

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1656

TITLE LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND  
LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, Petitioners V.  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

PLACE Washington, D. C.

DATE February 25, 1986

PAGES 1 thru 49

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IN THE SUPREME COURT OF THE UNITED STATES

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LOCAL 28 OF THE SHEET METAL :  
WORKERS' INTERNATIONAL ASSOCI- :  
ATION AND LOCAL 28 JOINT :  
APPRENTICESHIP COMMITTEE, :  
Petitioners, :

v. : No. 84-1656

EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, ET AL. :

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Washington, D.C.

Tuesday, February 25, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:46 o'clock a.m.

APPEARANCES:

MARTIN R. GOLD, ESQ., New York, New York, on behalf of the petitioners.

O. PETER SHERWOOD, ESQ., Deputy Solicitor General of New York, New York, New York, on behalf of the respondent.

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1 this is not a goal case, further race conscious  
2 remedies, and total loss of self-government.

3 Now, when the quota was not achieved by the  
4 deadline which was fixed by the District Court, then  
5 civil contempt remedies were imposed upon this union,  
6 and as a result of the fact that this was deemed to be  
7 civil contempt and not criminal contempt, the union was  
8 not able or permitted to defend itself by proving that  
9 it had not acted wilfully, and that it didn't have any  
10 control over the situation.

11 As a result of this, a strengthened program of  
12 further quotas was imposed, more race conscious  
13 remedies, 100 percent -- a fund to be used 100 percent  
14 for minorities, and which cannot in any way be used to  
15 benefit white people at all. Now, I hope to demonstrate  
16 to you that the reverse discrimination in this case is  
17 beyond all boundaries. It is beyond the boundaries of  
18 Title 7. It is beyond what Congress intended and set  
19 forth in speech after speech during the debates.

20 QUESTION: Mr. Gold, before you get into the  
21 substance of your argument, would you tell me which  
22 paragraph of the decree imposes the quota?

23 MR. GOLD: It is the decree which sets forth  
24 -- it is --

25 QUESTION: You quoted several paragraphs in

1 your reply brief. Is it in those paragraphs?

2 MR. GOLD: In our reply brief and in our main  
3 brief we set forth the specific -- we quoted the  
4 specific paragraph. I don't have the page number before  
5 me. We have got 1,000 pages printed. But it  
6 specifically -- the original quota specifically states  
7 in the court's decree that by July 1, 1981, the quota  
8 shall be achieved.

9 Excuse me. I do have it. It is A305. That  
10 is Page 305 to the appendix to the cert petition, I  
11 believe.

12 Now, there is one point that I really think  
13 must be put on the table in this case. Many people who  
14 look at this case seem to apply a presumption to it, the  
15 presumption that since this union has been in litigation  
16 for all these years over matters pertaining to civil  
17 rights, the presumption is that they must be bad people,  
18 and some of the language which has been used  
19 particularly in the amicus briefs goes beyond all facts.

20 One of the words which appears over and over  
21 again is egregious. I want to demonstrate to you that  
22 when you scratch below the surface here, what has  
23 happened is quite the reverse. This union has really  
24 been forced by virtue of this quota, by virtue of these  
25 other -- to engage in more reverse discrimination than

1 has been permitted in any case that I know about.

2 And to say that this union is a bunch of  
3 bigots who will go to any extent and any limit to avoid  
4 taking in minorities just avoids the facts. It ignores  
5 them completely. This union has done just the  
6 opposite. As a result of what has been imposed upon it,  
7 this union has taken in as much, as many minorities as  
8 possible, and continues to do so. They have gone so far  
9 and would go so far if permitted as to literally put up  
10 a sign at the entrance to the office where people could  
11 sign up for the apprentice program saying "Blacks only  
12 need apply."

13 That is because of the court order which has  
14 been imposed against them.

15 Now, it is important to bear in mind that  
16 sheet metal workers are a very skilled trade. As a  
17 skilled trade, it takes a sufficient -- it takes a  
18 significant amount of time for them to be trained. The  
19 apprentice program is four years. Not everyone can  
20 qualify for the apprentice program. The aptitude test  
21 that has been given for a good period of time now under  
22 the supervision of the courts' offices is at  
23 approximately the level of tenth grade math, tenth grade  
24 English, and that is just to get into the program.

25 Now, it would just be impossible, and no one

1 is claiming otherwise, to simply open the doors and  
2 permit anyone to come in and become a sheet metal  
3 worker. It is as if you wanted to do the same thing  
4 with a professional, the legal profession or the medical  
5 profession, and suppose a determination were made that  
6 there was an insufficient percentage of minorities in  
7 those professions, and the federal judge said, as a  
8 result of that, we are going to integrate. These  
9 professions are going to start to accept a larger  
10 percentage of minorities, and we will give you an out  
11 date, and by that date a percentage has to be achieved.

12 On a somewhat lesser scale, that is what  
13 happened in this case.

14 QUESTION: Well, are you challenging any  
15 finding that there was deliberate discrimination?

16 MR. GOLD: No, Your Honor.

17 QUESTION: So there was deliberate  
18 discrimination?

19 MR. GOLD: Your Honor, I began by --

20 QUESTION: And a remedy was called for.

21 MR. GOLD: Yes, sir.

22 QUESTION: Now, what was wrong with the  
23 remedy?

24 MR. GOLD: What was wrong with the remedy was  
25 that it went beyond what Title 7 permits.

1 QUESTION: In what respect?

2 MR. GOLD: In that to begin with it contained  
3 a quota. Next --

4 QUESTION: When you say the quota, you mean  
5 the 29.3 percent.

6 MR. GOLD: Well, it was originally 29 percent.

7 QUESTION: Anyway, you call it a quota, and  
8 you say that the court called it a quota.

9 MR. GOLD: Yes, Your Honor.

10 QUESTION: All right, so that is one. What  
11 else?

12 MR. GOLD: That is one. The next is the total  
13 loss of control over self-government by virtue of the  
14 administrator, and the others are a variety of minor  
15 provisions in the order and judgment and the affirmative  
16 action program -- that is seven paragraphs of them --  
17 which direct that preferences be given to minorities in  
18 various aspects of hiring.

19 QUESTION: Do you make any claim that --  
20 similar to the claim the United States makes that the  
21 remedy was excessive because it gave remedies to people  
22 other than victims?

