

ORIGINAL

# TRANSCRIPT OF PROCEEDINGS

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of:	)	
	)	
SANDRA GARDEBRING, COMMISSIONER	)	
OF THE MINNESOTA DEPARTMENT OF	)	
HUMAN RESOURCES,	)	
	)	
Petitioners,	)	No. 86-978
	)	
v.	)	
	)	
KATHRYN JENKINS,	)	
	)	
Respondent.	)	
	)	

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SUPREME COURT, U.S.  
WASHINGTON, D.C. 20543

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DATE: January 13, 1988

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IN THE SUPREME COURT OF THE UNITED STATES

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SANDRA GARDEBRING, COMMISSIONER OF :  
 THE MINNESOTA DEPARTMENT OF HUMAN : No. 86-978  
 SERVICES, :  
 Petitioner, :  
 V. :  
 KATHRYN JENKINS :

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Washington, D.C.  
 Wednesday, January 13, 1988

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

APPEARANCES:

JOHN L. KIRWIN, ESQ., St. Paul, Minnesota;  
 on behalf of the Petitioners.

PAUL J. LARKIN, JR., ESQ., Washington, D.C.;;  
 on behalf of the United States, as  
amicus curiae, in support of Petitioner.

LAURIE N. DAVISON, ESQ., Minneapolis, Minnesota;  
 on behalf of the Respondents.

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

(11:05 a.m.)

1  
2  
3 CHIEF JUSTICE REHNQUIST: Mr. Kirwin, you may proceed  
4 whenever you are ready.

5 ORAL ARGUMENT BY JOHN L. KIRWIN, ESQ.

6 ON BEHALF OF PETITIONER

7 MR. KIRWIN: Thank you, Mr. Chief Justice, and may it  
8 please the Court.

9 This case is here on certiorari to the Eighth Circuit  
10 Court of Appeals. The case involves Minnesota's operation of  
11 the AFDC program.

12 There are two issues raised by this case. First,  
13 does an applicant publicity regulation of the Secretary of  
14 Health and Human Services require a state to single out one of  
15 the myriad eligibility requirements of the AFDC program? And  
16 require a state to give repeated, detailed, written notice of  
17 that one requirement to all applicants and recipients?

18 Minnesota and the Secretary argue that the  
19 Secretary's regulations requires states to generally publicize  
20 the AFDC program and its eligibility requirements to  
21 applicants.

22 The second issue is equally significant to Minnesota  
23 and to other states. Can a court apply an information  
24 regulation of the Secretary in a way that effectively modifies  
25 Congress' eligibility requirements? Can the court require the



1 state to pay AFDC benefits to a person who is without dispute  
2 ineligible to receive those benefits under Congress'  
3 eligibility statute?

4 A divided panel of the Eighth Circuit required the  
5 state to pay such benefits to an ineligible person. And  
6 enjoined the state from recovering over-payments made to that  
7 ineligible person even though Congress had expressly required  
8 states to recover all AFDC over-payments.

9 The Eighth Circuit essentially read the Secretary's  
10 information regulation as modifying the statutory eligibility  
11 requirement. And also the statutory recoupment requirement.  
12 The Secretary doesn't interpret his own regulation in that way  
13 and the regulation couldn't be interpreted to modify the  
14 statutory requirements. That would be beyond the Secretary's  
15 authority.

16 The specific eligibility requirement involved in this  
17 case is the 1981 lump-sum statute. As the Court will recall  
18 from the Lukhard case, which was decided last term, the lump-  
19 sum statute provides that when an AFDC family receives an  
20 amount of non-recurring income greater than its monthly AFDC  
21 grant, the family will be ineligible for AFDC for one or more  
22 months, depending on the size of the lump-sum payment and the  
23 amount of the monthly grant.

24 Immediately after the passage of the lump-sum  
25 statute, which was part of the Omnibus Budget Reconciliation Act

1 of 1981, Minnesota distributed a letter to all persons who were  
2 receiving AFDC in Minnesota at that time. The letter told them  
3 about certain of the OBRA changes. Now, there were many, many  
4 OBRA changes to the AfDC program and Minnesota's letter picked  
5 out 19 of the changes that Minnesota thought were the most  
6 important.

7 One of those was the lump-sum statute. Minnesota  
8 sent that letter simply to assist its AFDC recipients and  
9 Minnesota had never had the understanding under the federal  
10 regulation that it was required to provide advance publicity to  
11 recipients that Congress had changed eligibility requirements.

12 Apart from the 1981 letter, Minnesota's general  
13 program of providing information to applicants and recipients  
14 is accomplished primarily in two ways. First, Minnesota  
15 provides a pamphlet for AFDC applicants which provides general  
16 information about eligibility requirements and other aspects of  
17 the AFDC program.

18 The pamphlet includes descriptions of those  
19 eligibility requirements which apply to every AFDC applicant  
20 and recipient and which form the framework of the AFDC program.

21 The pamphlet provides specific information regarding  
22 the eligibility requirements which relate to age of children,  
23 statutory reason for deprivation of parental support, the two  
24 different kinds of income limits, the resource limits of the  
25 program, the requirements to participate in work programs and

1 in recovery of child support.

2 And the pamphlet tells applicants that it does not  
3 cover all the AFDC rules, that those rules change and that  
4 applicants should consult with their caseworkers concerning the  
5 more specific requirements of the AFDC program.

6 Second, in addition to this pamphlet, Minnesota  
7 provides a caseworker to each applicant and recipient to  
8 consult with that person concerning the specifics of the AFDC  
9 program.

10 Now, in addition to those information sources, every  
11 applicant and recipient knows, based on their participation in  
12 the program, on their completion of the application forms and  
13 other periodic forms on which they have to report in minute  
14 detail their income and resources and family living situations,  
15 applicants and recipients know that almost any change in their  
16 financial situation affects their AFDC eligibility.

17 As a general matter, the Secretary and the state have  
18 determined, based on their experience in operating the AFDC  
19 program, that a lengthy written explanation of eligibility  
20 requirements is less helpful to applicants or recipients than  
21 an individualized oral discussion at a time when the  
22 eligibility requirement is meaningful to the recipient.

23 In 1984, two and a half years after the OBRA changes  
24 became effective, the named Plaintiff, Kathryn Jenkins,  
25 intervened in a pending Federal Court lawsuit. And Jenkins

1 claimed that Minnesota was required to give specific, detailed,  
2 periodic, written notice to every applicant and recipient  
3 concerning only one requirement of the AFDC program, the lump-  
4 sum statute; a statute which affects really a small percentage  
5 of the recipients in the AFDC program.

6 The lower courts agreed with Jenkins' argument and  
7 they ordered the state to provide that kind of notice. And the  
8 court held that Minnesota's 1981 letter which included an  
9 explanation of the lump sum statute, and which Jenkins had  
10 received, hadn't been specific enough in describing the lump-  
11 sum statute.

