

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-1358

TITLE WILLIAM L. LUKHARD, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL  
SERVICES, Petitioner V. ONA MAE REED, ET AL.

PLACE Washington, D. C.

DATE January 14, 1987

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IN THE SUPREME COURT OF THE UNITED STATES

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WILLIAM L. LUKHARD, COMMISSIONER, :  
VIRGINIA DEPARTMENT OF SOCIAL :  
SERVICES, :  
Petitioner, :  
V. : No. 85-1358  
ONA MAE REED, ET AL. :  
- - - - -x

Washington, D.C.  
Wednesday, January 14, 1987

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 11:06 o'clock a.m.

APPEARANCES:

THOMAS J. CZELUSTA, ESQ., Assistant Attorney General of  
Virginia, Richmond, Virginia; on behalf of the  
petitioner.  
GLEN D. NAGER, ESQ., Assistant to the Solicitor General,  
Department of Justice, Washington, D.C.; pro hac vice,  
respondent Secretary of H&HS in support of petitioner.  
JILL A. HANKEN, ESQ., Richmond, Virginia; on behalf  
of the respondents.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

THOMAS J. CZELUSTA, ESQ.,

on behalf of the petitioner

3

GLEN D. NAGER, ESQ.,

pro hac vice, respondent

Secretary of H&HS

in support of the petitioner

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JILL A. HANKEN, ESQ.,

on behalf the respondents

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THOMAS J. CZELUSTA, ESQ.,

on behalf of the petitioner - rebuttal

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

2 CHIEF JUSTICE REHNQUIST: We will hear  
3 arguments next in No. 85-1358, Lukhard against Reed.

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

6 ORAL ARGUMENT OF THOMAS J. CZELUSTA, ESQ.,  
7 ON BEHALF OF THE PETITIONER

8 MR. CZELUSTA: Mr. Chief Justice, and may it  
9 please the Court, the question before the Court this  
10 morning is whether a state can require a recipient of  
11 AFDC benefits who receives a personal injury award to  
12 use at least a portion of that award for future living  
13 expenses in lieu of receiving AFDC benefits.

14 The question arises out of the enactment of an  
15 amendment to the Social Security Act by Congress in 1981  
16 as a result of the Omnibus Reconciliation Act, and that  
17 statute is now commonly referred to as the lump sum  
18 rule.

19 Essentially what that statute provides is that  
20 when a recipient of AFDC receives an amount of income in  
21 a month which when added together with all the other  
22 income available to that family in that month exceeds  
23 the state's standard of need, then the family must be  
24 disqualified from AFDC benefits for a period of time.  
25 That period is determined by adding all that income



1 together, dividing by the state's standard of need, and  
2 the resulting quotient is the number of months of  
3 disqualification.

4 Congress in the statute uses the word "Income"  
5 but does not define it. The Secretary, in enacting  
6 regulations in 1981 and '82 did not define the term but  
7 rather continued the long-standing federal policy of  
8 allowing states to treat personal injury rewards as  
9 income but did not require them to do so.

10 On March 18th of 1986 the Secretary enacted a  
11 rule which now defines lump sum income and requires  
12 states to include personal injury awards as income  
13 subject to the rule save to the extent that the funds  
14 are earmarked and used for a purpose for which they are  
15 intended, such as medical expenses or legal fees.

16 QUESTION: With regard to those items, medical  
17 expenses and legal fees, they are deducted before the  
18 application of this requirement?

19 MR. CZELUSTA: Under current policy the  
20 medical expenses and any other directly related expense  
21 is deducted at the front end when determining the  
22 disqualification period.

23 QUESTION: How about future medical expenses,  
24 if it is an ongoing medical problem?

25 MR. CZELUSTA: In 1984 Congress amended the

1 statute to allow states greater flexibility to shorten  
2 the period of ineligibility, and we have done that.  
3 Future medical expenses and a number of other  
4 situations, if somebody steals the money, or a family  
5 member absconds with the money, or if the --

6 QUESTION: Yes, how about that situation?  
7 There was one of those examples given in this case of a  
8 family member who left the family and took the money  
9 along. Now what happens?

10 MR. CZELUSTA: If that case had occurred after  
11 the 1984 amendment to the Act that person would not have  
12 been disqualified at all.

13 QUESTION: But this particular family is  
14 disqualified because it occurred before the adoption of  
15 the rule?

16 MR. CZELUSTA: Yes.

17 QUESTION: Is that it?

18 MR. CZELUSTA: Yes.

19 Virginia believes that the Secretary's  
20 determination that personal injury awards could be  
21 income subject to the lump sum rule and now must be is  
22 entitled to the deference of this Court. whether or not  
23 this Court gives deference to the Secretary's  
24 determination, however, the petitioner believes that  
25 Virginia's inclusion of personal injury awards as income

1 subject to the lump sum rule is a reasonable  
2 interpretation of the statute and is consistent with the  
3 intent of Congress.

4 In Heckler v. Turner, this Court had before it  
5 a case involving a statute enacted by the OBRA Congress  
6 involving AFDC and the meaning of the word "income."  
7 This Court looked at the language of the statute, its  
8 legislative history, the administrative background  
9 against which the OBRA Congress worked, and the goals  
10 and objectives sought to be achieved.

11 In that case this Court determined that  
12 Congress did embark upon a new course which in that case  
13 was emphasizing work requirements over financial  
14 incentives. We believe that if this Court examines the  
15 language of the lump sum statute, its legislative  
16 history, the goals and objectives sought to be achieved,  
17 and the administrative background against which the  
18 Congress worked, it will lead the Court to the  
19 conclusion that Congress indeed intended to embark upon  
20 a new course with the lump sum rule, and that Virginia  
21 has correctly identified that course.

22 Both Congress and the administration  
23 articulated a number of goals and objectives sought to  
24 be achieved by enactment of the rule. They sought to  
25 restrain the growth of government spending. They sought

1 to redirect benefits to those who are without income or  
2 resources with which to support themselves, and to  
3 reduce or eliminate benefits for those who had money  
4 with which to support themselves.

5 Congress and the administration sought to  
6 promote responsible budgeting and encourage personal  
7 responsibility, but of particular concern to both  
8 Congress and the administration was that the prior  
9 treatment of large sums of money had, in the words of  
10 the Senate Finance Committee, "the perverse effect of  
11 encouraging recipients to spend money quickly in order  
12 to regain or retain eligibility."