23 MR. GOLD: Yes, sir.

24 QUESTION: Was that part of your argument?

25 MR. GOLD: That is part of our argument, Your

1 Honor. But we go beyond that, because if we look at the  
2 case, if you telescope it to look for a moment at what  
3 is going on now as a result of these enhanced and  
4 magnified orders which followed the contempt, here we  
5 have a situation now where the last acts of  
6 discrimination that anyone has proved or even alleged  
7 occurred prior to 1975, and nevertheless, as a result of  
8 these orders this union is presently maintaining two  
9 lists of young people who are applying for entrance to  
10 the apprentice program, whites and non-whites, and when a  
11 person comes in the door, we have to put him on one list  
12 or another, and 45 percent --

13 QUESTION: If they have passed the test.

14 MR. GOLD: No more test.

15 QUESTION: Oh, I see.

16 MR. GOLD: Now there is a selection board.

17 QUESTION: Okay.

18 MR. GOLD: And 45 percent of each class of  
19 apprentices is now minorities. Now, who we --

20 QUESTION: Regardless of how they are graded  
21 by the selection board?

22 MR. GOLD: That's right. Now, who are we  
23 discriminating between? These are not the victims of  
24 discrimination.

25 QUESTION: Who do they choose first on the

1 white list and who do they choose first on the black  
2 list? Is it by grade?

3 MR. GOLD: There are no tests any longer.

4 QUESTION: I know, but --

5 MR. GOLD: There is a selection board, and  
6 what the selection board does is, it goes over the  
7 qualifications of all of these people, and if they --

8 QUESTION: But they rank them.

9 MR. GOLD: Yes. They are going to take 100  
10 people, they are going to take 55 whites and 45  
11 non-whites.

12 QUESTION: Yes, but the 55 whites who they  
13 believe are the best qualified.

14 MR. GOLD: Are the best qualified.

15 QUESTION: And similarly with the blacks.

16 MR. GOLD: Yes.

17 QUESTION: But they don't compare the two  
18 lists.

19 MR. GOLD: They don't compare the two lists.  
20 If they compared the two lists, it would not come out  
21 55-45.

22 QUESTION: This is to get into the apprentice  
23 program.

24 MR. GOLD: That's right, which everybody  
25 acknowledges is today by far the major avenue into this

1 union. But the result of what has happened here is, who  
2 are these people that want to be admitted now? By no  
3 means are these the victims of past discrimination. You  
4 can't look at this case to expand that meaning in any  
5 way and come to that position. These are young people  
6 who are coming into the work force who are about 18  
7 years old.

8 QUESTION: Who is on this board? Are they  
9 union people?

10 MR. GOLD: No. One is a person -- we have  
11 several boards and I have to keep them straight. I  
12 believe one is selected by the plaintiffs, that is, by  
13 the state, the city, and the EEOC, one by the union, and  
14 one by the administrator, who is the judge's  
15 representative, a special master.

16 Now, so we are discriminating between these  
17 young people who at the time of the last acts of  
18 discrimination that have been proved were approximately  
19 seven years old at most.

20 QUESTION: Or they weren't born at all.

21 MR. GOLD: Or maybe some of them weren't born  
22 at all. That is correct, Your Honor. And this is going  
23 on, and we continue to be forced by virtue of this  
24 quota, which we have now been threatened -- our very  
25 existence has been threatened if we fail to meet this by

1 August of 1987.

2 QUESTION: Why hasn't it been met up to date?  
3 Because 45 percent, allocating 45 percent to the black  
4 list doesn't augment the membership fast enough to get  
5 to the --

6 MR. GOLD: By no means could it possibly do  
7 it. This was doomed to failure from the first. And it  
8 doesn't make any mathematical sense to have thought that  
9 it could have worked from the beginning.

10 QUESTION: But you are not free to put any  
11 more than 45 percent blacks on the list?

12 MR. GOLD: At the moment, we are not, Your  
13 Honor. Now, we have tried to get permission to put more  
14 than 45 percent on the list. Right after the original  
15 decree was entered in 1975, the problems here became  
16 absolutely apparent. This is 1975, and so the --

17 CHIEF JUSTICE BURGER: We will resume there at  
18 1:00 o'clock, counsel.

19 MR. GOLD: Thank you.

20 (Whereupon, at 12:00 o'clock p.m., the Court  
21 was recessed, to reconvene at 12:58 o'clock p.m. of the  
22 same day.)

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1 Gold, is one of the paragraphs to which you called my  
2 attention which sets forth the quota, it says by 1981 it  
3 had to be met, and of course obviously that date has  
4 passed. But am I correct that none of the contempt,  
5 specific findings of contempt against you are based on  
6 the failure to achieve the quota? Is that right?

7 MR. GOLD: Well, that is correct, that the  
8 specifications of contempt which the District Judge  
9 found against us and the Court of Appeals affirmed did  
10 not contain that. The notice of motion to hold us in  
11 contempt and the supporting affidavits by the attorneys  
12 for both the state and the city concentrated upon the  
13 failure to achieve the quota. That was the primary  
14 basis of their motion.

15 The court, the District Court instead said he  
16 is not finding us in contempt for failing to achieve a  
17 quota, underline not, and said, but he is convinced that  
18 the other failures, the specifications of contempt taken  
19 together made it impossible for other reasons we didn't  
20 achieve the quota.

21 QUESTION: But whatever he found you in  
22 contempt for, you nevertheless were under an order to  
23 achieve a quota. That is your submission.

24 MR. GOLD: That's correct.

25 QUESTION: And I am still interested in

1 knowing --

2 MR. GOLD: Why we didn't.

3 QUESTION: Yes. You say the figure was 15  
4 percent now, just now?

5 MR. GOLD: Yes, as of January 31 of this  
6 year. Now --

7 QUESTION: Again, before you leave it, just so  
8 I have it clear in my mind, is there another paragraph  
9 that requires that the quota be met by a different  
10 deadline other than the --

11 MR. GOLD: Now there is, Your Honor.

12 QUESTION: And where is that?

13 MR. GOLD: That is in a more recent -- in the  
14 more recent order which emerges --

15 QUESTION: And then my second question is,  
16 have you specifically challenged that position of that  
17 order?

18 MR. GOLD: Absolutely. One of the orders  
19 which is on direct appeal to the circuit from which we  
20 filed this cert petition is the order which slightly  
21 altered the percentage to 29.32 percent, required that  
22 that percentage be achieved by August of 1987, and  
23 specifically threatened the union that its very  
24 existence would be in jeopardy by fine, by extraordinary  
25 fines if they failed to achieve it by that date, and

1 that is one of the primary orders which we are  
2 contesting here.

