In the

Supreme Court of the United States

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SUPREME COURT, U. S.

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act,

Appellant,

--vs--

LARRY STEINBERG, et al.,

Appellees.

No. 73-848

Washington, D. C.
October 15, 1974
and
October 16, 1974

Pages 1 thru 54

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IN THE SUPREME COURT OF THE UNITED STATES

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant, v. LARRY STEINBERG, et al., Appellees.	No. 73-848

Washington, D. C.,

Tuesday, October 15, 1974.

The above-entitled matter came on for argument at 2:45 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, 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
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

DONALD E. WASIK, ESQ., Assistant Attorney General of Connecticut, Employment Security Division, Labor Department (AG-7), Hartford, Connecticut 06115; for the Appellant.

JOHN M. CREANE, ESQ., Abeshouse & Creane, 95 River Street, Milford, Connecticut 06460; for the Appellees.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in 73-848, Fusari against Steinberg.

Mr. Wasik, you may proceed whenever you're ready.

ORAL ARGUMENT OF DONALD E. WASIK, ESQ.,

ON BEHALF OF THE APPELLANT

MR. WASIK: Mr. Chief Justice and may it please the Court:

This class action suit concerns the adequacy of Connecticut's administrative procedures, which I use to determine weekly claims for unemployment compensation.

The three-judge district court had before it two issues.

One, do the Connecticut procedures violate the so-called "when due" provisions of the Social Security Act; and

Two, do they violate the due process requirements of the Fourteenth Amendment?

The lower court found that there was no statutory violation, but did rule that there was a constitutional violation.

Since the district court found no statutory violations, and because no appeal was taken from that decision by the claimants, this issue is not before this Court. Therefore, the only statement on the merits of this issue,

which has been raised in my opponent's brief, is that the lower court, and the Court in the Torres and Dinger decisions, were correct in ruling that where a decision is made that the claimant is not eligible for benefits, obviously then no benefits are due, and therefore the "when due" provision cannot be violated.

The issues that are here are:

One, whether Connecticut's administrative hearing, which employs a "seated interview" system, meets due process requirements.

And, two, whether the district court, in determining this first issue, erred in receiving and considering evidence which relates to the appeal period subsequent to the hearing in question.

The facts generally here concern individuals who have filed an initial application for benefits. They have satisfied the Department that they have registered for work with the Employment Service, and that they have met the wage credits requirement of the statute. In other words, they have enough earned wages from a former employer prior to their unemployment.

These people then go on a biweekly basis to the local office, where they submit a form showing where they have gone to seek work during the past two weeks. Now, although they go every two weeks, the statutes require a determination each week

as to eligibility.

When they go to this interviewer, the interviewer usually will ask some questions, such as: Did you earn any wages during this two-week period? Were you able to work during this period?

He will look at the form. If it seems as though he has made reasonable efforts during that week, he will receive his check. If a question is raised by what the claimant says or what is in that form, the claimant is then referred to another interviewer behind the counter. This is the fact-finding examiner, who will then go into greater detail and discuss, then, with the claimant what efforts he has made to seek work during those two weeks just ended.

Now, that, basically, is the situation that is before us. And, as you can see, this situation is far different from that in Goldberg v. Kelly.

The claimant here actually presents his case to the decision maker. This was the, quote, "fatal flaw", unquote, which was found in the Goldberg case. He is heard.

In welfare cases generally, the recipient only has to establish need at the initial proceedings, when he first applies. He then proceeds to be paid unless and until his status changes.

In unemployment compensation cases, not only is there no needs test, but the statutes providing for these benefits

also require an affirmative duty on the part of each claimant to each week qualify for benefits.

Now, what are Connecticut's procedures which, we submit, meet due process requirements?

First, what do we mean by due process? We submit the essence of due process is fairness. Considering all the relevant factors, are Connecticut's procedures fair? Let us see --

QUESTION: A moment ago, Mr. Wasik, you said that under Connecticut law the claimant must each week qualify for the benefits. Do you mean by that that each week he has to show that he has made some effort to obtain employment?

MR. WASIK: Exactly that, Your Honor.

In Connecticut the claimant has notice of the interview. When he first applies he's given a booklet that is entitled, Your Rights and Responsibilities under the Connecticut Unemployment Compensation Law.

As the name implies, the claimant has responsibilities, not the first of which is to read this booklet, which not only tells him what his obligations are, but gives him helpful information as to how he can meet these obligations.

More importantly, these claimants are experienced. All of the named claimants in this case received benefits for varying periods of time.

QUESTION: Mr. Wasik, could I back up a little bit?

About this hearing, he's given no notice of what's to be discussed, right?

MR. WASIK: No, Your Honor, because the claimant -- except in the booklet itself, he knows that he has to show where and when he went to seek work. But --

QUESTION: But they don't tell him that "we know you didn't do it" or --

MR. WASIK: Oh, we can't. We don't know ourselves until he appears.

QUESTION: Oh, I see. And he has --

QUESTION: Does the office each week give him referrals?

MR. WASIK: No. Only -- we try to. But that's -- well, I won't say it's rare. This is why he registers with the Employment Service.

QUESTION: Yes.

MR. WASIK: The Employment Service tries to establish referrals. And when we learn that this man might be suited for this job, and there is an opening, he is referred.

QUESTION: And of course if he doesn't take it, then he has to come back and justify his refusal to take it, doesn't he?

MR. WASIK: Yes, Your Honor, but that's --

QUESTION: And in addition to that, are you telling

us that he has to -- where he's not had referrals, or even if he has, he's got to indicate what he has tried --

MR. WASIK: Yes, Your Honor.

QUESTION: -- how he's tried to find a job in the previous week; is that it?

MR. WASIK: Yes, Your Honor. Yes.

QUESTION: And he's not allowed to go outside the record at all. Is he allowed to bring anybody in as a witness?

MR. WASIK: He can bring anybody he wants as a witness, Your Honor.

QUESTION: How does he know what he's going to bring the witness for?

MR. WASIK: Well, Your Honor, if a claimant has been receiving benefits, he already, by his experience, knows what he must do to collect those benefits. Therefore, during that two-week period, if he knows that instead of going out and looking for a job for three days he was out fishing, he knows, unless he gets off his butt and looks those last two days, there's going to be a question as to what efforts he made.

