

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1097

TITLE S. SIMCHA GOLDMAN, Petitioner V. CASPAR W. WEINBERGER,
SECRETARY OF DEFENSE, ET AL.

PLACE Washington, D. C.

DATE January 14, 1986

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ALDERSON REPORTING

(202) 628-9300

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - :
3 S. SIMCHA GOLDMAN, :

4 Petitioner, :

5 v. :

No. 84-1097

6 CASPAR W. WEINBERGER, :

7 SECRETARY OF DEFENSE, ET AL. :

8 - - - - - :
9 Washington, D.C.

10 Tuesday, January 14, 1986

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

14 APPEARANCES:

15 NATHAN LEWIN, ESQ., Washington, D.C.; on behalf of the
16 Petitioner.

17 MS. KATHRYN A. OBERLY, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.; on
19 behalf of the Respondents.

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

NATHAN LEWIN, ESQ.

on behalf of the Petitioner

3

KATHRYN A. OBERLY, ESQ.

on behalf of the Respondent

27

NATHAN LEWIN, ESQ.

on behalf of the Petitioner --rebuttal

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1 response to our requests for admissions, and I quote,
2 "that it is a well established religious tradition and
3 practice among adherents to Orthodox Judaism that males
4 keep their heads covered at all times.

5 QUESTION: Mr. Lewin, you mentioned enlisted
6 personnel. Was the petitioner here an officer, or did he
7 occupy civilian status, or was he --

8 MR. LEWIN: No, he was an officer. He joined
9 under a program under which he became -- he was a
10 psychologist in the Air Force under a program where he
11 was trained and then became a Captain, entered into the
12 Air Force to serve as a psychologist, so he was an
13 officer.

14 QUESTION: I thought you said enlisted
15 personnel.

16 MR. LEWIN: I'm sorry. I meant officers as
17 well as other personnel in the military services.

18 QUESTION: Mr. Lewin, as long as you are
19 interrupted, may I ask whether it makes any difference in
20 your view if someone enters the service voluntarily, if
21 the person entering the service knows and understands the
22 military is not willing to grant such an exception for
23 dress?

24 MR. LEWIN: We think it really makes no
25 difference, because we think that the decisions of this

1 Court indicate that -- Sherbert and Verner and Thomas and
2 Review Board -- that government may not condition
3 benefits, for example, such as unemployment compensation
4 benefits, on an unconstitutional condition such as
5 deprivation of religious rights.

6 The same thing, we submit, holds true if in
7 fact somebody enters knowing that there is such a
8 regulation. Of course, the practical impact, quite
9 frankly, Justice O'Connor, of a decision by this Court
10 saying that the military may apply such a regulation
11 constitutionally would be that it would in the future bar
12 conscientious believers, who would feel that they could
13 not go day to day without covering their heads, from
14 joining the Air Force.

15 We think that's really an additional factor as
16 to why this Court ought not to permit the absolute rule
17 that the military services are arguing for in this case.

18 QUESTION: Well, Mr. Lewin, you refer to
19 Sherbert against Verner and Thomas versus the Review
20 Board. But those were cases from civil life. We've
21 never applied that sort of balancing test where the
22 military has been involved, have we?

23 MR. LEWIN: Yes, Your Honor. That's absolutely
24 true. They were cases from civilian life and the -- what
25 makes this case certainly more difficult, and the

1 Solicitor General, I think, concedes in his brief that in
2 civilian life there could probably be no constitutional
3 objection to the wearing of a yarmulke even in courts or
4 other places where one is ordinarily required to dress in
5 a certain way.

6 Military life is different. However, this
7 Court has said time and again that the protections of the
8 Bill of Rights apply in the military, and our view, quite
9 frankly, is that in this case the military has gone far
10 beyond what this Court has even tolerated in those
11 situations where, for example in the parallel area of
12 speech, the Court has upheld military regulations.

13 Just to proceed immediately to that point,
14 Justice Rehnquist, Brown and Glines is a case which the
15 Solicitor General relies on very heavily, but of course
16 Brown and Glines which was, I think, the extreme in terms
17 of speech cases where the Court sustained a system of
18 prior restraint in the area of speech as applied to the
19 military, was a case in which a regulation said that
20 material could be prohibited from a military base if it
21 presented, quote, "a clear danger to the loyalty,
22 discipline or morale of members of the Armed Forces, or
23 material interference with the accomplishment of a
24 military mission."

25 The opinion, Justice Powell's opinion for a

1 majority of the Court, spoke four times of the standard
2 of, quote, "clear danger." Clear danger, not simply the
3 possibility of some disruption, not the fact that there
4 might be some interference, but a clear danger to factors
5 such as morale and discipline.

6 This case doesn't concern a regulation in which
7 the military services are saying any deviation from the
8 dress code that in the view of a commander presents a
9 clear danger to morale, discipline, may be prohibited.
10 This is a case where the military has simply said,
11 absolutely, unequivocally, we will permit not the
12 slightest departure whether it presents a danger or not,
13 from the dress code.

14 QUESTION: But the military has also said -- at
15 least there is testimony -- that any departure is in
16 itself a defeat of the military objective which is
17 uniformity of dress.

18 MR. LEWIN: It's true. It is some departure if
19 one assumes that any departure is a clear danger. What
20 we are saying --

21 QUESTION: That's what the military is saying,
22 is that the purpose of uniforms is to make everybody look
23 alike. They don't want people to look different, and to
24 detract from that is itself a departure from the military
25 scheme.

1 MR. LEWIN: Agreed, Justice Rehnquist. The
2 question is whether a departure in and of itself
3 suffices, or whether the fact that something is a
4 departure suffices to overcome the religious protection
5 that's afforded by the Free Exercise Clause.

6 And, our position is precisely that just as
7 this Court has said, that departures are not enough,
8 merely departures or disruptions are not enough in the
9 area of speech, departures if they don't -- are not so
10 extreme as to present that kind of a danger, cannot be
11 sufficient merely because the military says so.

12 Because, if one relies on what the military
13 says, then, we submit, essentially this Court is saying
14 what it has rejected time and again which is that by
15 entering upon military service someone doffs the
16 protection of the First Amendment.

17 QUESTION: Where in the military context have
18 we said, as you intimate we have said, that departures
19 are not enough?

20 MR. LEWIN: Well, I think by the emphasis on
21 clear danger or --

22 QUESTION: I think you are just drawing a
23 negative inference from languages, where the holdings
24 would be against you.