3 QUESTION: Mr. Gold, one of the things raised  
4 in your brief has to do with the order setting up a  
5 special fund --

6 MR. GOLD: Yes, Your Honor.

7 QUESTION: -- for use in connection with the  
8 apprenticeship program.

9 MR. GOLD: Yes.

10 QUESTION: Did you challenge the validity of  
11 the fund order under Title 7 in the Court of Appeals?

12 MR. GOLD: Yes, Your Honor.

13 QUESTION: And we find that challenge in the  
14 record some place?

15 MR. GOLD: The specific -- there was a direct  
16 appeal taken from that order itself to the Second  
17 Circuit, and the Second Circuit specifically dealt with  
18 it on that basis. I don't think that the Second Circuit  
19 in its majority opinion went into any analysis as to  
20 that order being valid under Title 7, but it was clearly  
21 what they considered, and that is evident from the  
22 dissenting opinion, which specifically states in no  
23 uncertain terms that it is invalid just on that ground.

24 QUESTION: Now, before lunch, you were talking  
25 about two lists from which applicants are accepted for

1 the program. Those lists were not ordered by the Court,  
2 were they? I thought those were voluntarily structured  
3 at the 45 percent level.

4 MR. GOLD: Well, I hardly think that that is  
5 voluntary, Your Honor. When you are living under a  
6 quota, with threats of the nature which are involved in  
7 this case, and in order to do your best to come as close  
8 to trying to comply with that you "voluntarily," I say  
9 in quotes, engage in reverse discrimination, I don't  
10 regard that as voluntary.

11 QUESTION: Well, at least the second circuit  
12 said that the defendant had voluntarily set up the 45  
13 percent list.

14 MR. GOLD: The majority opinion said that,  
15 Your Honor, and that was their basis for invalidating a  
16 specific provision in the newly revised affirmative  
17 action plan creating a mandatory one-to-one, one  
18 minority, one majority. But as I say, that is hardly  
19 voluntary.

20 QUESTION: How is the term "non-white" defined  
21 in the order?

22 MR. GOLD: Non-white is a person of -- a Negro  
23 person or a person with a Spanish surname. Now, where  
24 did that definition come from? It came from the  
25 original complaint filed by the Department of Justice in

1 1971, in which they defined that term as such. The  
2 definition was carried forward in the pretrial order,  
3 which led to the District Judge's decisions. It has  
4 been carried on ever since.

5 Does that make any sense? I have difficulty  
6 with it. For example, this union now has a reasonable  
7 number of orientals. Those orientals are counted as  
8 whites. It had very few orientals, if any, back in  
9 1964, when this whole business began.

10 QUESTION: Mr. Gold, have you answered yet the  
11 question why you had not achieved the goals?

12 QUESTION: He has given one reason. So you  
13 can -- can you go ahead?

14 MR. GOLD: Well, there are a couple of  
15 reasons. The primary reason is because during the  
16 period involved there were extraordinary economic  
17 reversals in the construction industry in New York, of  
18 which this union is one part. I am sure you will recall  
19 that during just this period from 1975 to 1980, which is  
20 the critical period here, the construction industry in  
21 New York was in terrible straits.

22 As a result, the membership of this union went  
23 from in excess of 3,000 members to approximately 2,000  
24 members during that period of time, and there weren't  
25 any jobs for the journeymen, and there weren't any jobs

1 for anybody at times, even for the membership. In the  
2 low point of this, 42 percent of the union members were  
3 employed, not unemployed, but employed. The rest of  
4 them were all unemployed. There just wasn't any  
5 construction going on in New York.

6 Now, at that time how is it possible to  
7 interest anyone, white or black or purple, in becoming a  
8 member of this union or in joining this business? That  
9 was the primary problem. But I think that this failure  
10 was inevitable anyway without the most extraordinary  
11 kind of reverse discrimination, which I think could  
12 never be tolerated.

13 QUESTION: Well, it was possible with  
14 extraordinary reverse discrimination, as you call it.  
15 The 45 percent you set, but I take it it was accepted by  
16 the special master or whatever you call him, the  
17 administrator.

18 MR. GOLD: It was accepted by the plaintiffs  
19 in 1981 as well.

20 QUESTION: Yes.

21 MR. GOLD: And the union had done it  
22 voluntarily before that, even though the class of  
23 apprentices had been very small as a result of the  
24 economic decline.

25 QUESTION: But you say it was inevitable

1 anyway, and so --

2 MR. GOLD: Yes, I think --

3 QUESTION: So the remedy -- does that  
4 translate into an assertion that a satisfactory remedy  
5 was impossible?

6 MR. GOLD: Well, I think that calling this  
7 civil contempt just -- and treating it the way the  
8 District Court did just mixed up civil and criminal  
9 contempt remedies.

10 QUESTION: This is a contempt argument, and I  
11 understand that is part of your argument, but that isn't  
12 much of a Title 7 argument.

13 MR. GOLD: Well, I am not sure that I  
14 understand your question then, Your Honor. The point  
15 with respect to the contempt is this. In a civil  
16 contempt situation, the purpose of it is to coerce  
17 somebody, to obey an order which is yet unobeyed. That  
18 is the primary purpose. In fact, as I read Section  
19 1101, which is the contempt section under the Civil  
20 Rights Act, I think that is the only permissible  
21 purpose. That is the only basis on which this was  
22 sustained by the Second Circuit.

23 QUESTION: Mr. Gold, excuse me for  
24 interrupting you.

25 MR. GOLD: Yes, Justice Powell.

1 QUESTION: I have a question or two that may  
2 not be relevant but as a matter of interest. Did the  
3 District Court's order require any member of the union  
4 to be laid off?

5 MR. GOLD: No, Your Honor.

6 QUESTION: In what way, if any, did the order  
7 of the District Court discriminate against a particular  
8 member of the union?

