous litigation or if it does, it does so only with res-
9 spect to the poor and as to them, it deters all litigation. It
10 does not provide revenues, at least not from the poor, because
11 they are unable to pay these fees.

12 It does not particularly, or at least measurably,
13 conserve revenues or facilities or services in the court
14 system. And even if it did, it has never been held or believed
15 to my knowledge that the cost of constitutionally imposed bur-
16 dens relieves the states from fulfilling their duties under
17 those burdens.

18 In Shapiro versus Thompson this Court said that, "We
19 recognize that a state has a valid interest in preserving the
20 fiscal integrity of its programs. But a state may not accom-
21 plish such a purpose by invidious discrimination between
22 classes of its citizens. It could not, for example, reduce
23 its expenditures for schools by barring indigent children, and
24 yet the State of Connecticut is attempting to reduce its ex-
25 penditure for courts by barring indigent litigants.

1 We wish to emphasize that it is not enough for the
2 Appellees to show a mere rational basis for the fee system
3 which operates in the State of Connecticut. They must show
4 more a compelling necessity for imposing court fees upon the
5 poor.

6 This Court, in Shapiro versus Thompson, which I
7 just quoted from, said in essence, that only a compelling
8 necessity could justify discriminating among citizens on sus-
9 pect criteria, such as poverty or race, and discriminating in
10 a manner which affects important rights, such as the petition
11 for redress of grievances.

12 We ask this Court to reverse the Court below; to
13 give the relief which Appellants seek and in so doing we have
14 maintained in the last brief, which we submitted to this Court,
15 that a holding in favor of Appellants can be narrowly based;
16 or narrowly limited in its implications.

17 This case involves a specific constitutional
18 guarantee: the right to petition for redress of grievances.
19 It involves litigation concerning matters of constitutional
20 magnitude: marriage, procreation. Further, it involves matters
21 which cannot be settled privately.

22 The State of Connecticut has said to these
23 Appellants that they cannot resolve their affairs privately;
24 they must go into state courts to seek the relief they need
25 and yet at the same time have barred them from those courts.

1 A holding emphasizing these factors, for example,
2 would not compel a later holding that counsel must be appoin-
3 ted in civil cases or a later holding that fees for the use of
4 golf greens on a public golf course must be waived for the
5 poor.

6 A useful analog for this case is Goldberg versus
7 Kelly, where this Court considered the meaning of due process
8 in welfare termination cases, and concluded that a hearing is
9 the essence of due process, but that appointment of counsel
10 may not be required.

11 In conclusion, then, we ask this Court to grant the
12 relief for Appellants --

13 Q I don't quite get that brief. The distinction
14 you draw there. Maybe the party is so indigent that they can't
15 hire a lawyer.

16 A That is correct, Your Honor and I would
17 suppose that in many, if not most aspects of civil litigation
18 it would be useful, perhaps necessary, to have an attorney, but
19 a holding in this case would not compel a later holding that
20 counsel must be appointed in civil cases.

21 Q Why would it not?

22 A Because in this case we are relying upon a
23 specific First Amendment guarantee and the right to petition
24 for redress of grievances. There is no such --

25 Q They might be barred from it as successfully

1 by not being able to hire a lawyer, as by not being able to pay
2 the fees.

3 A I take it that the First Amendment, in speaking
4 about the right to petition is speaking about access to the
5 courts or to government. It would always remain true that the
6 fruits of that access inherently would be unequal. Now --

7 Q Well, if it's unequal, wouldn't there be any
8 way to equalize it?

9 A Perhaps as a matter of equal protection under
10 the 14th Amendment this Court might want to go farther and to
11 hold that, for example, counsel must be appointed in certain
12 types of civil cases.

13 Q Why might they not be influenced to go far
14 enough eventually under your arguments, to say that courts are
15 necessary to civilized people. You've got to have them in
16 the government, and therefore they must supply all without
17 regard to their race, color or amount of money they have.

18 A I would think that a holding of that nature as
19 to courts would be perfectly appropriate. Now, when I say that
20 what I have in mind are the kinds of considerations this Court
21 had in mind in *Goldberg versus Kelly*, in saying that due
22 process must be afforded at some point by the state, whether it
23 be in what is called an administrative hearing or what is
24 called a court, but that the functions of courts must be per-
25 formed and they must be performed equally, at least open

1 equally to the rich and the poor alike.

