

SUPREME COURT OF THE UNITED STATES

In the Matter of:

F. CLARK HUFFMAN, ET AL.,

Petitioners

v.

WESTERN NUCLEAR, INC., ET AL

No. 87-645

PAGES: 1 through 45

PLACE: Washington, D.C.

DATE: April 27, 1988

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 600

Washington, D.C. 20005

(202) 628-4888

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x

3 F. CLARK HUFFMAN, ET AL., :

4 Petitioners :

5 v. : No. 87-645

6 WESTERN NUCLEAR, INC., ET AL. :

7 -----x

8 Washington, D.C.

9 Wednesday, April 27, 1988

10 The above-entitled matter came on for oral argument
11 before the Supreme Court of the United States at 10:56 a.m.

12 APPEARANCES:

13 THOMAS W. MERRILL, ESQ., Department of Justice,
14 Washington, D.C.;

15 on behalf of Petitioners.

16 PETER J. NICKLES, ESQ., Washington, D.C.;

17 on behalf of Respondents.

18
19
20
21
22
23
24
25

C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORAL ARGUMENT OF

PAGE

THOMAS W. MERRILL, Esq.

on behalf of Petitioners

3

PETER J. NICKLES, Esq.

on behalf of Respondents

24

THOMAS W. MERRILL, Esq.

on behalf of Petitioners - Rebuttal

42

P R O C E E D I N G S

(10:56 a.m.)

1
2
3 CHIEF JUSTICE REHNQUIST: We'll hear arguments now in
4 No. 87-645, F. Clark Huffman v. Western Nuclear, Inc.

5 Mr. Merrill, you may proceed whenever you're ready.

6 ORAL ARGUMENT OF THOMAS W. MERRILL, ESQUIRE

7 ON BEHALF OF THE PETITIONERS

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

10 This case presents an important question of statutory
11 interpretation involving the Department of Energy's Uranium
12 Enrichment Program. Section 161(v) of the Atomic Energy Act
13 authorizes the Atomic Energy Commission, now the Department of
14 Energy, to provide enrichment services for utilities, both
15 domestic and foreign, that operate nuclear power plants.

16 That section goes on to provide that DOE shall
17 restrict its enrichment of foreign uranium for use in domestic
18 power plants to the extent necessary to assure the maintenance
19 of a viable domestic uranium industry.

20 The Court of Appeals in this case construed this
21 language to mean that when the domestic uranium industry is not
22 viable, DOE must automatically stop all enrichment of foreign
23 uranium, even if this would not make the domestic industry
24 viable.

25 We disagree. In our view, the Statute instructs DOE

1 to restrict enrichment of foreign uranium only to the extent
2 that such restrictions will in fact make the domestic industry
3 viable and does not instruct that DOE must impose enrichment
4 restrictions when it would not have the effect of making the
5 domestic industry viable.

6 This case was decided below on Respondent's Motion
7 for Summary Judgment. The key fact under the Court of Appeals
8 theory is that the status of the domestic uranium industry
9 whether or not it is currently viable. As to that fact, there
10 is no dispute.

11 The Secretary of Energy has found in a series of
12 annual viability determinations that the domestic uranium
13 mining and milling industry is not currently viable.

14 QUESTION: What does that mean in the context of that
15 finding? That it can't make a profit, or that it won't be
16 sufficient to satisfy all our domestic needs?

17 MR. MERRILL: The meaning of viability is spelled out
18 in some detail, first of all, by Congress. Congress passed a
19 statute in 1982, Section 170(b) of the Atomic Energy Act, which
20 sets forth eight criteria the Department of Energy is to look
21 at in making a viability determination.

22 The Secretary has in turn issued regulations under
23 that Statute which further spells out the method that will be
24 followed in determining viability.

25 QUESTION: Does the Congressional statute require

1 that viability be determined by ability to meet national needs,
2 rather than profitability?

3 MR. MERRILL: We think clearly yes. Although the
4 criteria are complex that the gist of the statutory criteria
5 and of the Secretary's regulations are to focus on the
6 capability of the domestic industry in satisfying the needs of
7 the nuclear power industry in the event of certain future
8 contingencies such as an interruption of imports.

9 Neither the statutory criteria nor the regulations
10 focus merely on the profitability of the domestic industry. So
11 for example if you had one or two domestic uranium plants that
12 were very profitable but nevertheless did not have the capacity
13 to satisfy the needs of the domestic industry, that would not
14 be a viable industry. A viable industry is one which has the
15 resources, both in terms of reserves production capacity and
16 financial strength to satisfy the needs of the domestic power
17 industry.

18 QUESTION: It's a strange use of the word, I must
19 say.

20 MR. MERRILL: Well, whether it's a strange use or
21 not, Congress clearly set forth the criteria in 1982 which were
22 to be used, and the criteria focused on things like the
23 production capacity of the industry and its financial
24 resources.

25 QUESTION: Mr. Merrill, in opposing the Motion for

1 Summary Judgment, is that the position the Government took that
2 that's what viability meant?

3 MR. MERRILL: The meaning of viability was never
4 really confronted in this case. It was raised in Count V of
5 the Respondents' Complaint and there was some pleadings in the
6 District Court on the question. But the District Court never
7 reached the issue and the Respondents then dismissed that count
8 from their complaint without prejudice. So there's been no
9 focus exactly on what the meaning of viability is.

10 The case was decided below on the assumption that the
11 domestic industry was not viable. The Department of Energy has
12 a view as to what that means.

13 QUESTION: What my question really was directed to
14 was what position the Government took in opposition to the
15 Motion for Summary Judgment. Did they espouse a particular
16 theory of viability at that time?

17 MR. MERRILL: The Department's theory throughout this
18 case has been that the statute, contrary to the lower court's,
19 does not require restrictions be imposed whenever the domestic
20 industry is not viable. The statute requires an inquiry into
21 the effects that restrictions would have on the viability of
22 the domestic industry.

23 So in our view, what the statute requires is that the
24 Secretary look at the condition of the domestic industry and
25 consider the effect of restricting enrichment of foreign

1 uranium on that condition and act accordingly. If the domestic
2 industry is viable and does not need any restriction on foreign
3 imports, no restrictions are appropriate.

4 On the other hand, if the industry is not viable and
5 restrictions on imports would not do anything to make it
6 viable, the statute also does not require restrictions.