25 MR. LEWIN: Well, Your Honor, I think the

1 statements that have been made that say that the
2 Constitution does protect individuals in the military
3 service would itself be undermined if in fact the
4 military could simply by saying so and expressing its
5 expert opinion say that variations undermine morale. It
6 would mean that the military -- a commander could just as
7 well say prayer is prohibited, private prayer, because
8 that would undermine morale, because people should only
9 obey commanding officers and not pray.

10 It would mean the military --

11 QUESTION: It wouldn't mean -- the military has
12 never taken that sort of a position.

13 MR. LEWIN: We're fortunate that they haven't.
14 I'm quite astounded, Justice Rehnquist, that they have
15 taken the position that such small departures as a
16 yarmulke on the top of one's head or even a kum-kum as
17 cited in the brief that they refer to, the dot that a
18 Hindu might wear, very small departures from the uniform,
19 or for that matter, the appendix to the government's
20 brief.

21 The government has taken various liberties, I
22 must say, with the record in this case and just put
23 before this Court a host of material which they did not
24 see fit at all to subject to cross examination and trial
25 in this case. One of the extraordinary things is a

1 letter that they print as an appendix to the Solicitor
2 General's brief about what they -- at that time was 51
3 members of a Pentecostal church. I'm told now, by
4 speaking to the pastor after I saw a copy of the letter,
5 over 100 members of a Pentecostal church, who were
6 court-martialed or discharged from the Army because they
7 refused to roll up their sleeves, as a matter of piety.

8 Now, it seems to me again, Your Honor, that
9 although it is true, the military can say that every
10 order requires obedience irrespective of what a civilian
11 court may say, or what civilian personnel might say, we
12 submit that that's not what the free exercise clause is
13 about.

14 QUESTION: Well, Mr. Lewin, you pressed the
15 point several times that the Constitution follows a
16 person into the military, but not just the way it does
17 for all civilians, of course. Lights out at 11:00
18 o'clock, you can't tell civilians that. Rights of
19 association are quite limited in the military, are they
20 not?

21 Let me ask you another -- somewhere I read that
22 there is -- someone had tabulated 387 different religious
23 sects extant in the state of California. One of them,
24 according to this comment, forbade the contact of metal
25 on the body. You couldn't have metal buttons or a belt

1 buckle that was made out of metal. It had to be
2 something else.

3 Now, does that religious belief have the same
4 protection that you urge for your client here?

5 MR. LEWIN: I submit, Mr. Chief Justice, every
6 religious belief would have protection. The question of
7 whether it would present a danger either to morale or to
8 the military mission might be quite different.

9 QUESTION: You're approaching it from what I
10 see as the other end. Suppose you had a person of that
11 faith, came in and said, no, I can't have brass buttons.
12 I want plastic buttons or buttons made out of natural
13 wood or something, stone. The military must accommodate
14 it?

15 MR. LEWIN: I think the burden to the military
16 certainly is a very substantial factor, and where the --

17 QUESTION: Well, must they --

18 MR. LEWIN: No, I think very possibly in that
19 case the military would not have to accommodate, because
20 it -- well, the difference is that where the military is
21 required to create a whole new uniform for somebody --

22 QUESTION: Just different buttons.

23 MR. LEWIN: Or different buttons. If he's able
24 to provide his own buttons, maybe that should be a
25 permissible means. If he's asking the military to

1 provide buttons for him, I think that may cast a burden
2 which a yarmulke does not.

3 One of the things about the religious
4 observance in this case is, it imposes no burden upon
5 anyone. It is a small head covering that someone wears.
6 Judge Starr in dissenting below noted that it is
7 equivalent to prayer. That's really all that it is.
8 It's a constant symbol of devotion that somebody is
9 wearing that imposes no burden on any other person
10 whatever.

11 QUESTION: Well, there are other faiths that
12 wear other kinds of headgear, are there not, Mr. Lewin?

13 MR. LEWIN: Yes, Justice Brennan.

14 QUESTION: How about Sikhs?

15 MR. LEWIN: Yes, Sikhs require the wearing of
16 turbans. And of course, the --

17 QUESTION: How many Sikhs are --

18 MR. LEWIN: Well, the interesting thing is, and
19 here's where I say the government takes quite a liberty
20 with the record, we went into this at trial. There was a
21 full trial in this case. The Air Force had its experts
22 on the stand.

23 We went into whether there were members of the
24 military service who presented these dress regulations.
25 The witness testified that he had heard of one Sikh in

1 some case that he thought involved the Army.

2 Now, in this Court, suddenly, with
3 representation simply made in the brief, we are told by
4 the Army that there are so and so many, no record, no
5 opportunity to go through individual circumstances, and
6 we submit that in fact --

7 QUESTION: How about Hindus, any record as to
8 that?

9 MR. LEWIN: Nothing, again. A chaplain
10 testified, and of course the problem is this country --

11 QUESTION: How about Krishnas?

12 MR. LEWIN: None that I know of in the Air
13 Force. I think they said there were none.

14 QUESTION: Rastafarians?

15 MR. LEWIN: Again, I think the testimony was,
16 there were none that they knew of in the Air Force. And
17 the point, Your Honor --

18 QUESTION: Would you make a distinction between
19 their headgear and --

20 MR. LEWIN: Yes, Your Honor. I think
21 distinctions are possible under a standard that says that
22 where there would be a clear danger in terms of morale or
23 discipline, it seems to me it's possible.

24 The Solicitor General keeps talking about how
25 the standard can't be expressed, and yet the Air Force

1 dress code is full, is just chock full of references to
2 rings or bracelets being neat and conservative, being
3 small; small, plain healing posts with regard to
4 earrings, identification bracelets that are --

5 QUESTION: The dress code does not prohibit
6 military personnel from wearing rings?

7 MR. LEWIN: That's right. It does not prohibit
8 wearing not more -- there's a maximum number, not more
9 than three rings.

10 QUESTION: How about crosses around the neck?

11 MR. LEWIN: I think if they're obvious, if
12 they're open, very large, then I think it might very well
13 fall into the area of prohibited ornamentation, but
14 bracelets are permitted, identification bracelets if
15 they're neat and conservative. Where such a small and
16 neat --

17 QUESTION: May I interrupt? What is the
18 difference between a cross around the neck and a
19 yarmulke? Why is one permissible, and the other not?