QUESTION: Well, if he doesn't get a job, he knows he's going in there, and somebody is going to lower the boom on him, doesn't he?

MR. WASIK: Not necessarily, but he is going to be questioned as to what efforts he has made.

QUESTION: But he doesn't know what information they have.

MR. WASIK: No, but he -- we have no information.

QUESTION: Well, is he charged with anything or not?

MR. WASIK: No, there are no charges made.

QUESTION: Well, why does he have to come in?

MR. WASIK: He has the burden of establishing --

QUESTION: That's right. He has the burden.

MR. WASIK: -- that he did search for work. And that he was not restricting his availability for work.

QUESTION: And so he's guilty.

MR. WASIK: No. There's no --

QUESTION: Just a moment.

MR. WASIK: Excuse me, Your Honor, I'm sorry.

QUESTION: He's guilty of not having found work.

MR. WASIK: Are you asking --

QUESTION: Perhaps it would be better to say he is guilty, if you can use that term, of not establishing his eligibility.

MR. WASIK: Yes. The word "guilty" has a connotation which is not applicable in this case, I submit, Your Honor.

QUESTION: Then give me a better word.

MR. WASIK: He has failed to meet his responsibil-

ities as outlined by the statutes and by the booklet he receives, Your Honor.

QUESTION: And he failed to meet the eligibility requirements to obtain the relief.

MR. WASIK: That's right.

QUESTION: He starts off with that.

MR. WASIK: No. He starts off by showing that he is registered for work --

QUESTION: Why does he come in there?

Because he hasn't found work.

MR. WASIK: Yes, but he also must show that he has looked for work.

QUESTION: But he comes in there charged with not having found work.

MR. WASIK: No. No, he -- excuse me, Your Honor, he's not charged with not having found work. He may be charged -- if I may use that term, and I don't like it -- with not --

QUESTION: Well, give me a better word than "charged".

MR. WASIK: It is pointed out to him that the efforts that he made to seek work are not reasonable. There's quite a difference, Your Honor.

QUESTION: Where is that pointed out to him?

MR. WASIK: The booklet itself. He must make

reasonable efforts to find work.

QUESTION: And he, as an ordinary layman, knows what "reasonable" is?

MR. WASIK: Well, it's defined in the booklet, Your Honor, for his benefit.

QUESTION: Do you have any trouble with the word "reasonable"? Don't we have trouble with it about eight or ten times a week?

MR. WASIK: But this is a standard that's applied throughout the law, Your Honor.

QUESTION: Yes, I know, but this man comes in, automatically has to explain why.

MR. WASIK: No, he doesn't have to explain why, Your Honor. If he has made --

QUESTION: If he comes in and says nothing, what happens?

MR. WASIK: He has a form which shows where he can --

QUESTION: But if he comes in and says nothing, what happens?

MR. WASIK: They will ask him: Where did you go to look for work?

QUESTION: And he doesn't answer. What happens?

MR. WASIK: If he fails to answer, he will be denied benefits.

QUESTION: Right. Why?

MR. WASIK: The statutes and the booklet tell him he must make efforts, and if he doesn't communicate those efforts to us, how can we pay him benefits? This is a trust fund that the Administrator, as a fiduciary, must administer with reasonable diligence.

QUESTION: Are you telling us that this is in effect a burden of proof which he must meet periodically, just as he must meet it the first time that he comes in?

MR. WASIK: Yes, Your Honor. I hate to say "burden of proof", but certainly that's what it amounts to. The burden is on him to show eligibility. The statutes require this.

QUESTION: Well, if he came in on the first day and said, "I want some benefits", but refused to answer any questions, then he wouldn't get any benefits, I take it?

MR. WASIK: No, he would not have satisfied the basic requirement of giving us information as to whether or not he is entitled to benefits.

QUESTION: Of course, each and all of these people have qualified initially, haven't they?

MR. WASIK: Yes. In fact the plaintiff Steinberg collected for 26 consecutive weeks, and he was advised at the seated interview, more than one seated interview, that he had better improve his efforts to find work; don't restrict your-

self to making contacts with the local union hall. But he did, and finally he was denied benefits. Sure, because he didn't meet the -- he didn't heed the advice given to him that he has to make efforts, reasonable efforts.

QUESTION: You suggested somewhere here in the briefs, that I read some time ago, and then I think suggested and then denied that there is some sort of a rule of thumb that if a person is -- what -- has made two or three or four --

MR. WASIK: Yes. There is a rule of thumb. It's not followed categorically. Again, for instance the lower court says: Give them an advance, a certain number of places to go. Well, this just wouldn't work out.

If you required somebody who is looking for a waitress job to go to ten places, this might be reasonable. But a professor of some university who is out of a job, there are just so many places he can go. And you can't require him to go to ten places.

What is reasonable for the individual. Each case has to be determined on its own merits.

QUESTION: But there is a rule of thumb?

MR. WASIK: Yes, for the --

QUESTION: For the ordinary case.

MR. WASIK: For the ordinary case.

QUESTION: And what is that? How many --

MR. WASIK: If they -- during this period when we're using this form, the examiners at the counter, if they went to three places in one week --

QUESTION: Three would be --

MR. WASIK: -- for each week, then they would be given their check. There would be no questions raised.

QUESTION: And is that pretty well known?

MR. WASIK: I think it was, Your Honor. I can't say that everybody, that each examiner knew that.

QUESTION: I mean among the beneficiaries, was it?

MR. WASIK: I can't speak for what's in the mind of the beneficiaries. But I would --

QUESTION: Well, I just wondered if it was common knowledge whether or not --

MR. WASIK: I think it was common knowledge that if they -- the form had six places for the two-week period, and if they filled out the six --

QUESTION: That's a pretty good indicator.

MR. WASIK: Yes, Your Honor. We would have liked to have seen more lines, actually.

Now, the claimant does have notice of the issues. The lower court either deliberately ignored or completedly overlooked the fact that the issue is not known to the department employee until the claimant appears.

The claimant, however, knows what he's done regarding

his own efforts, whether or not he has restricted himself, either as to hours or conditions of employment. Thus, he alone knows, before the hearing takes place, what issues might be raised.

The claimant has an opportunity to present witnesses.

Now, in the majority of the cases, certainly, there simply are no witnesses.