13 Prior to OBRA, a recipient who received a  
14 large sum of money could have been disqualified for the  
15 month that the money was received, but thereafter to the  
16 extent that any was left it was treated as a resource,  
17 and as soon as it was spent down to the state's  
18 allowable resource limit, then the person could  
19 immediately regain eligibility.

20 Inclusion of personal injury awards as income  
21 subject to the lump sum rule achieves every one of these  
22 goals and objectives. The funds remaining in the hands  
23 of a recipient after deduction for the directly related  
24 expenses by and large represents pain and suffering,  
25 loss of earnings, loss of earning capacity, and in some



1 cases future medical expenses, but it is money. It is  
2 available to be spent. It can be spent over a period of  
3 time, carefully, on essential needs such as food,  
4 clothing, and shelter, or it can be spent very quickly  
5 on consumer goods.

6 QUESTION: What kind of receipts wouldn't be  
7 treated as income? What continues to be treated as  
8 resources?

9 MR. CZELUSTA: If someone owns the house and  
10 they sell the house, we would treat the funds that came  
11 from the sale of that house as a resource.

12 QUESTION: So that there would be an incentive  
13 in order to bring the resources down to the level at  
14 which the person can requalify to spend that money as  
15 quickly as possible.

16 MR. CZELUSTA: Yes. But in those instances we  
17 feel that a person does have to have a place to live, so  
18 that if they sell their home they are going to in all  
19 likelihood replace it.

20 QUESTION: Now, that would only be a problem  
21 if you sell a home. I mean, if you are selling, let's  
22 say, a vacation home that would already be counted as a  
23 resource anyway.

24 MR. CZELUSTA: Yes.

25 QUESTION: So converting it to cash instead of

1 the real estate wouldn't make any difference.

2 MR. CZELUSTA: No, it would be disqualified in  
3 either event.

4 QUESTION: What about a bequest of \$1,500?

5 MR. CZELUSTA: That would be counted as income  
6 subject to the lump sum rule. And the individual would  
7 be disqualified for the period of time that the  
8 calculation worked out to be.

9 QUESTION: What if it were a piece of land  
10 somewhere?

11 MR. CZELUSTA: Land itself is a resource. And  
12 if the land is sold, we would consider it to be a  
13 resource.

14 QUESTION: So that you would treat the bequest  
15 differently from the devise.

16 MR. CZELUSTA: Yes. We believe that Congress  
17 did not intend to obliterate the distinction between  
18 income and resources. They still did use the word  
19 "income," and in other parts of the statute they still  
20 use the word "resources."

21 I would point out one thing, Justice Blackmun,  
22 that our resource level at the time this suit was  
23 brought was \$600. Now it has been raised to \$1,000. So  
24 when we are talking about a piece of land it has got to  
25 be either a very, very small interest in a piece of land

1 or a very poor piece of land to begin with.

2 QUESTION: Was this, this is the state's  
3 construction of this provision?

4 MR. CZELUSTA: Yes.

5 QUESTION: It is not compelled by any view of  
6 the United States?

7 MR. CZELUSTA: It is now. As of March 18th,  
8 1986, the Secretary has now required every state in the  
9 country to --

10 QUESTION: What about before that?

11 MR. CZELUSTA: Before that the Secretary in  
12 accordance with a long-standing policy that the  
13 Secretary had would require certain things to be treated  
14 as income, such as a retroactive Social Security award.

15 QUESTION: Well, what about this  
16 particular --

17 MR. CZELUSTA: For this kind of a payment the  
18 states had the option --

19 QUESTION: I see.

20 MR. CZELUSTA: -- of treating it as a resource  
21 or as income.

22 QUESTION: Well, they --

23 MR. CZELUSTA: And after 1981 to 1986 the  
24 Secretary continued that and said, you may do it, but  
25 you do not have to. Now the Secretary has said you

1 may -- you must.

2 QUESTION: Do you understand the Secretary to  
3 say the Act requires it or that he is just free to  
4 interpret the statute that way?

5 MR. CZELUSTA: The Secretary's position, I  
6 believe, is that the statute does not require him to do  
7 it.

8 QUESTION: Yes, all right.

9 MR. CZELUSTA: But it certainly gives him the  
10 discretion to do it.

11 QUESTION: Well, I guess he is going to speak  
12 for himself.

13 MR. CZELUSTA: Yes.

14 We believe that requiring a personal injury  
15 award to be treated as a resource would defeat every  
16 goal that Congress intended to achieve in enacting the  
17 rule.

18 QUESTION: When you answered Justice White in  
19 the affirmative when he asked, is this required by the  
20 federal government now, did that answer apply not just  
21 to the treatment of this income, but also to the  
22 treatment that we have been discussing earlier of  
23 resources such as a home and so forth? Is it all  
24 standardized now?

25 MR. CZELUSTA: Yes.



1 QUESTION: So all of the answers you have  
2 given are now not just Virginia's view but everybody's  
3 view by reason of federal law.

4 MR. CZELUSTA: (Inaudible.)

5 QUESTION: But the rule is a little different  
6 on some of the resources, isn't it, such as -- some  
7 exchanges of assets now produce income even though they  
8 would have produced a resource before. Isn't that  
9 correct? Say you sell a car. That would be income now,  
10 wouldn't it?

11 MR. CZELUSTA: No.

12 QUESTION: Under the new federal  
13 interpretation? I misunderstood it.

14 MR. CZELUSTA: Well, one of the things that  
15 the federal rule does that we have been doing  
16 differently up until now is the issue of casualty loss  
17 awards.

18 QUESTION: Right. That's what it was, yes.

19 MR. CZELUSTA: That right now, although we  
20 have moved to change our rule, if a car is destroyed, we  
21 treat the insurance payment as a resource, assuming that  
22 the person is going to replace the car.

23 QUESTION: But they require you to treat it as  
24 income now.

25 MR. CZELUSTA: But the Secretary says not to

1 the extent that it is earmarked and used for the  
2 purposes for which it was intended, so if it comes in  
3 intended to replace the car and they go out and replace  
4 the car, then the only difference between our rule now  
5 and the Secretary's new rule is that we are going to  
6 have to ask for receipts and actually go out and see the  
7 car.