12 QUESTION: Who was the District Judge, MacLaughlin?

13 MR. KIRWIN: It was Judge MacLaughlin, Justice  
14 Blackman.

15 The lower court, we believe, seriously misconstrued  
16 the Secretary's regulation. What does the regulation require?

17 This is not a regulation that requires detailed  
18 notice of every eligibility requirement or even of any specific  
19 eligibility requirement. The regulation says that applicants  
20 shall be given information in writing and orally as appropriate  
21 about various aspects of the program.

22 In addition to eligibility requirements, the state  
23 has to describe program coverage, scope of the program, other  
24 services available, appeal rights, and other rights and  
25 responsibilities. And the regulation requires that the state



1 provide simple pamphlets or bulletins containing information  
2 about the program.

3           The state and the Secretary agree with Judge Fagg's  
4 interpretation of the regulation. Judge Fagg who dissented in  
5 the Court of Appeals, said that the regulations simply requires  
6 the state to publicize generally in written form and orally as  
7 appropriate the AFDC program and its availability.

8           The 8th Circuit tried to turn the regulation into  
9 something completely different from that. The lower court held  
10 that the regulation requires notice of a specific eligibility  
11 requirement that the lower court felt was a particularly  
12 important requirement.

13           The court held that the regulation requires that  
14 information be provided to applicants despite the fact that the  
15 regulation only -- excuse me -- to recipients despite the fact  
16 that the regulation talks only of applicants and it required  
17 that the notice be given periodically.

18           The Court held that the notice must include a  
19 detailed description of the mechanics of an eligibility rule,  
20 including examples of the rules operation.

21           None of those requirements is based on any standard  
22 contained in the regulation. The Court simply constructed those  
23 requirements on its own.

24           Under the 8th Circuit's decision, a state can never  
25 know, until after the fact, whether it is given enough

1 information or whether it has effectively implemented a  
2 provision of the AFDC program. The 8th Circuit singled out  
3 this one eligibility requirement for this type of notice. The  
4 lower Court's decision can be read to require that kind of  
5 notice about every eligibility requirement, although it is not  
6 completely clear.

7 That would be virtually impossible to do and even if  
8 it could be done, it would be virtually useless to applicants  
9 or recipients to overwhelm them with that volume of  
10 information.

11 The Plaintiffs argue that while the lower Court  
12 didn't require this type of notice concerning every eligibility  
13 requirement, but that the lower Court's decision is not  
14 necessarily limited to the lump-sum statute either. That there  
15 may be other eligibility requirements, as yet unidentified,  
16 about which the state has to give that kind of notice.

17 But when you look at what happened in this case, it  
18 is easy to understand why those kinds of gray areas make the  
19 situation so administratively unworkable for Minnesota and the  
20 other states.

21 In 1981, there was nothing in the regulation or in  
22 any interpretation of the Secretary which would have informed  
23 Minnesota that it was even required by law to distribute the  
24 informational letter or that it was required to single out one  
25 provision of the AFDC program, the lump-sum statute, for

1 specialized treatment in that letter.

2 And in its AFDC pamphlet, Minnesota had no way of  
3 knowing, based on the language of the Federal Regulation or any  
4 interpretation of the Secretary, that even though not every  
5 eligibility requirement had to be described, the lump-sum  
6 statute did have to be described and in great detail.

7 Under the 8th Circuit's decision, a state has to  
8 guess about what information is required, and about which  
9 eligibility requirements have to be described.

10 And if a state predicts wrong, if a Federal Court  
11 later disagrees with the state's considered judgment, based on  
12 its experience, then the state's implementation of the  
13 eligibility requirement is set aside for the past months, or  
14 even years, as occurred in this case.

15 Even if the 8th Circuit was correct in its holding  
16 that Minnesota was required to provide more information, the  
17 Court's remedy here was certainly improper. Because Kathryn  
18 Jenkins had appealed the termination of her benefits, she  
19 received continued benefits during that appeal process and when  
20 the appeal was resolved, the county agency notified Jenkins  
21 that it would recoup the overpayment that had been made to her  
22 by withholding one percent of her monthly AFDC grant.

23 The 8th Circuit enjoined Minnesota from recouping the  
24 overpayment made to Jenkins. The Court said that since  
25 Minnesota had not provided enough information concerning this

1 lump-sum statute, the state had not effectively implemented the  
2 statute. And that Jenkins was not subject to the statute,  
3 subject to the eligibility condition established by Congress.

4 The lower Court ordered that Jenkins was entitled to  
5 receive and to retain AFDC benefits, even though Congress had  
6 expressly said otherwise.

7 In the lump-sum statute, of course, Congress had said  
8 that when an AFDC recipient received a certain amount of  
9 income, the recipient would be ineligible for a fixed period of  
10 time. And Congress did not provide that if the state did not  
11 provide advance information concerning the requirement, that it  
12 did not become effective and that people weren't subject to it.

13 And in another of the 1981 OBRA changes, Congress  
14 said that if any recipient received more benefits than he or  
15 she was entitled to receive, the state was required to recoup  
16 that overpayment of benefits.

17 QUESTION: Mr. Kirwin, is the only named Plaintiff in  
18 this action with standing to assert the notice issue, Kathryn  
19 Jenkins?

20 MR. KIRWIN: That is correct, Justice O'Connor.

21 The Plaintiffs have conceded that and the lower Court  
22 found that.

23 QUESTION: And a letter was given to Ms. Jenkins  
24 when, September?

25 MR. KIRWIN: In September of 1981.



1 QUESTION: Of 1981?

2 MR. KIRWIN: Yes, Your Honor.

3 QUESTION: Which made reference to this lump-sum  
4 change?

5 MR. KIRWIN: It did, Justice O'Connor. In fact, it  
6 included quite a bit of information about the lump-sum statute.

7 QUESTION: And it is your position that that did  
8 constitute written notice, if written notice was required?

9 MR. KIRWIN: If written notice was required. In  
10 addition to that --

11 QUESTION: In your responses to interrogatories, in  
12 the proceedings below, did you acknowledge that written notice  
13 was required to recipients, as well as applicants?

14 MR. KIRWIN: Your Honor, I am not certain if that  
15 statement would have been made in answer to interrogatories.

16 QUESTION: The respondents, I thought, said that was  
17 the case. That the responses to interrogatories made no  
18 distinction between the notice required to applicants and to  
19 recipients.

20 MR. KIRWIN: Justice O'Connor, I think that what  
21 respondents were referring to, was the answers to  
22 interrogatories by the Secretary.

23 QUESTION: I see.

24 MR. KIRWIN: I would --

25 QUESTION: Well, you don't answer questions of law in

1 interrogatories anyway, do you?

2 MR. KIRWIN: Your Honor, I believe that a party can  
3 be asked to state its position concerning legal issues in  
4 interrogatories.

5 QUESTION: And was that what was done here?

6 MR. KIRWIN: Interrogatories were served on the  
7 Secretary and the Secretary's responses, we believe, were quite  
8 confusing. In fact, the two lower Courts disagreed on which  
9 side the Secretary was on, on this issue.

