

In the

ORIGINAL

Supreme Court of the United States

MORGAN M. FINLEY, CLERK OF THE :
CIRCUIT COURT OF COOK COUNTY, :
ILLINOIS, :
Petitioner :
v. :
TONI MURRAY :

No. 80-2205

Washington, D. C.

Wednesday, April 21, 1982

Pages 1 - 50

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7 v. : No. 80-2205
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10 Washington, D. C.
11 Wednesday, April 21, 1982

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 11:10 o'clock a.m.

15 APPEARANCES:
16 SCOTT A. MAYER, ESQ., Chicago, Ill.; on behalf of the
17 Petitioner.
18 JOHN S. ELSON, ESQ., Chicago, Ill.; on behalf of
19 the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments
next in Finley against Murray.

You may proceed whenever you're ready.

ORAL ARGUMENT OF SCOTT A. MAYER, ESQ.,
ON BEHALF OF THE PETITIONER

MR. MAYER: Mr. Chief Justice and may it
please the Court:

This case is before you on a writ of
certiorari to the Seventh Circuit Court of Appeals.
Petitioner should enjoy absolute judicial immunity from
Section 1983 damages liability for acts taken in
discharge of his duties as an aide to the court, in
order that the court's judicial duties may be properly
accomplished.

The intimate relationship between the court
clerk and the court is clearly reflected in the record
in this case. Petitioner, the clerk of the Circuit
Court of Cook County, created court procedures in order
to implement a general order issued by the presiding
judge of the Municipal District in the Criminal Court of
Cook County. The clerk created these court procedures
in conjunction with the general order in order to notify
the Chicago Police Department of warrant recall orders,
as well as to notify victims and witnesses of court

1 dates when a criminal defendant, such as Respondent,
2 fails to appear in court on the designated court date.

3 QUESTION: Mr. Mayer, is it your position
4 basically that the clerk should enjoy absolute immunity
5 here, even if, for example, he refused to forward any
6 recall orders involving blacks?

7 MR. MAYER: The clerk would enjoy absolute
8 judicial immunity only if he was acting in his capacity
9 as clerk in order that judicial duties may be properly
10 accomplished.

11 QUESTION: As a clerk, he declines to forward
12 any recall orders involving blacks. Absolutely immune
13 in your view?

14 MR. MAYER: He would not be absolutely immune
15 in that situation. He would be immune only if he was
16 acting pursuant to court order or directive, within the
17 scope of his duties as the clerk of the court.

18 QUESTION: Well, how is that different?

19 MR. MAYER: In this case, there is no
20 allegation of a clerk intentionally failing to
21 communicate to the police department an arrest recall
22 warrant. In this case the only allegations are against
23 the Petitioner as the clerk of the court in his official
24 capacity in creating procedures. These procedures,
25 there are no allegations that they are unconstitutional,

1 but merely that those procedures were not followed by
2 one clerk who, by mistake or inadvertence, inadvertently
3 failed to communicate the warrant recall to the Chicago
4 Police Department.

5 QUESTION: Well, does the mandatory nature of
6 the duty, then, affect whether in your view there is
7 absolute immunity?

8 MR. MAYER: No, it is not relevant whether or
9 not the duty is labeled discretionary or ministerial.
10 The relevant inquiry is not into that nature, but into
11 whether or not that is a function intimately associated
12 to the court process. Therefore, the question devolves
13 not on whether or not the clerk must or must not --
14 whether it's a ministerial or discretionary duty, but on
15 the function.

16 The test is whether the clerk is acting as an
17 official aide and whether he is functioning in that
18 capacity as clerk, as the Petitioner in this case was in
19 fact doing. In his close association with the presiding
20 judge, he created procedures. There are no allegations
21 against any other clerk in this case.

22 QUESTION: But Mr. Mayer, is it not true that
23 the complaint alleges that those procedures were
24 knowingly adopted even though they were unconstitutional
25 procedures? Page 9 of the Joint Appendix has that kind

1 of allegation.

2 MR. MAYER: The complaint on its face alleges
3 that the Petitioner knowingly implemented court
4 procedures, but there are no allegations on the face of
5 the complaint other than --

6 QUESTION: Well, here's the paragraph I have
7 reference to: "The conduct, procedures and customs
8 herein alleged occurred and continued to occur during
9 the course of and as a result of Defendant's knowing and
10 unconstitutional adoption, promulgation, revocation, and
11 implementation of policies, statements, regulations, and
12 known custom."

13 MR. MAYER: It's correct that that allegation
14 is in the complaint.

15 QUESTION: And you're saying that your client
16 is immune even though he did exactly what's alleged
17 there, absolutely immune?

18 MR. MAYER: Even assuming, taking all facts
19 --

20 QUESTION: That is your position?

21 MR. MAYER: Yes, that is true, our position is
22 that he is absolutely immune as a function of his status
23 as clerk, acting as clerk for the court. This would be
24 no different than if the Respondent alleged that the
25 judge in his creation of procedures in his general order

1 knowingly created procedures similar to the allegations
2 in the complaint.

3 He is, like the judge, performing a function
4 as clerk for the court, in a quasi-judicial capacity,
5 within the scope of his authority, which is admitted in
6 the face of the complaint. The complaint admits that
7 this was his duty as the court clerk, that he created
8 these procedures, and that all that he failed to do was
9 to create perfect procedures.

10 When we discuss the question of judicial
11 immunity, we are dealing with an imperfect world. That
12 is all that happened here. A mere mistake and a mislaid
13 file in the court's office, clerk's office, was at most
14 what caused the failure of the recall warrant to be
15 communicated.

16 QUESTION: Mr. Mayer, do you see any
17 distinction between the clerk's act in carrying out the
18 order of the judge or the court or in refusing to carry
19 it out?

20 MR. MAYER: It is irrelevant whether or --

21 QUESTION: If the clerk just refuses to carry
22 out the judge's order to transmit recalls?

23 MR. MAYER: Our position is that the clerk
24 would be absolutely immune in that situation, because it
25 is -- the policy considerations behind allowing -- the

1 policy considerations are as follows: that court
2 clerks, as judges, should be free from allegations of --
3 free from defending against allegations of a 1983
4 complaint for acts that are intimately related to the
5 judicial process, whether or not those acts are carried
6 out.

