

**ORIGINAL**

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 81-1983

**TITLE** RICHARD S. SCHWEIKER, SECRETARY OF HEALTH AND  
HUMAN SERVICES, Petitioner v. CARMEN CAMPBELL

**PLACE** Washington, D. C.

**DATE** February 28, 1983

**PAGES** 1 thru 47



ALDERSON REPORTING

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440 FIRST STREET, N.W.  
WASHINGTON, D.C. 20001

1                   IN THE SUPREME COURT OF THE UNITED STATES

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3   RICHARD S. SCHWEIKER, SECRETARY   :

4       OF HEALTH AND HUMAN SERVICES,   :

5                                   Petitioner       :

6                               v.                       :       No. 81-1983

7   CARMEN CAMPBELL                       :

8   - - - - -x

9   Washington, D.C.

10    Monday, February 28, 1983

11       The above-entitled matter came on for oral argument  
12 before the Supreme Court of the United States at  
13 10:05 a.m.

14 APPEARANCES:

15   JOHN H. GARVEY, ESQ., Office of the Solicitor General,  
16       Department of Justice, Washington, D.C.; on behalf of  
      the Petitioner.

17   RUBEN NAZARIO, ESQ., Brooklyn, New York; on behalf of the  
      Respondent

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1                                    P R O C E E D I N G S

2                    CHIEF JUSTICE BURGER: We will hear argument  
3 first this morning in Schweiker against Campbell.

4                    Mr. Garvey, you may proceed whenever you are  
5 ready.

6                    ORAL ARGUMENT OF JOHN H. GARVEY, ESQ.,

7                    ON BEHALF OF THE PETITIONER

8                    MR. GARVEY: Mr. Chief Justice, may it please  
9 the Court, the issue in this case is the validity of  
10 regulations governing claims under the Social Security  
11 Act for disability in cases that can't be decided on the  
12 basis of medical evidence alone.

13                   In 1979, the respondent who was then 51 years  
14 old applied for disability benefits under Title II  
15 claiming a back problem and high blood pressure.

16                   QUESTION: Total impairment?

17                   MR. GARVEY: I believe so.

18                   She had been born in Panama where she was  
19 educated through the sixth grade, and moved to the  
20 United States in 1964. Between that time and the time  
21 of filing her claim, she had worked as a maid in a hotel  
22 and as a seamstress and had injured her back moving a  
23 laundry truck.

24                   Her claim was denied initially and on  
25 reconsideration by the State agency, and she then



1 requested a hearing before an Administrative Law Judge.  
2 The Administrative Law Judge took evidence on her  
3 medical claims, on her back impairment and her other  
4 claims, and concluded that she was capable of doing  
5 light work as that term is defined in the regulations  
6 which are at issue in this case.

7           The Administrative Law Judge also took  
8 evidence on respondent's age and education, and on her  
9 work experience and training, and after consulting the  
10 guidelines in Appendix 2 of the regulations, concluded  
11 that she was not disabled.

12           The respondent then sought review in the  
13 District Court which upheld the Secretary's  
14 determinations and respondent then appealed to the  
15 Second Circuit which reversed.

16           The Second Circuit held that in cases which  
17 can't be decided on the basis of medical evidence alone  
18 where the claimant is incapable of doing her prior work,  
19 the Secretary is required to show two things in order to  
20 find the claimant not disabled.

21           The first thing the court said the Secretary  
22 must demonstrate is what the claimant can do, that is to  
23 say, what kinds of physical activities like lifting and  
24 walking, and what sort of skills she may have acquired  
25 in her past work. With respect to that issue, the Court

1 of Appeals concluded that the Secretary's determination  
2 that respondent was capable of doing light work was  
3 supported by substantial evidence.

4 The Court of Appeals said that the Secretary  
5 must also introduce evidence on a second question. The  
6 Court said that the Secretary must show what kinds of  
7 jobs are available for a person who is capable of doing  
8 what the claimant is capable of doing.

9 QUESTION: Mr. Garvey, do you interpret the  
10 Court of Appeals' decision as perhaps being based on  
11 some kind of due process, lack of notice requirement?

12 MR. GARVEY: I find it difficult to understand  
13 the Court of Appeals as having said that, because it  
14 made no mention of the due process clause. Respondent  
15 contends that the Court of Appeals was concerned about  
16 giving notice to claimants of the issues which are at  
17 stake in disability hearings. The Secretary understands  
18 the Court of Appeals to have done something more radical  
19 than that.

20 QUESTION: Short of a due process requirement  
21 of notice, what other requirement would there be?

22 MR. GARVEY: What other requirement might the  
23 Court --

24 QUESTION: For notice.

25 MR. GARVEY: There is also a statutory --

1 QUESTION: -- as far as this Court is  
2 concerned?

3 MR. GARVEY: There is a statutory requirement  
4 of notice in Section 205(b) of the Social Security Act  
5 that provides that the Secretary must give notice and  
6 reasonable opportunity for a hearing, and the Secretary  
7 has in fact implemented that notice requirement by  
8 regulations, and there are a couple in particular.

9 In 20 CFR 404.938, the Secretary has provided  
10 that notice of a hearing will be mailed or served at  
11 least ten days before the hearing. It will contain a  
12 statement of the specific issues to be decided and tell  
13 you that you may designate a person to represent you  
14 during the proceedings.

15 The regulations then go on to provide that  
16 once the hearing has begun, the Administrative Law Judge  
17 may consider a new issue at the hearing, that is to say,  
18 an issue not raised at the initial or reconsideration  
19 stage.

20 QUESTION: Mr. Garvey, the Court of Appeals  
21 didn't mention that section that you have just quoted at  
22 all.

23 MR. GARVEY: No, it did not.

24 QUESTION: As I understand it, we have a  
25 statute here and we have regulations issued pursuant to

1 the Secretary's authority under 405(a), and the Court of  
2 Appeals could decide against the Secretary in this case  
3 only if it either decided that the regulation wasn't  
4 authorized by the statute or that the statute had some  
5 sort of constitutional infirmity in it.

6 MR. GARVEY: That is the Secretary's  
7 contention in this case, that is correct.

8 QUESTION: What do you understand to have been  
9 the reasoning of the Court of Appeals, if it had any?

10 MR. GARVEY: As I understand the Court of  
11 Appeals, what it was concerned about was that the  
12 Secretary had not complied with the procedures which the  
13 Courts had used to interpret the statutory term before  
14 these regulations had been passed.

