

Supreme Court of the United States

OCTOBER TERM, 1969

In the Matter of:

Docket No. 829

GENEVER LEWIS, ET AL. :

Appellants, :

vs. :

ROBERT MARTIN, DIRECTOR, STATE :

DEPARTMENT OF SOCIAL WELFARE OF :

THE STATE OF CALIFORNIA, ET AL. :

Appellees :

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Date March 4, 1970

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

GENEVER LEWIS, ET AL.,

Appellants

vs

No. 829

ROBERT MARTIN, DIRECTOR, STATE
DEPARTMENT OF SOCIAL WELFARE OF
THE STATE OF CALIFORNIA, ET AL.,

Appellees

The above-entitled matter came on for hearing at
10:05 o'clock a.m. on Wednesday, March 4, 1970.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

APPEARANCES:

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(for the U. S. as amicus curiae)

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San Francisco, California
Attorney for Appellees

1 if HEW'S regulation is valid as a proper implementation of the
2 Act, that California's conflicting statute must necessarily
3 fall in the sense that California can no longer continue to
4 be entitled to receive benefits should the Secretary determine
5 to cut them off.

6 Q Under the Federal regulation, as I understand
7 it, it would be incumbent upon California to prove, to show, or
8 to ascertain to its own satisfaction, how much, in fact, the
9 stepfather or the man assuming the role of spouse actually
10 does contribute.

11 A That's correct, Your Honor. I think there are
12 three positions that you could take. One is California's,
13 which is, essentially an irrebuttable presumption of support
14 by the very --

15 Q It is an attribution of support by reason of
16 statuts?

17 A The other is an approach that it could be
18 regarded as consistent with the HEW regulation, but I don't
19 think it is; that is that the burden of proof is on the
20 recipients to show that the income was not actually received.

21 Q Well, that's what I was --

22 A It is our view is that the language of the
23 regulation speaks in terms of actual contributions and income
24 actually received and attempts to track King versus Smith in
25 this respect, so I think that it's the third category in which
the bur

1 the burden of proof is on the state to show that the income
2 was, in fact, received, so as to reduce or in extreme cases --

3 Q And I suppose this might vary from month-to-
4 month and even from week-to-week or even from day-to-day.

5 A I And California has raised the question that we
6 think is a reasonable question about the seriousness of the
7 administrative burden. Now, we have checked the best we can
8 -- HEW has checked on my behalf and determined that some 40
9 states have programs that do exactly this, protect the HEW
10 regulations, and I have attempted to ascertain whether the
11 feeling of these states and their administrators is that that's
12 a practicable way to proceed and the answer has been "yes."
13 It's not a complete survey, but as best we could sample it.

14 Q Well, how do they deal with the fact that this
15 may be a changing pattern. I mean, the stepfather may have
16 all good intentions and one month might contribute and the next
17 month he might stop at the bar and grill and drink up or gamble
18 all the money away and not contribute that month. And what is
19 the --

20 A Most of them proceed as we proceed in the income
21 tax context. They require self-disclosure and self-reporting.
22 Perhaps, to the surprise of some, they found that in most cases
23 this works, that people receiving welfare benefits are prepared
24 and do disclose honestly what income they do receive from other
25 sources. This is the basic thrust of the -- of President

1 Nixon's welfare message, the notion of self-reporting and
2 self-disclosure. Beside that, there are caseworkers that pro-
3 ceed to investigate and talk to these people. They talk to the
4 man and they talk to the woman or whatever.

5 The problems are significant; there is no doubt
6 about it, but most of the states have not thought that they
7 are insurmountable.

8 Q Do you know of any case in this Court where it
9 has ever held that where two litigants have a controversy among
10 themselves, there can be a case or controversy with any con-
11 stitutional sense when one of them has the right to settle the
12 case on his own terms.

13 A I'm not sure that I understand Your HONor --

14 Q Well, the Government here has a right to
15 decline to let the state have money.

16 A That's right. The Government is not a litigant
17 in this case, Your Honor.

18 Q It's not a litigant, but it's involved with it.

19 A It's involved --

20 Q And that's what you're trying to get decided --

21 A But the litigation --

22 Q -- what should be a controversy between the
23 government and the state and the state can determine for itself
24 whether it accepts the money --

25 A Your Honor --

1 Q -- why should that be a case or controversy
2 which calls for the attention of this Court?

3 A Well, I think that the controversy is between
4 the people who consider themselves entitled, under the --

5 Q They're trying to get around it all by saying,
6 "well, if the state would do what it should, we'd get our money."
7 Now, the state doesn't have to do it; the state can decline
8 to do it and the government can decline to let them have the
9 money.

10 A Well, the state can, theoretically, decline it,
11 but California, like virtually every state, has a specific
12 statute that says that if any of their statutes and rules and
13 regulations in a welfare context are inconsistent with Federal
14 rules and regulations, the Federal rules and regulations shall
15 prevail.

16 While theoretically, California may be in a position
17 to simply remove itself from the Federal program, however im-
18 practical, as a practical matter, they have made this judgment.
19 Their statute, Section 1003 of the California Welfare and
20 Institutions Code says exactly this. We've checked other state
21 statutes. New York has an even more explicit statute. It says
22 that --

23 Q But with reference to every one of them, the
24 Government can settle it by not letting them have any money.

25 A The Government can do this but --

1 Q All on its own. Why should this Court, with
2 all the burdens it has and the multitudinous cases that are
3 coming before us, undertake a case in controversy when there is
4 not a case in controversy existing between the two main persons
5 who are interested in this, namely: the state and the govern-
6 ment.

7 A Well, Your Honor, I think Congress intended
8 when it passed the Social Security Act, for needy --

9 Q Social Security is a different thing.

10 A This is --

11 Q Where do you collect the money for Social
12 Security?

13 A This is a part of the Social Security Act, an
14 Act of 1935, as Your Honor knows, and this AFDC program has
15 been in existence since that time. Congress intended, and I
16 think it's quite --

17 Q That's an obligation on the part of the govern-
18 ment; isn't it?

19 A It's an obligation on the part of --

20 Q The Federal Government.

21 A That's correct.

22 Q This is an obligation to a certain extent on
23 the part of the state; to a certain extent on the part of the
24 Federal Government, to be based on an agreement which they can
25 reach or not reach as they see fit.