7 The majority of circuits who have decided
8 whether or not clerks are absolutely immune have held
9 that they are as long as the act is pursuant to a court
10 order or directive or intimately related to the
11 process. Even the Fifth Circuit in Williams versus Wood
12 held that without regard to scienter, which is a factor
13 that is always taken -- which is never taken into
14 consideration in a question of immunity of judges,
15 dating back to Bradley versus Fisher.

16 It is irrelevant because the policy is that
17 the potential harm to deny absolute judicial immunity
18 from Section 1983 damages is greatly outweighed by the
19 good to the public.

20 QUESTION: Is this derivative from the judge?

21 MR. MAYER: Our position is that the absolute
22 judicial immunity enjoyed by the court clerk -- he
23 derives his status from the court, but he -- the test
24 for his immunity is dependent not only on his status
25 from the court --

1 QUESTION: Well, suppose the judge said, that
2 rule you've got that's set out on page 9, don't you ever
3 follow it, and he continues to follow it. Is he still
4 immune?

5 MR. MAYER: If the clerk refused to follow the
6 court order, we would still submit that he would be
7 absolutely immune in this case. It is a question of
8 status and function. As long as the duties are
9 performed in order that --

10 QUESTION: Does that go to the property clerk,
11 too? Does your rule apply to the deputy clerk, too?

12 MR. MAYER: Yes, Your Honor.

13 QUESTION: And the assistant clerk?

14 MR. MAYER: As long as he is an official,
15 yes.

16 QUESTION: And the stenographer? Tell me when
17 to stop. And the stenographer?

18 MR. MAYER: Your Honor --

19 QUESTION: And the man that opens the door,
20 and the man that sweeps the room? You haven't told me
21 to stop yet.

22 MR. MAYER: The line should be drawn at the --
23 in this case, based on the test that is applied in
24 judicial immunity cases, to stop when the clerk is --
25 when the person is no longer acting as an official aide

1 of the judge in order that judicial duties may be
2 properly accomplished.

3 QUESTION: This applies, you say, to the
4 judge's bailiff?

5 MR. MAYER: Absolute judicial immunity has
6 been applied to bailiffs in courts where their acts --

7 QUESTION: His chauffeur?

8 MR. MAYER: No, Your Honor.

9 QUESTION: Why not?

10 MR. MAYER: Because the chauffeur is not an
11 extension of the court as the clerk is an arm of the
12 court. The chauffeur has --

13 QUESTION: Well, how about the bailiff?

14 MR. MAYER: The bailiff --

15 QUESTION: How about the bailiff acting as a
16 chauffeur?

17 MR. MAYER: The bailiff acting as a chauffeur
18 --

19 QUESTION: Yes.

20 MR. MAYER: -- is not absolutely immune from
21 1983 damages liability.

22 QUESTION: Why not? Under your theory, why
23 not?

24 MR. MAYER: Because he is not acting as an
25 aide to the court. His status -- he is taken out of the

1 context of the court. He can be called bailiff or
2 anything else, but you look then to what is his conduct,
3 and if his conduct as a chauffeur has nothing to do with
4 the court system, which I assume it does not, he would
5 enjoy no immunity in his status as a chauffeur.

6 QUESTION: Earlier I thought you responded to
7 one question that indicated that if the clerk had an
8 order from the judge and he failed to carry that order
9 out he would still have immunity. Now, if it's
10 derivative from the judge, how is it a quasi-immunity
11 act if he's doing not what the judge ordered him to do,
12 but failing to do what the judge ordered him to do?

13 MR. MAYER: Our position is that in the sense
14 that a clerk is acting as a judge he would have
15 derivative immunity. In the sense that the clerk acts
16 as the clerk and not the judge, he enjoys absolute
17 judicial immunity without regard to the manner of
18 performance of the act, because we look not to the
19 specific result of whether or not the act was
20 accomplished; we look to what was the function of the
21 clerk at the time.

22 In this case, the failure of the warrant
23 recall order to be communicated was merely the result of
24 at most inadvertence, and in that case it is no
25 different than in the common law when a court clerk

1 failed -- erroneously entered an order by the court. It
2 was as if the clerk did not enter the order at all, but
3 under the common law the clerk did in fact enjoy
4 immunity from damage liability.

5 QUESTION: Why wouldn't qualified immunity be
6 adequate here, in terms of exactly what happened? If
7 you say all it was was a piece of negligence, why would
8 he need any more than qualified immunity?

9 MR. MAYER: The clerk should enjoy absolute --
10 the absolute judicial immunity, not a qualified
11 immunity, because he would be forced at trial to defend
12 against the good faith acts of conduct that is
13 intimately related to the judicial process. The
14 independence of the judiciary -- this would require the
15 clerk to go to court, to sit at the defense table, to
16 defend against conduct that may in the end turn out not
17 in fact to have been the result of negligence, or if
18 even intentional conduct.

19 The point is that the court system will be
20 clogged, the judicial machinery will break down, if
21 court clerks are required to defend their actions in
22 court in 1983 actions.

23 QUESTION: Why do clerks ever post bonds?

24 MR. MAYER: Court courts post bond in their
25 fiduciary capacity as a trustee --

1 QUESTION: Well, why aren't they just
2 absolutely immune? Are they just paying money out for
3 nothing for bonds?

4 MR. MAYER: No, they're not. But the question
5 of bonds is a different question from whether or not the
6 court in a 1983 action should be subject to absolute --

7 QUESTION: Can you see a clerk on his bond?
8 Can the clerk be sued on his bond for this conduct, for
9 malfeasance in office?

10 MR. MAYER: A clerk could be sued on his bond,
11 but he could also -- there are other alternative
12 remedies that a clerk can be sued on besides his bond.

13 QUESTION: Why can he be sued on his bond if
14 he's absolutely immune?

15 MR. MAYER: Because the statute -- well, the
16 state statute can provide, as it does in Chapter 25,
17 Section 10, as an alternative remedy, that the clerk of
18 the court can -- the principal clerk is liable for the
19 acts of his subordinates.

20 QUESTION: Well, in Illinois -- in Illinois is
21 the bond required of a clerk, a bond, an insurance
22 policy like the public liability for driving an
23 automobile, or is it a bond simply to replace any money
24 which he receives and embezzles?

25 MR. MAYER: Yes, the latter aspect is the

1 purpose of the bond in the State of Illinois, for the
2 purpose of -- to replace those moneys that are taken
3 illegally by the clerk.

4 QUESTION: Suppose the Illinois legislature
5 passed a statute that says, we know we've read all about
6 this immunity for state officers under 1983, but that
7 just is an assumption by the Supreme Court or by some
8 courts that this kind of immunity is essential to get
9 the public work done. Well, we hereby declare that it
10 is not essential to get the Illinois public work done to
11 have immunity under 1983.