The decision is based on the facts given by the claimant himself. There were no witnesses in the Steinberg case, nor were there any witnesses in any of the cases of named claimants in this action.

QUESTION: When you say witnesses, do you mean on the appeal hearing or at the seated interview?

MR. WASIK: At the seated interview, Your Honor. If the claimant should need a witness, the record shows that he is given time to obtain one.

QUESTION: In other words, if a person had been ill for the two-week period, I assume that that, under the regulations in the statute, would excuse him from actively seeking work during that period.

MR. WASIK: No, Your Honor.

QUESTION: Wouldn't it?

MR. WASIK: No. It might if he were ill for one or two days, and he -- then the latter part of that week he made sufficient efforts, reasonable efforts, he would probably

be paid. But if the man is sick for, let's say, four days out of the week, the statute says that he must be physically and mentally able to work. He would not meet that requirement. Therefore, he would not receive benefits for that week.

The philosophy behind this unemployment compensation is --

QUESTION: Is that you have to be ready, willing and able to work.

MR. WASIK: He has to -- right. And to look for.

QUESTION: I didn't know that that covered temporary illness.

MR. CHIEF JUSTICE BURGER: We'll pick up at that point in the morning, counsel.

MR. WASIK: Thank you.

[Whereupon, at 3:00 p.m., the Court was recessed, to reconvene at 10:00 a.m., Wednesday, October 16, 1974.]

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IN THE SUPREME COURT OF THE UNITED STATES

JACK A. FUSARI, Commissioner of Labor of the State of Connecticut, Administrator, Unemployment Compensation Act, Appellant, v. LARRY STEINBERG, et al., Appellees.	No. 73-848

Washington, D. C.,

Wednesday, October 16, 1974.

The above-entitled matter was resumed for argument at 10:04 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, 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
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

[Same as heretofore noted.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume arguments in No. 73-848. And you may proceed, counsel.

ORAL ARGUMENT OF DONALD E. WASIK, ESQ.,

ON BEHALF OF THE APPELLANT -- Resumed.

MR. WASIK: Mr. Chief Justice, and may it please the Court:

I must emphasize that the interviews in question here are not contests between the Department employee and the claimant. The employee is a neutral party, he is just gathering the facts. He has no interest, there's no money coming out of his own pocket here. There are no charges or any defenses that the claimant has to meet or make. All he has to do is tell it like it is, or was, the past two weeks.

The Steinberg situation shows that the seated interviews do not always result in a denial of benefits. Indeed, he was advised and instructed on how he could improve his efforts to meet his obligations to be eligible. And he was then paid.

The Department system was certainly fair to him, as it is to all claimants.

The Claimants here would have us believe that simply by registering with the Employment Service and meeting the wage credit requirements, that from then on they have a right to keep on collecting, without saying or doing any more.

This ignores the explicit requirements of the statutes, that the claimants, to receive benefits, must, each week, be able to work and make reasonable attempts to secure employment.

QUESTION: Suppose at this early stage the applicant is asked some questions which involve his efforts to get work, and some challenge is made to that, is he permitted an opportunity to corroborate that?

MR. WASIK: Yes, he is, Your Honor. Testimony of the office manager of one of the local offices -- there is a deposition in the record -- shows that if he says he would like to have a witness, or if he needs a doctor's certificate or something like that, he is given time to get this.

QUESTION: Or, I suppose, a letter from some prospective employer, --

MR. WASIK: Yes.

QUESTION: -- who says that he has no work that week, but if he'd come back two weeks later, he might have something for him?

MR. WASIK: Yes, Your Honor. He's given this opportunity.

Such a right, we submit, to benefits is, at best, a conditional right. If I may analogize, this is comparable to a man being given a key to an apartment building. He can get into the building, but, unless he has keys to the individual

apartments, he cannot get into these apartments.

So, as a man registers for benefits, registers for work with the local office, and meets the wage credit requirements, this is the key to the building. But he can't get into each apartment unless, as each week, he meets the requirements of showing that he has made reasonable attempts to secure employment and that he has not restricted his availability; he is able to work.

QUESTION: But you would have a different -- you perhaps wouldn't be here at all if the termination, if you want to call it that, was for another reason?

Was for a continuing reason, that was ascertainable at the outset.

MR. WASIK: Well, counsel may disagree with me, but that, I believe, is correct, Your Honor. Because all of the facts pertaining to the named claimants here concern their efforts and their availability for work, information which they, themselves, supply.

QUESTION: But if it were a question of his wage credits?

MR. WASIK: Wage credits, no, this has already been determined --

QUESTION: Well, it's already been determined, but what if you suddenly redetermine it and cut him off?

MR. WASIK: No. If there is a question on his wage

credits, if a question arises that, Gee, maybe he doesn't have sufficient wage credits, as pointed out in the record, he is given a notice that there will be a hearing at such-and-such a time.

QUESTION: All right, so that the answer is that you think the rule would be different, then?

MR. WASIK: Yes, Your Honor.

QUESTION: Okay.

QUESTION: Mr. Wasik, Mr. Steinberg lost on his appeal to the Board, didn't he?

MR. WASIK: To the Commissioner, yes, Your Honor.

QUESTION: To the Commission, and then he had a right to appeal that determination to the Superior Court in Connecticut?

MR. WASIK: That is correct, sir.

QUESTION: And would he have had a right to raise a constitutional challenge to the validity of the hearing in that Superior Court proceeding?

MR. WASIK: Yes, he would, Your Honor.

As this Court recently said in the Arnett v. Kennedy case, property interests are not created by the Constitution, rather, they are created in the dimensions defined by existing rules or understandings stemming from an independent source, such as State law.

And this is exactly the situation here. The

Connecticut statutes, which provide these benefits, also require an affirmative showing by the claimants, each and every week for which they seek these benefits.

That Connecticut's procedures do not result in wholesale denials of benefits, as our opponents would have us believe, is pointed out by the very financial condition that Connecticut finds itself in now.

QUESTION: Mr. Wasik, would it be a good excuse for not attending one of these hearings if a man says, "I'm out getting a job"?

MR. WASIK: Yes, Your Honor. If he called and said, "I cannot make my appointment today, I'm going on a job interview", no problem.

QUESTION: How could --

MR. WASIK: They would ask him to call back to tell whether or not he did recieve the job. If he was given the job. And, if not, to then come in as soon as possible.