7 QUESTION: I'm still not quite sure I've got an
8 answer to my question. Let me phrase it this way, if I may: I
9 take it there would be a distinction between saying that even
10 if we impose restrictions, that will not make the industry
11 viable. That might be one position you'd take.

12 A second position might be that even if we impose
13 restrictions, that will not help the industry even in the
14 slightest. Do you understand?

15 MR. MERRILL: I understand.

16 QUESTION: Which if either of those two positions did
17 you take in the trial court?

18 MR. MERRILL: I'm not sure what position we've taken
19 up to this point. Our position --

20 QUESTION: I'm talking in opposition to the Motion
21 for Summary Judgment?

22 MR. MERRILL: Our position has been throughout that
23 the statute requires an examination of the effects of
24 restrictions and restrictions must be such as are necessary to
25 insure the maintenance of a viable domestic uranium industry.

1 It must make the industry viable.

2 QUESTION: So you're saying that even if the
3 restrictions might tend to improve the condition of the
4 industry, they still would not be imposed unless they would
5 have the ultimate benefit of making a non-viable industry
6 viable?

7 MR. MERRILL: Yes, we think that's correct. If the
8 latter interpretation that you're suggesting were the
9 appropriate one, we think the statute would have used words
10 like, promote, the viable of the domestic uranium industry.
11 But the statute uses the word instead, assure, the maintenance
12 of a viable domestic uranium industry. So we think the
13 statutory language requires not just restrictions that would
14 make the industry a little better off, but that it would
15 produce an industry with the capability of serving the needs of
16 the domestic nuclear power industry.

17 Furthermore, even if the statute meant what you're
18 suggesting, that restrictions would have some beneficial
19 effect, that would require reversal of the judgment in this
20 particular case, because the Court of Appeals' theory of the
21 statute is that no inquiry into effects is required whatsoever.
22 Once you find that the domestic industry is not viable, bang,
23 that ends the matter, and the Department of Energy must impose
24 one hundred percent restrictions.

25 QUESTION: Mr. Merrill, on the meaning of viable

1 question, it is a little hard to understand how a domestic
2 industry could be available to meet national needs if it can't
3 make any money.

4 MR. MERRILL: Yes, Your Honor, and in fact, one of
5 the four factors that the Department of Energy looks at in
6 determining whether or not the industry is viable are the
7 financial resources of the industry. And the key in recent
8 years to finding --

9 QUESTION: It just seems to be necessarily tied in if
10 the companies simply can't make any money producing, how can
11 they be available to meet national needs?

12 MR. MERRILL: We agree with that, Your Honor. The
13 financial resources of the industry are an integral part of
14 determining whether or not they have the capability of serving
15 the needs of the domestic industry.

16 But in order to be capable of serving the needs of
17 the domestic power industry, they must have considerable
18 financial resources to raise the capital that's necessary to
19 build the production facilities that will produce a substantial
20 quantity of uranium.

21 And it's the Secretary's determination that those
22 financial resources are not in the picture at this particular
23 time and that imposing restrictions on foreign uranium would
24 not put those financial resources into the picture. In fact,
25 it's the Secretary's view that such restrictions would be

1 counterproductive. They would not in the long run help the
2 domestic uranium industry.

3 But again, that issue was not addressed below. The
4 question of the effects one way or the other was not addressed
5 by the lower courts. They went off on this legal theory that
6 that kind of inquiry just was not required by the statute.

7 QUESTION: So the reason for the non-viability
8 determination by the Secretary is relevant to our consideration
9 of this case and to the operation of the statute?

10 MR. MERRILL: I don't think that the issue before
11 this Court requires the Court to get into an analysis of the
12 Secretary's reasoning about the effects of --

13 QUESTION: Not his reasoning, but his reasons.

14 MR. MERRILL: Well, it requires of course that the
15 Court consider the legal reasons that we're advancing for the
16 proposition that Section 161(v) does not impose this automatic
17 shutoff whenever the domestic industry is not viable.

18 QUESTION: No. My point is suppose the report said
19 that the industry is not viable because there's too much
20 enrichment being given to foreign materials. I take it then
21 the reason for non-viability would be critical to the operation
22 of this statute?

23 MR. MERRILL: Yes, in that case it would, Your Honor.

24 QUESTION: And so then it follows that the reasons
25 that the Secretary gives for the non-viability determination

1 should be consulted in determining the operation of the
2 statute.

3 MR. MERRILL: We agree with that, Your Honor. In a
4 proper proceeding under this statute, as we interpret it, the
5 Secretary of Energy would examine the effects of restrictions
6 on foreign uranium to see whether or not they would produce a
7 viable domestic industry. Once that determination had been
8 made, then some type of judicial review proceeding would be
9 appropriate we think to examine that reasoning and that
10 rationale to see whether or not it was arbitrary and capricious
11 or whether or not it comported with the statute.

12 That's not the case that you have here. The District
13 Court and the Court of Appeals did not review any of the
14 reasoning that the Secretary advanced in the 1986 rulemaking.
15 That was not before the Court. The lower courts went off on a
16 pure legal theory to the effect that Section 161(v) does not
17 require any inquiry into effects. It simply requires an
18 automatic imposition whenever the domestic industry is not
19 viable.

20 QUESTION: Well, should the case go back or should we
21 assess the viability report here and say the statute cannot
22 possibly operate. Is that your view?

23 MR. MERRILL: No. This Court in our view should
24 simply examine the legal rationale the lower court gave in
25 support of the District Court's summary judgment order, and if

1 the Court finds that the statute does mandate an inquiry into
2 effects, that the judgment should be reversed. The case would
3 then go back to the District Court for further appropriate
4 proceedings.

5 We think that two things are critical with regard to
6 those further proceedings. One, that they should take place
7 under a correct interpretation of the statute which is that the
8 statute requires an inquiry into the effects of restrictions.
9 And secondly under the statute, it's the Department of Energy's
10 responsibility to make the findings about effects.

11 The District Court is not to conduct a trial de novo
12 into the conditions of the uranium industry but rather, it's
13 the Department's responsibility to make that, subject of course
14 to appropriate judicial review under the Administrative
15 Procedure Act.