1 A But they have all seen fit to do that and they
2 all --

3 Q But, it's not a matter of controversy here as
4 to what the state can do and what the Federal Government can do.

5 A Well, I think there is a very real controversy.
6 These people --

7 Q When the government has its own sanction and its
8 own ends it can stop paying the state any money.

9 A In this particular case, these people claim
10 benefits and the claim in California --

11 Q Yes, rather indirect, to claim benefits to get
12 a lawsuit settled between the state and the Federal Government.

13 A Well, Your Honor, I understand the difficulties
14 with this Court not wanting to become the Court of Last Resort
15 in all welfare disputes.

16 Q Well, why do you place us right there?

17 A I don't think it will place you right there,
18 Your Honor. It seems to me that if the law in this area is
19 clarified so that the states understand the obligations they
20 have, and I think King versus Smith went a long way on --

21 Q If the states understand it, why should we have
22 to decide it?

23 A What I'm suggesting is that when cases like
24 this are decided it will be clear what the obligations of the
25 states are.

1 Q To that extent, but they change with each
2 changing day and each changing litigant.

3 A Well, Your Honor, with all respect, I don't
4 think that the Federal approach has changed the thing and so
5 long as the Court establishes that Federal construction of the
6 Act is the appropriate one in this area, then the states will
7 necessarily have to abide by it and I think California and New
8 York and the other states have already made the decision.

9 Q They will have to abide by it and if they
10 don't, the Government has its relief in its own hands: it can
11 decline to let them have the money.

12 A That's correct, but that's circular, because
13 they have already made this judgment. Unless California
14 rescinds its statute, it's made a judgment that it will accede
15 to the Federal rules and --

16 Q And the Federal Government can at this moment,
17 withdraw its funds.

18 A That's right, they can, but whether that's a
19 reasonable or practical course --

20 Q Probably more reason than to get this Court
21 mixed up in every welfare case that arises in the whole range
22 of this government.

23 A But the approach you suggest would carry over
24 to every Federal matching grant program, Your Honor, and would
25 simply say that there is no distinguishable controversy here and

1 that the way to proceed is for the Federal Government always to
2 cut off funds, and I don't think the Court has proceeded that
3 way in the past and I don't think that it's --

4 Q We haven't had this case before.

5 A Your Honor --

6 Q Have we had this case before?

7 A With all respect, in King versus Smith the
8 Court said, "There is, of course, no question that the Federal
9 Government, unless barred by some controlling constitutional
10 prohibition, may impose the terms and conditions upon which its
11 money allotments to the states shall be disbursed"--

12 Q I don't believe there is a Member of this
13 Court who will deny that statement.

14 A "And that any state law or regulation incon-
15 sistent with such Federal terms and conditions is, to that
16 extent, invalid.

17 Q Yes, when it's raised in a case of controversy.

18 A Well, I think that King versus Smith was as
19 much a case of controversy as the present case.

20 Q Maybe so. But even if it was, that's no sign
21 we should continue to be bound by it if it's wrong.

22 A No; I'm suggesting, Your Honor, that if the
23 Court clarifies the questions raised in this case and other
24 cases, that there is no reason to expect that the Court will
25 continue to be involved year after year in these disputes over

1 the welfare laws. Once the Secretary has his authority made
2 clear, I think that it's reasonable for the Court to expect
3 that he'll act, but there have been serious questions about
4 this. They have been raised in litigation and they are before
5 the Court presently.

6 Q But the custom has now arrived whereby every-
7 body is bringing every kind of welfare case to this Court;
8 bringing into our lap a number of controversies that we are
9 simply not capable on account of the lack of numbers and the
10 lack of scope of handling these.

11 Q I suppose it's complicated somewhat by the
12 fact that the statute is now amended when the regulations are
13 amended and so we will have a whole new set of statutes and
14 regulations to deal with.

15 A Well, I'm not sure that I'm clear on that.

16 Q Well, there are a new set of regulations at
17 HEW; are there not?

18 A Well, there is not a new set of regulations
19 that bear on the question here at issue --

20 Q How about the new California statute?

21 A Well, the new California statute is, as Mr.
22 Amsterdam discussed yesterday, does raise, with respect to
23 parts of the controversy before the Court, some questions that
24 have to be resolved, I think, on remand by the District Court.
25 But, it doesn't do away with the entire matter here, doesn't

1 touch the stepfather question and California's continuing to
2 act, as far as we know, under the old statute, and they have
3 not yet promulgated regulations, officially adopted regulations
4 and --

5 Q When does the new statute go into effect
6 again?

7 A Well, the new statute was enacted in November
8 of 1969 and we agree that there are questions that properly
9 should be probed as to that statute and its effect on the MARS,
10 the man assuming the role of spouse, because that's all it
11 relates to, by the District Court and we suggest to that extent
12 that a remand to that Court would be appropriate. But that
13 doesn't, I don't think, moot the entire case.

14 Your Honor, I really haven't had a chance on behalf
15 of HEW to make the affirmative arguments, and could I have
16 several minutes to do so?

17 MR. CHIEF JUSTICE BURGER: The affirmative argument
18 on --

19 MR. BEYTAGH: On the validity of the regulation.

20 MR. CHIEF JUSTICE BURGER: Well, about how long do
21 you think you would need?

22 MR. BEYTAGH: About five minutes.

23 MR. CHIEF JUSTICE BURGER: Well, we'll grant you
24 five minutes and extend it accordingly.

25 MR. BEYTAGH: Thank you.

1 We think that the regulation is valid for a number of
2 reasons. First, we think that a presumption of validity always
3 attaches, as this Court has said a number of times, to the
4 administrative interpretation by a government official charged
5 with the responsibility for administering a particular act.

6 As Mr. Amsterdam indicated yesterday, the same
7 approach, the approach of requiring proof of actual income
8 before reduction of benefits has been applied across the board
9 in other categorical public assistance programs by HEW.

10 Moreover, we think that in 1967 Congress, at last
11 implicitly, approved the HRE regulation when it reenacted the
12 act and enacted certain amendments to these provisions, knowing
13 what HEW's construction had been, and not seeking to change it.

14 Moreover, we think that it's quite clear in King
15 versus Smith the Court specifically referred to a predecessor
16 regulation and said that "Regulations of HEW" -- this is in
17 footnote 16 of King versus Smith, "Regulations of HEW which
18 clearly comport with the statute restrict the resources which
19 are to be taken into account under Section 602 to those that
20 are, in fact, available to an applicant or recipient for cur-
21 rent use on a regular basis. This regulation properly excludes
22 from consideration resources which are merely assumed to be
23 available to the needy individual."

