

116 L Ed 2d 947 JUDGE'S LIABILITY FOR DAMAGES

Supreme Court's views as to judge's liability for damages

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RESEARCH REFERENCES

Annotations

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Federal Statutes, Constitution, and Court Rules

42 USCS § 1983

Encyclopedias, Treatises, and Specialized Services

1 Am Jur 2d , Abuse of Process § 21

15 Am Jur 2d , Civil Rights §§ 268, 269

32 Am Jur 2d , False Imprisonment §§ 64-73

46 Am Jur 2d , Judges §§ 72-83

47 Am Jur 2d , Justices of the Peace §§ 18-24, 26, 27

50 Am Jur 2d , Libel and Slander §§ 193, 194, 231, 233, 242, 243

52 Am Jur 2d , Malicious Prosecution § 66

6 Federal Procedure, L Ed, Civil Rights §§ § 11:249, 11:250

Practice Aids

5 Federal Procedural Forms, L Ed, Civil Rights § § 10:157

10 Am Jur Pl & Pr Forms (Rev), 131, 133

False Imprisonment

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Libel and Slander

L Ed Digest, Civil Rights § 32

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ALR Index, Judges; Justice of the Peace; Privileges and Immunities

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I. Preliminary Matters

§ 1. Introduction

[a] Scope

This annotation¹ collects and analyzes those decisions in which the United States Supreme Court has determined whether a judge² may be subjected to liability for damages.³

[b] Related matters

Validity, construction, and application of 18 USCS §§ 241 and 242 (and similar predecessor provisions), providing criminal liability for conspiring to deprive, or depriving, person of civil rights-Supreme Court cases, 137 L Ed 2d 1091

Supreme Court's views as to application or applicability of doctrine of qualified immunity in action under 42 USCS § 1983, or in Bivens action, seeking damages for alleged civil rights violations, 116 L Ed 2d 965

Supreme Court's views as to measure or elements of damages recoverable in federal civil rights action under 42 USCS § 1983, 91 L Ed 2d 647

Supreme Court's views as to awards of attorneys' fees in federal civil rights cases, 87 L Ed 2d 713

Supreme Court's construction of Civil Rights Act of 1871 (42 USCS § 1983) providing private right of action for violation of federal rights, 43 L Ed 2d 833

Sex discrimination-Supreme Court cases, 27 L Ed 2d 935

Immunity of public officials from personal liability in civil rights actions brought by public employees under 42 USCS § 1983, 63 ALR Fed 744

Actionability, under 42 USCS § 1983, of claims against persons other than police officers for false arrest or false imprisonment, 44 ALR Fed 225

Civil liability of judicial officer for malicious prosecution or abuse of process, 64 ALR 3d 1251

Allowance of damages to successful plaintiff or relator in mandamus, 73 ALR 2d 903

Libel and slander; findings, report, or the like of judge or person aiding in judicial capacity as privileged, 42 ALR 2d 825

§ 2. Background and summary

In a decision cited by the United States Supreme Court in two of its earliest cases involving the question of a judge's liability for damages,⁴ and said to have established the doctrine of

judicial immunity at common law, Lord Coke of the English **Star Chamber** (1) held in *Floyd v Barker* (1607) 77 Eng Rep 1305, that the judges of English courts of record could not be called into question, except to the King, "for any supposed corruption, which extends to the annihilating of a record, or of any judicial proceedings before them," and (2) further ruled that such a judge was immune "for anything done by him as Judge."⁵ The Supreme Court has adhered consistently to the rule initially enunciated by *Floyd v Barker* in numerous decisions, in support of the view that a judge generally may invoke the doctrine of judicial immunity with respect to suits for damages against the judge (§3, *infra*).

Although an earlier decision appeared to take a contrary view, the court has held that judges are not liable even where judicial acts in excess of their jurisdiction are alleged to have been done maliciously, corruptly, or in bad faith (§4, *infra*). In addition, the Supreme Court has held or recognized that a judge is immune from damages in actions under 42 USCS § 1983, notwithstanding statutory language under which "[e]very person" who brings about the deprivation of the federal constitutional or statutory rights of another under color of state law is liable to the party injured (§5, *infra*).

In the Supreme Court's view, however, the application of the general rule of judicial immunity from liability for damages is subject to two distinct limitations. As to the first limit, the doctrine is inapplicable where a judge's challenged actions were not taken in the judge's judicial capacity (§6[a], *infra*); but the judge still may not be liable in damages if the judge's actions qualify as legislative, based on principles of legislative immunity (§6[b], *infra*). As to the second limit, the judicial immunity doctrine is inapplicable to preclude a judge's liability for damages where the judge's actions were taken in the absence of jurisdiction, which some Supreme Court decisions have explained to mean the clear or complete absence of all jurisdiction (§7[a], *infra*). The court has distinguished such actions from those which are taken in excess of jurisdiction, but with respect to a matter which is within the judge's subject matter jurisdiction, and has recognized that immunity from damages applies to the latter (§7[b], *infra*). Furthermore, while the Supreme Court's language in a few cases appears to require that judges having limited jurisdiction were entitled to immunity from damages only for acts within their jurisdiction, a subsequent decision over 50 years later did not distinguish a municipal police justice from judges generally for purposes of invoking the immunity doctrine (§7[c], *infra*).

