

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

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

CAPTION: LOUIS W. SULLIVAN, SECRETARY OF HEALTH
AND HUMAN SERVICES, ET AL., Petitioners. v.
SANDRA EVERHART, ET AL.

CASE NO: 88-1323

PLACE: Washington, D.C.

DATE: November 27, 1989

PAGES: 1 - 45

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - X

3 LOUIS W. SULLIVAN, SECRETARY :
4 OF HEALTH AND HUMAN SERVICES, :
5 ET AL., :

6 Petitioners, :

7 : No. 88-1323

8 v. :

9 SANDRA EVERHART, ET. AL., :

10 - - - - - X

11 Washington, D.C.

12 Monday, November 27, 1989

13

14 The above-referenced matter came on for oral argument
15 before the Supreme Court of the United States at 10:01
16 o'clock a.m.

17 APPEARANCES:

18 AMY L. WAX, ESQ., Assistant to the Solicitor General,
19 Department of Justice, Washington, D.C.; on behalf of
20 Petitioners.

21 LINDA J. OLSON, ESQ., Denver, Colorado; on behalf of
22 Respondents.

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

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
AMY L. WAX, ESQ., On behalf of the Petitioners	3
LINDA J. OLSON On behalf of the Respondents	20
<u>REBUTTAL ARGUMENT OF</u>	
AMY L. WAX, ESQ.	41

1 PROCEEDINGS

2 (10:01 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear arguments first
4 this morning in No. 88-1323, Louis W. Sullivan, Secretary
5 of Health and Human Services versus Sandra Everhart.

6 Ms. Wax.

7 ORAL ARGUMENT OF AMY L. WAX, ESQ.

8 ON BEHALF OF PETITIONERS

9 MS. WAX: Thank you. Mr. Chief Justice, and may it
10 please the Court:

11 This case concerns the validity of longstanding
12 regulations known as the netting regulations that set forth
13 a method for correcting errors in the amount of benefits
14 paid under two Social Security Act programs, the Title II
15 Retirement and Disability Insurance Program, and the Title
16 XVI Supplemental Security Income Program.

17 The regulations authorize the Secretary of Health and
18 Human Services to add together or net multiple past errors
19 in the amount of benefits paid to an individual up to the
20 time that the Secretary discovers that an error has been
21 made.

22 If that calculation reveals a net underpayment, then
23 under the pertinent statutory provisions, the Secretary pays
24 that amount to the beneficiary. If netting reveals a net
25 overpayment, then, before collecting the overpayment from

1 the beneficiary by reducing forthcoming benefits or
2 demanding a refund, the Secretary must consider whether a
3 waiver of recovery is appropriate.

4 The Tenth Circuit struck down these regulations as
5 contrary to the provisions of the Social Security Act that
6 they implement. This Court should reverse that ruling. The
7 netting method has been in use for decades. It provides a
8 simple, fair, and common sense way to settle accounts, one
9 that is familiar from a wide variety of contexts.

10 Most important, the calculation of the single net error
11 is fully consistent with Congress' intent in creating the
12 payment correction provisions and providing for a waiver of
13 recovery in certain limited circumstances.

14 Netting guarantees in every case that the government
15 may never reduce a person's forthcoming benefit payments or
16 demand an out-of-pocket refund without providing an
17 opportunity for a waiver. The netting regulation responds
18 to Congress' evident concern to ensure that no one who was
19 without fault in causing the overpayment will be deprived
20 of the resources needed to pay for the basic necessities of
21 life by the Secretary's act of retrieving the overpayment.

22 Netting also guarantees that an unfortunate past
23 mistake will not become the occasion for the infliction of
24 future hardship on beneficiaries who are without fault.

25 QUESTION: Ms. Wax, one of the amicus briefs says that

1 once the Secretary detects an overpayment that it sometimes
2 holds -- the government sometimes holds the netting period
3 open and purposely underpays the recipient until it can net
4 out the overpayment in order to take advantage of this
5 netting regulation.

6 Do you know of any instances in which that may have
7 occurred?

8 MS. WAX: Your Honor, we are not aware of any instances
9 in which the agency intentionally held open the netting
10 period in order to take advantage of some subsequent
11 underpayment errors that may have occurred. There are a few
12 instances mentioned in this litigation where the Secretary
13 has been -- perhaps we should say tardy -- in taking action
14 on overpayments of which he was aware.

15 QUESTION: Do you think it would be a violation of the
16 regulations if the Secretary were to do what amicus says is
17 done sometimes?

18 MS. WAX: Well, I think it might be -- I'm not sure
19 which regulation it would violate for the Secretary to do
20 that because there is no regulation that sets forth a time
21 limit between detection or suspicion of an overpayment and
22 what we call determination of an overpayment.

23 But our policy and our practice, which we feel is
24 entitled to a presumption of regularity, is to take no more
25 time than is necessary between the time that the Secretary

1 first becomes aware of an error and actually resolves that
2 error to the point where he's in the position to demand
3 overpayment.

4 QUESTION: But there is no regulation requiring prompt
5 action. What recourse would a recipient have faced with
6 this sort of problem?

7 MS. WAX: Your Honor, respectfully, we don't think that
8 a class action that facially challenges the validity of our
9 netting regulation as inconsistent with the statute would
10 be the vehicle in which to challenge what an individual
11 recipient perceives is tardiness, or to the point of
12 arbitrary and capricious tardiness, in resolving their
13 overpayment.

14 We think that the proper recourse is an individual
15 lawsuit where the Secretary can defend himself.

16 QUESTION: Ms. Wax, I assume that tardiness, that just
17 waiting, is not a very intelligent policy for the Secretary.
18 I mean, he can't use it intentionally to do harm unless he's
19 sure that there will be a future -- a future underpayment.

20 And presumably it does violate a regulation
21 intentionally to make an underpayment. Or, doesn't it?
22 Indeed, it violates the statute, does it not?

23 MS. WAX: Well --

24 QUESTION: What I am saying is that the Secretary
25 cannot consciously and maliciously use delay because he

1 doesn't know whether he's going to make a future
2 underpayment or not. Or, does he?