9 MR. GOLD: I don't think that it did  
10 discriminate against any existing member.

11 QUESTION: You used the term "reverse  
12 discrimination." I would like to identify the impact,  
13 if any, on individual members of the union.

14 MR. GOLD: I think that the impact is on  
15 people coming into the union, who desire to come into  
16 the union.

17 QUESTION: Who are not in the union already.

18 MR. GOLD: Yes, Your Honor.

19 QUESTION: And who are wanting to get into the  
20 apprenticeship program.

21 MR. GOLD: Yes, Your Honor.

22 QUESTION: And it seems to me I read in one of  
23 the briefs that existing union members are required to  
24 pay for the apprentice program. Is that correct?

25 MR. GOLD: Yes.

1 QUESTION: Who pays for it?

2 MR. GOLD: They do, Your Honor, as they pay  
3 for everything else that is going on here.

4 QUESTION: They pay for the administrator,  
5 too, don't they?

6 MR. GOLD: They pay for the administrator.  
7 The administrator's fees as of the end of November had  
8 been close to \$700,000 so far for his services. He has  
9 been involved in this on essentially a daily basis since  
10 he was originally appointed.

11 QUESTION: Has there been any problem about  
12 the availability of qualified nonwhites?

13 MR. GOLD: Absolutely, Your Honor. That is --

14 QUESTION: Does that enter into the achieving  
15 15 percent instead of 29?

16 MR. GOLD: That certainly is a factor, Your  
17 Honor.

18 QUESTION: Is there material on that in the  
19 record?

20 MR. GOLD: There is, Your Honor. The  
21 material, we didn't print it, but it is reports that  
22 indicate that smaller percentages of non-whites than one  
23 would hope had passed the original -- had passed the  
24 entrance tests.

25 I would like to reserve --

1 QUESTION: Is that any place --

2 QUESTION: You say that it would have been  
3 impossible to achieve this 29 percent under any  
4 circumstances.

5 MR. GOLD: Yes. The only way that this could  
6 have been achieved is if there was an extraordinary boom  
7 in the construction industry in New York, and at the  
8 same time the union essentially said we are only going  
9 to take blacks or close to only blacks, and went out  
10 and --

11 QUESTION: Into the apprentice program.

12 MR. GOLD: Into the apprentice program. Now,  
13 as a result --

14 QUESTION: Didn't you run the apprentice  
15 program whether the construction industry was on the  
16 boom or in the --

17 MR. GOLD: We did, Your Honor, but during the  
18 lean years there were just a small number of apprentices  
19 who were in the program. Many who joined dropped out  
20 because they weren't able to get jobs. It is a  
21 four-year apprentice program, and during that period of  
22 time people have to work, and if there are no jobs it is  
23 very difficult to attract or keep people.

24 I would like to reserve a few moments -- a few  
25 minutes at the end of my time. Thank you.

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CHIEF JUSTICE BURGER: Mr. Sherwood.

ORAL ARGUMENT OF O. PETER SHERWOOD, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. SHERWOOD: Mr. Chief Justice, and may it please the Court, listening to Mr. Gold this morning and the first part of this afternoon, I was struck by his characterization of the condition of the union that we have here before us today. I would think that neither the District Court nor the Court of Appeals would have recognized the union in its supposed compliance as described by Mr. Gold this morning.

References to the term "egregious conduct" comes not so much from the amici or the briefs filed by the respondents but rather is a term used by the lower courts in describing the conduct of this union.

For over two decades the courts have been prodding this reluctant union towards full compliance with local, state, and federal laws requiring equality of opportunity in employment. And our appearance here today is simply the latest stop along that arduous road.

This afternoon I want to focus on the meaning of Section 706(g) as it relates to the issues that are before the Court, and of course we stand on all of the arguments that we make in our brief. Initially, I want

1 to state briefly our position regarding Section 706(g).  
2 I intend to respond briefly to a few of the points made  
3 by Mr. Gold this morning and early this afternoon, and  
4 then return to a fuller discussion of Section 706(g).

5 To the extent that the Court determines that  
6 it should address the reach of the remedial authority of  
7 District Courts under Title 7, it is our position that  
8 Section 706(g) itself gives courts broad authority to  
9 grant relief that realistically will work to fully  
10 remedy the discrimination that it has found.

11 In some cases, and I suggest that this is one  
12 such case, that includes the power to order affirmative  
13 race conscious relief which benefits some people who are  
14 not the proven victims of the identified  
15 discrimination. Imposition of a per se rule that  
16 prevents the District Court from ordering such remedies  
17 in appropriate cases is at odds with the plain language  
18 of the statute itself.

19 As is evident in the decision to the Courts of  
20 Appeals that are charged with responsibility for  
21 implementing and overseeing implementation of the  
22 statute, such a rule would deprive the courts of the  
23 needed tools, the tools they need in order to carry out  
24 the statute's essential purpose of rooting out  
25 identified discrimination and its effects.

1           We believe, however, that the determination of  
2 whether or not non-victim-specific race-conscious  
3 remedies should be ordered should be left initially to  
4 the discretion of the District Courts. That is the  
5 scheme that Congress envisioned when it enacted and  
6 amended Title 7.

7           Of course, that relief should be tailored to  
8 cure the effects of the identified discrimination.  
9 Considerations that should attend that determination to  
10 impose prospective race-conscious remedies have already  
11 been suggested by this Court in Webber and by Justice  
12 Powell's opinion in Fullilove.

13           They include the efficacy of alternative  
14 remedies, the planned duration of the remedy, the  
15 relationship between the percentage of minority workers  
16 admitted to membership, and the percentage of minority  
17 group members in the relevant labor pool, the  
18 availability of waiver provisions if the hiring plan  
19 cannot be met, and the effect of that plan on third  
20 parties.

21           Regarding a number of the points that Mr. Gold  
22 made earlier, I would like to just make a few comments.  
23 One, the District Court's order here does not impose a  
24 quota. The 45 percent number that Mr. Gold referred to  
25 is one selected by the union. What the District Court

1 has ordered in this case is that the union move with  
2 dispatch towards overcoming the long history of  
3 discrimination that it has practiced.