With respect to particular alleged conduct (§§8, 9, 10, 11, 12, 13 and 14, *infra*), the Supreme Court has held that judges were immune from damages liability for particular claims concerning (1) appellate adjudications against a party with intent to injure the party (§8, *infra*); (2) participation in an unconstitutional conviction (§9, *infra*); (3) the grant of an ex parte petition for a minor's sterilization (§10, *infra*); (4) the authorization of the courthouse seizure of an attorney, for purposes of bringing the attorney into the judge's courtroom to appear in a pending action before the judge (§11, *infra*); (5) the taking of disciplinary actions against an attorney by a judge having the power to do so, in cases involving disbarments (§12, *infra*); and (6) judicial notetaking

during trials (§14, *infra*). The Supreme Court, however, has also held that a particular judge was not entitled to absolute immunity from damages liability with respect to a claim concerning the judge's demotion and discharge of a female probation officer (§13, *infra*).

II. General Considerations

A. Rule of Immunity

§ 3. Generally

The following decisions of the Supreme Court support the view that in general, a judge may invoke the doctrine of judicial immunity with respect to suits for damages against the judge: *Wilkes v Dinsman* (1849) 48 US 89, 12 L Ed 618; *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285 (judges of superior or general authority); *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646 (judges of courts of superior or general authority); *Spalding v Vilas* (1896) 161 US 483, 40 L Ed 780, 16 S Ct 631 (judges of courts of superior jurisdiction); *Alzua v Johnson* (1913) 231 US 106, 58 L Ed 142, 34 S Ct 27; *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213; *Imbler v Pachtman* (1976) 424 US 409, 47 L Ed 2d 128, 96 S Ct 984; *Butz v Economou* (1978) 438 US 478, 57 L Ed 2d 895, 98 S Ct 2894; *Ferri v Ackerman* (1979) 444 US 193, 62 L Ed 2d 355, 100 S Ct 402 (apparently recognizing rule); *Supreme Court of Virginia v Consumers Union of United States, Inc.* (1980) 446 US 719, 64 L Ed 2d 641, 100 S Ct 1967; *Dennis v Sparks* (1980) 449 US 24, 66 L Ed 2d 185, 101 S Ct 183; *Briscoe v LaHue* (1983) 460 US 325, 75 L Ed 2d 96, 103 S Ct 1108; *Pulliam v Allen* (1984) 466 US 522, 80 L Ed 2d 565, 104 S Ct 1970; *Cleavinger v Saxner* (1985) 474 US 193, 88 L Ed 2d 507, 106 S Ct 496; *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538; *National Collegiate Athletic Ass'n v Tarkanian* (1988) 488 US 179, 102 L Ed 2d 469, 109 S Ct 454; *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286; *Hafer v Melo* (1991, US) 116 L Ed 2d 301, 112 S Ct 358; and *Antoine v Byers & Anderson* (1993, US) 124 L Ed 2d 391, 113 S Ct 2167.

The doctrine that judges of superior or general authority are not liable to civil action for their judicial acts, unless perhaps where such acts were in excess of jurisdiction and done maliciously or corruptly, was as old as the law, and its maintenance was essential to the impartial administration of justice, the Supreme Court held in *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285. Any other doctrine, the court noted, would necessarily lead to the degradation of the judicial authority and the destruction of its usefulness. Unless judges, in administering justice, were uninfluenced by considerations personal to themselves, continued the court, they could afford little protection to the citizen in his person or property. The court observed that judges could not be uninfluenced by such considerations if, whenever they erred in judgment as to their jurisdiction upon the nature and extent of which they were constantly required to pass, they could be subjected to prosecution

at the instance of every party imagining himself aggrieved, and called upon in a civil action in another tribunal-and perhaps before an inferior judge-to vindicate their acts. Noting that the exemption for judges from civil action was for the sake of the public, and not merely for the protection of the judge, the Supreme Court added that such exemption had been maintained by a uniform course of decisions in England for centuries and in the United States ever since its settlement.

In discussing the purposes served by judicial immunity from liability in damages, the court stated in *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538, that if judges were personally liable for erroneous decisions, the resulting avalanche of suits-most of them frivolous but vexatious-would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, said the court, and it would manifestly detract from independent and impartial adjudication. The court further noted that suits against judges were not the only available means through which litigants could protect themselves from the consequences of judicial error, since most judicial mistakes or wrongs were open to correction through ordinary mechanisms of review, which largely were free of the harmful side effects inevitably associated with exposing judges to personal liability.