15 Before the regulations were enacted, at  
16 disability hearings, the statute provided that where the  
17 case can't be decided on the basis of medical evidence  
18 alone, the Secretary was required to consider, under  
19 Section 223, the claimant's age, education, and work  
20 experience.

21 That job of considering those vocational  
22 factors, along with the claimant's medical impairment,  
23 in order to decide what kinds of jobs are available for  
24 the claimant, had been performed largely with the  
25 assistance of vocational experts.



1           These were people who were rehabilitation  
2 counsellors or directors of employment agencies, and  
3 under contract with the Social Security Administration.  
4 They would take the stand, after all of the evidence  
5 about the claimant's medical factors and vocational  
6 characteristics had been taken, and would be asked  
7 hypothetical questions by the Administrative Law Judge  
8 about what sorts of jobs would be available for such a  
9 claimant if the Court determined that he was able of  
10 doing light work.

11           The Court of Appeals, as I understand it, said  
12 in this case that the Secretary was required to continue  
13 to do that in order to give the claimant an opportunity  
14 to dispute the suitability and the availability of the  
15 jobs that were noticed.

16           I think the Court's decision is very much  
17 like, in fact I think it is identical to claims raised  
18 under 405(g) decided by the First, Third, Fifth,  
19 Seventh, and 11th Circuits. In each of those cases,  
20 what the claimant contended was that the Secretary's  
21 decision wasn't supported by substantial evidence if the  
22 Secretary didn't put on evidence about what kinds of  
23 jobs were out there that were suitable for a claimant of  
24 this sort.

25           QUESTION: Is this a substantial evidence case

1 for us, then?

2           Your cert petition treats it as though the  
3 Court had invalidated the grid system in some kind of  
4 regulations promulgated by the Secretary, and yet the  
5 Court didn't expressly do that. Are you telling us,  
6 then, that it really is a case of sufficiency of the  
7 evidence?

8           MR. GARVEY: No, it is not.

9           You will notice in the Court of Appeals'  
10 opinion that at page 7-A it says, on the question of  
11 what this claimant can do, the record as a whole  
12 supports the Administrative Law Judge's finding that Ms.  
13 Campbell had the residual functional capacity to perform  
14 light work.

15           Then the Court goes on to say that there is a  
16 second question which must be decided, that is to say,  
17 what kinds of jobs are out there and what their demands  
18 are. With respect to that, the Court said the  
19 Secretary's decision was not supported by substantial  
20 evidence because he had not introduced any evidence on  
21 that question.

22           But what the Secretary contends in this Court  
23 is that it is unnecessary for him to introduce any  
24 evidence on that question because the issue has already  
25 been resolved by the regulations.

1               QUESTION: Maybe you are arguing that the grid  
2 system is evidence.

3               MR. GARVEY: But it is evidence only in the  
4 sense in which any kind of regulation is evidence. What  
5 the tables and the guidelines actually do is to make  
6 unnecessary the introduction of evidence on what kinds  
7 of jobs.

8               QUESTION: It really dispenses with the need  
9 for this sort of a proof that the Court of Appeals  
10 thought was required.

11              MR. GARVEY: That is correct. What the  
12 Secretary concluded was that those issues are really  
13 legislative facts most appropriately determined in the  
14 course of rulemaking proceedings. I might add that that  
15 conclusion corresponds to what this Court said in  
16 Matthews against Eldridge.

17              What the Court there said was, resolution of  
18 the inquiry as to the types of employment opportunities  
19 that exist in the national economy for a physically  
20 impaired worker with a particular set of skills would  
21 not necessarily be advanced by an evidentiary hearing.  
22 Then the Court went on to quote a passage from Professor  
23 Davis's treatise dealing with legislative facts.

24              Then the Court concluded that the statistical  
25 information relevant to this judgment is more amenable

1 to written than to oral presentation.

2 QUESTION: At the top of page 9-A of the  
3 opinion, is it possible that that material where the  
4 Court refers to the fact that before and after these  
5 guidelines that the Court of Appeals had had some pretty  
6 specific notions as to what the standard should be.  
7 Does that suggest that they perhaps are not giving  
8 enough weight to the guidelines?

9 MR. GARVEY: I think that is exactly correct.  
10 At the top of 9-A what the Court says is that in future  
11 cases, in past -- before and after adoption of the  
12 guidelines, this Court has required the Secretary to  
13 identify specific alternative occupations, supported by  
14 a job description clarifying the nature of the job and  
15 demonstrating that the job does not require exertion or  
16 skills not possessed by the claimant. The Court then  
17 goes on to say that in the past this has been done  
18 largely through the use of vocational testimony.

19 Then the Court says at the top of page 10-A  
20 that if the Secretary is going to dispense with the use  
21 of vocational experts, what he has got to do is provide  
22 a similar degree of specificity, and concludes "the key  
23 consideration in the administrative proceeding must be  
24 that the claimant be given adequate opportunity to  
25 challenge the suitability or availability of the jobs



1 noticed."

2           If the Secretary is in fact required to do  
3 that, then the regulations are effectively useless,  
4 because --

5           QUESTION: Is there anything in the  
6 regulations that deals with the burden of proof and this  
7 possible shifting of the burden of proof here?

8           MR. GARVEY: What the regulations say is that  
9 in cases which are specifically described by the  
10 guidelines, by the tables in Appendix 2, that under  
11 those circumstances if the findings of fact are the same  
12 as the rule, we use that rule to decide whether a person  
13 is disabled.

14           On the question of burden of proof with  
15 respect to the suitability or availability of jobs for  
16 people who meet the requirements in the tables, the  
17 question of burden of proof is irrelevant for the same  
18 reason as the substantial evidence question is  
19 irrelevant, because that issue about whether such jobs  
20 are available is no longer litigated in these  
21 proceedings. It has been decided by rulemaking.

22           I should add that with respect to all of the  
23 facts that are unique to any given claimant with respect  
24 to the claimant's medical condition, physical  
25 impairments, mental impairments, the claimant's age,

1 what kind of training the claimant has, what kind of  
2 education she has got, what work she has done in the  
3 past, on all of those questions, once the disability  
4 inquiry reaches the last stage, the Secretary still  
5 maintains or still shoulders the burden of proof showing  
6 that the claimant is capable of engaging in activity,  
7 all of that notwithstanding, and the regulations  
8 specifically provide that all of those issues are open  
9 to rebuttal at the hearing.