20 MR. LEWIN: Well, I don't know whether -- in
21 other words --

22 QUESTION: Then you suggest there be a
23 constitutional difference?

24 MR. LEWIN: No, I'm not suggesting that there
25 be a constitutional difference. I'm just saying -- I'm

1 saying the Air Force Code now does it. If there were --
2 I think --

3 QUESTION: Let me ask you this. Could the
4 military constitutionally prohibit a person from wearing
5 a cross that was rather plainly visible around the neck?

6 MR. LEWIN: If it's a matter of religious
7 obligation, Your Honor, I think that the military, unless
8 it could find that it in some way interferes with the
9 morale or discipline, could not.

10 A very plain, conservative cross that is
11 religiously required, or an emblem that somebody believes
12 is religiously mandated, at all times, I think that's --

13 QUESTION: You mean one that hung down over
14 your uniform?

15 MR. LEWIN: Well, the question is what the
16 religion requires, Your Honor. If it requires that it
17 hang down outside, that's one thing. If it simply -- if
18 it requires only that it be worn underneath garments, the
19 military can say that anything that you can religiously
20 require, anything that may under your religion be worn
21 under your garments, should be worn under your garments.

22 QUESTION: Hasn't the government said here that
23 if the thing isn't visible, if it's a cross that you just
24 wear on your T-shirt and your uniform covers it, then
25 it's okay?

1 MR. LEWIN: Well, but what that does is, it
2 distinguishes in terms of faiths between those where
3 there may be a requirement that it be worn -- that the
4 particular article has to necessarily be seen.

5 QUESTION: But that isn't the basis for the
6 government's distinction, as I understand it. The basis
7 is that if it's invisible it doesn't alter your outward
8 dress and that's all the government is concerned with, is
9 your outward dress.

10 MR. LEWIN: Well, let me say that first of all,
11 until the trial in this case, that wasn't true either.
12 At the trial in this case it developed that there were
13 Mormon undergarments that were being worn in violation
14 then of the regulations. Now they amended the
15 regulations to permit non-visible objects to be worn. At
16 that point, even that was not permitted.

17 But, even that distinction, Your Honor,
18 distinguishes between perfectly conservative, neat
19 looking articles of apparel that may be worn under the
20 garments and those that may be neat, and worn over --

21 QUESTION: But that distinction is based on the
22 appearance of uniformity, which may make very rational
23 sense.

24 MR. LEWIN: Which is an interest. It's a
25 rational interest, but a rational interest, Justice

1 Rehnquist, is not enough to overcome the First Amendment.

2 QUESTION: Well, in the military it may well
3 be. Certainly we've never said no.

4 MR. LEWIN: Well, I think what this Court has
5 said is that even in the military, that one has to apply
6 the least restrictive alternative. In Brown and Glines
7 the opinion said, "Like the Army regulation that we
8 upheld in Spock, the Air Force regulations restrict
9 speech no more than is reasonably necessary to protect
10 the substantial government interest."

11 So, again one has to look to the least
12 restrictive alternative.

13 QUESTION: Well, the Court didn't say the thing
14 would have been invalid if it hadn't followed that.

15 MR. LEWIN: It's true, but there was all that
16 language that indicated that that was an important
17 element of the Court's result that it reached in Brown
18 and Glines, that it --

19 QUESTION: Don't the military chaplains wear
20 religious insignia?

21 MR. LEWIN: Military chaplains, yes. Yes, they
22 do.

23 QUESTION: An exception or something?

24 MR. LEWIN: An exception, that's permitted
25 under the regulations.

1 QUESTION: Regulations --

2 MR. LEWIN: Permit that, yes, and they permit
3 the wearing of other religious headgear, yarmulkes, other
4 things, during religious services.

5 QUESTION: It's a badge the chaplains' wear --
6 is furnished by the military service, is it not?

7 MR. LEWIN: It is, and as a matter of fact, one
8 suggestion --

9 QUESTION: This is to distinguish the chaplain
10 from somebody in the artillery or some other branch,
11 isn't it?

12 MR. LEWIN: Yes, and the military services
13 certainly would be free if they said, look, there are
14 persons who want to wear skullcaps, to provide uniform
15 skullcaps for religious reasons. There will be no
16 objection. There is no requirement on the part of
17 Captain Goldman that he wear only his own yarmulke that
18 he has worn at different times, but that he can wear an
19 Army -- an Air Force issue yarmulke which is in an Air
20 Force color and melds with the uniform.

21 The point is that the Air Force -- and the
22 reason that this case is different, Justice Rehnquist, is
23 that the Air Force and the military are providing no
24 accomodation. It's not as if they are saying, we're
25 providing some recognition of the religious right with

1 regard to dress code, but we will not accept something
2 that goes so far as saffron robes. We heard a lot at the
3 trial about saffron robes.

4 QUESTION: May I interrupt, because I'm still
5 not quite clear on your answer to one of Justice
6 Brennan's earlier questions. What about different kinds
7 of headgear that are somewhat more obvious? Is it the
8 same constitutional -- say, a turban or --

9 MR. LEWIN: There is a point, Justice Stevens,
10 I think where a headgear or a head covering could become
11 so obtrusive that it interferes.

12 QUESTION: Intrusive -- no, doesn't have any
13 physical impairment, it's just intrusive in the sense
14 that it's readily noticed that it's different from
15 everyone else. Is that the test?

16 MR. LEWIN: Well, no. I think that "readily
17 noticed" -- obviously a yarmulke is noticed.

18 QUESTION: Right.

19 MR. LEWIN: So, noticed is not the test. I
20 think the question is --

21 QUESTION: Well, then I take it, a turban would
22 have the same constitutional protection?

23 MR. LEWIN: It would be another case. I think
24 it should.

25 QUESTION: Why is it another case?

1 MR. LEWIN: Well, because it is larger. If one
2 talks about --

3 QUESTION: The only thing that means is, it's
4 more visible?

5 MR. LEWIN: Yes.

6 QUESTION: And I think you are saying
7 visibility doesn't make any difference?

8 MR. LEWIN: Justice Stevens, to the extent that
9 the military thinks that extraordinary visibility does --

10 QUESTION: They think the visibility of a
11 yarmulke is enough.

12 MR. LEWIN: Well, and what we are saying is
13 that when it is that slight, then it can't really -- if
14 there can't be sufficient to overcome the constitutional
15 --

16 QUESTION: Well, what if your client wanted to
17 satisfy his religious beliefs in the Air Force by wearing
18 a derby, say, I don't need to wear a yarmulke but a derby?