2 Q And the only way to do that unless you say that
3 you will deny equal protection to the rich, would be to say
4 that the courts must be open to all to prosecute or defend their
5 claims, whether they have money or do not have money and they
6 must pay the costs if they are able.

7 A And they must pay the costs --

8 Q Costs if costs are imposed at all. It seems to
9 me like that's fair, but as to how you would take this. I'm
10 not saying that's right or wrong; I'm just asking you.

11 A I don't think the argument carries that far if
12 I understand you correctly.

13 Q Yes.

14 A Well, the argument which I am making today I
15 don't think compels anyone to go that far at any time.

16 Q Just as far as your client goes?

17 A That is correct.

18 Q A good lawyer like that --

19 A Thank you.

20 ORAL ARGUMENT BY RAYMOND J. CANNON, ASSISTANT

21 ATTORNEY GENERAL OF CONNECTICUT, ON BEHALF

22 OF THE APPELLEES

23 MR. CHIEF JUSTICE BURGER: Mr. Cannon.

24 MR. CANNON: Mr. Chief Justice and may it please the

25 Court:

1 To understand what is really at stake in this case
2 perhaps it's well to outline briefly the procedures followed
3 in divorce actions or civil actions in Connecticut, all civil
4 actions.

5 First of all, of course the client sees the attorney
6 and the attorney determines whether there is a cause of action
7 that involves a writ, which is delivered to the officer to make
8 service at the expense of the client. And then the officer
9 returns the writ to court. At that time the statute comes into
10 play. It says the Clerk of the Court shall charge \$45 for
11 entering all civil causes. That's the statute.

12 To accomplish the relief sought by the plaintiffs in
13 this case it is necessary that some provision also be made to
14 pay these auxiliary costs which are incident to divorce cases.
15 Very often those expenses, maybe advertisement in a publication,
16 particularly when the defendant is absent from the state.

17 In this complaint another fact we must bear in mind
18 it seems to me, in this complaint the only plaintiffs are
19 women on welfare; they're not poor people generally. There are
20 thousands of poor people, as everyone knows, who are working
21 their heads off to try to make a living and keep the family to-
22 gether and object to going on welfare. Now, that class of
23 people is entitled to relief just as well as these people if
24 they are entitled to relief.

25 Presently the court has the thought: what has been

1 since the last time we were here? Presently we find no
2 inability of welfare women or all poor people to get divorce
3 action. There are plenty of them handled by the Legal Assistance
4 Association; a great number of them are being handled. We
5 tried to get some figures from them through the Clerk of the
6 Court, but they won't supply it.

7 Q Doesn't Connecticut furnish on application the
8 filing fees for divorces for people who are on relief?

9 A No, Your Honor; we do not have any general
10 informa pauperis statute. We have other situations where no
11 court fees are charged but they are not informa pauperis
12 statutes; they apply to everyone, regardless of his status.

13 There is this Legal Services Program which we men-
14 tioned in our brief before, which has been initiated by HEW
15 and the local welfare departments. It's an experiment that's
16 being carried on in five States in the Union, and Connecticut
17 happens to be one of them. It's a legal service organization
18 in the towns of Meriden, Southington and Wallingford.

19 Q That would take care of the problem that Mr.
20 Justice Black was inquiring about, but it doesn't reach the
21 question of filing fees, the \$45 or \$60, does it?

22 A The sheriff's fees, there is no direction of
23 action in the sheriff's fees.

24 Q Well, what is the amount of the fee here?

25 A \$45 is what goes to the State of Connecticut as

1 an entry fee and the statute provides --

2 Q The Legal Aid doesn't supply that; does it?

3 A Yes; they do. And so does Legal Assistance.

4 Connecticut contributes --

5 Q Then why are we here?

6 A Well, I don't know. At the beginning maybe
7 the Legal Assistance didn't pay all the fees; they don't pay
8 them now.

9 Q Well, specifically do they pay the \$45 we're
10 here talking about, if they ask for it?

11 A I understand so, but it's dependent upon the
12 judgment of the director of the Legal Aid Assistance. He, in
13 his discretion, according to their set up, can determine which
14 cases have the most significance and, accordingly will allot
15 the money that they collect from the Federal Government, the
16 State of Connecticut and other charitable organizations, to
17 pay the cases which in their opinion have priority.