It was acknowledged by a long line of Supreme Court precedents that a judge generally was immune from a suit for money damages, the court stated in *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286. Citing *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, the court said that although unfairness and injustice to a litigant might result on occasion, it was a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, was free to act upon his own convictions, without apprehension of personal consequences to himself.

The Supreme Court stated in *Antoine v Byers & Anderson* (1993, US) 124 L Ed 2d 391, 113 S Ct 2167, that the doctrine of judicial immunity was supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability.

Common law granted immunity to judges acting within scope of their duties. *Van de Kamp v Goldstein* (2009) 555 US 335, 129 S Ct 855, 172 L Ed 2d 706.

§ 4. Effect of alleged malice, corruption, or bad faith

In the following cases, the Supreme Court expressed the view that a judge's immunity from liability for damages was not affected by alleged malice, corruption, or bad faith on the part of the judge.

Notwithstanding language in an opinion issued 3 years previously to the effect that judges of superior or general authority were not liable to civil actions for their judicial acts, even when in excess of jurisdiction, unless such acts in excess of jurisdiction were done maliciously or corruptly,⁶ the Supreme Court held in *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, that,

the exception for malicious or corrupt acts being unnecessary to a correct statement of the law, such judges were not liable even where acts in excess of jurisdiction were alleged to have been done maliciously or corruptly. The court stated that the judges' exemption from civil liability could not be affected by the motives with which their judicial acts were done, since the allegation of malicious or corrupt motives could always be made, and judges thus would be subjected to the same vexatious litigation upon such allegations whether or not malicious or corrupt motives existed. The law provided private parties with numerous remedies against the consequence of judges' erroneous or irregular actions from whatever motives such actions proceeded, said the court, but judges could only be reached by public prosecution for malice or corruption while exercising their judicial functions within the general scope of their jurisdiction.

Even when a judge was accused of acting maliciously and corruptly, the judge was immune from liability for damages for acts committed within the judge's judicial jurisdiction, the Supreme Court stated in *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213. The court said that it was a judge's duty to decide all cases within his jurisdiction that were brought before him, including controversial cases that aroused the most intense feelings in the litigants. Although the judge's errors might be corrected on appeal, said the court, the judge should not have to fear that unsatisfied litigants might hound him with litigation charging malice or corruption. The court added that imposing such a burden on judges would contribute not to principled and fearless decisionmaking, but to intimidation.

To the same effect as *Bradley v Fisher*, *supra*, are *Stump v Sparkman* (1978) 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, reh den 436 US 951, 56 L Ed 2d 795, 98 S Ct 2862; and *Butz v Economou* (1978) 438 US 478, 57 L Ed 2d 895, 98 S Ct 2894.

Judicial immunity, since it is an immunity from suit and not just an immunity from the ultimate assessment of damages, is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial, the court stated in *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286.

For the Supreme Court's rejection, with respect to a particular justice's liability for damages, of a suggested limitation of the judge's immunity by a particular statute referring to actions rendered in good faith and within jurisdictional limits, see *Alzua v Johnson* (1913) 231 US 106, 58 L Ed 142, 34 S Ct 27, *infra* §7[c].

§ 5. Applicability to suits brought under 42 USCS § 1983

Under the language of 42 USCS § 1983, originally enacted in 1871, "[e]very person" who brings about the deprivation of the federal constitutional or statutory rights of another under color of state law is liable to the party injured. Notwithstanding such inclusive language, it has been expressly held or recognized by the Supreme Court in the following cases that the rule under which a judge is immune from liability for damages is applicable in suits brought against a judge under § 1983.

In *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213, the court held that the settled principle of law that judges were immunized from liability for damages for acts committed within their judicial jurisdiction was not abolished by the enactment of 42 USCS § 1983. The court noted that the legislative record of § 1983 gave no clear indication that Congress meant to abolish wholesale all common-law immunities. Observing that the court had previously held that the immunity of legislators for acts within the legislative role was not abolished,⁷ the court said that the immunity of judges for acts within the judicial role was equally well established, and it was to be presumed that Congress would have specifically so provided had it wished to abolish the doctrine.

To the same effect as *Pierson v Ray*, *supra*, see *Imbler v Pachtman* (1976) 424 US 409, 47 L Ed 2d 128, 96 S Ct 984; *Stump v Sparkman* (1978) 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, reh den 436 US 951, 56 L Ed 2d 795, 98 S Ct 2862; *Dennis v Sparks* (1980) 449 US 24, 66 L Ed 2d 185, 101 S Ct 183; *Briscoe v LaHue* (1983) 460 US 325, 75 L Ed 2d 96, 103 S Ct 1108; and *Cleavinger v Saxner* (1985) 474 US 193, 88 L Ed 2d 507, 106 S Ct 496.