24 Moreover, the Court, earlier this term, summarily
25 affirmed a decision by the District Court in Connecticut in

1 Solomon versus Shapiro, which is reported at 396 U.S. 5, which
2 held the HEW regulation valid and an inconsistent Connecticut
3 practice to be invalid.

4 Moreover, we think that HEW's approach is consistent
5 with the purpose of the Act, which is to provide economic
6 security to the 5 million + children that are covered by this
7 act. It's a massive act; this regulation is an important part
8 of it; it -- the whole program involves expenditure of over
9 \$2 billion by the Federal Government each year, a total ex-
10 penditure of close to \$4 billion.

11 California's statute, we think, conflicts with this
12 regulation and since California has a statute that I earlier
13 referred to, which says that when its rules and regulations
14 conflict, Federal rules shall prevail. We think whatever the
15 relevance of this supremacy clause, that in this context, the
16 District Court improperly struck down the HEW regulation and
17 properly upheld the California approach.

18 California's approach of assuming support simply is
19 contrary to fact in most cases.

20 Moreover, it's inconsistent with King versus Smith
21 for the reasons that I have indicated earlier. There is some
22 language in that opinion that counsel might refer to, but that
23 language is always accompanied by the reference to "support
24 in fact," and while the court referred to a legal obligation,
25 it also referred to support in fact, as coupled therewith.

1 The Court was referring, in King versus Smith, we
2 think, to a legal obligation of general applicability, not the
3 strange sort of thing that California sought to carve out.
4 Indeed, if California is right, Alabama could have avoided the
5 decision there by just enacting a statute which said, "Okay,
6 substitute fathers have a legal obligation of support."
7 Whether it was enforceable or not, what difference; it would
8 have complied.

9 Now, I don't think the Court intended that in King
10 versus Smith and we don't think it makes good sense.

11 Q I should think, to follow what California has
12 done that the family would not be eligible for AFDC grants at
13 all.

14 A I think, Your Honor, that's the ultimate con-
15 clusion you reach here.

16 Q I mean, it would be the same as the situation in
17 King versus Smith.

18 A That's -- well --

19 Q Because families are eligible only if one parent
20 is dead or absent.

21 A That's correct. If you press it to the
22 ultimate, they are making these people parents, and --

23 Q Is that our definition that they are not
24 eligible?

25 A But California doesn't want that, of course,

1 because the statute we're talking about here is specifically
2 tailored to AFDC and relates only to that project, so they are
3 simply trying to reduce the benefits the people receive by
4 assumed support they get from these men without any actual
5 proof of it.

6 And I think that if California were pressed -- there
7 are some -- a couple states have adopted statutes that, at
8 least as to the stepfather, place a general obligation.

9 As to those --

10 Q Well, that makes the family ineligible.

11 A We would agree. Yes, and Washington has
12 offered a statute, and I think a couple others. That's quite
13 right.

14 Q Does California have a general statute applying
15 to the MARS?

16 A I couldn't really conceive of one applying to
17 the MARS, but stepfathers, I think is a feasible thing, and as
18 I indicated, some states do, and that makes the stepfather the
19 -- the regulation itself, the first part of it which I didn't
20 read specifically provides that. It says: "or in relation to
21 a child's stepfather with ceremony remarried to the child's
22 mother or adopted parent, and is legally obligated to support
23 the child under state law of general applicability, which re-
24 quires stepparents to support stepchildren to the same extent
25 that natural or adoptive parents are required to support their

1 children."

2 Q Now, why would you say that was all right?

3 A Well, I think the judgment is that you have
4 then a real and enforceable obligation. It's analogous to the
5 obligation of a natural or an adoptive parent.

6 Q Well, if the state can substantiate the fact
7 that there is a legal obligation to support the children in the
8 house, these living in the house, there is a legal obligation
9 under state law to support those children and if it's en-
10 forceable, you would say you think the regulation is all right?

11 A Well, it has to be one that meets all the
12 criteria which this regulation spells out, which is one of
13 general applicability. The person becomes just as a natural
14 or adoptive father or stepfather. Now, most of these people
15 simply don't want to be put in that position and I don't think
16 most states are going to --

17 Q I know, but when you say that that would be
18 all right, what you're really doing is assuming income.

19 A Well, just as you are assuming income as to a
20 natural parent.

21 Q With a natural parent, with a parent; with a
22 natural parent.

23 A Right.

24 Q Living at home.

25 A Right.

1 Q And if the parent moves out you no longer
2 assume income; do you?

3 A No; that's correct.

4 Q And, but as long as he's at home you will
5 assume income.

6 A That's correct.

7 Q And you say you would be willing to assume
8 income if the state had the proper law with respect to step-
9 fathers?

10 A I think that's a necessary conclusion. That's
11 the way the regulation reads and for good or for bad, we have
12 to support the regulations.

13 I think that it coincides with common sense.

14 Q You think this represents a professional,
15 expert judgment as to what likely reality is?

16 A Well, I think that the idea is that when you
17 have a man that's willing to do this much that then you have a
18 more or less stable family unit that does not fit into the
19 category of --

20 Q But, experience would show that in the MARS
21 situation that it's just contrary to reality to assume income?

22 A I think that's so. I think that as soon as you
23 try to put an obligation -- real obligation of support on these
24 MARS people, at least, their alternative is simply to get out
25 and California's statute, both as to stepfathers and MARS,

1 provides that they have an obligation to support only when they
2 are in the home. Then they leave and they don't have an
3 obligation --

4 Q Sure. Well, the result of this regulation has
5 been to -- that some MARS have left?

6 A I don't know --

7 Q Didn't that happen in one or two of these
8 cases?

9 A I don't know whether it has been the result --

10 Q It must be that the California regulation has
11 got some real teeth in it, then.

12 A Well, it has real teeth when it deprives people
13 that need --

14 Q Well, I suppose if it drives MARS out of the
15 family it must be because there is a real obligation. As long
16 as they stay there, then, then why isn't the statute --

17 A No; the reason they don't stay there is because
18 the money is cut off and they, since their income is assumed to
19 be available, but it is not really available, because they have
20 other children to support, or whatever, then they move out be-
21 cause they are not, in fact, able to provide support.

22 Q I wonder if there is another hypothesis for
23 their moving out, too. Wasn't it one of the considerations in
24 the development of this scheme that when the Aid to Dependent
25 Children stops the free boarder left, because the income was

1 stopped. Doesn't that show up in the legislative history?

2 A Your Honor, I think it shows up in the early
3 legislative history. In King versus Smith, I think the Court
4 made clear that the notion of punishing the kids by seeking to
5 legislate morality for the MARS, had been abandoned by Congress
6 in subsequent amendments.