4 QUESTION: How about the 29 percent figure?

5 MR. SHERWOOD: The 29 percent figure, Justice  
6 Rehnquist, is a number which the District Court said you  
7 shall move ahead with -- make regular and substantial  
8 progress, and those are the words the court used,  
9 towards getting to the 29 percent. It is a means by  
10 which the Court measured how long it would closely  
11 supervise this union's progress towards integration.

12 QUESTION: There was no time requirement --

13 MR. SHERWOOD: There is a time requirement  
14 which has been, incidentally, reset a few times now.  
15 The court recognized early on that conditions beyond the  
16 control of the union, such as conditions in the union,  
17 might require adjustment, and the court has done so, as  
18 I said, on two occasions.

19 What the court has required, and it has said  
20 so in several places in the record, is that it wants the  
21 union to move ahead and move ahead with dispatch.

22 QUESTION: Supposing the District Court had  
23 said I think you should aim for 29 percent and I think  
24 you should -- I am going to order you to attain it six  
25 years hence, would you say that is not a quota?

1 QUESTION: And if you don't, I will fine you.

2 QUESTION: Yes.

3 MR. SHERWOOD: Okay. I don't want to debate  
4 whether we are talking about a quota or a goal, because  
5 it seems to me that the terms, although many people use  
6 them, don't -- doesn't focus in precisely on the concept  
7 which we are talking about.

8 QUESTION: Would you say that is permissible?

9 MR. SHERWOOD: But let's call it a quota.

10 QUESTION: Was that permissible for the  
11 District Court to do under your view of 706?

12 MR. SHERWOOD: I believe so, yes. The  
13 District Court could do what it has ordered in this  
14 case. It has --

15 QUESTION: How did the District Judge come to  
16 29.23?

17 MR. SHERWOOD: It came to 29.23 on the basis  
18 of the evidence it had before it that that was the  
19 proportion of -- the proper proportion of non-whites.

20 QUESTION: I assumed it was drawn from some  
21 such, but the fraction seems to be a little curious.

22 MR. SHERWOOD: That was the result of the  
23 particular evidence before the District Court in 1982.

24 QUESTION: But here this is a fluctuating --  
25 the market is fluctuating. The number of people

1 employed at a given time is fluctuating.

2 MR. SHERWOOD: No, it is not.

3 QUESTION: Is that not so?

4 MR. SHERWOOD: The -- well, certainly the  
5 number of people in the market may fluctuate over time,  
6 but that 29.23 percent was fixed in 1982 as a result of,  
7 yes, a change in the relevant labor pool, and also, and  
8 most importantly, because the jurisdiction of the union  
9 had changed as a result of a merger of other unions into  
10 this union.

11 There was a proceeding before the District  
12 Court in which the union proposed that the proper end  
13 goal should be around 21 percent. The plaintiffs in the  
14 case asked for percentages ranging between 33 and 41  
15 percent. The District Court had in the record before it  
16 testimony to the effect that the proportion of  
17 non-whites in the labor market, in the defined labor  
18 market who were within the appropriate age ranges was  
19 29.23 percent, and that is where the number came from,  
20 so the District Judge picked a number which was in  
21 between that which the union was proposing and that  
22 which plaintiffs were proposing.

23 As I said, the --

24 QUESTION: But anyway the figure was supposed  
25 to match the percentage of available applicants in the

1 labor market.

2 MR. SHERWOOD: In the labor market. That is  
3 correct.

4 QUESTION: Of whatever was defined as  
5 minority.

6 MR. SHERWOOD: That's correct, and that was  
7 based on the evidence that was before -- presented to  
8 the District Judge.

9 Mr. Gold suggested that the fund sets up a 100  
10 percent quota with respect to those items that are  
11 addressed in that particular order. I should point out  
12 that the District Court made quite clear that the union  
13 was free if it chose to extend those kinds of benefits  
14 to whites as well, but the Court was not going to itself  
15 impose -- require that the union extend those benefits  
16 to white individuals.

17 I should point out, too, that the selection  
18 board that selects people for the apprenticeship program  
19 are all union members. One is selected by the  
20 administrator. One is selected by the plaintiffs, and  
21 one is designated by the union, but they are all members  
22 of Local 28.

23 Importantly -- I think it is important to  
24 recognize precisely what --

25 QUESTION: Did the plaintiffs agree to the 45

1 percent at one point in this proceeding?

2 MR. SHERWOOD: The plaintiffs did acquiesce in  
3 that. Yes, Justice White.

4 QUESTION: And have they ever asked for a  
5 higher percentage?

6 MR. SHERWOOD: At one point the plaintiffs  
7 sought to obtain an order from the District Judge for a  
8 one-to-one ratio for placing people into the  
9 apprenticeship program, and the District Court --

10 QUESTION: And what did --

11 MR. SHERWOOD: I am sorry.

12 QUESTION: What did the judge say, no?

13 MR. SHERWOOD: The District Court did order  
14 that, but the Court of Appeals stripped that portion of  
15 the order for the reason that since the union was  
16 voluntarily indenturing non-whites at 45 percent, there  
17 was no need for that kind of ratio.

18 QUESTION: Would one-to-one have attained the  
19 29 percent goal, do you know?

20 MR. SHERWOOD: By 1986? I don't think so,  
21 Justice White.

22 QUESTION: Any more than 45 percent? A little  
23 -- maybe a little more.

24 MR. SHERWOOD: I don't think the difference is  
25 significant, but I think it is important to remember

1 precisely what led to this union being held in  
2 contempt. They were not held in contempt for not  
3 meeting the 29 percent goal. They were held in contempt  
4 for not trying particularly hard.

5 QUESTION: But they were still under an order.

6 MR. SHERWOOD: Pardon?

7 QUESTION: They were still under an order to  
8 attain that -- to shoot for that goal.

9 MR. SHERWOOD: Yes, that is correct, but that  
10 is precisely it. They are under an order to shoot for  
11 that goal. It required that they meet the 29 percent.  
12 It currently says they ought to meet the 29 percent by  
13 the middle of 1986. At one point in the past it said  
14 that they were to meet it by the middle of 1981, and it  
15 was then changed to 1982 because of conditions in the  
16 industry. And if there is evidence in the record --

17 QUESTION: Well, if the union had complied  
18 with all of the acts, all of the orders that they had  
19 been held in contempt for disobeying, would there have  
20 been any greater chance of achieving the goal or quota  
21 or whatever you call it?