B. Exceptions to Immunity

§ 6. Where judge's actions are not taken in judicial capacity

[a] Generally

In the following Supreme Court cases, support is given expressly or by negative implication to the view that an exception exists to the general rule of judicial immunity from liability for damages with respect to actions which are not taken in a judge's judicial capacity or within a judge's judicial jurisdiction: *Wilkes v Dinsman* (1849) 48 US 89, 12 L Ed 618; *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285; *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646; *Spalding v Vilas* (1896) 161 US 483, 40 L Ed 780, 16 S Ct 631; *Alzua v Johnson* (1913) 231 US 106, 58 L Ed 142, 34 S Ct 27; *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213; *O'Shea v Littleton* (1974) 414 US 488, 38 L Ed 674, 94 S Ct 669; *Imbler v Pachtman* (1976) 424 US 409, 47 L Ed 128, 96 S Ct 984; *Stump v Sparkman* (1978) 435 US 349, 55 L Ed 331, 98 S Ct 1099, reh den 436 US 951, 56 L Ed 795, 98 S Ct 2862; *Butz v Economou* (1978) 438 US 478, 57 L Ed 895, 98 S Ct 2894; *Ferri v Ackerman* (1979) 444 US 193, 62 L Ed 355, 100 S Ct 402; *Supreme Court of Virginia v Consumers Union of United States, Inc.* (1980) 446 US 719, 64 L Ed 641, 100 S Ct 1967; *Dennis v Sparks* (1980) 449 US 24, 66 L Ed 185, 101 S Ct 183; *Briscoe v LaHue* (1983) 460 US 325, 75 L Ed 2d 96, 103 S Ct 1108; *Cleavinger v Saxner* (1985) 474 US 193, 88 L Ed 2d 507, 106 S Ct 496; *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538; *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286; *Hafer v Melo* (1991, US) 116 L Ed 2d 301, 112 S Ct 358; and *Antoine v Byers & Anderson* (1993, US) 124 L Ed 2d 391, 113 S Ct 2167.

For purposes of determining whether a judge's action was undertaken in a judicial capacity and thus immune from liability for damages, the Supreme Court stated in *Stump v Sparkman* (1978) 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, reh den 436 US 951, 56 L Ed 2d 795, 98 S Ct 2862, that the factors to be considered related to (1) the nature of the act itself, and thus whether the act was a function normally performed by a judge; and (2) the expectations of the parties, that is, whether the parties had dealt with the judge in his judicial capacity.

Observing that judicial immunity from liability in damages is justified and defined by the functions that such immunity protects and serves, and not by the person to whom it attaches, the Supreme Court stated in *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538, that while the court had not articulated a precise and general definition of the class of acts entitled to immunity, the decided cases suggested an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges might on occasion be assigned by law to perform. Citing a Supreme Court case which involved a criminal charge against a judge,⁸ the court said that administrative decisions had not been regarded as judicial acts, even though such decisions might be essential to the functioning of the courts. The court further noted that under *Supreme Court of Virginia v Consumers Union of United States, Inc.* (1980) 446 US 719, 64 L Ed 2d 641, 100 S Ct 1967, *infra* §6[b], legislative immunity-rather than judicial immunity-extended to judges acting to promulgate a code of conduct for attorneys.

In addition to citing its previous decision in *Stump v Sparkman*, *supra*, to the effect that a judge is not immune from liability for damages for actions which are not taken in the judge's judicial capacity, the Supreme Court observed in *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286, that if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a "nonjudicial" act, on the ground that an improper or erroneous act could not be said to be normally performed by a judge.

With respect to damages liability, it was stated by the Supreme Court in *Antoine v Byers & Anderson* (1993, US) 124 L Ed 2d 391, 113 S Ct 2167, that the touchstone for the applicability of the doctrine of judicial immunity was the performance of the function of resolving disputes between parties or of authoritatively adjudicating private rights.

Judge's absolute immunity does not extend to actions performed in purely administrative capacity. *Clinton v Jones* (1997, US) 137 L Ed 2d 945, 117 S Ct 1636.

[b] Legislative actions

It apparently has been held by the Supreme Court that a judge who undertakes action in a legislative capacity, while unable to invoke the doctrine of judicial immunity for such action, nevertheless may be immune from liability for damages based on principles of legislative immunity.

Observing that a private civil action, whether for an injunction or for damages, created a distraction and forced legislators to divert their time, energy, and attention from their legislative

tasks to defend the litigation, the Supreme Court held in *Supreme Court of Virginia v Consumers Union of United States, Inc.* (1980) 446 US 719, 64 L Ed 2d 641, 100 S Ct 1967, in an action brought under 42 USCS § 1983 to challenge the code for attorney conduct which had been promulgated by a state's highest court, that such court and its members were immune from suit-apparently including suit for damages-for acts performed in their legislative capacity. Noting that § 1983 did not create civil liability for acts undertaken in a field where legislators traditionally had power to act, the Supreme Court stated that there was little doubt that if the state legislature instead had enacted the code, the legislature could have sought dismissal on grounds of absolute legislative immunity. In the case at hand, where the state's highest court had claimed that it had inherent power to regulate the bar and that it had exercised the state's entire legislative power with respect to regulating the bar, the members of the state's highest court were the state's legislators for the purpose of issuing the code, the Supreme Court said. The Supreme Court vacated and remanded the judgment of a three-judge Federal District Court in the case at hand on grounds unrelated to the issue of damages.

