

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-5279 & 82-5331

TITLE ARTHUR DIXSON, Petitioner v.  
UNITED STATES; and  
JAMES LEE HINTON, Petitioner v.  
UNITED STATES

PLACE Washington, D. C.

DATE October 12, 1983

PAGES 1 thru 44



ALDERSON REPORTING

(202) 628-9300  
440 FIRST STREET, N.W.  
WASHINGTON, D.C. 20001

1	C O N T E N T S	
2	<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
3	DONALD V. MORANO, ESQ.,	
4	on behalf of the Petitioners,	
5	appointed by this Court	3
6	RICHARD G. WILKINS, ESQ.,	
7	on behalf of the United States	22
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1                   IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x

3 ARTHUR DIXSON,                   :

4                   Petitioner,       :

5                   v.                   :       No. 82-5279

6 UNITED STATES; and               :

7 JAMES LEE HINTON,               :

8                   Petitioner,       :

9                   v.                   :       No. 82-5331

10 UNITED STATES                   :

11 - - - - -x

12                   Washington, D.C.

13                   Wednesday, October 12, 1983

14                   The above-entitled matter came on for oral

15 argument before the Supreme Court of the United States

16 at 10:01 o'clock a.m.

17 APPEARANCES:

18 DONALD V. MORANO, ESQ., Chicago, Illinois; on behalf of

19     the Petitioners, appointed by this Court.

20 RICHARD G. WILKINS, ESQ., Office of the Solicitor

21     General, Department of Justice, Washington, D.C.; on

22     behalf of the United States.

23

24

25

1                                   P R O C E E D I N G S

2                   CHIEF JUSTICE BURGER: We will hear arguments  
3 first this morning in Dixon against the United States  
4 and the consolidated case.

5                   Mr. Morano, you may proceed whenever you are  
6 ready.

7                   ORAL ARGUMENT OF DONALD V. MORANO, ESQ.,  
8                   ON BEHALF OF THE PETITIONERS,  
9                   APPOINTED BY THIS COURT

10                  MR. MORANO: Mr. Chief Justice Burger, and may  
11 it please the Court, the issue before the Court is  
12 whether petitioners as employees of a community-based,  
13 non-profit corporation, United Neighborhoods,  
14 Incorporated, UNI, constituted public officials  
15 according to the bribery statute.

16                  Since petitioners in their employment with  
17 United Neighborhood, Incorporated, were not federal  
18 employees, the only provision under which they could be  
19 subject to the bribery statute would be as "persons  
20 acting for or on behalf of the United States or any  
21 department, agency, or branch of government thereof, in  
22 any official function, under or by the authority of any  
23 department or agency or branch of the government."

24                  The legislative history establishes, however,  
25 that petitioners cannot be subject to the bribery



1 statute under this provision. First, as employees of  
2 United Neighborhoods, Incorporated, they were not  
3 officers or persons acting on behalf of a corporation  
4 controlled by a department, agency, or branch of the  
5 federal government.

6 Second, petitioners did not have contracts  
7 with a department, agency, or branch of the federal  
8 government, and therefore could not serve as agents in  
9 performing the terms.

10 QUESTION: Did their agency, the local agency  
11 have a contract with the United States government?

12 MR. MORANO: The contract was between the city  
13 of Peoria and the United States government. The  
14 contract was a community block grant, which was issued  
15 in 1978 to the city of Peoria, and petitioners were  
16 employees of a subgrantee, this non-profit corporation,  
17 United Neighborhoods, Incorporated.

18 Third and last, petitioners were not federal  
19 inspectors licensed or authorized by some department,  
20 agency, or branch of the federal government to certify  
21 or enforce standards established by law.

22 In looking at the legislative history of the  
23 bribery statute, in 1962, the last time the bribery  
24 statute was revised, Congress said that it was not  
25 making any substantive changes in the statute in regard

1 to classes of persons subject to it, but merely was  
2 consolidating under one statute what had heretofore been  
3 13 different statutes.

4 But Congress also declared that it was  
5 continuing to give the same broad interpretation of  
6 public official and public act as found in case law.  
7 Congress, however, had been prodded by the Court in this  
8 Court's 1920 decision, United States versus Strang, to  
9 make the bribery statute applicable in piecemeal fashion  
10 to employees of government owned and controlled  
11 corporations, such as, for instance, the Homeowners Loan  
12 Corporation and the Federal Deposit Insurance  
13 Corporation.

14 And then, in the year 1948, Congress revised  
15 the statute and inserted "or any department or agency  
16 thereof" to embrace offices or persons acting on behalf  
17 of any independent agencies or government owned or  
18 controlled corporation.

19 I think two good examples of government owned  
20 or controlled corporations would be the Federal Reserve  
21 Banks which are depositories for currencies held in the  
22 United States Treasury, and also fiscal and monetary  
23 agents of the United States, and another example would  
24 be the European Exchange System, which served as an  
25 instrumentality of the United States government and the

1 Department of the Army in operating exchanges at  
2 European military posts.

3           Thus, what we can infer from these examples is  
4 that a necessary condition of such a government  
5 controlled corporation is that a department, agency, or  
6 branch of the federal government exercise an ongoing  
7 control, supervision, and direction of the operation of  
8 the corporation. There is a symbiotic relationship  
9 between the corporation which is controlled and the  
10 federal government.

11           One of the definitions given in Webster's  
12 Third International Dictionary of the noun "control," I  
13 think, specifies rather aptly the kind of control which  
14 I am talking about: "Application of policies and  
15 procedures for directing, regulating, and coordinating  
16 production, administration, and other business  
17 activities in a way to achieve the objectives of the  
18 enterprise."

19           Accordingly, United Neighborhoods,  
20 Incorporated, was not a corporation controlled by the  
21 federal government. Indeed, the program manager of the  
22 Department of Housing and Urban Development for western  
23 Illinois in charge of the dispersal of the community  
24 development block grants to the city of Peoria during  
25 the period of the indictment testified that he neither

1 knew or was required to know the existence of United  
2 Neighborhoods, Incorporated, nor, for that matter, any  
3 other subgrantee.