7 Q Well, I'm not talking about the punishment for
8 children aspect. I'm talking about what you were addressing
9 yourself to, the reasons for the departure of this putative
10 father.

11 A Well, to the extent that there is a notion of
12 having stable family units, it seems to me that HEW's approach,
13 and not California's fosters that, because HEW's approach
14 allows the reduction in the amount of benefit payments only
15 when there's proof of actual income. And therefore, when there
16 is not actual income the MARS or the stepfather, I assume, will
17 continue to reside with the children.

18 Now, to the extent that that's a value worth preser-
19 ving, HEW's approach preserves it. California's does not;
20 California's forces the man to move out of the house when he
21 doesn't have income to help support the children so that they
22 won't receive the -- the reduction won't be cut off, as some
23 of the people in this case were,

24 For the reasons that we have submitted and for the
25 reasons in the brief, we think that the District Court order and

1 the judgment should be reversed and remanded to the --

2 Q Has the Supreme Court of California had a chance
3 to pass on this?

4 A Your Honor, my understanding is that the
5 Supreme Court of California has not had a chance to pass
6 squarely on this. It's in Lower California Appellate Court --

7 Q You don't know how they would construe the
8 law or the later amendments of --

9 A That's correct, but I don't think that really
10 the law needs too much instruction. Perhaps Counsel from
11 California will illuminate us on this, but the intermediate
12 Appellate Court decisions are ambiguous, frankly. They speak
13 in terms of the obligation of support not being a general one
14 that applies across the board, but one tailored to AFDC. Well,
15 that's quite right; it is one tailored to AFDC.

16 There was a case where one of these people said that
17 this law was a deprivation of his right to property, that
18 California couldn't do this. And the California Court said,
19 "No; that's not right. He isn't being deprived of anything.
20 His income is simply being assumed to be transferred to the
21 support of the children.

22 So, to the extent that this California uauthority, it's
23 confusing and ambiguous, but it at least raises questions as
24 to whether the duty of support is anything more than an
25 illusory one.

1 Thank you.

2 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Beytagh.
3 Mr. Linderman.

4 ORAL ARGUMENT BY JAY S. LINDERMAN, DEPUTY
5 ATTORNEY GENERAL OF CALIFORNIA, ON BEHALF
6 OF APPELLEES

7 MR. LINDERMAN: Mr. Chief Justice and may it please
8 the Court: I might start, Mr. Justice Black, in trying to
9 answer your question regarding the determination by the
10 Secretary of HEW and whether California is in compliance and
11 if not, why not cut California off?

12 This litigation started in the District Court.
13 California officials were in the process then of trying to
14 determine from HEW whether in fact, HEW felt that the Califor-
15 nia statute and regulations were in conflict and we were unable
16 to even receive a definitive statement from HEW whether or not
17 the Secretary considered California to be in compliance or not.

18 And we urged -- the various correspondence on the
19 subject was attached to our motion to dismiss filed in the
20 District Court and we urged the District Court at that time that
21 there is a procedure in the Social Security Act for resolving
22 disputes between the state and HEW as to whether a state plan
23 does or does not comply. If the Secretary makes a determination
24 of noncompliance, the state is given the authority to petition
25 the Court of Appeals for the particular circuit for a

1 determination of that specific issue.

2 We urge the District Court to allow us to do that or
3 at least first allow us to receive --

4 Q Allow you to do what now?

5 A To utilize the procedure set forth in the
6 Social Security Act. It provides a procedure for resolving a
7 dispute between the states and HEW.

8 Q What is that?

9 A What is the procedure?

10 Q Yes.

11 A If HEW makes a determination of noncompliance
12 of a state plan the state may go to the Court of Appeals for
13 the particular circuit in which the state is located.

14 Q May I just interrupt you one moment? There
15 has to be a formal disapproval of the state plan; does it not?

16 A My understanding, Mr. Justice, is that it has
17 to be a determination -- the language is a determination at --

18 Q But, isn't there some kind of formal deter-
19 mination?

20 A A formal determination --

21 Q What precedes the determination? Is there a
22 hearing or what happens?

23 A In California what was happening at the time
24 this suit started was considerable correspondence going back
25 and forth between the Governor and the Director of the

1 State Department of Social Welfare.

2 Q In other words, it was just by correspondence
3 with state officials and HEW?

4 A And the Secretary -- at that time, Secretary
5 Cohen.

6 Q But nothing in the way of a formal proceedings
7 administered before a board or something like that?

8 A Nothing at that point, because when the suit
9 was filed, California was still in the process of trying to
10 find out whether the Secretary had even made a determination
11 that California was not in compliance. And then this lawsuit
12 was filed and another one. And we urge --

13 Q What is there to suggest a review, expressly
14 provided in the statute in the appropriate Circuit Court of
15 Appeals. A review of what?

16 A Of the question of whether the state plan con-
17 flicts or complies --

18 Q I know, but would it not have to be a review of
19 some formal determination at some time?

20 A I would assume so; yes, and that is what we
21 were --

22 Q Well, I'm still in the dark how that determina-
23 tion is -- under what procedure is that determination arrived
24 at?

25 A I would assume that it is a written communique

1 from the Secretary of HEW that --

2 Q So, for example, would this be the case if
3 your California officials had received from HEW a letter which
4 said: "We don't think the California plan complies with the
5 Federal regulation," you could have judicial review in the 9th
6 Circuit of that letter of determination?

7 A Questionable --

8 Q But these are compliance proceedings under the
9 statute; aren't they?

10 HEW, as I understand it, has only proceeded against
11 two states in the long history of this. One is Connecticut
12 and the other is Nevada; is that right?

13 A Yes, Nevada.

14 Q And those are compliance proceedings?

15 A This is a --

16 Q They come up to an adjudication. Whether they
17 can be reviewed has never been determined?

18 A I think that's correct. But what happened in
19 the California instance was the State Director of Social
20 Welfare did receive a letter from the Secretary, then Secretary
21 Cohen, setting forth various reasons why the Secretary felt that
22 California was not in compliance. The Director from California
23 then wrote back to the Secretary and said: "If this is a
24 determination of noncompliance, then we respectfully request
25 reconsideration, but please tell us what it is that you are

1 saying, and we never received a reply to that.

2 Q Is that correspondence in the appendix here?

3 A It's not in the correspondence, Mr. Justice;
4 it is attached to the motion to dismiss, which the state filed
5 in the District Court.