10 The Secretary agrees in this case, though, that his  
11 information regulation that we have been talking about doesn't  
12 provide that if information isn't given, the eligibility  
13 conditions won't be applied.

14 This Court has recognized in a number of cases that  
15 courts can't order the benefits be paid out contrary to the  
16 conditions set by Congress for the receipt of those benefits,  
17 to remedy mistakes made by government agents. Even where  
18 government agents have provided mis-information, as in FCIC v.  
19 Merrill or Schweiker v. Hansen, this Court nonetheless, has  
20 said that Congress has established the conditions upon which  
21 those monies can be paid out.

22 An administrative mistake simply doesn't create an  
23 entitlement to benefits where a person doesn't meet Congress'  
24 eligibility requirements.

25 That doesn't mean that a Court is without any

1 authority to remedy a state's failure to comply with an  
2 information regulation if that kind of obligation exists here.  
3 Certainly the Court could enjoin the state to provide the  
4 required information in the future.

5 But this Court has never gone so far as to order that  
6 the benefits be provided to a person who doesn't meet those  
7 substantive eligibility requirements.

8 We believe that the lower Court both misapplied the  
9 Secretary's information regulation and that it granted a remedy  
10 which was expressly precluded by Federal Law and we ask this  
11 Court to reverse the decision of the 8th Circuit.

12 And, if there are no questions, I will reserve the  
13 remainder of my time for rebuttal.

14 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Kirwin, we  
15 will hear now, from you, Mr. Larkin.

16 ORAL ARGUMENT OF PAUL J. LARKIN, JR., ESQ.,  
17 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE  
18 IN SUPPORT OF PETITIONER

19 MR. LARKIN: Thank you, Mr. Chief Justice and may it  
20 please the Court?

21 Congress has not imposed any notification  
22 requirements on the Secretaries or on the states, in order to  
23 implement the AFDC program. The Secretary has therefore been  
24 required to determine what types of notice the state should be  
25 required to give and whether the notices should be uniform

1 throughout the nation.

2 In undertaking that responsibility, the Secretary's  
3 scheme has three parts. First, applicants, that is a person  
4 defined by the regulations who has submitted an application and  
5 whose application has not been terminated, must be given  
6 information about the basic outlines of the program.

7 Second, a recipient must be told to inform his or her  
8 caseworker about changes in circumstances, so that the  
9 caseworker can counsel that person about the effect, if any,  
10 those changes in circumstances may have.

11 Third, applicants and recipients must be given  
12 written information explaining why an application was rejected  
13 or benefits have been terminated.

14 The Secretary's scheme leaves considerable discretion  
15 to the states, because the circumstances under which the  
16 different AFDC programs are implemented, as well as the factors  
17 that are relevant to each person will vary from state-to-state  
18 and from person-to-person.

19 There is no reason to believe that the situation  
20 under which the AFDC program is implemented, in Minnesota is  
21 the same as what it is implemented like in New York City.

22 There are a variety of different factors that can  
23 vary from place-to-place or from person-to-person. The amount  
24 of income or resources that individuals may have, whether  
25 individuals are receiving income or resources from some other



1 type of social service program, the number of caseworkers in a  
2 community, the caseload those people may have, the ability of a  
3 client to reach a caseworker's office to discuss matters with  
4 him personally, and the ability of people in a particular  
5 locality to understand written or spoken english.

6 Because these matters can vary greatly from state-to-  
7 state, the Federal Government has left the states considerable  
8 latitude in deciding how best to implement the information  
9 requirements of the AFDC program.

10 The states, in turn, have to make two judgments.  
11 First, advance written notice to beneficiaries, may not be the  
12 most effective way of providing information about the operation  
13 of the program. And face-to-face counseling, counseling over  
14 the telephone, or other types of circumstances like that may be  
15 far more appropriate.

16 Some states may decide that the best way to to  
17 communicate information to someone is after a person has been  
18 accepted into the program, to have that person come in for  
19 counseling and at that time, have that person told about a  
20 variety of different general obligations and also be told that  
21 they should report changes in circumstances to a caseworker.

22 In other circumstances, a state may decide that  
23 written information is better. And different people can differ  
24 as to what is reasonable. Here, for example, the affidavits  
25 submitted by the caseworkers and other personnel who administer

1 the AFDC program in Minnesota, which affidavits are reprinted  
2 in the Joint Appendix, indicate that the affiants believed in  
3 their experience, the best way to communicate the effect of the  
4 program to a person was to tell a person before or after, for  
5 example, a lump-sum had been received, about how that may or  
6 may not affect his circumstances.

7 Not every one of the different rules, including the  
8 lump-sum rule, will affect every person who participates in the  
9 program. The lump-sum rule is, itself, a contingency --  
10 certain events have to occur before it affects anyone.

11 In addition, there is evidence in the record,  
12 submitted in one of the affidavits by Petitioner's state  
13 officials that at least in one county, that is described as  
14 being average in size, somewhere between only one and five  
15 percent of the people in the program are affected by the lump-  
16 sum rule. It may also be that not everyone who receives a  
17 lump-sum will necessarily have their income reduced as a  
18 result.

19 There may be other circumstances that occurred during  
20 the same period. For example, there may be the unfortunate  
21 circumstance that medical expenses might need to be incurred.  
22 The result is, that whether or not a person receives a lump  
23 sum, can itself not necessarily affect the eligibility or  
24 continued eligibility determination.

25 In addition, states are entitled to take into account

1 the fact that advance written notice might be costly and every  
2 dollar spent on the implementation of the program is a dollar  
3 that can't be paid out to beneficiaries.

4 QUESTION: Mr. Larkin, can I backup for a second?

5 You described three different categories of notice  
6 that you say the Secretary under its regulations must give. One  
7 is applicants about the basic information and the second was  
8 recipients were told to contact their caseworker and third, is  
9 the statement of reasons when there is an adverse action.

10 As to the first, which you referred only to  
11 applicants, that you are referring are you not, to the  
12 regulation which the interrogatory answer that I think Justice  
13 O'Connor referred to earlier, described as referring to  
14 applicants and recipients.

15 MR. LARKIN: Let me address that now.

16 QUESTION: I think it is 206.10(a)(ii).

17 MR. LARKIN: Right.

18 There are two answers to interrogatories that are  
19 relevant here. One shows up at Page A-89, and the other is at  
20 Page 90 and 91 of the Joint Appendix.

21 QUESTION: What were the pages again?

22 MR. LARKIN: I am sorry. The first one was 89 and 90  
23 to 91.

24 The second answer we say, states a considerable  
25 latitude and are not required to publicize the lump-sum rule in

1 specially developed pamphlets or bulletins.

2 That is the same phrase that shows up in the  
3 subsection I regulation that is at issue in this case.

4 QUESTION: This is A-89, you say?

5 MR. LARKIN: Yes, in the Joint Appendix.

6 No, well, the one I just read was from 90 to 91.

7 QUESTION: Which of those, just to help?

8 I have in front of me the red brief at Page 18, which  
9 quotes one of these, which is 18 and 19 of the red brief. I  
10 gather that is the one at 89, isn't it?

