

# ORIGINAL

In the

## Supreme Court of the United States

EDDIE C. THOMAS,

PETITIONER,

V.

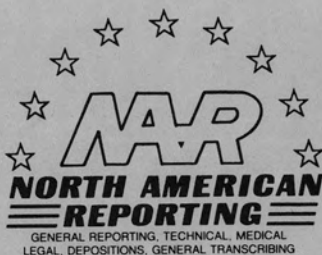
REVIEW BOARD OF THE INDIANA  
EMPLOYMENT SECURITY DIVISION  
ET AL.

RESPONDENTS.

No. 79-952

Washington, D.C.  
October 7, 1980

Pages 1 thru 43.



Washington, D.C.

(202) 347-0693

1  
2  
3  
4  
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

-----:  
:  
EDDIE C. THOMAS, :

Petitioner, :

v. :

No. 79-952

REVIEW BOARD OF THE INDIANA  
EMPLOYMENT SECURITY DIVISION  
ET AL. :

Respondents. :

-----:  
Washington, D. C.,

Tuesday, October 7, 1980

The above-entitled matter came on for oral argument  
at 1:01 o'clock p.m.

BEFORE:

HON. WARREN E. BURGER, Chief Justice of the United States  
HON. WILLIAM J. BRENNAN, JR., Associate Justice  
HON. POTTER STEWART, Associate Justice  
HON. BYRON R. WHITE, Associate Justice  
HON. THURGOOD MARSHALL, Associate Justice  
HON. HARRY A. BLACKMUN, Associate Justice  
HON. LEWIS F. POWELL, JR., Associate Justice  
HON. WILLIAM H. REHNQUIST, Associate Justice  
HON. JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

MRS. BLANCA BIANCHI de la TORRE, Esq., Legal Aid Society of  
Gary, Inc., 31 E. Fifth Avenue, Gary, Indiana 46402;  
on behalf of the Petitioner.

WILLIAM E. DAILY, ESQ., Chief Counsel, Office of the  
Attorney General of Indiana, Indianapolis, Indiana  
46204; on behalf of the Respondent.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

MRS. BLANCA BIANCHI de la TORRE, ESQ.,  
on behalf of the Petitioner

3

WILLIAM E. DAILY, ESQ.,  
on behalf of the Respondents

19

MRS. BLANCA BIANCHI de la TORRE, ESQ.,  
on behalf of the Petitioner -- Rebuttal

38

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments now in Thomas v. Review Board of the Indiana Employment Security Division et al. Mrs. Bianchi.

ORAL ARGUMENT OF MRS. BLANCA BIANCHI de la TORRE

ON BEHALF OF THE PETITIONER

MRS. BIANCHI de la TORRE: Mr. Chief Justice, and may it please the Court:

In 1963 this Court held that the denial of unemployment compensation benefits to a person who refuses otherwise available and suitable work for religious reasons was a denial of that person's right to the free exercise of religion.

~~With facts~~ With facts very similar to those that this Court had before it in Sherbert v. Verner, the Supreme Court of Indiana has upheld the denial of unemployment compensation benefits to the petitioner, Eddie C. Thomas. The facts before this Court which were determined by the Referee of the Division and affirmed by the Review Board reveal the following.

Mr. Thomas was specially hired into the roll foundry of respondent, Blaw-Knox.

QUESTION: What did they make there, what kind of fabricating did they do there?

MRS. BIANCHI: Mr. Chief Justice, this is not a matter of record but I can inform the Court that the roll foundry was engaged in the production of steel rolls to be used in the steel



1 industry.

2 QUESTION: Some of it might get into tank turrets,  
3 I suppose?

4 MRS. BIANCHI: It is possible; yes.

5 QUESTION: Or trucks and --

6 QUESTION: Does all of it get into tank service?

7 MRS. BIANCHI: Again, the record does not reveal that.  
8 It is possible that some of these rolls went to other divisions  
9 of Blaw-Knox. Now, some of these rolls were also sold to  
10 other steel mills in the area, like Bethelhem Steel, Inland  
11 Steel, for different and varied purposes.

12 Mr. Thomas was working in the roll foundry for approx-  
13 imately a year. The record revealed that this division was not  
14 engaged in the production of armaments. He worked as a chain-  
15 man "hooker" and he was involuntarily transferred to the tank  
16 turret line after a year.

17 When Mr. Thomas was transferred to the tank turret  
18 line, he realized that his new job involved the direct manufac-  
19 ture of armaments. At this time --

20 QUESTION: Had he been a Jehovah's Witness when he  
21 was first employed  
was first employed?

22 MRS. BIANCHI: Yes. When he became an employee of  
23 Blaw-Knox he listed in his initial application for employment,  
24 "Religion - Jehovah's Witness." And "Hobbies - Bible study and  
25 Bible reading."

1 QUESTION: Incidentally, did the congregation itself  
2 ever decide that issue?

3 MRS. BIANCHI: It's not clear from the record. The  
4 transcript of the --

5 QUESTION: The record's pretty obscure -- that's the  
6 same answer you've given me each time, and --

7 MRS. BIANCHI: Well, the record reveals that he was  
8 going to ask the congregation to make a decision but the record  
9 does not indicate whether the congregation made the decision.  
10 However, Mr. Thomas did reach a decision that the work he was  
11 performing in the tank turret line was against his religious  
12 belief.

13 QUESTION: Is there any claim in this case that his  
14 beliefs were not bona fide religious beliefs?

15 MRS. BIANCHI: Well, the Supreme Court of Indiana  
16 seems to attack, not his sincerity, but the nature and the basis  
17 of his belief. The Supreme Court of Indiana essentially says,  
18 well, it isn't clear what his belief is and the nature and  
19 basis of the same.

20 QUESTION: And pointed to another Jehovah's Witness  
21 who had continued --

22 MRS. BIANCHI: Yes. And then they say, even if it's a  
23 religious belief, it's not a cardinal tenet of his religion  
24 and it's not shared by the congregation.

25 QUESTION: That in your submission is entirely

1 irrelevant.

2 MRS. BIANCHI: Yes. They are irrelevant. What we  
3 are arguing is that a belief, a religious belief which is sin-  
4 cerely held, even though it's not consistent --

5 QUESTION: Even though it's held by only this person?

6 MRS. BIANCHI: Yes, yes, Mr. Justice, even though it's  
7 not consistent with the philosophy -- excuse me, consistent  
8 with but not adopted by the religion to which this person  
9 belongs is protected by the First Amendment. That's essentially  
10 our claim before this Court.

11 QUESTION: Mrs. de la Torre?

12 MRS. BIANCHI: Yes, Mr. Justice?

13 QUESTION: To the extent that you are quoting from the  
14 record or saying that the record shows, I take it the final  
15 guide for us is what the opinion of the Supreme Court of  
16 Indiana says insofar as it speaks to the question, as to what  
17 the facts are?

18 MRS. BIANCHI: No, the facts appear in the record in  
19 the decision of the Referee that was affirmed by the Review  
20 Board.