3 MS. WAX: The -- well, we think that it would be
4 arbitrary for the Secretary to do that.

5 QUESTION: To do what?

6 MS. WAX: To deliberately sit on an overpayment.

7 QUESTION: Regardless of whether it would be arbitrary.
8 I'm saying whether it's arbitrary or not, it's not very
9 intelligent --

10 MS. WAX: That's the --

11 QUESTION: -- because the Secretary doesn't know that
12 he's going to make a future underpayment and he's just
13 sitting around failing to collect the overpayment on the
14 speculation that there will be a future underpayment, unless
15 you assume that he can consciously make a future
16 underpayment in order to work the system. He can't do that,
17 can he?

18 QUESTION: Well, of course, that's -- that's exactly
19 the allegation that's made by amicus. Precisely that.

20 QUESTION: Well, then your answer to that is that there
21 is a law against his making future underpayments. Is there
22 not or is there not?

23 MS. WAX: There is a law against his making future
24 underpayments deliberately, yes. That would violate the
25 provisions of the statute that set the substantive level.

1 QUESTION: He violates the law if he does it
2 negligently. He has to make up the underpayment. He's
3 violated the statute. He owes somebody something.

4 MS. WAX: That's correct. To the extent that the
5 statute says that whenever he determines that an error has
6 been made, then he shall make it up. And to the extent that
7 that would imply the duty to make it up in a timely fashion
8 and not to use it to manipulate the situation, we agree.

9 But Justice Scalia's point is well worth noting. The
10 Secretary -- it would be a very inefficient way to collect
11 underpayments to sort of sit around waiting for overpayment
12 -- oh, excuse me, for underpayments to accrue that he can
13 put together with those overpayments.

14 The fact is that most people do pay back their
15 overpayments. The vast majority of overpayments can be
16 collected by the Secretary in a fairly prompt manner. So
17 it would not be in the Secretary's interest to delay
18 processing those overpayments on the speculation that
19 underpayments might crop up later that he could net with
20 them.

21 And we make that point in our reply brief. We just -
22 - we have no incentive. The incentive structure would not
23 lead us to do that and we don't do that.

24 This case is controlled by the principles set forth in
25 Chevron v. NRDC. The netting regulations deserve

1 substantial deference and should be upheld unless they are
2 arbitrary, capricious or manifestly contrary to the statute.

3 Respondents contend, as they must to prevail in this
4 case, that the regulations cannot possibly be reconciled
5 with the payment correction provisions. But, in fact, the
6 very opposite is true.

7 The language and history of these provisions and their
8 evolution reveal a clear congressional intent to permit the
9 aggregation of past errors rather than just the
10 consideration of each monthly error in isolation and to
11 mandate a waiver procedure only in the case where the
12 Secretary attempts prospective means of recovery -- that is,
13 the reduction in forthcoming benefits or the demand for a
14 refund.

15 In challenging the netting practice, respondents focus
16 on the waiver of recovery provision, which places limits on
17 the Secretary's authority to collect overpayments. The
18 Title II waiver provision provides that there shall be no
19 adjustment or recovery from any person who is without fault
20 where such adjustment or recovery would defeat the purpose
21 of the statute or would be against equity and good
22 conscience.

23 In a nutshell, respondents claim that netting, which
24 necessarily entails the setting off of overpayment errors
25 in some past months against underpayment errors in other

1 past months, is a form of adjustment or recovery within the
2 meaning of the waiver provision.

3 Therefore, they contend, the Secretary must consider
4 waiver before netting, and the Secretary must decide whether
5 to waive the total amount of overpayments considered
6 separate and apart from any underpayments that may have
7 occurred before netting them together. And, under this
8 Court's decision in *Califano v. Yamasaki*, that means a face-
9 to-face hearing.

10 But the statutory language and history reveal that the
11 terms adjustment and recovery were never intended to refer
12 to retroactive setoffs but, rather, to prospective
13 recruitment methods. That is, the reduction in forthcoming
14 benefits or an out-of-pocket refund. And the waiver
15 provisions were intended to provide procedural protections
16 in just the cases where the Secretary attempts to use those
17 methods to retrieve the money that's mistakenly paid out.

18 QUESTION: If "adjustment" and "recovery" in the
19 statute don't include netting, then where does the Secretary
20 get his authority for the netting regulation?

21 MS. WAX: Well, there are two sources of authority for
22 netting, that is, setting off past overpayments and
23 underpayments.

24 The first is what we call the determination clause or
25 the determination provision of the payment correction

1 provisions. The statute says that whenever the Secretary
2 determines that more or less than the correct amount of
3 payment has been made or benefits have been paid, then under
4 regulations prescribed by the Secretary, he shall make
5 adjustment or recovery.

6 And we interpret the "authority" to determine whether
7 more or less than the correct amount of payment has been
8 made as implicitly delegating to the Secretary the
9 prerogative to decide over what past period he shall
10 determine whether more or less has been paid. And that
11 includes the authority to decide whether more or less has
12 been paid up to the point when he makes the determination -
13 - that is, over the entire past period.

14 Second, there is a common-law right of administrative
15 or equitable setoff which this Court has recognized in
16 numerous cases, cases that are cited in our reply brief,
17 including Gratiot versus United States, Burchard versus
18 United States, Wisconsin Central Railroad, and a long line
19 of cases in which this Court has said that the government
20 may apply assets belonging to the debtor that are in its
21 hands against debts owed to the government. It need not pay
22 out those amounts and then attempt to get them back.

23 We construe that as a sort of background authority to
24 do a setoff in any type -- an authority that needs to be -
25 -

1 QUESTION: Yes, but -- may I just interrupt you. Do
2 you think that common-law authority survives the statutory
3 provision that no adjustment shall be made without providing
4 for the -- you know, of an overpayment unless you have the
5 opportunity to forgive part of it?

6 How does the common-law survive that statutory
7 enactment?

8 MS. WAX: Well, we think it survives for two reasons.
9 First of all, as this Court has noted in the cases I've just
10 mentioned, because there is such a strong presumption that
11 the government can do common-law setoff, there needs to be
12 a very explicit congressional expression of intent to limit
13 that right or cut it off.

14 QUESTION: What could be more explicit than no
15 adjustment shall be made if it would defeat the purpose of
16 the subchapter and so forth?