8 QUESTION: Oh, I see.

9 MR. CZELUSTA: That is the only difference  
10 between the two rules.

11 QUESTION: Is there any change in the  
12 treatment of the medical expenses and the -- that you up  
13 to now have treated as resource rather than income?

14 You deduct -- as I understand it, in a  
15 personal injury award you deduct medical expenses and  
16 things of that -- attorneys' fees, and treat them as --  
17 or just take them out of the calculation entirely?

18 MR. CZELUSTA: Well, the money will have been  
19 spent by that point in time in paying those medical  
20 bills, and --

21 QUESTION: And that still will be the same  
22 under the new --

23 MR. CZELUSTA: Yes, that remains the same.

24 QUESTION: Well, but future medical bills will  
25 not have been expended,.

1 MR. CZELUSTA: Correct.

2 QUESTION: And is it the federal policy that  
3 governs on treatment of future medical bills?

4 MR. CZELUSTA: It is in the statute now.

5 QUESTION: How about drugs?

6 MR. CZELUSTA: As I said before, Justice  
7 O'Connor, that would shorten the period, so we would  
8 disqualify them initially for a period, and then they  
9 have the right to come back in and reapply and produce  
10 these bills and say, I have incurred these medical  
11 expenses, or my husband has absconded with the money, or  
12 I had to avoid an eviction, and then we would  
13 recalculate the period and shorten it.

14 To be sure that Congress used the word  
15 "income" and did not define it, respondents maintain  
16 that the word "income" should be interpreted according  
17 to its plain and ordinary meaning. The word, however,  
18 just simply does not have a singular plain and ordinary  
19 meaning. It is rather a concept within which there are  
20 different definitions depending upon the context in  
21 which the word is used and the result intended to be  
22 achieved.

23 Indeed, if a plain and ordinary definition  
24 exists at all, it is a broad one which includes all that  
25 comes in, and represents an increase in an individual's

1 economic power, and in fact this is the judgment of the  
2 Seventh Circuit Court of Appeals in Watkins versus  
3 Blenzinger.

4 We believe if the Court examines the purposes  
5 and goals to be achieved through the rule and its  
6 legislative history the Court will conclude that  
7 Congress intended the word "income" to be a broad one.  
8 The administration in proposing the rule to Congress  
9 repeatedly described the rule in terms of a large sum of  
10 money and gave us such examples, inheritances, insurance  
11 settlements, and retroactive Social Security benefits.

12 Congressional documents, both staff and  
13 committee, repeatedly describe it in similar terms. The  
14 statute that was enacted by Congress was enacted  
15 virtually identically to that proposed to it by the  
16 administration. It expressed no disagreement with it  
17 and made no exceptions to it.

18 We believe that if Congress intended to  
19 restrict the definition of income it could have very  
20 easily done so.

21 QUESTION: Well, it could have used some other  
22 word than "income," too.

23 MR. CZELUSTA: Certainly.

24 QUESTION: Ordinarily you wouldn't think that  
25 tort recoveries are income, would you?



1 MR. CZELUSTA: Again, I think --

2 QUESTION: I mean, just in a --

3 MR. CZELUSTA: It depends, I think, on who you  
4 are --

5 QUESTION: -- if you just weren't reading the  
6 Social Security Act you wouldn't think that was income.

7 MR. CZELUSTA: It depends on who you talk to.  
8 I think if you talk to a lawyer or an accountant they  
9 are going to respond from that background. If you talk  
10 to the person next door who has seen their neighbor all  
11 of a sudden have money to spend and say, did they  
12 receive income, I think they would acknowledge, yes,  
13 they did receive income.

14 QUESTION: Well, I know, but the people who  
15 wrote the law weren't just ordinary neighbors. They  
16 were -- they were writing -- the people who wrote it, I  
17 suppose, knew what they were talking about when they  
18 used the word income.

19 MR. CZELUSTA: But even within a technical  
20 legal context the word does have different meanings,  
21 depending upon that context and the resultant end to be  
22 achieved.

23 I would wish to reserve the balance of my time  
24 for rebuttal. Thank you.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

1 Czelusta.

2 We will hear now from you, Mr. Nager.

3 ORAL ARGUMENT OF GLEN D. NAGER, ESQ.,  
4 ON BEHALF OF THE RESPONDENT SECRETARY OF H&HS  
5 IN SUPPORT OF PETITIONER

6 MR. NAGER: Mr. Chief Justice, and may it  
7 please the Court, as counsel for petitioners noted, this  
8 case presents a question concerning the meaning of the  
9 term "income" in the AFDC part of the Social Security  
10 Act.

11 Specifically, the question is whether the  
12 Secretary is reasonably determined that states may treat  
13 and how should treat personal injury or workers'  
14 compensation awards as income --

15 QUESTION: Mr. Nager, it has already been  
16 discussed this morning that for a good many years the  
17 Department left it up to the states to decide whether to  
18 treat it as income or a resource.

19 MR. NAGER: Yes, Justice O'Connor. That's  
20 correct.

21 QUESTION: Now, why the change?

22 MR. NAGER: The change arises out of the  
23 Secretary's examination of the purposes Congress was  
24 trying to promote in amending the statute in 1981. If I  
25 might back up a little, prior to 1981, when there was no

1 lump sum rule, whether a nonrecurring receipt in the  
2 form of a personal injury award or a worker's  
3 compensation award was characterized as a resource or as  
4 income did not have a significant effect because however  
5 it was characterized in the second month it would be  
6 characterized as a resource, and if the assistance unit  
7 still had the money from the award they would be  
8 ineligible for benefits under the resource --

9 QUESTION: Yes, but if they had spent it that  
10 was all right, and the government, the Secretary left it  
11 up to the states --

12 MR. NAGER: Right, and the --

13 QUESTION: -- and then all of a sudden there  
14 was a change.

15 MR. NAGER: Yes. Justice O'Connor, the  
16 rationale for leaving it up to the states prior to 1981  
17 arises out of two elements. The first element is, the  
18 practical effect was, these are not recurring events,  
19 they are single time events, and so we were only talking  
20 about one month's worth of benefits, and secondly, the  
21 Court -- we would ask the Court to keep in mind that the  
22 AFDC statute is one that this Court has termed based on  
23 cooperative federalism. It is a statute that states  
24 participate in at their option, and when they choose to  
25 participate they in fact provide part of the money.