6 Q So that would be in 42 U.S.

7 A It's in the record, but it's not in the appen-
8 dix.

9 Q Do you have a statutory citation to this review
10 procedure?

11 A I believe it is Section 1116 of the Social
12 Security Act. I don't have the U.S. Code citation, but it is

13 --

14 Q 1316, I think.

15 Q Was it while the State and the Federal Govern-
16 ment were in negotiations as to whether or not the State was in
17 compliance, that this suit was filed on the part of alleged
18 individual beneficiaries in California?

19 A I believe the timing, Mr. Justice, the corres-
20 pondence was in the summer of 1968 and the first of these two
21 consolidated cases was filed in October of '68.

22 But, as far as the State is concerned, we had never
23 received any definitive statement from the Secretary as to
24 whether we were or were not in compliance when the lawsuit was
25 filed.

1 Q Have you ever received one since?

2 A Never received one since, other than the
3 appearance of HEW as amicus in this proceeding, alleging that
4 we are not in compliance.

5 Q Between you and the alleged beneficiaries --

6 A Pardon me?

7 Q As between California and the alleged bene-
8 ficiaries. That's the lawsuit now; isn't it?

9 A The lawsuit now is the alleged beneficiaries
10 against the state, alleging that the state is not in compliance
11 with Federal Law.

12 Q Has any Court of Appeals been called upon to
13 act under this procedure?

14 A I'm not familiar with any, Mr. Chief Justice.

15 Q It hardly strikes me as an ideal way to
16 litigate a complex legal question to go directly on no record,
17 on administrative determination from the Court of Appeals. At
18 least in all the other administrative reviews by the Courts of
19 Appeals, there is a record.

20 A I'm not certain that it's any more improper or
21 inappropriate method than coming directly to the United States
22 Supreme Court to resolve this, with not much more record.

23 Q Well, actually, that could be done in quite a
24 different way? If the Executive Branch of the United States
25 of America cut off funds to California because you were not in

1 compliance with the conditions under which the conditions under
2 which those funds were made available under the categorical
3 assistance program.

4 California could then sue the United States of
5 America in this Court as a Court of -- as the highest Court;
6 is that right?

7 A Yes, I would think so, Mr. Justice.

8 Q Well, if the United States were to cut you off,
9 do you think that the alleged beneficiaries all over the state
10 could sue you?

11 A No. Could sue the state?

12 Q Yes.

13 A No. I'm not certain.

14 Q Well, what's the difference between that
15 lawsuit and this one?

16 Q Your state could have a Social Security wholly
17 independent of Federal funds.

18 A Of course, it could, but I doubt it very much.
19 I think I can speak for the State --

20 Q No, but constitutionally speaking.

21 A Of course; of course. But, I think I have a
22 right to speak for --

23 Q But it would have a right to administer it;
24 wouldn't it?

25 A As it chose; I would think.

1 Q Subject to certain constitutional restrictions.

2 A Constitutional restrictions would be the only
3 ones.

4 Q As I understand it, there is no one here
5 challenges the fact that there is no constitutional provision
6 which would prevent California from spending its own funds in
7 its own way, if it doesn't mix them up with the Federal
8 receipts.

9 A Well, I think the Appellants in this case are
10 arguing that irrespective of the Supremacy Clause problem in
11 the case, that even assuming that there is no problem there,
12 that California is distributing its funds in violation of the
13 Equal Protection Clause.

14 Q And that same argument would be made whether or
15 not there were any Federal funds.

16 A Yes; definitely.

17 Q How do they raise it under the Equal Protection
18 Clause?

19 A Their allegation is that the obligation which
20 California places on MARS in a welfare home only, as opposed to
21 a MARS in a nonwelfare home, denies equal protection to the
22 children in the welfare home and to the MARS in the welfare
23 home.

24 Q That would raise a question purely under the
25 state law?

1 A They are raising the question --

2 Q And they can sue the state on that and it
3 wouldn't be tied up at all with the Federal Government pro-
4 vision in connection with compliance?

5 A No --

6 Q As I understand their lawsuit is based on quite
7 a different theory.

8 A Oh, it is, but this is an aspect of their law-
9 suit also, is the Equal Protection Clause, which, assuming
10 California were running its own welfare program and not receiv-
11 ing FEderal matching funds, presumably the same constitutional
12 limitations are going to have to apply. The only ones that
13 would be eliminated would be the regulations of HEW and the
14 Act of Congress.

15 Q I suppose that all of this was answered by
16 Cardozo in that initial case, the Stuart Machine Company case
17 back in 1936. These are the conditions upon which the state
18 could participate; they need not participate. If they do par-
19 ticipate they must -- get Federal funds, they must participate
20 under FEderal conditions.

21 A We don't question the fact that California must
22 comply with valid HEW regulations and an ACT of Congress in
23 order to be able to qualify to receive the Federal funds. We
24 are not disputing that at all.

25 Q I don't suppose that any question has been

1 raised about that by anybody.

2 A None whatsoever. And nor do we question the
3 authority of the Secretary of HEW to issue rules and regula-
4 tions to fill out the details of the Social Security Act.

5 Q And if the State wants to participate it would
6 have to comply with it?

7 A No question about it, Mr. Justice.

8 Our position, however is, thought, that the Secretary
9 of HEW in his regulation has exceeded the scope of authority
10 given him by Congress in the Social Security Act.

11 Q And there's no question that that's a contro-
12 versy that's involved in this case, even though the parties
13 are the State of California and welfare Appellants.

14 A There is no question that that the--

15 Q And there's no question that that issue is a
16 case of controversy properly before this Court for decision;
17 is it?

18 A I would concede that; yes. My point initially
19 was that there is an alternative procedure that the controversy
20 could first be resolved in the Court of Appeals of the 9th
21 Circuit.

22 Q Well, that's, I guess, what you were addressing
23 yourself to earlier.

24 A Exactly. I assume, though, that even if it
25 were resolved in the Court of Appeals for the 9th Circuit, that

1 sooner or later it would reach here.

2 Q I think it would manage to, somehow.

3 A The HEW regulation has two parts to it. The
4 first one is the SEcretary's definition of who may be a parent.
5 Which, of course, goes to the question of: is the child a
6 dependent child and eligible or not eligible for assistance.

7 Q I know, but it doesn't go to the question of
8 the amount of money; it goes to the question of eligibility at
9 all.

10 A If the person is determined to be a parent,
11 there is no eligibility, with the exception of the unemployed
12 parent in the optional AFDC --

13 Q Well, with some few exceptions, but generally
14 speaking if both parents are inthe house; ineligibility, period.

15 A By definition the Social Security Act sets up
16 AFDC eligibility for a child who is deprived of support because
17 of the absence of a parent.