21 QUESTION: Well, but I mean, if the Supreme Court of  
22 Indiana says the facts were different than that, we take the  
23 facts as stated by the Supreme Court of Indiana, do we not?

24 MRS. BIANCHI: Well, the problem with that is that the  
25 Supreme Court seems to challenge the fact but never reverses or

1 modifies those facts. In fact, they say, "We affirm the Review  
2 Board." They raise this question but never reverse the Review  
3 Board.

4 QUESTION: Well, it's possible to affirm a lower  
5 tribunal on a different ground, is it not?

6 MRS. BIANCHI: That is possible; yes.

7 QUESTION: Mrs. de la Torre, suppose that Mr. Thomas  
8 had reached the point where all work was against his religious  
9 convictions. Would you still be here?

10 MRS. BIANCHI: We would have to look at that claim  
11 under the test that the courts have advanced, is this a reli-  
12 gious belief and is it sincerely held? But that is not our  
13 case. He has not become a nonproductive member of society, he  
14 has just said, I will not work in the production of armaments,  
15 but I am willing, able, and available to return to the roll  
16 foundry or to work in any other type of work that does not  
17 violate my religious belief.

18 QUESTION: What if in the Selective Service cases that  
19 were decided in the late 60s and early 70s where it was held  
20 that an ethical or sincerely held moral belief, even though  
21 nonreligiously founded, was adequate for conscientious objec-  
22 tion. What if his views stemmed from that rather than from his  
23 membership in Jehovah's Witnesses?

24 MRS. BIANCHI: Well, this is a constitutional claim  
25 and that definition of religion which was adopted in Seeger  
and Welsh has not been expanded to the First Amendment. And we



1 are saying that we don't have to go that far. That's not the  
2 issue in this case because he belongs to a well-established  
3 and known religion that is no stranger to the federal judiciary,  
4 the Jehovah's Witnesses, and we don't need to look for an  
5 answer in Seeger or Welsh.

6 The Referee concluded that Mr. Thomas quit for reli-  
7 gious reasons because as a Jehovah's Witness he was specifi-  
8 cally exempted from aiding in or producing armaments used in the  
9 advancement of war.

10 The Court of Appeals of Indiana said that the facts  
11 were not in dispute in that with those facts Sherbert was con-  
12 trolling. The Court of Appeals of Indiana held that the dis-  
13 qualifying provisions of the Indiana Code 22-4-15-1 as applied  
14 to Thomas imposed a burden on the exercise of his First Amend-  
15 ment right to the free exercise of religion. Because the  
16 Review Board conceded that they had no compelling state interest  
17 to justify any infringement, the Court of Appeals reversed the  
18 Review Board and awarded benefits to Thomas.

19 The case came before the Supreme Court of Indiana on  
20 a petition to transfer filed by the Board. In a 3-2 decision  
21 the Supreme Court of Indiana attempts to distinguish Sherbert  
22 and in doing so applies erroneous standards. Like we said be-  
23 fore, the Supreme Court said, well, it isn't clear what his  
24 belief was and the basis of his belief. If it's religious, it's  
25 not a cardinal tenet, and even if it is religious, it's not

1 shared by all of the congregation. These are erroneous stan-  
2 dards. There's no requirement that this be a cardinal tenet  
3 of the religion to which this person belongs or that it be  
4 shared by all the members of the congregation. The critical  
5 point is whether this is a religious belief and whether it is  
6 sincerely held by this individual. That, as I said, is the  
7 threshold inquiry.

8           The answer to both questions in Thomas's case is, yes.  
9 Thomas' belief is religious in nature. He is a Jehovah's  
10 Witness. Nobody has questioned that thus far.

11           QUESTION: Does that faith also bar participating in  
12 national defense if our country were invaded? Does it bar --  
13 is it total passive resistance?

14           MRS. BIANCHI: From reading the cases that this Court  
15 has had before it involving Jehovah's Witnesses opposed to  
16 military service, it is clear they oppose all the wars of this  
17 world. And I refer to the Sicurella case, a 1955 decision of  
18 this Court. Mr. Thomas describes his beliefs as religious and  
19 I would like to, if the Court allows me, read from a transcript  
20 of the Referee before the hearing -- from the hearing before  
21 the Referee. Thomas says, and I quote:

22           "I really could not, you know, conscientiously con-  
23 tinue to work with armaments. It would be against all of  
24 the religious principles that I have come to learn and  
25 appreciate except up to this point."

1 QUESTION: Mrs. de la Torre, what if the Referee at  
2 the conclusion of the hearing had said, I don't believe  
3 Mr. Thomas?

4 MRS. BIANCHI: Well, then he could have concluded that  
5 Thomas quit for personal reasons, but he didn't do that. In  
6 fact he said, the Referee, oh, I can understand, I can see your  
7 difficulty, and I have the utmost respect for your religious  
8 principles. And I'm quoting from the transcript. Those are  
9 the words of the Referee.

10 QUESTION: And what if the Supreme Court of Indiana  
11 had said after the Referee said what you have just quoted him as  
12 saying, we find that the Referee committed reversible error in  
13 believing Thomas?

14 MRS. BIANCHI: The Supreme Court of Indiana never  
15 said that.

16 QUESTION: But what if it had?

17 MRS. BIANCHI: Then they would have reversed the con-  
18 clusion of the Referee and we would still be here because we  
19 think that the record supports the conclusion of the Referee.

20 QUESTION: But didn't the -- the Referee said he quit  
21 for religious reasons?

22 MRS. BIANCHI: Yes.

23 QUESTION: The Supreme Court said, we disagree.

24 MRS. BIANCHI: The Supreme Court said --

25 QUESTION: You could certainly interpret what they

1 were disagreeing with as including the reasons.

2 MRS. BIANCHI: Well, I agree with that, Mr. Justice.

3 QUESTION: Well, then, if they disagree with the  
4 referee on that fact-finding, where are you?

5 MRS. BIANCHI: Okay. Then I say that the Supreme  
6 Court of Indiana was wrong if they in fact reversed the Referee,  
7 because the evidence in the record reveals that there is suffi-  
8 cient evidence.

9 QUESTION: Is that a federal question then?

10 MRS. BIANCHI: The constitutional claim is a federal  
11 question.

12 QUESTION: Is it a federal question on the narrow  
13 hypothetical Mr. Justice White has just posed, that the state  
14 court has reversed the referee on what could be his credibility  
15 findings? Now, let's assume, hupothetically, that reversing  
16 on credibility of witnesses unseen by the reviewing court would  
17 be an error of some kind. Is it a federal question error?