19 MR. LEWIN: I understand.

20 QUESTION: I suppose you would say that is
21 protected?

22 MR. LEWIN: I would say that if there is a
23 solid religious basis for it, I think the military would
24 have to indicate that it does interfere. I think, at the
25 very least, Justice White, I am saying in those

1 circumstances the military has got a burden to say, yes,
2 we think this interferes in such an obvious way with
3 military discipline that it is prohibited.

4 On the other hand, when --

5 QUESTION: How could it interfere with the
6 discipline, under your theory, enough --

7 MR. LEWIN: Yes.

8 QUESTION: The only interference with
9 discipline is somebody's refusal to live up to the dress
10 code?

11 MR. LEWIN: No, I think, frankly, Justice
12 White, if an article of clothing is so obvious and so
13 extreme that when one looks at it one sees only it and
14 doesn't see the uniform, I think the military could make
15 a determination, a reasoned determination that that's
16 going beyond what is permissible.

17 That's simply not true of very small items such
18 as a yarmulke. When someone wears a yarmulke, one barely
19 notices it. The truth is, if one looks closely one sees
20 it, but it is not as a derby or a top hat or a saffron
21 robe. It doesn't totally take over.

22 QUESTION: May I ask, and I don't mean to be
23 facetious, would it satisfy his religious belief to wear
24 a toupee?

25 MR. LEWIN: Yes.

1 QUESTION: It would?

2 MR. LEWIN: It would, and in fact there has
3 been one case where in the interim, at least, while
4 matters are being litigated, that a toupee was worn by an
5 Orthodox Jew in place of a head covering. Yes, it would
6 satisfy it.

7 Now, our -- the question of drawing lines
8 between what is neat and what is conservative is a line
9 which the military itself draws. Our point, Justice
10 White, is the military says an identification bracelet
11 that's neat and conservative may be worn. An
12 identification bracelet, presumably that's garish, may
13 not be worn. A head covering --

14 QUESTION: Can a Masonic ring be worn?

15 MR. LEWIN: I don't know. I don't know. But
16 rings are permitted, but again they must be neat and
17 conservative. Why can't that be applied to headgear?

18 QUESTION: Is there any part of this, the
19 desire to indicate what his religious faith is?

20 MR. LEWIN: I'm sorry, I didn't understand that.

21 QUESTION: Well, you wear a yarmulke, anybody
22 who sees that on somebody's head, do they know what
23 religion he is?

24 MR. LEWIN: Yes, they know what religion he
25 is. A yarmulke is, I think in our common society today,

1 has come to be known as a sign of someone --

2 QUESTION: Why wouldn't he just as soon wear a
3 toupee?

4 MR. LEWIN: No. They could wear a toupee, but

5 --

6 QUESTION: Why wouldn't he just as soon wear a
7 toupee?

8 MR. LEWIN: Well, because he's not bald, and I
9 think wearing a toupee would look --

10 QUESTION: I know a lot of people who aren't
11 bald and they still wear toupees.

12 MR. LEWIN: I understand, but since his
13 religion -- and I think, by the way I think toupees, the
14 regulations permit the wearing of toupees to cover
15 baldness or disfigurement. They don't specifically
16 permit the wearing of toupees simply to keep one's head
17 covered.

18 But that, we submit, is simply a way of
19 avoiding really what is the basic question, which is,
20 should someone be able to wear something that's neat,
21 conservative, not obtrusive, but a minor variation from --

22 QUESTION: But it's recognizable as a deviation?

23 MR. LEWIN: It's a recognizable deviation.

24 QUESTION: And whereas he could wear something
25 that wouldn't be a recognizable deviation?

1 MR. LEWIN: Well, I submit, Justice White, that
2 on someone who has a full head of hair, wearing a toupee
3 would look somewhat strange.

4 QUESTION: It doesn't in the courtrooms in
5 London where they are required to wear a wig.

6 MR. LEWIN: That's true, but I submit that if
7 the military saw someone walking around with a long,
8 white wig, they may not be willing to accept that as part
9 of the dress code.

10 QUESTION: Even in the Judge Advocate?

11 MR. LEWIN: Even in the Judge Advocate. In our
12 view this case really presents, although it seems to be a
13 small constitutional issue, a very fundamental question
14 regarding the quality of the military service.

15 The military forces are the protectors of our
16 liberty. We're proud of them. We want them to be proud
17 of the ideals for which they are expected, if necessary,
18 to lay down their lives. Douglas MacArthur said that men
19 will not fight and die without knowing what they are
20 fighting and dying for, and in this nation they fight and
21 die for freedom of speech and conscience, for tolerance
22 and diversity, for acceptance of all creeds and peaceful
23 ways of life.

24 And the question is whether the message that
25 one carries, that the military carries, is that

1 conformity overcomes even very minor deviations, and we
2 submit that, if I can use a historical parallel, this
3 Court in the early pre-war or World War II periods, I
4 think viewed the error, really, of forcing conformity on
5 individuals in the flag salute cases, where again the
6 need for conformity was viewed as overriding everything
7 else, and even the individual rights of those who would
8 not salute the flag, and that error finally was
9 recognized four years later.

10 And we submit that very similarly, we have here
11 where Chief Justice Stone dissenting in Gebitis noted
12 that in that case, that involved a small minority
13 entertaining in good faith their religious belief, and
14 that small and helpless minority should not have been
15 overridden in the interests of conformity.

16 We submit that with regard to the military
17 needs here, the same is true. The military can carry
18 out its military mission and can carry out all the needs
19 of morale and discipline if they take account of the Free
20 Exercise Clause of the First Amendment.

21 QUESTION: Mr. Lewin, there seems to be some
22 disagreement in the briefs as to whether the wearing of
23 the yarmulke is required by Jewish law. What is the
24 correct situation?

25 MR. LEWIN: The government, I think,

1 acknowledged in its Request for Admissions that it was,
2 that it is part of the traditions. It is, I think Jewish
3 scholars recognize in terms of the degrees of
4 requirement, it is not among the Biblical commandments,
5 certainly.