18 Q Your friend and you were both here on a con-
19 stitutional issue, and as your friend has imposed it, a con-
20 stitutional issue of no small importance. Is there any possi-
21 bility that the petitioner has not exhausted her administrative
22 remedies, if you can call them that? Or is it for us to de-
23 cide as a constitutional matter that the fee is to be waived?

24 A The difficulty in that regard, it seems to me,
25 Your Honor please, is that these are not state agencies,

1 strictly speaking. The Legal Aid Assistance Association, In-
2 corporated, is incorporated under the State of Connecticut
3 pursuant to Federal legislation which recognized and advocated
4 that these legal assistance associations be formed in conjunc-
5 tion with the -- supported by the local bar associations to
6 provide legal services for the poor.

7 Q Is any of it supported by the public?

8 A Pardon me?

9 Q Is any of their money supplied by the public;
10 by the state or the government?

11 A Oh, yes, Your Honor; there is money supplied.
12 I have the 1968 audit, certified audit with me.

13 Q Now, are these people effectively barred? I
14 mean if they can get the money and have the money and there are
15 public or private agencies available to supply these fees, are
16 they really effectively barred? Is this a real controversy or
17 not?

18 A Well, it's opinion that they are not effectively
19 barred and there are a lot of them in the divorce courts. It's
20 not in the record, but I can give you a court assignment here
21 on September --

22 Q Why do you say they are not barred?

23 A The Legal Aid and the Legal Services Program,
24 two different programs, each pay entry fees; each paying for
25 its service. The Legal Aid Services is a separate program just

1 initiated and really gotten on the floor since we argued it
2 last term. The first three or four months when that was or-
3 ganized, they operated an entirely different way than the Legal
4 Aid Assistance Association. They are not a corporation; but
5 -- contracts with the local Bar Association and they have a
6 director where when a case comes in and its assigned to some
7 attorney who has previously indicated that he will accept these
8 cases and the Legal Aid Services Program pays his attorney a
9 modest \$16 an hour plus the cost of expenses. And in Meriden,
10 Wallingford and Southington, there was only one lawyer out of
11 the whole three towns which comprise a population of about 75
12 or 100,000. I understand there is only one lawyer who didn't
13 signify that he would signify that he would accept work along
14 with this program, because of age or ill health or infirmity or
15 for some reason.

16 Q These are private organizations?

17 A It's a public organization --

18 Q If I may say so, not state supported?

19 A It is state-supported through the welfare depart-
20 ment.

21 Q And Federal; isn't it?

22 A And Federal; both of these programs have Federal
23 financing.

24 Q Mr. Cannon, as to these plaintiffs named in this
25 case, you say they can get \$45 for the purpose of filing this

1 lawsuit or not?

2 A I have to say with this proviso, Your Honor
3 please --

4 Q Sir?

5 A The entry fees that are paid by the Legal
6 Assistance Association, Mr. La France's client -- he formerly
7 was with the Legal Aid -- he hasn't been with them for over a
8 year or more. It was Mr. Derenforth, the Director, who deter-
9 mined what fees should be paid in what cases. And --

10 Q You're not saying that these people got the
11 \$45 in costs; you're not saying that?

12 A No; no.

13 Q And you are not saying they could have gotten
14 it; are you?

15 A I'm not saying they got it. I don't know why
16 it was refused to them. I don't know why --

17 Q Was it refused?

18 A Oh, no; I wouldn't make that claim.

19 Q Well, what is your claim?

20 A It was refused, not by Legal Aid; it was
21 refused by the Court of the State of Connecticut because --

22 Q When you say "refused," you mean the waiver of
23 the entry fee; is that it?

24 A That's right. I don't mean to say --

25 Q Have you looked up the regulations of HEW,

1 of the Health and Education Department of the Federal Govern-
2 ment on this?