4 QUESTION: Mr. Morano, is this argument  
5 directed to the phrase in the statute "a person acting  
6 for or on behalf of the United States?"

7 MR. MORANO: Yes. What I have argued, Justice  
8 Rehnquist, is that in effect there really are three  
9 rubrics under which someone could be deemed to act for  
10 and on behalf of the United States in terms of  
11 legislative history and case law which was given  
12 approbation by the Congress in its 1962 statement.

13 And the three rubrics are that you have an  
14 officer or employee of a government controlled  
15 corporation, or --

16 QUESTION: But not -- Let's take them one at a  
17 time. Right after the phrase "acting for or on behalf  
18 of the United States" comes "or any department, agency,  
19 or branch of government." Now, wouldn't that really  
20 include the first example you have just given?

21 MR. MORANO: But, see, these are -- we are  
22 talking about actual government bodies in government or  
23 any agency or branch of the government thereof, but  
24 these are --

25 QUESTION: But --



1 MR. MORANO: This one is acting on behalf of  
2 these, you see.

3 QUESTION: But are we talking about them? The  
4 statute is in the disjunctive, and you are right, in the  
5 latter part it says, "or on behalf of any department,  
6 agency, or branch of government thereof," but before  
7 that it says, "or on behalf of the United States," which  
8 suggests to me that that phrase must mean something over  
9 and above "any department, agency, or branch of  
10 government." Do you see what I mean?

11 MR. MORANO: Yes, I understand what you are  
12 saying. I think I would put it in the -- perhaps in the  
13 -- I should perhaps state it in the disjunctive then,  
14 that -- I can't think offhand of an example in which a  
15 person would be acting on behalf of the government  
16 unless they were some department, agency, or branch of  
17 the government involved. I mean, it is --

18 QUESTION: Well, I suppose the grain  
19 inspectors are an example. They are covered by a  
20 separate statute, but that is an example, is it not, of  
21 someone acting for and on behalf of the government? Are  
22 there other examples like the grain inspectors where  
23 some state or local agency or employee is designated by  
24 law to be an agent of the federal government?

25 MR. MORANO: But I think that the grain

1 inspector, wouldn't the grain inspector be acting for  
2 the Agriculture Department? I think the grain inspector  
3 is authorized or licensed by the Agriculture  
4 Department.

5           Anyway, I would concede that it could be  
6 understood in the disjunctive, certainly, that it could  
7 be acting on the behalf of the United States or any  
8 department, agency, or branch of the government, but  
9 still, the three rubrics would be covered by that,  
10 whether you understood it as in the disjunctive or  
11 merely suplisage.

12           QUESTION: Mr. Morano, did the UNI do any of  
13 the work itself in any occasion, or was it always a mere  
14 conduit for the federal funds?

15           MR. MORANO: It had no relationship whatsoever  
16 with the federal government save for the federal source  
17 of the funds.

18           QUESTION: Did it ever do any of the  
19 rehabilitation work itself?

20           MR. MORANO: It did all of the rehabilitation  
21 work. Yes, Justice O'Connor. It did all of the  
22 rehabilitation work for that area of the city. UNI had  
23 been established in 1975 with these independent  
24 objectives as a community-based organization to improve  
25 the situation.

1 When the Nixon Administration in 1974 passed  
2 the community block grant in response to the turmoil and  
3 the lack of decent housing and the lack of other sources  
4 of finances to improve this condition, the UNI -- they  
5 received more than \$1 million, the city of Peoria  
6 received more than \$1 million in grants specifically  
7 earmarked to work in that area, and then they  
8 subcontracted the work out. All the objectives and  
9 goals were general goals of the city, but UNI was to use  
10 its own ingenuity in accomplishing them.

11 QUESTION: Mr. Morano, may I just make sure I  
12 understand? You said that UNI did all the  
13 rehabilitation work itself. By that I take it you mean  
14 they let the contracts to private contractors who did  
15 the work. They didn't do --

16 MR. MORANO: Oh, I see what you mean. I  
17 misunderstood the question. Yes.

18 QUESTION: They didn't actually do any of  
19 the --

20 MR. MORANO: They did have volunteers,  
21 though. They did -- in other words, a community-based  
22 organization, and so that they did have housing  
23 contracts --

24 QUESTION: I see.

25 MR. MORANO: -- but this wasn't -- you see,

1 there were volunteers, community-based volunteers, and  
2 there were other things which --

3 QUESTION: I see.

4 MR. MORANO: UNI continued to carry on all  
5 kinds of activities.

6 QUESTION: So they did actually some physical  
7 rehabilitation work --

8 MR. MORANO: Yes.

9 QUESTION: -- with their own personnel as well  
10 as contracting work out? I see. I see.

11 MR. MORANO: Thank you, Justice Stevens. I  
12 didn't understand Justice O'Connor's question.

13 Granted the city of Peoria was required to  
14 submit annual reports to HUD, and the Secretary of HUD  
15 had the right to audit such community block grants and  
16 to adjust, reduce, or withdraw such funds if the city  
17 did not substantially comply with the terms of the  
18 application of the requirements of the Act.

19 But according to the Act, once the city of  
20 Peoria had received this community block grant, the  
21 entire administration of the grant was left to it, and  
22 HUD had absolutely no control over or right to  
23 interfere with its administration.

24 So therefore what is decisive is that the  
25 federal government had relinquished all control over the



1 there were volunteers, community-based volunteers, and  
2 there were other things which --

3 QUESTION: I see.

4 MR. MORANO: UNI continued to carry on all  
5 kinds of activities.

6 QUESTION: So they did actually some physical  
7 rehabilitation work --

8 MR. MORANO: Yes.

9 QUESTION: -- with their own personnel as well  
10 as contracting work out? I see. I see.

11 MR. MORANO: Thank you, Justice Stevens. I  
12 didn't understand Justice O'Connor's question.

13 Granted the city of Peoria was required to  
14 submit annual reports to HUD, and the Secretary of HUD  
15 had the right to audit such community block grants and  
16 to adjust, reduce, or withdraw such funds if the city  
17 did not substantially comply with the terms of the  
18 application of the requirements of the Act.