10           It might be useful for me just to describe  
11 briefly the reason for adopting these regulations and  
12 say a few words about the way they work, and then say a  
13 little bit more about what it was that the Secretary  
14 believes the Court of Appeals decided.

15           Until 1978, before these regulations were  
16 adopted, indeed today, most disability cases can be  
17 decided on the basis of medical evidence alone. It will  
18 either show that the claimant is so impaired that she is  
19 unable to do any work regardless of what her vocational  
20 characteristics are, or it will show that the claimant's  
21 impairment is not sufficiently severe to warrant further  
22 inquiry.

23           In cases which can't be decided simply on the  
24 basis of medical evidence, the promulgation of the  
25 regulations was designed to displace the use of

1 vocational experts at hearings in determining the  
2 question of what kinds of jobs were available and  
3 suitable for claimants who are described by the  
4 regulations.

5           The general theme of the regulations is this:  
6 For claimants whose impairments are not sufficiently  
7 severe to warrant the conclusion of the question right  
8 there, among people who have similar impairments, what  
9 the regulations do is to say that the older you are, the  
10 more likely it is that you will be impaired, that you  
11 will be disabled. Or, the less education you have, or  
12 the less training you have, for people who have similar  
13 impairments, the ones who are less educated, less  
14 well-trained, have no skills, it is those people who  
15 have an easier time proving disability under the  
16 regulations which are at stake in this case.

17           What the tables -- At the conclusion in  
18 Appendix 2, what those tables do is to classify jobs  
19 according to their gross physical demands. For example,  
20 the table that deals with light work in this case  
21 assumes that people who are able to do light work are  
22 able to undertake such activities as carrying more than  
23 ten pounds frequently, and occasionally 20 pounds, that  
24 they are able to do a good deal of walking or standing  
25 or, if the job involves sitting, they are able to do

1 such things as pushing or pulling of arm and leg  
2 controls.

3           For people whose impairment is only of that  
4 sort, only in the kinds of gross physical demands of  
5 which the tables take notice, the Secretary has said  
6 that for those who are capable of doing light work, that  
7 there are some 1600 jobs, different types of occupations  
8 in the national economy, which can be performed by  
9 people of that sort. These are simple jobs that anybody  
10 can learn to do in less than 30 days. They are jobs  
11 like --

12           QUESTION: Well, suppose one of the things  
13 that the tables say is that light work includes the  
14 ability to lift up to 20 pounds or 15, whatever it is,  
15 may the claimant dispute whether or not he or she in  
16 fact may lift up to 15 pounds?

17           MR. GARVEY: Indeed. In fact, the respondent  
18 in this case disputed that she was unable to lift 20  
19 pounds on at least two occasions. At her hearing, she  
20 introduced evidence from her doctor, Dr. Lowenthal, on a  
21 form which the Social Security Administration has  
22 designed to address just that question, the Joint  
23 Appendix on page 32.

24           QUESTION: Then what happens, Mr. Garvey? She  
25 testifies, "No, I can't lift more than ten pounds."



1 What then must the ALJ do when the table says that if  
2 you are capable of doing light work and must lift up to  
3 15? Does this necessarily require a determination that  
4 no, she can't do light work?

5 MR. GARVEY: No, not necessarily. What  
6 happens is what has always happened in these disability  
7 cases, the Administrative Law Judge considers her  
8 evidence along with the contrary evidence which is  
9 introduced --

10 QUESTION: And makes a finding.

11 MR. GARVEY: -- and makes a finding with  
12 respect to how many pounds she is able to lift.

13 Had the Administrative Law Judge in this case  
14 concluded that she was not capable of lifting that  
15 weight, then he wouldn't have been able to apply Table  
16 2. He would have been required, at a minimum, to apply  
17 Table 1 which would have determined that she was  
18 disabled in this case.

19 QUESTION: Of course, in advance of the  
20 hearing, does she get any kind of notice to indicate  
21 that one of the issues will be whether she can or cannot  
22 lift 15 pounds?

23 MR. GARVEY: The notice which she gets in  
24 advance of the hearing appears in the administrative  
25 record, and it says that "the issues at your hearing

1 will be how severe your impairment is. The impairment  
2 must be so severe as to prevent you from not only not  
3 engaging in your usual work, but considering your age,  
4 education and work experience, prevent you from engaging  
5 in any other kind of substantial gainful work."

6 QUESTION: Does she get a copy of the  
7 guidelines at all?

8 MR. GARVEY: She does not get a copy of the  
9 guidelines. Claimants do get a copy --

10 QUESTION: Excuse me, Mr. Garvey. If she  
11 doesn't get a copy of the guidelines, how does she know  
12 the issue of whether she can lift 15 pounds or not will  
13 arise at the hearing?

14 MR. GARVEY: She is told that the guidelines  
15 will apply.

16 QUESTION: How does she get access to the  
17 guidelines?

18 MR. GARVEY: The guidelines are available at  
19 Social Security Administration Branch offices. She is  
20 also told at the beginning of the hearing, as she was in  
21 this case by the ALJ, that the issue will be how much --  
22 the issue will be your ability to stand, sit, lift,  
23 walk, carry, and similar facts of that sort.

24 On page 37 of the Joint Appendix, the  
25 Administrative Law Judge said: "What we are interested

1 in is your capacity to engage in sedantary, light,  
2 medium, or heavy work. What we're taking into account  
3 is your ability to walk, stand, sit, lift, push, pull,  
4 carry --

5 QUESTION: Now I gather she is entitled to  
6 assistance with a counsel, is she not, if she wants to  
7 bring someone?

8 MR. GARVEY: Yes, she is.

9 QUESTION: But if she does not bring someone,  
10 none is provided for her?

11 MR. GARVEY: That's correct, although it is  
12 important to emphasize that the Administrative Law Judge  
13 at these hearings does not represent the Secretary. The  
14 Administrative Law Judge is charged under the  
15 regulations with fully bringing out both the claimant's  
16 side of the case and the Secretary's side of the case.

17 We think that the transcript of the hearing in  
18 this case in fact demonstrates the Administrative Law  
19 Judge questioned the respondent on each of these  
20 characteristics which are made relevant by the tables.

21 QUESTION: Mr. Garvey, I still am not  
22 certain. When is she told about 15 pounds?

23 MR. CARVEY: She is not specifically told in  
24 any of the notices which are mailed to her that the  
25 question will be whether she can lift 15 pounds.

1                   QUESTION: My question is, when is she told,  
2 ever?

3                   MR. GARVEY: She can be told at the hearing,  
4 in fact, it is quite proper --

5                   QUESTION: When was this particular party told  
6 that she is going to be measured by whether or not she  
7 can lift 15 pounds?

