

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 83-916

**TITLE** UNITED STATES, Petitioner v. ALLAN WAYNE MORTON

**PLACE** Washington, D. C.

**DATE** April 25, 1984

**PAGES** 1-30



IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES, :  
Petitioner, :  
v. : No. 83-916  
ALLAN WAYNE MORTON :

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Washington, D.C.

Wednesday, April 25, 1984

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 1:56 o'clock p.m.

APPEARANCES:

MICHAEL W. MC CONNELL, ESQ., Office of the Solicitor  
General, Department of Justice, Washington, D.C.; on  
behalf of the petitioner.

KALETAH N. CARROLL, ESQ., Fairfax, Virginia; on behalf  
of the respondent.

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KALETAH N. CARROLL, ESQ.,	
on behalf of the respondent	19

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

2 CHIEF JUSTICE BURGER: We will hear arguments  
3 next in United States against Morton.

4 Mr. McConnell, you may proceed whenever you  
5 are ready.

6 ORAL ARGUMENT OF MICHAEL W. MC CONNELL, ESQ.,

7 ON BEHALF OF THE PETITIONER

8 MR. MC CONNELL: Thank you, Mr. Chief Justice,  
9 and may it please the Court.

10 The issue in this case is whether the United  
11 States in its capacity as employer and garnishee is  
12 required to reimburse an employee for sums deducted from  
13 his paycheck in compliance with the facially valid state  
14 court writ of garnishment enforcing a judgment for  
15 alimony and child support.

16 The state court subsequently was found not to  
17 have had personal jurisdiction over the employee  
18 respondent here in the underlying divorce proceeding.

19 The legal framework under which this case  
20 arises is a federal garnishment statute, 42 USC 659,  
21 which waives federal sovereign immunity and subjects  
22 federal agencies to suit in the capacity as garnishee to  
23 enforce alimony and child support in like manner and to  
24 the same extent as any private garnishee and which  
25 expressly immunizes the United States from liability for



1       honoring any legal process regular on its face.

2               The facts of this case are quite simple when  
3       viewed from the perspective of a federal disbursing  
4       officer whose only responsibility is to ensure that the  
5       garnishment writ is regular on its face. In August,  
6       1975, respondent's wife obtained a divorce, including  
7       alimony and child support, pursuant to a default  
8       judgment in Alabama state court.

9               Over a year later, in December, 1975, the Air  
10      Force Finance Office at Elmendorf Air Base in Alaska was  
11      served a writ of garnishment to collect arrearages in  
12      Colonel Morton's obligations under the divorce decree.

13              QUESTION: You left out that he was served on  
14      the case itself from Alabama by mail.

15              MR. MC CONNELL: That's correct, Your Honor.  
16      The Air Force Finance Office received two documents. It  
17      received a writ of garnishment and it received a copy of  
18      the underlying judgment of divorce issued by the Alabama  
19      state court. The disbursing officer attached --  
20      assigned to the case applied the usual procedures in  
21      processing it, examining the document to make sure that  
22      it was one that qualified under the statute.

23              He looked first to see if it was issued by a  
24      court of competent jurisdiction. In this case, the writ  
25      was issued by the Tenth Judicial Circuit Court of the

1 state of Alabama, which is a court of general  
2 jurisdiction, and unquestionably is a court competent to  
3 issue a writ of garnishment.

4 He checked second to see if the writ was to  
5 enforce an order for child support or alimony. Since  
6 the federal garnishment statute does not permit  
7 garnishment for other purposes, such as rent or  
8 commercial loans or the like, it is necessary to make  
9 sure that it is for child support or alimony. In this  
10 case, the face of the writ revealed that the sums were  
11 being sought for that purpose.

12 Third, he checked to see if the writ was in  
13 the proper form, and as the trial court found as a fact,  
14 the writ of garnishment was in the proper form, the  
15 usual form used by the state of Alabama for writs of  
16 garnishment.

17 And finally, the officer examined the writ to  
18 see if there were any irregularities on the face of the  
19 writ which would suggest invalidity under state or  
20 federal law.