19 But according to the Act, once the city of  
20 Peoria had received this community block grant, the  
21 entire administration of the grant was left to it, and  
22 HUD had absolutely no control over or right to  
23 interfere with its administration.

24 So therefore what is decisive is that the  
25 federal government had relinquished all control over the

1           The only exceptions are the decisions of the  
2 Seventh Circuit in the instant case and in United States  
3 versus Mosley. Petitioners in their employment with  
4 United Neighborhoods, Incorporated, had no contract with  
5 any department, agency, or branch of the federal  
6 government or the United States of America, nor were  
7 they agents of the federal government inasmuch as they  
8 had no direct dealings with the city of Peoria, let  
9 alone with the federal government.

10           QUESTION: Do you think the Congress could  
11 have authorized the federal agency itself in Washington  
12 to go out and do all this community rehabilitation,  
13 awarding the contracts directly through federal  
14 employees? Could they have done it that way if Congress  
15 wanted them to? Any constitutional objection to it?

16           MR. MORANO: There might be a problem of -- I  
17 mean, the -- I haven't thought that through, but my  
18 guess might be that there might be a problem between --  
19 of the -- a dispute between the legislative and  
20 executive branches of the government that this is --  
21 this sounds a little bit maybe too socialistic for the  
22 usual way in which Congress operates.

23           QUESTION: Well, in this instance, Congress  
24 created an agency which was authorized by Congress to  
25 make grants in the communities and allow the grantee of

1 that community to carry out the rehabilitation of  
2 housing. Is that correct?

3 MR. MORANO: Yes.

4 QUESTION: Well, then, wasn't everything that  
5 was being done being done on behalf of the United  
6 States?

7 MR. MORANO: I think that the history of the  
8 Act shows that this would be giving too broad a scope to  
9 acting on behalf of the United States. Certainly the  
10 United States had an interest, the United States had  
11 given funds, but if we look at the Community Development  
12 Act of 1974, which was a continuation of the federal  
13 revenue sharing programs for better communities that  
14 Nixon had initiated and the Congress had gone along with  
15 him on, Congress found critical problems facing the  
16 cities which it hoped to alleviate by enlisting the  
17 support of the local groups.

18 The emphasis was upon the initiative of the  
19 community to tailor a program which was suitable for it  
20 in its unique situation.

21 QUESTION: The initiative began with the local  
22 community asking the federal government for some money,  
23 and then the federal government gave the money, so that  
24 it was entirely paid for by the federal government, was  
25 it not?

1 MR. MORANO: Yes, Justice, it was entirely  
2 paid for by the federal government.

3 QUESTION: Then on the second -- on the  
4 disjunctive aspect of what Justice Rehnquist read to  
5 you, isn't all this conduct by these people being done  
6 on behalf of the United States?

7 MR. MORANO: I don't think, Justice Burger, in  
8 terms of the legislative history of these words, that we  
9 should give such a broad construction --

10 QUESTION: Well, let's forget about the  
11 legislative history and see whether the language of the  
12 statute is clear. If it is clear, we don't need to look  
13 at the history, do we?

14 MR. MORANO: That's true, Justice. I do not  
15 think that the -- that use of language on behalf of  
16 someone suggests -- is suggested by the fact that  
17 someone has an interest in the results, and that someone  
18 is paying for what is being done.

19 The statute says clearly that what is  
20 anticipated is the consolidated efforts of city, state,  
21 and local governmental bodies, the continuation of  
22 business investments, et cetera, so that the "on behalf  
23 of the United States," if we gave this strong  
24 interpretation, any time we had federal funds -- excuse  
25 me?



1 QUESTION: Mr. Morano, suppose the UNI just  
2 took the money and bought a yacht with it? Would there  
3 be any federal problem?

4 MR. MORANO: Yes, there would, Justice  
5 Marshall.

6 QUESTION: There would be? Well, how would  
7 that be? How would that come about?

8 MR. MORANO: As I have tried to delineate with  
9 these government controlled corporations, UNI does not  
10 qualify as a government controlled corporation;  
11 however, audits were regularly allowed by the Secretary  
12 of HUD, and if there is a misuse of the funds, then  
13 funds can be adjusted, withdrawn, or reduced in terms of  
14 this information.

15 QUESTION: Can anybody be put in jail for  
16 taking federal money?

17 MR. MORANO: Not unless there is a criminal  
18 statute.

19 QUESTION: Well, my hypothetical is, they took  
20 the federal money and bought a yacht with it, and I am  
21 asking you, is that legal or illegal under the federal  
22 law?

23 MR. MORANO: They couldn't be prosecuted under  
24 the bribery statute, because the bribery statute doesn't  
25 cover them, because --

1 QUESTION: Well, I didn't think the bribery  
2 statute covered buying a yacht. That is embezzlement,  
3 isn't it?

4 MR. MORANO: I don't know what law it would or  
5 would not be covered under.

6 QUESTION: But don't you know that it's a  
7 crime? I mean, you say UNI is free to do whatever it  
8 wants to do. Then it can buy a yacht.

9 MR. MORANO: No, within the scope of the --  
10 they have a contract with the city of Peoria, and they  
11 were subject to an audit by the city of Peoria --

12 QUESTION: And the federal government.

13 MR. MORANO: -- and if they didn't conform,  
14 they were subject to prosecution under any existing  
15 law. The only contention --

16 QUESTION: Weren't they subject to an audit by  
17 the federal government? Didn't you say five minutes ago  
18 that HUD did audit it?

19 MR. MORANO: They had the right to --

20 QUESTION: They had the right to.

21 MR. MORANO: Yes.

22 QUESTION: Well, how did they get that right?

23 MR. MORANO: It was given by the statute, the  
24 community block grant.

25 QUESTION: Well, does anybody have the right

1 who doesn't have the money? Isn't the right tied to the  
2 money? And isn't the money tied to the federal  
3 government?