17 MS. WAX: Well, we think that --

18 QUESTION: That's pretty explicit.

19 MS. WAX: -- when those terms are looked at in their
20 statutory context, that they do not have the expansive
21 meaning --that is, the meaning that encompasses retroactive
22 setoff -- they have a narrower meaning.

23 We don't think that those terms have a plain meaning
24 and we think that if we look at the 1935 statute, the '39
25 statute, the way that these provisions have evolved, it

1 becomes clear that Congress never intended those terms to
2 refer to retroactive setoffs.

3 QUESTION: Well, let me just ask then, is it your
4 position that at the time an underpayment is made and it's
5 identified, the government can always look back as far as
6 it can to see whether there is any past overpayment and
7 always set it off regardless of whether equity or good
8 conscience would justify it? They could do it deliberately
9 in every case.

10 MS. WAX: That is correct, your Honor.

11 QUESTION: Yeah.

12 MS. WAX: The Secretary is allowed to look backward
13 from -- not from the time that the underpayment was made,
14 but from the time when he determines --

15 QUESTION: Right, I understand.

16 MS. WAX: -- that the underpayment is made. Yes.

17 QUESTION: And to follow-up on Justice Steven's
18 question, in your view, that would never result in a
19 recoupment that was against equity or good conscience?

20 MS. WAX: Let's put this way --

21 QUESTION: Well, can we put it my way?

22 (Laughter.)

23 MS. WAX: We think that the Secretary is entitled to
24 decide -- to come up with a threshold criterion to decide
25 when the equity in good conscience inquiry should take

1 place.

2 Just to be more concrete about that, if an individual
3 has in their past payment record an underpayment and a
4 counterbalancing overpayment, they are in a very different
5 position from someone who just has a pure overpayment
6 because the person who has both kinds of errors can always
7 satisfy his debt to the government by extinguishing the
8 government's debt to him. He can do it with essentially a
9 paper transaction.

10 Whereas, the person who has a pure overpayment cannot
11 do it with a paper transaction. He has to either risk his
12 present and future benefits, suffer a garnishment of those
13 benefits, or he has to reach into his pocket and transfer
14 cash to the government.

15 QUESTION: Well, again, I think the respondent is
16 correct in saying that you basically have a per se rule that
17 netting can never result in a recoupment that's against
18 equity or good conscience.

19 MS. WAX: Well, as a general matter it's more likely
20 that the obligation to repay a net overpayment will be
21 inequitable --

22 QUESTION: Well, but the whole scheme of the statute
23 is that we don't look at it as a general matter. We look
24 at it on a case-by-case basis.

25 MS. WAX: Well, this Court has said in cases such as

1 Bowen v. Yuckert and Heckler v. Campbell that even where a
2 statute requires an individualized determination that the
3 Secretary can make threshold rules which weed out
4 individuals that in his judgment generally will not meet the
5 statutory requirements.

6 And the Secretary has a lot of discretion to decide
7 when recovery would be inequitable. Those are broad terms
8 that the Secretary necessarily must give content to.

9 QUESTION: But you've given content to them in this
10 case by a per se rule that there can never be a recoupment
11 that's against equity or good conscience whenever there is
12 netting. Isn't that correct?

13 MS. WAX: Yes, essentially we have because we have made
14 a reasonable distinction, which we believe is reasonable,
15 between individuals who have mixed errors and can satisfy
16 their debt simply by erasing two numbers on two sides of a
17 ledger and individuals who have to suffer some deprivation
18 in the present to pay back the money.

19 We think that that is the sort of distinction that the
20 Secretary is entitled to make in implementing this statute
21 and in giving content to the terms "equity" and "good
22 conscience" which are very broad general terms in light of
23 the overall purpose of the statute.

24 QUESTION: I don't understand the government's
25 position. I thought the government was saying that it is

1 only required to consider equity and good conscience by the
2 statute after the netting. Now you are saying -- which
3 seems to me quite different and a proposition I find quite
4 difficult to grasp -- that that's not it.

5 But, rather, what the government says is that there is
6 no violation of equity and good conscience so long as you're
7 netting. In other words, the statutory provision governs
8 but you are just adopting a general rule that will comply
9 with the statutory provision. Now, which is it?

10 MS. WAX: Well, it's both in a way. We certainly are
11 saying that the statute does not require us to even go into
12 that inquiry --

13 QUESTION: All right, so --

14 MS. WAX: -- until netting is finished.

15 QUESTION: -- that's what I understood you to --

16 MS. WAX: But in order to lend weight -- in order to
17 show why that's reasonable, given -- if we give that the
18 statute maybe isn't entirely clear --

19 QUESTION: Statutes don't have to be reasonable. I
20 mean, if that's what you think Congress was driving at --
21 if you think Congress made the determination we're only
22 worried about people who have to cough up money or who have
23 to make a reduction of future payments, it seems to me
24 that's all you'd have to worry about. Do you have to prove
25 that that is reasonable as well?

1 MS. WAX: Well, we're really arguing in the alternative
2 here. We're saying that Congress was quite clear. We feel
3 that Congress wrote a statute that was very clear in which
4 it set a floor that we only need to consider fault equity
5 and the purposes of the statute after we finish netting.
6 Absolutely, that's our position.

7 QUESTION: What you're saying, in other words, is that
8 even if it's clear to everyone who is interested in the
9 problem that it would be against equity and good conscience
10 not to allow the recoupment -- but not to allow the person
11 to keep the overpayment -- nevertheless, it's not an
12 adjustment within the meaning of the statute. So we don't
13 care about equity and good conscience with what may have
14 happened prior to the time you decided whether or not to
15 adjust.

16 MS. WAX: That's correct.

17 QUESTION: Yeah.

18 MS. WAX: Our position is that such a retroactive
19 setoff is not adjustment.

20 QUESTION: It is not an adjustment?

21 MS. WAX: It is not an adjustment. It's not recovery.
22 And that is the -- those are the meanings that --

23 QUESTION: And it's perfectly fair because you're sure
24 that the recipient of the allowance has plenty of money to
25 offset? There are never cases in which the person is at a

1 minimum subsistence level and there really is a hardship
2 working out of this?

3 MS. WAX: Right. A person who faces an offset -- their
4 current benefits, the amount of money they have on hand
5 today -- is never at risk because they can satisfy their
6 debt to the government by extinguishing the government's
7 debt to them.