QUESTION: I was just wondering, you take one of five days out of his job-seeking, to sit around and talk.

MR. WASIK: Well, the day that he comes, while some of them may spend a good part of the day there, the procedures are scheduled so that he does not spend the whole day there.

In fact, if the policy works correctly, they expect the individual to come dressed to seek work, if in fact they happen to have a referral the day he comes in for his inter-

view. So they do not --

QUESTION: Well, that's different from any other place I've ever seen in my life. You sit around all day, usually, waiting for your name to be called.

MR. WASIK: That may be, Your Honor.

QUESTION: Is that different in Connecticut?

MR. WASIK: Not exactly. No, Your Honor.

QUESTION: I shouldn't think so.

MR. WASIK: On May 1st of 1969, Connecticut had, in its Unemployment Compensation Benefit Fund, over $298 million. This fund has been depleted to the point where we are now in debt to the U. S. Government $62 million. And this doesn't count the approximately $65 million that's taken in each year from the employers who are being taxed.

Further, there are estimates showing that we will have to borrow, in 1975 and 1976, even though the maximum tax rate on the employers has gone from 2.9 last year to 5.0 this year, and will go to 5.9 next year.

In conclusion, I would simply say that these claimants have all received benefits from the very system that they are challenging. They are very happy with Connecticut's informal hearing, when it expeditiously awards him benefits, but they are unhappy when the same procedures result in a denial of benefits for one or two weeks.

QUESTION: Mr. Wasik, there's something in the

briefs about taking three months for an appeal to be resolved. Is this the usual experience?

MR. WASIK: At the present time, Your Honor, yes. There is -- there is longer than we would like to have, a delay period.

But again I would point out this is due to the number of appeals and the backlog of -- well, the backlog; I'm being redundant -- the backlog of cases.

But I would point out that this is a separate entity, the Unemployment Commission, that hears these cases. They are not a defendant in this case. Plus, this is subsequent to a hearing which we believe meets due process requirements. Therefore, it's not relevant.

QUESTION: Now, a person cut off for not making efforts to find work can make efforts the next week and get reinstated, I take it?

MR. WASIK: Yes, Your Honor; exactly.

QUESTION: And were some of these people?

MR. WASIK: I believe Steinberg was cut off and he -- although he received 26 weeks, there were extended benefits at that time, and he obtained a job for a short period of time and then went back, and I believe he started receiving benefits again after a short period of time.

QUESTION: Is the condition of your fund and the state of the appellate delays and appeals and so forth, does

that in any wise reflect an unusually high unemployment rate in Connecticut?

MR. WASIK: Yes, Your Honor, I think it does.

QUESTION: What's it running to?

MR. WASIK: Oh, I couldn't answer the percentage rate.

QUESTION: Higher than the national average?

MR. WASIK: I believe it is, Your Honor; yes. Yes, it's an industrialized State.

If there are no further questions, I would like to save what remaining time I have for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Creane.

ORAL ARGUMENT OF JOHN M. CREANE, ESQ.,

ON BEHALF OF THE APPELLEES

MR. CREANE: Mr. Chief Justice, and may it please the Court:

I think there's some danger in this case, of a danger that was noted by, I believe it was, Justice Rehnquist yesterday, that it's a different case being argued here than was decided by the district court.

I think the only way to understand this case is to go through the record and check my statements and Mr. Wasik's against what the court found below.

Before I get into my argument, I would like to

respond to a question that Justice Stewart raised yesterday, concerning the rule of thumb on the reasonable work effort.

You'll find that at page 20A of the Jurisdictional Statement, in the district court opinion. And I'd like to read that part of the footnoe from the district court opinion.

The district court said: "It might also be noted that the record discloses some uncertainty about the standard against which 'reasonableness' is measured. Theodore Hatcher, Unemployment Compensation Director for Connecticut, testified that there is an informal" -- I'll wait until you've found it. I'm sorry.

It's on the footnote 25 on page 20A.

QUESTION: Think you.

QUESTION: On page what?

MR. CRANE: Page 20A of the Jurisdictional Statement.

Mr. Hatcher testified that there was "a rule of thumb that the claimant must list at least three places at which he has sought employment a week on his U.C.-45 form. In response to a question from this court, Mr. Hatcher said that claimants were advise of this rule at their befit rights interview. However, Eleanor Smarz, manager of the Bridgeport Unemployment Compensation office, responded to a question about whether claimants were told of the 'rule of thumb' by stating:

"'It was not an official notification that they were to tell these people, if that is what happened. But this is, there's no official number or anything in reference to this.'

"Thus, serious questions arise about whether a claimant can ever meet a burden of proof based on a 'rule of thumb' that he has never heard of. Indeed, even Mr. Hatcher conceded that in 'crash periods' not everyone receives a benefit rights interview, at which the information is supposedly imparted."

The actual testimony, for those that want to compare the context of that, from Mrs. Smarz, is at page 87 through 90 of the single Appendix. And on Mr. Hatcher, pages 193 through 194a of the single Appendix.

QUESTION: Did the district court consider this a conflict of fact and resolve it?

MR. CREANE: Well, the conflict was between the Director, Mr. Hatcher, and the office manager. One of them was saying -- well, yes, of course everyone hears about it. And the person who administers the program at the local office said, No, we don't tell them, there's no magic number; sometimes three is enough, maybe it isn't. It depends on the circumstances of the case.

QUESTION: Well, you have two witnesses testifying to two different situations. I would think if the district court

is conducting a factual hearing it would resolve that and say, We believe A or we believe B.

MR. CREANE: Well, I think they did.

QUESTION: Where?

MR. CREANE: They said, "Thus, serious questions arise about whether a claimant can ever meet a burden of proof ... that he's never heard about." I think that clearly resolves it. At least it does in my mind.

Now, Mr. Wasik stated yesterday that he wasn't sure that the fact finders, all of the fact finders knew about it. These are the people that are administering the program. And he wasn't sure if they had heard about the rule of thumb. But that he was pretty sure that the claimants knew about it.

Now, I'm not sure what that means, that the people running the system may not know about it, but the claimants apparently know about it. There's just nothing in the record to support a finding that any claimants knew about this rule of thumb.