8                   MR. GARVEY: She was not told that she would  
9 be measured at any time.

10                  QUESTION: She was never told?

11                  MR. GARVEY: No.

12                  She was told that she would be measured by how  
13 much she could lift, whether she could lift weight, and  
14 she testified that she was unable to lift anything. She  
15 introduced a form which her doctor had given her saying  
16 that she was unable to lift more than ten pounds. So it  
17 is not a question of her having been unable to meet the  
18 evidence.

19                  As you stress, it's appropriate, in fact  
20 perhaps desirable, for the Administrative Law Judge to  
21 bring to the claimant's attention that the question at  
22 disability hearings is what you can lift, what you can  
23 carry, how far you can walk, how long you can stand.

24                  The Office of Hearings and Appeals has  
25 designed, in the training of Administrative Law Judges,



1 and has circulated a kind of manual which tells them how  
2 they ought to conduct these hearings. The statements  
3 that are made by the Administrative Law Judge at the  
4 beginning of this hearing on pages 36, 37, 38, and 39,  
5 are taken almost verbatim from those instructions to  
6 Administrative Law Judges about how to conduct the  
7 hearing, about what to tell the claimant.

8           The Administrative Law Judge in this case, as  
9 the manual provided, said that "What we are concerned  
10 about is not only whether you can do your own job, but  
11 whether you can do other jobs. In deciding that, what  
12 we want to know is what your age is, what education you  
13 have, what work experience you've got."

14           He then goes to say, we are also going to ask  
15 whether you can do sedantary, or light or medium work.  
16 In deciding that question, what we want to know is your  
17 ability to walk, stand, sit, lift, push, pull or carry.  
18 He told her all of those things at the beginning of her  
19 hearing.

20           QUESTION: May I ask you a question?

21           Maybe it is unrealistic with 1600 jobs that  
22 are available for this physical impairment, but  
23 supposing she was familiar with the regulation and she  
24 wanted to prove that all the jobs in the category  
25 required some skill, such as speaking English, or

1 reading, or something that she did not have, and  
2 therefore, she couldn't perform any of them. Assume she  
3 was successful in that kind of proof for some reason  
4 other reason other than physical impairment, would she  
5 then prevail?

6 MR. GARVEY: What she would then have  
7 succeeded in proving was that that was the wrong table  
8 to apply to her, or that for some reason the tables  
9 didn't apply.

10 In cases where the claimant is unable to  
11 perform these kinds of jobs because she can't see or  
12 because she has difficulty hearing, or because she has  
13 some problem with fine motor skills, arthritis in the  
14 fingers, for example, or she's got epilepsy, or she's  
15 got an allergy to dust and is unable to work outdoors,  
16 in those kinds of cases the tables do not apply.

17 In those kinds of cases the regulations  
18 specifically say, if you look at Section 200(e) of  
19 Appendix 2 which appears on page 56-A, Section 200(e)(1)  
20 says, in the evaluation of disability, where the  
21 individual has solely a non-exertional type of  
22 impairment -- that is sight, hearing, fine motor skills  
23 -- the rules do not direct factual conclusions of  
24 disabled or not disabled.

25 So all of the evidence which you mention would

1 be perfectly appropriate, and indeed that sort of  
2 question is asked by the Administrative Law Judge before  
3 first deciding whether the tables can be applied at  
4 all.

5 QUESTION: I am still not clear what happens  
6 if she proves that even though he has correctly  
7 described her physical condition, she can't perform any  
8 of the 1600 jobs.

9 What happens in the proceeding? Does she  
10 win?

11 MR. GARVEY: I would suppose so. I presume  
12 that in that case what she would have proved is that the  
13 kinds of occupations of which the Secretary took notice  
14 in the rulemaking proceeding don't in fact exist. What  
15 she would have proved is that the regulations are  
16 arbitrary and capricious in that case, but there is no --

17 QUESTION: I wouldn't necessarily think that  
18 they would be arbitrary and capricious in all cases, it  
19 is just that she has some particular incapacity for --  
20 Of course, I admit, it is a hard case to assume, with  
21 1600 jobs, presumably she ought to be able to perform  
22 some of them.

23 But I suppose and the Second Circuit's view  
24 is, they could forestall that by telling her -- the ALJ  
25 merely has to tell her, here are 10 or 15 jobs that

1 under the schedule you can perform, and give her a  
2 chance to prove otherwise.

3 MR. GARVEY: I should emphasize again -

4 QUESTION: If I understand your view, there are  
5 cases in which the regulations, at least theoretically,  
6 might not be dispositive if she --

7 MR. GARVEY: Absolutely, there are many such  
8 cases. There are many such cases.

9 QUESTION: So is it correct that one could  
10 interpret the Second Circuit as holding, as just  
11 imposing a requirement on the hearing officer to be sure  
12 that this isn't one of those cases. To give the  
13 claimant an opportunity to say, "Well, here is a  
14 representative group of 1600 jobs. Is there any reason  
15 why you can't perform these jobs?" Is that all that the  
16 Second Circuit requires?

17 MR. GARVEY: I don't believe so, because the  
18 Second Circuit continually said that what the Secretary  
19 had failed to do was to introduce evidence about these  
20 kinds of jobs to show (a) that they were available and  
21 (b) that they were suitable for somebody who, the Second  
22 Circuit had already said, was capable of doing light  
23 work.

24 QUESTION: If one were to construe the Second  
25 Circuit opinion in the way I suggested it might be read,



1 how big a problem would it be for the Secretary?

2 Are there many cases like this one in the  
3 Second Circuit?

4 MR. GARVEY: There are many cases in which the  
5 tables cannot be applied because the claimant has some  
6 other disability which doesn't fit within the  
7 description of light work.

8 QUESTION: That is true regardless of whether  
9 you follow the Second Circuit or not.

10 MR. GARVEY: That is correct.

11 It doesn't seem as though it would be a great  
12 burden, but the problem with construing it as simply a  
13 kind of notice as respondent was due in this case, is  
14 that it focuses on what is absolutely the most esoteric  
15 point about the whole disability determination process.

16 If you tell somebody, who has been a  
17 seamstress or a hotel maid most of her life, that she is  
18 capable of operating a pinking machine or cutting  
19 newspaper clippings for a business service, it really  
20 tells her very little that she is interested in  
21 knowing. It tells her very little about the issues in  
22 the disability hearing.