22 MR. SHERWOOD: I cannot say that they would  
23 have achieved it. I can say with certainty that they  
24 would have been much further along the road, and it is  
25 for foot-dragging that they were held in contempt, not

1 for not reaching the goal.

2 It is important, too, to see what the District  
3 Court did here. The District Court ordered the union to  
4 not artificially close down the size of the  
5 apprenticeship program, and it is in order to provide  
6 greater opportunities for minorities to enter into the  
7 trade, and also to limit the impact of the court's order  
8 on third parties who are seeking to enter the --

9 QUESTION: Is the 29 percent union membership  
10 or part of the apprenticeship program? It is the union  
11 membership.

12 MR. SHERWOOD: Twenty-nine percent membership,  
13 which includes both journeymen and apprentices. The  
14 number is -- they are lumped together for purposes of  
15 making that calculation.

16 QUESTION: Can I ask you, Judge Winter said  
17 this, and I am sure you are aware of it, in dissent:  
18 "However, in light of the facts that large numbers of  
19 journeymen did not work during the period in question,  
20 or only worked meager hours, reactive fingerprinting at  
21 Local 28 is faintly camouflaged holding that journeymen  
22 should have been replaced by minority apprentices on a  
23 strictly racial basis."

24 Do you have any response to that?

25 MR. SHERWOOD: There is nothing in the court's

1 order that required the union to displace journeymen as  
2 such. The standard within the industry was generally,  
3 and this isn't a strict requirement now, that there be a  
4 ratio of apprentices to journeymen on roughly a  
5 one-to-four basis.

6 QUESTION: One-to-four, yes.

7 MR. SHERWOOD: What occurred during the time  
8 period that we are concerned about was that the ratio of  
9 apprentices to journeymen went way up. In some shops  
10 you were talking about one in 22.

11 QUESTION: Because there wasn't any work.

12 MR. SHERWOOD: And because the union kept the  
13 size of the apprenticeship program very low as compared  
14 to journeymen, and if you look at the hours worked by  
15 journeymen during that period of time, the curb goes way  
16 up. Again, the journeymen increased their hours during  
17 that time period, and the court, given that kind of  
18 evidence, concluded that what the union was about was  
19 shifting work from apprentices to journeymen to the  
20 disadvantage of and in violation of the court's order  
21 requiring that it move -- make regular and substantial  
22 effort towards integrating its membership.

23 Mr. Gold indicated that there is evidence in  
24 the record of an inadequate number of minorities  
25 applying for the apprenticeship program. He refers to

1 the fact that in 1981 the union indicated that  
2 minorities were not doing well on the test.

3 The reason why early on the court required  
4 that the union validate its selection procedures, the  
5 union elected not to attempt to do that. And so the bit  
6 of evidence that Mr. Gold is referring to is that the  
7 minorities were not passing this unvalidated selection  
8 procedure that the union had been using, and that is why  
9 it switched from using this paper and pencil test to the  
10 selection board.

11 And so I would say that there is no question  
12 in this case as to the unavailability of qualified  
13 non-whites to seeking admission into the union. I might  
14 point out that in the last couple of years the rate of  
15 application among minorities entering in this union  
16 seeking application, seeking membership in the union,  
17 has been running between 40 and 49, 50 percent and 75  
18 percent, depending on which particular class you look  
19 at.

20 Returning to Section 706(g) itself. The  
21 provision is worded broadly, as broadly as one could  
22 imagine. It authorizes courts upon a finding of  
23 unlawful discrimination to order such affirmative action  
24 as may be appropriate, which may include but is not  
25 limited to reinstatement and so on, and any other

1 equitable relief as the court deems appropriate.

2 This sentence is the source of the court's  
3 power to award race-conscious relief which in  
4 appropriate cases may benefit persons who are not proven  
5 victims of discrimination.

6 There are, however, some policy choices that  
7 Congress built into the statute which operate to guide  
8 the discretion in awarding affirmative relief. One of  
9 those choices incorporated into the last sentence of  
10 Section 706(g) says in essence that a court should not  
11 require an employer to hire a particular individual who  
12 chooses not to hire for reasons other than unlawful  
13 discrimination.

14 The remedy which a particular individual may  
15 demand for himself is restricted to make whole relief.  
16 He doesn't require the right to employment simply  
17 because the employer was found guilty of discriminating  
18 against the group of which he is a member.

19 Another policy choice is that the statute is  
20 prospective in its application. It doesn't require the  
21 removal of employees who are hired as a result of the  
22 prior discrimination.

23 QUESTION: Where do you find that?

24 MR. SHERWOOD: We find that only in the  
25 legislative history of the statute where there is --

1 QUESTION: You think that restricts 706(g) so  
2 that you couldn't require the discharge of  
3 non-minorities to hire minorities to achieve a certain  
4 goal?

5 MR. SHERWOOD: That is what Congress in  
6 enacting the statute --

7 QUESTION: You think Congress intended not to  
8 permit that.

9 MR. SHERWOOD: That is what I understood  
10 Congress to --

11 QUESTION: Based on the legislative history.

12 MR. SHERWOOD: Based on the legislative  
13 history. I don't see anything in the statute itself  
14 that says that.

15 QUESTION: Whose statements do you rely on?  
16 Are they stated in your brief?

17 MR. SHERWOOD: I believe we may have mentioned  
18 it in our brief. What comes to mind is Senator Clark  
19 and Case's memorandum which refers to when the statute --

20 QUESTION: Do you think that is fairly  
21 authoritative?

22 MR. SHERWOOD: It is one of the authorities  
23 that is important. All I am saying with respect to  
24 that, however, is that it says that we are giving a  
25 one-year delay before the statute comes into effect, and

1 it makes reference to the fact that the statute is  
2 prospective, but there is nothing in the language of the  
3 statute itself that requires -- that says that one could  
4 not hire or discharge individuals who were hired because  
5 of discrimination.

6 QUESTION: Mr. Sherwood, do you think your  
7 view of 706(g) has been true ever since 1964, or do you  
8 think it was enacted in 1972?

9 MR. SHERWOOD: No, I believe it has been true  
10 since 1964.

11 QUESTION: So you don't rely on anything that  
12 happened in 1972 as having broadened the relief that --  
13 of the kind you are talking about.