To the same effect, see *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538 (recognizing rule).

§ 7. Where judge's actions are taken in absence of jurisdiction

[a] Generally

The following Supreme Court decisions support the view, either expressly or by negative implication, that an exception exists to the general rule of judicial immunity from liability for damages with respect to actions which are taken by a judge in the absence of jurisdiction.

In *Wilkes v Dinsman* (1849) 48 US 89, 12 L Ed 618, the Supreme Court said that it was well-settled that all judicial officers were exempted from civil prosecution for their acts when acting on subjects within their jurisdiction.

The Supreme Court stated in *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285, that it was a general principle, applicable to all judicial officers, that they were not liable to a civil action for any judicial act done within their jurisdiction.

Exemption from liability to civil suit for judicial acts exists for judges of courts of superior or general authority where there is jurisdiction of the subject matter, even where irregularity and error attend the exercise of such jurisdiction, the Supreme Court stated in *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646. As discussed in §7[b], *infra*, however, the court further noted that there was a distinction to be observed between judicial acts done in excess of jurisdiction, as to which judges were exempt from liability, and judicial acts done in the clear absence of all jurisdiction over the subject matter, as to which judges were not exempt from liability.

It was noted in *Imbler v Pachtman* (1976) 424 US 409, 47 L Ed 2d 128, 96 S Ct 984, that with apparent reference to liability for damages, the common-law absolute immunity of judges for

acts committed within their judicial jurisdiction was preserved under 42 USCS § 1983

In *Dennis v Sparks* (1980) 449 US 24, 66 L Ed 2d 185, 101 S Ct 183, a case that involved a damages claim under 42 USCS § 1983 against private parties with respect to an injunction which allegedly had been issued in a corrupt manner by a state judge, as the result of a conspiracy between the private parties and the judge, the Supreme Court said that the judge's immunity was dependent on the challenged conduct being an official judicial act within his statutory jurisdiction, broadly construed.

With respect to money damages, a judge is not immune for actions which are judicial in nature, but which are taken in the complete absence of all jurisdiction, the court stated in *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286.

Also to the effect that an exception exists to the general rule of judicial immunity from liability for damages with respect to actions which are taken by a judge in the absence of jurisdiction are *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213; and *National Collegiate Athletic Ass'n v Tarkanian* (1988) 488 US 179, 102 L Ed 2d 469, 109 S Ct 454.

[b] As distinct from judge's actions in excess of jurisdiction

The Supreme Court has recognized that while a judge can be held liable in damages for actions taken in the clear absence of all subject matter jurisdiction, a judge is immune from such liability for actions which are taken in excess of jurisdiction, but with respect to a matter which is within the judge's subject matter jurisdiction.

In *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, the Supreme Court stated that a distinction was to be observed between judicial acts done in excess of jurisdiction, as to which judges could not be subjected to civil liability, and judicial acts done in the clear absence of all jurisdiction over the subject matter, as to which judges could be held personally liable. Where there clearly was no jurisdiction over the subject matter, said the court, any authority exercised by a judge was a usurped authority, and no excuse was permissible for the exercise of such authority when the want of jurisdiction was known to the judge. However, the court noted, where jurisdiction over the subject matter was invested by law in the judge, or in the court which the judge held, questions as to the manner and extent in which the jurisdiction was to be exercised generally were as much questions for the judge's determination as were any other questions involved in the case, although the validity of judgments might depend upon the correctness of the judge's determination of such jurisdictional questions. By way of illustration, the court stated that if a probate court-invested only with authority over wills and the settlement of estates of deceased persons-should proceed to try parties for public offenses, and the probate judge necessarily knew that the court's jurisdiction over the subject of offenses was entirely wanting, the judge's commission would afford no protection to him in the exercise of the usurped authority. Continuing its illustration, the court said that if instead a judge of a criminal court with general criminal jurisdiction should hold a particular act to be a public offense when it was not and

proceed to the arrest and trial of a party charged with such act, or if the judge should sentence a party convicted to a greater punishment than that authorized by the law, no personal liability to civil action for such acts would attach to the judge, although the acts would be in excess of jurisdiction. Observing that some of the most difficult and embarrassing questions which a judicial officer was called upon to consider and determine related to the jurisdiction of the judicial officer or the court, or the manner in which jurisdiction should be exercised, the Supreme Court added that the same principle of exemption from liability which obtained for errors committed in the ordinary prosecution of a suit where there was jurisdiction of both subject and person applied in cases involving questions as to the exercise of jurisdiction.