21 Now, I mentioned that there were two documents  
22 served on the Air Force. The other document was a copy  
23 of the judgment of divorce. Now, in this instance that  
24 document was not necessary for the processing of the  
25 writ. Under the regulations of the Office of Personnel

1 Management which implement this statute, it is necessary  
2 to file a copy of the underlying decree only when the  
3 writ itself does not make plain whether it was for child  
4 support and alimony alone, which is not uncommon, since  
5 some writs of garnishment do not specify the nature of  
6 the underlying obligation. In this case, as I have  
7 said, the writ itself indicated that it was for child  
8 support or alimony. Thus the second document was not  
9 necessary.

10 Nonetheless, it is worth noting that a copy of  
11 the judgment of divorce was also regular on its face.  
12 There are no irregularities apparent on the face of the  
13 document that would suggest invalidity, and in the first  
14 line of the judgment of divorce, it states that  
15 respondent was duly served and failed to appear in the  
16 divorce proceeding.

17 Upon receiving the writ, the finance office  
18 promptly notified Colonel Morton, who then sought legal  
19 advice. Upon the advice of counsel, Colonel Morton  
20 protested the garnishment to the finance office on  
21 several grounds.

22 First, he claimed that he had in fact been  
23 satisfying on a regular monthly basis his obligations  
24 for divorce and alimony. Second, he claimed that he was  
25 neither domiciled in nor a resident of Alabama. And

1 third, he claimed that he had not been properly served  
2 in the divorce proceeding.

3 Since none of these matters went to the  
4 question of the regularity of the writ on its face, the  
5 disbursing officer answered the writ and subsequently  
6 deducted the sums owing to Mrs. Morton and paid them  
7 over to the registry of the Alabama court.

8 Colonel Morton did not then nor has he at any  
9 time since challenged the state court judgment in the  
10 Alabama courts. This is in spite of the fact that the  
11 notice which was provided him by the Air Force expressly  
12 informed him that he might have defenses to the  
13 underlying action, advised him to seek legal counsel,  
14 and informed him that the United States would not be  
15 asserting his defenses for him in the garnishment  
16 action.

17 In fact, Colonel Morton did seek advice of  
18 counsel from not one but two attorneys, and on their  
19 advice he chose not to challenge the underlying action.

20 The position of the government on these facts  
21 is straightforward. The garnishment writ was regular on  
22 its face. Colonel Morton's arguments, whether he had  
23 paid his obligations, whether the court's recital that  
24 he had been duly served was accurate, and whether he had  
25 had sufficient contacts with Alabama to justify



1 jurisdiction were beyond the ken of disbursing officers  
2 and beyond their powers and responsibilities under the  
3 statute and implementing regulations.

4 The Air Force was required in like manner and  
5 to the same extent, no more, no less than any private  
6 garnishee to comply with the state court legal process.

7 Now, the facts and legal principles applicable  
8 to this case when viewed from respondent's position,  
9 that is, looking to see whether there was in fact  
10 personal jurisdiction over Colonel Morton in that  
11 underlying divorce proceeding, are considerably more  
12 complicated, and I will leave those facts for opposing  
13 counsel to develop.

14 Suffice it to say that the courts below found  
15 it necessary to determine and to rely upon the following  
16 facts among others. They looked at where Colonel Morton  
17 voted. They looked at where he paid taxes and why.  
18 They looked at where he registered his automobile, why  
19 he used his moving allowance to send his family to  
20 Alabama, what his subjective intentions were when he  
21 moved to Alaska, and the like.

22 Just a recital of some of these facts should  
23 indicate that these are not the facts which are within  
24 the ordinary purview of the disbursing officer paying  
25 out federal salaries, but even after the facts had been

1 established by the trial court below, the able judges of  
2 the federal circuit were not able to agree on the legal  
3 conclusions to be given those facts.

4 They in fact split on a two to one vote on the  
5 question of whether the Alabama divorce court did have  
6 jurisdiction over Colonel Merten, but of course the  
7 majority on the panel did conclude that the Alabama  
8 court had erred on the question of its own jurisdiction,  
9 and that the Air Force should have refused to honor the  
10 Alabama writ.