6 However, rabbinic view, the weight of rabbinic
7 view is that it should be worn at all times during waking
8 hours. There's an authority that the government cites in
9 a footnote of someone who says that if his livelihood is
10 dependent on it, one may remove the yarmulke. But, that
11 was not Captain Goldman's view. That was not the view of
12 the rabbis he followed and from whom he requested
13 opinions, and it is not the view that the government
14 acknowledged in the district court.

15 And again, I say if this Court looks at the
16 record in the district court, not at a study that was
17 made subsequently to justify the government's position,
18 the study which is --

19 QUESTION: In the Solicitor General's brief,
20 footnote 4, I believe, on page 6 states that although the
21 wearing is a tradition, it is not required by Jewish
22 law. Do you agree with that?

23 MR. LEWIN: No, I don't agree with that. And
24 let me say that -- again, I was saying that this joint
25 service study that's quoted by the government repeatedly,

1 we've talked about that in the yellow brief, our reply
2 brief on the cert petition, that was a study that was
3 made when the military had the choice of congressional
4 legislation that would have permitted yarmulkes and then
5 went to the Congress and said, well, we'll study this.

6 It was -- Justice Stevens, I think, spoke in an
7 opinion a few terms ago about the dangers of looking to
8 what parties do in the course of litigation when they
9 want to improve their positions in litigation. That's
10 exactly what this joint service study was. It was
11 foreordained because it was done to demonstrate to the
12 Congress that they could not allow departures from
13 uniform in the military.

14 THE CHIEF JUSTICE: Ms. Oberly.

15 ORAL ARGUMENT OF KATHRYN A. OBERLY, ESQ.

16 ON BEHALF OF THE RESPONDENTS

17 MS. OBERLY: Thank you, Mr. Chief Justice, and
18 may it please the Court:

19 Mr. Lewin only grudgingly acknowledges that
20 this is a military case and not a civilian free exercise
21 case.

22 QUESTION: May I interrupt you?

23 MS. OBERLY: Yes.

24 QUESTION: Are you still adhering to footnote 4?

25 MS. OBERLY: As to whether the yarmulke is

1 required? Yes, it's our position, it was Captain
2 Goldman's testimony at trial also, that although it is a
3 strong, well-established practice and tradition of devout
4 Orthodox Jewish males to wear a yarmulke, it is not a
5 requirement of Jewish law.

6 QUESTION: Was that the finding of the district
7 court?

8 MS. OBERLY: I don't think that they made a
9 finding, but to the extent that he did, he certainly did
10 not say it was a requirement of Jewish law, and there is
11 a definite distinction between Jewish law and --

12 QUESTION: Well, what -- on what premise should
13 we decide this case?

14 MS. OBERLY: I think if you decide it on
15 Captain Goldman's own testimony, which we -- at page 6 of
16 our brief where the cite is to page 200 of the joint
17 appendix, petitioner testified that a custom followed by
18 some but not all devout Orthodox Jewish males is the
19 wearing of a yarmulke.

20 At that same place in the transcript he
21 acknowledged that it was not required by Jewish law.

22 QUESTION: Well, I gather you are saying, if --

23 MS. OBERLY: I'm not --

24 QUESTION: If we have to proceed on that
25 premise we don't have to reach the constitutional issue?

1 MS. OBERLY: It is clearly that premise,
2 diminishes the level of the significance of the religious
3 practice at issue here, but it is not the government's
4 position that there is no religious issue at all
5 involved, that it has to rise to the level of Jewish law
6 before Captain Goldman can claim it as a sincere
7 religious practice that he personally follows.

8 QUESTION: For what other reason does he wear a
9 yarmulke?

10 MS. OBERLY: Parion?

11 QUESTION: What other reason does the Captain
12 wear, other than religious?

13 MS. OBERLY: His interpretation of what he
14 should do as a devout Orthodox Jew is wear a yarmulke, and
15 we are willing to accept that as a sincere religious
16 belief on his part, just as in the prior case we're
17 willing to accept the sincerity of the religious --

18 QUESTION: Which is only to say, then, we shall
19 address --

20 MS. OBERLY: Yes, but I think it's not at all
21 irrelevant for the Court to take cognizance of the fact
22 that Captain Goldman himself acknowledges that it's not
23 required by the laws of his religion and the government
24 introduced the authorities cited in the footnote 4 to
25 show that Jewish rabbinical authorities agree with that.

1 QUESTION: Yet, it's not just a matter of
2 private choice, it's a private choice of alternatives
3 that includes a long tradition?

4 MS. OBERLY: It is, and that's why we are not
5 asking the Court to say this is not a religious practice
6 entitled to consideration.

7 QUESTION: It certainly is a firmly held belief
8 of the Captain's?

9 MS. OBERLY: That's correct, and as the Court
10 has indicated, in some cases religions of one are
11 sufficient.

12 QUESTION: Yes, indeed.

13 QUESTION: It seems to me, Ms. Oberly, that the
14 extent that his view is unique, then actually strengthens
15 the government's case. I'm surprised you rely on this,
16 because it makes it less likely there would be large
17 numbers of people who wear this particular headdress.

18 MS. OBERLY: As you point out in the last case,
19 Your Honor, religions have a way of gaining sudden
20 popularity and spreading like wildfire, but I'm not
21 suggesting that yarmulkes --

22 QUESTION: This religion has been around quite
23 a while.

24 MS. OBERLY: No, but the incentives to seek
25 exemptions from the uniform -- mandatory uniform

1 requirements are quite high. They may approach the
2 incentives to seek exemptions from paying taxes, as the
3 Court considered in the United States versus Lee. It's
4 only human nature to resent being told what to wear, when
5 to wear it, what to eat, when to get up and how to spend
6 your entire day, and if --

7 QUESTION: Or that you can wear a bow tie?

8 MS. OBERLY: Right. You are not in proper
9 uniform, Justice Stevens, and it would not -- the
10 military has a number of cases, some of them pending in
11 litigation that are cited in my brief, some of them that
12 have not gotten to the level of litigation but have been
13 requests for religious exemptions and that number is
14 constantly growing.

15 And, if this Court were to hold that an
16 exemption for Captain Goldman is constitutionally
17 required, it's only common sense to assume that the
18 number of requests for comparable of exemptions, whether
19 from Orthodox Jews wearing yarmulkes or Sikhs wearing
20 turbans or Rastafarians --

21 QUESTION: Are there many Sikh cases?

22 MS. OBERLY: The Air Force does not have Sikh
23 cases. The Army has a number of Sikh cases. The first
24 one they received, they willingly granted that first Sikh
25 and exemption to wear the -- and then Sikhs started

1 coming out of the woodwork, just as you predicted in the
2 last case, and it finally reached a point at which the
3 Army thought they were getting far too many requests for
4 exemptions. They could not accomodate it. They couldn't
5 see where this was leading, except to a problem of
6 unknown dimensions, and they then cut off the practice of
7 accomodation.

