

March 2021

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Recommended Citation

Samuel J. Smith, Social Security Disability Insurance and Due Process for the Poor Man - Fantasy or Reality - Richardson v. Belcher, 48 Denv. L.J. 405 (1972).

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SOCIAL SECURITY DISABILITY INSURANCE AND
DUE PROCESS FOR THE POOR MAN —
FANTASY OR REALITY — *RICHARDSON v. BELCHER*

BY SAMUEL J. SMITH*

Richardson v. Belcher bars the extension of the developing fundamental rights doctrine from encompassing social security disability insurance benefits. The motivation for Mr. Smith's critical evaluation of the Supreme Court's decision derives from his experience in social security law and his representation in social security disability insurance claims of coal miners and other low income families in West Virginia — people of the sort who will feel more directly the impact of Belcher. What follows is a uniquely practical and personal analysis of a decision of broad implication.

INTRODUCTION

RAYMOND Belcher was a 53-year-old southern West Virginia coal miner, married, with two children. He was an employee of the Pocahontas Fuel Co. at Lynco, West Virginia, where his yearly earnings totaled approximately \$6,600.¹ On March 25, 1968, Belcher received a broken neck during the course of his duties as an employee of Pocahontas. On May 20, 1968, Belcher filed an application for social security disability benefits,² alleging that he became unable to work as a result of the above-mentioned accident. His wife and children also applied for benefits under the Act. Belcher, his wife and children were granted social security disability benefits effective in October 1968, in the sum of \$329.70 per month. Furthermore, since his employer had chosen to establish a workmen's compensation fund, Belcher became entitled to workmen's compensation from the State of West Virginia in the sum of \$203.60 per month.

In January 1969, Belcher's monthly social security dis-

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¹ Facts in personal knowledge of writer, as well as facts contained in *Belcher v. Richardson*, 317 F. Supp. 1294, 1295 (S.D.W. Va. 1970) and *Richardson v. Belcher*, 404 U.S. 78 (1971).

² Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620 (1935), codified (with subsequent amendments) as 42 U.S.C. §§ 301-1396 (1970). Parallel citations will be given in all subsequent footnotes, since the Act has been codified in Title 42 of U.S.C., but that title of U.S.C. has not been enacted into positive law. References in text are to Statutes at Large denominations, which are in popular usage.

ability payment was reduced from \$329.70 per month to \$225.30 under the reduction and offset provisions of section 224³ of the Social Security Act upon a finding that Belcher was receiving workmen's compensation from the State of West Virginia. After exhausting his administrative remedies, Belcher instituted an action in the United States District Court for the Southern District of West Virginia,⁴ challenging the offset and reduction provision of section 224 as a denial of due process of law guaranteed by the fifth amendment.

The district court held for Belcher, granting the full social security benefits and holding the reduction in benefits to be unconstitutional. On appeal to the Supreme Court, the holding of the district court was reversed.⁵

I. DISABILITY INSURANCE BENEFITS UNDER THE SOCIAL SECURITY ACT

During recent years much has been written concerning due process as it relates to a poor person charged with a crime. However, comparatively little has been written concerning civil due process as it relates to the poor man and social justice. Furthermore, in connection with the poor man and other persons comprising the lower income families classification, the social security laws, their administration, and court interpretation have all but escaped the scrutiny and quills of judges, lawyers, and legal scholars.⁶

This article will briefly examine the nature and purpose of the Social Security Act as it relates to the provision of disability benefits. An analysis of *Richardson v. Belcher* will follow, with the object of identifying the problems with respect to social security disability insurance benefits which the deci-

³ Social Security Amendments of 1965, Pub. L. No. 89-97, § 335, 79 Stat. 406, amending Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620 (1935), codified as 42 U.S.C. § 424a (1970) (popularly known as a "Section 224 Reduction").

⁴ *Belcher v. Richardson*, 317 F. Supp. 1294 (S.D.W. Va. 1970). The Act provides for review of a final decision of the Secretary of Health, Education, and Welfare by the United States judicial district in which the plaintiff resides or has his principal place of business. Social Security Act Amendments of 1939, ch. 666, § 205(g), 53 Stat. 1370, amending Social Security Act, ch. 531, § 205, 49 Stat. 624 (1935), codified as 42 U.S.C. § 405(g) (1970).