11 MR. LARKIN: Yes, that is the one on the prior page.

12 QUESTION: Okay, I am sorry.

13 MR. LARKIN: The one at 90 to 91 says, for the  
14 subsection I regulation which is at issue here, does not  
15 require a state to publicize the lump-sum rule or any other  
16 eligibility requirements in specifically developed pamphlets or  
17 bulletins.

18 The term, specifically pamphlets or bulletins, is the  
19 term that also shows up in the regulations, subsection I.

20 Now, at the prior page, I think the problem that  
21 resulted was that the answer attempted to answer a question by  
22 referring to two regulations, at the very outset of the answer  
23 at Page 89, it refers to Federal Regulations at subsection I  
24 and 2, so that it is talking about applicants and recipients.

25 So, I think later on, when the statement says, this



1 would generally include advising applicants and recipients of  
2 their obligation, if there is a drafting error it occurred  
3 because the sentence was read in light of a completer question.

4 But it is not the Secretary's position that you have  
5 to provide applicants with written information about the lump-  
6 sum rule.

7 QUESTION: I see.

8 And is it I that refers to applicants and II that  
9 refers to recipients, is that how it works?

10 MR. LARKIN: Yes.

11 QUESTION: I see.

12 MR. LARKIN: Then the reasons, those I have  
13 explained. Not every applicant will, of course, be accepted.  
14 And what the Secretary would like is to have people given  
15 information about the basic outlines of the program. And what  
16 the Secretary also wants to be sure is that the material is  
17 simple and understandable and is therefore, readily accessible  
18 to people.

19 The Secretary, I don't think, would believe that  
20 sending a copy of all the Federal statutes and regulations and  
21 Social Security action transmittals and state materials, which  
22 would in a way, I suppose, arguably satisfy a literal  
23 requirement of the rule, which is what the Eighth Circuit has,  
24 the way the Eighth Circuit has read it, would be very helpful  
25 to people.

1           After all, the material should be simple and  
2 understandable, because the ability of people to contact their  
3 caseworkers may differ.

4           The basic assumption of the system here, is that a  
5 person will be able, working with his or her caseworker, to  
6 understand how the system affects that person. The Secretary  
7 has felt that it believes that it is not prudent to require  
8 that all different types of written material be provided to  
9 everyone in the program.

10           The regulation, itself, subsection I, on which the  
11 Court of Appeals relied only applies to applicants. And even in  
12 that respect, we don't believe that applicants should be  
13 flooded with a variety of materials.

14           The Secretary's regulation, we believe, is designed  
15 to, or the whole scheme is designed to afford people notice  
16 about how this system works, to help them understand what  
17 happens when they receive new income.

18           Giving them a variety of notice in written form may  
19 be damaging, because they may not understand how it works.

20           Unless the Court has any further questions?

21           CHIEF JUSTICE REHNQUIST: Thank you, Mr. Larkin.

22           I will hear now from you, Ms. Davison.

23           ORAL ARGUMENT BY LAURIE N. DAVISON, ESQ.

24                           ON BEHALF OF RESPONDENTS

25           MS. DAVISON: Thank you Mr. Chief Justice and may it

1 please the Court.

2           The question before this Court is whether the  
3 District Court and the Court of Appeals properly applied a  
4 Federal Regulation which requires that certain information be  
5 provided in written form. And the regulation explicitly  
6 requires that information about conditions of eligibility and  
7 the responsibilities of applicants and recipients of assistance  
8 be included in that information.

9           Now, the Minnesota Welfare Department does provide  
10 certain information in written form. These are the two  
11 pamphlets that are in the Joint Appendix, which are given by  
12 the Welfare Department to everyone who applies for AFDC.

13           If the Commissioner had added one or two sentences  
14 about the lump-sum rule in 1981, or 1982, or 1983, or 1984, we  
15 would not be here today. But for some unknown reason, the  
16 Commissioner chose not to say a word about the lump-sum rule,  
17 in any written information given to anyone who applied for AFDC  
18 between October of 1981, when the lump-sum statute went into  
19 effect and July of 1985, when the Commissioner complied with  
20 the District Court's order requiring that an explanation of the  
21 lump-sum rule be provided.

22           QUESTION: Of course, the particular plaintiff here,  
23 if she had contacted her caseworker, as she was supposed to,  
24 would have presumably been advised of the rule by her  
25 caseworker.

1 MS. DAVISON: Ms. Jenkins, Your Honor, did tell the  
2 Welfare Department that she was expecting a lump-sum either  
3 from Social Security Disability Benefits, or Workers'  
4 Compensation Benefits.

5 The record is clear on that point and at no point --

6 QUESTION: I thought that the record was clear that  
7 she did not report the lump-sum payment to her caseworker as  
8 she was supposed to.

9 MS. DAVISON: No, Your Honor, I think that is not  
10 correct.

11 What the record indicates is that she got the lump-  
12 sum on October 31, 1983, and she was never told that she had to  
13 call her worker before she spent it. She was told in writing,  
14 in this pamphlet, that what she had to do was to report it in  
15 writing on the 8th of the following month, by the 8th of the  
16 following month and she did that.

17 The problem for Ms. Jenkins is that because she was  
18 facing a mortgage foreclosure, she spent the money, she paid  
19 her mortgage before calling her worker. But it is also --

20 QUESTION: I thought she -- the family also received  
21 \$16,000 in a workmens' compensation lump-sum benefit which was  
22 never reported?

23 MS. DAVISON: Your Honor, that is part of what the  
24 Commissioner is claiming and it is part of an attempt by the  
25 state to paint Ms. Jenkins as a cheat and that is simply not



1 supported by the record.

2 It is true that she received a lump-sum payment in  
3 December of 1981, or January of 1982, when she was a recipient  
4 of the AFDC benefits. But she says that she did report it.

5 QUESTION: So you say that is in dispute.

6 In any event, was there some letter sent in 1981,  
7 dated September 18, 1981, that made some mention of the lump-  
8 sum rule?

9 MS. DAVISON: Yes, there was, Your Honor.

10 QUESTION: And Ms. Jenkins received that?

11 MS. DAVISON: Ms. Jenkins presumably received that,  
12 but she --

13 QUESTION: So she did get something other than what  
14 was in that pamphlet?

15 MS. DAVISON: She got something when she was a  
16 recipient, Your Honor, in 1981.

17 QUESTION: Right.

18 MS. DAVISON: She was not a recipient for some eight  
19 months in 1982. She reapplied, she was an applicant for AFDC  
20 benefits in November of 1982, and when she applied for those  
21 benefits in 1982 she, like all the other people who applied for  
22 benefits, after the lump-sum statute went into effect, got no  
23 information about the lump-sum statute.

24 Now, the other thing about Ms. Jenkins is that after  
25 getting the September 1981 letter which did mention the lump

1 sum statute, she got a lump-sum and when she -- and then went  
2 off assistance because her husband's workmens' compensation  
3 made the family ineligible for welfare.

