OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-571

TITLE HARRY N. WALTERS, ADMINISTRATOR OF VETERANS' AFFAIRS, ET AL., Appellants V. NATIONAL ASSOCIATION OF RADIATION SURVIVORS, ET AL.

PLACE Washington, D. C.

DATE March 27, 1985

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IN THE SUPREME COURT OF THE UNITED STATES

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HARRY N. WALTERS, ADMINISTRATOR :
OF VETERANS' AFFIARS, ET AL.,
Appellants, :
V. : No. 84-571
NATICNAL ASSOCIATION OF :
RADIATION SURVIVORS, ET AL. :

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Wednesday, March 27, 1985

Washington, D.C.

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:07 o'clock a.m.

APPEARANCES:

MARK IRVING LEVY, Assistant to the Solicitor General, Department of Justice; on behalf of the Appellants.

GORDON PAUL ERSPAMER, ESQ., San Francisco, CA; on behalf of the Appellees.

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C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We'll hear arguments first this morning in Walters v. the National Association of Radiation Survivors.

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

ORAL ARGUMENT OF MARK IRVING LEVY, ESQ.

ON BEHALF OF THE APPELLANTS

MR. LEVY: Thank you, Mr. Chief Justice, and may it please the Court, since the time of the Civil War, Congress has strictly limited the amount that a veteran can pay an attorney in connection with a claim for veterans' benefits before the V.A.

During the first 120 years that this policy was in force, no court ever found the fee limitation statute to be unconstitutional. Indeed this Court in Gendron, in summarily affirming the decision of a three-judge District Court, had sustained the constitutionality of the statute against the procedural due process challenge.

In the present case, however, the United States District Court for the Northern District of California entered a broad preliminary injunction against the constitutionality of the fee provision. We have brought this case to this Court on direct appeal to

defend the constitutionality of the statute.

The Court granted a stay of the District Court's order and the fee limitation has remained in effect pending this Court's decision.

Now, before discussing the V.A. system, I'll first briefly address the standard of review that is applicable here. Appellees contend that the sole issue before this Court is whether the District Court abused its discretion in enjoining enforcement of the statute. We disagree. Whereas here a District Court's preliminary injunction rests on an error of law, it is subject to plenary review and should be reversed as legally erroneous.

There is no reason for this Court to defer to a District Court on questions of law. And a District Court has no discretion to strike down on the basis of a legal error a valid act of Congress.

Now, in light of this standard, let me turn then to --

QUESTION: Mr. Levy, appropos of the standard, are you in a position to say whether the District Court contemplated extensive further proceedings after the entry of the preliminary injunction, more receipt of evidence, and that sort of thing?

MR. LEVY: I think that was at least an open

possiblity, but the record in this case even at this stage is quite extensive, and it's simply not clear how much more would be required. But it is clear that the preliminary injunction was not meant to be a final judgment --

QUESTION: Mr. Levy, the Government didn't put in much evidence in the proceedings below, did it?

MR. LEVY: It did not put in much evidence because we think the case raises an issue of law.

QUESTION: But presumably, if it were to continue, the Government would have some evidence to present.

MR. LEVY: We would certainly consider that in light of the Court's opinion, and we would like to leave open that possibility if the Court disagrees with our principal issue that the case is ripe for decision on the merits now.

QUESTION: Well, you do agree, I guess, that the standard of review normally for a preliminary injunction is the abuse of discretion standard.

MR. LEVY: We think that's the appropriate standard where the entry of the preliminary injunction depends on an appraisal of the facts or discretionary weighing of the relative equities of the party and considerations of that sort.

When it turns on a question of law, though, we do not think that's the --

QUESTION: Well, it wasn't clear to me just what the question of law was that you think governs.

MR. LEVY: We think that this Court can determine as a matter of law that the statute is constitutional and that the District Court's entire approach was incorrect as a matter of law. We think that is the fundamental legal issue.

QUESTION: Can that be done, and Mathews v. Eldridge provides the framework of analysis?

MR. LEVY: Yes, we think it can be done under the Mathews standard. Essentially the issue would be whether the system has an undue risk of error or is fundamentally unfair, and we think that in this particular case at least, that can be decided as a matter of law, and that the District Court erred in taking particular evidence about certain claims in the system and basing a preliminary injunction on that basis.

QUESTION: So it all boils down in your view basically to the risk of error component in the Mathews/Eldridge formula.

MR. LEVY: I believe that's right. And more particularly, Appellees' position is that the difference

between the representation of counsel substitute -- that is, the free accredited service representatives that we discuss at length in our brief -- and the representation provided by retained lawyers is so critical to the fairness and accuracy of the procedure, that it is a matter of constitutional dimension rather than a matter of policy making for Congress.

We think that really is the central issue in the case, viewed in the overall context of the V.A. system.

QUESTION: Well, are there no factua findings that are relevant to that, to the extent the court found that as applied at least, the proceedings were not being conducted in an informal manner, and that there is a risk of error?

MR. LEVY: We think there are no facts that are appropriate for a court to take, at least in the circumstances of this case; that the system viewed in the overall context of the way Congress intended it to operate and the recent and extensive consideration the Congress has given to the system and the determinations it made are sufficient to sustain the constitutionality of the statute.

But an important part of our argument is the overall context of the V.A. system, and it's to that

that I would now like to turn.

QUESTION: Did the Government simply rely on the statute in this case? The statute is perfectly clear. No one has any doubt about what it means.

MR. LEVY: That's correct.

QUESTION: And the question is whether or not it violates the Constitution, apparently, in the minds of some.

MR. LEVY: That is the question presented. And we think that for really two reasons the District Court's approach was error. First, as I say, and as I will discuss in more length later, Congress itself has looked at this issue and has made certain conclusions that are exactly contrary to what the District Court determined on the record in this case.

In that situation, we think principles of deference and judicial restraint require a court to defer to the determination that Congress has made. But even beyond that, the question in this case is whether the feeling that renders the system, in the generality of cases whether it renders the overall system fundamentally unfair and inaccurate, it is inappropriate in our view for a District Court to rely on the kind of evidence that it did here, the sort of individualized, anecdctal, impressionistic evidence of some

self-interest that attorneys and claimants who are dissatisfied with the system, and indeed even the sort of anecdotal evidence that plaintiffs obtained in discovery from V.A. officials -- we think that is simply not a reliable and substantial enough basis to strike down an act of Congress.