4 MR. MORANO: I think that we can analogize  
5 with income tax. I mean, it seems to me that there  
6 are --

7 QUESTION: Are you going to answer my  
8 question? Do you agree with me?

9 MR. MORANO: I think I do. Would you please  
10 repeat it? I am sorry.

11 QUESTION: I have forgotten it.

12 (General laughter.)

13 QUESTION: I mean, you forgot it, so I forgot  
14 it.

15 MR. MORANO: Well, I think that certainly -- I  
16 think the emphasis has been too much upon the federal  
17 source of the community block grants and the perduring  
18 interests of Congress in these, but when it comes to a  
19 criminal statute, if there is any ambiguity, and I  
20 maintain that there is ambiguity in what it means to act  
21 on behalf of someone else, that if we were to say that  
22 any time one handles funds that have been derived from  
23 someone else, that one is acting on behalf of that  
24 government body, well, then it seems to me that we would  
25 have an almost limited jurisdiction, and it doesn't seem

1 to me that that would be a reasonable interpretation of  
2 what Congress had intended.

3           So that I think that in view of the fact that  
4 we -- to understand a plain meaning, we not only have to  
5 construe the words "acting for or on behalf of the  
6 United States in any official function," but we also  
7 have to look to a further restriction, and the further  
8 restriction is under or by authority of some department,  
9 agency, or branch of the government thereof.

10           And it seems to me that there is -- it would  
11 be rather far-fetched to say that these employees who  
12 were doing day to day tasks assigned to them by their  
13 superiors in United Neighborhoods, Incorporated, are  
14 acting under or by the authority of HUD, or under or by  
15 authority of the city of Peoria, let alone HUD.

16           The Congress, when it drafted the statute,  
17 didn't predicate the statute in terms of the source of  
18 the funds. In the government brief, they --

19           QUESTION: Mr. Morano, you are now referring  
20 to the section of the statute that speaks of under or by  
21 authority of any such department, agency, or branch of  
22 government, and then you go back -- if you go back  
23 earlier in the statute, within the same subparagraph,  
24 the language there, "any department, agency, or branch  
25 of government," is separate from the language, "a person



1 acting for or on behalf of the United States." It is at  
2 the bottom of Page 1 of your blue brief.

3 I think one could make the argument that the  
4 language you are now relying on, "under or by  
5 authority," modifies only the phrase "any department,  
6 agency, or branch of government," and not "a person  
7 acting on behalf of the United States." Do you disagree  
8 with that?

9 MR. MORANO: I would think so, but I wonder if  
10 it makes any difference in this case, because obviously  
11 if these people were acting on behalf of -- if they were  
12 public officials, they would be so because of the  
13 connection through HUD, and so therefore it is a  
14 department of the federal government, and therefore, if  
15 they are going to be public officials, it would be under  
16 or by authority of the Department of HUD. And this is  
17 not, it seems to me, what is the case here.

18 I think that the government in its brief says  
19 that it is hard to imagine how Congress could have  
20 expressed more vividly its intention to cover persons  
21 administering federal programs, and I think in the very  
22 posing of the question it answers itself, for if  
23 Congress had intended that there be federal jurisdiction  
24 under the bribery statute for all cases of alleged fraud  
25 by persons administering federally funded programs, all

1 it would have had to have done would have been to have  
2 drafted a statute stating just that. But it didn't do  
3 such.

4           It seems that the principle of lenity and the  
5 principle of federalism adds strength to this position.  
6 The principle of lenity that in a criminal statute, if  
7 there is any ambiguity whatsoever, if there is genuine  
8 ambiguity -- I shouldn't say any ambiguity whatsoever --  
9 but if there is a genuine ambiguity, the narrower  
10 construction is mandated, and it seems to me that the  
11 most one can say is that there is some doubt about  
12 Congressional intent about the language.

13           And therefore the narrower construction seems  
14 mandated. In addition, since we have here not merely a  
15 criminal statute but a federal criminal statute, we also  
16 have problems of comity and federalism, that the area of  
17 criminal law is generally, absent a national or  
18 constitutional issue, left to the jurisdiction of the  
19 states.

20           QUESTION: Have you looked at 18 United States  
21 Code recently to see all the federal criminal statutes  
22 there are? I think you would have some hesitancy in  
23 making that statement. You may answer if you wish.

24           MR. MORANO: I am sorry. Is my time off?

25           QUESTION: No, you may respond to my comment.

1 QUESTION: You may respond to the question if  
2 you wish.

3 MR. MORANO: Have I looked at the statute?

4 QUESTION: I was just making the point that  
5 there are a great number of federal criminal statutes  
6 certainly.

7 MR. MORANO: Yes. Thank you.

8 CHIEF JUSTICE BURGER: Mr. Wilkins?

9 ORAL ARGUMENT OF RICHARD G. WILKINS, ESQ.,  
10 ON BEHALF OF THE UNITED STATES

11 MR. WILKINS: Mr. Chief Justice, and may it  
12 please the Court, the United States has just a few brief  
13 points to make. The statutory construction question  
14 presented by this case is indeed readily resolved. The  
15 plain language of 18 USC Section 201 as well as its  
16 legislative history and the broad public policies  
17 underlying the federal bribery statute clearly  
18 demonstrate the petitioners are public officials within  
19 the meaning of the federal bribery statute.

20 At the outset a few facts, I believe, are  
21 necessary to put this question in its proper  
22 perspective. Petitioners were the executive director  
23 and housing rehabilitation coordinator of United  
24 Neighborhoods, Incorporated, a public or a non-profit  
25 public corporation that was designed to perform various

1 functions. One of these was the distribution of federal  
2 housing funds obtained from the federal government  
3 through the city of Peoria under the Housing and  
4 Community Development Act of 1974.