18 HEW in Subsection A of its regulations, 203 says that
19 "The only person who can be a parent is a natural father, an
20 adoptive father or a stepfather, who is legally obligated to
21 support the child to the same extent as a natural or adoptive
22 father.

23 If that's correct -- California is not attempting to
24 defy children living with a MARS or stepfather as nondependent
25 children. We are not trying to call the stepfather or the MARS

1 a parent, but under HEW's definition the only thing California
2 did wrong was to limit the stepparent liability to a stepparent
3 in a welfare home.

4 California had imposed an obligation on all step-
5 fathers to support their children, then it seems to me that
6 under the HEW regulation California could determine all needy
7 children in a home with a stepfather, totally ineligible for
8 aid and it certainly escapes me how the needy child in a welfare
9 home derives any more economic protection from the extension
10 of the stepfather liability to a stepfather in a nonwelfare
11 home.

12 Q Well, if you're right, then you're violating
13 the Federal Law in a different way, because you are spending
14 Federal money which you are not authorized to spend, because
15 you are giving it to children who are ineligible under the
16 Federal statute.

17 A Well, you can easily remedy the situation, Mr.
18 Justice, by simply exchanging our support our of HEW's statute
19 and making all stepfathers liable for the support of their
20 children.

21 Q As I say, if you do that, then if you give any
22 money to a family with a stepfather, then you're making an
23 unauthorized expenditure of Federal money and you are violating
24 the Federal Law.

25 A Which, to me, would be frustrative of the

1 purposes of AFDC, which is to impose a support obligation on a
2 stepfather in a relatively affluent family certainly gives no
3 economic protection to the child with a stepfather in a poor
4 family. It makes no sense, but if the HEW regulation is valid,
5 I think I can state with relative certainty, that California
6 will just extend its stepfather liability statute and cut off
7 all children in stepfather homes.

8 Q And that, in turn, will be litigated; I assume?

9 A I would assume.

10 Q Why do you want to cut them off unless the
11 stepfather would have some income?

12 A Oh, assuming an employed stepfather. Assuming
13 an employed stepfather, because if he were unemployed, then the
14 family would qualify under California's optional AFDCU --

15 Q You won't cut off any more children than you
16 are now.

17 A We're not cutting off children now, though, Mr.
18 Justice.

19 Q You're reducing payments by assumed income of
20 the stepfather --

21 A We're reducing payments --

22 Q -- regardless of its availability.

23 A Assumed availability because of the support
24 obligation.

25 Q Sure; so you're reducing payments on account of

1 your law and you wouldn't cut off any more if you extended your
2 obligation right across the board.

3 A Now, some children living with stepfathers are
4 still receiving aid because the stepfather's net income is
5 insufficient to bring the family up to the state's maximum
6 budget for the family. But, if we extend the stepfather
7 liability to non-AFDC family stepfathers, then the children in
8 the AFDC family with a stepfather are going to be totally cut
9 off.

10 There are now children in the AFDC stepfather families
11 who are still receiving aid, albeit less aid because of the
12 obligation of support on the --

13 Q Well, what about the MARS?

14 A It seems to me --

15 Q Your old law until you changed it, put an
16 obligation on him; didn't it?

17 A The old -- it still does in a different
18 fashion.

19 Q So, you've modified it.

20 A We've modified it. But the statute which was
21 the subject of litigation in the court below, the obligation
22 was that the MARS had to support the children in his home --

23 Q Like the stepfather.

24 A Like the stepfather. And I would submit that
25 if HEW thinks that you can extend statewide general law of

1 applicability to a stepfather and thereby make no --

2 Q With a man --

3 A You can do it with a man equally as well, and
4 in fact, I would think might have to do it, not because of any
5 moral antipathy to the common-law marriage, but if you don't
6 do it a man is crazy to marry the welfare mother.

7 Q Well, what is -- is the MARS issue realistic
8 here?

9 A Oh, I think very definitely so.

10 Q And because of the trafficking?

11 A Yes.

12 Q Is that all?

13 A There is --

14 Q Because the new regulation is not in issue in
15 this suit.

16 A Not an issue in this suit, but the same problem,
17 the problem of assuming that there is a meaningful support
18 obligation that's a different kind of obligation now, but the
19 same question of whether the obligation that California imposes
20 is an enforceable one, and a source of a resource to the child
21 will remain, even under the new regulation. It will take on a
22 different --

23 Q Wouldn't you suppose, though, as a matter of
24 experience that you could justify assuming income, assuming
25 availability of income where the real parent is living at home,

1 and have a wholly different experience with stepfathers or MARS
2 who are living in the home?

3 A Just in terms of --

4 Q Actual availability of income?

5 A If your question is directed to the point is a
6 natural father more apt to support his child than a stepfather
7 is -- is that the gist of your question?

8 Q That's part of it.

9 A I would say yes, if the kind of stepfather or
10 man-in-the-house that California is talking about is the same
11 kind of a man as Alabama had in King versus Smith.

12 Q Well, then, why isn't the Federal regulation a
13 valid expression -- the valid judgment along that line -- along
14 those lines.

15 A Because the Federal regulation, Mr. Justice,
16 is not geared to the factual realities of who these men are that
17 California is concerned with. They're not the midnight visitor
18 in King versus Smith, who had family of his own and nine child-
19 ren and no income.

20 Q I think the invalidity of it might be in that
21 it permits assumption of income -- availability of income where
22 there is a statewide law of general applicability if that's
23 contrary to the experience.

24 A I think the Social Security Act impels assump-
25 tion of income where there is a law of support. As this Court

1 interpreted the purposes of AFDC in King versus Smith, it was to
2 provide support for children without -- who could not --

3 Q Do you think it would be invalid under the
4 Social Security Act for the HEW to provide that regulation that
5 income of natural parents, availability of income for the
6 natural parents living at home will not be assumed?

7 A Yes, I think it would be invalid.

8 Q Under the statute?

9 A Under the Social Security Act as interpreted by
10 this Court in King versus Smith, that Congress expects that when
11 there is a breadwinner in the home that the breadwinner will
12 support the child and the Social Security Act says that the --
13 the second part of this is, but the state has to determine the
14 extend of need of the children in the home and the child is
15 deemed less needy because of the resource which is assumed by
16 Congress to inure to the benefit of the child because of the
17 support obligation.