4 When she reapplied for AFDC benefits in November of  
5 1982, she was asked to verify how that lump-sum, the 1981-1982  
6 lump-sum was spent, she provided that verification and she was  
7 found eligible.

8 That lump-sum, despite that September 1981 notice was  
9 treated under the prior lump-sum statute.

10 And so she had every reason to believe that the rule  
11 was as it had been in the past -- that she could receive lump-  
12 sum income, spend it, report it, verify the expenses and then  
13 that lump-sum would have no effect on her future eligibility  
14 for assistance.

15 But the key is that she was an applicant in 1982 and  
16 was given no information about that.

17 QUESTION: Ms. Davison, can I interrupt you right  
18 there, because there is one fact I am a little puzzled about.

19 She was a re-applicant was she, in November of 1982,  
20 having been off the rolls for how long?

21 MS. DAVISON: She had been off the rolls for eight  
22 months.

23 QUESTION: Well, then was she a recipient in  
24 September of 1981?

25 MS. DAVISON: She was a recipient in September of

1 1981.

2 QUESTION: So she got the September letter?

3 MS. DAVISON: She got the September letter.

4 QUESTION: So the fact then, I mean if that were  
5 adequate and I know you dispute that, but if that were adequate  
6 then she would be on notice of at least the contents of that  
7 letter.

8 MS. DAVISON: She was on notice in September of 1981.

9 QUESTION: Right.

10 MS. DAVISON: But then she got a lump-sum that was  
11 treated not under the old lump-sum rule, it was not treated  
12 under the new lump-sum statute.

13 QUESTION: When did she get that?

14 MS. DAVISON: In September of 1981 she got the  
15 September letter.

16 QUESTION: Right.

17 MS. DAVISON: And in either December of 1981 or  
18 January of 1982 she got a lump-sum that was treated when she  
19 reapplied in November of 1982, eight months later, it was  
20 treated, that previous lump-sum was treated as income in the  
21 month received and a resource thereafter that did not affect  
22 her future eligibility for AFDC.

23 QUESTION: That was because the program did not go  
24 into effect until February of 1982?

25 MS. DAVISON: Exactly, exactly and the state did

1 nothing to tell --

2 QUESTION: But she did have notice that lump-sums  
3 were a matter of special interest to the agency.

4 MS. DAVISON: For years the program has required --

5 QUESTION: I understand what it was, but she did have  
6 a duty to report lump-sums.

7 MS. DAVISON: And she did.

8 She reported her lump-sum on a timely basis.

9 QUESTION: She reported the second lump-sum --

10 MS. DAVISON: The first lump-sum is not at issue. The  
11 reason that there is a -- Justice O'Connor asked about whether,  
12 about the \$16,000 lump-sum payment, and there is no finding of  
13 fact by the District Court on whether or not she reported that  
14 lump-sum because it was not relevant to this case.

15 She was a new applicant in November of 1982, and got  
16 no information about the lump-sum rule. She --

17 QUESTION: Well, I don't understand.

18 On the one hand you seem to be telling me that  
19 November 1892 her lump-sum was explained to her and it had been  
20 treated under the old rule and therefore, she had a right to  
21 rely on it and now you seem to be saying that she did not know  
22 anything about it.

23 MS. DAVISON: She did not know anything about the new  
24 rule. She was not told that the law had changed.

25 QUESTION: Well, she had been told in September of



1 1981, though, she had gotten that letter.

2 MS. DAVISON: She was told in September of 1981 that  
3 the law had changed.

4 QUESTION: Right.

5 MS. DAVISON: That letter also said that this is  
6 based on current information and we may change our minds.

7 QUESTION: Well?

8 MS. DAVISON: But she was told in November of 1981  
9 that there was some change but her experience after receiving  
10 that letter told her and would have told anyone that you could  
11 spend your lump-sum income on debts, report it, verify it, and  
12 you would be eligible --

13 QUESTION: Now, is the only lump-sum that she  
14 received that is relevant, the one that she received between  
15 the receipt of the letter and the time she reapplied?

16 MS. DAVISON: No. She received a lump-sum in October  
17 of 1983, a year after she applied for benefits.

18 QUESTION: And was that lump-sum reported?

19 MS. DAVISON: It was reported, it was reported two  
20 days after she received it. She was told in writing --

21 QUESTION: But she already spent it.

22 MS. DAVISON: -- she had eight days, she had 10 days  
23 to report it, or eight days to -- excuse me, or she had until  
24 eight days into the following month to report it.

25 QUESTION: And the problem was that she had already

1 spent it in those two days, that is right, I remember it now.

2 MS. DAVISON: Exactly.

3 And the Welfare Department knew that she was  
4 expecting a workers' compensation check or a Social Security  
5 disability check and yet, even with that knowledge, they told  
6 her nothing about her obligations under the statute to budget  
7 and use that money to pay for her family's ordinary living  
8 expenses.

9 What the District Court did here is to say to the  
10 Commissioner, Commissioner you violated the regulation, correct  
11 that violation. That was the sum total of the burden imposed  
12 by the District Court and affirmed by the Court of Appeals.

13 And I want to make it very clear what this case is  
14 not about. The Court did not enjoin implementation of the  
15 lump-sum statute. The Court did not hold that any class member  
16 was eligible for benefits because they did not get an  
17 explanation from some statute.

18 We are not arguing that an explanation of the statute  
19 was a condition precedent to the application of the lump-sum  
20 statute. That is not our position.

21 QUESTION: Ms. Davison, your opponent says that the  
22 District Court in the Eighth Circuit required payments to be  
23 made to your clients which were contrary to the Congressional  
24 authorization.

25 What is your response to that?

1 MS. DAVISON: That is not correct, Your Honor, that  
2 is not what the Court required.

3 Kathryn Jenkins got AFDC benefits during her period  
4 of ineligibility. Not because of anything that the District  
5 Court did, but because she filed an administrative appeal and  
6 Federal Regulations require that you get continued benefits  
7 pending an administrative appeal decision.

8 What the District Court did, or what the Court of  
9 Appeals did, was conclude that there had been a violation of  
10 law, there had been a violation of the regulation that required  
11 an explanation of the lump-sum statute. And that given that  
12 violation, the Court had the authority to fashion a remedy for  
13 Kathryn Jenkins and the remedy that was fashioned was an  
14 injunction against the state recovering a \$5,000 overpayment.

15 QUESTION: Even though it was clearly an overpayment  
16 under the Act of Congress?

17 MS. DAVISON: That is right. It was an overpayment.

18 QUESTION: What authority did the Eighth Circuit cite  
19 for that proposition? What of our cases?

20 MS. DAVISON: The Eighth Circuit did not make clear,  
21 Judge Arnold did not make clear the basis for that order.

22 To the extent that the opinion suggests that the  
23 basis for that equitable order is that the statute did not take  
24 effect and we disavow that position.