At most what the court should have looked at were things that went to the validity of the system. As the Chief Justice suggests, it would be the statute, the regulations, the policies of the V.A., systemwide statistics perhaps and how it operates. It would be at that level, even in an operational --

QUESTION: Did the District Court, Mr. Levy, hold the statute unconstitutional across the Board, or just as it operated with respect with respect to these particular Appellees?

MR. LEVY: Well, it's or struck down the statute across the board. Indeed, it went well beyond this case and the service-connected death and disability benefits issue here.

But even under Appellees' characterization, we think it is misleading to call this as applied challenge. Usually what that means is that you look at particular circumstances of an individual case and decide whether the statute as applied there is or is not

constitutional.

In this case, the Appellees challenged the system in entire categories of what they call complex cases. Now, those are a relatively small part of the V.A.'s total caseload; they comprise thousands of claims. And Appellees simply ignored the differences among the claims and the claimants in those cases.

They also make a number of arguments against the validity of the system that are in no way limited to the classic cases they have identified. They are rather systemwide complaints about the V.A. And indeed, Appellees in their brief make an effort to defend the relief that the District Court entered here, which is a nationwide injunction which is not limited to the plaintiffs, either the organizational or individual plaintiffs in this case, which is not limited to complex cases, which is not limited to cases in which the District Court, for whatever reason, thought the process would be unfair in the absence of retained lawyers. It is a broad preliminary injunction.

QUESTION: Mr. Levy, can I interrupt for a second, because I'm still puzzled about standard review and the way we approach the case.

The District Court wrote an opinion about 50 pages long and made a lot of factual conclusions and

statements in there, some of which might be called findings, some of which might be conclusions; I don't know.

But to the extent that they are findings of fact in the District Court's opinion, do you challenge them?

MR. LEVY: We have not come to this Court to ask it to decide whether the District court abused its discretion. We do think that the methodology of the --

QUESTION: So then if we think facts are important, we may assume for purposes of deciding this case that the District Court has correctly stated it.

MR. LEVY: Well, in our reply brief, we discuss at some length the record, and we think the District Court's reading of the evidence is highly questionable and vulnerable, but we have not presented as a separate question whether the District Court --

QUESTION: So your answer to my question is yes, for purposes of deciding the case we should assume that to the extent findings of fact are in the District Court's opinion, they are correct.

MR. LEVY: I think the Court would be entitled to come to the conclusion that the District Court's findings were clearly erroneous or an abusive discretion. But that is --

QUESTION: But you have not so argued.

MR. LEVY: But that is not the reason we have come to the Court.

QUESTION: So again, I just want to -- for purposes of deciding the case, we assume that the factual statements made by the District Court are correct.

MR. LEVY: No. I think our position would be that for purposes of resolving our principal argument, and that is that this case can be resolved as a matter of law, that assumption would be appropriate. If the Court disagrees with us on that, but nonetheless feels that the District Court's conclusions were erroneous or arbitrary, abuse of discretion --

QUESTION: So your view is, as a matter of law, even if there is a greater risk of error because of the statute, and that the veterans don't get the full range of services that lawyers could provide them, nevertheless the statute is valid.

MR. LEVY: We would take the position that it is constitutional, but we would also take the position that the premise of your question is not the proper basis for decision here, because Congress itself has looked at the system, conducted extensive hearings over a number of years, issued a number of reports, and has

come to the conclusion that the system is informal and non-adversarial and that the V.A. service representatives do provide effective assistance, and that lawyers are unnecessary and undesirable here.

So we think that is the appropriate factual premise for the Court's decision. And against that background, we think the statute is clearly constitutional.

QUESTION: I take it that it's the Government's position that there are no findings of fact of any kind that bear on the constitutionality of this statute. The statute must be evaluated on its face.

Is that so?

MR. LEVY: Well, we take that position in light of the congressional determinations. Had Congress not found that, there would be an open question of whether it would be appropriate, but --

QUESTION: Well, including the legislative history, too.

MR. LEVY: That's correct. But I want to reiterate that even if it were appropriate for the District Court to make some kinds of factual inquiries, we think that the approach taken here was fundamentally misguided and that the court should have focused on a more systemwide perspective to determine whether, under

the Eldridge standard in the generality of cases, the system is fundamentally unfair and fundmentally inaccurate, not whether in particular cases there may have been a mistake made or whether people might have felt wrongly that they weren't entitled to retain a lawyer.

That is not the relevant question. And so we think the District Court's approach to the extent that it went to this sort of individualized or anecdotal level was not a proper inquiry for the District Court.

QUESTION: Well, Mr. Levy, do you take the position that in any Mathews v. Eldridge inquiry as applied to a particular statute enacted by Congress, that if there are sufficient congressional hearings and review, that the Court in every such case should look to the congressional history in deciding the application of Mathews v. Eldridge standards?

MR. LEVY: Let me say that this case is somewhat unusual in the sense that Congress is making --

QUESTION: Well, answer, if you would, whether that is your view --

MR. LEVY: That is not our --

QUESTION: -- that we should look first to the extent of congressional hearings to determine whether a court is entitled to make findings under Mathews.

MR. LEVY: It is not our view where the extensive congressional hearings are contemporaneous with the statute being enacted. But that's not the situation here.

Congress was reviewing a statute that's been in effect for 120 years. The Congress is intimately familiar with it. It has amended it from time to time and has reconsidered it subsequently on numerous occasions. So when you're making congressional determinations about a statute that's been in place and you're looking to the operation of the system, it is in those circumstances that we would say that deference is due as a matter of judicial restraint to the determinations of Congress.

It is not the typical legislative history, one of construing a statute, but is contemporaneous with the enactment.

QUESTION: And would the same thing apply to review of state statutes? If a state legislature had reviewed a statute already in effect and made findings, then we should defer to that?

MR. LEVY: Well, I think that would be an arguable position. Different considerations would come into play, and we haven't taken a position on that. I think that would not necessarily be determined by this

case, but certainly where Congress is the legislative body we think the argument --

QUESTION: Is there another case where this Court has expressed that framework of analysis?

MR. LEVY: I believe so. And we've cited a number of them in our brief, but I can focus on a few of them in particular. I think in Texaco v. Short, which was the mineral lapse case, the Court said that the Indiana legislature was in a much better position than the Court to decide whether the two-year grace period was sufficient notice to satisfy due process when the statutory requirements were being changed.