12 There certainly wouldn't be any immunity then,
13 would there?

14 MR. MAYER: The clerk would be immune only if
15 he was acting as an official aide of the court in order
16 to discharge the court's duties.

17 QUESTION: But the state doesn't want any
18 protection for its officers to protect its public
19 business.

20 MR. MAYER: The state can legislate in this
21 area, as it has done already in the Illinois Revised
22 Statutes in the Clerk's Act.

23 QUESTION: Would you think -- could the clerk
24 have been sued under state law here?

25 MR. MAYER: The clerk could have been sued

1 under state law.

2 QUESTION: And he would not have been immune?

3 Under state law he would not have been immune?

4 MR. MAYER: Under state law today there is a
5 statute that would provide that the principal clerk can
6 be sued for the acts of his deputies.

7 QUESTION: He could be sued for this conduct
8 right here, and he would not be immune under state law?

9 MR. MAYER: Under state law, the question has
10 not been decided whether the clerk enjoys judicial
11 immunity. But there is a state statute and there is
12 case authority that permits a clerk to be sued in a
13 civil action.

14 QUESTION: For the negligence of his
15 deputies?

16 MR. MAYER: yes, for the negligence of his
17 deputies.

18 QUESTION: Aren't you asking the federal
19 courts, then, to be more Roman than the Romans? If the
20 Illinois courts, the Illinois legislature, permit this
21 sort of an action in state court against a clerk, I
22 would think Justice White is quite right that Illinois
23 has determined that absolute immunity isn't necessary.

24 QUESTION: Or any kind of immunity.

25 MR. MAYER: Well, the statute that I referred

1 to is an available alternative remedy that has not been
2 tested that I can tell in my research. The statute is
3 on the books, but there is a question now raised by
4 Drury versus Mclean County, which has held that the
5 clerk of the court in Illinois has historically been a
6 member of the judiciary branch.

7 QUESTION: So you say it's an open question
8 --

9 MR. MAYER: It is an open question in
10 Illinois. The Drury case did not --

11 QUESTION: You just told me that there could
12 be recovery against this clerk in an Illinois court
13 under state law for this very conduct.

14 MR. MAYER: Your Honor, I'm sorry. The case
15 --

16 QUESTION: That's what you just told me a
17 while ago.

18 MR. MAYER: Well, the case is an -- the issue
19 is an open issue. My point is only that there is a
20 state statute that could provide a remedy against the
21 clerk.

22 QUESTION: Well, that's -- so what do you
23 mean, is there a remedy for this conduct under state law
24 or not?

25 MR. MAYER: It is not clear, other than by the

1 fact that this statute exists.

2 QUESTION: Is your state statute cited
3 anywhere?

4 MR. MAYER: Yes, Your Honor, it is.

5 QUESTION: In your brief or what?

6 MR. MAYER: It is cited in the Respondent's
7 brief and in our reply brief. It's in footnote 3 of the
8 Respondent's brief.

9 QUESTION: Thank you.

10 QUESTION: May I ask this question. Is there
11 a difference between action and non-action by the
12 clerk? Assume, for example, that the clerk neglected to
13 issue the mandate of the court, just inadvertently
14 failed to do it. That would be non-action. You have
15 non-action in this case.

16 Does the immunity for which you argue extend
17 regardless of whether it's action or non-action?

18 MR. MAYER: Yes, Your Honor, and the reason
19 for that again is that acting as an official aide of the
20 judge in his capacity as the clerk, it is not relevant
21 whether the intended -- whether the intended result was
22 accomplished. The fact is that the policy
23 considerations require that in order for the judicial
24 machinery to be able to function with the essential
25 court officers, the clerks -- the courts will be clogged

1 with petitioners like the clerk of the circuit court
2 having to go in to defend against actions of performance
3 or non-performance, it will disrupt the court system to
4 such a degree that the potential harm to deny absolute
5 judicial immunity must be outweighed by the public good
6 to have clerks clerking and not sitting in courtrooms
7 defending against actions and complaints under 1983
8 either for inaction or action.

9 QUESTION: What if the inaction was
10 deliberate? The clerk just didn't want to have the
11 mandate issue because he didn't agree with it.

12 MR. MAYER: Our position would be the same,
13 that an absolute judicial immunity would exist
14 regardless of the intent or the malice or the bad
15 faith.

16 QUESTION: Even if he deliberately ignored the
17 judgment of the court?

18 MR. MAYER: It is better to -- yes. It is
19 better to allow one corrupt -- a corrupt clerk to go
20 free than to have the faithful clerks, whose ardor will
21 definitely be dampened from performing their faithful
22 duties if a policy is instituted where they can be
23 subject to liability for allegations of malice or bad
24 faith in a complaint.

25 The facts in this case are simple. The clerk

1 here is not alleged to have done anything wrong. All he
2 did was create procedures. These procedures were
3 intimately --

4 QUESTION: Mr. Mayer, you didn't raise any
5 question as to whether or not the clerk could be held
6 substantively liable under 1983. As I understand your
7 petition, the only question you raise is, assuming that
8 the clerk can be held liable for these rather detached
9 and passive acts, whether notwithstanding the
10 substantive liability he may assert an absolute
11 immunity.

12 MR. MAYER: Yes, Your Honor, our petition --
13 the question presented is limited to whether or not he
14 should enjoy absolute judicial immunity for acts taken
15 in discharge of his duties as an official aid of the
16 court, in order that the court's judicial functions can
17 be properly accomplished.

18 And the facts in this case clearly reflect
19 that when the clerk, the Petitioner, created these
20 procedures he did it with the court's knowledge, with
21 the court's approval, under the court's supervision --
22 clearly an act as the clerk within his scope of
23 authority as the clerk of the court.

24 In this case, Petitioner is clearly and should
25 be clearly held absolutely immune for an act that is so

1 intimately related and integrally related to the
2 judicial process.

3 The 1983 cases in the circuits that have dealt
4 with this issue have all held -- the majority of the
5 cases that have held that the clerks are immune have
6 held that the clerk of the court's common law immunity
7 has not been abrogated by the enactment of Section
8 1983.