23 QUESTION: But it does tell her more than  
24 handing her a card with 1600 jobs on it, doesn't it?

25 MR. GARVEY: Certainly, although it tells them

1 --

2           What the Secretary is really interested in in  
3 this case is not whether she is capable of operating a  
4 pinking machine, but whether she is capable of doing --  
5 what her impairments are. How much is she capable of  
6 lifting, carrying, how far she can walk or stand, and  
7 whether she has any other kinds of physical impairments,  
8 what her age and education are. With respect to those  
9 questions, the mere mention of jobs like operating a  
10 pinking machine tells you very little.

11           If there are no further questions, I would  
12 like to reserve the remainder of my time for rebuttal.

13           CHIEF JUSTICE BURGER: Mr. Nazario, you may  
14 proceed whenever you are ready.

15           ORAL ARGUMENT OF RUBEN NAZARIO, ESQ.,

16           ON BEHALF OF THE RESPONDENT

17           MR. NAZARIO: Mr. Chief Justice, and may it  
18 please the Court, the issue presented by this case is  
19 not whether the Secretary has the authority to  
20 promulgate regulations to determine disability.

21           The issue in this case is whether the  
22 Secretary's failure to give an unrepresented and  
23 uneducated claimant notice of the medical and vocational  
24 factors which he has to determine prior to applying the  
25 grid violated the claimant's procedural rights to a full

1 and fair hearing.

2 QUESTION: What is the source of those  
3 procedural rights, Mr. Nazario?

4 MR. NAZARIO: First of all, Your Honor, the  
5 claimant has the right under the regulations to present  
6 all the evidence relevant to her case. The claimant has  
7 the right under the statute to present all her relevant  
8 evidence and the statute imposes on the Secretary the  
9 requirement that he base his decisions on evidence  
10 adduced at the hearing.

11 But more importantly, this right is premised  
12 on the Secretary's own regulations which require the  
13 ALJ, especially where the claimant is not represented,  
14 to help the claimant present her case to --

15 QUESTION: Did the Court of Appeals cite each  
16 of those regulations or statutory provisions that you  
17 have just mentioned?

18 MR. NAZARIO: No, Your Honor. The Court of  
19 Appeals just made reference to the -- in general to the  
20 claimant's right to present evidence at the hearing.  
21 Precisely the holding of the Court of Appeals was that  
22 the claimant was not given the chance to present the  
23 relevant evidence in this case. They did not cite the  
24 authority for the holding, but the holding is clearly  
25 that the claimant did not have the right to present her

1 case because the Secretary failed to give her notice of  
2 the issues.

3 The Second Circuit clearly did not evaluate the  
4 medical and vocational regulations. All the Circuit did  
5 was a factual determination that Mrs. Campbell did not  
6 have this fair opportunity to present this case which is  
7 given to her by the statute, and which the Secretary --

8 QUESTION: Are the regulations which you're  
9 relying on contained here in the petition or the  
10 appendix or something, and if so where?

11 MR. NAZARIO: I believe the specific  
12 regulation is cited in our brief, and it is cited also  
13 in the Secretary's brief. It is the regulation which  
14 imposes on the Secretary, or rather on the ALJ the duty  
15 to look fully into all the matters at issue in order to  
16 take the testimony of the claimant, to make the relevant  
17 questions to the claimant.

18 This regulation has been interpreted by most  
19 Courts --

20 QUESTION: Which regulation is it, and is it  
21 set forth any place in the papers that we have before  
22 us?

23 MR. NAZARIO: Yes, Your Honor, it is.

24 (Pause.)

25 QUESTION: Don't let me interrupt your



1 argument.

2 MR. NAZARIO: The regulation appears at 30 CFR  
3 44.944.

4 QUESTION: Where are they in your briefs, what  
5 page?

6 MR. NAZARIO: We discuss that regulation on  
7 page 11 of our brief, the second paragraph there.

8 The case law, in fact, imposes on an ALJ a  
9 duty to go beyond the classic prehearing notice. It  
10 imposes on the ALJ the duty to make sure that the  
11 claimant present all the relevant evidence in disability  
12 hearings. It was precisely this opportunity which was  
13 denied to Mrs. Campbell.

14 The Secretary, through Mr. Garvey, has  
15 emphasized to this Court that the medical and vocational  
16 regulations should not come into play until the claimant  
17 has had a full opportunity to testify about the issues  
18 which they leave open for litigation.

19 QUESTION: May I ask, Mr. Nazario, are you  
20 making any constitutional argument, B of your brief  
21 suggests you may. If you are making a constitutional  
22 argument, what is it?

23 MR. NAZARIO: I say --

24 QUESTION: You say the regulations entitle her  
25 to the kind of hearing you say she did not get. Is your

1 case then premised on a violation by the Secretary of  
2 his own regulation; is that it?

3 MR. NAZARIO: Yes, Your Honor. The case is  
4 premised on a violation of the Secretary's regulation.

5 QUESTION: What constitutional violation?

6 MR. NAZARIO: The constitutional -- The right  
7 of a claimant to testify at the hearing is premised not  
8 only in the Secretary's regulation, but also in the  
9 Social Security statute which requires notice and the  
10 right --

11 QUESTION: So this is a statutory and under  
12 the regulations.

13 MR. NAZARIO: The regulation, and also a  
14 constitutional claim because the claimant has a right  
15 under the Fifth Amendment, under the due process clause  
16 of the Fifth Amendment to introduce all the -- to have a  
17 full and fair hearing in determining her entitlement to  
18 disability benefits.

19 QUESTION: Do we have to reach the  
20 constitutional claim, if you are right that the statute  
21 and regulations entitled her to something which she  
22 didn't get?

23 MR. NAZARIO: That is not the issue in the  
24 case, Your Honor. The issue is whether the Secretary  
25 complied with all the due process requirements of notice

1 and of full and fair hearing to this specific claimant.

2 QUESTION: You mean due process requirements  
3 as expressed in the regulations and the statute?

4 MR. NAZARIO: Yes, Your Honor.

5 QUESTION: Mr. Nazario, the Court of Appeals  
6 in its opinion, as I read it, made no mention of any  
7 constitutional claim that you asserted under the Federal  
8 Constitution. Did you raise your constitutional claim  
9 before the Court of Appeals?

10 MR. NAZARIO: Well, Your Honor, the Court of  
11 Appeals assumed that Mrs. Campbell had had due process.  
12 They didn't --

13 QUESTION: I asked you a question. Did you  
14 raise your constitutional claim in your argument to the  
15 Court of Appeals?