16 QUESTION: My problem, Mr. Merrill, is that to some
17 extent, my determination of what the statute means when it says
18 that they will provide it if necessary to assure the viability,
19 depends to some extent upon what I think the statute means by
20 viability. If it means one thing by viability, it is more
21 likely to bear the meaning you want it to bear, and if it means
22 another, somewhat less likely.

23 That's why I wanted to know what your interpretation
24 of what it means is.

25 MR. MERRILL: As best I recollect, the dispute that

1 was raised in Count V of the Complaint in this case was a very
2 narrow one. The Respondents argued that viability means
3 capability of serving all the needs of the domestic industry
4 and they criticized the fact that the Secretary, in his 1983
5 rulemaking to define viability, had tinkered with that and had
6 said that it only, it deleted the word, total needs, and just
7 said, needs. And also had qualified it by talking about future
8 contingencies, in the face of future contingencies.

9 There is no basic dispute between the parties in this
10 case, I don't think, based on that at least, that viability
11 refers to the question of what can the domestic uranium
12 industry do for us, rather than what can we do for it. The
13 statute was not intended as a measure to simply provide
14 financial relief for the domestic uranium industry.

15 And it's quite clear, I think, from the original
16 legislative history that --

17 QUESTION: Yes, but I'm still not sure if you're
18 saying the statute does not operate here because of what was
19 said in the report or because the ultimate finding of non-
20 viability was made. And it seems to me that the answer to that
21 question is necessary for us to determine what we're supposed
22 to do with this case, whether we're supposed to decide it here
23 or send it back for more findings.

24 MR. MERRILL: Well, Justice Kennedy, I don't think
25 that the issue before the Court is whether or not restrictions

1 should now be imposed on domestic uranium.

2 The only issue before the Court is whether the Court
3 of Appeal's legal theory was correct, which states that
4 restrictions have to be imposed now because the statute
5 mandates that without any further inquiry into the nature of
6 the domestic uranium industry and its relationship to the world
7 uranium market.

8 And so since there's nothing technically in the
9 record that would allow this Court to review the Secretary's
10 determination of effects, we think that that question properly
11 has to be sent back to be decided through proper proceedings
12 before the Secretary and that the District Court should
13 probably be the appropriate forum to decide what the nature and
14 form of those further proceedings should take.

15 QUESTION: So you're asking for a remand?

16 MR. MERRILL: Yes. We're asking for this Court to
17 reverse the judgment below and remand for further appropriate
18 decisions in light of that.

19 QUESTION: Has the Department's view of the necessity
20 or propriety of restrictions, has that view always been held by
21 the Department, or did it at one time have a different view?

22 MR. MERRILL: We think that the Department and its
23 predecessor agency, the Atomic Energy Commission, have always
24 articulated a consistent vision of Section 161(v) which is that
25 the statute requires an examination of the effects of

1 restriction on the domestic industry. There are a number of
2 statements --

3 QUESTION: Well, that isn't really my real question,
4 is it. I probably haven't put it very well.

5 Suppose there's a finding -- or I'll put it this way:
6 even if there's a finding, if there is a finding of non-
7 viability, then is restrictions even proper? The Department
8 says, no, it is not. They should not have any restrictions..

9 Is that right?

10 MR. MERRILL: Well, in an appropriate case, if the
11 Department found that the domestic industry was not viable and
12 that restrictions would return it to viability and assure its
13 viability, of course restrictions would be required. That's
14 what the statute says.

15 QUESTION: All right, all right. But has the
16 Department always said no restrictions if the industry's non-
17 viable and restrictions would not make it viable?

18 MR. MERRILL: We are unaware of any statement that is
19 inconsistent with what you just said.

20 QUESTION: And when did the rulemaking take place in
21 this case?

22 MR. MERRILL: The rulemaking?

23 QUESTION: The current regulations.

24 MR. MERRILL: The current enrichment criteria were
25 reconsidered in 1986.

1 QUESTION: Was that after the District Court action?

2 MR. MERRILL: It occurred in the middle of the
3 District Court proceedings. The notice of proposed rulemaking
4 I think came down in January of 1986.

5 QUESTION: Well, did the rule when it was made merely
6 reflect what the practice had been before?

7 MR. MERRILL: The 1986 rulemaking took a position
8 which is completely consistent with the position which has been
9 taken in this litigation.

10 QUESTION: Well, that isn't -- did it just reflect
11 what the prior practice was, or not?

12 MR. MERRILL: The 1986 rulemaking retained in effect
13 the enrichment criteria which had been in effect before. The
14 current enrichment criteria originate in 1974 and the
15 Department of Energy decided that the domestic industry was --

16 QUESTION: Was that by a rule or?

17 MR. MERRILL: That was by regulation. That the
18 domestic industry was on its feet sufficiently so that
19 restrictions on foreign uranium could be phased out. In 1974,
20 the Secretary promulgated a phase-out schedule which started in
21 1977 and in increments proceeded to 1984.

22 From time to time, in the early 1980s, informal
23 inquiries were made as to whether or not some kind of
24 postponement of this phase out or reimposition of restrictions
25 were appropriate. There were Congressional hearings held in

1 1981 in which the issue was aired.

2 Throughout this period of time, including the most
3 recent rulemaking, the Secretary has taken the position that no
4 modification of this 1974 schedule was appropriate.

5 QUESTION: Well, as they phased out the restrictions,
6 the industry went downhill.

7 MR. MERRILL: Justice White, the industry really
8 suffered a precipitous decline in the early 1980s.

9 QUESTION: Partly caused by the removal of
10 restrictions or?

11 MR. MERRILL: We think that really it had virtually
12 nothing to do with the removal of restrictions. In the early
13 1980s, restrictions were still in effect but were being phased
14 out. There were some imports at that time but they were well
15 below ten percent of the total energy requirements of the
16 domestic industry.

17 And the industry collapsed at a point in time when
18 imports were really a relatively minor aspect of the picture.
19 Now, since then imports have increased. In the last three
20 years imports have been running at around the range of 35 to 45
21 percent of domestic energy needs.

22 But the Secretary's position is that because Section
23 161(v) applies only to enrichment of raw uranium and does not
24 restrict imports of enriched uranium and because there are now
25 two European consortia that actually compete with DOE to

1 provide enriched uranium that the imposition of restrictions on
2 unenriched uranium would simply induce domestic utilities in
3 large numbers to flee overseas to these other competitors of
4 DOE and purchase enriched uranium for direct import into the
5 United States.