9 QUESTION: Well, what if it's abrogated by
10 state law?

11 MR. MAYER: Well, if -- the clerk's immunity
12 should still survive regardless of whether -- in 1983
13 actions, the question is whether --

14 QUESTION: Why would it? Why would it?

15 MR. MAYER: The question of whether or not the
16 clerk is absolutely immune under 1983 is dependent upon
17 whether or not at common law the clerk was -- enjoyed
18 immunity from damages when sued when performing acts as
19 a clerk in discharge of his duties, regardless -- and as
20 the common law establishes, the clerk of the court was
21 not amenable to suit when acting under the direction and
22 supervision of the court.

23 A presumption existed that when a clerk acted
24 he acted with the authority of the court for whom he
25 acted, regardless of whether or not it was negligent or

1 intentional.

2 Now, the cases that have dealt with this in
3 the circuits have consistently held that whether or not
4 it was a failure to notify someone pursuant to a court
5 order, whether it was a failure to send notice of a copy
6 of a notice of appeal, regardless of whether or not the
7 clerk refused to docket a particular piece of paper, the
8 end result was the same. The analysis focused on
9 whether or not the clerk acted as an official aid of the
10 judge in order that the judicial duties could be
11 properly accomplished.

12 And the policy considerations behind this are
13 clear, that if clerks are required to defend their
14 actions in a federal court plaintiffs will be able to do
15 indirectly what they cannot do directly. The clerk will
16 be the one who will have to go in and defend against
17 court orders and court actions, which cannot be done if
18 the judge himself had been sued under Section 1983. By
19 bringing the clerk into court, the court system will be
20 bogged down.

21 In a system like Cook County, in the Circuit
22 Court of Cook County, to have the clerk of the court go
23 in and defend every time a disgruntled person feels like
24 filing a Section 1983 suit based upon conduct of the --

25 QUESTION: Well, certainly this Respondent is

1 not a disgruntled person.

2 MR. MAYER: That is correct.

3 QUESTION: You haven't made any mention of the
4 facts underlying this. She was a victim, as I
5 understand it, of a robbery or a mugging or something.

6 MR. MAYER: Your Honor, in this case she was
7 charged --

8 QUESTION: She was more than disgruntled.

9 MR. MAYER: The clerk of the court agrees that
10 she is not a disgruntled person. In fact, it is
11 unfortunate that what happened happened here. The
12 warrant recall order should have gotten to the Chicago
13 Police Department.

14 The facts in this case are clear that she was
15 not the victim of a mugging. She was in fact initially
16 charged as a criminal defendant for deceptive practices,
17 and in this case the Respondent --

18 QUESTION: But arising out of the theft of her
19 credit cards, no?

20 MR. MAYER: Assuming the allegations in the
21 complaint are taken as true, yes, that is correct. But
22 even under these set of facts, we must go back to the
23 allegations in the complaint. The allegations in the
24 complaint clearly reflect that the Respondent
25 acknowledges that the clerk was acting as an official

1 aide of the judge, acted in discharge of his judicial
2 duties to implement court orders, and that all that the
3 Respondent seeks in this case is that the clerk create
4 perfect procedures, which are impossible in an imperfect
5 world, where immunity recognizes that mistakes will
6 occur.

7 And especially in a large metropolitan court
8 system, like the one in Circuit Court of Cook County
9 with 2100 deputy clerks, 6 municipal districts, a
10 likelihood of one mistake in a thousand like this
11 happening will happen. Without judicial immunity, the
12 clerk should -- would be subject to having to leave his
13 duties and thus impair the effective administration of
14 justice in the circuit court.

15 QUESTION: Mr. Mayer, at this point we really
16 don't know what happened, do we, because it was resolved
17 on summary judgment?

18 MR. MAYER: We know -- it's not relevant
19 beyond the facts as they're stated on the complaint as
20 to what happened. We know what happened as to what the
21 clerk did. The clerk created the procedures with the
22 court to promote the efficient management of the court
23 system.

24 Whether or not the clerk on the tenth floor
25 mislaid that file intentionally, negligently, whether or

1 not the Chicago Police Department failed to execute
2 their procedures, is not relevant to the question of
3 whether the clerk is absolutely immune as an official
4 aide, doing his job to promote the efficient management
5 of the judiciary.

6 We would ask that this Court reverse the
7 Seventh Circuit's decision and extend absolute judicial
8 immunity to court clerks. I would ask that the
9 remaining time I have be reserved.

10 CHIEF JUSTICE BURGER: Mr. Elson?

11 ORAL ARGUMENT OF JOHN S. ELSON, ESQ.

12 ON BEHALF OF RESPONDENT

13 MR. ELSON: Mr. Chief Justice and may it
14 please the Court:

15 This case is not about a clerk's liability for
16 the proper execution of a court order. The complaint
17 alleges both that Petitioner did not fulfil his duty to
18 deliver to the police the court order recalling
19 Respondent's arrest warrant and that the failure to
20 deliver that order is alleged to have resulted from
21 Petitioner's continued implementation of policies and
22 customs that he knew were inadequate, as Mr. Justice
23 Stevens pointed out in reading from the complaint.

24 QUESTION: Mr. Elson, suppose you had a
25 situation, instead of hundreds of clerks in the office,

1 you have a justice of the peace, a judicial officer out
2 in the country, who has no clerk, no staff, no
3 secretary, and then you postulate all the facts that
4 happened here: that he should have sent something to
5 the sheriff or to the police, but he went fishing or he
6 just forgot it or he put it in the drawer and mislaid
7 it.

8 Would the judge have absolute immunity?

9 MR. ELSON: The opinions of this Court on that
10 question are not recent and the question is not clear.

11 QUESTION: Well, what's the general
12 proposition about judicial immunity?

13 MR. ELSON: The general proposition is that
14 the court would look at the nature of the duty, and this
15 is an administrative duty, so that judicial immunity
16 simply wouldn't apply, since this Court has determined
17 --

18 QUESTION: Well, the Strunk case should shed
19 some light on the answer to that question, shouldn't
20 it?

21 MR. ELSON: I'm sorry, Stump?

22 QUESTION: Strunk.

23 QUESTION: Stump.

24 MR. ELSON: Stump versus Sparkman?

25 QUESTION: Yes.

1 MR. ELSON: In Stump versus Sparkman, the
2 court -- one of the requirements for judicial immunity
3 was that the court act within its jurisdiction. It
4 seems clear from the context of the case that the Court
5 was referring to jurisdiction in the sense of
6 jurisdiction to decide cases.