And, in fact, to the contrary, I would refer the Court to the depositions of one of the original plaintiffs, who Mr. Wasik did not mention during his argument. That would Mrs. Triana. I think she presents a fair representation of what can happen to a person going through the system.

QUESTION: Mr. Creane, what's the -- this is my

question and maybe I'm the wrong person to ask this, but what is the relevance of this to your argument, to your position in this case?

MR. CREANE: Well, I think Mr. -- counsel for the appellant has laid down what he feels is the basic issue before this Court: is it a fair system?

QUESTION: Yes.

MR. CREANE: And that I intend to go into the defects found by the district court in the seated interview procedure, and demonstrate, I hope, that the district court was correct. Mr. Wasik is saying they were wrong.

And the rule of thumb is just one small dose of the type of fairness that many claimants encounter in the Unemployment system in Connecticut. They're not told about it.

If you look at the --

QUESTION: But it is, as -- I suppose you will agree with your brother, that it is, at best, at most, a rule of thumb, as he pointed out yesterday, if you're a waitress and looking for a job as a waitress is one thing, and if you're a university professor and looking for that kind of a job, that's another thing.

MR. CREANE: The question, I think, is how can a claimant satisfy his standard, which he doesn't know about?

QUESTION: Well, the standard is in the pamphlet that's given to them, isn't it?

MR. CREANE: That standard, I think, is --

QUESTION: That is, what a reasonable person out of work would do to find a job. I'm just paraphrasing.

MR. CREANE: That's on page 250a of the Appendix.

QUESTION: Right.

MR. CREANE: This is the only guidance that a claimant gets on the issue of reasonable effort. "Your efforts to get a job must be the efforts which a person out of work would make if he is sincerely looking for work."

QUESTION: Right.

MR. CREANE: I think that standard -- it may be the best that can be managed, but it's devoid of any kind of guidance, I think, largely for a claimant, and it leaves him at the mercy of a fact-finder, applying whatever standard he happens to feel is reasonable to that claimant.

Now, there are some office memos that are also set out in the Appendix, that spell out in more detail what "reasonable effort" is.

And, as Mrs. Smarz, in her deposition, stated, there is virtually an infinite number of factors that can be taken into account on determining reasonable effort.

The only one who has access to any of these memos, or has any idea of what standard he's being measured against, is the fact-finder. The claimant simply goes into it blind.

QUESTION: Would it be possible to have a man -- or

a public announcement of all the factors that would relate to every type of employment in every type of case?

MR. CREANE: No, I don't think that would be practical, Mr. Justice. What we're --

QUESTION: Does not this manual section that Mr. Justice Stewart referred to communicate to an applicant that he's supposed to do, or she's supposed to do, whatever he or she would do to get a job if there were no Unemployment Insurance?

MR. CREANE: Well, that may be what's intended, but it still comes down to a subjective --

QUESTION: Well, doesn't it come through?

MR. CREANE: Apparently not. It comes down pretty much to the subjective determination.

QUESTION: Well, what else would it mean, if it doesn't mean that?

MR. CREANE: Well, it depends; for one thing, the Department has recognized that the unemployment rate in the area is one of the factors that a fact-finder should take into consideration on what is reasonable. Obviously, if there are a lot of jobs available, you're expected to go out and find one of them, as opposed to when there are fewer or none, the Department has recognized that there is little point in making a person run around fruitlessly.

And yet, again, in the deposition of Mrs. Smarz, she

says that she's never -- as far as she knows, they are not, the fact-finders are not given that information, and she's never seen it in a fact-finding decision. And yet that's supposed to be one of the factors on reasonable effort.

QUESTION: Do you suggest that it is a policy decision that the harder a job is to find the less you're supposed to do to find one?

MR. CREANE: I think that's reflected in Department memos, that they will not require fruitless chasing around, when there simply are no jobs available.

QUESTION: Well, would that vary with the kind of work?

MR. CREANE: Yes, certainly it would.

QUESTION: In other words, if, as the present economic conditions is today, the building trades are having a very high rate of unemployment, it is reasonable to think that a man skilled in the building trades is going to have a greater difficulty finding employment; isn't that true?

MR. CREANE: Yes.

QUESTION: Do you suggest that it is the policy of the United States Government or the State of Connecticut to say that because it's harder to get a job, therefore you don't have to try as much?

MR. CREANE: I can -- if you will look at page 117a of the single Appendix, Mr. Chief Justice.

QUESTION: Of the Appendix?

MR. CREANE: Yes.

QUESTION: 117a?

MR. CREANE: Yes, Mr. Justice.

It's right about in the middle of paragraph 2, on "What constitutes 'reasonable efforts'?"

Beginning with "If, however, there is very little hiring taking place because of depressed economic activity and the Employment Service has most of the existing jobs listed in its files, then a less complete round of visits to possible employers is indicated."

That's one of the factors that a fact-finder is supposed to take into consideration.

Apparently they are not given the information on what the unemployment rate is. That was in the deposition of the office manager.

QUESTION: Well, would the agency necessarily know that?

MR. CREANE: Oh, yes. I mean, those are Department of Labor statistics, they're available by region.

QUESTION: Well, that particular day or --

MR. CREANE: No, I believe it's monthly information. Which is not passed on to the people that are supposed to be taking it into consideration in making a determination.

QUESTION: You say they might get it once a month?

So that at any given time the information might be one month out of date.

MR. CREANE: Well, there's some time-lag, to be sure, but that's true of any of our governmental statistics. It's the most accurate information available.

QUESTION: I take it that this system has the sit-down interview, so-called, followed by a full hearing if the person wants one at some time in the future.

What do you think the standard is that you're pushing for, that should be followed before refusal or before suspension? Do you think it's a probable cause basis or a final decision?

MR. CREANE: What we are seeking in this case is exactly what the State of Connecticut is giving to other claimants in more or less the same circumstances. In fact, where there's less compelling reasons for a hearing.

QUESTION: Well, what's the answer to my question? Do you think that the hearing that you're pushing for should be designed not just to determine probable cause, pending a full hearing, but to finally conclude the matter?

MR. CREANE: Something certainly more than a probable cause hearing, in light of the --

QUESTION: Well, why, if there's a later full hearing?

MR. CREANE: Because we feel that there is very

strong presence of two factors that I believe you pointed out in the Arnett vs. Kennedy case. There's a very strong individual interest in the deprivation of benefits in this case, and I'd like to go into the need aspect of this program.