16 MR. NAZARIO: We argued before the Court of  
17 Appeals that Mrs. Campbell had not been given adequate  
18 notice and an adequate hearing and an adequate  
19 opportunity to present her evidence because the ALJ  
20 failed to inform her of the --

21 QUESTION: Did you phrase that in terms of a  
22 constitutional violation in the Court of Appeals?

23 MR. NAZARIO: No, Your Honor, we did not, and  
24 the Court of Appeals did not take it in terms of a  
25 constitutional violation.

1           It assumed, without discussion, that Mrs.  
2 Campbell was entitled to a hearing, to a full  
3 opportunity to present her evidence. But there is no  
4 discussion of the statutory or constitutional basis for  
5 this requirement, maybe because it is so clear. The  
6 facts in the record of Mrs. Campbell clearly demonstrate  
7 that she did not have the minimum pre-notice which is  
8 required by the law.

9           Mrs. Campbell, as has been stated, has only a  
10 sixth education. She has some difficulties expressing  
11 herself in English, and she was misled by the  
12 Secretary's original denial of benefits. The Secretary  
13 stated that she was not entitled to benefits because she  
14 could return to her usual occupation as a maid.

15           Mrs. Campbell came to the hearing prepared to  
16 discuss that issue, and as a matter of fact, she spent  
17 most of her efforts at her hearing testifying to why she  
18 could not perform the duties required by her former  
19 occupations.

20           At no time did the Secretary tell Mrs.  
21 Campbell that he was going to deny benefits based on the  
22 rule which required the finding that she could lift over  
23 15 or over 20 pounds and that, therefore, she should  
24 address that issue at the hearing.

25           Mrs. Campbell presented the Secretary with



1 several letters from her doctor which stated that she  
2 could not perform -- that she could not lift any  
3 weight. The Secretary or the ALJ never made any effort  
4 to ascertain what that said and meant by heavy work.

5 Of course, this finding about the specific  
6 number of pounds which Mrs. Campbell could lift was  
7 critical. If she had been found unable to lift over ten  
8 pounds, she would have established that she was disabled  
9 under the Act. She was never given the opportunity to  
10 present this evidence to the Secretary.

11 QUESTION: May I ask you a question here. Do  
12 you read the Second Circuit opinion as holding that if  
13 the Administrative Law Judge had, just before he or she  
14 ruled, said: Now there are 15 jobs here on this list  
15 that people who are capable of doing light work can  
16 perform, and under the regulations you can perform  
17 these. If he had just said that to her, so she could  
18 have put in evidence that she couldn't perform those 15  
19 jobs, would that have been all that the ALJ had to do?

20 MR. NAZARIO: In this particular case.

21 QUESTION: This particular case.

22 MR. NAZARIO: In Mrs. Campbell's case, we  
23 believe so. If the ALJ had told her examples of the  
24 jobs which she was assuming --

25 QUESTION: These ten or 15.

1           MR. NAZARIO: Under this process, Mrs.  
2 Campbell would have probably been able to address the  
3 issue at the hearing.

4           QUESTION: Supposing that instead of doing  
5 that, the ALJ had said: The Secretary has a regulation  
6 that lists 1600 jobs that people who can do light work  
7 can do. Here is a copy of that regulation. Then he let  
8 her take an hour to look at it and then if she wanted  
9 to, try to prove she couldn't perform any of those jobs.  
10 Would that have satisfied your position?

11          MR. NAZARIO: In the case of some claimants it  
12 probably would have, but not in the case of this  
13 claimant.

14          QUESTION: In this case.

15          MR. NAZARIO: I don't think that this claimant  
16 would have been able to understand the Secretary's  
17 regulations.

18          Frankly, there is nothing in the record to  
19 indicate that Mrs. Campbell was told that she had the  
20 right, or that she had the obligation, or that she  
21 should --

22          QUESTION: What I am really trying to find  
23 out. You seem to agree that if the ALJ had said: Here  
24 are 15 jobs that you should be able to perform, if  
25 instead of that he had listed or read all 1600 --

1           MR. NAZARIO: Your Honor, but the problem is  
2 that the regulations do not contain a list of the jobs,  
3 and that's the problem. In order to find out what jobs  
4 the Secretary is assuming that a claimant who fits a  
5 grid structure can perform, the claimant would have to  
6 go to other more difficult and less available sources,  
7 such as the Dictionary for Occupational Titles, and  
8 several publications of several agencies.

9           So even if the claimant is told that her claim  
10 will be decided under the medical and vocational  
11 regulations, and that she should read those regulations,  
12 assuming that the claimant can't understand the  
13 regulations and can't travel to the District Office, the  
14 claimant would not know what jobs the Secretary is  
15 assuming that she or he can perform.

16           Your Honor was absolutely right earlier in  
17 this argument when he said that the claimant should be  
18 given an opportunity to testify about those factors  
19 which limit the grid applicability, and the Secretary  
20 stated in his argument that grids come into play only  
21 where claimant has limitations in terms of his or her  
22 ability to meet strength requirements.

23           They do not come into play if the claimant has  
24 a significant non-exertional limitation. If the  
25 claimant has significant visual or auditory problems,

1 problems in terms of environmental conditions, if  
2 inability to tolerate gases, fumes, anything, any  
3 limitation that is not measured out in terms of strength  
4 would limit the application of the grid to that  
5 claimant.

6 In this case, Mrs. Campbell was not told that  
7 she had to testify about these types of limitations  
8 because they would be relevant in determining whether  
9 the grid was applicable to her. So that this record,  
10 even less the evidence which was necessary for a  
11 determination of whether the grid was applicable at all,  
12 the determination by the Second Circuit that Mrs.  
13 Campbell did not have an meaningful chance to present  
14 her evidence because the Secretary had not given her  
15 notice, I think is entitled to affirmance. It is a  
16 factual determination that is amply supported in the  
17 record of this case.

18 QUESTION: What is the amount of benefit she  
19 receives?

20 MR. NAZARIO: She is currently receiving about  
21 only \$250 a month.

22 QUESTION: Of course, the amount is not  
23 relevant to any of the legal issues here, but I was  
24 interested in terms of why she appeared at this hearing  
25 without any legal assistance.



1           MR. NAZARIO: I understand she tried to get  
2 legal assistance but she was unable to because the  
3 private attorneys which she contacted charged a sum  
4 which was too high for her means at that time, and she  
5 could not get the service of a free legal  
6 representative.