6 So for that reason at this point in time, even though
7 imports are a fairly large aspect of the picture, the
8 particular mechanism that Section 161(v) establishes would not
9 provide any relief to the industry.

10 Another aspect of the industry which has emerged is
11 there's now an active secondary market. Because the demand
12 projections that were made in the 1970s about the increased
13 demand for uranium in the future led to a tremendous production
14 exploration activity and created a huge imbalance between
15 supplies and demand, there is now a large stockpile of surplus
16 enriched uranium that many utilities own. And there's an
17 active secondary market trading in this enriched uranium.
18 And that's another source the utilities could turn to if in
19 fact restrictions were imposed on the enrichment of foreign
20 uranium.

21 So those are the reasons which the Secretary has
22 given in the 1986 rulemaking for not at this point in time
23 reimposing restrictions.

24 QUESTION: May I go back historically in the period
25 before say in 1979, is it generally understood the industry was

1 viable?

2 MR. MERRILL: I think, yes, Your Honor. In 1974 in
3 particular, when DOE announced that it was going to phase out
4 restrictions, there were some Congressional hearings held, but
5 there's nothing that really reflects --

6 QUESTION: Well, if it was viable then, and your test
7 of viability doesn't depend on profits but rather on capacity,
8 what happened to decrease the capacity of the industry to serve
9 the possible national needs in the event that we had to shut
10 off imports?

11 MR. MERRILL: Well, the initial determination of non-
12 viability was made in 1985 with respect to 1984. And the
13 primary rationale there was that the industry lacked sufficient
14 financial resources to have the production capacity ten years
15 hence to supply the domestic nuclear power industry in the
16 event of something like an interruption of imports.

17 QUESTION: So it was a financial problem rather than
18 a physical exhausting mines or anything of that kind.

19 MR. MERRILL: The Secretary has found that there are
20 sufficient economic reserves, and that for present needs there
21 is sufficient production capacity but the concern is that
22 because of the financial weakness of the industry that
23 somewhere down the future, it will not have sufficient
24 productive capacity in order to satisfy the needs of the
25 domestic industry.

1 QUESTION: What it means is, if -- and I'm not
2 suggesting they should -- but if the Government were willing to
3 subsidize production costs or something, there's no suggestion
4 that there isn't the physical capacity to make the industry
5 viable in the sense of being able then to supply them.

6 MR. MERRILL: The physical capacity in the sense of
7 reserves or? I think there are more than adequate reserves.
8 The question is whether or not there will be in the future
9 production capacity, mines, milling equipment and things like
10 this is the basic reason for the non-viability finding at this
11 point in time.

12 QUESTION: Mr. Merrill, if you mean by viability what
13 you say you mean by viability, I find it very implausible that
14 Congress intended what you say it intended. You're essentially
15 saying that Congress so much cared about whether we had a
16 domestic capacity to produce this uranium that it said we want
17 you to continue to subsidize this domestic industry up to the
18 point where that subsidy is no longer needed for that industry
19 to fullfil one hundred percent of our domestic needs.

20 However, if you find that that industry is only at
21 best going to be able to fullfil 90 percent of our domestic
22 needs, well, then we don't want you to subsidize it at all.
23 That's an absolutely weird intent. All or nothing at all.
24 Either give us a domestic industry that can produce a hundred
25 percent of everything we need, or else, don't give us any at

1 all.

2 Why would Congress intend something like that?

3 Now, if you mean something different by viability, if
4 you mean profitability, that I could understand.

5 MR. MERRILL: Justice Scalia, I think Congress when
6 it enacted Section 161(v) was basically concerned about two
7 things. They were concerned about the possible weakness of the
8 domestic industry in the transitional period from a totally
9 controlled market where the Government was the sole purchaser
10 to an open market where private property rights existed in
11 uranium and there was free buying and selling. And they wanted
12 to cushion the impact of that transition.

13 And they were also concerned that no one really knew
14 what was going to happen in the next five to ten years and
15 therefore that it was important to have a flexible standard
16 that would be able to accommodate different things that might
17 have happened.

18 And the net result was that they enacted the
19 particular statute which has purposeful language that adopts a
20 means end relationship and says that we have a goal. The goal
21 is a viable domestic industry. We have a tool, enrichment
22 restrictions. And we want you to use this tool when it will
23 assure the maintenance of a viable domestic industry.

24 QUESTION: By viable you mean can fullfil a hundred
25 percent of our capacity, and it is an accurate description of

1 your position to say, Congress wanted this industry to be
2 subsidized if it could fullfil a hundred percent of our
3 capacity. But if it could fullfil only 95 percent of our
4 capacity, Congress wanted the subsidy to be withdrawn.

5 What, out of spite? Why would Congress enact a
6 statute like that?

7 MR. MERRILL: Well, I don't know, a hundred percent,
8 95 percent. The concept of viability is not keyed to
9 particular percentages like that. It's a judgmental concept
10 which again focuses on the question of whether or not the
11 industry will be able to overcome certain types of future
12 contingencies.

13 And I'm not sure that a conclusion that the industry
14 could serve 95 percent of the industry as opposed to a hundred
15 percent --

16 QUESTION: Well, make it 80. I mean, 95 percent
17 isn't it. It's just -- well --

18 MR. MERRILL: I think it's fair to say that Congress
19 in 1964 thought that this tool would do the job. I don't think
20 there's any dispute about that. But Congress did not enact
21 that particular understanding into law. Congress adopted a
22 purposeful standard. That purposeful standard as applied today
23 we think can only dictate one result which is that the
24 Secretary has to look at the effects and under that type of an
25 examination --

1 QUESTION: Well, Mr. Merrill, why isn't profitability
2 part and parcel of viability?

3 MR. MERRILL: It is, Justice O'Connor, financial
4 resources.

5 QUESTION: Well, why wasn't that your answer to
6 Justice Scalia? I mean, you're responding to his questions as
7 though that isn't part of it at all.

8 MR. MERRILL: It is part of the inquiry, absolutely.
9 The Secretary looks to see whether or not there are sufficient
10 financial resources to render a viable industry. What the
11 Secretary does not do, however, and I think this was the thrust
12 of your question, is say, would restrictions help a little bit.