8 QUESTION: Have you ever heard of credit? I mean, some
9 of these people may have committed, you know, future outlays
10 in anticipation that they're going to have more money coming
11 in in the future. I think it's a very hard burden to bear
12 if the Secretary is trying to persuade us that this will
13 never result in a situation that's going to impose something
14 of a hardship on the person who has to have the setoff.

15 MS. WAX: Well, your Honor, as you've said, we don't
16 get to the hardship determination until we finish netting.
17 So, that partly solves the problem.

18 But in terms of an individual who has been underpaid
19 perhaps getting themselves into a very bad situation which
20 simple reimbursement of the amount might not compensate for
21 -- if a person has a pure underpayment error, there is no
22 provision in the statute for overcompensation of that
23 person.

24 That person may go into debt, they may incur expenses
25 because they weren't paid timely and yet the statute simply

1 provides that they will get back the amount that they're
2 entitled to -- not that they will be deliberately paid more
3 than they're entitled to, which is what would happen if
4 there was a waiver of an underpayment -- excuse me -- an
5 overpayment considered separately.

6 So, in that sense, we think that it's fair and it
7 comports --

8 QUESTION: But except that the overpayment by
9 hypothesis will have occurred sometime in the past. I mean,
10 isn't that true?

11 MS. WAX: Well, sometimes.

12 QUESTION: I mean, whenever the -- whenever the
13 recipient is objecting to not getting enough today and the
14 answer is, well, you were overpaid three years ago, there
15 always -- what happened is something that's long in the past
16 for people who normally don't save that money for long
17 periods of time.

18 MS. WAX: It's correct that that is the hard case,
19 Justice Stevens.

20 QUESTION: Well, isn't that the typical case?

21 MS. WAX: Well, we don't think it's the typical case.
22 The typical case is really more like the cases represented
23 by the named plaintiffs and intervenors who had their
24 underpayments and overpayments bunched up and sometimes
25 overlapping in a fairly contracted period.

1 That scenario that you described doesn't come up all
2 that often. But the fact remains that even in that
3 situation the person has gotten the money they're entitled
4 to and, when they have to repay the government, they can do
5 it by applying the underpayment to their overpayment; they
6 don't have to pay out of pocket.

7 I'd like to reserve the remainder of my time for
8 rebuttal.

9 QUESTION: Thank you, Ms. Wax.

10 Ms. Olson, we'll hear now from you.

11 ORAL ARGUMENT OF LINDA J. OLSON, ESQ.

12 ON BEHALF OF RESPONDENTS

13 MS. OLSON: Mr. Chief Justice and may it please the
14 Court:

15 At issue in this case is an analysis of the waiver
16 statute, 42 U.S.C. Section 404(b), and the manner in which
17 the Secretary's netting policy abrogates the equitable
18 protections provided by that statute.

19 Today I would like to focus on these three main issues:
20 the plain language and intent of the waiver statute, the
21 fact that netting is a form of adjustment in recovery and
22 therefore specifically limited by the waiver statute, and
23 the fact that the enforcement of the lower court's order
24 would not be unduly burdensome.

25 The waiver statute language is clear, unambiguous and

1 mandatory. It states that in any overpayment case there
2 shall be no adjustment or recovery from any blameless person
3 if such recovery would cause hardship or inequity.

4 This broad language protects any overpaid person. It
5 does not exclude overpaid people with underpayments.

6 QUESTION: Excuse me. Does it use the word hardship
7 or are you saying against equity and good conscience?

8 MS. OLSON: Yes. I am interpreting against -- that
9 would violate the --

10 QUESTION: Well, if -- we're talking about the clear
11 language of the statute as against equity and good
12 conscience?

13 MS. OLSON: That's right.

14 QUESTION: All right.

15 MS. OLSON: Or would defeat the purposes of the Act.
16 That has been determined to mean would deprive a person of
17 income needed for ordinary and necessary living expenses.
18 And that would be the hardship aspect of waiver. You have
19 to prove both, that the overpayment was not your fault and
20 either that it would defeat the purposes of the Act to
21 collect it, which means cause a financial hardship, or that
22 it would be inequitable to collect it.

23 QUESTION: Is the term "hardship" used in one of the
24 regulations?

25 MS. OLSON: No. I'm paraphrasing that it -- the intent

1 of --

2 QUESTION: All right.

3 MS. OLSON: -- violate the purpose of the Act.

4 QUESTION: When you say it has been interpreted to
5 mean, you mean by the agency?

6 MS. OLSON: By -- by this Court and by the legislature
7 in its legislative history -- has indicated that it was to
8 protect people from any sort of burdensome collection
9 activity.

10 When Congress enacted the waiver provision in 1939,
11 Congress was aware that there would be erroneous payments
12 by the Secretary and sought to protect, in limited
13 circumstances, individuals from recovery where such recovery
14 would cause great financial hardship.

15 There is no evidence that Congress has ever sought to
16 cut back on this broad equitable protection.

17 This Court interprets the --

18 QUESTION: How long has the netting been going on?

19 MS. OLSON: Well, the SSI regulations of the Title XI
20 regulation has been in effect since 1975. The Secretary's
21 brief indicates that it was going on in Title II sometime
22 before then but we really don't know. The only clear time
23 for this Title II regulation is in 1981 when the ruling was
24 enacted.

25 The Yamasaki case of 1979 clearly set out the fact that

1 Congress in the plain language of the statute found that
2 waiver should precede any sort of recovery, a waiver
3 consideration. It was a similar attempt by the Secretary
4 to infringe on a beneficiary's entitlement to seek waiver
5 of recovery.

6 And this Court found that recovery could not precede
7 a waiver notice and hearing. It's that very notice and
8 hearing which the respondents' are seeking prior to any
9 recovery through netting.

10 QUESTION: Was the Court in Yamasaki dealing with this
11 situation where you're talking about a setoff of previously
12 received benefits?

13 MS. OLSON: The Court did not specifically address
14 netting, although there is some indication that the named
15 plaintiff was a netting victim. But Yamasaki is applicable
16 in that it did deal with a recovery prior to the institution
17 of waiver rights.