7 And I think this interpretation was augmented
8 in the Court's recent decision in Dennis versus Sparks,
9 in which the Court held that the purpose of judicial
10 immunity -- that judicial immunity arose in order to
11 protect judges' ability "to exercise their independent
12 judgment about the merits of cases."

13 The only precedent on this, direct precedent
14 on this subject dates back to 1879 in the case of Ex
15 Parte Virginia, in which the Court was explicit in
16 saying that -- this Court was explicit in saying that
17 it's necessary to look at the actual function performed
18 by a judge, and that if a judge performs a function that
19 could just as well be handled by anybody -- in that case
20 it was a purely ministerial duty -- then the judge has
21 no immunity simply because of his title and status.

22 QUESTION: Of course, that was a mandamus
23 action.

24 MR. ELSON: That was a mandamus action. This
25 Court has looked at the policies for mandamus for

1 immunity in terms of injunctive relief and damages in
2 some cases as being related. In that case there was no
3 indication that the Court would have had a different
4 view in terms of damages, certainly, in that case. I
5 would even hazard that the reasons for injunctive relief
6 might be even stronger than for damages.

7 QUESTION: Is it your position, counsel, that
8 the clerk would be entitled to qualified immunity for
9 failure or refusal to perform a mandatory duty?

10 MR. ELSON: No, Your Honor. It's our position
11 that on the facts of this case it's just premature to
12 determine whether any immunity would be appropriate, as
13 Judge Swygert --

14 QUESTION: Just in abstract terms, not with
15 reference to the determination of the facts of this
16 case, assuming that we had a clerk who failed or refused
17 to perform a mandatory duty --

18 MR. ELSON: If a mandatory --

19 QUESTION: -- what is your view of the
20 appropriate of what would be appropriate?

21 MR. ELSON: If the mandatory duty were of a
22 ministerial nature, then no immunity would be
23 appropriate. And this Court -- all of this Court's
24 decisions dealing with the question of immunity have
25 held that the fundamental purpose of immunity is to

1 protect an official's discretion, ability to exercise
2 discretion independently. Where there is no discretion,
3 then the fundamental purpose of immunity disappears.

4 Judge Swygert in his opinion below noted that,
5 and the Fourth Circuit has held that in its leading
6 opinion of McCray versus Maryland.

7 QUESTION: Judge Swygert's opinion was a
8 concurring opinion.

9 MR. ELSON: I'm sorry. In his concurring
10 opinion he noted that, and referred to McCray versus
11 Maryland in the Fourth Circuit as also holding that.

12 And that is in line with the historical --

13 QUESTION: Do you understand on the remand for
14 trial, which I gather was the order of the Court of
15 Appeals, wasn't it?

16 MR. ELSON: That's correct.

17 QUESTION: Is there any issue of immunity
18 open?

19 MR. ELSON: Yes, there is. The Court of
20 Appeals remanded on the ground that factual
21 clarification was necessary to determine whether
22 official immunity was appropriate, and cited to a
23 previous Seventh Circuit case --

24 QUESTION: Now, you say whether official
25 immunity. In what form, absolute or --

1 MR. ELSON: Well, the court -- the only
2 indication was its reference to its previous case in
3 Dieu versus Norton. In that case the court determined
4 that a court clerk had absolute immunity for actually
5 carrying out the orders of a judge acting pursuant to
6 his legal duties. So the implication from the Seventh
7 Circuit's remand would be a remand for a factual
8 determination of whether the clerk was in fact acting
9 pursuant to judicial --

10 QUESTION: And if not, no immunity at all?

11 MR. ELSON: And if not, the question of no
12 immunity is unclear. All we have is Judge Swygert's
13 concurrence, in which he says that no immunity would be
14 appropriate. Of course, he was also referring to the
15 problem of whether negligence is appropriate --

16 QUESTION: Are you suggesting that, if on the
17 remand there were a determination there ought to be some
18 immunity, that what, the trial judge would have to
19 determine whether it was going to be qualified or not?

20 MR. ELSON: The trial judge would have to
21 determine whether there's qualified or no immunity.

22 QUESTION: No on the theory that he wasn't
23 acting within the scope of his authority or something
24 like that?

25 MR. ELSON: Well, no immunity on the theory

1 that he was performing purely a ministerial function.

2 QUESTION: Ministerial officer.

3 MR. ELSON: And had no discretion whatsoever.

4 And the ministerial -- the proposition that there is no
5 immunity for ministerial functions fits within the
6 historical background of Section 1983. One of the
7 requirements for proving absolute immunity under Section
8 1983 is to show -- the Petitioner has the burden of
9 showing that there was an equivalent immunity in 1871,
10 when Section 1983 was enacted.

11 QUESTION: Mr. Elson, before you leave the
12 question on remand, is it not correct that there are
13 three alternatives, rather than two, even under your
14 view of the law? One would be that if it were a mere
15 ministerial act there would be no immunity at all. And
16 the other extreme, if he's carrying out a direct order
17 of the judge and if he does exactly what the judge tells
18 him to, I think you probably would agree that's absolute
19 immunity.

20 MR. ELSON: No, I would not, because the order
21 in this case of the chief judge was purely an
22 administrative order, and it's our position --

23 QUESTION: Well, let me put it a little
24 differently. Would there not be some situations in
25 which the clerk did nothing more than carry out a direct

1 order of a judge where he would be entitled to absolute
2 immunity?

3 MR. ELSON: Definitely.

4 QUESTION: All right. But is there not an
5 intermediate category where he might have -- he's not
6 carrying out a direct order, he might be performing a
7 discretionary act, such as drafting new procedures or
8 something like that, where you might recognize qualified
9 immunity?

10 MR. ELSON: That's correct.

11 QUESTION: And this conceivably could be such
12 a case, because one of the questions is whether his
13 procedures are reasonable or not.

14 MR. ELSON: That's correct. And the recent
15 decisions, though not the historical decisions on this,
16 would indicate that a qualified immunity would be
17 appropriate.

18 QUESTION: So that actually on remand any one
19 of those three alternatives is at least conceivable?

20 MR. ELSON: That's correct.

21 QUESTION: If we were to affirm the remand, we
22 need not now determine what immunity he's entitled to.

23 MR. ELSON: That's correct, exactly.

24 QUESTION: Mr. Elson, I take it from the Court
25 of Appeals' opinion that the issue of liability, as

1 opposed to immunity, isn't totally resolved by the Court
2 of Appeals. As I read the author of the opinion, he
3 kind of treats the case like a hunting accident and
4 said, you know, one of these five people must be liable,
5 go back and figure out who.