5           As detailed in our brief, United  
6 Neighborhoods' use of these funds and petitioners'  
7 administration of these funds was subject to a whole  
8 host of federal substantive and procedural regulations.  
9 The federal government designed the program, set forth  
10 what activities UNI could undertake, set forth how the  
11 funds were to be managed and administered.

12           Indeed, although the petitioners say the  
13 federal government relinquished control over these  
14 funds, the legislative reports on the '72 -- on the '74  
15 legislation state unequivocally that Congress provided  
16 extensive executive oversight "to ensure that federal  
17 funds are being used efficiently to achieve national  
18 objectives."

19           Therefore, this was not a mere local project,  
20 but rather, as UNI itself stated in its application for  
21 federal housing funds, it proposed to undertake "a joint  
22 effort with the city of Peoria to achieve the common  
23 goals as set forth in the Housing and Community  
24 Development Act."

25           QUESTION: Mr. Wilkins, can you give other



1 examples of federal grant programs that you believe  
2 should be treated like the community development program  
3 for purposes of this statute? It is somewhat of a  
4 concern to think that any potential recipient of federal  
5 money might be subject to the statute.

6 MR. WILKINS: Certainly, it is a subject of  
7 some concern, but I think the plain terms of the statute  
8 handle that concern, Justice O'Connor. The statute  
9 applies only to a person acting for or on behalf of the  
10 United States in an official function, so it isn't just  
11 anyone who receives some sort of federal fund or some  
12 sort of federal subsidy. It is someone who performs an  
13 official function on behalf of the government.

14 For example, the Seventh Circuit case noted by  
15 petitioners in Mosley, there the defendant was charged  
16 with administering the Comprehensive Education and  
17 Training Act, CETA funds, and he had the control. He  
18 could determine who would receive the benefit of those  
19 federal funds.

20 In this case, the power to determine who  
21 receives a federal housing rehabilitation contract is  
22 surely an important official function. This isn't a  
23 case where just anyone who receives funds falls within  
24 the reach of the statute.

25 QUESTION: Certainly in the Fortune versus

1 Harris case, where we have to deal with the Freedom of  
2 Information Act question, the Court took a different  
3 approach and said that grants of federal funds generally  
4 don't create a partnership or joint venture with the  
5 recipient, and they don't convert the acts of the  
6 recipient from private acts to governmental acts, and so  
7 forth, and took a different approach.

8 MR. WILKINS: Certainly, that -- perhaps,  
9 though -- you have to look at the underlying goals of  
10 the different statutes involved also. I think when you  
11 understand or when you consider that the underlying goal  
12 of federal bribery law is to protect the public from the  
13 evils of corruption in public service, the statute must  
14 be broad enough, must be construed broadly enough to  
15 deal with that concern, and the legislative history of  
16 this statute, as I hope to detail in a few moments --

17 QUESTION: One last question while I have you  
18 interrupted.

19 MR. WILKINS: Sure.

20 QUESTION: Would Congress have needed to even  
21 pass a statute expressly covering, for example, the  
22 grain inspectors under your interpretation of this  
23 statute?

24 MR. WILKINS: No, indeed they don't. In fact,  
25 the case involving the grain inspectors cited in our

1 brief, the Kirby case, does not involve the statute that  
2 specifically makes grain inspectors public officials.  
3 There are two statutes that govern grain inspectors, the  
4 Warehousemen's Act and the Grain Inspectors' Act. The  
5 inspectors involved in Kirby were licensed under the  
6 Warehousemen Act. That statute doesn't make them public  
7 officials. There is no express statute. The Court  
8 there therefore just had to analogize, or had to look at  
9 the case in terms of the statute and say, were these  
10 people acting for or on behalf of the United States.  
11 They concluded, yes, they were. So that case is an  
12 example clearly where someone was acting for or on  
13 behalf of the United States without any specific  
14 statute.

15           QUESTION: Mr. Wilkins, is your argument, in a  
16 nutshell, as to why these people are acting for or on  
17 behalf of the United States that they were -- they had  
18 control over who got so-called "federal funds?"

19           MR. WILKINS: They had substantial control  
20 over who would receive the benefits of a federal housing  
21 rehabilitation program.

22           QUESTION: Well, okay. Now, you say the  
23 benefits of a federal housing rehabilitation program. I  
24 take it then it is a good deal less than direct control  
25 over federal funds.

1           MR. WILKINS: Well, Justice Rehnquist, they  
2 did indeed have direct control over federal funds. They  
3 were the persons who were administering funds that were  
4 provided by the federal government.

5           QUESTION: Yes, but how many concentric  
6 circles had the funds gone through before they got to  
7 them?

8           MR. WILKINS: Well, the funds went directly to  
9 the -- the program is set up -- the Housing and  
10 Community Development Act is set up in this fashion.  
11 Funds are given directly to local governmental entities.

12          QUESTION: Like the city of Peoria in this  
13 case?

14          MR. WILKINS: Like the city of Peoria.  
15 Regulations -- the statute then allows the city to turn  
16 to a subgrantee and allow a subgrantee to administer  
17 those funds. Regulations promulgated by the Department  
18 of Housing and Urban Development closely circumscribed  
19 who can be a subgrantee. It wasn't as if the city of  
20 Peoria could choose any old group it wanted to to  
21 administer these federal housing funds. UNI had to meet  
22 specific and strict eligibility regulations and  
23 guidelines to be able to administer these funds.

24          QUESTION: If there had been a block grant in  
25 this case, not any sort of a categorical grant, but just



1 that the United States decided to give \$500,000 to every  
2 city over 100,000, and let's assume Peoria qualified as  
3 such a city, and then Peoria in turn contracted with UNI  
4 to develop the same things UNI was doing, and some of  
5 the money that Peoria used came from the federal  
6 government in this uncategorical block grant. Is the  
7 person working for UNI still subject to the statute?

8 MR. WILKINS: In that circumstance, it might  
9 be more questionable. Indeed, that was the original  
10 proposal here. In 1974, the Nixon Administration  
11 proposed just giving block grants with no strings  
12 attached, no substantial federal oversight. Congress  
13 balked and in fact flatly rejected that.