1 They administer the program on a day to day basis, and  
2 the statute is replete with options given to the states  
3 in making decisions about how the program should be run,  
4 most importantly setting the level of need and the level  
5 of benefits --

6 QUESTION: Well, the point is, they have no  
7 option any more, and I am wondering if the statute  
8 requires that interpretation.

9 MR. NAGER: No, Justice O'Connor, the  
10 Secretary's position is not that the statute mandates  
11 the personal injury awards and workers' compensation  
12 awards be treated as income. Rather, the purposes  
13 behind the lump sum rule specifically that Congress was  
14 concerned with cutting the cost of the program,  
15 encouraging large payments of money to be budgeted, are  
16 furthered by treating workers' compensation awards and  
17 personal injury awards as income and thus that  
18 facilitates what Congress was trying to achieve in  
19 amending the statute in --

20 QUESTION: So you rely or the Secretary relies  
21 on some power to enact regulations to further the  
22 overall purposes of the statute?

23 MR. NAGER: Yes, Justice O'Connor, Congress --

24 QUESTION: It isn't just an interpretation of  
25 the statute that we are considering?



1 MR. NAGER: It is a exercise of the  
2 Secretary's delegated authority under the statute to  
3 interpret the statute. Congress in 42 USC 1302  
4 delegated rulemaking power to the Secretary and  
5 throughout the AFDC part of the statute instructs that  
6 the Secretary will interpret the provisions of the  
7 statute and be responsible for administering them.

8 In that capacity the Secretary prior to 1981  
9 determined that the purposes of the statute would be  
10 furthered by leaving this particular type of monetary  
11 receipt to the option of the states as to whether or not  
12 it should be treated as income or as resources, and  
13 after 1981 examined the pattern of the states' response  
14 to the 1981 amendment and the purposes that Congress was  
15 trying to further in the 1981 amendments and thus in  
16 1984 issued the notice of rulemaking proposing that  
17 personal injury and workers' compensation awards and  
18 other similar types of nonrecurring lump sum receipts  
19 would be treated as income.

20 QUESTION: Is it a policy judgment, or is it  
21 an interpretive judgment?

22 MR. NAGER: Well, it is an interpretation of  
23 the statute, Justice Scalia.

24 QUESTION: I would think so, and all you are  
25 saying is, it was no big deal before '81. It wasn't

1 necessary to interpret it one way or another. It didn't  
2 make a whole lot of difference, and the Secretary had  
3 other things to do. It became very important later to  
4 know just what the interpretation of this was, and then  
5 he came up with this -- that's what I thought had  
6 happened, anyway.

7 MR. NAGER: I couldn't have put it more  
8 succinctly. The Secretary believes that his  
9 interpretation is reasonable. By looking at the  
10 language and the legislative history of the statute the  
11 states get no guidance as to whether or not these items  
12 should be treated as income or as resources. It is  
13 common ground among the parties that the statute does  
14 not define the term "income" and does not state either  
15 in specific terms or in general terms whether or not  
16 personal injury and worker's compensation awards should  
17 be treated as resources or income.

18 Respondents have not been able to point to  
19 anything in the legislative history which shows that  
20 Congress intended to exclude these types of payments  
21 from the income calculation, and so what we have is a  
22 classic case of where Congress has created the general  
23 framework, mandated that the states shall take into  
24 account any income and resources, and then not define  
25 the term, left the interstices of the statute to be

1 filled in by those who administer the statute, in this  
2 case the Secretary and the states.

3 In doing that, the Secretary, guided by what  
4 is left available to him, which is the purposes Congress  
5 was trying to promote, has on a case by case basis  
6 looked at the receipts that a family can receive and  
7 determined in his judgment whether or not those were the  
8 types of receipts that Congress intended to have  
9 included in the income calculation as to whether or not  
10 they would further the purposes of the statute.

11 QUESTION: Mr. Nager, now, under the food  
12 stamp program, which also is designed to help these same  
13 people, these things aren't treated as income, these  
14 personal injury awards.

15 MR. NAGER: Justice O'Connor, I quibble with  
16 your premise that these programs are designed to help  
17 the same people. In fact, the food stamp program is  
18 available to a broader group of people. The AFDC  
19 statute is really designed as a statute of last resort,  
20 and I can give two reasons for that, at least two  
21 examples of why that is true.

22 First of all, food stamps are in kind  
23 benefits. The only thing the recipient can do with them  
24 is get food with them, whereas the AFDC program is a  
25 cash grant statute, and Congress has defined the group

1 of people eligible in the AFDC program more narrowly  
2 than the group of individuals eligible for food stamps  
3 in the food stamp program.

4 In addition, as we pointed out in our brief,  
5 the food stamp program has a rather all-inclusive  
6 definition of income and then has an express exclusion  
7 for personal injury and worker's compensation awards,  
8 and that express exclusion is absent in the AFDC part of  
9 the statute.

10 The Court of Appeals gave three reasons for  
11 refusing to defer to the Secretary in this case. Its  
12 first reason was that it equated the concept of income  
13 with profit or gain. It said that profit or gain is the  
14 plain and ordinary meaning of the term "income," and  
15 thus the Secretary has adopted an unreasonable  
16 interpretation of the statute.

17 We pointed out in our brief one can look at a  
18 variety of dictionary and sources, and we looked at the  
19 ones the respondents pointed out, and the term "income"  
20 is defined in various ways, profit or gain, gross  
21 receipts. In fact, in this Court's decision in Heckler  
22 versus Turner there are several references to the term  
23 "income" as being a broader concept than the narrower  
24 term "earned income," and in fact in several places  
25 refer to income as meaning gross receipts.

1           The second reason the Court of Appeals gave  
2     for treating personal injury -- for refusing to defer to  
3     the Secretary was that the Court of Appeals looked to  
4     other statutes. The food stamp statute that Justice  
5     O'Connor has pointed out and the Internal Revenue Code,  
6     and in those statutes Congress has excluded by express  
7     provision personal injury or worker's compensation  
8     awards.

9           The Court might have looked at the SSI program  
10    where Congress has defined the term "income" to include  
11    worker's compensation awards and other awards, and by  
12    regulation the Secretary has interpreted the SSI program  
13    to include personal injury awards. We just don't think  
14    that the interpretation of the AFDC program can be  
15    controlled by the decisions Congress has made in other  
16    statutes. Rather, we have to look at the purposes and  
17    provisions of the AFDC statute, and as counsel for  
18    petitioner has noted and which I would briefly  
19    summarize, the purposes of the AFDC statute are promoted  
20    by treating worker's compensation and personal injury  
21    awards as income .