11 This case is thus a perfect illustration of  
12 why Congress limited the responsibility of the federal  
13 disbursing agents to determining whether the writ is  
14 regular on its face, and why it makes neither practical  
15 nor legal sense to put the federal government at the  
16 risk of double payment when the disbursing officer  
17 honors a state court order at risk on facts that the  
18 officer has no means of knowing, and on legal  
19 determinations that the officer has no authority or  
20 capacity to make.

21 It puts the federal government at risk that a  
22 federal court may subsequently decide that a facially  
23 valid state court order which the employee himself had  
24 chosen not to challenge at the time had been erroneously  
25 entered. The practical effect on the federal government

1 is plain. Respondent's theory subjects the government  
2 unfairly to double liability even where it has performed  
3 all of the actions that the law requires, but the  
4 practical effect on the Congressional scheme in the  
5 garnishment statute is equally important.

6 Congress passed the garnishment statute in  
7 1974 for the express purpose of providing a rapid and  
8 convenient means whereby former spouses and children  
9 could obtain enforcement of child support and alimony  
10 judgments. It was based expressly on the findings by  
11 Congress that then existing remedies were inadequate.  
12 In fact, after hearings and considerable investigation,  
13 Congress concluded that the failure of the system to  
14 provide adequate enforcement of child support and  
15 alimony orders were a major contributing cause to  
16 poverty and to the welfare problem, finding that there  
17 were large numbers of affluent and middle class fathers  
18 who simply abandoned their families and did not comply  
19 with the orders, leaving their families dependent upon  
20 public assistance.

21 The legislative history shows that Congress  
22 intended for garnishment writs to be honored on the  
23 basis of the state court order or decision alone. It  
24 did not impose any other conditions precedent to the  
25 payment. But under the holding of the court below, the

1 government will be forced to take steps to protect  
2 itself from double liability. Each of these possible  
3 alternative steps would erect an additional and  
4 unintended obstacle to the Congressional purposes.

5 There are three basic alternatives that the  
6 government faces in an instance where there is some  
7 doubt about the underlying jurisdiction of the court  
8 that entered the original judgment. Now, respondent  
9 suggests, and this was also the alternative mentioned by  
10 the court below, that the government simply refused to  
11 comply with any garnishment writ where the employee has  
12 claimed that the jurisdictional basis of the underlying  
13 decree is defective.

14 But the effect of this would be to  
15 unilaterally deny the benefits of this statute to the  
16 spouses and children to whom Congress intended that they  
17 be present, and it would relegate them to the very  
18 remedies that Congress had found inadequate.

19 Now, I realize that the court below, echoed by  
20 respondent in his brief in this Court, are considerably  
21 more upbeat about those remedies that Congress had  
22 considered and found inadequate.

23 I don't propose to go into that particular  
24 debate, because for purposes of interpreting what  
25 Congress intended for this statute, it matters only that



1 Congress drew the conclusion that those remedies were  
2 inadequate, and it is manifestly contrary to the  
3 Congressional purposes to enable a federal disbursing  
4 officer because of his unilateral doubts about a state  
5 court process to deny those benefits to the spouses and  
6 children Congress intended to assist.

7 But all of this is even assuming that the  
8 United States, having agreed to be subject in like  
9 manner and to the same extent as any private garnishee  
10 to garnishment writs would be free to disregard a  
11 facially valid and binding state court order, a matter  
12 which we consider highly dubious on its face.

13 The more likely alternative here is that the  
14 government's explanation for refusing to honor a writ  
15 would be treated as an answer or return under state law,  
16 but this would then put the government in the position  
17 of litigating against the spouse and children who were  
18 the intended beneficiaries of the statute. They would  
19 be litigating against the spouse and children in state  
20 court on behalf of the employee concerning the validity  
21 of the underlying divorce.

22 I can imagine few roles which are less  
23 appropriate for the United States government than for it  
24 to be litigating on one side in state court of a marital  
25 dispute, and it would turn the purpose of the

1 garnishment statute on its head. Congress intended to  
2 make it easier for spouses and children to collect their  
3 alimony and child support rights, and instead, under the  
4 judgment of the court below, the government would be  
5 enlisted as their opponent in collecting those  
6 benefits.