18 It is our position that netting is a recovery and the
19 plain language of 42 U.S.C. Section 404(a) which describes
20 the collection procedures supports our position. The
21 Secretary has in fact conceded that if netting is an
22 adjustment or recovery, he must provide waiver rights.

23 404(a) provides --

24 QUESTION: Where has he conceded that? Because I
25 interpreted the argument this morning to contradict that.

1 There was an alternative argument made.

2 MS. OLSON: Well, in page 22 of the brief in chief is
3 where he makes that concession.

4 The plain language of 404(a)(1) provides whenever the
5 Secretary finds that more or less than the correct amount
6 of payment has been made to any person, proper adjustment
7 or recovery shall be made under regulations prescribed.

8 Again, this broad language is used which says whenever
9 the Secretary finds an incorrect payment and, furthermore,
10 the words "adjustment and recovery" are broad terms which
11 cover a variety of collection attempts which we would argue
12 includes the netting procedure.

13 The adjective "proper" further indicates that
14 collection only from individuals not eligible for waiver is
15 allowed. Again, this Court in the Yamasaki decision,
16 indicated that the implication of that word is that
17 recoupment from persons qualifying for waiver would not be
18 proper. And it's just such an improper recovery we contend
19 that's at issue in this case.

20 The broad connotations of the words adjustment and
21 recovery have been outlined in the brief and certainly
22 should be interpreted to include netting. Some of the cases
23 cited by --

24 QUESTION: Well, Ms. Olson, I guess the government
25 takes the position that the statutory language that directs

1 the Secretary to find whether more or less than the correct
2 amount of payment was made is sufficiently general that it
3 permits the Secretary to determine whether there has been
4 a net overpayment or a net underpayment. So, you don't get
5 to the question of adjustment or recovery until that step
6 has been taken.

7 MS. OLSON: Yes, that is the Secretary's position, but
8 there is no -- there is no definition of the term "more or
9 less" in the statute that would support such.

10 QUESTION: Well, do you think then that some deference
11 to the Secretary's definition is owing?

12 MS. OLSON: Not where the Secretary's definition
13 directly contradicts the succeeding paragraph which just
14 says that --

15 QUESTION: Well, it doesn't contradict it if -- if
16 their reasoning is correct on their definition of
17 determining whether more or less than the correct amount has
18 been paid.

19 MS. OLSON: Well, our reading of more or less would
20 mean either that the statute is supposed to be
21 distinguishing between overpayments, which would be more,
22 or underpayments, which would be less.

23 And that differential treatment appears throughout this
24 statute and it was one of the things that the Tenth Circuit
25 relied on in striking down the statute. That all Congress

1 intended with that language was to say that if the Secretary
2 finds that more than the correct amount of payment has been
3 made, look to waiver, if less than the correct amount has
4 been paid, pay the underpayment.

5 Another way of looking at more or less would be to say
6 that the Secretary makes a monthly determination of the
7 correct amount of payment and --

8 QUESTION: Well, there is nothing in the statute that
9 says it has to be done monthly, is there?

10 MS. OLSON: Well, there are other provisions in the
11 statute which refer to payments being made monthly, that the
12 calculation of the correct amount of payment is determined
13 on a monthly basis. 42 U.S.C. 402 and 423 both indicate
14 that Title II is a monthly program, and 42 U.S.C. 1382(c)(1)
15 also highlights the fact that SSI is a monthly program.

16 The reality is that that's how the Secretary conducts
17 business. That's how the Secretary does netting, is to
18 first find out what the correct amount of payment is for the
19 month. After that, he proceeds to the second step, which
20 is netting. It's incorrect to argue that netting precedes
21 that step because netting can't occur until first a monthly
22 determination of error has been made and the amounts have
23 been set off.

24 QUESTION: Of course, Congress could have made that
25 very -- I mean, if Congress had that very clearly in mind,

1 it could have just inserted the indefinite Article A. I
2 mean, it could have -- whenever the Secretary finds that
3 more or less than the correct amount of a payment has been
4 made to any person.

5 And that's essentially what you are arguing, that
6 payment must be read to mean a payment. It didn't really
7 say a payment, though. It just says more or less than the
8 correct amount of payment.

9 MS. OLSON: Yes, it doesn't say payments either,
10 though. So --

11 QUESTION: Well, it doesn't say payments either.
12 That's fair. So the government would say, well, that means
13 it's ambiguous and the tie goes to the Secretary.

14 (Laughter.)

15 MS. OLSON: Well, we would again say that it's not at
16 all ambiguous when read with -- in the material with
17 Subsection B. When adjustment and recovery appear in both
18 sections, it seems clear that the Secretary was limited
19 specifically in any type of adjustment procedure.

20 The Secretary himself, in his own regulations, uses the
21 words adjustment and recovery very broadly and uses them to
22 refer to lump sum offsets. Those are adjustments.
23 Increases in monthly benefits are adjustments.

24 His policy operations manual even describes the netting
25 procedure as an adjustment. There is a great deal of

1 inconsistency with that position and then to claim that it's
2 not mandated to be limited under the waiver statute.

3 QUESTION: Yes, but it's clear that if the regulation
4 is valid, what he's done in this case is valid.

5 MS. OLSON: Well, the regulation itself is poorly
6 worded at best, I would say. I think that if the regulation
7 were left intact and interpreted to mean that waiver has to
8 precede netting, that the respondents' position would be -
9 -

10 QUESTION: I didn't know you were arguing for a
11 different interpretation of the regulation. I thought you
12 were arguing that this is invalid.

13 MS. OLSON: Well, we are. The regulation is invalid
14 on its face, it's our position. But, again, the regulation
15 itself doesn't clearly say that you can't have a waiver
16 determination before netting, although that's clearly --

17 QUESTION: I suppose, though, you would at least say
18 that the Secretary's interpretation of his own regulation
19 is entitled to some --

20 MS. OLSON: Yes. But the regulation could be -- could
21 be amended to clarify, as 416.543 does, that in different
22 period netting situations, the Secretary does provide waiver
23 rights. There is really no reason why there should be this
24 distinction between different period and same period
25 netting, and we would submit that in all netting situations

1 both Title II and Title XVI, a recipient should have the
2 right to prove hardship.