The opinion of Justices Brennan, Marshall, and White in Oregon v. Mitchell had a quite extensive discussion of this proposition and concluded that as a matter of judicial restraint and judicial competence, courts should defer to the broad constitutionally applicable facts.

QUESTION: Mr. Levy, you really are talking about invalidating a statute on its face, aren't you?

MR. LEVY: I believe that's right, although --

QUESTION: Or at least you are not talking about invalidating a statute as applied to a particular case.

MR. LEVY: Absolutely not. That's exactly

right.

QUESTION: And I would suppose you would concede that this statute could be unconstitutionally applied in a particular case.

MR. LEVY: It is conceivable.

QUESTION: You can't argue, you aren't arguing that --

MR. LEVY: They're not arguing that that's not conceivably possible. We think those cases would be few, if any.

QUESTION: And you're saying that Congress's attention to this statute at least should preclude invalidation on its face.

MR. LEVY: Exactly

QUESTION: Now, it's invalidation on its face in reliance on the operation of the system. We don't take the position that a court can never look beyond the statute as written in the books or the regulations on their face. It is appropriate in some circumstances, althcugh not here, perhaps to look at the operation of the system, but it's the operation of the system, it's a systemwide approach --

QUESTION: Well, is it possible here that the court did make an as-applied analysis, but simply erred in the extent of the relief that it granted under the

preliminary injunction by trying to enjoin the entire operation?

MR. LEVY: I don't believe so, if by "as-applied," you mean as to the three or four individual plaintiffs in this case. That was not the way the case was litigated below and the substantial part of the record has nothing to do with them. It is directed, rather, to this category of complex cases that Appellees seek to identify.

QUESTION: The District Court didn't direct itself to the facts of these particular cases?

MR. LEVY: It did not; no. There were incidental portions of the record and perhaps incidental references in the opinions, but that certainly was not the basis for the District Court's opinion.

QUESTION: Was this a class action?

MR. LEVY: It was not a class action. No class was requested or certified.

QUESTION: Mr. Levy, I'm puzzled by your response to Justice White. Do you concede that there could be some unconstitutional applications of the statutes?

MR. LEVY: I concede it is a theoretical possibility, although as I say, it is doubtful it would ever exist. We think that there would have to be two

things shown in order to make out that kind of a case. First, it would have to be shown that the representation of an attorney would necessarily be required in order to have adequate representation and would categorically be better than that provided by a service representative; and second, that the claimant would be unable, consistently with the fee limit, to have a lawyer represent him.

We doubt that there are very many, if any cases, in the first category where it can be concluded absolutely that a lawyer is necessary and would do a better job than a service representative. And we also doubt that there are many cases given pro bono lawyers, given legal services, given that some service representatives are in fact themselves attorneys, we doubt that if a particular case ever arose where it was truly necessary to have an attorney, that the claimant wouldn't be able to find one consistent with the $10 fee limit.

But if those two conditions ever happen to come up and could be demonstrated, then we would agree that the statute could be held unconstitutional.

QUESTION: But that's not the issue here.

MR. LEVY: That is not the issue here. No, it certainly isn't.

Now, at the risk of going back, I would like to discuss the nature of the claims system that is before the Court today, because that is fundmental to the issue that we have asked it to decide.

The relationship between the Government and veterans is a very special, indeed a unique one. Throughout the history of this nation, Congress has shown special concern and solicitude for veterans and has provided a wide range of care and assistance to them and their families.

That relationship is carried over to the benefit system for service-connected death and disability that is at issue here. Both the substantive, and more importantly for present purposes, the procedural features of that system clearly reflect Congress's special consideration of our nation's veterans.

Now, the V.A. claims systems is a truly unique administrative process. Congress created a system in which claims were to be processed quickly and efficiently, in which legal technicalities and lawyers would not be involved, in which the V.A. and service representatives would assist veterans in establishing their claims, and in which administrative claims decisions would be final and not subject to judicial

review.

By design, the V.A. system is informal and nonaversarial. The procedures and forms are easily understood and quite liberal. The system is not governed by technical legal requirements or formalities. For example, the rules of evidence do not apply and there is no cross-examination.

Moreover, no V.A. personnel, whether lawyers or non-lawyers, appear in opposition to the claim. Rather, it is the V.A.'s responsibility to assist the veteran to establish his claim and to grant benefits wherever possible under the law. And to that end, V.A. adminsters the statute under a broad construction and gives every reasonable doubt to veterans.

Finally, there is an extensive system specifically recognized by the Congress of representatives of accredited service organizations to assist and represent veterans at no cost. These service representatives are paid full-time employees of the service organizations. They receive training, both form and on-the-job, and through their continuing day-to-day involvement in the V.A. system, they develop ease and a familiarity and expertise with the V.A. process and its personnel.

These non-lawyer representatives are also

especially well-suited to the factual and medical or vocational issues that are involved in benefit claims.

QUESTION: Well, what's more interesting to me, those organizations weren't in existence when the law was passed.

MR. LEVY: They were not in existence in 1862, although they've been in existence, I believe, since 1924.

QUESTION: But they weren't when the law was passed.

MR. LEVY: They were not when the law was first passed. They were when Congress has subsequently amended the law, and they've been in effect for more than half a century.

QUESTION: But they weren't there when the law was first passed.

MR. LEVY: That's correct.

QUESTION: That's all I'm asking you to admit.

MR. LEVY: No, I agree with that, although --

QUESTION: If there were no such organizations, would the law be constitutional?

MR. LEVY: This would be a much harder case, quite honestly, if the organizations didn't exist. I wouldn't be prepared to say that it would be

unconstitutional, but I can say it would be much more difficult. But we think that the service representatives are a fundamental and integral part of this system, and the Congress essentially has provided a system of counsel substitute.

QUESTION: Then why are they necessary if the Veterans Administration is doing all this for the veteran benefits? I don't understand.

MR. LEVY: I'm not saying it would be necessary, but it seems to me they are certainly helpful, both to the veteran and to the constitutionality of the statute. And that's one of the things that makes this system truly unique. I am unaware of any other system --

QUESTION: What about the finding of the court below that the service representatives are giving ineffectual assistance now? What do we do with that?

MR. LEVY: We have two fundamental objections to that. First, we think the District Court, at most, could have determined that in certain individual cases the representative perhaps didn't do as good a job as should have been done.