⁵ *Richardson v. Belcher*, 404 U.S. 78 (1971), *rev'g* 317 F. Supp. 1294 (S.D.W. Va. 1970).

⁶ Social security disability benefits have been discussed in the following articles: Abraham & Walkstein, *Workmen's Compensation and the Social Security Disability Program: A Contrast*, 16 VAND. L. REV. 1055 (1963); Myers, *Disability Benefit Provisions Under the Social Security Act—An Early Report*, 16 J. AM. Soc'y C.L.U. 5 (1952); Samuels, *Deduction for Benefits Received*, 119 NEW L. J. 228 (1969); Sharp, *Social Security Disability Cases*, 55 A.B.A.J. 141 (1969); Note, *Social Security Disability Benefits: Three Current Problems*, 52 MINN. L. REV. 165 (1967); 40 U. CIN. L. REV. 408 (1971).

sion creates for the poor working man or woman who is injured during the course of employment and suffers permanent, total disability.

A. *General Provisions*

Generally speaking, the Social Security Act encompasses numerous programs which all appear to have the basic objectives of keeping individuals and families from becoming destitute due to loss of earnings, protecting the elderly against the rising costs and expenses of illnesses that could otherwise exhaust their savings, keeping families together, and hopefully giving children the opportunity to grow up in health and security.⁷ These basic programs can be summarized as follows:

- A. Retirement insurance.
- B. Survivors insurance.
- C. Disability insurance.
- D. Hospital and medical insurance for the aged.
- E. Unemployment insurance.
- F. Public assistance and welfare services.

It should be noted that although the Social Security Act is a federal law, the federal government operates only the retirement, the survivors, the disability, and the hospital and medical insurance programs listed above, while the unemployment and public assistance and welfare programs are operated by the states with federal cooperation.⁸

B. *Disability Insurance Benefits*

One of the purposes of the Social Security Act is to keep families from becoming destitute due to loss of earnings by the family bread winner in the event that he or she becomes disabled. To that effect the Social Security Act provides a disabled worker with monthly cash disability insurance benefits beginning with the first month in which all the following conditions have been met:⁹

- A. He or she is under a disability as defined in sections 216(i) and 223 of the Social Security Act.¹⁰

⁷ U.S. DEPT. OF HEALTH, EDUCATION AND WELFARE, SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY HANDBOOK 2 (4th ed. 1969).

⁸ *Id.* at 3.

⁹ See Social Security Amendments of 1956, ch. 836, § 103, 70 Stat. 815, amending Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620 (1935), codified as 42 U.S.C. § 423 (a) (1) (1970).

¹⁰ The term "disability" is defined in sections 216(i) and 223(d) of the Social Security Act, as amended, to mean:

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental

- B. He or she has filed an application for disabled workers benefits in accordance with section 223(b) of the Social Security Act.¹¹
- C. He or she has the requisite disability insured status.¹²
- D. He or she has completed a 6-month waiting period or he or she is exempted from this requirement.¹³
- E. He or she has not attained age 65.

Additional monthly benefits, commonly referred to as auxiliary benefits, are normally payable to the other family members (husband or wife and children) on the earnings record of the disabled worker.¹⁴ The amount of the monthly disability payments which the disabled worker and his family receives is based upon the amount of contributions which the worker has made to the social security fund. Thus a worker whose income averages approximately \$6,500 per year and who makes social security contributions on that amount would receive a higher monthly disability payment than another worker whose income might average approximately \$4,500 per year.

C. Section 224 Reduction

The disabled worker, however, may not be entitled to the full amount of monthly cash disability benefits described above if he is also receiving monthly benefits pursuant to a federal

impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months

The 1968 amendments of the Act imposed the additional requirement that

(A) an individual . . . shall be determined to be under disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job exists for him, or whether he would be hired if he applied for work. Social Security Amendments of 1967, Pub. L. No. 90-248, § 158(b), 81 Stat. 868, *amending* Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620 (1935), codified as 42 U.S.C. § 423(d) (1970).