3 The actual effect on the individual of the netting
4 procedure is that it does create hardships for some
5 individuals when the waiver statute is designed to prevent
6 such inequity. There is no question that when the Secretary
7 netted Mr. Zweizen's \$4,000 underpayment against his \$9,000
8 overpayment that the Secretary recovered \$4,000. Mr.
9 Zweizen has \$4,000 less to meet his obligations. He may be
10 facing foreclosure; he may have \$10,000 in medical bills.

11 He will never have an opportunity to prove his need for
12 this underpayment, however, under the Secretary's netting
13 system. All the respondents are arguing is that Mr. Zweizen
14 should have that opportunity to prove why such recovery is
15 inequitable.

16 QUESTION: But you would say that -- you would say that
17 the Secretary isn't entitled. Suppose he is about to make
18 a monthly payment and he then discovers that last month's
19 payment was an overpayment -- what can he do about that?
20 Anything?

21 MS. OLSON: He, the Secretary, discovers that last
22 month there was an overpayment?

23 QUESTION: Yes. Uh-huh.

24 MS. OLSON: Well, then -- then he notifies the client,
25 the beneficiary, that there has been an overpayment, asks

1 the beneficiary if he wishes to request waiver or
2 reconsideration of the overpayment.

3 QUESTION: Then if there's been -- and if he discovers
4 that there's been an underpayment the month before and an
5 overpayment in the month before that, you think he can't
6 net?

7 MS. OLSON: That's right. That's our position. Not
8 in the absence of -- of the waiver opportunity.

9 Although the Secretary would argue that it's a rare
10 occurrence that there are long netting periods, the facts
11 of the named plaintiffs and some of the individuals named
12 in the amicus brief belie that contention. In fact, two of
13 the named plaintiffs had seven-year netting periods. Mr.
14 Zenick had a five-year netting period.

15 Certainly if there is a very short netting period, if,
16 as Justice White indicated, there's a few months involved,
17 it's less likely that one could establish the inequitability
18 of returning the money. It's more likely that the
19 overpayment is around or that the overpayment amount is
20 relatively small.

21 But in lengthy netting periods, it's clear that the
22 overpayment has long since been spent.

23 QUESTION: But do we have any statistics as to the
24 operation of the netting provision, as to whether most of
25 the payments cover and the setoffs cover a long period of

1 time or a short period of time?

2 MS. OLSON: No. The Secretary really has no statistics
3 as to how the netting policy works, how many people are
4 affected by it precisely.

5 QUESTION: Well, then do you think a facial attack,
6 such as you've made, is justified?

7 MS. OLSON: Well, I think that the language of the
8 statute lends itself to the presumption that you can go back
9 many years.

10 As Judge Gibbons found in the Lugo dissent, you could
11 go -- the Secretary could go back a quarter of a century and
12 collect overpayments through netting. There's no -- there's
13 no limitation on the regulation to prevent such a
14 presumption.

15 QUESTION: Yes, but might not the proper relief there
16 be to something more determinative to that particular
17 situation rather than just striking down a regulation which
18 might only rarely reach that situation?

19 MS. OLSON: Well, there's no reason to believe, I
20 think, that it is a rare situation. In our experience, we
21 have seen many individuals come in with long periods such
22 as this.

23 The reality is, when the Secretary terminates someone's
24 benefits, the Secretary knows that person has been overpaid.
25 A notice could go out that day, the same day as the

1 termination notice. But, for some reason, in situations
2 such as Mr. Zenick, no overpayment notice goes out until
3 years later when he's due a large underpayment.

4 There is no disincentive for such a lengthy netting
5 period at this point, and that's one of our concerns.

6 QUESTION: Why isn't there any disincentive? Every
7 year the Secretary is waiting -- this fellow is using the
8 Secretary's money. And the Secretary isn't sure that
9 there's going to be an underpayment. He doesn't go out to
10 make underpayments in the future, does he?

11 MS. OLSON: No. We're not attributing a bad motive to
12 the Secretary. It is a huge system and people do --

13 QUESTION: Right.

14 MS. OLSON: -- get lost. But if someone is a
15 relatively poor individual who loses his benefits, the
16 Secretary doesn't have many recourses to collect that money.
17 He can sue him, but that is very rarely done. The easiest,
18 most efficient way to get --

19 QUESTION: Oh, I see what you're saying.

20 MS. OLSON: -- the money back is to offset. When the
21 Secretary has the --

22 QUESTION: You may be right. The chances that there
23 will be a mistake in the future, including an underpayment,
24 are probably pretty good.

25 MS. OLSON: Yes.

1 (Laughter.)

2 QUESTION: You may be right.

3 MS. OLSON: The Secretary's -- the Secretary's position
4 shows that we would argue as a patent disregard for some of
5 the desperate financial straits in which some disabled and
6 elderly people find themselves.

7 By presuming that an individual who is owed an
8 underpayment has no need for his funds if he also has an
9 overpayment, the Secretary does a great disservice to many
10 individuals who do have obligations to meet. If they have
11 a large medical bill and the Secretary has netted their
12 overpayment so that they cannot pay it with their
13 underpayment, individuals will reduce their monthly income
14 to make those payments.

15 So, contrary to the Secretary's representations, there
16 will be a reduction in one's standard of living. There will
17 be economic insecurity because those debts which could have
18 been paid with the underpayment will now be paid with their
19 limited monthly income. Congress did not intend such a
20 result when it enacted the 404(a) and 404(b).

21 The Lugo court, which contradicts the Tenth Circuit's
22 decision, made a number of misassumptions. It indicated
23 that it was somewhat troubled by the scenario of an
24 individual like Mr. Lugo who had a large netting period, but
25 presumed that it didn't affect a lot of people. There was

1 no data cited for why it made this presumption.

2 The Lugo majority wrongly considered waivers to be
3 windfalls when in fact the waiver protection is specifically
4 designed to protect the most needy and the most vulnerable.
5 It is not a windfall.

6 It misapplied the Yamasaki decision. Yamasaki made a
7 limited exception in the case of reconsideration decisions.
8 If someone is just disputing the amount of an overpayment,
9 they do not need to have a prerecoupment notice and hearing.

10 That is not the case in the netting situation. What
11 is at issue in netting is the waiver protection.

12 Furthermore, the Lugo majority improperly relied on the
13 Secretary's claim that if netting is eliminated, a multitude
14 of confusing notices and monthly hearings would be required.
15 The Tenth Circuit properly held that it would not be
16 administratively burdensome to eliminate the existing
17 netting policy.