18 Q Mr. Linderman, I think you used the term,
19 "the assumption was compelled." Now, that assumption also de-
20 pends upon the enforceability of the support against this man
21 in the house. Is it a safe assumption, a rational assumption
22 that there is any real enforceability against a man in the house?

23 A I think there is, Mr. Chief Justice. Before I --

24 Q How? By suits against the man?

25 A Yes.

1 Q How many lawyers is it going to take to deal
2 with the 500,000 people on welfare in Los Angeles alone?

3 A I appreciate that problem, but it's not any
4 different than the child living with a natural father who may
5 not support it. The child or his mother has to sue the man,
6 not the State. The State doesn't pay aid and then pursue the
7 man. The child has to get the money from the man.

8 Q Does this record show what is the ratio of
9 unemployed natural fathers whose children are receiving this
10 aid, as compared with the man-in-the-house type of situation?
11 Any information on that at all?

12 A The number of unemployed fathers? Not that I
13 know of, Your Honor. There are statistics that would indicate
14 how many families we're talking about, which contain the -- the
15 figures were of July, 1968 and at that time there were roughly
16 191,000 families, AFDC families in California and of that there
17 were 6700 families with a stepfather and 2700 families with a
18 MARS. But a total of roughly 9500 families out of a 191,000
19 families. But of the 191,000 I am not familiar with the
20 statistics on how many of those are unemployed fathers. I
21 could easily obtain them and supply them to the Court if you
22 wish.

23 Q I'm not sure that that's necessary, unless
24 someone else wants it. What I am trying to get at is: this
25 assumption that you are talking about is based on a further

1 assumption of the enforceability against this man?

2 A That's correct, and it's the same assumption
3 as applies to a natural father in the home. It is an assump-
4 tion that there is an enforceability.

5 Q Well, wouldn't you concede that it's easier to
6 enforce that claim against the natural father by usual tradi-
7 tional processes than it is against these transient men-in-the
8 house?

9 A But, Your Honor, by definition, these men are
10 not transients. These are --

11 Q Whose definition?

12 A By the state definition before the application
13 of the rule, even can begin, the man-in-the-house, by defini-
14 tion either is living in the home and is, in a stepfather case,
15 ceremonially married to the mother or in the MARS case, is
16 living in the home and has either assumed financial obligations
17 on behalf of the family, or comports himself in the community
18 as husband and wife and one of the crucial criteria of deter-
19 mining who is the MARS is that he has no other alternative
20 place of residence. This is his family. And to the extent
21 that he is a transient, the moment he leaves the home the child
22 is restored to eligibility.

23 Q Mr. Linderman, did I understand you correctly
24 that the child and the wife had to go to court to get the sup-
25 port from the husband who had left?

1 A Who has left?

2 Q Yes.

3 A They would have to go to court only to the
4 extent to collect back payments that might be due. Once the
5 man leaves the house --

6 Q Well, in the California welfare system you mean
7 that the welfare system doesn't do that?

8 A Not to collect the back payments.

9 Q You don't have a special department that that's
10 all they do?

11 A Not for the wives of the stepfathers.

12 Q No; I said for the legitimate fathers.

13 A For the legitimate father; yes.

14 Q So you go after him to make him pay his debts?

15 A After he leaves the house.

16 Q After he leaves his house.

17 A After he leaves the house, but not while he is
18 there.

19 Q I thought you said the responsibility was on the
20 children?

21 A While the man is in the house. While the man
22 is in the house, be he a natural father or adoptive father, a
23 stepfather or a mother, the state does not pursue his resources
24 for the child.

25 Q Even if the wife applies for relief?

1 A If the wife applies for relief in the natural
2 father case and he is living in the home, relief is denied.
3 They are ineligible by definition.

4 Q The minute he leaves the welfare makes him
5 pay if they can find him and if he has the money.

6 A If they can find him, but with the MARS, the
7 State does not pursue him because there is no more obligation
8 and the state pays aid at that point, then.

9 The other one important resource, which I think is
10 unique in the West, particularly in California, in the case of
11 the stepfather is that under California community property law
12 the earnings of the stepfather are community property in which
13 the wife, the welfare mother, has a vested, present one-half
14 interest; half of his earnings are hers.

15 Q That's with the ceremonial marriage?

16 A That's with the stepfather only.

17 Q Yes.

18 A After the ceremonial marriage. There is no
19 community property in a putative marriage. There is in a
20 meretricious -- in a putative there is; in a meretricious, there
21 is not.

22 In other words, these people know they're not married,
23 the MARS and the mother and there is no community property
24 there. If one of them harbors the mistaken belief that they
25 are married, there can be community property there, but I'm

1 talking about the situation where the mother has ceremonially
2 married the man, community then attaches to his earnings and
3 half of his earnings are hers.

4 I would submit that if there is anything that is a
5 resource which the Social Security Act commands California to
6 consider in determining need, that is a resource.

7 Again, the mother may have to take legal action to
8 protect her half interest, but that's no different than the
9 mother living with the natural father of her children. She,
10 also may have to take legal recourse. The obligation is
11 clearly enforceable.

12 Q What specific language in the Social Security
13 Act do you rely on for arguing that this Federal regulation is
14 invalid?

15 A Section 402(A)(7) which is 42 U.S.C. Sec. 602
16 (a)(7).

17 Q Do you have that in an appendix to your brief?

18 A Yes, Your Honor. Its here in several places.
19 It's in the appendix -- no, it's not in the appendix. It's
20 cited throughout all the briefs.

21 Q There is no quick, easy place to find it.

22 Q Well, what is the specific language?

23 A It's -- I'll read the language. The place is
24 the first page in the Appendix in the Government's brief.

25 Q Right.

1 A This is Section 602(a)(7). It's one of a
2 series of requirements under the Social Security Act as to what
3 the state plan must provide, and it says that: "A state plan
4 for aid and services to need families with children must, under-
5 score must -- provide that the state shall, in determining
6 need, take into consideration any other income and resources of
7 any child or relative claiming aid."

8 Q All right. Now, we're talking about income and
9 resources.

10 A Yes.

11 Q So, you're saying that it would be inconsistent
12 with that Act to have a regulation which says that income and
13 resources are not going to be assumed?