[c] Judge having limited jurisdiction

It apparently has been recognized by the Supreme Court in the following cases that a judge having limited jurisdiction is immune from liability for damages only with respect to judicial acts within the judge's jurisdiction.

The Supreme Court stated in *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285, that in contrast to judges of superior or general authority-as to whom there was no liability for their judicial acts, unless such were done maliciously or corruptly, even when the acts were in excess of their jurisdiction-it had been held that judges of limited and inferior authority were protected only when they acted within their jurisdiction.

To the same effect is *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646.

In rejecting the contention that a justice of the supreme court of the Philippine Islands⁹ should be held liable for rendering a false judgment in view of a Philippine statute insulating a "judge, justice of the peace, or assessor" from liability only with respect to judicial actions rendered in good faith and within jurisdictional limits, the United States Supreme Court noted in *Alzua v Johnson* (1913) 231 US 106, 58 L Ed 142, 34 S Ct 27, that the statute had in mind judges of inferior courts, as to whom a different rule had been held to prevail.

See, however, *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213, *infra* §9, in which the Supreme Court-in holding that a municipal police justice was immune from liability for damages with respect to the justice's role in the unconstitutional conviction of certain individuals-did not distinguish the municipal police justice from judges generally, for purposes of invoking the doctrine which established the immunity of judges for acts committed within their judicial jurisdiction.

* **Comment:** Reviewing the Supreme Court's jurisprudence with respect to judicial immunity, one commentator has expressed the view that in light of developments in the law, such as the shift in administrative authority from justices of the peace to statutory agencies and the availability of judicial review of administrative action, there is no longer any reason to distinguish between the immunity of superior and inferior court judges.¹⁰

III. Liability For Particular Alleged Conduct

§ 8. Appellate adjudications against party with intent to injure party

The Supreme Court has held that a judge's particular, alleged appellate adjudications against a party with the intent to injure the party did not subject the judge to liability for damages.

Affirming a judgment of the supreme court of the Philippine Islands,¹¹ the United States Supreme Court held in *Alzua v Johnson* (1913) 231 US 106, 58 L Ed 142, 34 S Ct 27, that the doctrine of judicial immunity protected a justice of the Philippine supreme court against a suit to recover damages upon alleged grounds to the effect that the justice-with full knowledge and intent to injure, and without jurisdiction-had entered an appellate judgment against an individual contrary to an order of the full Philippine supreme court and had made false statements of facts in appellate opinions affecting the individual. The United States Supreme Court, citing *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285, and *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, said that it was fundamental that the immunity of the justice from suit was the same as that of judges in the United States, and the Supreme Court added that the principle of immunity was so deep seated in the American system that it was to be regarded as carried into the Philippines by implication as soon as the United States established courts in the islands.

§ 9. Participation in unconstitutional conviction

A judge's participation in an unconstitutional conviction of criminal defendants has been held by the Supreme Court not to subject the judge to liability in an action for damages brought by the defendants.

Affirming a Federal Court of Appeals' judgment in relevant part, the Supreme Court held in *Pierson v Ray* (1967) 386 US 547, 18 L Ed 2d 288, 87 S Ct 1213, that a municipal police justice was immune from liability in an action for damages brought under 42 USCS § 1983 by clergymen whom the justice had unconstitutionally convicted of violating a state breach-of-the-peace statute in connection with the clergymen's attempted use of segregated facilities at an interstate bus terminal, where the record was barren of any proof or specific allegation that the justice had played any role in the clergymen's arrests and convictions other than to adjudge them guilty when their cases were heard.

§ 10. Grant of ex parte petition for minor's sterilization

It has been held by the Supreme Court that the grant of an ex parte petition which sought authorization for the sterilization of the petitioner's minor daughter, by a judge of a state court having general jurisdiction, did not subject the judge to liability for damages in an action later brought by the daughter.

Reversing the judgment of a Federal Court of Appeals to the contrary, the Supreme Court held in *Stump v Sparkman* (1978) 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, reh den 436 US 951, 56 L Ed 2d 795, 98 S Ct 2862, that a judge of a state court of general jurisdiction was immune from liability for damages in an action brought against him under 42 USCS § 1983 by a woman and her husband, which action was based on the fact that, several years before, the judge had granted an ex parte petition filed by the woman's mother while the woman was still a minor to have her sterilized. In the petition, the mother had claimed that (1) her daughter, who was then 15 years old, was "somewhat retarded"; and (2) it would be in the best interest of the daughter, who allegedly had begun associating with older youth or young men, if she underwent a tubal ligation "to prevent unfortunate circumstances." The Supreme Court stated that it could not be said that there was a clear absence of all jurisdiction for the state court judge to consider a sterilization petition filed by a minor's parent, where there was no state statute or case law prohibiting such consideration by a state court of general jurisdiction. A case by a state appellate court which held that a parent did not have a common-law right to have a minor child sterilized spoke only to parental rights, the Supreme Court said, and did not question the jurisdiction of a state court judge who was presented with such a petition from a parent. Furthermore, the Supreme Court observed, the state court judge's approval of the sterilization petition was a judicial act-notwithstanding the undocketed, ex parte nature of the proceeding-since (1) in approving a petition relating to the affairs of a minor, the judge performed the type of act normally performed only by judges; and (2) as was acknowledged by the woman and her husband, such performance was in the judge's judicial capacity. Rejecting the view that the state court judge should not be held immune from liability because of the tragic consequences of his actions in the case at hand, the Supreme Court said that the fact that an issue before a judge was a controversial one was all the more reason that the judge should be able to act without fear of suit. The court rejected the contention that even if the action of the judge in granting the petition was not foreclosed under the state's statutory scheme, the judge could be held liable for an illegitimate exercise of common-law power due to an alleged failure to comply with elementary principles of procedural due process.