8 QUESTION: Is this in a record?

9 MS. OBERLY: This is in the joint -- this is in
10 a Law Review article cited in our brief and it's also in
11 the joint service study that was prepared for Congress
12 which is a public document prepared after --

13 QUESTION: So that Sikhs may no longer wear
14 beards?

15 MS. OBERLY: That's right. That is correct, in
16 any branch of the service, in any military department.

17 QUESTION: How about Christians?

18 MS. OBERLY: Who wished not to shave their
19 beards? That's not permitted either. The only exception
20 for beards is temporary treatment of a medical condition,
21 ingrown facial hairs, and that lasts about 90 days, but
22 there's no religious exception for beards.

23 QUESTION: Why -- you can wear a rug but you
24 can't wear --

25 MS. OBERLY: Well, I'm sorry, Your Honor, but

1 you can't wear the rug unless it's for prosthetic medical
2 reasons to cover up disfiguration or baldness caused by
3 illness. I'm not sure of the reason for that. It may be
4 as --

5 QUESTION: But you couldn't wear a yarmulke?

6 MS. OBERLY: It may be, as Mr. Lewin suggested,
7 that if you put a toupee on top of a full head of hair it
8 will not look like a uniform. It would detract from the
9 neat, professional image that the military is trying to
10 promote. But in fact, toupees are not a solution to
11 Captain Goldman's problem.

12 QUESTION: Well, I've --

13 MS. OBERLY: Unless he's bald.

14 QUESTION: The military forbids wearing it?

15 MS. OBERLY: Except to cover up baldness caused
16 by some sort of illness or disfiguration.

17 QUESTION: But of course, all of this argument
18 about appearance in the military doesn't involve this
19 because you don't wear the yarmulke outside? Most of the
20 military work is done outside.

21 MS. OBERLY: That's true, although --

22 QUESTION: So, it doesn't involve that at all,
23 does it?

24 MS. OBERLY: That's true, but unfortunately it
25 does not and I would assume Mr. Lewin would -- I would

1 agree, it doesn't help Captain Goldman because most of
2 his work is done inside.

3 QUESTION: Why do you have to have such rigid
4 discipline indoors?

5 MS. OBERLY: Pardon?

6 QUESTION: Why does --

7 MS. OBERLY: Your Honor, the military's
8 position is, it doesn't matter where you are, it doesn't
9 matter whether you are in combat, it doesn't matter
10 whether you are serving in time of peace, it doesn't
11 matter whether you're ashore, it doesn't matter whether
12 you're on training exercises. At every single instant of
13 your military career --

14 QUESTION: We are required to accept that
15 without question?

16 MS. OBERLY: That's right. The only way --

17 QUESTION: Well, I'm not.

18 MS. OBERLY: Pardon?

19 QUESTION: I'm not.

20 MS. OBERLY: No, you're not. But at the time
21 that you may have served in the military, you were. And
22 the military -- the judgment of the military
23 professionals to whom we look to, to provide us with
24 answers to these questions, and I am not suggesting that
25 the Court should just abdicate to their judgment, but

1 when their judgment is based on rational factors as we
2 think it is in this case, then it is the civilian court's
3 role to accept that judgment.

4 QUESTION: Ms. Oberly, I think I missed some of
5 the exchange about beards. Would you repeat that again,
6 what the regulations are about beards?

7 MS. OBERLY: Beards are not permitted.
8 Moustaches that do not extend beyond the corners of the
9 mouth are permitted. Beards are not permitted.

10 QUESTION: What about the Surgeon General of
11 the United States?

12 MS. OBERLY: I think he is part of the
13 Department of Health and Human Services.

14 QUESTION: He's an Admiral. He wears a Navy
15 uniform.

16 MS. OBERLY: He's not a military officer.

17 QUESTION: Aren't admirals and generals exempt
18 from --

19 MS. OBERLY: The Public Health Service, Your
20 Honor, is also a uniformed service but they're not a
21 military department. The Public Health Service is part of
22 the Department of Health and Human Services.

23 QUESTION: Ms. Oberly, in the military context
24 of a Free Exercise claim, what is the test that you think
25 our cases indicate should be employed? Is it the

1 language taken from the case that refers to whether there
2 is a clear danger to military effectiveness?

3 MS. OBERLY: That's the Brown case. That would
4 be -- I find all of the tests somewhat unhelpful, but
5 that would be one test that we would use. Another way of
6 rephrasing the same test would be to say that the
7 government's burden is to show a substantial governmental
8 interest, which is not necessarily the same thing as a
9 compelling governmental interest as used in Thomas, and
10 to show that the means chosen to achieve that substantial
11 governmental interest are reasonably related to --

12 QUESTION: Well, if the Court were to use the
13 test of whether it's a clear danger to military
14 effectiveness as applied to the wearing of the yarmulke
15 indoors in the manner which Captain Goldman did for four
16 years without objection, what is the danger to military
17 effectiveness in his case?

18 MS. OBERLY: I must say that although the
19 "clear danger" words appear in those opinions, that is
20 not in fact what the Court did. What the Court did was
21 sanction the prior restraint on speech and petitions to
22 Congressmen, saying that a military commander need not
23 await the actual outbreak of disruption and a threat to
24 order, discipline and loyalty among his troops before he
25 can act to avert that disruption.

1 That is inconsistent with saying that he can
2 only act when there's a clear danger. In other words, by
3 authorizing prior restraints on speech or petitions to
4 Congressmen or leafletting, the Court clearly wasn't
5 requiring the actual occurrence of a present danger, of a
6 clear danger.

7 QUESTION: Well, you haven't answered my
8 question.

9 MS. OBERLY: What I'm saying is that I think
10 that our position here is fully consistent with what the
11 Court did in the Greer and Brown cases, by saying that
12 military changes don't have to wait for the actual
13 occurrence of the clear danger, and that here in this
14 case what's analogous to the presumed clear danger in the
15 free speech cases is the military judgment that
16 exceptions to the uniform requirement will undermine the
17 military purposes of training, discipline, morale, esprit
18 de corps, things that the military --

19 QUESTION: In every instance regardless of the
20 particular duty assignment or location and so forth?

21 MS. OBERLY: Yes, Your Honor. The Court has
22 said in Brown itself, and also more recently in Chappell
23 versus Wallace, that the military does not need to have
24 and in effect can't practically have different rules for
25 combat in peacetime and ashore and on base, the same set

1 of rules, the same criminal justice system, same uniform
2 requirements apply at all stages to every service member.