3 A I have been more or less familiar with them
4 indirectly under the Legal Services Program.

5 Q And do they require that the money be given to
6 the indigent to conduct necessary lawsuits; or do you know?

7 A No; the program is not given directly to the
8 welfare recipient.

9 Q Who is it given to?

10 A It is given to the welfare department. If a
11 welfare client wants legal services, regardless of the nature,
12 divorce or anything else, then they have two attorneys who are
13 on their own payroll. Then they are on salaries --

14 Q Do they supply them to the indigent?

15 A They are free for the indigent. But then there
16 are additional services that if they want other services as
17 to the two people assigned to the particular job of rendering
18 legal services to this organization. Then the lawyers who have
19 subscribed as being willing to take these cases, the director
20 files the case with one of these lawyers. So that --

21 Q He gives them a small fee; doesn't he?

22 A Yes and --

23 Q And that's what that amounts to, but they do
24 get a lawyer?

25 A That's right; they get a lawyer and they get

1 their fees paid and they get all kinds of problems --

2 Q The Government and the State contribute to
3 the fund?

4 A That is correct, Your Honor.

5 Q Well, the problem in this case is that this was
6 decided on a motion to dismiss and everything alleged in the
7 complaint was taken to be true by the Three-Judge District
8 Court, very properly. And it assumed that all of the allega-
9 tions were true and it then granted a motion to dismiss the
10 complaint. But that complaint was supported by affidavits;
11 just to take a sample on appearing on page 11 of the record,
12 affidavits, sworn to under oath in which the affiant says,
13 among other things, that their welfare benefits in the State
14 of Connecticut do not include an allotment for legal and court
15 fees.

16 Now, there are several other affidavits containing
17 the same or similar statements. And that appears to be true;
18 these were sworn to under oath and on familiar grounds of
19 practice and procedure and pleading on the motion to dismiss the
20 complaint all those allegations were assumed to be true by the
21 District Court, properly.

22 A Those --

23 Q And we have no evidence in this case; we simply
24 have an allegation -- the allegations of the complaint and the
25 motion to dismiss, which was granted.

1 A We will admit that; we don't argue that fact.

2 Q Well, then what's the point of getting into --

3 A Well, I thought the Court -- the situation has
4 changed materially in the last couple years.

5 Q Well, I'm interested in it; I asked you the
6 questions. I am interested in it for this reason: we should
7 not decide a case of this wide importance on a great constitu-
8 tional question if, as a matter of fact, provisions are already
9 made by the Government to take care of a lawyer if they have
10 to have him.

11 A Well, Justice Black, I spoke in the first in-
12 stance about the Legal Aid Service, which is an experimental
13 problem; it's in its second year. It's a pilot program and as
14 I understand it it is designed to determine whether the
15 Federal Government will go deeper into this; provide a dif-
16 ferent kind of service from the Legal Aid or adopt some other
17 measure. That's what I understand the Legal Aid Service is.
18 And there is only one community -- three communities in New
19 Haven being handled by the Legal Aid -- this is the new program
20 of HEW. That prior to that time this Legal Aid Assistance
21 Corporation was organized back in '64, I believe, and they are
22 in turn, financed by the Federal Government, the State of
23 Connecticut, the Ford Foundation, Meyer Foundation and other
24 charitable contributions.

25 So, there are either public monies or charitable

1 monies and they are given to them for a certain purpose and
2 they ended the year 1968 with a substantial sum and if these
3 people made application for a divorce during that period this
4 Legal Aid Assistance had the money to pay for these sheriffs
5 and entry fees during that period and it must be a fact that
6 the others are given the court -- the Clerk of the Superior
7 Court, at my request didn't have the figures, but he requested
8 assistance from the Legal Aid Assistance to give him the
9 figures, but we didn't get them. I don't know why.

10 Q Well, if the State has failed to raise a
11 defense which might be a defense, even if it's on the fact, of
12 course, we don't have to decide it fully, but it could be
13 sent back to the State Court in some proceeding so that they
14 can look up and see whether or not these people can get their
15 divorce money from the state, or from the Federal Government.

16 A Well, it may very well be that that would be
17 the action to pursue, but we --

18 Q I should think it would be a problem of the
19 state to raise all the defenses it had; one of them being that
20 you are not stating facts when you say you do not have the
21 money and can't get it, because there is provision made for
22 it in the Federal and State contributions jointly.