And secondly is the risk of error at the initial determination, and there's a very substantial risk of error; and thirdly, we're not talking about simple mathematical calculations that are easily solved by documentary proof. We're talking about the application of broad standards, reasonable effort.

QUESTION: Wouldn't you think that if -- wouldn't you think that -- or would you -- that if the probable -- if all that was to be required prior to termination, if that's what this is to be called, is probable cause to believe that the person is unqualified. Would you think the sitdown interview would be satisfactory?

MR. CREANE: On a probable cause hearing? No. Even the present procedures would not constitute a probable cause hearing, in light of the --

QUESTION: Why not?

MR. CREANE: -- in light of the defects that were noted by the district court.

I think, at a minimum, the claimant has to have advance notice and an opportunity to bring witnesses with him.

Now, it's undisputed --

QUESTION: Well, you don't even need that to arrest somebody.

MR. CREANE: Pardon?

QUESTION: You don't even need that to arrest somebody.

MR. CREANE: What, advance notice?

QUESTION: Or a chance to litigate about probable cause before a magistrate.

MR. CREANE: I think the criminal situation is not analogous to a man, while it may be his only source of income, being taken away from him. I think it's very close to the welfare situation, if not exactly on all fours.

Although I recognize that there is no needs test in unemployment, there's no requirement that you demonstrate need. I think this Court has already recognized, in Java, that Congress intended this as a salary replacement during the worker's period of unemployment. And I think it's also undisputable that many unemployment claimants are living very close to the edge of subsistence. And it isn't very difficult to see why.

In Connecticut, the average wage several years ago was $150 a week. The average claimant received 40 percent of that average income, which comes out to about $60 a week. Before his benefits are even terminated, his back may already be to the wall, he may already be in a position where he's

just on a subsistance income there, without talking about denying any additional benefits.

Now, there was one other point, Mr. Justice, that you raised about a week-to-week -- the man can go back out again and get his benefits.

I would call your attention to, again in the Appendix, to the affidavits of -- the affidavit of Mrs. Triana. That would be at page 135a. I'm not going to read the entire affidavit, but the gist of it is -- this is what happened to Mrs. Triana.

She had been collecting for two to four weeks. She walked into the Unemployment office in Bridgeport and they said, "You haven't filled out your card properly." Now, the woman doesn't speak English. To my knowledge, this benefit rights booklet is not even reproduced in Spanish, or at least was not at that time.

They said, "No, you didn't use reasonable effort. Fill out this form properly next time, and come back in."

She came back in two weeks later, and she had her six signatures on the card. She had them right on there. And they said, "Well, you did it all in one day. That isn't reasonable effort."

And she explained to them that her son, who acted as her interpreter, had to go around with her on the one day that he could.

Off again. She was denied six consecutive weeks. Finally got her hearing about three months later, and the Commissioner found -- one of his findings of fact is that she was desperate for work, and sought work throughout the labor market. He restored four of those six weeks.

Mr. Miranda, another one of the plaintiffs in this case, denied eight consecutive weeks on the issue of reasonable effort. Not -- no, the first two or four were on reasonable effort, the next four they denied simply because he had an appeal pending.

It's against department policy, but it's in the stipulation of facts that it happens.

When he got his hearing, the Commissioner restored all eight weeks. And said that that fact-finder was wrong, you know, eight times in a row, on the issue of reasonable effort.

So I think that -- while the department policy is that it's week-by-week, very often that is not the impact on the claimant.

QUESTION: Mr. Creane, if I can back up a minute, what type of notice do you want?

MR. CREANE: What type of notice? Well, I think on the -- there's a good model for this Court or the district court to follow, if it's affirmed and remanded, in the proposed consent order that the State has filed in this case.

I think this is important for the Court to take note of.

What the Department has said is that on an initial -- on a redetermination of eligibility on an initial disqualification, they now recognize that due process requires that they give advance notice, right to bring counsel, right to present evidence. That's what we're looking for. And they're giving it in situations where a claimant, they feel they have made an error on his initial wage credits and they -- it's a simple mathematical calculation, and yet they recognize they will now --

QUESTION: Well, let me give you a hypothetical case. The authorities know nothing of what happened last week with Applicant A, and he's coming in for his weekly seated conference, what notice to you give him, do you want?

MR. CREANE: Do we want? Well, we want, if an issue arises as to possible disqualification, we want them to tell him --

QUESTION: Well, is there any issue at that stage?

MR. CREANE: When he walks in?

QUESTION: Yes.

MR. CREANE: Not unless the Department raises one.

QUESTION: Well, does he need notice?

MR. CREANE: No.

QUESTION: Well, do you want notice or not?

MR. CREANE: We want notice from the point at which

the Department says there's a question, "We've got a question about your eligibility." Then we want notice.

QUESTION: Verbal will do?

MR. CREANE: That's -- as long as it's effective notice. But we would want --

QUESTION: Well, he comes in and he says, "I have spent last week on the beach, and I haven't looked for a job." Now, does he need notice?

MR. CREANE: He could -- yes, he can waive it, if he cares to and say I'd rather take -- I'll lose my week now rather than get it now and have it taken away from me later on when it's found that --

QUESTION: Well, wouldn't the notice be that you didn't look for work last week?

MR. CREANE: No, that's not notice. Not when you walk in and you're told, that moment, "We've got a question and you better be prepared to argue your case." That's not a notice.

QUESTION: Well, that's not the way it was argued yesterday. I understood that you come in every week and you tell them what you have done to look for a job.

MR. CREANE: No, that is not correct. There are stipulations of fact that once your initial entitlement is settled, you come in and your benefits are routinely issued to you on the basis of handing in a signed form saying that

you looked for work, your two weeks are given to you, the seated interview is the exception. It's not everyone who goes into that office gets a seated interview, where you explain to the person what you did. That's the exception, I think Mr. Wasik noted that today, that there are far fewer than claims presented.

So you don't have to go in every two weeks and prove that you were out. What you do, you're right, you hand in a form, but you don't sit down and explain everything you did.

So the notice you get, you're plucked from the claims line and sent over for a seated interview, if there's any question about the way you filled out the form or the number of employers you listed, or that it's not signed, or whatever.

QUESTION: Is that where you want the notice?