That may be true. This is a large system. There are thousands of representatives, and there may be an occasional case where the system doesn't work as it's

intended to work. But that doesn't cast doubt on the constitutionality of the statute. Due process depends on the generality of cases and the fairness of the system.

Beyond that, Congress has looked at the issue and has determined that in the overall claim system, representatives do provide effective assistance, and the V.A. does render help to the claimants, and so we think that the District Court's findings, completely inconsistent with Congress, have to give way as a matter of deference to the congressional determination.

And I should point out that one piece of objective evidence in this record is that the success rates for service representatives are generally as good, and in some instances better than the success rates for veterans in the V.A. system. We think that's very telling evidence that the District Court simply swept aside.

Now, it may be that that's not conclusive. It may not end the case, but we think it is strong corroboration for the fairness of the system overall, both on its face, as Congress has intended and as Congress has determined it to operate.

QUESTION: Do you mean that the veterans' organizations give better legal services than $10

lawyers do?

MR. LEVY: Well, there aren't very many $10 lawyers in the system.

QUESTION: Well, I thought you said they get better service.

MR. LEVY: I said their success rates are as good, and in some instances better.

QUESTION: Than whom?

MR. LEVY: Than attorneys who are in the system. The attorneys in the system now would typically be a pro bono attorney who is handling the case for free, or a legal services attorney.

QUESTION: So I'm right; it's a $10 lawyer.

MR. LEVY: No, it's all lawyers who are now in the system. And the question is not whether the service -- the question is not even whether the service representatives do as good a job; the question is whether they do a good enough job. Congress has found that they do and has had this statute in a very unique adminstrative system for 120 years.

QUESTION: Does the V.A. provide a service representative in every case?

MR. LEVY: The V.A. does not formally itself provide the service representative. They are provided by the service organization under the statute in the

relationship between the veteran and the service organization.

And the answer is yes, the service representative is available upon request in every case.

QUESTION: So the veteran goes to the V.A. and the V.A. directs him to a service representative?

MR. LEVY: That would be possible, or they go to a service representative or a service organization directly. And as I understand it, the service organizations handle any claim without regard to the possible likelihood of success or even without regard to whether the veteran is a member of that association.

So I think it's fair to say that a service representative is available to every claimant in every case if he wishes it.

QUESTION: You've emphasized that the Congress wanted to do away with lawyers in the proceedings in the administration of this statute. They also wanted to do away with judges, both lawyers and judges, and have it be a purely administrative procedure.

MR. LEVY: That's correct. Section 211(a) bars judicial review of the administrative decisions in claims, and we think that strongly reinforces the overall nature of the system that Congress wanted here, and part and parcel of that system is not to have it run

by lawyers, not to have it subject to the legal technicalities that are typically found in our legal system, including in administrative processes.

QUESTION: Are the service representative full-time employees of the particular veterans' organizations, or are they volunteers or some of both?

MR. LEVY: The service representatives who represent claimants before the V.A. are paid full-time employees. There are some volunteers at the local level who provide other kinds of assistance.

QUESTION: But they're not employees of the Government?

MR. LEVY: No, no, no. Full-time paid employees of the service organizations.

QUESTION: And when you talk about service organizations, we've got an awful lot of green briefs in this case. Are any of them filed by service organizations?

MR. LEVY: There's one service organization that's filed an amicus brief on behalf of the Goverment in this case, and several -- I don't know the exact number -- that have filed amicus briefs on behalf of Appellees, two or three, I think.

QUESTION: What are the names of some of the service organizations?

MR. LEVY: VF, the Veterans of Foreign Wars; the Red Cross; Disabled American Veterans; organizations of that type, some of which are specifically identified in the statute.

QUESTION: And with one exception, they disagree with you on the merits -- the service organizations themselves.

MR. LEVY: Well, the ones that have come in. As I say, I think two or three have come in on the other side, but I don't think that is particularly harmful to our position. In effect, what we see this case to be is an attempt by the Appellees to invoke the due process clause to obtain relief from the courts that they haven't been able to get from Congress.

QUESTION: May I ask on the congressional point, do you rely primarily on the congressional judgment at the time the statute was enacted or in subsequent deliberations on whether to amend the statute?

MR. LEVY: Well, we rely on both and Congress's continuing familiarity. But we place a central reliance on the legislative record in the last five or six years when Congress has considered amendments of the fee limitation and declined to amend it because it found the system to be adequate and fair

as it now exists.

I would like to reserve the remainder of my time.

CHIEF JUSTICE BURGER: Mr. Erspamer.

ORAL ARGUMENT OF GORDON PAUL ERSPAMER, ESQ.

ON BEHALF OF THE APPELLEES

MR. ERSPAMER: Mr. Chief Justice and may it please the Court, this case involves a central question of what process is due veterans who have been killed, maimed, or injured in the service of their country, and in connection with the benefit programs Congress has instituted to compensate them for those deaths or injuries.

More specifically, it involves a question of whether a veteran can pay an attorney more than $10 out of his own pocket to represent him in connection with complex service-connected death and disability compensation claims.

It also involves the validity of a separate statute which criminalizes the payment of a fee in excess of $10 and subjects the attorney and perhaps the claimant to criminal penalties.

This case is unique among recent due process cases in this Court, I think for several reasons. Appellees do not seek additional opportunities to be

heard, nor to have, for example, have counsel provided for them at government expense. Rather, they just merely seek the opportunity to retain attorneys at their own expense and make their right to -- the statutory right to representation by counsel that does exist in the system, contrary to the Government's statement, more meaningful.

And perhaps I can start there in the argument and correct I think a misapprehension the Court may be laboring under as a result of some of the comments made by ccunsel.

Lawyers have always been allowed in the system since 1862, and in fact lawyers are authorized, specifically authorized by statute, the same statute that enacts the fee limitation. So there was never any attempt by Congress to exclude lawyers from the system.

In fact, if you look at the legislative histcry of the statute, the purpose behind the fee limitation, both in 1862 and in later years when it was reenacted, culminated in 1924, was solely to limit overreaching by unscrupulous attorneys.

So the explanation for this anomalous, seemingly anomalous situation where you have one statute, 3404(a) which grants the veteran the right to representation by counsel, and another statute which

limits the fees to $10, is only explained by the rationale for the statute, which is the prevention --

QUESTION: Are you going to get to the standard of review later in your argument?

MR. ERSPAMER: Well, I can address it now.

QUESTION: No, I just wanted to know if you are going to get to it.