18 MRS. BIANCHI: It would not be a federal question if  
19 we didn't have a free exercise claim involved. But this Court  
20 has held that when free exercise or constitutional claims are  
21 involved it is free to review the facts and come to its own  
22 conclusion, especially when the constitutional claim is denied  
23 on facts as determined by the --

24 QUESTION: You mean that's the doctrine of constitu-  
25 tional facts? The doctrine of constitutional facts?



1 MRS. BIANCHI: Yes.

2 QUESTION: That this being a free exercise claim --

3 MRS. BIANCHI: This Court is free --

4 QUESTION: -- we independently can make our own deter-  
5 mination of what the facts are?

6 MRS. BIANCHI: Well, the Court can look at the record  
7 to determine if --

8 QUESTION: --aif he quit for religious reasons?

9 MRS. BIANCHI: Are you asking me if he did or if the  
10 Court can look --

11 QUESTION: You're saying we may look at the record  
12 and make our determination.

13 MRS. BIANCHI: I believe this Court can.

14 Again, we submit that Mr. Thomas' opposition to work-  
15 ing with armaments is a belief protected by the First Amendment.  
16 The Court cannot --

17 QUESTION: Could the connection be so tenuous that  
18 the reviewing courts could reverse? Let me take a hypothetical  
19 between some of -- in the mean between some of the hypotheti-  
20 cals suggested. Suppose he was working in a factory making  
21 threshing machines for farms and he reasoned that threshing  
22 machines would be used to produce wheat which might go to  
23 Russia and he does not want, his religious belief forbids his  
24 doing anything to help the communist world. Would that be in  
25 your view too tenuous and speculative to sustain a religious

1 claim?

2 MRS. BIANCHI: Again, I would have to go back to the  
3 test, is this a religious belief, and is it sincerely held?  
4 That would be the answer, the only answer in every case where a  
5 person raises the constitutional claim; we're going to have to  
6 face that threshold question. And then, if the answer is yes  
7 on both questions, then we're going to have to go to the test  
8 as advanced in Sherbert, which is what the Supreme Court of  
9 Indiana fails to do.

10 QUESTION: But you said before, this being a case  
11 involving turrets for tanks, tanks are reasonably used only in  
12 warfare. We don't have those difficult questions.

13 MRS. BIANCHI: No, we don't have them in here. In  
14 looking at the sincerity, since the courts according to the doc-  
15 trines of Fowler and United States v. Ballard cannot inquire  
16 into the validity of the belief, the courts can and do, most of  
17 the time, look into the sincerity. In a --

18 QUESTION: Which court? This Court in reviewing?

19 MRS. BIANCHI: The trial court, the appellate court.  
20 They're not prevented, you know, from looking at the sincerity  
21 of the belief. Once a First Amendment claim or a constitution-  
22 al claim is raised, then the courts must answer those two ques-  
23 tions: if this is a religious belief, is it sincerely held?  
24 And in looking at sincerity, consistency with a belief, con-  
25 sistency of this belief with the tenets of a well-established

1 religion may be persuasive on the issue of this person's sin-  
2 cerity but it's not conclusive. There are other extrinsic  
3 facts that the courts can consider to determine sincerity. One  
4 of those is, what role does religion play in the life of this  
5 individual? In Thomas's case we submit that religion plays a  
6 central role in his life. He's a Jehovah's Witness, his hobbies  
7 are Bible study and Bible reading. His belief is consistent  
8 with the tenets of the Jehovah's Witnesses who are opposed to  
9 war.

10 Furthermore, Mr. Thomas was willing to take a 50 per-  
11 cent cut in his income in order to live his life according to  
12 his religious belief. And that, we submit, shows that his  
13 belief was religious in nature and sincerely held.

14 The analysis, then, in a free exercise case, is, is  
15 there a burden on the free exercise of religion? And if there  
16 is, is it justified by a compelling state interest? In this  
17 case we believe that there is an infringement on his First  
18 Amendment rights, the same infringement that this Court found  
19 in Sherbert vs. Verner.

20 Mr. Thomas' ineligibility for unemployment compensa-  
21 tion benefits derives solely from the practice of his religion.  
22 Like in Sherbert, he is forced to choose between following the  
23 precepts of his religion and forfeiting benefits on the one  
24 hand, or abandoning the precepts of his religion to remain em-  
25 ployed, on the other hand. This, this Court has held, is an

1 unconstitutional choice. And this same test had been applied  
2 in McDaniel v. Paty and Wisconsin v. Yoder. The Review Board  
3 has conceded that it has no compelling state interest to justifi-  
4 fy the infringement on Thomas's First Amendment rights. No com-  
5 pelling state interest was raised or briefed before the state  
6 courts below, and now the Review Board for the first time in  
7 these proceedings has attempted to introduce before this Court  
8 a compelling state interest.

9 This Court has consistently held that it will not  
10 consider matters raised here for the first time which were  
11 never briefed or raised in the lower courts below. It will do  
12 so only when there is plain error, and we submit that is not  
13 in this case, that is not our case. There's a concession that  
14 there is no compelling state interest. And under those cir-  
15 cumstances we respectfully request this Court that the infringe-  
16 ment on Thomas's First Amendment rights not be tolerated.

17 QUESTION: Mrs. de la Torre, in your briefs you have  
18 not cited the Braunfeld case.

19 MRS. BIANCHI: Yes?

20 QUESTION: Do you have any comment on that?

21 MRS. BIANCHI: Yes. We submit that Sherbert expanded  
22 the test advanced in Braunfeld and this Court has not expressly  
23 overruled Braunfeld although in recent decisions -- I believe  
24 in the Wisconsin v. Yoder or McDaniel v. Paty, Justice Brennan  
25 indicated that candor compels an admission that Braunfeld has



1       been overruled. I think what --

2               QUESTION: But has the Court overruled it?

3               MRS. BIANCHI: No, it has not been overruled, but I  
4 think that the Court has expanded the test to require the state  
5 a greater burden of proof when there is an infringement on First  
6 Amendment rights, which was not the test in Braunfeld. Braun-  
7 feld has been, I think, not overruled but severely limited by  
8 the test in Sherbert, which this Court has consistently applied  
9 ever since Sherbert was decided.

10              QUESTION: Well, I thought you would have attacked it  
11 in some way, anyway. One of the amicus did, but you didn't.

12              MRS. BIANCHI: Yes. Americans United for Separation  
13 of Church and State.

14              QUESTION: It's a pretty small point, but where is  
15 the Blaw-Knox factory located?

16              MRS. BIANCHI: It's in East Chicago, Indiana.

17              QUESTION: In East Chicago.

18              MRS. BIANCHI: Finally, we would like to indicate  
19 that granting unemployment compensation benefits to the peti-  
20 tioner does not amount to a violation of the Establishment  
21 Clause. This argument was rejected in Sherbert, and also in  
22 McDaniel v. Paty, decided by this Court in 1978. All that the  
23 state is doing in granting unemployment compensation benefits to  
24 Thomas is acting with neutrality in the light of serious reli-  
25 gious differences in our nation. This Court has characterized

1 itself for encouraging benevolent neutrality, the doctrine of  
2 flexibility in its approach to the religion clauses of the First  
3 Amendment.