18 The Tenth Circuit found the Secretary would be under
19 no greater burden to provide notice in hearings than already
20 imposed under the statute in Yamasaki. There is no
21 requirement of monthly notices or monthly hearings.

22 Many of the provisions that the Tenth Circuit would
23 require are already in place. The Secretary has a
24 regulation, 20 C.F.R. 416.558, which provides for notices
25 which break down the overpayment and underpayment for each

1 month. That is all that we would need as well as a pre-
2 netting waiver procedure which is found at 20 C.F.R.
3 416.543.

4 QUESTION: A pre-netting waiver? Why? Why would you
5 allow netting but allow the hardship determination to be
6 made after the netting?

7 MS. OLSON: I think that would still contradict the
8 Act.

9 QUESTION: Why? Why would it?

10 MS. OLSON: Because it's a recoupment. Netting is a
11 recoupment, and no recoupment can proceed until a netting
12 determination is --

13 QUESTION: Well, that's right, but he nets and he says,
14 I acknowledge -- let's see -- he changes positions -- says,
15 I acknowledge that netting is a recoupment. All the statute
16 requires then, is that before I make netting, I have to have
17 a hearing to see whether given the fact that I'm only
18 setting off you really have any hardship.

19 Why can't he do that? Given the fact that I'm only
20 setting off, there is no hardship. And the Secretary says,
21 you know, 99 times out of 100 there won't be any.

22 MS. OLSON: Well, that --

23 QUESTION: Why do you have to insist that it be done
24 monthly?

25 MS. OLSON: Well, this Court found that recovery

1 shouldn't be exalted over waiver protections, and that would
2 be such an exaltation.

3 The essence of an equitable statute such as the waiver
4 statute is the individual determination, the individual
5 opportunity to prove hardship. By netting first, you're
6 taking away that individual's opportunity and --

7 QUESTION: No, but I am allowing him to prove hardship.
8 The Secretary conducts the netting just the way he does now,
9 only he allows the individual to come in and say even though
10 you're setting off and even though I don't have to reach in
11 my pocket, there is still hardship in my particular case.

12 Why wouldn't that satisfy all of your objections?

13 MS. OLSON: Because the statute and Congress didn't
14 intend it to work that way. When it said there shall be no
15 recovery from blameless people, it meant there shall be no
16 recovery through netting or any other sort of adjustment,
17 and this is just that sort of recovery.

18 The Secretary acknowledges that only six percent of
19 overpaid people ever even request waiver. So, we're not
20 talking about a system that would deluge the Secretary with
21 waiver requests. Half of the people that apply frequently
22 are granted waiver, and those would be the most needy.

23 The 12,000 --

24 QUESTION: Who has the burden of proof in these kinds
25 of hearings? Does the beneficiary have the burden of proof

1 in the hearing to show that there would be hardship?

2 MS. OLSON: Yes. The beneficiary has to fill out an
3 overpayment questionnaire, a waiver questionnaire, which is
4 about six pages, setting forth why he was not at fault in
5 causing the overpayment, and listing his financial
6 circumstances and why recovery would be inequitable.

7 He would have an opportunity to present testimony about
8 that, his credibility could be assessed in the way the
9 statute intended then before collection could take place.

10 It's possible to get a partial waiver. It's possible
11 that one could go through that hearing and the
12 administrative law judge could determine you're entitled to
13 waiver of the balance of the overpayment but for the amount
14 that would be covered by the underpayment, the Secretary can
15 keep it.

16 There are a number of possible scenarios --

17 QUESTION: You say keep it. Actually, the Secretary
18 would be able to recover it because --

19 MS. OLSON: That's right.

20 QUESTION: -- under your -- it would be paid first,
21 then there would be the hearing and the ALJ might say, well,
22 now you've got to give that underpayment back.

23 MS. OLSON: Well, we don't necessarily say that the
24 underpayment would have to be paid first. That is a
25 possibility and that --

1 QUESTION: Well, then, that's what Justice Scalia was
2 suggesting. I thought you were saying it had to be.

3 MS. OLSON: I'm --

4 QUESTION: I mean, the overpayment has to -- isn't it
5 correct under your view that the overpayment has to be paid
6 right away together with a notice that you have a right to
7 take the benefit of the good faith exception? But don't you
8 have to get the -- isn't it true that they have to turn over
9 the money right away?

10 As soon as the government -- as soon as the Secretary
11 finds there's been an underpayment, is it not your view that
12 the Secretary has a duty to pay the amount of the
13 underpayment together with a notice that we have a right to
14 collect it back because of prior overpayments?

15 MS. OLSON: The regulations indicate that the Secretary
16 should promptly send out underpayments. The statute 404(a)
17 requires the Secretary to remit underpayments --

18 QUESTION: Right.

19 MS. OLSON: -- when they're determined. The promptness
20 as to how fast the underpayment has to be sent out, though,
21 is not specified in the regulation. We would certainly
22 argue that the underpayment can't be held, and in fact the
23 existing netting regulations --

24 QUESTION: Well, could it be held for the period of
25 time required for the Secretary to send a notice saying

1 there was an earlier overpayment and you have a right to
2 have it offset under paragraph B?

3 MS. OLSON: Yes. So long as --

4 QUESTION: And you would say that the Secretary could
5 hold the money during the time period required to resolve
6 the Section B dispute?

7 MS. OLSON: Well, yes.

8 QUESTION: Or at least to see whether they raise it or
9 not?

10 MS. OLSON: Within a reasonable time.

11 QUESTION: Now, if they sent out a notice and said,
12 okay, within 30 days you have to claim a right to a setoff -
13 - the right to keep the overpayment. If you don't do so,
14 we're just going to offset it.

15 MS. OLSON: Yes.

16 QUESTION: They could do that?

17 MS. OLSON: Yes. And, in fact, in our brief we did
18 propose that procedure. I'm sorry if I misunderstood you.

19 QUESTION: Because I thought you answered the other way
20 to Justice Scalia.

21 MS. OLSON: Yeah. I must have misunderstood. I was
22 thinking if it was months. I mean, if we were talking of
23 six or ten months of holding an -- recovering an
24 underpayment that way, that wouldn't be proper.