14 MR. SHERWOOD: Well, certainly the 1972  
15 amendment has broadened Section 706(j). There is no  
16 question about that.

17 QUESTION: Well, by its terms, yes.

18 MR. SHERWOOD: By its terms, but it was not  
19 necessary for the Congress in 1972 to broaden the  
20 statute as it did in order for courts to award the kind  
21 of relief that we are talking about here.

22 QUESTION: So then you discount a good deal of  
23 what your opponents cite as legislative history to the  
24 1964 Act, the statements by Congressman Seller and  
25 people like that that we are not authorizing quotas, and

1 we are not having any of that sort of thing.

2 MR. SHERWOOD: Congress in those statements  
3 were referring to and giving assurance to individuals  
4 who believe that this statute if enacted would require  
5 employers across the nation to achieve or maintain  
6 racial balance. That is what those statements --

7 QUESTION: Well, some of them referred to  
8 courts ordering this sort of thing as a kind of relief,  
9 I think.

10 MR. SHERWOOD: Indeed, courts can't enter an  
11 order that would maintain a racial balance, and the  
12 reason for that is that once the court has remedied  
13 discrimination, and it may include the use of -- in  
14 getting to full compliance, that may include the use of  
15 goals and other race conscious means. Having done that,  
16 and having fully remedied discrimination, a court order  
17 could not then go on and require that the employer  
18 maintain any particular racial balance.

19 QUESTION: Because that would violate the  
20 section itself, or because it just would be an  
21 exorbitant remedy, or both?

22 MR. SHERWOOD: Because it would no longer be  
23 remedial at that point. But there is no specific words  
24 in Section 706(g) that say a court may not maintain --

25 QUESTION: So you think the limits of 706(g),

1 you think at least we must refer to the legislative  
2 history for guidance?

3 MR. SHERWOOD: I think you don't have to look  
4 to the legislative history for the purposes of this  
5 case. We can decide this case on the basis of the plain  
6 meaning of the statute itself. There is no need to look  
7 to the legislative history for any of the issues that  
8 are before us here.

9 In some other factual contexts, perhaps there  
10 may be some need to look at the legislative history, but  
11 given this particular case and its facts, I think the  
12 plain meaning of the statute itself is all that is  
13 required. And indeed if one looks at the decisions of  
14 the Courts of Appeals and the consistent actions of the  
15 federal agencies that are responsible for enforcing  
16 Title 7, following the enactment of the 1964 Act, you  
17 would see that those agencies and those courts recognize  
18 that the courts had the power that I suggest that it  
19 has.

20 Indeed, in 1972, when Congress was amending  
21 the law, it recognized that the courts already had those  
22 powers, and that appears quite clearly in comments from  
23 Senator Javits and others.

24 QUESTION: When you say had those powers  
25 specifically, what powers?

1 MR. SHERWOOD: The power to order whatever  
2 relief realistically would work in order to remedy  
3 completely the identified discrimination that had been  
4 found.

5 QUESTION: Well, except discharging  
6 non-minorities, or what?

7 MR. SHERWOOD: With respect to discharging  
8 non-minorities, again --

9 QUESTION: Where do you get that limit on  
10 706(g)?

11 MR. SHERWOOD: It has -- it comes out of --  
12 the only place that I see is in the legislative history  
13 of the '64 Act.

14 QUESTION: All right.

15 MR. SHERWOOD: But not in Section 706(g)  
16 itself. What Congress did in 1964 is recognize the  
17 broad equitable powers of District Courts to order  
18 whatever relief would work, and the District Courts  
19 following 1964 have found that in order to fully remedy  
20 discrimination, it was necessary to have in appropriate  
21 cases the kinds of remedies that may extend to  
22 individuals who are not already the proven victims of  
23 discrimination.

24 Certainly the District Court's -- whether the  
25 District Court orders race-conscious remedies in a given

1 case, depends on the particular facts, and questions,  
2 considerations that would go into that determination  
3 should include whether or not other means that are  
4 available to the District Court would be effective to  
5 carry out that purpose.

6 Questions regarding whether or not -- how long  
7 -- the duration of the program. Certainly once the  
8 discrimination is remedied completely, there is no need  
9 to continue to use those specific race-conscious means.  
10 And so in that sense the program would necessarily be  
11 temporary.

12 The end goal should be properly fixed, and a  
13 way of determining that is seeing what condition this  
14 particular, in this case, this particular union would  
15 have been in absent discrimination. One would have  
16 expected in this case that the non-white membership of  
17 this union would be somewhere around 29 percent had it  
18 not been guilty of discrimination.

19 QUESTION: Did the union draw its membership  
20 only from New York City?

21 MR. SHERWOOD: Principally.

22 QUESTION: But not only?

23 MR. SHERWOOD: But not only. Some of its  
24 members did live outside New York City. That question  
25 was raised in the very first appeal in this case as to

1 the appropriate scope of the -- the appropriate  
2 dimension or scope of the labor market.

3 I should point out that no issues have been  
4 raised with respect to that particular question, the  
5 scope of the labor market on this appeal. It is a  
6 matter that was raised and resolved a decade ago, and no  
7 petition for writ of certiorari was sought at that  
8 time.

9 Of course, the degree of flexibility that  
10 should go into the fashioning of any particular plan is  
11 a matter that ought to be considered as well. I think  
12 the District Court did precisely that in this case.

13 And finally, the incidental effects that the  
14 program may have on others should be considered. What  
15 the District Court did in this case was to require that  
16 the union maintain an apprenticeship program of adequate  
17 size, realistically fixed in terms of the availability  
18 of work within the industry so that there would be a  
19 stream of minorities and non-minorities entering into  
20 full membership in the union.

21 It is that problem, the problem of  
22 constricting the size of the apprenticeship program  
23 itself, that has been a repeated problem in this case.

24 QUESTION: Mr. Sherwood, on Page 14 of the  
25 petitioner's brief, in their summary of argument, they

1 say that they are complaining about the geographical  
2 area.

3 MR. SHERWOOD: They are saying that now. All  
4 I am saying, Justice Rehnquist, is that they did not  
5 complain about that in the Court of Appeals. That is  
6 something --

7 QUESTION: They complained about it once in  
8 the Court of Appeals. And this is the same case that  
9 originally raised it. It is now here on certiorari. We  
10 are certainly not bound by what the Court of Appeals  
11 said.