3 The reason is that the job of the peacetime
4 military, no matter where they're stationed, no matter
5 what their duty assignment is, is to be ready to fight a
6 war, to defend this country should they be called upon to
7 do so, and therefore it's essential that they be equally
8 well trained and indoctrinated from the moment that they
9 join the military as it is --

10 QUESTION: Well, all right. So, how does the
11 wearing of the yarmulke by Captain Goldman in the
12 hospital affect this?

13 MS. OBERLY: It interferes with -- it's
14 military judgment that -- let me back up a minute. We
15 are not saying that Captain Goldman alone would
16 necessarily be a threat to the national security if he is
17 allowed to wear his yarmulke. That is not our position.

18 Our position, however, is that deviations as a
19 class from the uniform requirement interfere with the
20 military purposes I've identified, by preventing the
21 assimilation of an incredibly diverse group of civilians
22 who come into the military from widely varying
23 backgrounds, who do not come in with the notion of
24 instinctive obedience to command, who in fact come in
25 with perhaps the opposite notion, and who from the day

1 they arrive need to be trained and inculcated in military
2 life.

3 QUESTION: Well, suppose everybody in the
4 military wore a yarmulke. Would that interfere with the
5 efficiency of the army?

6 MS. OBERLY: Not at all. However, it might
7 interfere with other persons' religious beliefs. I mean,
8 once it's determined --

9 QUESTION: We're talking about efficiency.
10 Now, you said it would interfere with the efficiency.

11 MS. OBERLY: No, because once it's determined
12 to have a uniform requirement --

13 QUESTION: You know, I was careful not to ask
14 you if just one man did it, would that -- I knew that
15 didn't. If all of them --

16 MS. OBERLY: If all of them did, it would be
17 part of the Air Force uniform.

18 QUESTION: It wouldn't interfere with the
19 efficiency?

20 MS. OBERLY: It could interfere with safety,
21 but it would not --

22 QUESTION: How could it interfere with safety?

23 MS. OBERLY: Well, there's certain -- safety
24 isn't an issue in this case, but there are certain
25 situations where headgear of any sort could interfere

1 with safety, such as a hat flying into a jet engine, and
2 in that case you don't wear headgear.

3 QUESTION: I don't think you would go out into
4 combat without a helmet on, and I also assume that the
5 yarmulke would be under the helmet, along with his head.

6 MS. OBERLY: Your Honor, the point is that once
7 it's determined that there be a uniform requirement for
8 the military --

9 QUESTION: The only thing you have is that the
10 Army said yes, and we have to agree.

11 MS. OBERLY: No, you're not compelled to agree,
12 but you are in our opinion required to have a fairly
13 strong reason for disagreeing because --

14 QUESTION: Like the First Amendment?

15 MS. OBERLY: No. The First Amendment clearly --

16 QUESTION: Well, it's in the ballpark.

17 MS. OBERLY: The First Amendment clearly gives
18 the Court a proper role in reviewing this. However, the
19 Court said in Parker versus Levy, servicemen don't lose
20 their First Amendment rights but they're applied
21 differently in the military because of the unique nature
22 of military society, and that's all that we are telling
23 the Court in this case.

24 QUESTION: Ms. Oberly, may I ask --

25 MS. OBERLY: Yes.

1 QUESTION: What about -- how do the regulations
2 affect wearing your crosses, Masonic rings, things like
3 that?

4 MS. OBERLY: I'll take them separately.
5 Crosses could not be worn if they are worn outside of the
6 uniform and were in any way visible. If you could wear
7 rosary beads or a cross or whatever under your uniform
8 and it wasn't visible, that would not be a uniform
9 violation and it's because no one would notice the
10 visibility.

11 QUESTION: In any event, they must be worn so
12 that you can't see them?

13 MS. OBERLY: That's correct. As to Masonic
14 rings, the regulations allow the wearing of neat and
15 conservative rings which could or could not have
16 religious significance.

17 QUESTION: So, like West Point rings?

18 MS. OBERLY: That's correct. It could also be
19 a wedding ring, which might be the reason for allowing
20 rings on more than one hand so you can have your West
21 Point ring on one hand and your wedding ring on the other
22 hand, and the regulations allow the wearing of one inch
23 wide identification bracelets.

24 That's the extent of the, quote, "jewelry
25 exception." No attempt is made in the regulation to tie

1 it in any way, one way or the other, to religion. It's
2 your choice as to what type of jewelry, your Masonic ring
3 or something else, you would choose to exercise within
4 that option.

5 But, it's been determined that that minor
6 exception does not interfere with the military purposes
7 of inculcating standardization that the uniform does.

8 QUESTION: What is the -- when does the
9 regulation apply?

10 MS. OBERLY: At all times on duty, and it also
11 specifies what you may or may not do when you're off duty.

12 QUESTION: What about off duty? When you're on
13 the base -- say you're attached to a military base and
14 you have a watch to stand for eight hours and then you're
15 off duty for the rest of the day, but you have to --
16 you're still on the base?

17 MS. OBERLY: If you're not -- there are times
18 when you're authorized to be around the base but not in
19 your uniform and in that case Captain Goldman could wear
20 his yarmulke because it's not inconsistent to wear other
21 articles of clothing. I mean, you choose your own
22 civilian clothes and as long as you're dressed at a time
23 when it's okay to be in civilian clothes, you can choose
24 your civilian clothes including the yarmulke.

25 The problem is that with the uniform, you don't

1 wear headgear indoors and the regulation is not directed
2 against yarmulkes.