23 A Well, maybe I have confused the Court. The
24 State has no appropriations --

25 Q I understand that.

1 A But --

2 Q But the Federal Government and the State have.

3 A It makes a contribution to these two organiza-
4 tions.

5 Q It doesn't make any difference where the on
6 money comes from if the people can get it to conduct their
7 divorce cases, then Connecticut -- we should not branch out,
8 I would think, into a decision on the constitutionality which
9 practically opens up the way for paying fees and all for all
10 indigents in all the courts in the nation.

11 Q Counsel, I'm afraid I led you into this by
12 my question as to whether or not the petitioner here had
13 exhausted their -- Appellants here, I should say -- had ex-
14 hausted all of their available remedies, whether administrative
15 or otherwise. But you tell us now that the situation has
16 developed considerably since the action was originally started?

17 A That's my understanding of it from the best
18 authority I know in the audits of the plaintiff in 1968.

19 Q If it developed that, through the welfare pro-
20 gram of the State of Connecticut, as it now exists, whether the
21 money comes all from Connecticut, or part is from the Federal
22 Government, and part is from the state, and that if that program
23 would advance to persons in the posture of Mrs. Boddie, the \$45
24 to file or make the entry fee payment, then would there be any
25 constitutional question for us to decide?

1 A I think not -- no; there would be no constitu-
2 tional program. I would think that we can get that information
3 by affidavit that if we could get cooperation from the number
4 of people and so forth, from this Legal Aid Assistance --

5 Q Mr. Cannon, putting it in another way: I think
6 what we're concerned about is whether today, Mrs. Boddie and
7 her co-plaintiffs are barred in Connecticut Courts with respect
8 to their divorce actions. Now, it may be that Mr. LaFrance is
9 the one to answer this question and not you, but I think from
10 the indications from the Bench this is a vital question at this
11 time and that when Mr. La France gets up again I would like to
12 know his answer to those questions.

13 A Well, if it may please Your Honor, Mr. La France
14 has been absent -- with all due respect to Mr. LaFrance, from
15 the state for some time -- but I made the inquiry myself, as to
16 howmany of these plaintiffs since the action was instituted,
17 have filed divorce cases. There are two; one was withdrawn, I
18 think.

19 Maryann Dozier has filed for divorce in March, 1970.
20 Her lawyer is Jonathan E. Silver. Jonathan E. Silver is on the
21 staff of the New Haven Legal Assistance; am I correct?

22 And Mrs. Perez filed her return before we were here
23 -- her divorce application before we came to court the last
24 time and it is still on file. She's represented by an Attorney
25 Gallagher and I don't know whether he's employed by the New

1 Haven Legal Assistance, the Legal Aid Services of Southington
2 or whether he's an independent attorney.

3 Q It wouldn't make any difference if, in the
4 meantime, she's got her \$45 entry fee paid through some source?

5 A She's in court.

6 Q She's in court and she has no case any more.

7 A That's the only two I know of and I was informed
8 that some, if they are possibly capable of raising their
9 money, by it to the Legal Aid by installments; otherwise they
10 use their own funds that they get from other sources.

11 Q Mr. Attorney General Cannon, right at the out-
12 set of his argument, Mr. La France said that he has satisfied
13 himself by investigation, that at least with respect to five
14 of these plaintiffs, these cases were not moot and I took that
15 as a professional representation that these people did not have
16 the money, the \$45 to pay the filing fee and furthermore, may
17 I point out that the State of Connecticut, your client, when
18 it filed a motion to dismiss this complaint, admitted every
19 allegation of the complaint. That's what a motion to dismiss
20 does.

21 A Correct, Your Honor.

22 Q And that this rather surprises me that you're
23 taking such a different posture now that you are here in this
24 court. Now you are beginning to deny the allegations of the
25 complaint. The place to do that --

1 A I didn't mean to deny the allegations of the
2 complaint. I misunderstood, apparently, the questions raised
3 as to what the status of these plaintiffs are now, in a year-
4 and-a-half this case has been standing.

5 It is our claim, of course, constitutionally, or on
6 the merits, that although 23 states, for example, have informa
7 pauperis statutes, two of them do not apply to divorce actions;
8 one state has allowed divorce actions for women only; and I
9 don't remember now what the other state required, but in all
10 these cases that are included in the Federal Pauperis Statute,
11 281915, it's within the discretion of the Court as to whether
12 to allow the plaintiffs to pursue in civil action a case without
13 payment of court fees.