7 The final alternative which in my view is the  
8 most likely in the long run if the judgment below were  
9 affirmed is that the United States would be forced to  
10 file interpleader actions in federal court to resolve  
11 who would be entitled to receive the employee's salary.  
12 This would indeed get the United States off the hook for  
13 double liability, but there is very little else in the  
14 procedure that commends it.

15 First of all, the spouse and children would be  
16 forced to litigate their rights a second time in a more  
17 expensive forum.

18 Secondly, it would not even benefit the  
19 employee, the working spouse, since he would be required  
20 to litigate as well, most likely in the very state where  
21 the spouse and children are living, which was the very  
22 thing which he is trying to avoid through all of this,  
23 and the federal courts would be inundated with numerous  
24 new interpleader actions, in each one of which the  
25 question would be whether a state court divorce decree

1 had been properly entered.

2 Neither the purpose of the statute nor any  
3 other sensible public policy would be promoted by this  
4 course of events.

5 But the results are not required, we submit,  
6 by the statute under the plain language of the statute.  
7 Section 659(a) subjects the United States to exactly the  
8 same obligations as are imposed on private garnishees,  
9 yet private garnishees are not required to second guess  
10 state court judgments or to litigate on behalf of the  
11 principal debtors.

12 It is well established under the law of  
13 virtually every jurisdiction that the duty of a  
14 garnishee to his creditor is simply to give notice of  
15 the action, no more. Even more clearly, Section 659(f)  
16 immunizes the government from liability for honoring a  
17 legal process that is regular on its face. That seems  
18 plain enough. The writ here, the garnishment writ was  
19 regular on its face. The government should not be held  
20 liable for having honored it.

21 To reach its contrary conclusion, the court of  
22 appeals took a rather roundabout route of  
23 interpretation, holding that because the term "legal  
24 process" is defined in the statute to be, among other  
25 things, process which is issued by a court of competent

1 jurisdiction, and then holding that the term "competent  
2 jurisdiction" necessarily means both personal and  
3 subject matter jurisdiction, the court came to the  
4 conclusion that a garnishment writ is not legal process  
5 regular on its face if the underlying judgment had been  
6 entered without personal jurisdiction over the  
7 employee.

8 Well, there are at least three flaws in this  
9 analysis. First, it fails to read the phrase "legal  
10 process regular on its face" as a whole. It yanks the  
11 term "legal process" away from its context. In context,  
12 it seems apparent that those attributes of being legal  
13 process should be matters that are discernible from the  
14 face of the writ. Otherwise, the words "on its face"  
15 would effectively have no meaning in the context of the  
16 statute.

17 Second, the Court of Appeals focused on the  
18 wrong court. The statute provides immunity for the  
19 United States for complying with legal process that was  
20 issued by a court of competent jurisdiction under the  
21 definitions. The legal process that the United States  
22 complied with was the garnishment writ. The question  
23 should be whether the court that issued that writ was  
24 competent to do so, not whether a divorce judgment which  
25 was underlying that degree was issued by a court of



1 competent jurisdiction.

2 Now, the garnishment court is in some senses  
3 an ancillary proceeding to the underlying judgment, but  
4 for jurisdictional purposes it is a new action which is  
5 brought by the plaintiff, Mrs. Morton, against the  
6 garnishee, the United States, as the defendant, and  
7 there is no question that the Tenth Judicial Circuit  
8 Court of Alabama was a court of competent jurisdiction  
9 to issue this garnishment writ. Whether or not the  
10 Alabama court properly had jurisdiction to issue a  
11 divorce is simply beside the point.

12 The third flaw in the Court of Appeals'  
13 analysis is that it assumes a definition of competent  
14 jurisdiction that is quite unnecessary and is  
15 inconsistent with the context in which it is used.  
16 Competent jurisdiction is a term which frequently is  
17 used to mean subject matter jurisdiction alone. It  
18 deals with the question of whether a court is competent  
19 to issue a particular type of order in a particular  
20 class of cases.