14 A Exactly.

15 Q That this statute requires that you assume
16 income and resources?

17 A Not "assume," no.

18 Q Well, we're talking about income and resources
19 of the child.

20 A Yes; of the child or the mother. See, it's
21 income and resources of any child or relative claiming aid.

22 Q Well, who's claiming aid?

23 A The mother and the child.

24 Q All right; so you've got to say that the income
25 -- you are going to have to assume the availability of income

1 from the MARS or stepfather, either to the mother or to the
2 child? You say the Act requires that? Whenever there is a
3 MARS in the house, or stepfather in the house, and the state
4 has, puts a legal obligation on him, that this Act requires that
5 you would assume that that income is available to the child?

6 A Assume that it is available, because it is a
7 resource. It's something in addition to proving income.

8 Q Well, this isn't an actual resource unless it's
9 actual; is it?

10 A But neither is the resource of the child living
11 with the natural father. The natural father may not --

12 Q That isn't my question; that isn't my point.
13 And I would make the same argument that, perhaps the HEW could
14 say that in the case of the parent living in the house we're
15 not going to assume income, either.

16 A As this Court pointed out in King versus Smith,
17 if there is a legal obligation of support, proof of actual
18 contribution cannot be determinative. That's the language --

19 Q It may not be determinative, but do you think a
20 regulation which requires proof of actual contribution is
21 invalid under that section?

22 A Yes, because it defines a child in California
23 to be resourceless. The child can have nothing other than the
24 income that the state, through some administrative miracle --

25 Q Well, if the MARS regularly and definitely

1 refuses to contribute anything to the support of the child,
2 regardless of the legal obligation on him imposed by the state,
3 is that a resource of the child?

4 A No, but the mother will undoubtedly kick the
5 man out of the house.

6 Q Well, that's hardly a remedy.

7 A But it is a --

8 Q That's not very relevant for a legal question.

9 A I think it is, Mr. Justice. It's a weapon;
10 it's a method of enforcement of the obligation that the state
11 is reducing the grant and the mother can say with real meaning:
12 "Support me or get out."

13 And the facts of this case, the complaints in this
14 case, despite their protestations that the men are not support-
15 ing the children in the house, the complaints themselves admit
16 that, due to the emergency, as the language of the plaintiffs,
17 the Appellants use, "due to the emergency caused by this state
18 statute the men are supporting the children until the statute
19 is declared invalid."

20 The statute does work. It is enforceable and the
21 men are supporting the children; at least some of the main
22 plaintiffs are, and the record will show that.

23 The other fact is that the -- in the case of the step
24 father and presumably in the MARS as well, it's literally im-
25 possible for them not to support them, at least in some of

1 these cases. The man has taken the welfare mother and her
2 children into his home. He has put a roof over their head,
3 which is the case in several main plaintiffs in this appeal.
4 The man has brought the children into his home. Now, cer-
5 tainly to some extent he's putting a roof over their head,
6 which is a lessened need for public expense to support that
7 family.

8 Q California does have a maximum grant regulation,
9 does it not?

10 A Under challenge. The case is -- Yes; it does
11 have a maximum grant and the case has been argued before this
12 Court.

13 Q Right.

14 A Yes.

15 Q And do you have a, do you work out a standard
16 of need under your system and it varies with whether or not --
17 with the kind of living conditions, the kind of shelter that
18 they have?

19 A There is a maximum amount of shelter need,
20 although there is another case in California on that issue,
21 that the state law and Social Security Act, the argument is,
22 compel the State to pay actual shelter needs.

23 But, it's a -- the current system is that there are
24 allocated specific amounts for each of the various needs:
25 shelter, food and clothing and so on.

1 Q Right.

2 Q With a maximum per family unit?

3 A A maximum per family unit up to the point, I
4 believe it's 10 children and from thatpoint on there is \$6
5 added per child after ten children, which the attack on the
6 statute is that that, of course, is --

7 Q Is violative of the Federal statute and
8 violative of the Equal Protection Clause of the 14th Amendment.

9 A Yes.

10 I believe, Mr. Justices, through the questioning that
11 I have covered most of the points that I wished to cover unless
12 the Court has some further questions --

13 Q Would it be fair to say that part of the
14 problem, or at least part of the problem is to what extent
15 leverage may be used against the children to enforce obligations
16 against the adults?

17 A I think that that is somewhat there.

18 Q Will you state it in your own way?

19 A I think the question is, taking King versus
20 Smith, as the starting point of what is and what is not allow-
21 able, the child in a home where there is a legally-obligated
22 man, a support-obligated man, a burden may fall on that child
23 because the man may not be performing his duties. To that ex-
24 tent inherent in the Social Security Act and in the AFDC
25 program, is that the child may be harmed because of a

1 delinquent father. But, so long as he remains in the house,
2 the burden is the child's and our essential argument is that
3 the support obligation which California imposes on a MARS or
4 a stepfather in the house, may put a burden on the child,
5 although we question that factually that does happen that
6 often, as we think the record in this case will show, that it
7 is not as absurd as the Appellants would argue to the extent
8 that the man will support someone other than his own children.

9 To the extent that there is a supportive obligation,
10 the Social Security Act, we submit, makes that child either
11 a nondependent child because of the natural parent, or a less-
12 needy child, because of a perhaps, lesser support obligation,
13 clearly enforceable, but the extent of the obligation on the
14 man may be less in terms of dollar amounts.

15 The support obligation of a natural father is without
16 limitation. The support obligation of the MARS and the step-
17 father, as the state computes the amount of the obligation,
18 may turn out to be a lesser amount than the amount the natural
19 father would have to pay.

20 Q Well, if you have a natural working father,
21 with this hypothetical, a natural father who is working, and he
22 more or less regularly drinks up half of his earnings, and we
23 have deprived children, then, as a result. Can they get Aid to
24 Dependent Children while he's living in the house, fully
25 employed?

1 A No.

2 Q So that you have children who suffer as a con-
3 sequences of the adults, which is beyond the reach of --

4 A The Social Security Act is only one of many
5 programs who try to alleviate poverty, but to the -- it's
6 limited; it is to provide support for children who do not have
7 some breadwinner to look to. It's not essential that the
8 breadwinner perform his duty of supporting the children.
9 Congress expected that the breadwinner would support the child-
10 ren in his home. California expects the same thing, but the
11 natural father or the MARS or the stepfather may spend his
12 earnings on wine, women and song, or whatever; the children may
13 suffer, but the AFDC program is not the way that you solve that
14 problem.

15 Thank you very much.

16 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Linderman.

17 I'm not sure whether there is any time left or not.
18 My markings are not clear. Apparently there is no time left.
19 Thank you for your submissions; the case is submitted.

20 (Whereupon, at 11:14 o'clock a.m. the argument in the
21 above-entitled matter was concluded)