4 We submit that the decision of the Supreme Court of  
5 Indiana is erroneous, that it should be reversed, and that  
6 Thomas should be entitled to unemployment compensation benefits.  
7 We would like to reserve the time left for rebuttal.

8 QUESTION: Could I ask you how the compensation is  
9 financed in Indiana? Is it by assessments on employers?

10 MRS. BIANCHI: Yes, taxes from -- contributions --

11 QUESTION: It's not a state fund?

12 MRS. BIANCHI: I believe it's both state funds and  
13 employers; yes.

14 QUESTION: But what the employer pays depends on his  
15 rate of unemployment, doesn't it?

16 MRS. BIANCHI: Yes. That's correct.

17 QUESTION: When you say, a state fund, is the state  
18 any more than a keeper of the stakes? That is, the state  
19 impounds the money coming from the employer. There's no tax on  
20 the general public that goes into this, is there?

21 MRS. BIANCHI: No, I don't think there is.

22 QUESTION: Any contribution from the employees in  
23 Indiana?

24 MRS. BIANCHI: I believe there is none.

25 QUESTION: Would you be making the same argument that  
this man, under Title VII or something, that he was discharged

1 for religious purposes?

2 MRS. BIANCHI: Well, the problem is that the employer  
3 in this case, -- if Thomas had filed a Title VII, could not  
4 accommodate him, because all of the other divisions except the  
5 roll foundry were engaged in the production of armaments. And  
6 Thomas did not file a Title VII. He filed for a --

7 QUESTION: Well, wouldn't he have been willing to  
8 take a job as clerk in an office?

9 MRS. BIANCHI: Oh, yes, but there was no such job,  
10 apparently. The record reveals that he sought the transfer  
11 immediately upon being assigned to the tank turret line. And  
12 in seeking this transfer he realized that all of the other  
13 functions at Blaw-Knox were directly involved with the manufac-  
14 ture of armaments.

15 QUESTION: But the employer must now pay him, in ef-  
16 fect; pay him unemployment compensation.

17 MRS. BIANCHI: The employer and the state. Not only  
18 the employer.

19 QUESTION: Are there state funds in this fund?

20 MRS. BIANCHI: I believe so.

21 QUESTION: CHI: thought you just told me that there was  
22 no tax?

23 MRS. BIANCHI: State funds -- well, there's state  
24 funds and employers' contributions, I believe.

25 QUESTION: It conceivably might be important to know

1 whether any general tax revenues are paid. I'm not sure. The  
2 record is silent on that, is it?

3 MRS. BIANCHI: Yes, it is, and that issue has never  
4 been raised by the Board or --

5 QUESTION: Perhaps your friend may know the answer  
6 to that.

7 MRS. BIANCHI: Probably.

8 QUESTION: If the answer is important.

9 MRS. BIANCHI: Thank you.

10 MR. CHIEF JUSTICE BURGER: Mr. Daily.

11 ORAL ARGUMENT BY WILLIAM E. DAILY

12 ON BEHALF OF THE RESPONDENT

13 MR. DAILY: Mr. Chief Justice, and may it please the  
14 Court:

15 The answer is that the contributions are made solely  
16 by the employers to the fund. There are no general tax funds,  
17 although I would suppose that the employer views it as a tax  
18 on the employer to create the fund in the first place.

19 Before I get to the meat of my argument, I have to  
20 address a point raised in the petitioner's reply brief and also  
21 addressed in oral argument today. I do not believe the Review  
22 Board has ever conceded that there is not a compelling state  
23 interest. There is some ambiguous language in the opinion of  
24 the State Court of Appeals which seems to say that at oral argu-  
25 ment there may have been a concession by the State on a com-



1 compelling state interest issue but the Review Board's position  
2 is only that. There is no evidence on the record as to the  
3 existence or nonexistence of a compelling state interest, and  
4 the reason for that blank record is that the Review Board was  
5 not a party at the hearing stage. The Review Board has never  
6 had any opportunity to present facts into evidence on the exis-  
7 tence or nonexistence of a compelling state interest. When I  
8 think of that, I think I will show as I go through my argument  
9 that compelling state interest is not really relevant to this  
10 case and the case can be decided without addressing that issue.  
11 But if you do want to address that issue, the Review Board  
12 should be given an opportunity to present facts if the case  
13 should be remanded.

14 QUESTION: Well, who litigates before the Review  
15 Board? The employer?

16 MR. DAILY: The employer --

17 QUESTION: -- and the employee.

18 MR. DAILY: -- and the employee.

19 QUESTION: What sort of proceeding would the Review  
20 Board put in such evidence?

21 MR. DAILY: It would have to be remanded to some lower  
22 court. The Supreme Court of Indiana can't hold factual hearings  
23 in this case.

24 QUESTION: Are you suggesting that we -- if we thought  
25 compelling state interest was relevant, we should send it back

1 to the Supreme Court of Indiana to hold an evidentiary hearing?

2 MR. DAILY: I certainly hope it doesn't come to that  
3 stage.

4 QUESTION: But if it does, is that what you're sug-  
5 gesting?

6 MR. DAILY: I'm suggesting that the Review Board cer-  
7 tainly should have an opportunity to present facts as to the  
8 existence of a compelling state interest.

9 QUESTION: What cases of ours would you say they  
10 would be guided by?

11 MR. DAILY: I think perhaps they would have to go  
12 back -- if the decision were against us to the point where we  
13 were required to have a hearing on a compelling state interest,  
14 we would have to look to Sherbert, perhaps Wisconsin v. Yoder,  
15 and that line of cases.

16 QUESTION: How would Yoder help you there?

17 MR. DAILY: I'm sorry; I stated the wrong case.

18 QUESTION: How would the Yoder case --

19 MR. DAILY: No. Yoder will not help in compelling  
20 state interest. I'm sorry. I think Sherbert --

21 QUESTION: Sherbert v. Verner --

22 MR. DAILY: Sherbert v. Verner; right.

23 QUESTION: You feel Sherbert helps you?

24 MR. DAILY: No, I think we would have to be guided by  
25 that if we went back for a hearing on compelling state interest.

1 QUESTION: Do you think that Sherbert should be over-  
2 ruled?

3 MR. DAILY: I think it should be modified. I think  
4 there are some very good points in Sherbert but I think it goes  
5 too far. I'm not sure that Sherbert by itself goes too far,  
6 but it's certainly been interpreted by subsequent courts and  
7 by some decisions from this Court more broadly than the deci-  
8 sion itself warrants. And I'll get to that in a moment.

9 The petitioner in this case relies heavily on Sherbert  
10 v. Verner; in fact, almost exclusively. Therefore, the Indiana  
11 Supreme Court looked to Sherbert and attempted to distinguish  
12 it. The court, the Indiana Supreme Court noted that the opinion  
13 in Sherbert specifically limits itself. The language says,  
14 "We do not by our decision today declare the existence of a  
15 constitutional right to unemployment benefits on the part of  
16 all persons" -- "all persons whose religious convictions are  
17 the cause of their unemployment." Now, despite that clear  
18 language, the petitioner in this case says that all persons are  
19 entitled to unemployment benefits under Sherbert.