25 But there is not a requirement that would immediately

1 demand reimbursement of the underpayments if the overpayment
2 were determined at the same time.

3 QUESTION: Why not ten months? I don't understand.
4 Once you accept that, it seems to me you say that the
5 Secretary can use this netting procedure so long as he gives
6 you a hearing or some kind of a process to determine that
7 the offset isn't going to impose hardship.

8 That's really all you're asking for, but you're
9 insisting that it be done promptly.

10 MS. OLSON: Well, we certainly don't want to aggravate
11 the hardship or the inequity by a system that would demand
12 that an underpayment be withheld for a great length of time.

13 The problem now is the Secretary fails to make prompt
14 waiver determinations. Some of the people in the amicus
15 brief have waited years for a waiver determination. So,
16 that would not be a good resolution to the problem.

17 But a prompt waiver determination could -- could
18 resolve our concerns.

19 QUESTION: The Secretary takes the position, as I
20 understand it, that you never get to the waiver problem.

21 MS. OLSON: That's right. That's the Secretary's
22 position. You only get to waiver if you have a net
23 overpayment. But everything in the statute, as we read it
24 and as Congress intended, contradicts that presumption.

25 As the Tenth Circuit held, the fundamental flaw in the

1 Secretary's reasoning is that through netting he is
2 effectively recovering benefits and such recovery, in the
3 absence of a waiver determination, violates the plain
4 language of the statute and Yamasaki.

5 We respectfully request this Court to affirm the Tenth
6 Circuit's decision. Thank you.

7 QUESTION: Thank you, Ms. Olson.

8 Ms. Wax, you have five minutes remaining.

9 REBUTTAL ARGUMENT OF AMY L. WAX, ESQUIRE

10 ON BEHALF OF THE PLAINTIFFS

11 MS. WAX: Justice Scalia suggests, why not just go
12 ahead and net and then give the person the opportunity to
13 be heard. Once again, we don't think the statute requires
14 that. But also, we want to emphasize that that would place
15 a significant new burden on the agency because as things
16 stand now, one-half of all individuals with mixed payment
17 errors end up with net underpayments.

18 Those individuals' accounts can be resolved very
19 promptly just by sending out a check. And, if everyone in
20 the mixed group now becomes entitled to a hearing, that will
21 swamp the system with multiple new hearing obligations that
22 will --

23 QUESTION: No, except for this --

24 MS. WAX: -- essentially double --

25 QUESTION: May I just interrupt? Except for this.

1 That in each of those cases the person had the burden of
2 proving that it would be inequitable even if the person kept
3 the amount in dispute. As you said earlier, most of the
4 time it's going to work out fairly if they keep the amount
5 in dispute.

6 So, the burden is really higher for a person who has
7 that cash on the table and, say, the government can't keep
8 that cash.

9 MS. WAX: It would be very, very hard for a person to
10 prove that it was inequitable --

11 QUESTION: Right.

12 MS. WAX: -- for them to keep that --

13 QUESTION: So that you won't lose many of those cases
14 then.

15 MS. WAX: We won't lose them but we'll have to process
16 them.

17 QUESTION: In fact, they probably wouldn't bring most
18 of them, would they?

19 MS. WAX: We don't know that. Right now we have --

20 QUESTION: But your argument earlier about why this was
21 basically fair, we really assume that to be the case in the
22 typical case.

23 MS. WAX: Well, we have no reason to believe that
24 people won't request waiver with the same frequency in that
25 population -- request waiver if they're separate

1 overpayments in the same frequency as they now request
2 waiver of their net overpayments. We have no way of
3 knowing.

4 All we know is that there will be many, many more
5 requests for waiver, the vast majority of which will
6 virtually be non-meritorious, thereby delaying our
7 processing of the meritorious net overpayment waiver claims,
8 placing a significant new administrative burden on the
9 agency. And that's what we're worried about. That's why
10 we're here today.

11 QUESTION: Do the waiver applications or hearings --
12 are they conducted before an administrative law judge?

13 MS. WAX: Initially, they are conducted before a
14 program officer. They are an informal face-to-face hearing
15 before a program officer. But, of course, all appeal rights
16 are reserved.

17 QUESTION: So, either -- a party that is dissatisfied
18 with the determination of the program officer can appeal to
19 an administrative law judge?

20 MS. WAX: Yes. There can be appeal to the
21 administrative law judge, to the appeals council, to the
22 district court. The resolution of mixed errors can be
23 delayed indefinitely by this new waiver right. That's why
24 we're very concerned about it.

25 Secondly, it's true that in some of the cases of the

1 named plaintiffs and intervenors, the period over which
2 overpayments and underpayments were netted was fairly
3 extensive, five or six years. But that does not mean that
4 these named plaintiffs conformed to Justice Steven's
5 scenario.

6 Ms. Wise and Mr. Zwiezen had overpayments and
7 underpayments from overlapping periods. They actually had
8 overpayments and underpayments in the same month. It would
9 be preposterous, we submit, to waive the overpayment
10 component and then turn around and pay them the
11 underpayment component when they have both errors in the
12 same month.

13 For example, Ms. Wise was overpaid disability benefits
14 because she was working, but she was underpaid retirement
15 benefits that she was entitled to but did not collect.
16 Justice Steven's scenario is fairly rare. It's a very
17 remote overpayment, a widely separated interval, and then
18 an underpayment. And that is not the scenario presented by
19 any of the individuals who are named in this case.

20 Finally, just to clarify, it is the Secretary's
21 regulations that interpret the concepts of fault, equity and
22 good conscience and defeat the purpose, and those
23 regulations are cited in respondent's brief at note 4.

24 If the Court has no further questions, we'll conclude
25 our remarks.

1 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Wax.

2 The case is submitted.

3 (Whereupon, at 10:59 a.m., the case in the above-
4 entitled matter was submitted.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

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

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. v.

SANDRA EVERHART, ET AL. CASE No. 88-1323

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

BY Leona M. May
(SIGNATURE OF REPORTER)

LEONA M. MAY
(NAME OF REPORTER - TYPED)

RECEIVED
SOUTH AND CENTRAL
MAIL ROOM

'89 FEB -5 P1:55