13 QUESTION: That's not my problem. I think you would
14 say if the subsidy would enable an industry to be profitable
15 that could only produce 80 percent of our national capacity,
16 then there's no viability and no subsidy is needed.

17 Wouldn't that be your answer?

18 MR. MERRILL: All I can say, Justice Scalia, is --

19 QUESTION: Is, yes.

20 MR. MERRILL: Is that I'd like to reserve the
21 remainder of my time for rebuttal.

22 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Merrill.

23 We'll hear now from you, Mr. Nickles.
24
25

1 ORAL ARGUMENT OF PETER J. NICKLES, ESQ.

2 ON BEHALF OF RESPONDENTS

3 MR. NICKLES: Mr. Chief Justice and may it please the
4 Court.

5 It is correct as my brother says that we are
6 confronted with a question of statutory interpretation. But I
7 think in light of the questions, it's important to understand
8 very briefly the procedural history.

9 This view of the Department which I think Justice
10 Scalia correctly characterized is a new view. When in 1974,
11 the Atomic Energy Commission proposed to phase out the one
12 hundred percent restriction, it told Congress that we will
13 watch over the industry and if there should be any doubt as to
14 its continuing viability, that is, it's ability to meet the
15 nation's civilian and military needs, we will step in and
16 restrict enrichment.

17 We litigated in the District Court and the Judge had
18 granted a summary judgment imposing an injunction and requiring
19 a rulemaking for the Department to explain why it should not
20 impose restriction in light of its concession as to non-
21 viability. And it was only, Justice White, after Judge
22 Carrigan issued the injunction that the Department published
23 its rule.

24 QUESTION: Well, they had undertaken to make it. The
25 rulemaking proceedings had been going on?

1 MR. NICKLES: The rulemaking proceedings, Justice
2 White, commenced after the filing of the summary judgment and
3 in the midst of the litigation. The rule was not complete as
4 of the time the summary judgment was granted. And the Court
5 can look in vain in the Joint Appendix for the findings that
6 have been mentioned by my brother.

7 There are no such findings in the record.

8 QUESTION: Yes, but how about the prior practice?

9 MR. NICKLES: The prior practice, Justice White, is
10 --

11 QUESTION: I would suppose that the Department said
12 to the Congress, we'll watch over the industry, we'll impose
13 restrictions if it is going down the tubes. But at some point,
14 they must have refused requests for restrictions. And I
15 suppose the reason they gave was that it wouldn't do any good.

16 MR. NICKLES: Not at all.

17 QUESTION: Well, that's what I want to know about.

18 MR. NICKLES: In 1981, the Department explained that
19 restrictions would impact its enrichment enterprise. When
20 Congress enacted Section 161(v), the Atomic Energy Commission
21 had a monopoly on enrichment, and therefore Congress knew that
22 imposing restrictions would have an impact.

23 In 1974, the Department then had some competition,
24 and when the Congress asked the Atomic Energy Commission, how
25 do you intend to assure that the industry meets our national

1 security needs, the Atomic Energy Commission said, we have
2 161(v) which we will use. We also have the power over import
3 licenses.

4 The practice had been, Justice White, to impose one
5 hundred percent restriction. It was phased out between 1974
6 and 1984. When the industry in 1981 said to the Department, we
7 need your help now. We are non-viable. The Department said,
8 you are viable.

9 We then had the Congress pass in 1982, amendments
10 that required an annual determination of viability. And for
11 the first determination made by the Department in 1984, the
12 Department said in 1983, the industry, although flat on its
13 back, is viable. I think very much along the lines of Justice
14 Scalia's remarks.

15 Finally, in 1986, and in 1985, and in 1987, the
16 Department conceded, yes, the industry now is not viable and
17 the Department in effect stands here before the Court today and
18 says, by reason of the fact that we have abandoned the
19 industry, we no longer can do anything for the industry.

20 This interpretation of the Department has never been
21 put before the Congress of the United States before July of
22 1986. And what happened when it put this interpretation before
23 the Congress? The Congress said in Public Law 99-500, that the
24 Court should pay no attention, should give no weight to this
25 interpretation of the Department of Interior.

1 I submit, Justice White, that one can look at the
2 legislative history and the administrative practice from 1964
3 on and one will not see any suggestion of this Departmental
4 interpretation that says in effect that we have the discretion
5 to decide that if we don't believe that 80 or 100 percent of
6 the needs of this country can be met by imposing restrictions,
7 we can simply throw up our hands and do nothing.

8 QUESTION: What do you think the legal affect of what
9 Congress did is? Do not give any weight to it. It didn't
10 purport to revoke the Rule. It just said, just don't pay any
11 attention to the Department's construction of the Statute. You
12 go back and just construe the statute without regard to the
13 DOE's views?

14 MR. NICKLES: I think that's correct, Justice White.
15 That what you have in effect is, unlike the Young case, --

16 QUESTION: Don't defer. Don't defer.

17 MR. NICKLES: Don't defer. Unlike the Young case,
18 which is heavily relied upon by the Government, where the Court
19 was confronted with a fifty year interpretation practice by the
20 FDA which had in effect been endorsed by the Congress, the very
21 first time the Department of Energy puts this interpretation
22 before the Congress, the Congress says, don't defer.

23 QUESTION: Is there some legislative history about
24 that statute or --

25 MR. NICKLES: I don't believe so, Justice White. It

1 was one of these continuing resolutions passed in the middle of
2 the night to keep the Government going, and as part of that,
3 the Congress saw fit to take note of this particular matter.

4 QUESTION: Well considered.

5 MR. NICKLES: As well considered as most matters.

6 QUESTION: Precisely what is the statutory provision
7 that was enacted in 1986?

8 MR. NICKLES: The statutory provision --

9 QUESTION: I don't mean the legislative history of
10 the conference report but exactly what was enacted into law.

11 MR. NICKLES: What was enacted into law --

12 QUESTION: And where do we find it in the materials
13 before us.

14 QUESTION: I'm looking at page 31 of your brief which
15 seems to --

16 QUESTION: It's quoted on page 36 of your brief, in
17 part, anyway.

18 MR. NICKLES: It's in our Brief in Opposition and
19 notwithstanding the effectiveness of the criteria, --

20 QUESTION: Where are you reading?

21 MR. NICKLES: This is in 2A of the Respondent's Brief
22 in Opposition. In effect, the Congress was providing funds in
23 Appendix A, so that this enrichment program which is an
24 important program could work. And the Congress said in effect
25 that funds provided in the joint resolution shall be used to

1 operate the enrichment program.