MR. CREANE: Where we want the notice? No, we don't object even to a seated interview. I think in most cases it will establish that the person is eligible.

Where we want the notice is at the point where the fact-finder says, "I've got a real question about your eligibility." Fine. He's now got a basis to say, "There's a serious question about eligibility. A hearing will be held a week from now." It's up to the Department, they can schedule it as quickly or as long as they want from that point.

But that's the point where we want notice.

QUESTION: What do you want, to have it continue?

MR. CREANE: Yes, I think, in light of the need of the claimant, as opposed to the -- there's no really counterveiling interest to weigh against the claimant.

QUESTION: Except that it's unrecoverable, isn't it?

MR. CREANE: No, in most -- again, in the single Appendix, over 50 percent of the overpayments are recovered by the State of Connecticut. This is not like --

QUESTION: Well, you don't say that there's no counterveiling, because in 50 percent they are.

MR. CREANE: Well, that's in one year. Now, that -- the man may --

QUESTION: Because there is a 50/50 chance he won't get it back.

MR. CREANE: No, it's actually better than 50/50. That's only for one year.

QUESTION: Well, maybe so, but don't say there isn't any counterveiling in here, because --

MR. CREANE: I didn't mean to imply there were none. But in light of the impact on the claimant, Mr. Miranda's affidavit presents the kind of impact that can result. The man was denied eight consecutive weeks. He had no money for rent, no money for food, depending on handouts from friends. You know. Call it brutal need, call it back-to-the-wall, call it whatever you want, but that's real

recognizable deprivation.

QUESTION: Unh-hunh.

QUESTION: Wouldn't he be eligible for welfare?

MR. CREANE: Well, there's no -- unlike New York, Connecticut has no Aid to Families with Dependent Children, Unemployed Parent program. That was one of the factors that the district court distinguished Torres on.

QUESTION: Does Connecticut have any analogous program?

MR. CREANE: No, not at the federal level. It has a town assistance program. Some of the claimants are clearly not eligible. If they're denied for refusing a job offer by statute, they are ineligible for any town assistance.

It's kind of a -- there's no way of really telling whether someone could or could not get it. Some absolutely can't, by law; others may.

QUESTION: How about the three named claimants here, is there any way of telling in their three cases?

MR. CREANE: Well, I don't think in the three -- no. Some of the proposed intervenors that were not allowed --

QUESTION: I mean the three named claimants, Steinberg, Miranda and Triana.

MR. CREANE: I don't think they had any involvement with the local welfare, that I know of.

QUESTION: Well, is there any way of telling whether

or not they were eligible -- they would have been eligible for town assistance?

MR. CREANE: Well, I don't believe there is any way of telling, no. Obviously, that was not what Congress intended when it set up the Unemployment Compensation Act. It was designed not to have the stigma of welfare attached to it. It was a separate, partly contractual, partly social, benefit program for workers, and I think it frustrates the congressional intent to say, Well, even if they gave him the business over there, he can go and get welfare.

QUESTION: Well, Judge Hays, in his opinion, the majority opinion in Torres, which was affirmed by this Court, relied on that fact in New York.

MR. CREANE: He relied on -- right.

QUESTION: Which is quite inconsistent, I take it, from what you say now.

MR. CREANE: Well, he relied almost exclusively on brutal need. I think this Court has gone beyond that in the weighing process on, just in the Arnett and Mitchell vs. W. T. Grant cases. I don't think it's quite that simple to say there's no brutal need absolutely in every case, and therefore it's distinguishable from Goldberg.

It may be in the type of procedures that you require or that the district court may require. They recognize that in their opinion.

QUESTION: Or the standard that's governing, probable cause or not.

MR. CREANE: Pardon?

QUESTION: Or the standard that's governing, probable cause or some other standard.

Arnett recognized probable cause as the pre-suspension standard.

MR. CREANE: It did, but there you've got a governmental interest in maintaining efficiency and morale, and the proper operation of the department, and virtually locked the scales. The government interest was so strong, at least the majority of this Court apparently felt that way; but there was nothing you could put in on the other side that could balance the scales at all.

Here we have very, very strong individual interests, and minimal State interest.

QUESTION: I understood Mr. Wasik, in response to some question earlier, to say that if any problem arose at the initial discussion -- in other words, if the interviewer was not satisfied with the efforts to obtain employment, and the applicant said, "Well, I can, if you'll give me two or three days, I'll get you some letters." He said that's routinely afforded now.

What notice -- is there some notice beyond that that you are urging?

MR. CREANE: Yes, reasonable effort is not the only grounds for disqualification in Connecticut, it's about 60 to 70 percent, but there are other efforts, I mean, other reasons: refusal to suitable job offer, where you may have third-party information which, it's undisputed, the fact-finder is free to rely upon just on the basis of a phone call.

For example, --

QUESTION: Oh, but Mr. Wasik has indicated that if such a situation arises, he's given whatever reasonable time is required to demonstrate and record his view of the matter.

MR. CREANE: Well, I think on the -- if he wants to go out and bring back a witness the next day, I'm sure the Department will not deny him that opportunity.

QUESTION: Or get a letter or --

MR. CREANE: Well, we're talking about third-party information which is a different situation, where they are free to call up an employer and say, "Was this man at your plant?" If he says, "No; never heard of him", he's free, it's in the stipulation of facts, he's free to deny that claimant at that point, on the basis of a phone conversation with an employer, who is probably so busy that he doesn't have the faintest idea who was in his plant in the last week.

QUESTION: Well, you're generalizing pretty -- in a pretty sweeping way, aren't you?

MR. CREANE: It's in the stipulation of facts.

This was agreed by the parties and it was a finding of the court. I mean, it happens. We spent a lot of time on it.

QUESTION: How can you make a finding that supports the sweeping statement that you've just made?

MR. CREANE: I'm giving an illustration of what can happen under the seated interview system in Connecticut.

QUESTION: Well, that's quite different from the stipulation, though, isn't it, counsel?

MR. CREANE: Well, both parties have stipulated that this example can happen under the Connecticut seated interview system. That the fact-finder is free to do it.

I'd like to call the Court's attention to the proposed consent order, which is on page 149 of the Appendix.