§ 11. Authorization of courthouse seizure of attorney

The Supreme Court has held that a judge's alleged actions in authorizing the seizure of an attorney who already was in the judge's courthouse, for purposes of bringing the attorney into the judge's courtroom to appear in a pending matter, did not subject the judge to liability for damages.

Even assuming the truth of allegations that, after a county public defender had failed to appear at a state judge's calendar call, the judge had authorized and ratified the actions of police officers in seizing the public defender with excessive force and bringing him from another courtroom into the judge's courtroom, the state judge was immune from a suit under 42 USCS § 1983 for money damages, the Supreme Court held in *Mireles v Waco* (1991, US) 116 L Ed 2d 9, 112 S Ct 286.

Reversing a judgment of a Federal Court of Appeals, which had expressed the view that the state judge's alleged actions were not taken in his judicial capacity, the Supreme Court noted that a judge's direction to court officers to bring before the judge a person who was in the courthouse was a function normally performed by a judge. The public defender was dealing with the state judge in his judicial capacity, said the court, insofar as the public defender had been called into the courtroom for purposes of a pending case. A judge's direction to police officers to carry out a judicial order with excessive force was not a function normally performed by a judge, the Supreme Court acknowledged, but the relevant inquiry instead was the nature and function of the judge's action in directing police officers to bring counsel in a pending case before the court. The fact that the state judge's order was carried out by police officers did not transform the state judge's action from judicial to executive in character, the Supreme Court observed, in that the state judge's direction was no more executive than a judge's issuance of a warrant for an executive officer to search a home. Moreover, the court stated, the state judge's action in authorizing and ratifying the police officers' use of excessive force was in excess of authority, but such action was taken in the very aid of the judge's jurisdiction over a matter before him, and hence could not be said to have been taken in the complete absence of all jurisdiction.

§ 12. Attorney discipline

In the following cases, it was held by the Supreme Court that the taking of disciplinary actions against an attorney by a judge having the power to do so did not subject the judge to liability for damages.

A Federal Circuit Court did not err in ruling that a state court justice was immune from a suit for damages by an attorney who sued the justice for the justice's allegedly wrongful removal of the attorney from the state bar, the Supreme Court held in *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285. After the justice received a letter which a client of the attorney had written, concerning the attorney's failure to pay the client a certain sum to which the client alleged entitlement, the attorney was notified in open court by the justice that his professional conduct and standing would be considered at a hearing 5 days later. Following the hearing-at which the attorney stated that he had paid his client the sum in question-the attorney nevertheless was disbarred for allegedly extortionate conduct with respect to a client. According to the Supreme Court, the state court on which the justice sat was a court of general jurisdiction which was empowered by statute to admit attorneys to practice in the courts of the state and to remove them for gross misconduct. Both the admission and removal of attorneys were judicial acts, the Supreme Court noted, and judges of superior or general authority were not liable for such acts, even when in excess of their jurisdiction, unless the acts were done maliciously or corruptly. Rejecting the attorney's contention that the justice never acquired jurisdiction to act in his case, the Supreme Court stated that the information imparted by the letter was sufficient to put in motion the authority of the state court, and the notice to the attorney was sufficient to bring the attorney before the state court to

explain the transaction to which the letter referred. The informality of the notice, or of the complaint by the letter, did not touch the question of the justice's jurisdiction, the Supreme Court said.

* **Note:** Although the Supreme Court in *Randall v Brigham*, *supra*, apparently recognized that a judge could be held liable for attorney discipline in excess of jurisdiction which was done maliciously or corruptly, the court's subsequent decision in *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, discussed below and in §4, *supra*, took the position that even malice or corruption were not grounds for excepting a judge's action in excess of jurisdiction from the general rule of judicial immunity from liability for damages.