MR. ERSPAMER: Yes. Why don't I take that up now? I believe the standard of review in this case, as we've indicated in our brief, is abuse of discretion standard of review. Of course, it is true, what counsel indicated, that it is by definition abuse of discretion for the court to make an error of law.

However, the Court should defer to the findings, the factual findings of the District Court, and should not reverse the preliminary injunction, absent an abuse of discretion. With regard --

QUESTION: I was just wondering, I was going to ask you the same question I asked Mr. Levy.

MR. ERSPAMER: I was just going to answer it.

QUESTION: Oh, go ahead.

MR. ERSPAMER: Yes. Further proceedings were contemplated in the District Court. No proceedings have taken place since the appeal was filed, but certainly we would plan to take an additional discovery in the

District Court once this appeal is resolved.

For example, one thing we would certainly want to take testimony from is from the service organizations.

QUESTION: Do you think the District Court's order did enjoin the enforcement of these fee statutes across the board?

MR. ERSPAMER: Well, on its face, it does enjoin it across the board. I believe the challenge was limited to the service-connected death and disability program. Perhaps this would be a good opportunity to explain what my understanding is of the nature of our challenge and the nature of the court's rulings on the as-applied facial point.

QUESTION: Well, I take it you are not defending the injunction as writte.

MR. ERSPAMER: We are not defending the injunction as written, insofar as it extends beyond the service-connected death and disability compensation program. Otherwise, we are defending it.

QUESTION: What about insofar as it extends beyond the relief necessary for the plaintiffs below?

MR. ERSPAMER: Well, let me address that.

QUESTION: Why shouldn't it be limited to them? It's sort of a surprise that it was as broad as

it was.

MR. ERSPAMER: Well, I think I can explain that by defining what the nature of the constitutional challenges were below.

First of all, both the First Amendment and the Fifth Amendment challenges were both facial and as applied. And the statute was attacked as applied in two or three separate respects, albeit related.

First, the statute was attacked as applied to the plaintiffs, which included individuals and the organizations. But more important, the statute was atacked as applied, given the current practices, rules, procedures, and practice of the Veterans Administration.

And that involved a substantial body of evidence that was gathered in the District Court with regard to systemic aspects of the system. For example, the complexity, the overall complexity of the system, substantively and procedurally.

Another example would be the extent to which claimants abandoned claims in the system which was proved through nationwide statistics.

Another example would be the -- well, basically they all are taken up, I guess, in the court's findings of fact.

Another aspect of that analysis was the fact

that veterans --

QUESTION: Do you think the District Court invalidated the statute facially?

MR. ERSPAMER: Well, I think it's a question of semantics whether you call the second aspect the second type of as-applied claim a facial claim or in as-applied claim, because it does not depend on facts with regard to the individual circumstances of the plaintiffs or the organizational appellees or the individual appellees. Rather, it was based upon a systemwide look at the system.

So in that sense, it is in the nature of a facial challenge, but it does not depend, just looking at the statute on its face without resort to any other evidence.

The other findings in that area --

QUESTION: Nevertheless, the injunction in the case, that the court invalidated the statute on its face.

MR. ERSPAMER: Well, I think the approach the court took --

QUESTION: Or at least with respect to a very large category of cases other than those specifically before us.

MR. ERSPAMER: That is correct, although we

also have the First Amendment aspect of the ruling of the Court which justifies the preliminary injunction as we have taken up in our brief.

Again, that was an as-applied and a facial attack on the constitutionality of the statute under the First Amendment.

QUESTION: Well, isn't your response to Justice White's question that the Court did strike down the statute across the board, but not simply looking at the statute on its face, but on the basis of the evidence?

MR. ERSPAMER: Yes. Yes. Based on the evidence about the systemic operation of the system and the individual circumstances.

QUESTION: And you defend the total invalidation of the statute on the basis of the evidence before the District Court.

MR. ERSPAMER: Yes, we do.

QUESTION: Even though a much narrower injunction could have been entered that would have satisfied the claims of these particular plaintiffs.

MR. ERSPAMER: Well, the problem there is that there are organizational plaintiffs who have members, who have a wide variety of claims. For example -- well, the Radiation Survivors Group mainly has atomic

radiation claims, although their members have many, many other service-connected claims that do not involve atomic radiation.

I guess the way I would approach that question is that the court determined that the statute was unconstitutional as applied to a significant number of situations such that it should be struck down across the board. And it would be difficult, I think, for the Court to draft an order that would be limited to the, for example, complex claims.

What is a complex claim? The testimony in the case were that at least 10 or 12 different types of claims were complex, including gunshot wounds, cases involving POWs, atomic radiation claims, agent orange claims.

QUESTION: I thought that was what your case was cast in terms of was complex claims.

MR. ERSPAMER: Well, it was primarily cast in terms of complex claims, but it involved -- it was a systemwide approach as well, all claims. So it was both.

We primarily emphasize the negative effects of the fee limitation upon complex claims where expert testimony is required, where substantial development of the factual evidence is required, and where the

abilities of the service organization lay representatives are most severely called into question.

However, we did attack the statute on its face and the court, I believe, based upon the combination of the facial and the as-applied challenge and the facts of record, struck down the statute across the board.

QUESTION: What would happen if a non-lawyer representative -- he wouldn't be covered by the statute?

MR. ERSPAMER: No. Actually, they are covered by the statute. The agents are subject to the $10 fee limitation as well as service officers. Everyone is subject to a $10 fee limitation. You can't pay anybody more than $10.

QUESTION: So it isn't limited to lawyers.

MR. ERSPAMER: It's not limited to lawyers; you're correct.

The approach that the Government takes to the factual findings of the District Court I think is rather unusual. They basically totally ignore them. Anyway, in the briefing they totally ignore the factual findings of the District Court.

And the court did make a number of specific factual findings regarding the operation of the system in the context of the Mathews v. Eldridge framework.

The court concluded that the fee limitatiin causes a high risk of erroneous deprivations and causes many V.A. claims not to be resolved on their merits, for several reasons:

First, unrepresented veterans are unable tc conduct the extensive investigation, the witness interviews, the documentation and the retention of experts, the legal analysis and other steps necessary to mount convincing V.A. claims.