2 QUESTION: Well, I was interested in the precise
3 language that was enacted into law.

4 MR. NICKLES: Right, Your Honor. But notwithstanding
5 --

6 QUESTION: Now you're reading from page 2?

7 MR. NICKLES: 2A.

8 QUESTION: 2A.

9 MR. NICKLES: Down at the bottom. Provided, further,
10 that no provision of this joint resolution or the July 24, 1986
11 criteria shall affect the merits of the legal position of any
12 of the parties concerning the questions whether Section 161(v)
13 of the Atomic Energy Act requires restriction of enrichment of
14 foreign origin source material destined for use in domestic
15 utilization facilities.

16 That is the precise language of the Congress.

17 QUESTION: It seems to me like Congress just wanted
18 to duck responsibility.

19 QUESTION: That doesn't sound like it helps you or it
20 helps the other side, to me.

21 QUESTION: How does that help you?

22 QUESTION: What are the July 24, '86 criteria.

23 MR. NICKLES: These are the criteria, Justice White,
24 that announce for the first time --

25 QUESTION: In the rulemaking.

1 MR. NICKLES: -- in the rulemaking that the
2 Department will not, in effect, impose the requirements of
3 Section 161(v).

4 QUESTION: It seems they won't take a position one
5 way or another whether they're right or wrong.

6 MR. NICKLES: I think it sustains our position
7 because in effect when the Department for the first time over
8 this long history of the statute put forward an interpretation
9 which I suggest is not revealed in any of the legislative or
10 administrative history, that Congress did not permit those
11 criteria to go into effect.

12 As the Court knows, 161(v) when the Department
13 promulgates criteria, they go into effect in forty days.

14 QUESTION: I would have some doubt as to whether
15 Congress had spoken very clearly in a continuing resolution
16 appropriating money, we ought to defer to that speaking when
17 it's talking about a particular case. But if there's doubt
18 about it, I mean, this is not an ordinary form of enacting a
19 substantive law. It's an appropriations bill.

20 MR. NICKLES: Well, the reason it's important, Chief
21 Justice Rehnquist, is that under 161(v), if the Congress had
22 not taken this action under the terms of Section 161(v), the
23 criteria would have become effective.

24 QUESTION: What if Congress says in an appropriations
25 resolution, we want the Supreme Court to affirm the Tenth

1 Circuit in a particular case? What weight should we give that?

2 MR. NICKLES: Such weight as the Court believes it
3 deserves. I don't believe --

4 QUESTION: Well, you're like Congress.

5 MR. NICKLES: Mr. Chief Justice, this Court
6 interprets the law. I think the importance of the provision is
7 made manifest when one reveals and reviews the Government's
8 position deriving from the Young case where the Government
9 places heavy emphasis on the fact that this case is governed by
10 Young.

11 And what we have here is a situation where the
12 Congress has stepped in.

13 QUESTION: Well, not any more. This is no longer
14 effective, right? It was just in an appropriations. It's in
15 effect for one year and then it's no longer in effect. So I
16 assume we can now assume that just the opposite of this is
17 true, that is, that those criteria now can affect the merits of
18 a legal position.

19 MR. NICKLES: I don't believe so, Justice Scalia. I
20 think Congress was speaking to the fact that this new
21 interpretation of the Department announced in July of 1986
22 would not be permitted to pass into effectiveness under the
23 provisions of 161(v).

24 QUESTION: They should have put it in the statute if
25 they wanted it to have that effect. This is only in a one year

1 appropriation. And once that -- Congress knows that -- once
2 that appropriation bill goes out of effect, so does that
3 provision of law.

4 The Executive Branch would be in terrible shape if
5 everything that's ever been put in an appropriation's rider
6 continues in effect. You know that. They wouldn't be able to
7 function.

8 MR. NICKLES: I think it important, it bears on this
9 question to review the Young case because the position taken by
10 the Government I think is inconsistent with the decision of the
11 Court in the Young case. There is no claimed ambiguity in the
12 words of the statute. The statute uses the words of command,
13 the Department shall not enrich foreign uranium.

14 The qualifying phrase informs the Department of the
15 percent limitation that is to be imposed. The Department's
16 position, as I understand it, is not that restrictions are not
17 needful, is not that restrictions will not help the industry,
18 it is that 161(v) standing alone will not achieve this 80 or
19 100 percent ability to meet the needs of the nation.

20 Now, in contrast, -- yes?

21 QUESTION: Could I ask you about your interpretation
22 of viability? As you gather, I didn't agree with the
23 Government's. You know, it seems to me hard to understand
24 that.

25 I'm not sure I understand yours, either. I gather,

1 do you think it means ability to produce 100 percent of the
2 domestic needs, or not? Or it just means economic viability?

3 MR. NICKLES: Justice Scalia, I think it means both,
4 but most importantly, it means the ability of the domestic
5 uranium industry in times of total disruption, that is, a cut
6 off of foreign uranium, to meet the civilian and military
7 requirements of this country.

8 And that's reflected in the eight items that are set
9 forth in the 1982 amendments that focus time and again on the
10 prospects and the current data on imports of foreign uranium
11 and do not use the word, profitability, but use the word,
12 financial strength. But the direction is on the ability of the
13 industry to meet the nation's civilian and military
14 requirements in time of disruption of foreign --

15 QUESTION: So you agree with the Government, then,
16 essentially, as to what viability means?

17 MR. NICKLES: I think there's agreement on that
18 point, yes, Your Honor.

19 In contrast to the administrative practice in the
20 Young case where the Food and Drug Commissioner had taken other
21 measures to protect the public health under Section 346, so
22 that the imposition of tolerance levels were not necessary for
23 the protection of public health, we have a situation here where
24 the Department has abandoned the industry, taken no measures
25 that would assure the viability of the industry, but simply

1 thrown up its hands.

2 In fact, the Department seeks to take credit for the
3 fact that since 1981, it has done nothing, contrary to the
4 representations it made to Congress in 1974 when it said it
5 would assure the viability of the industry.