7           The Secretary --

8           QUESTION: She later did get services of the  
9 Legal Aid, did she not?

10          MR. NAZARIO: No, Your Honor, not until she  
11 filed the case in the District Court.

12          QUESTION: Was it the Legal Aid who wanted to  
13 charge her \$35?

14          MR. NAZARIO: No, Your Honor.

15          QUESTION: That was a private attorney?

16          MR. NAZARIO: That was a private attorney.

17          QUESTION: I see.

18          MR. NAZARIO: That is correct, it was a  
19 private attorney.

20          The Secretary argues in this case that Mrs.  
21 Campbell had notice because, first of all, the  
22 procedures for determining disability under the  
23 regulations are spelled out in the regulations, and he  
24 claims that this notice by regulation meets the  
25 requirements of adequate notice.

1           QUESTION: Is there any procedure under Social  
2 Security to which the claimant could go to get  
3 instruction on how to present a case like this?

4           MR. NAZARIO: Not to my knowledge, Your  
5 Honor. The ALJ -- The only recourse that the claimant  
6 would have is if the ALJ fulfills his duties under the  
7 regulations and makes all the relevant questions at the  
8 hearing, then the claimant would ideally be informed of  
9 what the issues are, but certainly that did not happen  
10 in this case.

11           QUESTION: Is information available on the  
12 procedures and requirements and the regulation at the  
13 branch offices of the Social Security?

14           MR. NAZARIO: I believe that a copy of the CFR  
15 -- a copy of the regulations would be made available to  
16 the claimant if the claimant goes to the office and  
17 inquires about it.

18           QUESTION: Yes, and presumably there would be  
19 staff present to explain.

20           MR. NAZARIO: That I do not know, Your Honor.  
21 That I do not know. But nothing in the record of this  
22 case indicates that Mrs. Campbell was advised of the  
23 availability of those regulations, and nothing in this  
24 case indicates that all the claimants are advised of the  
25 availability and importance of those regulations.

1           QUESTION: Isn't she obligated to do a little  
2 something for herself, if she is depending on benefits,  
3 if she is trying to get benefits?

4           MR. NAZARIO: Well, Your Honor, in this case I  
5 think she did as much as she could, considering that she  
6 had a sixth grade education, that she was unrepresented  
7 at her hearing, and that she was misled by the  
8 Secretary's initial denial of benefits.

9           QUESTION: You don't think she could have been  
10 expected to go to the district office?

11          MR. NAZARIO: She did went to the District  
12 Office, that's where she filed the initial claim for  
13 benefits, that is where she filed the claim for  
14 reconsideration of the original denial, and that is  
15 where she filed the request for the hearing.

16          But when she filed the request for the  
17 hearing, she wasn't informed of the availability of the  
18 regulations. There is nothing in the record to indicate  
19 that.

20          QUESTION: But they were available there?

21          MR. NAZARIO: Presumably they were available,  
22 but she was not informed of their availability.

23          QUESTION: Mr. Nazario, there is some  
24 indication, is there not, that Congress has pressed the  
25 Secretary to promulgate a grid system or regulations

1 such as those that are employed here, is there not?

2 MR. NAZARIO: Yes, Your Honor, there is.

3 QUESTION: Basically, the Secretary in  
4 promulgating this system is carrying out the wishes of  
5 Congress; is that right?

6 MR. NAZARIO: Yes, Your Honor, that is right.  
7 But what is at issue in this case, again, is not whether  
8 the Secretary has the authority to promulgate this  
9 regulation. The issue in this case is whether the  
10 regulations were properly applied to Mrs. Campbell.

11 The issue in this case is whether the  
12 Secretary met the requirements in his own regulations,  
13 where the Secretary failed his obligation to make sure  
14 that the claimant presented all the relevant evidence  
15 which is required prior to the application of the  
16 medical and vocational regulations.

17 QUESTION: The Court of Appeals certainly did  
18 not state that the Secretary had failed to apply his own  
19 regulation, did it?

20 MR. NAZARIO: Well, the Court of Appeals did  
21 not state that in so many words, but the holding of the  
22 Court of Appeals is clear. It remanded the case of Mrs.  
23 Campbell to the Secretary for consideration of her claim  
24 after she was adequately informed of what the issues of  
25 the hearing were.



1           The holding of the Court of Appeals is clear  
2 in requiring proper application of the medical and  
3 vocational regulations. The Court of Appeals did not  
4 discuss at all the issue of the validity of the medical  
5 and vocational regulations.

6           It did not discuss any of the arguments which  
7 have been made against the validity of the medical and  
8 vocational regulations. It limited its holding to a  
9 factual determination that Mrs. Campbell did not have  
10 notice and, therefore, she was unable to present the  
11 evidence which was required.

12           QUESTION: Mr. Nazario, may I ask another  
13 question.

14           On page 37 of the Joint Appendix there is a  
15 transcript of what the ALJ said to her at the beginning  
16 of the hearing. He did say that the evidence about her  
17 ability to do other kinds of work, as well as her past  
18 work. He asked about her ability to walk, stand, sit,  
19 lift, push, pull or carry. Then he goes on and says:  
20 "I will take evidence and consider any mental, skin,  
21 sensory or environmental impairment that might limit  
22 your capacity to work."

23           Isn't that pretty good notice of the fact that  
24 any other disability would also be considered? Why  
25 isn't that notice adequate under the regulations?

1           MR. NAZARIO: Well, Your Honor, if the ALJ had  
2 followed up on this statement, if the ALJ had made the  
3 statement while Mrs. Campbell was testifying, then  
4 probably Mrs. Campbell would have been able to present  
5 her relevant evidence. But this statement was made by  
6 the ALJ at the beginning of the hearing when he was  
7 explaining to Mrs. Campbell all the relevant procedures  
8 -- all the relevant Social Security procedures.

9           He explained her appeals right. He explained  
10 her right to be represented. He explained her right to  
11 object to the medical evidence which had been  
12 incorporated in the record. He did not follow up on  
13 this statement at the stage of the hearing where Mrs.  
14 Campbell was testifying about her capacities.

15           In fact, if you look further down --

16           QUESTION: Are you saying that if he had  
17 repeated this statement while she was testifying, then  
18 you really wouldn't have a case?

19           MR. NAZARIO: If he had repeated this  
20 statement in terms of questions, and if Mrs. Campbell  
21 had been therefore able to put in evidence on each of  
22 these factors, then Mrs. Campbell would have established  
23 that she was disabled under the grid and, of course, she  
24 would have had no need to appeal on the Secretary's  
25 decision.