22           Now, the final reason that the Court of  
23    Appeals gave for refusing to defer to the Secretary was,  
24    it found inequitable that the Secretary allowed the  
25    state to treat personal injury awards as income, and yet



1 casualty losses as resources, and said that that  
2 violated the Secretary's own equitable treatment  
3 regulation.

4 The Secretary has resisted that throughout the  
5 litigation, because since the Secretary gave the option  
6 to the states to treat personal injury awards or  
7 worker's compensation awards as either income or  
8 resources, the state was merely acting pursuant to an  
9 option that the Secretary gave the states, and the  
10 Secretary does not believe that when a state acts  
11 pursuant to an option given by the Secretary that the  
12 state can be violating the Secretary's own equitable  
13 treatment regulation at the same time.

14 Thus we would ask that the judgment of the  
15 court below be reversed. Unless the Court has further  
16 questions.

17 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
18 Nager.

19 We will hear now from you, Ms. Hanken.

20 ORAL ARGUMENT OF JILL A. HANKEN, ESQ.,

21 ON BEHALF OF THE RESPONDENT

22 MS. HANKEN: Mr. Chief Justice, and may it  
23 please the Court, Virginia and the Secretary of HHS  
24 reject the fundamental concept in our common law that a  
25 personal injury award only makes the victim whole. It

1 does not enrich. There is no gain. But Virginia treats  
2 a personal injury award as income, and as a result  
3 parents and children who are the victims of accidents  
4 are disqualified from the AFDC program.

5 Because Virginia's standard of need is so low,  
6 even modest awards result in disqualifications of months  
7 or years. For example, a \$2,000 award paid to a mother  
8 with two children in Richmond will disqualify the family  
9 for more than six months.

10 QUESTION: The family has money to buy their  
11 necessities during that six months, right? Why is that  
12 unusual? If you regard this as a statute to help people  
13 who don't have money, not a statute to replace a  
14 person's arm if he is unfortunate enough to lose it, the  
15 fact is that the person has the money, regardless of how  
16 the money was come by, right?

17 MS. HANKEN: It is true that the person has  
18 money, but the purpose of that money is to compensate  
19 the individual for the injuries that have been suffered,  
20 and the problem is that the regulations make no  
21 provisions for the family to use the money for the  
22 purpose that it is intended.

23 QUESTION: Let's assume an individual gets a  
24 multi-million dollar personal injury award,  
25 multi-million dollar. The person is a millionaire now.

1 Your contention here is that it is somehow contrary to  
2 the purpose of AFDC if the state did not continue to pay  
3 this millionaire AFDC every month because of the manner  
4 in which that money was acquired? That doesn't strike  
5 me as obvious.

6 MS. HANKEN: Congress did not intend for  
7 multi-million dollar personal injury award that is  
8 compensatory to be treated under the lump sum rule. As  
9 a resource that money would disqualify the family for  
10 many months -- would disqualify the family for as long  
11 as they still had the money, and they would have to  
12 spend the money, and the agency would look to see how  
13 the money was expended to make sure that there was fair  
14 value received in return for the expenditures. And only  
15 when the family had \$1,000 left could they return to the  
16 program and receive AFDC benefits.

17 In reality, our clients have not received  
18 multi-million dollar payments. They have received  
19 personal injury awards of \$1,000. A disabled father  
20 received \$10,000 after being struck by a car. And the  
21 rule is not intended to apply as broadly as you say.

22 The lump sum rule was a very small part of the  
23 OBRA amendments. Of \$1 billion that was to be cut from  
24 the AFDC program, the lump sum rule was expected to save  
25 just \$5 millions, and only 5,000 families of the three

1 and a half million families receiving AFDC were to be  
2 disqualified from the program.

3 The fact that Virginia is applying this rule  
4 too broadly can be seen in these numbers because  
5 Virginia only has 1.6 percent of the ADC case load  
6 nationwide. Thus under Congressional estimates only 80  
7 families would have been disqualified under this rule if  
8 implemented as Congress intended.

9 Instead, the District Court found that 400  
10 families a year have been disqualified under Virginia's  
11 rules, five times the amount -- the number of people who  
12 are expected to be disqualified under the provision, and  
13 the reason that so many people have been disqualified  
14 under this --

15 QUESTION: Expected according to whom?  
16 According to the statute?

17 MS. HANKEN: The Congressional estimates at  
18 Page 76 of the Joint Appendix. The estimate is that  
19 5,000 families would be terminated from the program --

20 QUESTION: That is not in the statute,  
21 though.

22 MS. HANKEN: No.

23 QUESTION: That is an estimate of whom? Of  
24 whom? An estimate of whom? Who made the estimate?

25 MS. HANKEN: That is in a Congressional -- one

1 of the reports prepared by HHS to Congress estimating  
2 the --

3 QUESTION: Is it in a committee report? Does  
4 it appear in a Congressional committee report? Or is  
5 this just what HHS told a committee? Do we know that  
6 Congress was relying on that when they passed the  
7 statute, is what I am asking.

8 MS. HANKEN: Well, that was the amount of  
9 savings expected from this particular rule change, and  
10 it appears in the OBRA amendments and the final  
11 calculations of fiscal savings to be achieved under the  
12 various rules. In Virginia alone, 400 families a year  
13 are terminated under this lump sum rule because they are  
14 applying the rule to far more receipts than ever  
15 intended by Congress.

16 QUESTION: Where is this, Ms. Hanken? You are  
17 looking at it there.

18 MS. HANKEN: In the Joint Appendix, 76.

19 QUESTION: Thank you.

20 MS. HANKEN: And this is a Committee on ways  
21 and Means report estimating the number of families  
22 removed from the rolls and the expected impact on the  
23 budget.

24 These committee reports also indicate that  
25 Congress knew that the new rule was not going to be



1 applied to all payments of money. Throughout the  
2 committee reports Congress said that the new rule was to  
3 apply to payments that meet the definition of income,  
4 and throughout the reports the single example of income  
5 was retroactive Social Security benefits, which is --

6 QUESTION: May I interrupt you just for a  
7 minute?

8 MS. HANKEN: Yes.

9 QUESTION: How would you classify punitive  
10 damages?

11 MS. HANKEN: I would classify punitive damages  
12 as a gain, as this Court did in the Glentrell Glass  
13 case, and since there is a gain it would be more  
14 properly classified as income.