It was held by the United States Supreme Court in *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646, that a justice of the District of Columbia Supreme Court was not liable for damages in an action brought by an attorney who alleged that he had been disbarred wrongfully by the justice. While serving as cocounsel for an accused at a trial in the criminal court of the District of Columbia, over which trial the justice was presiding, the attorney allegedly threatened the justice with personal chastisement for the justice's conduct toward the attorney during the progress of the trial. Immediately after the jury was discharged in the trial, the justice directed that an order be entered striking the attorney from the roll of attorneys practicing in criminal court. Affirming the judgment of the District of Columbia Supreme Court as to the justice's immunity from liability, the United States Supreme Court observed that the criminal court, as a court of general criminal jurisdiction, had the power to strike the attorney's name from the court's rolls. Although the justice had erred in not citing the attorney before striking the attorney's name, so that the attorney could show cause why the order should not be made and could make an explanation, defense, or apology, the Supreme Court said, the erroneous manner in which jurisdiction was exercised-however it might have affected the validity of the act-did not make the justice's act any less a judicial act, nor did it render the justice liable to answer for such act in damages.

§ 13. Demotion and discharge of court employee

The Supreme Court has held that a particular judge was not entitled to absolute immunity from liability for damages for the judge's demotion and discharge of a court employee.

A state court judge was acting in an administrative capacity when he demoted and discharged a female probation officer, and thus the judge was not entitled to absolute immunity from liability for damages in the probation officer's sex-discrimination action against him under 42 USCS § 1983, the Supreme Court, reversing a Federal Court of Appeals' judgment to the contrary, and remanding the case, held in *Forrester v White* (1988) 484 US 219, 98 L Ed 2d 555, 108 S Ct 538. The Supreme Court stated that although the judge's actions in demoting and discharging the probation officer might have been important in providing the necessary conditions of a sound adjudicative system, such actions were not themselves judicial or adjudicative in nature. A judge who hired or fired a probation officer, the court said, could not be distinguished meaningfully

from a district attorney who hired and fired assistant district attorneys, or from any other executive branch official who was responsible for making such employment decisions. The court noted that the alleged influence on the quality of judicial decisions by the threat of vexatious lawsuits filed by disgruntled ex-employees in no way served to distinguish judges from other public officials who hired and fired subordinates and did not create a great enough danger to justify absolute immunity. Moreover, said the Supreme Court, it was not significant that only a state court judge could hire or fire probation officers under applicable state law in the case at hand, since to conclude that such employment decisions were brought within the court's jurisdiction or converted into judicial acts because the state court judge acted within the scope of his authority would lift form above substance.

§ 14. Notetaking during trial

It has been recognized by the Supreme Court that a judge's notetaking during trial was entitled to immunity from damages liability.

Thus, in *Antoine v Byers & Anderson* (1993, US) 124 L Ed 2d 391, 113 S Ct 2167, which generally involved the extent of the immunity of a person other than a judge, the Supreme Court recognized that judicial notetaking as it was commonly practiced during trials was protected by absolute immunity from damages liability. The court noted that such notetaking involved the kind of discretionary decisionmaking that the doctrine of judicial immunity was designed to protect, given that common-law judges exercised discretion and judgment in deciding exactly what and how much they would write.

Footnote 1

The present annotation supersedes the one at 55 L Ed 2d 850.

Footnote 2

For purposes of this annotation, the term "judge" is a public officer who conducts or presides over a court of justice; see 46 Am Jur 2d , Judges § 1 Such term thus excludes executive or administrative officials who perform judicial or quasi-judicial functions or who perform prosecutorial functions that are associated with the judicial process in criminal cases.

Footnote 3

Being limited to the issue of a judge's liability for damages, the present annotation does not cover whether judicial immunity is a bar to other types of relief, such as injunctive relief or attorneys' fees; see generally 15 Am Jur 2d , Civil Rights § 278, and 46 Am Jur 2d , Judges § 72

Footnote 4

See *Randall v Brigham* (1869) 74 US 523, 19 L Ed 285; and *Bradley v Fisher* (1872) 80 US 335, 20 L Ed 646.

Footnote 5

As discussed in Block, Stump v Sparkman and the History of Judicial Immunity, 1980 Duke LJ 879 (November 1980).

Footnote 6

Randall v Brigham (1869) 74 US 523, 19 L Ed 285.

Footnote 7

See Tenney v Brandhove (1951) 341 US 367, 95 L Ed 1019, 71 S Ct 783, reh den 342 US 843, 96 L Ed 637, 72 S Ct 20.

Footnote 8

Ex parte Virginia (1880) 100 US 339, 25 L Ed 676, in which the Supreme Court declined to extend judicial immunity to a county judge who had been charged in a criminal indictment with discriminating on the basis of race in selecting trial jurors for the county's courts.

Footnote 9

This case arose when the Philippines were still a United States possession, prior to their obtaining independence.

Footnote 10

Block, Stump v Sparkman and the History of Judicial Immunity, 1980 Duke LJ 879 (November 1980).

Footnote 11

This case arose when the Philippines were still a United States possession, prior to their obtaining independence.