14 The Court in a recent case in Washington, D. C. has
15 -- there were two statutes: one a general statute allowing
16 residents of Washington, D. C. to secure a divorce action in
17 General Sessions Court, I believe it was, and then it made the
18 Informa Pauperis Statute, 281915. In that case the court didn't
19 get into the constitutional features, but it reconciled the two
20 statutes and said that inasmuch as 281915 did not exclude
21 divorce cases then the plaintiffs could proceed under Informa
22 Pauperis regulations.

23 A divorce is -- it is our further claim -- a divorce
24 is not a matter of fundamental right. It's not within the frame-
25 work intendment of the constitution. We get into cases like

1 Verbo and Sniadach and other cases involving due process,
2 although there are civil factors involved, they are, to my
3 opinion, nevertheless, fundamental rights. The one: wages.
4 Wages -- a person is more dependent upon his wages as a general
5 rule than a person who has money in the bank. There is a
6 distinct difference there and to deprive and attach wages is,
7 as the Court said, "a brutal blow."

8 Wages, incidentally, haven't been attached in
9 Connecticut for years and years. And we get into the other
10 cases on equal protection and so forth. Equal protection is
11 protection of life, liberty and property. The equal protection
12 has to -- the out of money consideration has to attach to one
13 of those factors.

14 Life or liberty or property. In the Goldberg case
15 of course it was liberty; that was due process. But we have
16 submitted our argument in the first brief. We are now relying
17 furthermore on the Dandridge versus Williams case, which is the
18 reduction of the maximum multi-benefits due to families of over
19 five or six. It was decided on equal protection and I think that
20 case fits very well to this case.

21 Assuming it is, it was a rationality behind the
22 procedure adopted by the state. Now, there is that it's
23 reasonable to expect that persons using the courts would pay
24 some of the expense of maintaining them. That is done in every
25 state in the state court and in the Federal Courts as well

1 in this country, as far as I know.

2 Q Mr. Cannon, I did not understand you to be
3 changing your position in any sense in terms of not standing on
4 the posture and pleadings when the case came here, but in
5 response to my questions and others, you have indicated that
6 the situation may have changed since this litigation started
7 and that there may now be publicly-supported agencies within
8 the State of Connecticut who would supply the \$45.

9 A There may well be.

10 Q That line of questioning was pursued, I think
11 by all of us with respect to the basic proposition that Mr.
12 Justice Black suggested to you that if there is any other
13 solution you do not reach the large constitutional issues.

14 A Well, if the factual situation -- I have to
15 admit this: if the factual situation which exists today had
16 existed when we filed a motion to dismiss, we wouldn't have
17 filed a motion to dismiss.

18 When we filed a motion to dismiss, we had a lot of
19 cases from this New Haven Legal Assistance Association --

20 Q Mr. Attorney General, as of right now does Mrs.
21 Eddie or anybody else have the \$45?

22 A I couldn't answer that --

23 Q Well, do you deny it? Do you deny that she is
24 unable to put up the \$45?

25 A She personally, I would concede that she is

1 probably unable to put up the \$45.

2 Q In the case we have now she is in the same
3 position she was then.

4 A That is correct. The welfare department does
5 not give welfare recipients direct money for court proceedings.

6 Q Well, does anybody else give them the \$45 to
7 file this action?

8 A It's my understanding they do, Your Honor.

9 Q Well, can you prove it? Or is that just
10 hearsay?

11 A I can prove it now, but it's not in the record.

12 Q Can you prove that Mrs. Boddie has got \$45?

13 A Not applied to the individual; no, Your Honor.

14 Q Well, that's what we are dealing with, these
15 five people.

16 A I can just show an expenditure of sums for fees
17 and costs.

18 Q Well, we're dealing with five named Appellants.

19 Q Well, would you be willing to represent to the
20 Court that if this case were remanded to the courts of Connecti-
21 cut, that there may well be facilities to provide her with
22 money that was not available when this action was started?
23 Could you represent that?

24 A Yes, I think I would. I have got a certified
25 order that the New Haven Legal Assistance; and it shows an

1 expenditure of several dollars; of \$6,000 for fees and costs
2 in litigation.