6 Thirdly, in the Young case, it was important to the
7 Court that this consistent administrative practice had been
8 reviewed by Congress in 1954 and endorsed. I submit that
9 whatever the impact of the continuing resolution that I brought
10 to the Court's attention, that this interpretation announced
11 for the first time in July of 1986, has never received
12 Congressional endorsement.

13 The Department's position on 161(v) would render that
14 statute superfluous. The Department has not announced any
15 measures, and it has a host of powers it could employ, that
16 would assure the viability of the industry, none.

17 QUESTION: Well, you say we shouldn't defer to their
18 judgment at all in this case. You say it's new and all it does
19 is reflect some vague policy about free trade.

20 MR. NICKLES: Well, I think, Justice White, the Court
21 will find when it looks at the July 1986 rule that there's more
22 attention paid by the Department of Energy to free trade, on
23 non-proliferation, on the status of its enrichment enterprise,
24 on the impact of imposing restrictions on various alleged GATT
25 problems that the Department had rather than on the focus of

1 the industry.

2 QUESTION: Well, maybe, but are you submitting here
3 that the language of the statute with respect to restrictions
4 just can't be read as the Department does? Is their reading a
5 defensible reading?

6 MR. NICKLES: We do not believe it's a defensible
7 reading. We do not believe --

8 QUESTION: I know you think there's another better
9 one, but do you think it's even defensible?

10 MR. NICKLES: We don't believe it's defensible, Your
11 Honor. When Congress in 1964 enacted this statute, it made
12 sure that this restriction would work, and as a result of the
13 statute, one hundred percent restrictions were imposed. The
14 statute does not say, the Department shall not enrich foreign
15 uranium if the Department determines it will work.

16 QUESTION: Well, but it does say that you are to
17 impose those restrictions which are necessary to assure the
18 viability of the domestic industry. Is that what it says?

19 MR. NICKLES: It says that, Your Honor.

20 QUESTION: And the Department sits down and says,
21 well, there's no number of restrictions, we can't think of any
22 restrictions that would assure the viability of the domestic
23 industry, and so we can't think of any that would even be
24 necessary. There's just none that would work.

25 MR. NICKLES: I don't think they say that exactly,

1 Justice White. What they say is, we are not saying the
2 Department says that restrictions are not needful, that they're
3 not necessary. What they're saying in their papers and what
4 they said to the Court this morning is that restrictions
5 standing alone, and we don't intend to use any of those other
6 powers that Congress gave us, they're saying restrictions
7 standing alone will not assure that 80 or 100 percent of the
8 nation's needs.

9 That is not a reasonable interpretation of the
10 statute, either literally or substantively.

11 QUESTION: Let me just be sure, let's focus on the
12 statutory language for a minute. To the extent necessary to
13 assure the maintenance of a viable domestic uranium industry,
14 that's what they have to do. Now, is it your view that we do
15 not even have to have any fact finding to determine whether or
16 not the imposition of restrictions would result in a viable
17 industry?

18 MR. NICKLES: That is our position.

19 QUESTION: But then how do you get around the
20 language that the purpose of the restriction is to create or
21 maintain -- they use the word, maintain -- to create what does
22 not now exist. Everybody agrees there's not now a viable
23 domestic industry. But if it were perfectly clear that the
24 imposition of restrictions would not result in the creation of
25 a viable industry, then how do you come within the language of

1 the statute?

2 MR. NICKLES: First of all, Justice Stevens, I don't
3 believe the Department contends that the restrictions are not
4 necessary. But we believe that Congress made the finding in
5 1964 and has reiterated that position that when viability is in
6 doubt, --

7 QUESTION: But viability is not in doubt in this
8 case.

9 MR. NICKLES: Well, the Department should have
10 imposed these restrictions some years ago.

11 QUESTION: Well, maybe so, but --

12 MR. NICKLES: There is non-viability, and as the
13 Tenth Circuit said, restrictions must be imposed going up to
14 100 percent until the industry is restored. Now, if the
15 Department wishes to take other measures, and it has other
16 powers it can take, --

17 QUESTION: No, but you still haven't dealt with the
18 problem I presented to you. What if we assume, because there's
19 no finding to the contrary, that restrictions would not result
20 in viability.

21 MR. NICKLES: Then it is our position, Justice
22 Stevens, that the Department must take that argument to the
23 Congress.

24 QUESTION: But the statute just says, I don't see how
25 you get within the language of the statute. You have agreed

1 with their definition of viability. You're not assuring the
2 maintenance of a viable industry if you put some restrictions
3 in place that will not achieve that goal.

4 I don't understand your argument, is what I'm saying.
5 Maybe you're saying they have to do this and subsidize the
6 industry in addition, but surely this statute doesn't say that.
7 You know, provide them with money and personnel and things like
8 that.

9 MR. NICKLES: What we're saying is that Congress
10 assumed in 1964 that these restrictions would work. In 1974,
11 --

12 QUESTION: Well, you may be dead right that they
13 shouldn't have taken off the restrictions, but that's past
14 history now. We have a problem of what they must do, given the
15 present factual situation that everybody seems to agree on.

16 MR. NICKLES: Justice Stevens, Congress equipped the
17 Department with the powers that could assure the viability of
18 the industry. It has many powers but Congress said this is one
19 that must be used. The extent to which it must be used may
20 very well depend upon the other powers you exercise.

21 But there is no question on this record that the
22 Department believes that these restrictions are necessary. The
23 quarrel between the parties --

24 QUESTION: Necessary to do what?

25 MR. NICKLES: Necessary to assure the viability of

1 the industry. What the Department says, Justice --

2 QUESTION: Necessary to assure an unattainable goal.

3 MR. NICKLES: Well, the unattainable goal that the
4 Department talks about, Justice Stevens, is this 100 percent
5 meeting of the civilian and military needs of the country. And
6 this is the --

7 QUESTION: Which you agree is the correct definition
8 of viability.

9 MR. NICKLES: Absolutely. But our position is that
10 the Congress was not giving the agency a power that would not
11 work. And if the Agency today believes it will not work, it
12 should go back to the Congress and say, because this will not
13 work standing alone, and because we are unwilling to impose
14 other restrictions that may antagonize our trading partners,
15 and because of non-proliferation, because of a lot of things,
16 please change the statute.

17 They have not done that, and on this record and in
18 the light of the legislative history, these restrictions must
19 be imposed if Congress doesn't change the words.