14 If you look at the legislative history, they  
15 said, we want to impose these sorts of controls,  
16 regulations, we want to closely circumscribe the  
17 activities that the local governments can undertake. We  
18 are going to closely circumscribe what activities  
19 subgrantees can undertake. We are going to provide for  
20 audits. We are going to provide for review. We are  
21 going to keep our fingers in there to ensure that these  
22 funds are being used for national objectives.

23 QUESTION: But aren't you then saying that the  
24 less authority that the person has to act independently,  
25 the more readily you would conclude that he is acting on

1   behalf of the federal government?

2               MR. WILKINS:   Exactly.

3               QUESTION:   I see, so if there were a blanket  
4   authority to make all the decisions, he would not be  
5   acting on behalf of the authority, but if there is a  
6   limited authority to make decisions, he is.   It seems --

7               MR. WILKINS:   That is right, because if the  
8   federal government has limited your authority and said  
9   you can do A, B, and C, but not D, when you do A, B, and  
10   C, then you are acting on behalf of the United States.

11              QUESTION:   But if you said, you may do A, B,  
12   C, or D, then even -- it is not on behalf of --

13              MR. WILKINS:   I don't know whether I follow  
14   that analogy.

15              QUESTION:   Let me just put it a little  
16   differently.   Were the people employed by the city of  
17   Peoria acting on behalf of the United States, who let  
18   the contract to UNI?

19              MR. WILKINS:   In their function as --

20              QUESTION:   In letting the contract.

21              MR. WILKINS:   -- determining who was going to  
22   receive the funds, they probably were acting on behalf,  
23   yes.

24              QUESTION:   So it applies to them.   And the  
25   people who acted on behalf of UNI in letting the

1 contract to a building contractor, these people, you  
2 say, were --

3 MR. WILKINS: Yes.

4 QUESTION: Now, what about the building  
5 contractor letting a subcontract to an electrician?

6 MR. WILKINS: Now, that, in certain  
7 circumstances, that circumstance could be followed.  
8 There is a case cited in our brief, the Raff case -- it  
9 is rather old, I think, 20 years old -- where you had an  
10 architect that was hired to build an Air Force base, and  
11 as part of his -- he was bribed to hand out or to not  
12 inspect certain work by subcontractors, et cetera, and  
13 he was held liable under the bribery statute.

14 QUESTION: But your submission to us today is  
15 that not only the employees of UNI but the employees of  
16 the general contractors with whom UNI contracted are  
17 also within the federal bribery statute?

18 MR. WILKINS: Yes. An important thing to  
19 remember --

20 QUESTION: And may I just ask one other  
21 question?

22 MR. WILKINS: Yes.

23 QUESTION: At what point in the history of  
24 this much amended statute did the language on which you  
25 rely become a part of the statute? This was in the 19th

1 century, I believe, wasn't it?

2           MR. WILKINS: The -- Yes, it was. I will  
3 digress for a minute and handle the legislative history  
4 at this point, because it does seem of some concern.  
5 This statute was amended for perhaps -- well, several  
6 times, but one time in 1948 Congress expressly amended  
7 the statute and kind of broadened the language even  
8 further in response to this Court's decision in United  
9 States versus Strang, which had held on the basis of  
10 familiar agency principles that an employee of a  
11 government controlled corporation did not come within  
12 the conflict of interest statute because he wasn't an  
13 agent of the United States.

14           Congress at that point, when it adopted this  
15 language in 1948, in the legislative report said, we  
16 mean to overcome the holding in Strang. The growth of  
17 the federal government has been phenomenal. We are  
18 delegating all kinds of responsibilities and  
19 governmental powers to private entities, et cetera, that  
20 wasn't foreseen in the past. We mean to cover all  
21 persons who perform official functions on behalf of the  
22 government.

23           In 1962, Congress looked at this again, and  
24 indeed there were proposals made to restrict the statute  
25 as petitioners would restrict it. There were bills



1 introduced that would have defined public official as  
2 officer, agent, or employee. They were debated, and  
3 they were rejected. The Committee reports state that  
4 the reason this narrow language was rejected was because  
5 they intended to include within statutory coverage all  
6 person who perform activities on behalf of the United  
7 States.

8           This legislative history does not in any way  
9 evidence any sort of an intent to narrow the reach of  
10 this statute. An important fact to remember in this  
11 case, although we can hypothesize circumstances where  
12 people might -- where there might be less federal  
13 control or less federal involvement, in this case,  
14 petitioners were paid 100 percent of their salaries by  
15 the federal government. They could not perform any  
16 activity --

17           QUESTION: May I just interrupt you right  
18 there?

19           MR. WILKINS: Yes.

20           QUESTION: You, I thought, acknowledged that  
21 if there had been an unrestricted block grant from which  
22 all of the salaries were paid with federal money, that  
23 would not be enough.

24           MR. WILKINS: No, that's --

25           QUESTION: Nevertheless, you continue to rely

1 heavily on the fact that federal money --

2 MR. WILKINS: Well, it is one of the facts in  
3 this case. It was all federal money, and it was heavily  
4 restricted.

5 QUESTION: I think the key fact under your  
6 submission is the extent of the government regulation of  
7 the distribution of the money.

8 MR. WILKINS: Exactly, but the fact --

9 QUESTION: Now, let me ask you on that, was  
10 there a violation of any federal regulation pertaining  
11 to the distribution of this money?

12 MR. WILKINS: There are federal regulations.  
13 There are regulations of HUD that would proscribe the  
14 kinds of activities that were undertaken here. The  
15 remedy provided by the regulations is withdrawal of  
16 funds or recoupment of the funds.

17 QUESTION: Well, I am not sure you have  
18 answered me. Was there a violation of any federal  
19 regulation controlling the distribution of this money?