The Department has stated that whenever there is a monetary redetermination -- in other words, the man comes in, applies for benefits, they find him eligible, and then they find out they made an error later on and that he really didn't have sufficient wage credits. They have now recognized that even in that situation, which is a simple monetary calculation involved, did he have enough credits or didn't he, that due process requires that they give him notice of the hearing, right to bring witnesses, counsel, everything, and yet they stubbornly maintain that in situations where there are broad fault standards, involving very subjective determinations by the fact-finder, that they are not going to give that, that

same type of hearing in that situation.

And we find that inconsistent for them to maintain that position.

QUESTION: What happens when a claimant first arrives at the office? He's never asked for unemployment compensation before. He has to be -- show his qualification, I take it, --

MR. CREANE: Yes.

QUESTION: -- including the fact that he's been hunting for work?

MR. CREANE: Not on the -- I don't believe that's true on the initial determination. That's simply to bring in your blue slip showing that you were laid off involuntarily, that you have sufficient wage credits to entitlement, and that you're registered for work with the employment service.

I think at the next point, the next visit, --

QUESTION: When does your compensation start?

MR. CREANE: Generally another appointment is set, and you come in. It's in the --

QUESTION: And then you show -- by then, at that next meeting, you show what efforts you've been making to find work?

MR. CREANE: That's one of the disqualifying reasons, yes, that you didn't make sufficient effort.

QUESTION: Well, that's one of the qualifying reasons.

MR. CREANE: It's -- no, it's a disqualifying reason.

QUESTION: Well, all right. All right.

Do you think that if he -- he first arrives and he fills out his papers, and then he has this next meeting you speak of?

MR. CREANE: Yes.

QUESTION: At that point, what happens at that point?

MR. CREANE: Well, --

QUESTION: Does he -- then does he explain what he's been doing, or does he fill out another piece of paper?

MR. CREANE: No, he brings in -- he hands in a slip, attesting what he's -- made reasonable efforts and that he's been available for work.

QUESTION: So compensation doesn't start until, at some point, he's demonstrated that he's made some efforts?

MR. CREANE: The actual first checks, no.

QUESTION: Yes. And let's assume that he fills out his slip showing what efforts he's made, and it isn't satisfactory.

MR. CREANE: Well, then he'd have a right to appeal on that two weeks, but his entitlement has still been set under Connecticut law.

QUESTION: But you would say that your argument would apply to that situation, too, to the start up?

MR. CREANE: Yes. Right. You're right. Yes, it would.

If there are no further questions, that concludes my argument.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Creane.

Mr. Wasik, you have about six minutes, if you have anything further.

REBUTTAL ARGUMENT OF DONALD E. WASIK, ESQ.,

ON BEHALF OF THE APPELLANT

MR. WASIK: Mr. Chief Justice, may it please the Court:

Just a few items in rebuttal.

First, counsel has brought up the affidavits of Mrs. Triana and Mr. Miranda, whereby Mrs. Triana indicates that she never had an interpreter and was never given any information as to her rights.

There was a counter-affidavit, and you can find this at page 145a of the Appendix, of a Spanish-speaking interpreter used in this office, who testified that she gave two benefit rights interviews to this individual and did interpret for her.

And I would point out that the district court did not have actual testimony before it from these individuals, but just these affidavits.

So far as the statement about Mr. Miranda, in his

affidavit, saying that he was denied benefits because he had an appeal pending, as counsel has pointed out, this is against departmental policy.

Well, this does not make the system wrong. The system is all right. As he points out, this was against departmental policy. All systems have people problems. This is why we have so many memos. You can see from the many memos and departmental policy letters sent by the Department that they are anxious to see that its employees do administer the system correctly.

QUESTION: Does this record show how many employees the State of Connecticut has involved in the Unemployment Program?

MR. WASIK: I think there is evidence in the record, Your Honor.

QUESTION: You don't recall what it is, do you, the numbers of people?

MR. WASIK: I believe in the Bridgeport office, at the time the deposition was taken, I think there were forty employees in that office. That's one of the larger offices.

QUESTION: Bridgeport? Unh-hunh.

QUESTION: How many offices are there in the State? How many regional offices?

MR. WASIK: They have offices in the major counties. There would be at least four major offices, and, in peak

periods of unemployment, they open subsidiary offices in the county, where the people can file their claims.

QUESTION: And how -- what's the responsibility of a beneficiary of the program to seek a job geographically, how far does he have to roam?

MR. WASIK: The Department has information as to what a labor market consists of geographically, and a person would not be required to travel outside of that labor market to seek employment.

QUESTION: If he lives in Bridgeport, does he have to look in Hartford?

MR. WASIK: No, he does not, Your Honor.

QUESTION: Unh-hunh.

MR. WASIK: He's -- it's reasonable. It's what could reasonably be expected of the individual.

QUESTION: Within the area of his home?

MR. WASIK: Within his labor market, yes.

Certainly, as he -- there is policy that as the man receives benefits, the longer he receives benefits, perhaps the wider he should make a search for work, and reduce his level of what he's seeking.

In other words, we have case law that says he can look for a job as comparable as possible to his skills and income that he had before he was laid off. But the more he goes on unemployed, then he may have to lower these standards.

QUESTION: Unh-hunh. Or widen his --

MR. WASIK: Or widen his scope of search area.

QUESTION: -- search. Unh-hunh.

MR. WASIK: The question on third-party information, counsel has overlooked the point that when third-party information is used, the claimant is given the opportunity to rebut this information if there is a contradictory statement. There is a statutory presumption in favor of the claimant.

I would also add that the minimal aspect importance that counsel would give on the governmental interest here is not just the money that's in the fund, although I would point out that this affects, of course, the employers who are taxed, and indirectly it concerns the employees in the whole State.

But it also concerns the administrative efficiency of the local offices. They schedule a certain number of claimants that they can handle each day, and so they must expeditiously handle these claims. If we had to have a so-called due process hearing for every time a question arose as to a man's efforts, they could not handle the tremendous number of claimants who are coming in each week. There are some 40,000 claims a week during the period in issue, that's in the record.

I would simply respectfully submit that this Court was correct in affirming the Torres-Dinger decisions, and it has the opportunity now to distinguish unemployment compensation

cases and welfare cases by finding that Connecticut procedures do satisfy due process requirements.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wasik. Thank you, Mr. Creane.

The case is submitted.

[Whereupon, at 10:49 o'clock, a.m., the case in the above-entitled matter was submitted.]

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