21 Now, in order to tell whether it has that  
22 definition or the more expansive definition, it is  
23 necessary to look at the term in context, and since in  
24 context it is apparent that it should be a matter which  
25 is discernible on the face of the writ, it is plain that

1 the Court of appeals drew a conclusion which was  
2 unnecessary and in fact inconsistent with some of the  
3 other terms in the statute.

4 Now, the Court of Appeals apparently reached  
5 the tortured conclusion out of a fear that a contrary  
6 construction of the garnishment statute would violate  
7 Colonel Morton's due process rights. We submit that  
8 there are no due process problems that would demand a  
9 non-literal interpretation of this statute.

10 Colonel Morton's due process rights may well  
11 have been violated by the Alabama divorce judgment,  
12 assuming that the Alabama courts in fact lacked personal  
13 jurisdiction over him, but that, of course, is true  
14 whenever a court erroneously exercises jurisdiction over  
15 a person.

16 Colonel Morton received notice of the divorce  
17 proceeding and made a deliberate tactical judgment not  
18 to defend his rights in that forum. He could have made  
19 a special appearance to contest jurisdiction in the  
20 Alabama court. He could have done so even after the  
21 initial entering of the final judgment, since he could  
22 do so in the course of defending the garnishment order.  
23 And indeed because he is a serviceman, Colonel Morton  
24 has remedies that are available far in excess of those  
25 available to other citizens.

1 Under the Soldiers and Sailors Civil Relief  
2 Act, all he had to do was to send a letter to the  
3 Alabama state court, and he could have procured a stay  
4 of the action. He could have obtained another look at  
5 the judgment even after it had been entered, or he could  
6 have obtained the appointment of a guardian ad litem for  
7 him in the action.

8 But instead, on advice of counsel, Colonel  
9 Morton did nothing to protect his rights, and even today  
10 Colonel Morton has remedies that are available to him if  
11 his due process rights have been violated. He would be  
12 able to cut off any future garnishments by simply  
13 defending against one of the garnishments on the basis  
14 of this alleged jurisdictional defect.

15 He also has the ability to sue plaintiff, who  
16 after all received the moneys that we are saying were  
17 illegally or unconstitutionally taken from him. But  
18 nothing in the due process clause entitles Colonel  
19 Morton to shift the losses of his legal tactics onto his  
20 employer.

21 The United States is simply a stakeholder in  
22 this dispute. We have complied with facially valid and  
23 legally binding state court process, as we are required  
24 to do under statute. It is not our responsibility to  
25 assert respondent's rights in court or to make him whole

1 again if the state court erred.

2 There is no violation of due process for a  
3 third party to rely in good faith on a facially valid  
4 state court judgment. Thus, we submit that the judgment  
5 below should be reversed, because it is contrary to the  
6 plain language of the garnishment statute, because it  
7 produces an absurd result directly contrary to the  
8 legislative intent, because the result is not required  
9 by due process.

10 Unless this Court has some questions to ask of  
11 me, I will reserve the remainder of my time for  
12 rebuttal.

13 CHIEF JUSTICE BURGER: Very well.

14 Mrs. Carroll.

15 ORAL ARGUMENT OF KALETAH N. CARROLL, ESQ.,

16 ON BEHALF OF THE RESPONDENT

17 MS. CARROLL: Mr. Chief Justice, and may it  
18 please the members of the Court, this is a military pay  
19 case.

20 CHIEF JUSTICE BURGER: Would you raise your  
21 voice, please, a little, Mrs. Carroll?

22 MS. CARROLL: I am sorry. Does this need to  
23 be up?

24 CHIEF JUSTICE BURGER: He is tuning it up a  
25 little now.



1 MS. CARROLL: All right, sir. Thank you.

2 This is a military pay case. It involves the  
3 interpretation of a federal statute and how it is  
4 supposed to be administered by the military services.  
5 This case does not in any way affect the Alabama court  
6 order. It does not modify. It does not hold it void.  
7 It does not say anything to Alabama and to the order.