3 QUESTION: When you're off duty, what if you're
4 off duty and you're in your full uniform?

5 MS. OBERLY: Then you cannot wear the yarmulke.

6 QUESTION: Any time you're --

7 MS. OBERLY: Indoors, you can't wear any
8 headgear indoors with the uniform.

9 QUESTION: No matter whether you're on duty or
10 not?

11 MS. OBERLY: That's correct, because the
12 uniform regulation specifies what is the uniform.

13 QUESTION: What about off the base? If you're
14 in uniform you don't wear anything inside?

15 MS. OBERLY: If you're in uniform you wear only
16 what is -- what the regulation which is sort of like a
17 catalogue, it's 190 pages long with pictures that tell
18 you exactly what to wear on every occasion and tells you
19 when you can wear it and what combinations of uniform
20 articles you can wear with other uniform articles and you
21 don't add to or detract from that, but if you're in your
22 civilian clothes that's an entirely different situation.

23 Your uniform, however, whether you're on or off
24 duty, has certain required elements and you can't add to
25 or detract from those elements that are specified in the

1 regulations.

2 I'd like to point out, as Mr. Lewin mentioned
3 at the end, that we, the government discussed in its
4 brief at some length a study that was done by the Defense
5 Department for Congress on the whole subject of whether
6 and to what extent the military services could accomodate
7 religious practices. Mr. Lewin seems to denigrate the
8 study as something that the military offered up instead
9 of more rigorous requirements to be imposed on the
10 military.

11 In fact, the House had passed a bill that would
12 have required as a one-year experiment that yarmulkes or
13 religious headgear be permitted, and the Senate did not
14 pass that bill. Instead, the result in conference
15 committee was the requirement that the Defense Department
16 do this study addressing yarmulkes and all other issues
17 of religious accompiation, and report back to Congress at
18 the end of the study with recommendations as to what
19 accomodations were feasible and what accomodations were
20 not feasible.

21 The study group reported back that they could
22 and would, and they in fact have made accomodations to,
23 in certain instances that are deemed consistent with
24 military necessity, so that taking yarmulkes for example,
25 it is now Defense Department policy to allow the wearing

1 of religious garb, whether it's a yarmulke or something
2 else, in personal living quarters occupied by soldiers
3 but not in offices or in areas where military business is
4 being conducted., and the study group that did the study
5 for Congress determined that greater accomodation would
6 interfere with the military mission.

7 What's significant about that to us is that it
8 shows the political process and the congressional -- or
9 constitutionally committed congressional oversight of the
10 military, working the way it's supposed to. Congress now
11 has the Defense Department's report. Congress knows how
12 the Defense Department has implemented it. If Congress
13 thinks that further accomodation is either required or
14 desirable it can legislate it.

15 If it turns out that Congress makes a mistake
16 and orders the military to make changes in its uniform
17 regulations that do in fact cause disruption, it's quite
18 -- it's not easy but it's possible for Congress to
19 correct that mistake.

20 If, on the other hand, this Court
21 constitutionalizes mandatory exceptions to the uniform
22 requirements, it's quite a different matter and far more
23 difficult for what might turn out to be a mistake in
24 judgment about the effect on discipline and morale to be
25 corrected.

1 So, our position is that what's going on here
2 is the political process of civilian -- of legislative
3 and executive branch control over the military, working
4 exactly as it's supposed to, and that we would ask the
5 Court to leave the situation where it is and leave it to
6 the branches that are constitutionally in charge of the
7 military rather than to intervene precipitously in an
8 area that this Court has repeatedly recognized, civilian
9 judges simply do not have the expertise to second-guess
10 the military judgments that we're talking about.

11 Unless the Court has further questions, nothing
12 else.

13 CHIEF JUSTICE BURGER: Do you have anything
14 further, Mr. Lewin?

15 ORAL ARGUMENT OF NATHAN LEWIN, ESQ.

16 ON BEHALF OF THE PETITIONER -- REBUTTAL

17 MR. LEWIN: If I might just take a minute, Your
18 Honor, on Ms. Oberly's last point, the fact is, of
19 course, that Congress will be affected by whatever this
20 Court says regarding this case. At the time the study
21 was --

22 QUESTION: They would be if we decided it on a
23 constitutional ground..

24 MR. LEWIN: Yes, and if this Court says there's
25 no constitutional right, at the time this was being

1 discussed in the halls of Congress, military personnel
2 went down to see Senator Hatch and we have reproduced
3 some of that material in that reply brief, the question
4 was, is there a constitutional right. Senator Hatch
5 said, although he supported the study, that he hoped this
6 Court would reverse this case, and that's in the
7 Congressional Record.

8 So that, the Congress is looking -- various
9 Congressmen, even if they supported the study, were
10 looking at this Court's action with regard to that. So,
11 simply to say that if this Court affirms what the Court
12 below did, then everything is being put in a neutral
13 position, is totally unrealistic.

14 Congress will take that as an approval of what
15 the military has done, and of its report, even though
16 that report was done precisely in terms -- in the context
17 of this piece of litigation.

18 Finally, let me say that obviously the most
19 difficult part of this case is drawing the line, but
20 drawing lines is what this Court has done time and again
21 in various other constitutional areas. It does it in the
22 speech area with regard to clear and present danger. It
23 does it in the speech area and in the press area with
24 regard to obscenity and pornography cases.

25 Difficult lines had to be drawn, but to say

1 that because there's a difficulty of drawing the line,
2 someone who is going to be wearing and is required by a
3 matter of conscientious conviction to be wearing an
4 article of clothing that is neat, that is demonstrated by
5 actual experience, which is Captain Goldman's actual
6 experience over close to four years, and the actual
7 experience of the other doctor who testified in this
8 record, to say that that is something that would
9 interfere with military discipline, we think is just
10 plainly contrary to fact and --

11 QUESTION: Mr. Lewin, you have suggested that
12 when this Court acts, that we approve -- not frequently,
13 but certainly it's not infrequently, that we pass on an
14 Act of Congress, that doesn't mean we approve what
15 they've done. The wisdom of what Congress does is none
16 of our business, and unless a constitutional question
17 arises none of these questions are really relevant.

18 I question that Congress is eagerly waiting to
19 see what we are going to do. Perhaps one or two of them
20 are.

21 MR. LEWIN: Well, I'm afraid, from my
22 experience with Congress, they certainly focus very much
23 on what this Court says.

24 CHIEF JUSTICE BURGER: Thank you, counsel. The
25 case is submitted.

1 (Whereupon, at 11:56 a.m., the case in the
2 above-entitled matter was submitted.)
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CERTIFICATION

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

#84-1097 - S. SIMCHA GOLDMAN, Petitioner V. CASPER W. WEINBERGER,

SECRETARY OF DEFENSE, ET AL.

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

BY Paul A. Richardson

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