- ¹¹ Section 223(b) of the Social Security Act provides for the filing of an application, which is a prerequisite for obtaining social security disability benefits.
- ¹² Section 223(c) of the Social Security Act defines insured status, which for most means that he or she must have not less than 20 quarters of coverage during the 40-quarter period which ends with a quarter in which a person becomes disabled.
- ¹³ Section 223(c)(2) of the Social Security Act provides that a disabled person must wait a period of 6 months after onset of the disability before monthly benefits can be paid.
- ¹⁴ Section 202 of the Social Security Act provides auxiliary benefits for the wife and children of a disabled worker.

or state workmen's compensation law or plan. Section 224 of the Social Security Act provides, in part:

(a) If for any month prior to the month in which an individual attains the age of 62 —

(1) such individual is entitled to benefits under section 223 of this title, and

(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,

the total of his benefits under section 223 of this title for such month and of any benefits under section 202 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of —

(3) such total of benefits under sections 223 and 202 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

exceeds the higher of —

(5) 80 percentum of his 'average earnings,' or

(6) the total of such individual's disability insurance benefits under section 223 of this title for such month and of any monthly insurance benefits under section 202 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 of this title for a month (in a continuous period of months) reduce such total below the sum of —

(7) the total of the benefits under sections 223 and 202 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.¹⁵

The final effect of such reduction may be a total or partial loss of social security disability benefits. At first glance there does not appear to be anything contained in section 224 which

¹⁵ Social Security Amendments of 1965, Pub. L. No. 89-97, § 335, 79 Stat. 406, amending Social Security Act, ch. 531, §§ 1-1105, 49 Stat. 620 (1935), codified as 42 U.S.C. § 424a(a) (1970).

seems unfair or unconscionable. However, further review and study of the Social Security Act does not reflect other provisions providing for a similar reduction in monthly social security disability benefits where a disabled worker is receiving, in addition to social security disability benefits, the following federal or private benefits:

- A. Civil Service Retirement Act.¹⁶
- B. Railroad Retirement Act Annuity.¹⁷
- C. Veterans Administration Disability Benefits.¹⁸
- D. Coverage under a private disability insurance policy.
- E. Damages received in action in tort arising from the disabling injury.

Thus, it becomes very clear that the offset or reduction found in the disability insurance provisions of the Social Security Act applies only to a federal social security recipient who is also receiving workmen's compensation payments.¹⁹ Clearly, section 224 singles out recipients of workmen's compensation for the reduction and offset treatment. The question which logically follows, then, is whether section 224 is not arbitrary and does not lack a rational basis in that it discriminates between those disabled workers who receive workmen's compensation and those who receive compensation from other sources set out above. This is the question presented by the plaintiff in *Belcher*.

II. *Richardson v. Belcher*

A. *The District Court Opinion*

In September 1970, United States District Judge Sidney L. Christie²⁰ issued a memorandum decision²¹ in which he

¹⁶ Employees covered by the Civil Service Retirement Act are entitled to disability annuity after 5 years of civilian service. 5 U.S.C. § 8337 (1970). In fiscal 1970, there were 184,000 disabled annuitants. STATISTICAL ABSTRACT OF THE UNITED STATES 284 (1971). See also *Richardson v. Belcher*, 404 U.S. 78, 85 (1971).

¹⁷ The Railroad Retirement Act of 1937 provides disability benefits for railroad workers with 10 or more years of covered service. 45 U.S.C. § 228a (1970). See also 404 U.S. at 85-86 n.3.

¹⁸ The Veterans Administration provides disability benefits for service-connected as well as nonservice-connected disabilities. In fiscal 1970, over 2,000,000 veterans received service-connected disability benefits. STATISTICAL ABSTRACT OF THE UNITED STATES 264 (1971). See also 404 U.S. at 85 n.1.

¹⁹ Concerning disability insurance benefits the only offset or reduction provisions are contained in § 224 of the Social Security Act.