20 Now Sherbert didn't say that. It said, we do not make  
21 that finding.

22 QUESTION: Well, I think the -- my understanding of  
23 the reason for that language in Sherbert was to take care of  
24 my brother Blackmun's earlier hypothetical question as to what  
25 about the person whose religious convictions taught him that it

1 was sin to work at all, at anything.

2 MR. DAILY: Well, I agree that there may be a spec-  
3 trum here, going from that situation perhaps to a Sherbert.

4 QUESTION: Such a person, say, in the absence of that  
5 language in Sherbert, could say, I'm entitled to workmen's  
6 compensation -- I'm entitled to unemployment compensation.

7 MR. DAILY: And the petitioner did not deny that that  
8 person should -- in fact, the petitioner's position is that if  
9 there is a sincere religious conviction, sincerely held by an  
10 individual, that person is entitled to unemployment benefits  
11 no matter what his conviction is, even if it is that I should  
12 not be required to work at all.

13 QUESTION: That's not this case.

14 MR. DAILY: No. Obviously not.

15 QUESTION: What is the status of people, if any, in  
16 many of the courts, who would have a religious objection and  
17 scruple against participating in social security?

18 MR. DAILY: In the Indiana courts?

19 QUESTION: There have been some cases on that,  
20 haven't there, in the lower courts?

21 MR. DAILY: I'm not prepared to discuss that; I'm  
22 sorry. To continue my distinguishment of Sherbert, Sherbert  
23 involved a situation where South Carolina had a state law giving  
24 benefits to Sunday worshipers. Sherbert extended that same  
25 privilege to Saturday worshipers. There is no comparable



1 situation in the case before you today. We are not dealing  
2 with giving equality to Saturday worshipers that Sunday wor-  
3 shipers already have.

4 Sherbert found that the highest state court had not  
5 been able to point out any state interest. In this case the  
6 Indiana Supreme Court clearly points out the state interest to  
7 be protected and those state interests, if I may skip to another  
8 point, are to promote the stability in employment, to protect  
9 the citizens from the hardships of unemployment, preserving  
10 the unemployment fund. Those state interests are in my opinion  
11 as compelling or more compelling than some of the state inter-  
12 ests already upheld in this Court. And there I will refer you  
13 to Braunfeld v. Brown, Reynolds --

14 QUESTION: Mr. Daily, I don't think it's quite correct  
15 to say that there were no state interests involved in Sherbert.  
16 The opinion noted that there was a state interest in preventing  
17 spurious claims which would also be present here, and also a  
18 state interest in not making, complicating the work schedule  
19 that the employer has to worry about putting people on, when  
20 people can't work on Saturdays. So there were state interests  
21 there.

22 MR. DAILY: That is correct. And those state interests  
23 would exist here, in addition to the interests that I have  
24 listed. In this case, however, we have the highest court of  
25 the State finding that those interests that I have listed are

1 sufficient to sustain the statute.

2           Similar cases inquire as to whether or not there are  
3 other ways to achieve the secular state purposes or achieve the  
4 interest established by the case. And I note that the peti-  
5 tioners have not pointed out any other ways to achieve these  
6 secular interests or secular purposes.

7           As I read the opinion of the Indiana Supreme Court,  
8 that Court based its decision on three general and independent  
9 grounds. There are three different grounds for sustaining the  
10 Indiana Court's opinion. First of all, the Court found that  
11 the statutory good cause requirement has a valid secular pur-  
12 pose and a valid secular effect. In other words, the Braunfeld  
13 v. Brown test. Under that test we have a valid secular purpose,  
14 a valid secular effect; it is therefore a constitutional stat-  
15 ute.

16           Secondly, the Indiana Supreme Court found that the  
17 grant of an exemption to Mr. Thomas would conflict with the  
18 Establishment Clause in the Constitution, as a second indepen-  
19 dent grounds, also requiring that the statute be found to be  
20 constitutional. Thirdly, the Supreme Court went into the --

21           QUESTION: Mr. Daily, wasn't that argument specifi-  
22 cally rejected in Verner, both by the majority and by the dis-  
23 senters?

24           MR. DAILY: To that extent I am arguing for a modifi-  
25 cation of Sherbert v. Verner.

1 QUESTION: That's why you asked for the modification?

2 MR. DAILY: To the extent that that has been found by  
3 other courts, I think it should be modified.

4 And I'd like to address that question now. In Walz  
5 v. the New York Tax Commission, this Court noted that past  
6 opinions had considerable internal inconsistency because of  
7 certain sweeping statements. This Court also recognized that  
8 there could be a potential conflict between the religion  
9 clauses, and a test proposed in Walz v. New York Tax Commission  
10 is, first of all, examine the legislative purpose; secondly,  
11 examine the degree of involvement between church and state.

12 The current Indiana practice withstands these tests.  
13 Legislative purpose is a valid secular purpose, the degree of  
14 involvement is almost zero. The only reason that the Court  
15 had to examine the sincerity or the contents of Mr. Thomas's  
16 beliefs was because it had to distinguish Sherbert, or perhaps  
17 Wisconsin v. Yoder.

18 Under the current procedure in Indiana there is  
19 really no reason beyond those cases for an examination or for an  
20 involvement of the church with the state. However, if the  
21 state were to pass a statute saying that persons in Mr. Thomas's  
22 situation are exempt from the objective good cause requirement,  
23 if you examine that statute, the statute proposed by Mr. Thomas  
24 here -- although Mr. Thomas is not proposing a statute, he's  
25 proposing the Court do something to the same effect, to create

1 for Indiana an exemption. If the Court were to create that  
2 exemption or if the Legislature in Indiana were to create that  
3 exemption and were examined under the Walz test, you would have  
4 to find a secular legislative purpose for an exemption for  
5 people in Mr. Thomas's situation.

6 Now I submit that there is no reasonable secular  
7 purpose for that exemption. I don't think you will find a rea-  
8 sonable purpose stated in the briefs. I've noted one amicus  
9 brief seems to think that a secular purpose would be avoidance  
10 of conflict with the religion clauses and that argument seems  
11 to me somewhat circular. You can point out as a secular purpose  
12 for the denial of the relief an avoidance of conflict with the  
13 Establishment Clause.

14 In any event, there is no valid secular purpose for  
15 the establishment of exemption; the degree of involvement esca-  
16 lates terrifically if you grant an exemption for religious  
17 purposes. Then it becomes necessary to examine Mr. Thomas or  
18 people in his position to determine whether or not he actually  
19 has a sincere belief. You have to examine whether or not that  
20 belief is a religious belief, as opposed to a merely personal  
21 belief. And you run into the problem that Mr. Rehnquist sug-  
22 gested in one of his early questions: if you create that  
23 exemption statutorily, you run into the problem of the con-  
24 scientious objector cases and you perhaps have to interpret  
25 the statutory exemption in such a way that it applies to every-  
body whether it's a religious exemption or merely a deeply held



1 personal conviction.