8 All it says to it is, you may not enforce it  
9 in this manner simply because it does not qualify under  
10 the definitions set forth in the federal statute, which  
11 is 42 USC 659 and 662, because that was amended in 1977  
12 for the sole reason of clarifying this statute, as  
13 Senator Nunn made it clear when he argued for this  
14 amendment on the floor of the Senate.

15 Since that is true, we have to look -- this is  
16 not a man that is trying to escape liability as you have  
17 heard about so many times, and you have heard them talk  
18 about the reason for this statute. Not so. He kept  
19 right on paying. This man kept on voluntarily paying.  
20 After he had paid once in Loudon County, and after he  
21 had -- after Mrs. Morton had gone to Alabama, and after  
22 he had one of the children with him, the other one was  
23 married and over the age of 18, he still kept on paying  
24 something to her pursuant to their initial agreement  
25 between the parties.

1           Let's look at this a little bit more. Not all  
2 military people involved in these things are colonels.  
3 They are not all in the situation that Colonel Morton is  
4 in. Some of them, and very recently, have been in  
5 combat. These people in Grenada, these people in  
6 Beirut. And there is going to be more. We cannot say  
7 that we are always going to have peace in this country.

8           But what they are really saying to him is, and  
9 to every soldier and military man is, you have got to  
10 tell your commanding officer, time, sir, stop the war, I  
11 have got to go home and fight a divorce case, because  
12 the ex-wife remarries, commingles her property with the  
13 husband, his tenants buy the entirety, and where is it?

14           Now, they have admitted at Page 6 of the reply  
15 brief that Colonel Morton's pay was indeed taken without  
16 due process of law. The only basis of this, of course,  
17 would be the lack of in personum jurisdiction, and we  
18 are talking about what are legal obligations. Now, he  
19 is arguing on this statute before it came into -- before  
20 the amendments came into effect. When the amendments  
21 came into effect, it put certain definitions in this  
22 statute, and this definition makes all the difference.

23           He says it is only the writ that we may look  
24 at. Then why in the world would Congress have said,  
25 payments to provide for health care, education,

1 recreation, clothing, and to meet other specific needs  
2 of such child or children, such term also includes  
3 attorney fees, interest, and court costs when and to the  
4 extent that the same are expressly recoverable as such,  
5 pursuant to a decree, order, or judgment issued in  
6 accordance with the applicable state law by a court of  
7 competent jurisdiction.

8 Does that mean the garnishment writ? No,  
9 sir. It does not. It means that they have to look.  
10 When they say on the face of, the face of a judgment is  
11 the face of the record, and not one sheet of paper.  
12 They saw one sheet of paper. It said "Court" and they  
13 stamped it approved.

14 QUESTION: Have you seen many judgments on  
15 more than one piece of paper?

16 MS. CARROLL: Many judgments, sir?

17 QUESTION: On more than one piece of paper.  
18 Aren't they usually one piece of paper?

19 MS. CARROLL: Yes, sir, but, sir, when it says  
20 regular on its face --

21 QUESTION: The way to try that out would be in  
22 the Alabama courts, wouldn't it?

23 MS. CARROLL: No, sir.

24 QUESTION: Well, how else can you try out  
25 jurisdiction of the Alabama court other than in the

1 Alabama court. You say they didn't have in personum  
2 jurisdiction.

3 MS. CARROLL: That's right.

4 QUESTION: All he had to do was appear  
5 specially and try that out.

6 MS. CARROLL: Your Honor, they did not at any  
7 time even acknowledge the Soldiers and Sailors Civil  
8 Relief Act, and they entered a void judgment without  
9 it.

10 QUESTION: Well, he didn't --

11 MS. CARROLL: He relied on the advice of the  
12 Air Force JAB at Elmendorf who told him that he did not  
13 have to bother with this, that they could not take his  
14 pay.

15 QUESTION: Mrs. Carroll, you say regular, when  
16 it refers to a writ regular on its face that, you say  
17 then you are talking about the face of a "record" rather  
18 than the writ?