²⁰ The Honorable Sidney L. Christie has been a distinguished United States federal district judge for both the northern and southern district of West Virginia since his appointment in 1964. Judge Christie has probably reviewed more social security disability cases than any other active federal judge and was recently appointed to the chief judgeship for southern West Virginia.

²¹ *Belcher v. Richardson*, 317 F. Supp. 1294 (S.D.W. Va. 1970).

held that the facts and circumstances of Raymond Belcher's case were such that the section 224 reduction could not be constitutionally applied. To apply section 224, he reasoned, would deprive Raymond Belcher of due process and equal protection of the law under the fifth and fourteenth amendments. In arriving at his conclusion, Judge Christie cited the *Congressional Record* in its characterization of the nature of the Social Security Act:

"Social Security is not a handout; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right, the individual is eligible to receive his benefit in dignity and self-respect."²²

The government sought to justify the discriminatory provisions of the section 224 reduction by arguing that its purpose was to avoid the duplication of *public benefits*. Judge Christie rejected this argument on the grounds that the West Virginia Workmen's Compensation Fund is supported solely by premiums and other funds paid by employers and could not be treated as a public benefit.

Judge Christie acknowledged *Flemming v. Nestor*,²³ which held that the old-age benefits of an alien deported for cause could be lawfully terminated without offending the due process clause of the fifth amendment. However, Judge Christie felt that Raymond Belcher was not entitled to such cavalier treatment, especially in view of the more recent case of *Goldberg v. Kelly*²⁴ which in essence elevated the receipt of welfare benefits to the equivalent of a property right, also entitled to the safeguards of due process. Judge Christie concluded:

Therefore, since the Court in *Goldberg* appears to have determined that entitlement to welfare is in the nature of a property right, protected by the Due Process Clause of the Fifth Amendment, by the same rationale it must be determined that one who has made direct contribution to the social security fund and becomes entitled to disability benefits thereunder should and ought to be accorded equal status and protection. For it seems to us to be patently unfair for the welfare recipient, under *Goldberg*, to have a 'property right status' with all the procedural safeguards of due process, while the social security recipient, under *Nestor*, is deprived of such status and protection. The distinction is not only completely illogical, but is grossly inequitable.²⁵

²² *Id.* at 1298, citing 102 CONG. REC. 15, 110 (1956) (emphasis added by court).

²³ *Id.* at 1297; *Flemming v. Nestor*, 363 U.S. 603 (1960).

²⁴ 397 U.S. 254 (1970).

²⁵ 317 F. Supp. at 1297.

B. *The Supreme Court Opinion*

On direct appeal,²⁶ the Supreme Court of the United States reversed (4-3) the judgment entered by Judge Christie and upheld the constitutionality of section 224 of the Social Security Act.²⁷

In an opinion that is more curious than compelling, Mr. Justice Stewart, writing for the majority, held that the classification contained in section 224 of the Social Security Act was based upon legitimate purposes and goals established by Congress that were "rationally based and free from invidious discrimination."²⁸

In reaching his conclusion, Mr. Justice Stewart discussed the legislative history which prompted Congress to enact section 224 in its present form and found that certain data presented to congressional committees tended to show that in approximately 70 percent of the states, a typical worker injured during the course of his employment and eligible for both social security disability benefits and state compensation received combined benefits in excess of his normal take-home pay immediately prior to his disability. Mr. Justice Stewart further indicated, again relying on the same data, that this situation reduced the incentive of workers to return to work.²⁹

Mr. Justice Stewart all but ignored the "property theory" espoused in *Goldberg*, but did indicate that the *Goldberg* rationale was not applicable to *Belcher*. Instead, it was held that the "rationally based and free from invidious discrimination" rationale as set out in *Dandridge v. Williams*³⁰ was the proper test to apply in *Belcher*:

A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is "rationally based and free from invidious discrimination." *Dandridge v. Williams* While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment's Equal Protec-

²⁶ The Judiciary Act of 1948 provides:

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States . . . holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party. 28 U.S.C. § 1252 (1970).

²⁷ *Richardson v. Belcher*, 404 U.S. 78 (1971).

²⁸ *Id.* at 81.

²⁹ *Id.* at 83.