15 QUESTION: Although they are not compensatory.

16 MS. HANKEN: They are not compensatory at all,  
17 and therefore could be properly used by the family for  
18 future subsistence living expenses.

19 QUESTION: But you would call them, such  
20 damages income?

21 MS. HANKEN: Yes. Yes, Your Honor. But as  
22 Justice White mentioned earlier, there is an obvious  
23 definition of income. As this Court has found when  
24 looking for a common sense definition of income, there  
25 is a requirement of gain or profit, and that is the

1 definition that has been consistently followed by this  
2 Court and has been referred to as the obvious or the  
3 natural meaning of income.

4 The definition of income that is used in  
5 common speech, and of course in looking at 602(a)(17) we  
6 must look at the natural and common sense definitions of  
7 the words used by Congress. Congress did not intend to  
8 apply the rule to all payments of money. Even the  
9 Secretary still says that if a house is sold, and  
10 certainly a large amount of money is received in return  
11 for that, the money is a resource, and the money can be  
12 spent in any way the family needs to, and spend it down,  
13 and requalify for benefits under the program.

14 The system here creates an inequity between  
15 persons who receive personal injury awards and people  
16 who receive property damage payments. To this day  
17 Virginia still treats as a resource money paid for  
18 property damage. So if a car or refrigerator is either  
19 sold or damaged, the money paid in return is a resource.

20 QUESTION: They are not allowed to do that,  
21 though, are they? I thought that the federal rule now  
22 would not permit that, but Virginia just hasn't gotten  
23 around to revising its rules to conform to the federal  
24 rule.

25 MS. HANKEN: That is true if the new federal

1 regulation is valid.

2 QUESTION: Well, okay, but your argument  
3 assumes that the federal regulation is valid. So that  
4 inequity does not exist under what the Secretary is  
5 arguing for here.

6 MS. HANKEN: Even under the new regulation  
7 there still is an inequity because if the car  
8 refrigerator is damaged and money is paid in return, the  
9 family can replace the car or refrigerator and return to  
10 the program. But the person who receives a personal  
11 injury award has no opportunity to use that award for  
12 the purpose it is intended.

13 Let's look at a pain and suffering award. The  
14 family cannot make any expenditure to ease pain and  
15 suffering. The parent can't buy toys for the sick  
16 child. The family cannot buy a television for the  
17 bedridden person. You couldn't weatherize your house to  
18 make it warmer. Mr. Long couldn't buy a used car to  
19 help him travel after his injury.

20 The family can't set aside any funds for  
21 future burial expenses, which is allowed by Congress in  
22 the statute as a way to prepare for the future.

23 QUESTION: How about prosthetic devices or  
24 prescribed drugs or anything of that sort?

25 MS. HANKEN: Your Honor, any medical expenses

1 paid with the award would be deducted from the lump sum  
2 amount and the length of disqualification could be  
3 shortened. The problem, though, with that is, when the  
4 family receives the award they are told that you are  
5 ineligible for this program for months or years into the  
6 future. and the family may not even get the medical care  
7 they need because they know they have to let the money  
8 last.

9 And the other problem is, some future medical  
10 expenses may be needed beyond the disqualification  
11 period after the money is already gone, so the family  
12 doesn't have the ability to even get the kind of medical  
13 attention that they require as a result of the injuries,  
14 and in that respect they can't use the award for the  
15 purposes that it was intended, and have no ability to  
16 ease their pain and suffering to make their lives more  
17 comfortable or better. Some of the injured persons may  
18 want to go to additional educational courses or  
19 training.

20 QUESTION: There may also be a lot of people  
21 who can't get on the AFDC rolls right now because the  
22 level to qualify is too low. And more of those people  
23 might be allowed on if the kind of benefits that are  
24 paid to those who are on are reduced to some extent. I  
25 mean, there are hardships on both sides. We are talking

1 about an absolute amount of money that has to be  
2 distributed somehow, and the Secretary has said, these  
3 people have money. We can't replace the arm or the leg  
4 or whatever is lost. This is a program to give people  
5 money who don't have it. These people have money.

6 Now, there are others in the program who don't  
7 have money. I would rather spend the money there. Why  
8 isn't that a reasonable determination? I mean, it could  
9 have gone the other way.

10 MS. HANKEN: It is not --

11 QUESTION: There is hardship on all sides.

12 MS. HANKEN: Well, it is not reasonable  
13 because when Congress enacted this statute in 1981 it  
14 did not change the definition of income in the AFDC  
15 program. There has been a long standing distinction  
16 between income and resources, and Congress was aware of  
17 that distinction in 1981.

18 In fact, in the same year --

19 QUESTION: It was aware that Virginia was  
20 using this definition in 1981, wasn't it?

21 MS. HANKEN: Your Honor, in 1981, at Page 23  
22 of the joint appendix, Virginia's pre-OBRA regulation  
23 treated all lump sums except for Social Security  
24 retroactive benefits as a resource. The money was  
25 compared to resources, as it should be.



1 QUESTION: What about other states? Was there  
2 no state that was taking advantage of the discretion  
3 given them by the Secretary to treat this?

4 MS. HANKEN: There is no evidence in our  
5 record that any state was using an option, and in fact  
6 the documents referred to by the Secretary and Virginia  
7 are all post-CBRA documents discussing an option, and  
8 even if there was an option just by the pure definition  
9 when your house burns down or is sold, the money is a  
10 replacement.

11 The money -- the nature of the resource does  
12 not change. The money is a resource. And the same is  
13 true when a body is injured. Our bodies are priceless  
14 commodities, and money that is paid in substitution for  
15 our bodies is compensatory. It is an exchange. It is a  
16 conversion of one resource for cash money. It is a  
17 fundamental concept in our common law that --

18 QUESTION: Well, Ms. Hanken, isn't it -- it  
19 also is true that in many personal injury cases you have  
20 a very significant element based on loss of earnings  
21 that you project the earning capacity in the future, and  
22 so forth and so on. Isn't that perhaps subject to a  
23 different analysis than the pain and suffering part of  
24 your argument?

25 MS. HANKEN: Yes, it is true that personal

1 injury awards may include an aspect of lost earnings or  
2 lost earning capacity, but most of these situations are  
3 settled, and the settlements won't delineate between  
4 that portion of the award that is for lost earnings  
5 capacity and the portion that is for pain and  
6 suffering.