19 MS. CARROLL: The face of the record, sir.

20 QUESTION: That is not what the statute says.

21 MS. CARROLL: The statute says legal process  
22 regular on its face from a court of competent  
23 jurisdiction.

24 QUESTION: Well, then, do you think regular on  
25 its face modifies legal process?



1 MS. CARRCILL: I don't think so, because legal  
2 process has indeed been pulled out of the statute and  
3 defined specifically in the definitions at 662(c).

4 QUESTION: Well, your interpretation would  
5 offer -- would leave the disbursing officers at sea, I  
6 would think, if they can't simply look at what they are  
7 served with and make a judgment.

8 QUESTION: Well, sir, if you will look at this  
9 case and read this entire brief, I think you will see it  
10 is not the disbursing officer that receives them. There  
11 is an affidavit in there from the man and men of the  
12 finance center who reviewed these legally, and they are  
13 lawyers, and it says that it is their sole duty to  
14 review this legally to see if it meets the legal  
15 qualifications set forth.

16 QUESTION: Is there a provision in either the  
17 statute or the regulations as to what personnel in the  
18 service the writ of garnishment will be served upon?

19 MS. CARRCILL: Yes, sir, there is, and it is  
20 served upon the finance officer in Denver in this case.  
21 Elmundorf is a mistake. The finance officer in  
22 Elmundorf is the local finance officer. The place where  
23 it was served was in Denver. Mr. James Russell's  
24 affidavit before the court and which is cited here in  
25 both the petitioner's brief, petition, and in the court

1 below in the dissent sets it out quite clearly, that  
2 they are legally reviewed.

3 Of course, if they find this too difficult to  
4 do, then there are such things as administrative judges,  
5 but there is some reason for Congress amending this  
6 statute. They just didn't do it out of the sheer love  
7 of going in there and amending for nothing whatsoever.  
8 If their position is true, why in the world would they  
9 have bothered to amend this statute and put this in  
10 saying you will have no liability if and only if? They  
11 would not.

12 Congress is never presumed to do a useless  
13 Act, and that is what they are saying.

14 The thing here is that it does say in the  
15 major portion of this 659 section of that statute that  
16 they must be treated like any other private person.  
17 Well, in Alabama, there is a case that was cited by the  
18 dissent which is the case of Harris versus National  
19 Bank, a 1981 case long after these Alabama statutes came  
20 into being which said once the amount is paid it  
21 discharges the garnishee, and in that case they cited  
22 the old 1876 case of Pounds versus Hammer, which says  
23 that any garnishee paying on a void judgment is liable.

24 Now, in the case that -- this Harris versus  
25 National Bank case, the court there said, I am going to

1 send this back, because this garnishee has to be  
2 repaid. Who it's to be repaid from cannot be decided on  
3 the set of facts before this court. But apparently they  
4 are both liable if you read that case. And that falls  
5 into place with the case cite of Betts versus Cole, the  
6 1979 Hawaii case cited by the majority.

7 But what has happened here is that the Air  
8 Force advocates that this is -- you may just  
9 unilaterally take somebody's pay, that you don't have to  
10 look, and that you don't have to be careful. They are  
11 impatient with the law. They are impatient with  
12 process. If indeed they were a stakeholder, they would  
13 have no problem with putting the case over into the  
14 federal court and let them decide whether the Alabama  
15 court itself had been totally arbitrary and capricious  
16 and unfair.

17 That court, I might say, would not really, in  
18 my opinion, be a fair court to go back to under the  
19 circumstances. It would appear to me also that if they  
20 had just once done what they are supposed to do as far  
21 as the Soldiers and Sailors Civil Relief Act is  
22 concerned and appointed a guardian to represent this  
23 man, all of this would have been brought to the  
24 attention of the court.

25 QUESTION: Did he at any time ask for

1        appointment of a guardian?

2                MS. CARROLL: The law does not require him to  
3 ask, sir. He did not. That would have been an  
4 appearance in the state of Alabama.

5                QUESTION: My question -- he did not --

6                MS. CARROLL: No, sir.

7                QUESTION: He did not ask.

8                MS. CARROLL: No, sir.

9                QUESTION: Well, can he be heard to complain  
10 about something he didn't ask for?

11               MS. CARROLL: Yes, sir, because the burden is  
12 not on him. That particular law places the burden upon  
13 the court to do that, and says it shall not enter a  
14 default judgment unless this is done.