And to respond to one of the questions I believe that came from Justice Powell, 25 percent or more of veterans at the regional office level are in pro per and do not use service officers. In the Board of Veterans Appeal that figure is about half of that, but there was uncontradicted testimony in the record that fully 25 percent of these veterans appear in pro per and they pose a government attorney staff of over 800 attorneys that participate in the litigation of claim.

QUESTION: Is that by their own choice?

MR. ERSPAMER: Pardon me?

QUESTION: Is that by their own choice that they appear on their own behalf?

MR. ERSPAMER: Yes, and I think it reflects, in part, their opinion of the abilities of the service officers. And we have a lot of examples in the record

where veterans terminated their service officers beause they felt they were incompetent.

QUESTION: Counsel, don't you think if the District Court's right and you're right, it shouldn't be very difficult to find the case where the veterans -- an actual case has been litigated in the Veterans Administration and then the claim is made that representation was wholly inadequate and it was inadequate because you couldn't hire a lawyer for $10.

And then in that particular case, you say -- then you've really got concrete proof that this limitation is a denial of due process.

Why wouldn't you want to litigate a case like that?

MR. ERSPAMER: Well, we do have examples of that in the record. We have --

QUESTION: Why don't you bring one of them here?

MR. ERSPAMER: Well, we do have examples. We have attached the files, the claim files of a number of the plaintiffs --

QUESTION: Yes, but those people aren't here.

MR. ERSPAMER: Pardon me?

QUESTION: Those people aren't here. This hasn't happened to your clients.

MR. ERSPAMER: Oh, yes it has. Every one of our clients was represented by a service officer at one point in time. And there is extensive testimony in the record in the form of declarations from our clients, including Mr. Maxwell, Mr. Warehime, Doris Wilson, as to the mistakes and incompetency of their service representatives.

And, in fact, they terminated their service representatives and they sought to obtain legal assistance to replace them, and of course because of the fee limitation they couldn't.

In addition, there are six randomly selected files, claim files in the V.A. which the V.A. randomly selected, which reflect much of the same facts and the District Court had before it extensive files, including transcripts of hearings conducted by service officers, the claims actually filed by the service officers, and a variety of the other work product of the service officers at the time it rendered its decision.

There was a substantial body of evidence in the record on service organizations, including admissions from the V.A.

QUESTION: Nevertheless, the District Court didn't limit its judgment to the results that were obtained in concrete cases.

MR. ERSPAMER: Correct. Correct. The court made some findings based upon --

QUESTION: Because you wouldn't say that in every single case where a service representative has represented a claimant that the limitation is unconstitutional.

MR. ERSPAMER: No. We would not say it's unconstitutional as to every single case.

QUESTION: I would think there are an awful lot of them where you would concede it, that that is --

MR. ERSPAMER: Well, I think we would concede in a simple claim, and I don't know how many of these there are, that service representation may be adequate. But even in a simple claim, you're still confronted with this very complex legal procedural system. And to that extent, even with the very simple -- let's say a lost arm, which is rated in the rating guide --

QUESTION: Perhaps that's why Congress decided to do it the way they did it.

MR. ERSPAMER: Well, let me get back to what Congress did.

QUESTION: To have a full cadre of people who are specialized in this and who are paid.

MR. ERSPAMER: Well, the factual findings of the District Court were that the service representation

was inadequate and it was based upon more an individualized circumstances, and it was also based upon a series of admissions from V.A. officials in the record. And we did depose V.A. officials from the entire process, from starting at the Compensation and Pension Service, to the Board of Veterans Appeals, to the local service -- excuse me, local officers of the V.A.

So there was a very systemwide approach taken to that question of service representation and also -- you take a look at some of the statistical evidence in the record. Service representatives do not request hearings on behalf of claimants. They don't utilize procedural rights on behalf of claimants. They represent 87 percent of the people who appear in the Board of Veterans Appeals; yet, the hearing incidence rate is extremely loww -- less than 5 percent. That's --

QUESTION: That might add up to the proposition that a majority of all personal injury claims in this country initially filed in the courts are settled. Would you suggest that because they're settled and don't go to trial that there's something wrong about that?

MR. ERSPAMER: The cases that go to the Board of Veterans Appeals are not the ones that are settled.

They're the ones where the claimant is able to persevere long enough in order to comply with the procedures, and they feel definitely wronged.

QUESTION: Well, to fault service representatives for not requesting hearings, you really have to show that there was some prospect of relief if they had requested a hearing, don't you? I mean you wouldn't fault a lawyer for not appealing a case he'd lost if, say, he fairly concluded there wasn't much chance of success on appeal.

MR. ERSPAMER: Well, the testimony below was that -- and I can almost quote it -- service officers only request hearings where they think the decision is particularly outrageous in view of the facts of record.

That's a V.A. official testifying. The incidence of hearing requests is so low that it suggests that the hearing is not being utilized as a fundamental aspect of due process. The hearing success rate is twice as high where there's a hearing held.

QUESTION: Well, if Congress -- you don't deny, do you, that Congress could set up a totally informal system that didn't have a great many contested hearings where the V.A. was truly neutral and extended a helping hand and had a fee limitation. And if it worked the way it was supposed to, there would be no violation

of due process, would there?

MR. ERSPAMER: Well, I disagree with that because the system, as set up, contemplates lawyers and has always contemplated lawyers.

QUESTION: But I was asking about a hypothetical system which was simply set up and not on an adversary basis, but apparently as Congress originally intended to set up the Veterans Administration, where you wouldn't need assistance; they would help you process the claim, and that sort of thing.

Now, would that be unconstitutional?

MR. ERSPAMER: I think that would depend upon the facts that were adduced, and given the Mathews v. Eldridge framework. And I can't answer that question in the context of the few variables that you've given me.

I think it's a rare instance where in a system such as the V.A., where a veteran can be constitutionally denied the right to retain counsel, I can't perceive of a case where that would be true.

QUESTION: You think lawyers are an inescapable part of due process.

MR. ERSPAMER: Well, the right to retain lawyers, I think, is at the option of the veteran. Of course, the veteran is presumed to be capable of making that decision whether his particular case has the

complexity or the types of issues where he wants a lawyer to represent him.

And I think the mere fact that the V.A. lawyers pervade the entire system suggests that it is a system where lawyers are important. And the fact that Congress, through the entire 123-year history of the fee limitation, has authorized lawyers to participate in the process and the regulations authorize lawyers to participate in the process is strongly suggestive also o of the same fact.