3 Q In divorce cases?

4 A In all kinds of cases, Your Honor.

5 Q Does it say divorces?

6 A No; it's not broken down that --

7 Q You mean pay in all cases in litigation?

8 A Excuse me, Your Honor please? It's all cases.

9 it's not broken down -- this audit is not broken down by --
10 they have got "transports and costs," total: \$6,000.

11 Q What?

12 A \$6,000 plus.

13 Q For what?

14 A Transports and costs.

15 Q What kind of cases? Criminal, civil or --

16 A Well, there's no criminal fees here. We have a
17 public defender system in Connecticut in criminal --

18 Q Does this budget cover all civil matters, the
19 one you are reading from?

20 A It's not necessarily restricted to civil cases.

21 Q But it includes them?

22 A It includes them. And it indicates a surplus
23 on hand at the end of the season.

24 MR. CHIEF JUSTICE BURGER: I think your time is up,
25 Mr. Cannon.

1 MR. CANNON: I think so, Your Honor.

2 MR. CHIEF JUSTICE BURGER: Your time is up, too,
3 Counsel, but I have a question or two to put to you.

4 MR. LA FRANCE: Thank you.

5 MR. CHIEF JUSTICE BURGER: You have heard this
6 colloquy, of course and I am sure that you as a member of the
7 Bar, you would know that this Court doesn't reach constitutional
8 issues if there is any way to avoid them.

9 Do you see any reason why this case should not be
10 remanded to the Courts of Connecticut for consideration in
11 light of the changed conditions which may have occurred and
12 which are suggested to have occurred, by way of providing means
13 for this \$45 entry fee?

14 A I certainly do. There are several reasons.

15 Q What are they?

16 A First, I would argue that the availability of
17 other sources is irrelevant to whether or not these Appellants
18 have a constitutional right to walk into a court of Connecticut
19 and file a proceeding without having to pay for sanctions, for
20 fees which that state court has imposed upon them.

21 Q Even if the State of Connecticut, through its
22 agencies will provide that \$45 on request?

23 A Yes.

24 Now, secondly, with respect to that, the record in
25 this case is clear that the State of Connecticut will not

1 provide those funds on request.

2 I must say that I personally resent that a member
3 of the Bar of this Court and as an Attorney, Mr. Cannon's
4 going outside of the record --

5 MR. CHIEF JUSTICE BURGER: We asked him to go
6 outside of the record, Counsel.

7 MR. LA FRANCE: In the fashion in which he did,
8 because: for example, there is no program in the State of
9 Connecticut which will provide court fees to indigent litigants
10 upon request. There is only one program in which the State of
11 Connecticut is at all involved, and that is a pilot program
12 serving a small section of Middletown and the county around it.

13 For the rest of the state, and I might add, for the
14 rest of the Nation, people going to Legal Services Programs
15 cannot get into court unless that program is fortunate enough
16 to have excess funds or a budget item which allows for payment
17 of fees.

18 New Haven Legal Assistance is one of the few pro-
19 grams in the country, to my knowledge, which, over the years,
20 has had some funds available for payment of court fees. They
21 are limited funds; they are insufficient, but more importantly
22 if a person has a constitutional right to walk into a court he
23 should not have to go begging or soliciting or his attorney
24 should not have to go soliciting to charitable or voluntary
25 ad hoc agencies or governmental programs for something which

1 the State of Connecticut is obligated to provide.

2 Now, I submit to this Court --

3 Q That's the issue before us; isn't it?

4 A Pardon?

5 Q That's the issue before us; isn't it?

6 Whether the state --

7 A That is correct.

8 Q Whether they are obligated to do it without
9 money.

10 A And so that I maintain that Mr. Cannon's
11 argument, or at least the burden of it missed the point of this
12 appeal, which is that these Appellants don't have to go to
13 charitable organizations which may or may not have funds to
14 get something which the state is obligated to provide.

15 Now, to go back to the point which Mr. Cannon, I
16 guess was arguing: New Haven Legal Assistance does not have the
17 funds for these Appellants. If they did, I would never have
18 started this case; I wouldn't be here today.