³⁰ 397 U.S. 471 (1970). It should be noted that *Dandridge* involved an interpretation by the Court of a statutory classification under the laws of the State of Maryland. It now appears that the *Dandridge* doctrine or test has been extended to statutory classifications under federal law.

tion Clause, a classification which meets the test articulated in *Dandridge* is perforce consistent with the due process requirement of the Fifth Amendment. Cf. *Bolling v. Sharpe*, 347 U.S. 497, 499³¹

Applying the *Dandridge* test to the legislative intent and goals of Congress in establishing the section 224 reduction, Mr. Justice Stewart concluded:

The original purpose of state workmen's compensation laws was to satisfy a need inadequately met by private insurance or tort claim awards. Congress could rationally conclude that this need should continue to be met primarily by the States, and that a federal program which began to duplicate the efforts of the States might lead to the gradual weakening or atrophy of of the state programs.³²

III. IMPLICATIONS OF *Richardson v. Belcher*

Dandridge involved an interpretation by the Supreme Court of a statutory classification under the law of the State of Maryland. Since the *Dandridge* rationale has been applied to *Belcher*, it seems clear that the *Dandridge* doctrine has been extended to statutory classifications under federal law. Furthermore, since the Court rejected the *Goldberg* "property theory" in *Belcher*, the Court has in essence revitalized and given new life to *Flemming v. Nestor*.

Another writer commenting on the district court decision in *Belcher* suggests that the "property theory" espoused in *Goldberg* could not be applied to Raymond Belcher since he "is not a hard-core unemployable caught up in the cycle of poverty."³³ It should be pointed out that the coal fields of southern West Virginia, the area in which Raymond Belcher lives, is one of the most impoverished areas in the entire United States and has been so judicially recognized.³⁴ Raymond Belcher was disabled due to a crippling coal mine injury, as opposed to a person who is unemployed. Upon what rational theory or basis can a disabled workingman's right to be subservient to those of an unemployed person on welfare? Is it not illogical that a welfare recipient who has made no direct contribution to the fund from which he receives benefits has a recognizable "property right" which is protected by all the due process safeguards and that Raymond Belcher, who has worked all his life and made direct contributions to the social security fund from

³¹ 404 U.S. at 81.

³² *Id.* at 83-84.

³³ See 40 U. CIN. L. REV. 408, 414 (1971).

³⁴ See *Morton v. Gardner*, 257 F. Supp. 67, 74 (S.D.W. Va. 1966).

which he receives benefit, is without a "property right" sufficient to grant him due process safeguards? Such treatment of the workingman is simply not consistent with the due process and equal protection guarantees afforded by the Constitution.

Considered in another light, it is clear that the majority opinion in *Belcher* has accorded the Social Security Act the traditional presumption of validity characteristic of the "old" equal protection cases, and dropped in "new" equal protection cases.³⁵ Mr. Justice Marshall, in a dissenting opinion joined by Mr. Justice Brennan, responded to the majority opinion, which applied the presumption, in two ways. First, he asserted that the presumption of validity should *not* be applied:

In opposing this course, I adhere to my dissenting views in *Dandridge v. Williams*. I continue to believe that the "rational basis" test used by this Court in reviewing business regulation has no place when the Court reviews legislation providing fundamental services or distributing government funds to provide for basic human needs.³⁶

Assuming, *arguendo*, that the presumption of validity was applicable, Mr. Justice Marshall went on to point out that no rational basis existed for the distinction:

[E]ven under the Court's "rational basis" test, the discriminatory offset provision here cannot be sustained. There simply is no reasonable basis for singling out recipients of workmen's compensation for a reduction of federal benefits, while those who receive other kinds of disability compensation are not similarly treated.³⁷

The discrimination caused by section 224 is further clarified by Mr. Justice Douglas' dissenting opinion in *Belcher*, wherein he states:

Thus, had *Belcher's* supplemental disability payment come from a Veteran's Administration program, a Civil Service Retirement Act or Railroad Retirement Act Annuity, a private