20 MR. WILKINS: Yes, because there are -- as I  
21 said, there are regulations that prohibit the --

22 QUESTION: Prohibit subgrantees from taking  
23 bribes?

24 MR. WILKINS: From taking bribes and  
25 kickbacks, but the remedy for that as provided by the

1 regulations is recoupment of the funds or taking away of  
2 grant funds in the future.

3 QUESTION: Mr. Wilkins, you said a moment ago  
4 that this defendant had his -- these defendants had  
5 their salary paid by the federal government. Am I to  
6 take that to mean that their salary came the same way  
7 your salary and mine does --

8 MR. WILKINS: No.

9 QUESTION: -- out of a United States Treasury  
10 check?

11 MR. WILKINS: No, it didn't. It came through  
12 the grant -- the moneys came through the funding process  
13 set up and established by the housing community  
14 development program.

15 QUESTION: What was that chain of  
16 distribution?

17 MR. WILKINS: As I explained earlier, it went  
18 directly to the city of Peoria, and then according to  
19 federal regulations to the subgrantee.

20 QUESTION: So the government check went to  
21 Peoria, there was a check drawn by the city of Peoria to  
22 UNI --

23 MR. WILKINS: Right.

24 QUESTION: -- and then UNI wrote these salary  
25 checks, and you say that is federal funds.

1           MR. WILKINS: But the funds were always  
2 subject to federal control and audit. Indeed, there was  
3 an audit of these funds that was performed not according  
4 to standards set up by the city of Peoria. The audit  
5 was performed according to the Department of Housing and  
6 Urban Development's audit standards.

7           The argument of how the funds arrived has been  
8 rejected by this Court in fact in the past, the old  
9 United States ex rel. Marcus v. Hess case. It was a  
10 false claims case, but the argument was made that since  
11 the funds or the false claim was really made against a  
12 city or a municipal government, that it wasn't a claim  
13 against the United States, and this Court said the fact  
14 that moneys were channeled through a municipal --

15           QUESTION: But how far back -- or how far out  
16 in the stream of things can you go with that argument? I  
17 mean, these people probably paid their checks for  
18 groceries and so forth. Now, are you going to say that  
19 the grocer got federal funds?

20           MR. WILKINS: No. At the point federal  
21 control -- federal control over these funds dissipates  
22 at the point that the money is properly paid, perhaps,  
23 to a contractor. I mean, at the point where federal  
24 regulation of the program ceases, of course, federal  
25 control over the funds would cease.



1           In a vain attempt to avoid the plain language  
2 of this statute, petitioners, although it is undisputed  
3 that in the course of their administration of these  
4 funds they solicited and accepted \$42,000 in return for  
5 their awarding particular contractors federal housing  
6 contracts, they argue that they were not acting in an  
7 official function or acting under or by authority of a  
8 branch of the government.

9           This argument, as I have already detailed to  
10 some extent, is unavailing, because in performing the  
11 function of awarding federally funded housing  
12 rehabilitation contracts for purposes contemplated by  
13 federal law, they were clearly performing an important  
14 official function. They could only do so according to  
15 the regulations promulgated by HUD, and they were  
16 therefore acting under or by direction of that agency.

17           The legislative history, moreover, supports  
18 this construction. As I went through a few moments ago,  
19 the legislative history of the statute demonstrates  
20 unequivocally that Congress intended to reach out  
21 broadly to include all persons who perform official  
22 functions on behalf of the United States.

23           And finally, and perhaps most importantly, the  
24 federal policies underlying federal bribery law clearly  
25 demonstrate the petitioners should fall within the

1 definition of public official. The purpose of a federal  
2 bribery law is, of course, to protect the public against  
3 the corruption -- or the evils of corruption in public  
4 service.

5           The power that was used corruptly by  
6 petitioners in this case is an important governmental  
7 power. It is critical to the success of the Housing and  
8 Community Development Act programs that the authority to  
9 determine who receives federal contracts not be  
10 corrupted by bribery.

11           QUESTION: Mr. Wilkins, may I turn to another  
12 area that keeps running through my mind? There are a lot  
13 of federal grant programs where money goes to state  
14 agencies and cities, and the states and the cities  
15 administer the funds themselves pursuant to federal  
16 regulations and the like. Are the various state and  
17 local officials who administer those programs subject to  
18 federal bribery statutes?

19           MR. WILKINS: They may well indeed be subject  
20 to federal bribery statutes. There was a case in  
21 district court out -- it is a district court case out of  
22 New Mexico as cited in our brief, the Gallegos case,  
23 where the state of New Mexico hired a state employee to  
24 administer an assistance program set up by the FHA  
25 Administration to assist farmers. He was a state

1 employee, but his only function was to assist the  
2 implementation of this federal program, and he was held  
3 to be within the reach.

4 Now, again, I don't believe this raises any  
5 substantial concerns regarding an undue broad sweep for  
6 this statute because in any --

7 QUESTION: Well, I am thinking of situations,  
8 and we recently had this Panhurst case reargued in which  
9 there was a state program for care of the mentally ill,  
10 which is partially financed by federal funds, and the  
11 grant is subject to all sorts of regulation, and the  
12 state officials were doing their normal state duties but  
13 are also carrying out a federal function.

14 I gather under your theory it would still be  
15 subject to this statute.

16 MR. WILKINS: Yes.

17 QUESTION: And it may well be correct, but I  
18 am just trying to think of --

19 MR. WILKINS: Right, if they were performing  
20 an official function, as I said.

21 QUESTION: Well, it's their official state  
22 function --

23 MR. WILKINS: Right.

24 QUESTION: -- just as these people are doing  
25 their UNI duties --

1 MR. WILKINS: Exactly.

2 QUESTION: -- but you say it is a kind of a  
3 mixed function, both federal and otherwise at the same  
4 time.

5 MR. WILKINS: In fiscal year 1983, the federal  
6 government has appropriated over \$4 billion into the  
7 housing program that was administered by petitioners.  
8 It is essential to the proper administration of this  
9 undeniably federal program that the federal government  
10 be able to take the steps necessary, including criminal  
11 prosecutions for bribery --

12 QUESTION: Mr. Wilkins?

13 MR. WILKINS: -- to ensure -- Yes?

14 QUESTION: Let's back up a minute. We talked  
15 about a subcontractor --

16 MR. WILKINS: Yes.

17 QUESTION: -- like an electrician.

18 MR. WILKINS: Yes.

19 QUESTION: Well, suppose the ABC Electric Wire  
20 Company bribes the electrician subcontractor. Is that  
21 covered?