19 Q Did you ask for it?

20 A I certainly did. Your Honor, these cases --

21 Q You asked the State of Connecticut to let you
22 have the money to pay the fee out of that fund?

23 A The State of Connecticut has no fund. There is
24 no source for these fees --

25 Q What is the fund he's talking about?

1 A The fund that he is talking about to the extent
2 I understood, related to a small fund from the welfare depart-
3 ment for a pilot project in Middletown, jointly funded with
4 HEW. It has no bearing on these Appellants or on the rest of
5 the state.

6 The allegations in the affidavits in this record
7 remain unchallenged and they remain true, that there is no
8 place for these Appellants to go. Now, if this Court is con-
9 cerned about the present financial status of these Appellants
10 I will be happy to submit affidavits to this Court to persuade
11 it that this case is still alive and not moot, but remanding
12 this case after these applications sat in my office for six
13 months and after this case has taken two-and-a-half years, I
14 submit, would be cruel.

15 Q Are you taking the position, because I had an
16 idea that the Federal Government did supply funds for necessary
17 expenses, so much per month, and that it included in it all
18 necessary expenses. Are you taking the position that if they
19 do do that, that you should be allowed to have us pass on this
20 constitutional question now?

21 If I understand your argument, you are.

22 A First, of course, they don't do that, but if
23 they did --

24 Q Well, I'm not talking about that. How do we
25 know they don't?

1 A If there is such a regulation or such a program,
2 Mr. Cannon has had two-and-a-half years to refer to it in his
3 brief.

4 Q Suppose he had five years and the case comes
5 up before us where we must decide a certain important constitu-
6 tional question one way or another, depending upon whether
7 certain facts are true. Would you object to it being remanded
8 to the court to pass on this issue of whether or not the money
9 was available to them from the relief funds?

10 A I would object to the posture of this case
11 which has been in the Federal Courts for two-and-a-half years
12 and the state has never once documented the argument which it
13 has made more or less for the first time today.

14 Q Suppose it hasn't and we found out that's true;
15 should we still go ahead and pass on the constitutional
16 question, which perhaps will reach all the civil cases?

17 A The fact that the State has not raised any
18 reference to any program or regulation --

19 Q Suppose they didn't raise it and we found it
20 up here?

21 A If you found it then I would suggest --

22 Q -- in the Court?

23 A If it were a program clearly available to these
24 Appellants, then perhaps it might moot this appeal and perhaps
25 then a remand would be appropriate.

1 Q You mean an official program?

2 A I mean an official program.

3 Q You wouldn't concede that if the program were
4 wholly a private program?

5 A I certainly would not, Your Honor. These
6 Appellants don't have to go to charities to seek what is a
7 constitutional right.

8 MR. CHIEF JUSTICE BURGER: Well, if there are any
9 more questions, Counsel, your time is up, but you may respond
10 to any other questions.

11 If there are no other questions I think that --

12 Q I think, if I may say so, you suggested that
13 you would supply some affidavits as to the ability of these
14 clients of yours to get access to the courts in view of any
15 changed conditions. I, for one, would like to have those
16 affidavits.

17 A Thank you. I will provide them within two
18 weeks, Your Honor?

19 Thank you.

20 Q Can you get something about the viewpoint or
21 the regulations of the Health Department of the Government --

22 A I would like the opportunity to submit a
23 supplemental brief on those, Your Honor. I feel strongly that
24 this case should not be remanded.

25 Q Of course, Mr. Cannon may submit any information

1 that relates and bears on the issues that some members of the
2 Court are concerned about; namely and specifically: whether
3 any public authority in the State of Connecticut, either
4 whether it's supported by the State of Connecticut or Federal
5 or both, or indeed, separately any kind of authority. Whether
6 that's relevant or not, we don't now know, but you may submit
7 that material as well, Mr. Cannon.

8 MR. CANNON: Thank you, Your Honor.

9 MR. CHIEF JUSTICE BURGER: Of course each of you
10 will exchange your information before it comes up here.

11 MR. LA FRANCE: Thank you, Your Honor.

12 MR. CHIEF JUSTICE BURGER: Thank you, Mr. La France;
13 thank you, Mr. Cannon. The case is submitted, subject to those
14 filings.

15 (Whereupon, at 2:40 o'clock p.m. the argument in
16 the above-entitled matter was concluded)