25 It is our position that the Court has traditional

1 equitable powers to fashion remedy when there has been a  
2 violation of law, and there was a violation of law in this  
3 case. That there is no statute that --

4 QUESTION: There was a violation of the regulation,  
5 as you contend.

6 MS. DAVISON: The regulation, that is right.

7 There is nothing, there is no statute which deprives  
8 the Court of the equitable power to fashion a remedy and the  
9 Court properly exercised its discretion in fashioning the  
10 remedy.

11 QUESTION: Ms. Davison, the statute not only deprived  
12 her of eligibility but there is also an explicit provision in  
13 the statute requiring recoupment of overpayments, isn't there?

14 The Court, in effect, fashioned a remedy that  
15 overrode that provision.

16 MS. DAVISON: There is, Your Honor, a statute which  
17 governs the relationship between the State and the Federal  
18 Government. It says that if a state wants to get federal funds  
19 in the administration of its AFDC program, that the State must  
20 have in its state plan a provision that overpayments will be  
21 recovered.

22 QUESTION: I see.

23 MS. DAVISON: But that statute does not purport  
24 either in expressed or implicit terms to limit the traditional  
25 equitable powers of the Federal Court. And as this Court ruled



1 in Heckler v. Day, even the Court in Heckler v. Day found that  
2 it was clear from Congressional history that Congress did not  
3 want a Court to impose time limits on the Secretary in deciding  
4 Social Security benefits, but that the Court, in a footnote  
5 said, despite our conclusion, nothing in this decision limits a  
6 Federal Court from applying equitable principles in an  
7 individual case, to apply time limits in an individual case and  
8 to award benefits if the time limits are not kept.

9 QUESTION: I have tried to think of an analog of some  
10 other case I could come up with where the Court has fashioned a  
11 remedy that specifically allows somebody to do something which  
12 a statute prohibits.

13 And I can't think of one, can you?

14 And I did not see any in your brief. Do you know any  
15 other example, where a Court has said, because somebody has  
16 violated a regulation or because of some other rule, we are  
17 going to say you can ignore the statute?

18 MS. DAVISON: Well, Your Honor, in Goldberg v. Kelly  
19 the Court said that there must be a right to a due process  
20 hearing before benefits are terminated.

21 QUESTION: That is a Constitutional problem.

22 MS. DAVISON: That is a Constitutional case, Your  
23 Honor.

24 But nonetheless, some of those people would not have  
25 been eligible for benefits and at the time, there was no

1 provision for recovering overpayments when the overpayment was  
2 caused not by the client error.

3 And so, as a matter of fact, what happened in that  
4 case is that people who may not have been eligible were awarded  
5 benefits. That is the closest analogy that I can come up with.

6 There may be other cases, Your Honor, but I am not  
7 aware of them.

8 QUESTION: May I go back for a moment to the -- your  
9 claim depends on there having been a violation of law by the  
10 state administrator, at the time of the second application in  
11 November of 1982, by failure to explain the lump-sum  
12 requirement.

13 Would in your view, would it have been satisfactory  
14 to explain that requirement orally?

15 MS. DAVISON: No, because the Secretary's regulation  
16 says that the information must be provided in writing and  
17 orally as appropriate.

18 If the Secretary --

19 QUESTION: Well, what it says is in writing about  
20 coverage conditions of eligibility, scope of the program, and  
21 related services available. I suppose there is some ambiguity  
22 in precisely what detail that information has to be given in.

23 MS. DAVISON: If there is any ambiguity, Your Honor,  
24 it seems to me that it is about what information has to be  
25 provided but not whether it has to be in writing or whether it

1 can be simply oral information.

2 QUESTION: Right.

3 MS. DAVISON: So the question of whether or not it  
4 has to be in writing, I think, has to be answered in the  
5 affirmative. It has to be because that is what the Secretary  
6 said. Now, if the Secretary, in his judgment, feels that as a  
7 policy matter it is more effective to impart information orally  
8 than in writing, the Secretary is free to amend that  
9 regulation.

10 QUESTION: But what if, at the time of the  
11 application, your client got a pamphlet was it that -

12 MS. DAVISON: That is right, two pamphlets.

13 QUESTION: And they are in the record, I gather?

14 MS. DAVISON: They are in the record, in the Joint  
15 Appendix.

16 QUESTION: And do they mention the lump-sum  
17 requirements?

18 MS. DAVISON: Not a word.

19 QUESTION: No mention of lump-sum?

20 MS. DAVISON: No mention.

21 QUESTION: But, Ms. Jenkins had received the  
22 September 18, 1981 letter which did mention the new rule.

23 MS. DAVISON: That is right, but she got nothing at  
24 the time that she was an applicant.

25 It --

1 QUESTION: Let's assume -- so it would not make any  
2 difference in your position if the letter she got when she was  
3 a recipient was adequate notice?

4 MS. DAVISON: That is correct, Your Honor.

5 QUESTION: So you would say that letter is just  
6 irrelevant because she should have had another notice when she  
7 reapplied?

8 MS. DAVISON: That letter is totally irrelevant to  
9 the claim the Plaintiff and her class as to whether the  
10 regulation was violated. It is not irrelevant to the question  
11 of balancing of the equities and fashioning relief to the  
12 Plaintiff Jenkins.

13 It would be appropriate for the Court to have  
14 considered the fact that she had gotten this notice, just as it  
15 would be appropriate for the Court to consider the fact that  
16 she got a lump-sum after that, which was treated under the old  
17 rule, not the new rule.

18 But her rights were violated as an applicant, as were  
19 the other class members.

20 QUESTION: Because she got no notice then?

21 MS. DAVISON: Because she got no notice then, even  
22 though the Welfare Department knew that she was anticipating  
23 the receipt of a Social Security check or Workers' Compensation  
24 check.

25 QUESTION: May I ask one other question?



1           In the Joint Appendix at A-29 there is one pamphlet  
2 and another one at A-31, are those the two she got? She got  
3 both of those?

4           MS. DAVISON: She got both of those.

5           QUESTION: Okay.

6           MS. DAVISON: And it is not true as Mr. Kirwin  
7 suggested that these pamphlets only explain eligibility which  
8 are applicable to everyone on the program.

9           One of the eligibility requirements explained in the  
10 pamphlet, I think it is A-29, is that you, one of the child's  
11 parents has to have an illness which lasts at least 30 days.  
12 That is an eligibility requirement for benefits under the AFDC  
13 program for families who are incapacitated or one member is  
14 incapacitated. And they are less than 2 percent or about 2  
15 percent of the entire AFDC population on that particular  
16 program.

17           The lump-sum rule is applicable across the board in  
18 the same way that this is applicable across the board. It only  
19 affects people who have an incapacitated parent. The lump-sum  
20 rule only affects people who happen to receive lump-sum income.

21           But it only has direct implication for a relatively  
22 small percentage of the AFDC population. If there is any  
23 eligibility condition that has to be explained to people, it is  
24 the lump-sum rule. It is not a case, this is not a case about  
25 some abstract interest in information.