22 MR. WILKINS: It would --

23 QUESTION: I mean, where does the line cut  
24 off?

25 MR. WILKINS: The line cuts off, Justice



1 Marshall --

2 QUESTION: It cuts off some place before the  
3 grocery.

4 MR. WILKINS: Yes. It cuts off at any point  
5 that someone ceases to do an official function on behalf  
6 of the United States.

7 QUESTION: Well, this man is furnishing  
8 electric wire to the subcontractor who is working for  
9 the contractor who you say is directly under the federal  
10 government. Well, is he covered or not?

11 MR. WILKINS: In -- if there --

12 QUESTION: Where do you draw the line?

13 MR. WILKINS: It would depend on some  
14 attendant facts. For example, the Raff case cited in  
15 our brief, that involved the architect for building a  
16 large military base. He was bribed by subcontractors  
17 not to look carefully at his work or inspect carefully  
18 his work. That contractor was bribed.

19 Now, as you move further down the steps, I  
20 guess it would depend whether or not, at any given step,  
21 whether the subcontractor could be said to exercise some  
22 sort of official authority that would fall back on the  
23 federal fisc. If the federal subcontractor, for  
24 example, could chose wire from one distributor or  
25 another, and the cost of that wire would go directly to

1 the federal government, and he had the authority to make  
2 that determination, and he was being bribed to choose  
3 inferior wire, he may indeed fall within the reach of  
4 the contract.

5           QUESTION: How about in Medicaid and Medicare  
6 programs? How far do you take it there?

7           MR. WILKINS: In the Medicaid and Medicare, I  
8 am not terribly familiar with the legislative scheme or  
9 statutory scheme for those programs. I would believe it  
10 would be handled similarly to the CETA case, the Mosely  
11 case. If the person has direct control for the  
12 authorization or the expenditure or the distribution of  
13 federal funds, and he had the ability to make that sort  
14 of controlling decision, and the impact of that decision  
15 fell back on the federal government, on the federal  
16 taxpayers, I think you would say in that circumstance  
17 that he was exercising an official function. Again --

18           QUESTION: So the doctors and pharmacists and  
19 so forth are all covered?

20           MR. WILKINS: I am not sure whether you would  
21 go clear down to the pharmacists and all sorts of lower  
22 level echelons. In this circumstance, we are aware, or  
23 at least if you read the newspapers, you are aware that  
24 there is substantial graft and corruption in the  
25 administration of those programs. The federal statute

1 we, the government, submits should be interpreted  
2 broadly enough to reach anyone who has -- exercises any  
3 sort of official function in the administration of that  
4 program and does so corruptly.

5           The language of Section 201(a), its  
6 legislative history, and the important policies  
7 underlying federal bribery law unequivocally demonstrate  
8 that the statute should not be given the restrictive  
9 reading that has been urged upon this Court by  
10 petitioners. The United States respectfully submits  
11 that the decision of the Seventh Circuit Court of  
12 Appeals should be affirmed.

13           QUESTION: Let me ask you just one more  
14 question, if I may, or perhaps two more. In the civil  
15 side of this, and following -- if there had been audits,  
16 and I guess there really wasn't as close supervision as  
17 this -- of this particular operation as HUD might well  
18 have had, but if there were, and they wanted to get the  
19 money back, would they have a right of recovery from  
20 either the city or UNI, or is their only remedy against  
21 the individuals who were bribed?

22           MR. WILKINS: I think that the remedy is  
23 against the entity. I am not 100 percent clear on that,  
24 but I think the remedy is against --

25           QUESTION: And there was at all times some

1 kind of a right to audit the operation?

2 MR. WILKINS: Yes --

3 QUESTION: But they just didn't happen to do  
4 it in time.

5 MR. WILKINS: They did. They did do this.

6 QUESTION: I see.

7 MR. WILKINS: I mean, that -- it is a  
8 misstatement in the briefs.

9 QUESTION: Oh.

10 MR. WILKINS: As we stated in our brief, there  
11 was an audit performed here on these funds, and the  
12 audit was performed according to audit standards  
13 developed by the Department of Housing and Urban  
14 Development.

15 QUESTION: One final question. Perhaps I  
16 shouldn't ask, but you do have time here. Judge Powell  
17 often sends me to the dictionary, and I notice you  
18 quoted his hypogulia.

19 MR. WILKINS: Hypogulia.

20 QUESTION: What is --

21 MR. WILKINS: I went to the unabridged  
22 dictionary yesterday, in case someone would ask me that.

23 QUESTION: You quote it in your brief, so you  
24 must know what the word means.

25 MR. WILKINS: It means inability to act or



1 decide.

2 QUESTION: Inability to act or --

3 MR. WILKINS: They displayed no evidence of  
4 inability to act or decide.

5 QUESTION: I see. And therefore they had  
6 authority to make decisions.

7 MR. WILKINS: And therefore they had  
8 authority.

9 QUESTION: Thank you.

10 MR. WILKINS: Thank you.

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

13 (Whereupon, at 10:55 a.m., the cases in the  
14 above-entitled matter were submitted.)

15

16

17

18

19

20

21

22

23

24

25

# 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:

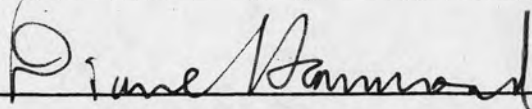
ARTHUR DIXSON, Petitioner c. UNITED STATES: # 82-5279 and

JAMES LEE HINTON, Petitioner v. UNITED STATES # 82-5331

---

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

BY



(REPORTER)

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

'83 OCT 18 P 3:55