1           If you look at the record of the transcript  
2 where Mrs. Campbell is in fact testifying about her  
3 capacities, that is only two pages in the transcript, it  
4 appears on page -- basically on page 50 and the first  
5 half of page 51, she, for example, stated: "I cannot  
6 sit too long. I cannot stand too long." That is at the  
7 bottom of page 49.

8           Instead of the ALJ asking her, how long can  
9 you sit? How many pounds can you lift? -- because that  
10 was critical to the determination of her claim, the ALJ  
11 changed the line of her testimony by asking "Can you  
12 bend?" "I cannot bend. The doctor warned me not to  
13 lift weights." There the ALJ again changes the line of  
14 her testimony and says, "I notice that you have stood up  
15 several times."

16          Further down the page, she is again testifying  
17 about her limitations, and she is saying: "I cannot  
18 raise. I can't do anything too much." The ALJ instead  
19 of trying to elicit her testimony with any specificity,  
20 which was required for application of the grid, the ALJ  
21 again changed around her testimony by asking about her  
22 medical treatment.

23          This record clearly establishes that Mrs.  
24 Campbell did not put into the record the evidence which  
25 was necessary for the determination of her claim under

1 the grid, and that she did not present her evidence  
2 because the Secretary never informed her of what it was  
3 that she needed to prove.

4 I would like to clarify a statement by the  
5 Court of Appeals which has been relied on by the  
6 Secretary in his papers. The Secretary says that the  
7 finding by the Court of Appeals that there was  
8 substantial evidence to support the finding that Mrs.  
9 Campbell could perform light work is very important, and  
10 in fact shows that Mrs. Campbell was in -- that Mrs.  
11 Campbell's ability to work was properly considered by  
12 the Secretary.

13 It should be pointed out that there are two  
14 different purposes for judicial review in disability  
15 determinations. One is whether the Secretary's  
16 determination is supported by substantial evidence. The  
17 other one is whether the Secretary followed proper  
18 procedures in determining the claimant's application for  
19 benefits.

20 By saying that considering whatever evidence  
21 was already in the record of Mrs. Campbell's proceeding,  
22 the determination that she could perform light work may  
23 have found some support, the Secretary was not  
24 sanctioning the way in which the ALJ arrived at that  
25 determination.



1           On several occasions the Second Circuit has  
2 remanded cases to the Secretary despite finding the  
3 determinations, the specific determination supported by  
4 substantial evidence precisely because the claimant was  
5 not given an opportunity to introduce contrary  
6 evidence.

7           All that the Second Circuit did in this case  
8 was to determine factually that Mrs. Campbell did not  
9 have notice and did not have the opportunity to present  
10 evidence. That determination is amply supported by the  
11 record of the case, and should be affirmed by this  
12 Court. Furthermore, the determination -- the direction  
13 to the Secretary that he has to give meaningful and  
14 informative knowledge to Mrs. Campbell on the remanded  
15 hearing is consistent with the Secretary's own  
16 regulations, with the Secretary's own argument, and  
17 should also be affirmed by this Court.

18           I thank you very much.

19           CHIEF JUSTICE BURGER: Do you have anything  
20 further, Mr. Garvey? You have two minutes remaining.

21           REBUTTAL ORAL ARGUMENT OF JOHN H. GARVEY, ESQ.,  
22                           ON BEHALF OF THE PETITIONER

23           MR. GARVEY: I have a couple of brief points.  
24 The first is with respect to the contention that the  
25 respondent had no opportunity to put on evidence

1 regarding her non-exertional impairments. As Justice  
2 Stevens pointed out, at the beginning of the hearing,  
3 the ALJ informed respondent that any non-exertional  
4 impairments that she might have would be issues in the  
5 hearing. In our reply brief, at pages 11 to 14, in the  
6 notes we indicate the passages at which each of those  
7 contentions was addressed.

8 I should add that in those kinds of cases  
9 where non-exertional impairments are present, then the  
10 question is what kind of work somebody can do. The  
11 tables are not used, as I emphasized before. What will  
12 happen in those kinds of cases most often is that the  
13 Secretary will call a vocational expert to see what kind  
14 of work is available for people who can do that.

15 With the respect to the question of her  
16 representation by counsel, I might just add a point  
17 which does not appear in our brief. A Senate Finance  
18 Committee report, CP-9716, issued just in August of '82,  
19 indicates that, contrary to what Professor Davis thinks,  
20 in disability cases, 71 percent of claimants are in fact  
21 represented by counsel. I might add that for those  
22 claimants who are not represented by counsel, the notice  
23 which they receive in advance of hearing tells them, as  
24 they told respondent in this case, that "The people at  
25 your local Social Security Office will continue to

1 assist you in obtaining any evidence you may wish to  
2 submit."

3 QUESTION: What does that mean, Mr. Garvey, as  
4 a practical matter?

5 MR. GARVEY: As a practical matter, what it  
6 means is that they may go to the Social Security Office  
7 and ask what kinds of evidence will help them to bolster  
8 their claim.

9 QUESTION: Are they told about the  
10 guidelines?

11 MR. GARVEY: They are told -- If they went to  
12 the Social Security Office and inquired about the  
13 guidelines, they would be told about the guidelines.  
14 The Secretary does not resist telling claimants about  
15 the guidelines. The respondent in this case was  
16 informed by the ALJ that the regulations in Appendix 2  
17 would be applied.

18 There is a notice -- I am sorry, my time has  
19 run.

20 CHIEF JUSTICE BURGER: You may finish your  
21 response.

22 MR. GARVEY: If I may just finish that  
23 sentence. The notice of hearing which appears at the  
24 end of the Secretary's brief, this Form HA-4607, does  
25 not appear in respondent's record as it does not appear

1 in any records. These kinds of forms which don't  
2 pertain to individual claimants simply are not stuck  
3 into the record. They are sent along with any mailings  
4 that the claimant gets, and it informs them that the  
5 regulations in Appendix 2 will be applied.

6           You will notice that the notice of hearing  
7 respondent got indicates that there was an enclosure,  
8 and it is likely that form.

9           CHIEF JUSTICE BURGER: Thank you, gentlemen.  
10           The case is submitted.

11           (Whereupon, at 11:01 a.m., the case in the  
12 above-entitled matter was submitted.)

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# CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

RICHARD S. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES  
v. CARMEN CAMPBELL, #81-1983

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY

Pine Harrow

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