QUESTION: How does the fee limitation prevent the group plaintiffs below from hiring in-house counsel because they can presumably charge membership fees to support their own hiring of lawyers? And it's just hard for me to understand how the fee limit affects groups.

MR. ERSPAMER: Well, basically they have very, very low membership fees and very limited resources.

QUESTION: Well, they can raise the fee and hire more lawyers.

MR. ERSPAMER: Well, correct. And where would that money be coming? It would be coming from the membership.

I guess that raises a question of whether that's indirectly paying a lawyer; under 3405, that raises a question. But the real extent to which the fee

limitation prejudices the organizations is that they are unable to collect fees from the claimants to support their program. And they can't -- without the fees --

QUESTION: Well, it strikes me that isn't the fault of the statute at issue.

MR. ERSPAMER: Well, if the statute at issue did not exist, the organizations could collect fees and provide services to their members. As it now stands, they cannot. They cannot do so.

I'd like to turn, if I could briefly, to the deference argument raised by the Government. First of all --

QUESTION: Do you think -- did I understand you that it would violate the statute if one of these groups had a house counsel that furnished -- and they paid them salaries?

MR. ERSPAMER: Well, I think that's a potential violation. Certainly a lot of these groups have tried to go out and hire independent contractors to work at, say, a contract rate.

QUESTION: On that basis, some pro bono lawyer is being paid by a law firm, I suppose, and he comes in and says I'll represent this fellow for nothing. And here comes a group that says we have a house counsel; we'll furnish our house counsel for nothing.

What's wrong with that?

MR. ERSPAMER: Well, it's stretching I think a little bit to call that a criminal violation, I agree.

QUESTION: I would think so, quite a bit. And I suppose there's a lot of instances of group legal services around the country, sort of an insurance scheme. I suppose one of these groups could do that.

MR. ERSPAMER: Correct.

Turning to the deference argument, I want to emphasize, first of all, that this argument was not raised in the District Court at all. There is no argument or no legislative "facts," whatever, placed before the District Court. And I think on that basis that the Government has waived that argument.

But let me address more particularly the question of what congressional activity has existed with regard to the fee limitation. First of all, the Government really ignores largely the congressional enactments concerning the fee limitation.

And I think, as we pointed out in our brief, the last time Congress really considered the fee limitation was in 1924, more than 60 years ago, in terms of legislative enactments.

There is no indication in the legislative history that the fee limitation was intended to control

the number of attorneys or to increase the informality or non-adversarial nature of hearings, or that the fee limitation was an experiment regarding what the Government likes to call informal dispute resolution, or that the fee limitation was intended to facilitate administrative speed in processing of claims.

Since 1924, there of course have been drastic intervening structural program and procedural and claim changes in the Veterans Administration. As I said, during the same period of time there have been sweeping changes in the law of due process. And I refer particularly to Gideon and Goldberg.

The Appellants disregard the legislative histcry regarding enactment. They do not rely upon any considered judgment or positive enactment of Congress. Rather, they rely upon some subsequent legislative proposals or bills that deal with the issue of judicial review which only consider the fee limitation insofar as it was necessary to accommodate this new right of judicial review.

None of the material that they cite in the recent congressional -- in the congressional area constitutes findings of Congress. There have been no enactments. There's a Senate bill in recent years has passed to provide for judicial review, has passed the

Senate. The House version of the bill in each instance never even got before out of the House Veterans Affairs Committee which is not an infrequent occurrence in the case of bills. In fact, in some sessions of Congress, 90 percent of the bills have never been reported out of committee.

Now, the fact -- thus, the Government is not relying upon any enactment or finding of Congress with regard to the fee limitation, with regard to the recent legislative history, because there are none. What they have relied upon is a Senate committee report with regard to a judicial review bill in the 97th and the 96th Congresses, which do not constitute findings of Congress by any means.

On the House side, all they've relied upon is House inaction on these bills, and legislative inaction is certainly an unreliable guide to legislative intent, and certainly the inference that the Government seeks to draw from the failure to pass these bills or the failure to even have them reported out of committee in the House is speculative.

There are many reasons why bills die in committee, many of which have nothing to do with the merits of the bills.

The only other thing that the Government

relies --

QUESTION: Are we concerned with the posture that you have presented this case with the merits of these?

MR. ERSPAMER: Pardon me?

QUESTION: Are we concerned about the merits of these proposed amendments?

MR. ERSPAMER: Well, I think the Government's argument assumes that the bills were rejected on the merits, and they may or may not have been. And in fact, in the House I don't think --

QUESTION: I thought the Government's argument was that for 120 years, except right after World War I, Congress has continued to use this system. That's all.

MR. ERSPAMER: That's part of their argument. However, in their brief they rely heavily upon these bills in the last -- recent sessions of Congress to provide for judicial review. And that's the source of the "findings" that they use. They do not go back to the original enactments regarding the fee limitation. And the reason they don't do that is because the purpose of the fee limitation was to protect veterans, not to bar them from access to lawyers.

And that's consistent throughout the entire history of the fee limitation, starting in 1862 when it

was set at $5, through the present date. Actually, the last time the statute was recodified was in 1958. That involved a mere consolidation of veterans' law.

Secondly, on the deference argument, the V.A. mainly relies upon equal protection in substantive due process cases involving deference, which involved the rational basis test. And of course that's not the proper test to be applied in this case.

If I can turn, if I could briefly, to the value I think of attorneys in this setting, because I think that's one of the basic issues with regard to the value of additional safeguards under the Mathews v. Eldridge analysis.

First of all, it's important to point out that this fee limitation prohibits counseling or advice with regard -- or assistance with regard to every aspect of this system. For example, a veteran cannot even go to an attorney and say please explain how to me how the system works, totally outside the context of any hearing or any formal process in the Veterans Administration.

The value of attorneys are several. First, he can give the claimant advice about the claim: do you have a claim; how to bring the claim; preparing the necessary claim forms; doing the necessary investigation which often will turn on developing witness statements

with regard to the circumstances of the injury; developing expert testimony from medical or scientific people; and then putting the whole case together; organizing it, putting it in a rational written form; representing the claimant at hearings; adducing testimony at live hearings.

And I think it's an important fact that where live hearings are held, veterans prevail twice as often. And I think that makes the waivers of the hearing quite significant under the system that exists now. And again, lawyers would utilize the procedural rights that Congress has provided to the veterans, rather than let them fall, basically abandon those procedural rights.