7 QUESTION: No, but it is certainly true,  
8 though, that a person who has a substantial salary gets  
9 a bigger settlement than a person who has a lower  
10 salary, even though the injury is precisely the same, so  
11 that it certainly must be part of the settlement figures  
12 as well as the awards made by juries and judges.

13 MS. HANKEN: That is true. Many of our  
14 victims are children, where lost earnings or earning  
15 capacity won't even be an issue, and in any case, just  
16 like the Internal Revenue Code exempts personal injury  
17 awards without trying to figure out what part of it is  
18 to replace lost earnings or earnings capacity, the  
19 money --

20 QUESTION: See, that kind of cuts against you  
21 a little bit, because Congress did it expressly there,  
22 didn't they?

23 MS. HANKEN: There is an express exemption in  
24 the Internal Revenue Code that exempts personal injury  
25 awards. However, that exemption was based on a long

1 history of departmental rulings by the Internal Revenue  
2 Service that took the position that personal injury was  
3 not income in the first place, and that is consistent  
4 with the opinions of this Court which find consistently  
5 that in order for income to be received there must be a  
6 gain or a profit, and in the Glenshaw Glass case, this  
7 Court said a personal injury award is compensatory  
8 only. There is no gain. It is not income in the first  
9 place.

10 QUESTION: There is also an explicit exception  
11 in the food stamp program, isn't there?

12 MS. HANKEN: That's true.

13 QUESTION: It is set forth explicitly that  
14 these things are not covered.

15 MS. HANKEN: Yes.

16 The Secretary has consistently been shifting  
17 its position, keeps changing his mind what the scope of  
18 the lump sum rule is. His latest interpretation, which  
19 is found in Footnote 4 of his reply brief, demonstrates  
20 the extreme to which the Secretary has gone in  
21 interpreting this rule.

22 Now the Secretary says that a house or a car  
23 is sold, that the money received in return is a  
24 resource, but if the home is burned in a fire or the car  
25 is wrecked in an accident, that money is income, and the

1     rationale given by the Secretary even though in his  
2     proposed new regulations and his final regulations  
3     adopted in March in the preamble he said that there  
4     could not be any rationale for distinguishing between  
5     large payments of money, he is still distinguishing  
6     between large payments of money, and now the house which  
7     is sold is a resource, but if it is damaged it is  
8     income.

9             This makes no sense. It is illogical and it  
10     is irrational. It doesn't have anything to do with the  
11     definitions of income and resources in the Social  
12     Security Act, and it doesn't have anything to do with  
13     what Congress intended in adopting the new income rule  
14     in 1981. To put a greater value on homes or cars than  
15     on our own health and wellbeing is illogical.

16            The children and the parents in this case --

17            QUESTION: Excuse me. What about a gift? Is  
18     that -- what is the ordinary meaning of income? What  
19     would somebody think of a gift? Would somebody regard a  
20     gift as being --

21            MS. HANKEN: A gift would be like a gain, and  
22     would therefore fall under the common definition of  
23     income.

24            QUESTION: You think an average person would  
25     consider a gift to be income? I don't know that that is

1 so. My point is, don't you acknowledge that the  
2 Secretary has to have some authority to give some  
3 meaning to income? It isn't self-evident what -- even  
4 if you say this particular item you think is  
5 self-evident, is it your contention that the word  
6 "income" is a word that the Secretary has no authority  
7 to interpret because it is self-evident what it means?

8 MS. HANKEN: No, but the Secretary does not  
9 have the ability or the authority to interpret the word  
10 "income" in a way that is contrary to what Congress  
11 intended.

12 QUESTION: You are saying its entire meaning  
13 is not self-evident, but at least it is self-evident  
14 that it includes recoveries for personal injuries.

15 MS. HANKEN: It does not include recoveries --

16 QUESTION: I'm sorry, right.

17 MS. HANKEN: It does not include recoveries  
18 for personal injuries.

19 QUESTION: I wasn't trying to trick you.

20 (General laughter.)

21 MS. HANKEN: And by using the historical  
22 definition of income, accumulated benefits, retroactive  
23 Social Security payments, which has always been treated  
24 as income -- throughout all of the documents of HHS that  
25 has always been viewed as income -- that would alone



1 have been enough to take care of the \$5 million savings  
2 and the 5,000 families across the country.

3 It is very common for families on AFDC to  
4 receive a retroactive Social Security benefit when a  
5 child's parent becomes disabled or dies and survivors'  
6 benefits or disability benefits are paid, and this was  
7 the core concern of Congress in 1981, and by sweeping  
8 more and more items into the definition of income and  
9 interpreting the rules in the illogical ways that the  
10 Secretary is, they are just going too far.

11 The parents and children in this case have  
12 already suffered the indignity of an injury caused by  
13 another. The policies add insult to their injuries by  
14 terminating their sole source of support for months into  
15 the future, long after the money is gone. The policies  
16 urged by Virginia and the Secretary make it impossible  
17 for the family to use the personal injury award for the  
18 purposes intended. They can't use the money to ease  
19 their pain and suffering nor to set aside funds for  
20 future needs.

21 The policy amounts to a disincentive for the  
22 victims of wrongdoing to seek redress. Here only the  
23 tort fees are benefits, because the families, knowing  
24 that the money is going to have to be used for  
25 subsistence income support, will simply not file these

1 cases. The rule is very harsh. As I have said, our  
2 standards of need are so low that disqualifications of  
3 months and years are not uncommon when a lump sum  
4 payment of money is received.

5 Our standards are sadly out of date, and they  
6 recognize only half of what a family needs to live. So  
7 this makes it essential that the rule is limited to the  
8 scope envisioned by Congress. They use the word  
9 "income" and at the same time reaffirm the distinction  
10 between income and resources by adopting new resource  
11 limitations in 602(a)(7)(b) of the Social Security Act.  
12 This means that Congress affirmed that a family does not  
13 have to relinquish all of its goods of value in order to  
14 receive AFDC benefits.