6 But it's not irrefutably foreclosed that the
7 clerk here might be held not liable, is it?

8 MR. ELSON: Oh, definitely not. That's not
9 closed, and the Seventh Circuit I think as very clear on
10 that. But of course, that is not the issue presented
11 --

12 QUESTION: Right.

13 MR. ELSON: -- in this case.

14 Going back to the historical, the equivalent
15 immunity -- and I would emphasize that, because this
16 Court has made it clear that without any equivalent
17 historical, any equivalent immunity at common law, then
18 the official's claim to absolute immunity must fail
19 because the literal terms of Section 1983 require an
20 all-inclusive scope of liability which must be give
21 effect without the background of an equivalent
22 immunity.

23 And here the law in the nineteenth century was
24 absolutely clear, and it was best stated in this Court's
25 1870 decision in *Amy versus Supervisors*, in which the

1 Court held, this Court held, that officials had not even
2 a good faith immunity for their negligence in carrying
3 out their duties. And there's no reason -- and the law
4 is very clear that court clerks were not exempted from
5 this rule of official liability.

6 There's no dispute in this case as to what the
7 mandatory duty of the court clerk was. And this is
8 stated in the appendix at page 23, which stated --

9 QUESTION: Suppose the clerk had a mandatory
10 duty to send this form along, this warrant recall form
11 along, and there was just some negligence by him or one
12 of his deputies that -- suppose when the facts are --
13 it's just a pure case of negligence.

14 Now, wasn't there a footnote in the Court of
15 Appeals' opinion that that wouldn't -- if it were just
16 negligence, it would not amount to a 1983 violation?

17 MR. ELSON: That's correct, that was the view
18 in the Seventh Circuit prior to this Court's decision in
19 Parrot versus Taylor.

20 QUESTION: Yes.

21 MR. ELSON: Which indicated that that was no
22 longer the law in terms of negligence being not
23 sufficient to state a claim under Section 1983.

24 QUESTION: Suppose all the clerk did was
negligently fail to carry out what -- the requirements

1 of a quite adequate set of procedures and regulations
2 that he and the judge worked out. On their face they're
3 perfectly all right. He just negligently failed to
4 carry it out.

5 And he's sued in 1983, stating a cause of
6 action, and the facts show that he has been negligent.
7 Now what kind of an immunity would you say he would
8 enjoy in that?

9 MR. ELSON: I'm not sure whether your
10 hypothetical is talking about the deputy clerk who
11 failed to actually physically get the document to the
12 police or the chief clerk who was responsible for the
13 procedures.

14 QUESTION: Either one.

15 MR. ELSON: Either one. Well, in either case
16 there would be no -- it would be our position that there
17 would be no absolute immunity.

18 QUESTION: Because he just negligently failed
19 to carry out an order.

20 MR. ELSON: I believe the question you're
21 asking goes to whether or not there's a constitutional
22 violation, and it could very well be --

23 QUESTION: No, no, my question doesn't. I
24 thought you went that there was a constitutional
25 violation. Let's assume there is. Negligent conduct

1 may nevertheless amount to a constitutional violation.
2 Assume there is.

3 Now the question is immunity.

4 MR. ELSON: Well, it's our position that the
5 nature of the constitutional violation does not affect
6 the determination of whether or not here's immunity.
7 Those are wholly separate questions, and it's given in
8 any immunity case that there is a sufficiently severe
9 violation to rise to constitutional proportions. So --

10 QUESTION: So would you put this in the
11 category that this was a ministerial act that he failed
12 to carry out?

13 MR. ELSON: Yes, I --

14 QUESTION: So no immunity at all.

15 MR. ELSON: It's unclear. But the duty was,
16 as is spelled out in the chief judge's order which is
17 quoted on page 23 of the appendix, where it says, three
18 times actually, "The clerk shall deliver the warrant
19 recall order to the central warrant unit." It couldn't
20 be more explicit in that regard.

21 QUESTION: Well, why then was there a remand?
22 Did a majority of the Court of Appeals decide that there
23 might be immunity even though it was only a ministerial
24 act?

25 MR. ELSON: No, I don't believe the Court of

1 Appeals reached that level of inquiry into the case.
2 There had simply been no factual development to
3 determine whether there had been any violation at all,
4 and possibly whether in fact the clerk may have acted
5 pursuant, adequately acted pursuant to the commands of
6 the judge.

7 QUESTION: Counsel, do you think that mere
8 negligence rises to a constitutional violation under
9 1983?

10 MR. ELSON: Well, I think it can in certain
11 situations, and I believe that this Court has already
12 decided that it can in its Parrot decision. Again,
13 however, I would emphasize that that question is not
14 raised in this case. Certainly if this Court could find
15 that negligence is not -- does not rise to a
16 constitutional violation, the issue here is absolute
17 immunity given a constitutional violation.

18 Even if Petitioner were able to show a common
19 law background for absolute immunity, Petitioner could
20 not meet the second burden, independent burden of
21 establishing immunity, and that is that the immunity is
22 essential to the proper performance of a court clerk's
23 duties. Petitioner has no explanation for why an
24 absolute immunity is essential to the performance of the
25 court clerk's duties, while on the other hand this Court

1 has held that such immunity is not essential to the
2 performance of the duties of a governor, of school board
3 members, hospital administrators, prison administrators,
4 policemen. If --

5 QUESTION: Cabinet officers.

6 MR. ELSON: That's correct.

7 And if the Petitioner's duties in this case
8 are anything more than ministerial, they are certainly
9 no more than of an executive or administrative nature
10 and therefore deserve no more immunity than
11 administrative or executive officials. Indeed, I would
12 argue that it deserves less immunity because normally
13 court clerks perform -- have less discretion in their
14 duties than say governors, cabinet officers, et cetera.

15 Petitioner's primary policy argument is that,
16 as we've heard, the clerks serve as an aide to the judge
17 and that they are important to judicial proceedings.
18 Well, this Court has made it clear that official
19 immunity depends not on an official's status or his
20 location in the judicial process, but on whether the
21 judgments of the official are functionally comparable to
22 the judgments of a judge in deciding cases, as this
23 Court pointed out in the Dennis opinion.

24 Since the Petitioner's responsibility for the
25 unconstitutional arrest in this case in failing to have

1 adequate procedures had nothing to do with deciding the
2 merits of a case, this functional comparability
3 argument, ground, is conclusive that judicial immunity
4 cannot apply. Petitioner --

5 QUESTION: In the Gravel case, we extended
6 immunity that was primarily that of a Senator to a
7 Senatorial aide. Would you think that judicial immunity
8 might at least rub off on the judge's secretary or the
9 judge's law clerk?