2 QUESTION: Do you think it is not clear in this case?  
3 that his position was placed entirely on his formal religious  
4 beliefs as distinguished from just disagreeing with some par-  
5 ticular facet of a war, as Vietnam, for example?

6 MR. DAILY: I think Mr. Thomas stated that his be-  
7 liefs, it was a personal religious belief.

8 QUESTION: Well, a personal religious belief against  
9 doing anything relating to making the weapons of war, direct  
10 weapons of war?

11 MR. DAILY: Directly involved in it; yes, sir.

12 QUESTION: He backed that up by saying that making  
13 steel alone, as he had previously, was not a barrier, and we  
14 can only infer that he meant that some of that steel might go  
15 into other purposes, and that he was only raising the question  
16 and he was helping to make a tank, for which there was no use  
17 except in war.

18 MR. DAILY: I think that's clear from the record,  
19 that his only objection was to being put on an assembly line  
20 where he could clearly see what he was making. In other words,  
21 if tanks or guns of some sort were going past him on the assem-  
22 bly line, then he found it conflicted with his personal beliefs.  
23 Whereas if a few steel --

24 QUESTION: Religious beliefs, as a member of Jehovah's  
25 Witnesses. Didn't he make that clear, in your view?

1 MR. DAILY: Yes, in my view it's very clear that  
2 as long as it were something that he could not recognize as a  
3 weapon, he had no --

4 QUESTION: It was not just a general appeal to con-  
5 science in the abstract as in the hypothetical posed by  
6 Mr. Justice Rehnquist, it was specifically his membership and  
7 adherence to the beliefs of Jehovah's Witnesses that he relied  
8 on.

9 MR. DAILY: I'm not sure that he relied on his  
10 Jehovah's Witness beliefs, but on his beliefs.

11 QUESTION: Well, is that true from the record, when  
12 there is another Jehovah's Witness who is not upset by this  
13 situation?

14 MR. DAILY: That's the point I'm making. It was  
15 Mr. Thomas' beliefs and not necessarily Jehovah's Witness  
16 beliefs.

17 QUESTION: So it gets down to a matter of a personal  
18 religious belief wholly apart from Jehovah's Witnesses?

19 MR. DAILY: On the record in this case that's true.  
20 I think if you'll notice in the reply brief by petitioner, it  
21 is apparently a matter of conscience by individual Jehovah's  
22 Witnesses rather -- there's a paragraph in the reply brief that  
23 seems to indicate that individual Jehovah's Witnesses may examine  
24 their own conscience and make their own determinations as to  
25 whether or not to work in certain fields.

1 QUESTION: But it is not unrelated to the beliefs of  
2 Jehovah's Witnesses, as a faith.

3 MR. DAILY: On the record in this case, I don't know  
4 that you can make that determination.

5 QUESTION: I thought the record in that respect was  
6 crystal clear, open to no possible doubt.

7 QUESTION: Well, it's a factor, I suppose, but the  
8 fact that another Jehovah's Witness went the other way would  
9 indicate it isn't a compelling factor. I don't believe --

10 QUESTION: Didn't the Supreme Court of Indiana say  
11 the question was unclear as to why he quit?

12 MR. DAILY: Examining the record in this case, the  
13 Supreme Court in Indiana could not find a basis for finding  
14 that this was a tenet.

15 QUESTION: That probably led to the 4-3 decision in  
16 the Indiana Supreme Court to some extent.

17 QUESTION: It was still 4-3.

18 MR. DAILY: Well, the minority in the Indiana Supreme  
19 Court felt that Sherbert should be given broad application and  
20 did not go into the facts. So they thought that Sherbert  
21 applied across the board, and therefore applied in this case.

22 QUESTION: Well, the fact that some other employees  
23 who were members of Jehovah's Witnesses did not take the same  
24 view of the matter, there's nothing unique in that.

25 MR. DAILY: That's so.

1 QUESTION: Members of any given faith, whether  
2 Catholic or Presbyterian or whatnot, have more liberal construc-  
3 tions of their own faith, but it's still rooted back to his  
4 claim as a Jehovah's Witness adherent.

5 MR. DAILY: I think that it is rooted in his claim  
6 that his personal interpretation of the doctrine required him  
7 to reach that decision.

8 QUESTION: Is there anything in this record that  
9 shows that any Jehovah's Witness is willing to work on a tank?

10 MR. DAILY: There are a number of -- well, it is  
11 clear from the record that Jehovah's Witnesses are willing to  
12 work on a tank in this factory. There are Jehovah's Witnesses  
13 working there.

14 QUESTION: Working on the tank itself?

15 MR. DAILY: Yes. There is --

16 QUESTION: On the tank itself?

17 MR. DAILY: There is no other --

18 QUESTION: Or the turret for the tank?

19 MR. DAILY: I'm sorry; the turret for the tank.  
20 I should be specific there.

21 QUESTION: That's what I thought.

22 QUESTION: Mr. Daily, you were telling us the three  
23 reasons for the Supreme Court of Indiana decision. The first  
24 was that it didn't come within the state good cause requirement.  
25 The State Supreme Court said good cause has to be a valid job-  
related reason, as I u 31



1 objective job-related reason, as I understand it.

2 MR. DAILY: That is my interpretation of the  
3 Braunfeld criteria.

4 QUESTION: Now, under that interpretation, refusal to  
5 work on Saturday would not be good cause, would it?

6 MR. DAILY: Under that interpretation refusal to work  
7 on Saturday would not be good cause.

8 QUESTION: So that part of the Supreme Court decision  
9 is plainly inconsistent with this Court's holding in Sherbert,  
10 isn't that correct?

11 MR. DAILY: That is correct.

12 QUESTION: Now, what was the third reason? You didn't  
13 get to the third, but the second one is, you agreed that we'd  
14 have to modify Sherbert also to accept the second ground, so  
15 I'm interested in -- what was it? -- I forget what the third  
16 one was.

17 MR. DAILY: The third one was the factual issues as  
18 to whether or not there is a religious tenet involved, whether  
19 or not he held that religious principle, a number -- in effect,  
20 everything I've said about distinguishing Sherbert.

21 QUESTION: On the facts.

22 MR. DAILY: All right. That's the -- it said

23 QUESTION: When he says -- the Supreme Court of  
24 Indiana said he was uncertain as to his precise beliefs, and  
25 said that his reasons for quitting work were unclear.

1 MR. DAILY: That is certainly correct from the record.

2 QUESTION: That's what the Supreme Court of Indiana  
3 said, whether -- totally aside from what the record says, but  
4 that was its reading of the record.

5 MR. DAILY: Yes. There are a number of tests under  
6 the Establishment Clause arising out of the aid to school cases.

7 QUESTION: Before you get to that, may I ask you,  
8 I take it we can read -- this is a constitutional fact type  
9 case, isn't it?