1           When Congress enacted the lump-sum statute, it was  
2 for the express purpose of imposing the responsibility on AFDC  
3 recipients of budgeting lump-sum income and to use it on  
4 ordinary living expenses in lieu of AFDC.

5           Now, that simply is not going to happen unless people  
6 know of that responsibility. And AFDC recipients even in  
7 Minnesota live substantially below the poverty level. They are  
8 bound to be under substantial financial pressure to spend lump-  
9 sum income quickly.

10           And telling them about their responsibilities and  
11 about the fact that they are going to be ineligible for AFDC  
12 for a number of months, at the time of termination is simply  
13 too late. That may be a month after the family got the lump-  
14 sum income.

15           It is especially unfair to somebody like Kathryn  
16 Jenkins and other people who had reason to believe that they  
17 could spend lump-sum income on legitimate debts and that it  
18 would not affect their future eligibility for assistance.

19           And the Commissioner agreed, excuse me, the Secretary  
20 agreed in answers to interrogatories that the operation of the  
21 lump-sum statute had to be explained.

22           QUESTION: Of course most people don't get  
23 explanations of changes in law. I mean, there have been  
24 massive changes in the Internal Revenue Code for example and my  
25 friendly revenue agent has not advised me what changes there

1 are going to be.

2 Now, to be sure, that just applies to matters that  
3 are not as crucial as getting subsistence payments, but  
4 nonetheless, it is the principle of our law that it is up to  
5 you to find out what your entitlements are.

6 MS. DAVISON: But we have here, a Federal Regulation  
7 which says that you do tell people about the eligibility  
8 conditions, you do tell them what their responsibilities are.  
9 And this is clearly a responsibility. That is what the  
10 Secretary said to Congress and that is what the Secretary said  
11 in regulations implemented in the lump-sum statute. This is a  
12 responsibility of caretakers.

13 QUESTION: Do we have to agree with you that  
14 applicant and recipient are one and the same in order to agree  
15 with you about the regulation?

16 Or is part of your claim that she did not get a  
17 notice when she was a new applicant is that --

18 MS. DAVISON: That is right.

19 No, I think you don't have to agree with me that  
20 applicants and recipients mean the same thing. The whole issue  
21 about whether the regulation applies to recipients as well as  
22 applicants is really a very narrow issue and affects only a  
23 very minor part of this case.

24 The District Court ordered that a explanation of the  
25 lump-sum statute be given to people who were then recipients of

1 AFDC because as applicants they had not gotten any information.

2 That was accomplished in November of 1985 and is  
3 moot. The Court ordered that new applicants be given this  
4 explanation at the time of application and the  
5 applicant/recipient argument would not affect that relief.

6 The Court also argued that the explanation be given  
7 every six months, at the time of redetermination.

8 What this whole argument boils down to --

9 QUESTION: That does not affect the one remaining  
10 named Plaintiff, anyway?

11 MS. DAVISON: That is right.

12 I would also like to make clear as to the question  
13 about the named Plaintiff and the standing of the named  
14 Plaintiff, and her adequacy as a class representative, is that  
15 there are other class members.

16 If she is not an adequate class representative, then  
17 the case could have been remanded for the substitution of a  
18 different Plaintiff.

19 So that even if the Court feels that the September  
20 1981 notice affects her standing, then it should have been  
21 remanded for someone else to intervene on behalf of the class.

22 The question of whether or not recipients are  
23 entitled to benefits boils down to whether the State is  
24 required to send one piece of paper which is already prepared  
25 to people who are already getting information at their six



1 month eligibility determination so that it is really a very  
2 minor issue in the case.

3 And since the Commissioner never made this argument  
4 to the District Court or to the Court of Appeals, it certainly  
5 can be affirmed as an appropriate form of relief.

6 They never claimed that there was any burden and  
7 there certainly isn't any burden.

8 Now, the Commissioner --

9 QUESTION: Excuse me, I gather that your point is  
10 that the requirement for oral consultation is not adequate  
11 because you are not required to contact your caseworker  
12 immediately upon receiving the lump-sum payment, is that it?

13 MS. DAVISON: That is right.

14 QUESTION: So that between the time you receive it  
15 and the 8th of the next month, or 10 days, whichever is longer  
16 is that --

17 MS. DAVISON: Whichever is shorter.

18 QUESTION: Whichever is shorter, you can blow the  
19 whole thing and then it is too late.

20 MS. DAVISON: That is right. And the first answer,  
21 Your Honor, is that the Secretary says it has to be in writing,  
22 but I agree with the Secretary's determination because the  
23 system works on written communication, that is how it is set  
24 up. And it is not adequate to wait until the information is  
25 reported and it is reported in writing by the 8th of the

1 following month. And then the Welfare Department only has to  
2 send a termination notice 10 days before the end of, 10 days  
3 before the beginning of the following month.

4           So, a lot of time can elapse. And it is also very  
5 difficult to reach your financial worker. Very often the phone  
6 is busy and people don't have telephones. The system, unlike  
7 the previous case, which did not reflect the real world, this  
8 case does reflect the real world, and in the real world of the  
9 Welfare Department, Welfare Administration, it makes sense to  
10 require that this information be provided in writing.

11           The Commissioner complains that the decision of the  
12 Court of Appeals left too many unanswered questions about the  
13 scope and applicability of this Federal Regulation.

14           If the Court had written a broad decision trying to  
15 anticipate all of the questions that might arise, as to the  
16 applicability of the regulation, and answered those questions,  
17 then the Commissioner would have a valid basis for complaining  
18 that as the Commissioner does complain, that the Court over  
19 stepped its judicial bounds, and interfered with the  
20 administration of the Welfare Department.

21           That is not what happened here. Judge Arnold  
22 answered the questions that were raised by the complaint in a  
23 reasoned and principled manner and if there are questions that  
24 require answers, the answers should be provided by the  
25 Secretary.

1           QUESTION: Let me just ask one other question about  
2 the specific violation of the regulation was that you treat the  
3 lump-sum as a condition of eligibility that should have been  
4 explained, is that right?

5           The pamphlets are okay on coverage and scope of the  
6 program but this one condition of eligibility is not adequately  
7 explained or is it that the responsibilities of the recipients  
8 are not adequately explained?

9           MS. DAVISON: I think it is both, because the lump-  
10 sum rule, unlike the vast majority of other rules, is not only  
11 a condition of eligibility but also in order to effectuate  
12 Congress' intent, imposes responsibilities on welfare  
13 recipients.

14           And that is one way that the Court of Appeals  
15 narrowed its decision and this Court could, too, that not all  
16 eligibility requirements impose responsibilities on recipients  
17 to take affirmative action.

18           QUESTION: And here, she knew she had to report but  
19 she did not know that she had to report before she spent the  
20 money?

21           MS. DAVISON: That is right.

22           And she did not know, even if she had reported,  
23 before she spent the money, she may or may not have been told,  
24 right then, what she could do with it.