15               This case is such a unique case. It is a  
16 Murphy's Law case below. Everything that could possibly  
17 happen wrong in a case happened in that case. If this  
18 case is upheld, then women can judge shop and forum shop  
19 all over the United States. They can go anywhere. They  
20 can then garnish on the strength of a void judgment, and  
21 they can say to the husbands, you know, well, when you  
22 are gone, I will take the money. When I am remarried,  
23 there is no way you are going to get it back.

24               And this is not a fair procedure. It would  
25 seem to me that this is the very reason that Congress

1 enacted this amendment to this Act. There are,  
2 according to the Air Force brief, there are 13,000  
3 military garnishments to be had as a result of this new  
4 Act, and yet you will see only four or five cases, and  
5 though this was the most dire diversion of what the law  
6 had been, there have been -- there has been amazingly  
7 little litigation on it.

8 Mostly it is not difficult to look at an order  
9 and see that there are two attorneys signed on the  
10 bottom of it. Secnd, it is not too hard to ask to send  
11 me a copy of the return and a copy of the state law,  
12 which is done in the ERISA Act all the time. That is  
13 not a difficult thing for any person to do that is  
14 trained in the law.

15 And it would appear to me that somebody has  
16 got to look out for soldiers who are gone and not let  
17 this kind of thing happen. Yes, it is unique. It is  
18 very rare. Ex parte judgments are very rare to begin  
19 with, and then for this kind of thing to happen is  
20 extremely unique.

21 The bad part about this is there is no  
22 preexisting debt unless that lower court did in fact  
23 have personal jurisdiction over the defendant. There is  
24 no debt for alimony and child support. It is not like a  
25 business case where you have a preexisting debt and you



1 may go in and enforce a preexisting debt. The Air Force  
2 has not paid off a legal obligation of his, so they are  
3 not paying him twice. They haven't paid him in the  
4 first instance.

5 All of this is very different from your  
6 business case. When they adopted the law of  
7 garnishment, Congress took with it a whole body of law,  
8 and these are distinguishable in that you have to  
9 remember that none of these cases that are domestic  
10 cases have a debt existing.

11 I do not believe that this Court in looking at  
12 the whole decision would say that there has been a fair  
13 decision in this case as far as the Alabama court is  
14 concerned. However --

15 QUESTION: Do you realize that the Alabama  
16 court's decision is not before us?

17 MS. CARROLL: Absolutely, sir, except there  
18 has been a finding by the Court of Claims --

19 QUESTION: Well, you have been arguing about  
20 it -- you have been arguing about it for the last 15  
21 minutes.

22 MS. CARROLL: Yes, sir, and that is because  
23 our statute requires that alimony and child support be  
24 in accordance with the Alabama law. They are not in  
25 accordance with the Alabama law. Otherwise, there is

1 liability.

2 Thank you, sir.

3 CHIEF JUSTICE BURGER: Did you have anything  
4 further, counsel?

5 MR. MC CONNELL: No, Your Honor.

6 CHIEF JUSTICE BURGER: Thank you, counsel.  
7 The case is submitted.

8 (Whereupon, at 2:33 p.m. the case in the  
9 above-entitled matter was submitted.)  
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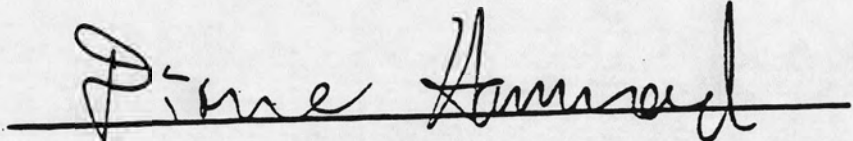
# CERTIFICATION

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:

#83-916-UNITED STATES, Petitioner, v. ALLAN WAYNE MORTON

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

BY

A handwritten signature in cursive script, appearing to read "Pine Hunsaker", written over a horizontal line.

(REPORTER)

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