12 MR. SHERWOOD: They raised it -- are you  
13 referring to when they raised it ten years ago?

14 QUESTION: Yes.

15 MR. SHERWOOD: Certainly they raised it --

16 QUESTION: There is no law of the case that  
17 binds this Court.

18 MR. SHERWOOD: We are not suggesting that law  
19 of the case applies here. What we say applies here with  
20 respect to that issue is res judicata.

21 QUESTION: There has never been a final  
22 judgment in this case, so it can't possibly be res  
23 judicata.

24 MR. SHERWOOD: There certainly has been a  
25 final judgment.

1 QUESTION: Is this not the same case that was  
2 litigated ten years ago?

3 MR. SHERWOOD: Yes. this is the same --

4 QUESTION: Then it is not res judicata.

5 MR. SHERWOOD: As I understand the principle  
6 of res judicata, once a case has been tried, and tried  
7 to judgment, and there has been the opportunity to  
8 appeal, and the 90 days that one gets in order to seek  
9 certiorari in this cases passes, that is --

10 QUESTION: Are you saying these people never  
11 took this issue to the Court of Appeals?

12 MR. SHERWOOD: They took it to the Court of  
13 Appeals in 1976.

14 QUESTION: But this Court can revise any part  
15 of this case that came along if it was once taken to the  
16 Court of Appeals.

17 MR. SHERWOOD: My understanding of res  
18 judicata is that once the time to appeal is over,  
19 following a trial on the merits, that after the time to  
20 appeal has expired, that is it, even if the court  
21 continues to maintain jurisdiction over the case.

22 QUESTION: Do you understand the difference?

23 MR. SHERWOOD: Fair enough. I see that my  
24 time is up.

25 CHIEF JUSTICE BURGER: Mr. Gold, you have four

1 minutes remaining.

2 ORAL ARGUMENT OF MARTIN R. GOLD, ESQ.,

3 ON BEHALF OF THE PETITIONERS - REBUTTAL

4 MR. GOLD: Thank you, Mr. Chief Justice.

5 One of the problems in this case is the fact  
6 that I believe the Second Circuit has misunderstood the  
7 difference between quotas and goals in the beginning of  
8 this case and even before.

9 The difference is set forth on Page 9, about 9  
10 and 10 of our reply brief. And it comes from an  
11 authoritarian memorandum which was issued in 1973 by the  
12 EEOC, the Department of Justice, the Civil Service  
13 Commission, and the Office of Federal Contract  
14 Compliance. Those are the agencies which have federal  
15 responsibility for enforcing the law in this area.

16 There are really three elements to the  
17 difference. It is a quota if it is a fixed number or  
18 percentage which must be achieved, if that percentage  
19 must be achieved regardless of number of applicants or  
20 economic circumstances, and if there are sanctions for  
21 its failure to reach that percentage.

22 If, on the other hand, there is a numerical  
23 objective, and it is precatory, it is subject to change  
24 with experience and it is not subject to sanctions, then  
25 it is a goal.

1 Now, the Second Circuit adopted a different  
2 test in the Rios case in 1973. Their test doesn't look  
3 at any of those criteria. Instead, it says -- it looks  
4 at only one criterion, and that is, must the percentage  
5 of membership be maintained after it is attained. In  
6 other words, according to the Second Circuit, if there  
7 is an order, as there was in this case, directing a  
8 party to achieve numerical membership of X percent by a  
9 specific date, that is a goal, says the Second Circuit.

10 If, on the other hand, the order goes further,  
11 and states that that percentage must be thereafter  
12 maintained at that level, then the Second Circuit says  
13 that is a quota. I suggest to you that that just is  
14 plain wrong. That comes from the Rios case in 1973, and  
15 that is the rule that the Second Circuit was enforcing  
16 when it made that difference in this case.

17 Now, the various circuits that have looked at  
18 this issue all said, I believe, I believe every one of  
19 them says that quotas are no good and goals in certain  
20 circumstances are permissible.

21 QUESTION: Well, as I understand it, you would  
22 be making your argument here on whether this -- even if  
23 you agreed that it was a goal --

24 MR. GOLD: I would, Your Honor.

25 QUESTION: -- you would be making the same

1 706(g) argument.

2 MR. GOLD: I would, Your Honor, absolutely. I  
3 don't think that I have to go that far in this case.

4 QUESTION: Well, you may.

5 MR. GOLD: Perhaps I may. And I don't think  
6 that goals are very good, either. And I don't think  
7 that they are permitted under 706(g), and they have got  
8 some problems. They have got two very specific  
9 problems. One is, they tend to degenerate into quotas  
10 if they are enforced that way, and second is, the basic  
11 assumption for them seems to me to be fallacious.

12 The assumption is that if you have a work  
13 force with 29 percent of a certain background person,  
14 that in the absence of discrimination, that same  
15 percentage of those people is going to gravitate to each  
16 occupation, and that just is contrary to human  
17 experience. That is not the way that people line  
18 themselves up.

19 Now, one other point that I would like to  
20 make, Mr. Sherwood --

21 QUESTION: The one point that worries me is,  
22 this whole question of goals was established in a case  
23 that you didn't bring up here.

24 MR. GOLD: But we didn't bring it?

25 QUESTION: Yes.

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MR. GOLD: The issue was --

QUESTION: You left it in the Court of Appeals, didn't you?

MR. GOLD: The issue of goals and quotas?

QUESTION: Yes.

MR. GOLD: The Second Circuit, which --

QUESTION: You didn't apply for cert, did you?

MR. GOLD: We didn't apply for cert in that --

QUESTION: Why?

MR. GOLD: I wasn't representing this party at that time, Your Honor, but I think the reason that people don't ask for cert is because they want to live without litigation if it is possible rather than go on endlessly if it proves to be necessary.

QUESTION: And lawyers are expensive.

MR. GOLD: Yes. Thank you. I see my time is up.

CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 1:47 o'clock p.m., the case in the above-entitled matter was submitted.)

**CERTIFICATION**

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

#84-1656 - LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, Petitioners V.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

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

BY Paul A. Richardson

(REPORTER)