Another aspect I would to briefly address is that there are a lot of other procedural protections that are generally recognized as aspects of due process that are absent in the system, which I think also should be considered under the Mathews v. Eldridge analysis.

First, there's no opportunity to compel the attendance of any V.A. official or to cross-examine any V.A. decisionmaker. There's no requirement that the V.A. state a basis for denial in a decision. Of course, there is no right to judicial review and all the decisions are final.

In practice in the system, there's no right to a pretermination hearing because the V.A. does not grant pretermination hearings, as shown in the brief. In actual practice, they wait until a decision to grant a hearing.

And finally, there is no requirement that the decision even be based upon the evidence and testimony presented at a hearing where a hearing is held. All these aspects of the system I think make the right to retain counsel a very important one.

I see my time is rapidly dwindling here. I think the important point to be made with regard to the Government interest is that the Government sought to defend the fee limitation in the District Court solely based upon the paternalistic arguments, overreaching by unscrupulous attorneys, depletion of benefits.

All the arguments they raise here about procedural changes and destroying the informality and so on, none of those arguments were raised in the District Court. In fact, the District Court made a specific finding on the question that the Government had failed to show it would be disadvantaged in any way by the removal of the fee limitation.

With regard to the contention that allowing attorneys into the system without the fee limitation

would change the nature of the system that Congress intended, first of all, there's just no change in V.A. procedures that would be involved if the fee limitation were removed. Attorneys are already allowed, and the fee limitation would not involve a change in any of the other informal aspects of the system which would still continue to exist.

QUESTION: Does the record show in what percentage of all cases attorneys appear with the claimant?

MR. ERSPAMER: Only in the Board of Veterans Appeals, and the rate is 2 percent. And the testimony was that it was lower at the regional office level.

I see my time is up.

CHIEF JUSTICE BURGER: Do you have anything further, Mr. Levy?

ORAL ARGUMENT OF MARK IRVING LEVY, ESQ.

ON BEHALF OF THE APPELLANTS

MR. LEVY: Thank you, Mr. Chief Justice. I have several points.

The argument this morning has made clear Appellees' complaint about a wide range of aspects of the V.A. system. Even assuming for the moment, though, that their asserted deficiencies are right, that would provide no legal basis for striking down the fee

limitation statute.

The appropriate remedy, if any, would be to require the V.A. to bring its procedures into conformity with the informal and non-adversarial system the Congress intended, not to make the system even more adversarial by invalidating the fee limit and allowing an infusion of retained lawyers.

And as I understand Appellees' argument this morning, they are making a facial attack on the statute, but one that depends on the evidentiary record in the case. That's simply not a tenable position as we understand it. The constitutionality of a federal statute doesn't vary from case to case and district to district, depending on the record that the parties put forward.

It's a facial attack, because I understood them to be saying today the statute either is or is not constitutional. We say it is constitutional and we think the court can decide that legal issue.

Now, Appellees have said that lawyers have always been permitted in the V.A. system. And that's true. The $10 limit is not in terms an absolute preclusion. But Congress has recognized virtually from the outset and indeed the 1870 and 1878 legislative history is quite clear, that the fee limit as a practica

matter amounted to a virtual prohibition on attorneys in the system, and the legislative history also shows that Congress intended that.

So I think it's a bit misleading to say that claimants have always had the right to an attorney. Congress understands that as the system now exists, there are few if any attorneys involved. That's the way it wants it to exist. And if a large number of attorneys started to appear even under the $10 fee limit, we assume Congress would take another look at that system in light of the practical changes and would deal with it in that light.

QUESTION: May I ask you, Mr. Levy, I think it's right, of course, that it's a denial of attorneys pretty much. But to what extent does the Government's position depend on it being a veterans' statute, rather than, say, food stamps or Medicaid or something like that?

Do you think the same kind of program could be used in all these other areas where the Government provides benefits for part of the population to say, in all these claims, no lawyers can participate?

MR. LEVY: With the system of service representatives and all the rest of the system?

QUESTION: No, just flatly. Just say we think

it's better to let government agents look out for the interests of the --

MR. LEVY: That would be a much harder case, and I can't give you a categorical answer in the abstract.

QUESTION: But this was when this statute was originally enacted.

MR. LEVY: Well, the whole world was much different when --

QUESTION: Yes, but we're passing on the statute. Are you conceding it was originally unconstitutional?

MR. LEVY: No, no. Not at all.

QUESTION: In other words, you would say all these later developments really are not necessary to sustain the statute.

MR. LEVY: No, because one would have to go back to the circumstances that existed in 1862, and I don't know then sufficiently well to be able to give you a legal judgment. But we certainly wouldn't concede that the statute was unconstitutional then. The statute was amended many times; it was reenacted as late as 1958. Congress well understands what the system is about and what it wants to do in this system, and we don't think the Court has to only look at the legislatie

history that existed in 1862 or the systems that existed them. The question is whether the statute now is constitutional or not.

QUESTION: Is your opponent correct in saying the last time the statute was amended was in 1924 with respect to the fee limit?

MR. LEVY: I can't remember the last time it was actually amended. It's been reenacted several times, in 1958 most recently. It was reenacted as part of a recodification.

Now, Appellees also took the position --

QUESTION: Well, what happens if you pass a statute which says that you may not be assisted by anybody that you pay more than $10?

MR. LEVY: That statute, depending on the system, could well be constitutional, but that's not this statute in this system.

QUESTION: Well, how could it be constitutional?

MR. LEVY: If the system were adversarial, if their lawyer appeared on the other side, if the claimant was expected to handle technical rules of evidence, of cross-examination, authentication of documents and so on.

QUESTION: Well, what about counsel of your

own choice?

MR. LEVY: Well, this Court has recognized that even routine counsel is not always necessary to a fundamentally fair procedure. We think that's very significant, and we would cite to Wolff and Goss and Baxter, among other cases, to establish that.

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

We will hear arguments next in Connecticut v. Heckler.

(Whereupon, at 11:07 o'clock a.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

lderson Reporting Company, Inc., hereby certifies that the ttached pages represents an accurate transcription of lectronic sound recording of the oral argument before the upreme Court of The United States in the Matter of:

84-571 - HARRY N. WALTERS, ADMINISTRATOR OF VETERANS' AFFAIRS, ET AL., Appellants V.

NATIONAL ASSOCIATION OF RADIATION SURVIVORS, ET AL.

nd that these attached pages constitutes the original ranscript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)