20 QUESTION: Actually, if I understand your position, I
21 think I understand it even less than Justice Stevens does,
22 because you're not just saying that if you can't make a hundred
23 percent of total needs or 80 percent, pick your number, you
24 still have to keep subsidizing. You are also saying you have
25 to keep subsidizing even if it is fully established that the

1 subsidy will not do any good at all. Not only that it won't
2 bring it up to 100 percent, but it will do no good whatever.

3 Isn't that your position, that it doesn't matter that
4 the Agency has no, and the Court has no right to inquire
5 whether it'll bring you up from 27 percent to 28 percent, even?
6 Right?

7 MR. NICKLES: That's correct. That's correct.

8 QUESTION: We've got a clash of very difficult
9 positions, here.

10 MR. NICKLES: I believe so, Justice Scalia.

11 QUESTION: I must say, I think you read the words, to
12 the extent necessary, etcetera, out of the statute. You just
13 say the Commission shall not offer services.

14 MR. NICKLES: It is our reading of the statute that
15 Congress has made the determination that these restrictions are
16 necessary and that they must be imposed.

17 QUESTION: Well, then why did they give the agency
18 any discretion?

19 MR. NICKLES: They gave the discretion to the agency
20 to determine what limitations should be imposed. And the
21 District Court, Your Honor, in imposing an injunction, told the
22 Agency to come forward with a rulemaking to show the Court why
23 one hundred percent restrictions would not be necessary. What
24 other measures the Department might take --

25 QUESTION: When you say, necessary, it means

1 necessary in aid of some end. You just use necessary as if it
2 were a word hanging out there. Necessary to do what? To
3 achieve a hundred percent, quote, viability. Everybody agrees
4 these restrictions wouldn't do that. Necessary to do what?

5 MR. NICKLES: The objective is obviously the
6 viability of the industry.

7 QUESTION: Which is a hundred percent?

8 MR. NICKLES: I don't believe it's a hundred percent.

9 QUESTION: Well, then what is it?

10 MR. NICKLES: There's no fixed percentage on it under
11 the Department's determination but it is enough so that if
12 there were to be a disruption in the imports of foreign
13 uranium, this nation could be assured that the domestic
14 industry was viable enough to meet the nation's needs.

15 QUESTION: But I thought a minute ago you said that
16 even though the subsidies would accomplish not even raising it
17 from 27 percent to 28 percent, they still would have to be
18 allotted.

19 MR. NICKLES: In our view, Congress made the
20 determination that these subsidies would work to assure the
21 viability of the industry, and that other powers --

22 QUESTION: Well, why would there be any hearing as to
23 whether the subsidies ought to be imposed? I mean, it would
24 just be automatic I think in your view.

25 MR. NICKLES: In our view, Your Honor, when the

1 Department concedes non-viability based on the criteria that
2 are set forth in the 1982 amendments --

3 QUESTION: Then subsidies are automatic.

4 MR. NICKLES: That triggers the requirement to impose
5 restrictions.

6 Thank you.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Nickles.

8 Mr. Merrill, you have three minutes remaining.

9 ORAL ARGUMENT OF THOMAS W. MERRILL, ESQ.

10 ON BEHALF OF PETITIONERS - REBUTTAL

11 MR. MERRILL: A good deal of the discussion here is
12 focused on questions like what is the proper definition of
13 viability and will the restrictions work or won't they work,
14 and whether the 1986 criteria were proper or improper. None of
15 those questions are really before the Court.

16 The only question before the Court is the Court of
17 Appeals' statutory interpretation which said that you don't
18 have to look to the effects, all you have to do is look to the
19 status of the industry and if it's not viable, you must impose
20 one hundred percent restrictions.

21 If that is an erroneous reading of the statute, the
22 Court should so determine, and that's really the end of the
23 matter before the Court.

24 I think for that reason, the discussion about the
25 1986 continuing resolution is also quite irrelevant. All that

1 resolution says on its face is that nothing in the resolution
2 or in the 1986 criteria are to affect the position of the
3 parties in this litigation. And as I've just indicated, the
4 criteria are not at issue in this litigation. They were not
5 something that the District Court or the Court of Appeals
6 passed on, and clearly we don't rely on the resolution in any
7 way in this case.

8 And so that's just a large --

9 QUESTION: Would you say that the Department could
10 have decided to impose a hundred percent restrictions even
11 though the industry was not viable? Would that have been
12 contrary to the statute?

13 MR. MERRILL: The Department has a mandatory --

14 QUESTION: Because if it is, if it isn't contrary to
15 the statute, then the language of the statute just doesn't
16 compel your result.

17 MR. MERRILL: Your question, I take it is, even if we
18 have no duty to impose, do we still have the authority to
19 impose?

20 QUESTION: Yes.

21 MR. MERRILL: That I think is a close question. I
22 don't think that the answer to that question needs to be
23 reached here.

24 QUESTION: Well, if it's only close, I take it you
25 think that arguably the language of the statute could be read

1 as your opposition suggests.

2 MR. MERRILL: No. The opposition suggests that we
3 have a mandatory duty to impose restrictions when the domestic
4 industry is not viable whether or not that would have any
5 effect whatsoever on the restoration of the viability of the
6 industry.

7 QUESTION: Well, I know, but if the Department could
8 impose the restrictions even though the industry is not viable,
9 you're saying they could impose the restrictions even though
10 they would do no good whatsoever, even though they would not
11 restore viability.

12 MR. MERRILL: I said it was a close question. We
13 think the answer to the question is, no. We think that
14 Congress spoke to this issue in 1964. It provided a specific
15 tool and that that tool is to be used only in one circumstance
16 when necessary to assure the viability, and not otherwise.

17 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Merrill.
18 The case is submitted.

19 (Whereupon, at 11:53 a.m., the case in the above-
20 identified matter was submitted.)

21

22

23

24

25

REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DOCKET NUMBER: 87-645

CASE TITLE: F. CLARK HUFFMAN, ET AL., v. WESTERN NUCLEAR, INC.

HEARING DATE: April 27, 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 UNITED STATES SUPREME COURT.

Date: April 27, 1988

Margaret Daly

Official Reporter

HERITAGE REPORTING CORPORATION
1220 L Street, N.W.
Washington, D.C. 20005

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'88 APR 29 P4:09