10 MR. DAILY: Yes, it is. There are a number of --

11 QUESTION: Well, let me put the question to you  
12 directly. I gather we're as free to read the record in respect  
13 to this constitutional issue as was the Indiana Supreme Court,  
14 are we not?

15 MR. DAILY: I understand that you incline towards  
16 giving credit to the interpretation by the state of its own --

17 QUESTION: Well, that isn't my question.

18 MR. DAILY: And that you would --

19 QUESTION: My question is whether we are as free as  
20 the Supreme Court of Indiana, since this is a constitutional  
21 fact question, to read the record and reach our own determina-  
22 tion?

23 MR. DAILY: I would limit that to the extent that  
24 you may go to the record if the state's determination is clearly  
25 erroneous.

1 QUESTION: Where did you get that?

2 QUESTION: No, no. In such cases as the involuntary  
3 confession cases -- didn't set up any clearly erroneous thresh-  
4 old but said that this Court was as free as were the state  
5 courts to -- in fact, had a duty, independently, to assess the  
6 record, the evidence of record.

7 QUESTION: I thought they set up the test of the so-  
8 called undisputed facts, that if there had been a resolution of  
9 disputed fact by the state, you accept the resolution by the  
10 state.

11 MR. DAILY: The problem on this factual record is, of  
12 course, that there was no participation by anybody opposed to  
13 Mr. Thomas so we have to examine what he said now as to the  
14 threshold question as to when you begin that examination. I'm  
15 not prepared to answer that.

16 QUESTION: Mr. Daily, as I understand the Supreme  
17 Court of Indiana, they're saying the resolution of this issue  
18 is somewhat unclear. They didn't resolve it definitely one  
19 way or the other, did they?

20 MR. DAILY: They definitely said that he had not  
21 clearly stated a religious principle that they could find in  
22 his testimony. They did not -- the burden of proof was ob-  
23 viously on the petitioner at this point. I think you can  
24 interpret their holding to say that he failed to meet his burden  
25 of proof.

1 QUESTION: Well, he prevailed on the fact issue  
2 before the hearing examiner and the Industrial Review Board and  
3 the Court of Appeals, didn't he?

4 MR. DAILY: No, he did not prevail at the two lower  
5 levels. The only point at which he prevailed was before the  
6 Court of Appeals.

7 QUESTION: He didn't get the award; I understand that.  
8 But on the question of whether his belief was a sincere reli-  
9 gious belief, they both agreed with him, didn't they?

10 MR. DAILY: They agreed with him on that point, yes.

11 QUESTION: And this is what we are talking about now?

12 MR. DAILY: Yes.

13 QUESTION: And what do you say the Supreme Court of  
14 Indiana said about the sincere religious belief determination  
15 of the Court of Appeals? Didn't they say it was unclear?

16 MR. DAILY: They said that on the record they could  
17 not sustain the finding below that he had a clear religious  
18 conviction.

19 QUESTION: Of the Board?

20 MR. DAILY: Of the Board.

21 QUESTION: Well, they said, not only is it unclear  
22 what his belief was but that it was unclear why he quit work.

23 MR. DAILY: That goes perhaps farther than --

24 QUESTION: Which is even different.

25 MR. DAILY: I think that would go further than I could



1 go on the facts in this case, at least that statement of their  
2 holding. They could -- the record clearly shows that he had,  
3 that he quit work because he did not want to work on the tur-  
4 rets, the tank turrets.

5 QUESTION: Well, that may be so. It may be so that  
6 he didn't want to work on the tank turrets but it would still be  
7 a question of whether he quit because of a religious belief.

8 MR. DAILY: That's true. And I don't think that --  
9 I think the Supreme Court of Indiana did not find any clear  
10 statement as to whether or not that's why he quit.

11 I'd like to point to -- a minute -- to a fairly recent  
12 case of this Court called TWA v. Hardison. In that case this  
13 Court said, "We will not readily construe a statute to require  
14 an employer to discriminate against some employees in order to  
15 enable others to celebrate their sabbath." I am hopeful that  
16 that to some extent modifies Sherbert. At least the dissent  
17 thought that it did. And I think it does too, and I think the  
18 basic principle in TWA v. Hardison is equality under the law.  
19 Petitioner in this case --

20 QUESTION: Was Sherbert addressed to that kind of a  
21 question?

22 MR. DAILY: Sherbert was addressed to a state action.  
23 This is an employer action involving a statutory mention of  
24 religion which is the same thing that the petitioners want us to  
25 do here, create an exemption for religion. I think the reasoning

1 is analogous, even though the factual situation is different.  
2 This Court has frequently stated that the Court should allow  
3 the legislature to assess the public need and should not strike  
4 down a neutral state action within the state's power even if  
5 that action approaches the verge or the limits of the power.  
6 That's from *Everson v. Board of Education*. The Court realizes  
7 the potential conflict between establishment and freedom that  
8 was realized in *Walz v. Tax Commissioners*. As Justice White  
9 noted in dissent in *Welsh v. U. S.*, Congress or in this case  
10 the state should have some leeway in interpreting the religion  
11 clauses. In this case the state has adopted a neutral position.  
12 That position does not clearly establish a religion nor does  
13 it directly infringe upon religious freedoms.

14 I am making the same plea that every attorney general  
15 probably does before you and ask that you recognize the federal  
16 system and adopt a hands-off approach in this particular situa-  
17 tion. The Legislature of Indiana has assessed the public need,  
18 as required in *Everson v. Board of Education*. The statute is  
19 neutral, as required in that state, and even though there is an  
20 indirect, there may be an indirect burden on Mr. Thomas in this  
21 case, that does not by itself give rise to a requirement that  
22 a statute otherwise neutral, with a secular purpose and a  
23 secular effect, should be stricken down. Thank you.

24 I'm sorry. Any further questions?

25 MR. CHIEF JUSTICE BURGER: Apparently none. Do you

1 have anything further?

2 ORAL ARGUMENT OF MRS. BLANCA BIANCHI de la TORRE

3 ON BEHALF OF THE PETITIONER -- REBUTTAL

4 MRS. BIANCHI: First we would like to address the con-  
5 tention of the respondent that the Court of Appeals never said  
6 there was there was a concession of no compelling state interest  
7 and we would like to address the attention of the Court to pages  
8 13(a) and 19(a) of our petition for certiorari where the Court  
9 of Appeals clearly said that the task of applying Sherbert in  
10 this case is focused by the Board's concession in oral argument  
11 that no compelling state interest exists in this case to justify  
12 an infringement. So it is very clear, there was a concession  
13 in oral argument.

14 Second, the Board contends that in Sherbert there was  
15 a discriminatory effect in relation to Sunday worshipers that  
16 is not present in this case. The truth of the matter is that  
17 Sherbert was decided on First Amendment, not on the Fourteenth  
18 Amendment equal protection provision.