10 MR. ELSON: Well, insofar as the judge's
11 secretary's and law clerk's duties were concerned with
12 the merits of the case, of an actual case in the
13 adjudicative process, definitely. If they were routine
14 administrative duties, although that question of course
15 is not before this Court, I would assert that the
16 rationale for judicial immunity simply would not apply.

17 QUESTION: And you feel the court clerk is
18 just sufficiently removed beyond that intimate
19 connection with the judge for it to rub off on the court
20 clerk?

21 MR. ELSON: Yes, in terms of deciding the
22 case. The court clerk does not have anything to do with
23 deciding the case. In certain cases --

24 QUESTION: He's not supposed to.

25 MR. ELSON: That's correct.

1 However, in certain cases, court clerks are
2 given authority to perform what may be called
3 quasi-judicial kinds of functions, like deciding the
4 appropriateness of probable cause for arrest or the
5 appropriateness of bonds. And there I think the
6 quasi-judicial immunity might apply, because it's a
7 judge-like decision on a case.

8 QUESTION: Do you think there's a remedy
9 against the clerk for this conduct under state law?

10 MR. ELSON: The statute provides a remedy. I
11 know of no cases in which damages were actually
12 collected, but the Illinois statute --

13 QUESTION: But you would think that -- is that
14 a declaration that the clerk has no immunity under state
15 law?

16 MR. ELSON: Certainly implicit in that is the
17 judgment of the Illinois legislature that immunity is
18 not necessary for a court clerk's functions.

19 QUESTION: And do you think that has any
20 relevance to the immunity question under 1983?

21 MR. ELSON: I definitely do, although immunity
22 is a federal law matter, as Martinez versus California
23 indicates, it certainly --

24 QUESTION: Well, it's a question of
25 construction of 1983 and what Congress might have

1 intended when they passed it and whether the intended to
2 revoke common law immunities. But if the common law in
3 a certain state has suddenly changed, been changed by
4 statute, and the otherwise -- the immunity that a clerk
5 would otherwise have in that state has suddenly been
6 eliminated by the state legislature, what should the
7 federal courts do about it under 1983?

8 MR. ELSON: Well, I think that would simply
9 reinforce the proposition that there are no valid policy
10 reasons --

11 QUESTION: Well, let's say that there had been
12 a clear decision in the federal courts that in state A
13 that court clerks were immune, absolutely immune. And
14 then there's a statute passed in state A that says there
15 is no such immunity, we don't need that kind of
16 immunity. And then there's a 1983 suit brought in the
17 same state against a clerk for very similar -- would he
18 then be immune?

19 MR. ELSON: Well, I think one could rely on
20 Section 1988 of Title 42 to argue that where the federal
21 law is deficient in any respect, that is, it doesn't
22 provide in any way about immunity, then you would look
23 to state law that most effectively serves the purposes
24 of the federal statute. And in that case you would look
25 at the state law's abrogation of immunity.

1 I would point out that there is no law in
2 Illinois to indicate that clerks ever had immunity in
3 this type of situation, that Illinois was in line with
4 all of the other states in indicating that court clerks
5 had no immunity.

6 QUESTION: None whatsoever, qualified or
7 otherwise?

8 MR. ELSON: Well, they -- for ministerial
9 duties they had no immunity.

10 QUESTION: Well, how about for
11 non-ministerial?

12 MR. ELSON: I don't know of any cases that
13 deal with discretionary duties.

14 QUESTION: Yes, but under your Illinois
15 statute, suppose one of these clerks, who I think you
16 suggested might fix bond, for example, or determine
17 probable cause, do that in substitution for the local
18 magistrate, and suppose he does it in some impermissible
19 way. Could he be liable under your statute in state
20 court?

21 MR. ELSON: Under the statute cited in the
22 brief, it indicates that the clerk would be civilly
23 responsible for the failures of the clerk.

24 QUESTION: And that would be for a judicial
25 act, wouldn't it?

1 MR. ELSON: That very well could be. There is
2 also a statute in Illinois that gives immunity for
3 discretionary acts of officials doing governmental
4 functions, as in most states. And how Illinois would
5 interplay with these two statutes is unclear in this
6 case.

7 I would also point out that the case, the new
8 case cited by Petitioner, the new Illinois Supreme Court
9 decision, points out that in 1870, I believe, when the
10 Illinois constitution was promulgated, court clerks were
11 not considered even non-judicial officers of the court,
12 that they were county officials. So they didn't even
13 have that proximity under the law at the time 1983 was
14 enacted.

15 Petitioner also argues that immunity is
16 necessary to promote judicial efficiency. Well, the
17 opposite is true. The protection of constitutional
18 rights and the promotion of judicial administration are
19 clearly mutually reinforcing goals, not antagonistic at
20 all.

21 The facts of this case I believe demonstrate
22 the possibility of a clerk's liability for an
23 constitutional arrest caused by ineffective procedures
24 for handling warrant recalls would have two effects: It
25 would be an incentive to have more efficient procedures

1 and thereby to reduce the incidence of unconstitutional
2 arrest. And I think it's interesting to note that
3 Petitioner himself recognized this effect of 1983
4 liability when he in his office memo to his clerk that's
5 on page 20 of the appendix -- that memo warns that
6 deputies who failed to follow correct procedures on the
7 handling of recall orders may be subject, as well as may
8 subject the clerk's office, to liability under Section
9 1983.

10 If such liability encourages Petitioner's
11 subordinates --

12 CHIEF JUSTICE BURGER: We'll resume there at
13 1:00 o'clock.

14 (Whereupon, at 12:00 noon, the argument in the
15 above-entitled matter was recessed, to resume at 1:00
16 p.m. the same day.)

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1 AFTERNOON SESSION

2 (12:59 p.m.)

3 CHIEF JUSTICE BURGER: Mr. Elson, you may
4 resume.

5 ORAL ARGUMENT OF JOHN S. ELSON, ESQ. -- RESUMED
6 ON BEHALF OF RESPONDENT

7 MR. ELSON: Thank you, Your Honor. Mr. Chief
8 Justice, may it please the Court:

9 Before we recessed for lunch I was discussing
10 why absolute immunity is not necessary to promote
11 judicial efficiency. And I was pointing out, the
12 Petitioner's own memo to his clerks, to his
13 subordinates, showed recognition that 1983 liability is
14 indeed an incentive to promote efficient judicial
15 procedures. And I would point out that if it's an
16 incentive to Petitioner's subordinates there's no reason
17 to think that it wouldn't be an incentive to Petitioner
18 himself to use adequate procedures.