25           QUESTION: But it seems to me that your case must

1 depend on the assumption that she would have been told, because  
2 then the failure of her to report -- I mean telling her the  
3 responsibility would not have done any good.

4 MS. DAVISON: What we think she should have been told  
5 under the Federal Regulation is, in one sentence as this Court  
6 indicated in Lukhard, the lump-sum rule requires that if you  
7 receive lump-sum income you will be rendered ineligible for the  
8 number of months that it would take you to use the lump-sum  
9 spending each month no more than your welfare grant.

10 That is what she was required under the regulation to  
11 be told.

12 QUESTION: Well, the letter pretty much said that but  
13 that it is not in so many words, I realize. But it made it  
14 clear that she could be ineligible for a period of months,  
15 which would be a change from the old rule.

16 MS. DAVISON: If they had given her this letter, that  
17 letter, in November of 1982, or given that letter to anybody  
18 who applied for AFDC benefits, any time between the  
19 implementation of the lump-sum statute, we wouldn't be here.

20 They did not give that letter to anyone other than  
21 people who were then recipients in September of 1981. They did  
22 not give it to her and they did not give it to the 200,000  
23 families who applied for benefits.

24 This Court doesn't have to judge the adequacy of that  
25 letter.



1           QUESTION: Ms. Davison, suppose that I disagree with  
2 you that the Court can give, can prevent the requirement that  
3 she give the money back?

4           Could I nonetheless uphold the rest of the relief  
5 that the Court gave? I mean the, in particular, the mandate  
6 that this information be included?

7           MS. DAVISON: Absolutely.

8           QUESTION: How can I do that though, because who  
9 would have had standing? She certainly does not have standing  
10 to get that relief. That relief does her no good. She is  
11 already, you know, she is not an applicant any more, she is on  
12 the program.

13          MS. DAVISON: No, but she was then, and she continues  
14 to be a recipient and as I understand standing, it is a  
15 threshold question.

16          QUESTION: Well, the relief has to benefit the  
17 individual that is suing and I don't see how this relief, other  
18 than the monetary relief does her a bit of good.

19          MS. DAVISON: She is a representative of the class  
20 and the class is an ongoing class of people who apply.

21          QUESTION: But that is the government who came up  
22 here, isn't it?

23          MS. DAVISON: The government petitioned for cert,  
24 yes.

25          QUESTION: And they object to more things than just

1 getting the money back.

2 MS. DAVISON: They object --

3 QUESTION: And aren't they entitled to, even though  
4 there is only one party on the other side?

5 MS. DAVISON: I am not sure I understand your  
6 question, Justice White. There, I think the ongoing relief  
7 that was ordered, it is certainly not moot and there is a class  
8 --

9 QUESTION: But the government is entitled to object  
10 to that relief?

11 MS. DAVISON: Absolutely.

12 QUESTION: And I don't -- do you want to defend it or  
13 not?

14 MS. DAVISON: To the relief?

15 QUESTION: Yes.

16 MS. DAVISON: To the relief for the class?

17 QUESTION: Yes.

18 MS. DAVISON: Absolutely.

19 To the relief of Kathryn Jenkins, yes, but not on the  
20 basis that she was eligible for benefits, rather on the basis  
21 that the Court had the equitable power to fashion a remedy and  
22 that the exercise of that equitable power was not an abuse of  
23 an abuse of discretion.

24 QUESTION: Thank you, Ms. Davison.

25 Mr. Kirwin, you have three minutes remaining.

1 MR. KIRWIN: Thank you, Mr. Chief Justice.

2 QUESTION: Mr. Kirwin, may I ask you to tell us what  
3 written notice was given to applicants for welfare before 1985  
4 about the lump-sum rule, in writing?

5 MR. KIRWIN: Before 1985, Your Honor, for the period  
6 from 1981 to 1985.

7 QUESTION: Yes, in writing.

8 MR. KIRWIN: Okay, applicants weren't given any  
9 written information concerning the lump-sum rule with this  
10 exception: that applicants filled out the application form,  
11 filled out the forms for redetermination of eligibility and  
12 there are some examples of those in the Joint Appendix. They  
13 are missing \$16,000 that was not reported on the forms that  
14 called for it.

15 Those forms specifically listed lump-sum income and  
16 so that applicants knew, even though they may not have known  
17 precisely how it would be treated, they certainly knew that  
18 lump-sum income was something that had some bearing on their  
19 AFDC eligibility.

20 QUESTION: But got no specific written notice about  
21 it until as a result of this lawsuit?

22 You implemented new information?

23 MR. KIRWIN: That is correct. No information other  
24 than the forms that --

25 QUESTION: And do you agree that the regulation of

1 the Secretary does require written notice to be given to  
2 applicants?

3 MR. KIRWIN: Concerning the lump-sum statute?

4 QUESTION: Concerning the lump-sum rule?

5 MR. KIRWIN: We very strongly disagree with that,  
6 Your Honor.

7 The Plaintiffs, the Respondents in their brief,  
8 concede that the regulation doesn't require that descriptions  
9 be given of all eligibility requirements. They say that and  
10 they say that the lower Court did not say that.

11 But they say that it would be a good idea that there  
12 is something special about the lump-sum statute. The lump-sum  
13 statute certainly has an impact on those families that are  
14 affected by it. Other eligibility requirements have an impact  
15 on the families that are affected by them.

16 The important thing is that the Secretary --

17 QUESTION: So when the Secretary in response to the  
18 written interrogatories said that information, in writing, had  
19 to be given to applicants about the lump-sum rule and its  
20 operation that was wrong, is that right?

21 MR. KIRWIN: Your Honor, I don't believe that is what  
22 the Secretary said.

23 QUESTION: Well, that is on Page 89 of the Joint  
24 Appendix.

25 MR. KIRWIN: Well, Mr. Larkin, I think has explained



1 that and I was perhaps too glib before in saying that the  
2 answers were confusing. I think to an extent they were but it  
3 was because the Secretary tried to describe obligations under  
4 two different regulations at one time.

5 I would like to make a brief comment about the remedy  
6 issue and the limitations on the lower Court's authority to  
7 grant a remedy.

8 I think Respondents are unclear as to what it was  
9 that the lower Court said.

10 I see that my time is up.

11 Thank you.

12 CHIEF JUSTICE REHNQUIST: Yes, it has, Mr. Kirwin,  
13 thank you.

14 The case is submitted.

15 (Whereupon, at 12:05 p.m., the case in the above-  
16 entitled matter was submitted.)

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REPORTER'S CERTIFICATE

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DOCKET NUMBER: 86-978

CASE TITLE: SANDRA GARDEBRING, COMMISSIONER OF THE  
MINNESOTA DEPARTMENT OF HUMAN RESOURCES.

HEARING DATE: Wednesday, January 13, 1988

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence  
are contained fully and accurately on the tapes and notes  
reported by me at the hearing in the above case before the

THE UNITED STATES SUPREME COURT

Date: 1-13-88

*Margaret Daly*  
\_\_\_\_\_  
Official Reporter

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