15 Throughout this litigation, for the five years  
16 since OBRA was enacted, both the Secretary and Virginia  
17 have not treated all payments of money as lump sum  
18 income. They have recognized that when money represents  
19 a resource it should be treated as a resource, and the  
20 Secretary still says that as far as selling a resource  
21 goes, that the money is a resource and could be spent as  
22 the family chooses, as the family needs to. The family  
23 does not have to purchase another house. Instead, the  
24 family could purchase -- put a down payment on a house  
25 and buy a car, or put aside money in a savings account,

1 purchase burial contracts, and reallocate resources in  
2 the way that they see fit for their family.

3 QUESTION: Ms. Hanken, you surprised me  
4 earlier because it was not my understanding when you  
5 said that the practice among the states as far as you  
6 know when OBRA was enacted was uniformly to treat these  
7 things as resources rather than income. The reason I  
8 had the opposite impression was a passage which I found  
9 in the Secretary's brief which says that the practice  
10 among the states was varied in 1981, and he gives a  
11 citation for that. Now, I didn't go back and look up  
12 the citation. Did you? And is it wrong?

13 MS. HANKEN: There isn't evidence in our  
14 record that the practices of states was varied. The  
15 Secretary --

16 QUESTION: You don't need testimony on that,  
17 do you. I mean, couldn't you give us a citation to the  
18 Federal Register? It was a Federal Register cite. I  
19 didn't look it up. Did you?

20 MS. HANKEN: The Federal Register cite at that  
21 point in the Federal Government's brief is one of the  
22 post-OBRA cites, a preamble used to explain its shifting  
23 of interpretation.

24 QUESTION: But does that -- that preamble at  
25 least does say that the practice among the states at the

1 time of OBRA was varied?

2 MS. HANKEN: That's true. That is what the  
3 preamble says.

4 QUESTION: May I ask you another question?  
5 Your argument earlier about the projection in the  
6 hearings of 5,000 families and in fact the 1.6 percent  
7 that Virginia represents turned out to be much larger,  
8 did you make that argument in your brief? I missed it.

9 MS. HANKEN: No, I did not, Your Honor.

10 QUESTION: You did not, so they haven't  
11 responded to it yet.

12 MS. HANKEN: No, they haven't. But the  
13 expected cost savings and the number of families  
14 affected is part of the record.

15 QUESTION: It is in the record.

16 MS. HANKEN: And in public documents  
17 Virginia's share of the national case load can easily be  
18 found.

19 QUESTION: I see.

20 MS. HANKEN: It is essential that the rule  
21 here is limited to the scope envisioned by Congress. It  
22 hasn't been applied by Virginia or Secretary to all  
23 payments of money because Congress didn't intend them  
24 to.

25 QUESTION: Excuse me. You also didn't set

1       forth in your brief the argument that the practice  
2       amount the states was uniform at the time OBRA was  
3       enacted, did you?

4               MS. HANKEN: Your Honor, I don't take the  
5       position that all states' practices were uniform. I am  
6       saying that I don't know, that in Virginia a lump sum  
7       payment was compared to the resource level except for a  
8       lump sum that represented accumulated gain. And that  
9       was Virginia's pre-OBRA policy.

10              QUESTION: Did you contest the Solicitor  
11       General's statement in your reply brief that practice  
12       among the states was varied?

13              I mean, the reason I ask is, that is an  
14       important point to me, and it seems to me that you  
15       should make your argument at a point where the SG has an  
16       opportunity to respond to it, not in oral argument after  
17       he has made his presentation and has no opportunity. It  
18       leaves me unable to decide the issue on the basis of  
19       what is in front of us.

20              MS. HANKEN: Well, even if the practices of  
21       states was varied, and it is true that prior to 1981 the  
22       distinction between income and resources, while separate  
23       and different, it was not nearly as important as the  
24       distinction today in terms of how the two are treated.  
25       In 1981 --



1 QUESTION: No, but you make a point that the  
2 Congress presumptively knew what the practices were, and  
3 if they were different the presumption cuts one way and  
4 if they are the same it cuts the other way.

5 MS. HANKEN: Well, the one thing that Congress  
6 knew is that the only consistent definition of income  
7 was accumulated benefits, the retroactive Social  
8 Security awards, and that has been the definition of  
9 income for many years by HHS, and that was the concern  
10 of Congress in adopting this new income rule. But it  
11 was not supposed to apply to all payments of money.

12 It never has, according to Virginia and the  
13 Secretary's policies, and it still doesn't, even under  
14 the Secretary's new rule, which was promulgated, adopted  
15 in its final form after Virginia's petition for  
16 certiorari was filed in a form that was much different  
17 than the proposed regulation.

18 They are trying to assist themselves in this  
19 litigation through their regulatory powers, and are  
20 virtually eliminating the distinction between income and  
21 resources in the AFDC program which has been in place  
22 for decades and which Congress did not change in 1981.

23 Congress did change the treatment of income  
24 and did lower the allowable resource level, but it did  
25 not change the definitions of those terms, so the Court

1 should give those terms their common sense definitions,  
2 and when you do so, personal injury awards will not fall  
3 into the income category.

4 Instead, personal injury awards will be what  
5 they are, compensatory for injuries suffered. Every  
6 penny of the award represents an actual loss. There is  
7 no gain. We urge you to affirm the judgment of the  
8 Fourth Circuit.

9 QUESTION: Thank you, Ms. Hanken.

10 MR. Czelusta, you have one minute remaining.

11 ORAL ARGUMENT OF THOMAS J. CZELUSTA, ESQ.,

12 ON BEHALF OF THE PETITIONER - REBUTTAL

13 MR. CZELUSTA: Mr. Chief Justice, and may it  
14 please the Court, if the Court has any questions, I will  
15 answer them.

16 QUESTION: Yes, do you have an answer to the  
17 5,000 argument?

18 MR. CZELUSTA: Ms. Hanken is wrong on the  
19 figures. If you look at the District Court's decision  
20 the figures that we came up with, it was only 231 cases  
21 a year, not 500.

22 QUESTION: I see. Thank you.

23 MR. CZELUSTA: If the Court has no further  
24 questions, I have no further rebuttal.

25 CHIEF JUSTICE REHNQUIST: Thank you. The case

1 is submitted.

2 (Whereupon, at 12:03 o'clock p.m., the case in  
3 the above-entitled matter was submitted.)  
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# CERTIFICATION

Anderson 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:

#85-1358 - WILLIAM L. LUKHARD, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES,

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Petitioner V. ONA MAE REED, ET AL.

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

BY Paul A. Richardson

(REPORTER)