19 There is a third criteria for establishing
20 absolute immunity from damages, and that is that
21 Petitioner must show that there are adequate safeguards
22 built into the process by which the court clerk or any
23 official acts that reduce the need for a damage, 1983
24 damage remedy. This Court has never found absolute
25 immunity justified unless there were adequate, such

1 adequate safeguards built into the process by which the
2 official acts.

3 And those safeguards, which were described in
4 Economou versus Butts -- the most essential ones are the
5 right to an adversarial hearing, the right to appeal,
6 and recourse to precedent.

7 Petitioner's failure here to have adequate
8 safeguards, being a purely administrative -- to have
9 adequate procedures for handling these recalls, is
10 purely an administrative type of action and occurred
11 wholly outside of the adjudicative process. So there is
12 no possibility of such safeguards being present, and
13 therefore there's no need -- there's no reduction in the
14 need for a Section 1983 damage remedy to restrain
15 constitutional violations. And this is an independent
16 requirement of absolute immunity the Petitioner has the
17 burden of showing, the existence of these safeguards.

18 In response to Petitioner's argument, I would
19 point out that essentially I think Petitioner has
20 conceded the question presented of whether he's entitled
21 to absolute immunity in his response to Justice
22 O'Connor's question as to whether there is -- as to
23 whether a clerk would be immune if the clerk violated a
24 court order and discriminated against an individual. In
25 conceding that there would be no immunity in that case,

1 I think that essentially essentially concedes the
2 question presented.

3 I think that concession is dictated, in sum, by
4 the three separate requirements for absolute immunity
5 that this Court has set up in all of its immunity
6 cases: that there be adequate safeguards, that there be
7 policy reasons that make immunity necessary for the
8 accomplishment of the official's duties, and that there
9 be an equivalent historical immunity as a background.

10 QUESTION: In other words, you're saying that
11 it must be something paralleling the kind of derivative
12 immunity that was defined in Gravel: that if a Senator's
13 aide is performing a legislative task, which is the way
14 Gravel limited the immunity, then he is immune. If he
15 is not performing something which is essentially the
16 same as what the Senator would do for himself --

17 MR. ELSON: That's right.

18 QUESTION: -- then there is no derivative
19 immunity.

20 MR. ELSON: That's correct. I don't know if I
21 would phrase it as a derivative immunity. There must be
22 -- the clerk must perform a function --

23 QUESTION: It's certainly derivative immunity
24 in the Gravel case.

25 MR. ELSON: That's correct, because the

1 legislative aide was performing a task that would be
2 immune if the legislator had himself performed it.
3 Derivative immunity of a court clerk, however, would be
4 not a judicial type of action. It would be related to
5 carrying out a judge's order, and therefore almost as an
6 arm of the judge.

7 QUESTION: If he issued, if the clerk issued,
8 was authorized to and did issue a warrant or a subpoena,
9 would you say that was quasi-judicial and subject to
10 immunity?

11 MR. ELSON: The task itself wouldn't be
12 quasi-judicial because it's not functionally like
13 deciding cases. There would be a derivative immunity,
14 an absolute immunity. I think the term "quasi-judicial"
15 has been used in many senses, but there would be an
16 absolute immunity because he'd be carrying out an
17 explicit order of a judge.

18 And in the same sense I think that the Gravel
19 case indicates that just because a court clerk happens
20 to be an aide of the judge, just as the legislative aide
21 was an aide of the Senator, that status does not in
22 itself confer immunity. There has to be a functional
23 equivalence.

24 Because Petitioner has not met any of the
25 three separate requirements for absolute immunity this

1 Court has set forth, there is no basis for the claim of
2 absolute immunity in this case.

3 CHIEF JUSTICE BURGER: Very well.

4 Do you have anything further, Mr. Mayer?

5 REBUTTAL ARGUMENT OF SCOTT A. MAYER, ESQ.,

6 ON BEHALF OF PETITIONER

7 MR. MAYER: Yes, Your Honor. Mr. Chief

8 Justice and may it please the Court:

9 Clearly on the face of the complaint, the
10 Petitioner in this case could have done no more than
11 what he did in creating the procedures in conjunction
12 with the general order in this case. Furthermore, the
13 courtroom deputy in this case followed each of the
14 procedures that was assigned to him and there are no
15 allegations that the deputy clerk involved in this case
16 did not comply or implement the procedures.

17 As far as intentional violation of the court
18 orders, it is clear that the clerk of the court is
19 amenable to alternative available remedies when he
20 intentionally violates a court order. He is subject --
21 he is answerable to the court. He is subject to
22 contempt. He is subject to removal from office, just as
23 well as a judge, and in addition would be subject to the
24 criminal analogue of the Section 1983 Act under Section
25 242 for criminal intentional violations of civil

1 rights. The clerk would enjoy no greater immunity than
2 a judge or a prosecutor would for intentional
3 violations.

4 Furthermore, it's clear that the negligent act
5 that occurred here, the mere inadvertent mislaying of
6 the warrant recall order, was something that could not
7 have been prevented even with the threat of the memo.
8 Mistakes will happen in a large system such as the one
9 in Cook County and merely the fact that this memo was
10 there was not something that even could prevent this one
11 isolated incident.

12 Clearly, the clerk is intimately related to
13 the court. He is not acting independent of the court.
14 He is not acting independent of the court. As this
15 Court held in Shadwick versus City of Tampa, the clerk
16 when working with the court is intimately related to the
17 court. He is a judicial officer and, when acting under
18 the supervision of a judge, he should be accorded the
19 same protection of absolute judicial immunity as the
20 judge would be if the judge in fact had performed the
21 act of failing, in this case, either to adequately
22 communicate to the police department a warrant recall
23 order or in fact created procedures as he did.

24 For these reasons, we've asked that the
25 Seventh Circuit Court of Appeals be reversed.

1 CHIEF JUSTICE BURGER: Thank you, gentlemen.

2 The case is submitted.

3 (Whereupon, at 1:06 p.m., the above-entitled
4 case was submitted.)

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CERTIFICATION

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

Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois,
Petitioner, v. Toni Murray -- No. 80-2205

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Reene Hammond

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