19 Also, the interests now asserted by the State for the  
20 first time before this Court in these proceedings were already  
21 rejected in Sherbert like Justice Stevens pointed -- And this  
22 Court has stated that only the gravest abuses endangering para-  
23 mount interests permit infringement on First Amendment rights.  
24 Those grave abuses are not present in this case.

25 QUESTION: Mrs. de la Torre, what if at the time that

1 your Mr. Thomas applied for work at the foundry he was told that  
2 as a matter of company policy someone who is in the roll mill  
3 automatically at the end of six months would be placed, rotated  
4 to the tank production department?

5 MRS. BIANCHI: That would be different from our case  
6 because that would indicate knowledge on this petitioner that  
7 that job was in conflict with his religious beliefs. And I  
8 have to admit that he could not accept that job and then allege  
9 that his free exercise rights had been violated, because he had  
10 knowledge. But in this case he didn't. The Referee concluded  
11 that it wasn't until he was transferred to the tank turret line  
12 that he realized the armament-producing nature of Blaw-Knox.  
13 So he would not put himself in a position of having a conflict  
14 with his religious beliefs. Also --

15 QUESTION: Could I ask you, suppose that his request  
16 to the Jehovah's Witnesses had been answered by the religious  
17 body saying, there's nothing contrary to our religion to work  
18 in the turret factory. And he said, well, that's maybe your  
19 view of it as a group, but my own personal religious beliefs  
20 prevent me from doing so.

21 MRS. BIANCHI: We will still argue that the First  
22 Amendment protects that belief because it's religious in  
23 nature, it's sincerely held.

24 QUESTION: As long as you say it's religion. What if  
25 he says, well, I just don't believe I should -- I just don't



1 believe in war.

2 MRS. BIANCHI: Well, that is consistent with the tenet  
3 of the Jehovah's Witnesses and would also be a belief protected  
4 by the First Amendment.

5 QUESTION: And you would say the same thing, then, if  
6 a person went to his employer and said, I can't work in a turret  
7 factory, I'm going to quit, and the employer said, well, why?  
8 I have a religious belief. And his employer said, well, what  
9 religion are you a member of? And he says, none except mine.  
10 I'm a one-man, I have a one-man religion. And -- but it's  
11 religious. I think it's contrary to the laws of God to go to  
12 war or to even work on the implements of war. You would be here  
13 in the same capacity --

14 MRS. BIANCHI: Then we would have to urge this Court  
15 to adopt the definition of religion in Seeger and Welsh, which  
16 has not been extended to the First Amendment as of today.

17 QUESTION: Well, no, he would say, this isn't just  
18 conscientious. I categorize my beliefs as religious.

19 MRS. BIANCHI: Okay, then, we would have to look, as  
20 I said, to the test of sincerity and religious nature and how  
21 central this belief is to the life of this individual. The  
22 Court has often emphasized the centrality of the belief to de-  
23 termine sincerity, and to that effect are the decisions  
24 of the Court of Appeals in Teterud v. Burns, 1979 decision, I  
25 believe, and other decisions of lower federal courts.

1 QUESTION: So you're close to conceding that all this  
2 Jehovah's Witness business is irrelevant.

3 MRS. BIANCHI: What we're saying is that if --

4 QUESTION: For the precise issue here.

5 MRS. BIANCHI: Pardon?

6 QUESTION: For the precise issue here. You are close  
7 to conceding that the presence of a Jehovah's Witness connection  
8 is irrelevant. He'll prevail anyway. The church --

9 MRS. BIANCHI: He doesn't need the backing of the  
10 well-known religious organization to come to this Court and  
11 urge protection of his First Amendment rights, but in this case  
12 that backing is persuasive as to the issue of sincerity and  
13 is very crucial.

14 QUESTION: but your response to Mr. Justice White was  
15 that eliminating that you would still be here.

16 MRS. BIANCHI: Yes; yes, Mr. Justice.

17 QUESTION: What if he said, I'm an atheist but I'm  
18 opposed to all wars?

19 MRS. BIANCHI: Then I would have to urge this Court  
20 to adopt the definition of religion in Seeger and Welsh.

21 QUESTION: But these fallback positions do not alter  
22 the fact that you have an organized established religion  
23 declaring the belief on which he relies.

24 MRS. BIANCHI: Yes, there is one.

25 QUESTION: But which all members do not follow,

1       apparently.

2               MRS. BIANCHI: Well, as we indicate in our reply  
3       brief, the Jehovah's Witnesses encourage their members to read  
4       and study the Bible and get their own teachings from it. It's  
5       the practice that they do encourage and they have to come to  
6       their own decision.

7               QUESTION: But some of them -- not all Jehovah's  
8       Witnesses refuse to work in the turret factory.

9               MRS. BIANCHI: That's correct.

10              QUESTION: And at least some of them thought it was  
11       wholly consistent with the tenets of the sect, or of the reli-  
12       gion.

13              MRS. BIANCHI: They did not view working there as  
14       unscriptural, while Mr. Thomas did.

15              QUESTION: But does that necessarily follow? Suppos-  
16       ing you had a Catholic nurse employed in a hospital and was  
17       transferred into the abortion ward, and she said, well, it's  
18       against my religion to work in abortions and then they defend  
19       it on the grounds, well, some other Catholics will perform these  
20       services, therefore your belief is not religious, is not sin-  
21       cere.

22              MRS. BIANCHI: I would say that the belief is reli-  
23       gious in nature because she's saying that --

24              QUESTION: Some people are more religious than others  
25       within the same faith, in other words.

1 MRS. BIANCHI: Yes.

2 QUESTION: Well, you have the further factor that in  
3 the Roman Catholic faith you have an authoritarian determina-  
4 tion of these issues and yet people are not excommunicated just  
5 because they don't follow all of them.

6 MRS. BIANCHI: Well, we are submitting that the pres-  
7 sure from the congregation is not a necessary element of a pro-  
8 tected expression of religious belief.

9 QUESTION: You agree that the group as a whole do not  
10 make this a tenet, that they don't have a rule against working  
11 in turret factories. They leave it up to each individual to  
12 study the Scriptures and come to his own conclusions as to what  
13 his religious belief should be.

14 MRS. BIANCHI: Yes, Mr. Justice.

15 QUESTION: So the fellow who works in the turret fac-  
16 tory is acting just as consistently with the Jehovah's Witnesses  
17 tenets as the fellow who doesn't.

18 MRS. BIANCHI: His interpretation; yes.

19 QUESTION: Yes.

20 MRS. BIANCHI: Thank you.

21 MR. CHIEF JUSTICE BURGER: Very well. Thank you,  
22 counsel. The case is submitted.

23 (Whereupon, at 1:58 o'clock p.m., the case in the  
24 above-entitled matter was submitted.)



CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording in the oral argument before the Supreme Court of the United States in the matter of:

No. 79-952

Eddie C. Thomas

v

Review Board of the Indiana Employment Security Division, et al and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: WJW

William J. Wilson

1980 OCT 21 PM 4 58

RECEIVED  
SUPREME COURT U.S.  
MARSHAL'S OFFICE