³⁵ Equal protection has traditionally been couched in terms of reasonable classifications. A classification is not unreasonable if it is related to the police power of the state. If the court can conceive of any set of facts that would sustain the reasonableness of the classification, the burden is on the party challenging the statute to show by clear and convincing evidence that the classification is arbitrary and without reasonable basis. See *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). In a series of recent cases involving certain interests, however, the burden of proof has been shifted. In cases involving "fundamental rights," the presumption of validity is not applied, the effect of which is to presume the invalidity of statutes adversely affecting a fundamental right. In such a case, the burden is on the state to show reasonableness by clear and convincing evidence. See, e.g., *Kramer v. School District*, 395 U.S. 621 (1969), right to vote; *Shapiro v. Thompson*, 394 U.S. 618 (1969), right to travel, or right to receive welfare, or both; *Loving v. Virginia*, 388 U.S. 1 (1967), distinction based on race; *Douglas V. California*, 372 U.S. 353 (1963), right to counsel on appeal.

³⁶ 404 U.S. at 90.

³⁷ *Id.* at 91.

disability insurance policy, a self-insurer, a voluntary wage contribution plan, or the proceeds in an action in tort arising from the disabling injury, there would have been no reduction in his social security benefits. The offset under § 224 applies only to federal social security disability beneficiaries also receiving workmen's compensation payments, a group which in 1965 totaled only 1.4% of all social security disability beneficiaries. Yet, of the 849,000 disabled workers who in 1965 received social security disability benefits, over sixteen percent also received overlapping veteran's benefits, and almost fourteen percent received benefits from private insurance maintained under the auspices of an employer or a union.³⁸

In short, the presumption of validity applied in *Belcher* presents an obstacle which may well prove to be insurmountable, and the due process safeguards as they relate to the acts of Congress may well be a myth.³⁹

CONCLUSION

One of the most astounding aspects of *Belcher* is the Court's complete disregard of the fact that it was taking a substantial amount of badly needed income from the Raymond Belcher family. Mr. Justice Marshall makes this point very clear by pointing out that Raymond Belcher was earning approximately \$6,600 per year prior to his disabling injury. Had Raymond Belcher been able to keep the full measure of social security benefits totalling \$329.70 per month in addition to his workmen's compensation benefits of \$203.60 per month, his income would have totalled almost \$6,400 per year, some \$200 less than he had earned before his disabling injury.⁴⁰ Because of the section 224 reduction, however, Raymond Belcher's social security benefits were reduced to \$225.30 per month, the effect of which was a reduction of his annual income to almost \$5,100 per year, a net loss of approximately \$1,300 per year.

The full impact of the *Belcher* decision will be felt by the lower income families who cannot afford to purchase disability insurance to protect themselves from the sudden loss of income, such as the Belcher family, which must now live on substantially less per year due directly to the section 224 offset.

³⁸ *Id.* at 85-87.

³⁹ In the area of economic regulation, the Supreme Court has typically given a presumption of validity to state laws challenged as violative of the equal protection clause of the fourteenth amendment. See note 35 *supra*. *Morey v. Doud*, 354 U.S. 457 (1957), represents a rare, if not solitary, instance in which the Court has recited the *Williamson v. Lee Optical* language defining the application of the presumption, and then gone on to find the statute discriminatory. *Morey* probably stands as a warning to the legislature only that it should make an effort to avoid discriminatory classifications so blatant as that in the Illinois statute which *Morey* invalidated.

⁴⁰ 404 U.S. at 88.

This decision affects the coal miners, farm hands, custodians, sanitary removal personnel, laborers, and street cleaners, just to mention a few. The effect of this decision will not be felt by the blue collar worker who has more substantial financial resources from which he can purchase disability insurance which is not subject to the section 224 offset. But, this decision will also be felt by the minority groups throughout America, who comprise the majority of lower income families. It seems grossly unfair that these people must suffer the possibility of further discrimination.

To the practical-minded federal district judges who are being called upon with increased frequency to interpret the social security laws, to the lawyer who is involved on a day-to-day basis representing the poor workers having social security disability claims, and to the poor disabled workers who look to the social security and workmen's compensation laws for assistance, to say that the section 224 offset of the Social Security Act is not discriminatory and violative of the fifth amendment is exalting fantasy over reality.