

VOL 53 ISS 6 ART. 10 | 0 | INTRODUCTION

Under the established doctrine of judicial immunity,¹ a judge is absolutely immune from a suit for damages for his judicial acts taken within or even in excess of his jurisdiction.² Judicial immunity is necessary for the proper administration of justice and for the advancement of various policies.³ The two policies most often proffered by courts and commentators are judicial independence⁴ and the need for finality in judicial proceedings.⁵ The public interest is substantially weakened if a judge allows fear of a suit to affect his decisions.⁶ In addition, if judicial matters are drawn into question by frivolous and vexatious actions "there never will be an end of causes: but controversies will be infinite."⁷

The leading modern case on the doctrine is *Stump v. Sparkman*,⁸ in which the Supreme Court held that a judge will remain absolutely immune from a damage suit if he acted within his jurisdiction, or even in "excess of his jurisdiction," but not in the "clear absence of all jurisdiction"⁹ and the act he performed was a "judicial act."¹⁰

The importance and necessity of the judicial immunity doctrine is well established,¹¹ but the extent to which the doctrine should shield judges from suits for damages is unclear.¹² The definition of a judicial act for purposes of the second prong of the Stump test has caused confusion among the lower courts¹³ because of its broad and ambiguous nature.¹⁴ Indeed, there are both substantive problems in the test's interpretation and procedural problems in its application. The substantive issue is that Stump does not make clear whether certain executive, legislative, administrative, or ministerial acts taken by judges can be considered judicial acts.¹⁵ The procedural problem involves courts' incongruous application of the judicial act definition in a specific fact pattern: when a judge privately meets with a party prior to any judicial proceedings and agrees to rule in favor of that party.¹⁶ Although this conduct is a clear violation of section 1983 of the Civil Rights Act,¹⁷ these "private prior agreements" have been protected under the judicial immunity doctrine. Courts have reached this result by applying the judicial act definition to the subsequent judicial act, rather than to the specific private prior agreement.¹⁸

This Note focuses on the judicial act requirement for judicial immunity. Part I examines the controversial Stump decision and the broad nature of the judicial act definition. Part II discusses the



substantive problems with the Stump definition and demonstrates how the definition should be read when addressing questionable judicial acts. Part III discusses the procedural problem connected with the judicial act definition and demonstrates how the definition should be applied when addressing a "private prior agreement." This Note concludes that only a more precise reading of the Stump definition will aid courts in analyzing challenged judicial acts and that because private prior agreements to rule in favor of one party are not judicial acts within the meaning of the Stump definition, the doctrine of judicial immunity should not apply to such cases.

(Fordham Law Review. Joseph Romagnoli)

Footnotes

¹. See *Pulliam v. Allen*, 104 S. Ct. 1970, 1975 (1984); *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982); *Stump v. Sparkman*, 435 U.S. 349, 355 (1978); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967); *Alzua v. Johnson*, 231 U.S. 106, 111 (1913); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872); *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 536 (1868). The doctrine has its origin in early English common law. See Bradley, 80 U.S. (13 Wall.) at 347; Randall, 74 U.S. (7 Wall.) at 534 & n., 536; *Sirros v. Moore* [1975] 1 Q.B. (C.A.) 118, 132, 137 (1974).

². *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978) ("[J]udges of courts. . . are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction. . .") (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872)); see, e.g., *Dykes v. Hosemann*, 743 F.2d 1488, 1495 (11th Cir. 1984); *Rheurark v. Shaw*, 628 F.2d 297, 304 (5th Cir. 1980), cert denied, 450 U.S. 931 (1981); *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974). Judicial immunity does not bar "prospective injunctive relief against a judicial officer acting in her judicial capacity," nor does it bar an award of attorney's fees under 42 U.S.C. § 1988. *Pulliam v. Allen*, 104 S. Ct. 1970, 1981, 1982 (1984).

³. See *Stump v. Sparkman*, 435 U.S. 349, 363 (1978) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872)); *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 536 (1868); *Sirros v. Moore*, [1975] 1 Q.B. (C.A.) 118, 132 (1974); see also Jennings, Tort Liability of Administrative Officers, 21 Minn. L. Rev. 263, 271-72 (1937) (nine policy reasons suggested for "so sweeping a rule" of absolute immunity); Sadler, Judicial and Quasi-Judicial Immunities. A Remedy Denied, 13 Melb. U.L. Rev. 508, 524 (1982) ("Firstly, and most fundamentally, it is said that the public interest requires an independent judiciary free from the fear of vexatious personal actions."); Note, Judicial Immunity and Judicial Misconduct: A Proposal for Limited Liability, 20 Ariz. L. Rev. 549, 579-88 (1978) (nine policy reasons advanced in favor of judicial immunity) [hereinafter cited as Judicial Misconduct]; Note, Developments in the Law-Remedies Against the United States and Its Officials, 70 Harv. L. Rev. 827, 833 (1957)



("[A]vailability of a defense to a subsequent action against him is easily rationalized as being essential to the proper administration of justice.") [hereinafter cited as *Remedies Against the United States*].

⁴ See, e.g., *Pulliam v. Allen*, 104 S. Ct. 1970, 1976 (1984); *Stump v. Sparkman*, 435 U.S. 349, 369 (1978) (Powell, J., dissenting); *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872); Jennings, *supra* note 3, at 271; Wilson, *Judicial Immunity-To Be or Not To Be*, 25 How. L.J. 809, 810 (1982); 11 Ind. L. Rev. 489, 499 (1978).

⁵ See, e.g., *Pierson v. Ray*, 386 U.S. 547, 564 n.4 (1967) (Douglas, J., dissenting); *Harper v. Merckle*, 638 F.2d 848, 856 n.10 (5th Cir. 1981), certdenied, 454 U.S. 816 (1981); Jennings, *supra* note 3, at 271-72 & n.34; Nagel, *Judicial Immunity and Sovereignty*, 6 Hastings Const. L.Q. 237, 265 (1978); Sadler, *supra* note 3, at 525; *Judicial Misconduct*, *supra* note 3, at 584; *Remedies Against the United States*, *supra* note 3, at 833.

⁶ See *Pulliam v. Allen*, 104 S. Ct. 1970, 1976 (1984) (quoting *Scott v. Stansfield*, 3 L.R.-Ex. 220, 223 (1868)); *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *Gregory v. Thompson*, 500 F.2d 59, 63 (9th Cir. 1974); *McAlester v. Brown*, 469 F.2d 1280, 1283 (5th Cir. 1972); Brazier, *Judicial Immunity and the Independence of the Judiciary*, [1976] Pub. L. 397, 399; Jennings, *supra* note 3, at 271 & n.31; see also *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872) ("For it is a general principle of the highest importance to the proper administration of justice that a [judge], in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself."); *Beard v. Udall*, 648 F.2d 1264, 1269 n.5 (9th Cir. 1981) (per curiam) (underlying purpose of judicial immunity is principled and fearless decisionmaking); *Rankin v. Howard*, 633 F.2d 844, 847 (9th Cir. 1980) (same), cert. denied, 451 U.S. 939 (1981).

⁷ *Floyd v. Barker*, 12 Co. Rep. 23, 24, 77 Eng. Rep. 1305, 1306 (Star Chamber 1607); see *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 349 (1872) (mentioning the possibility of an endless cycle and the burden placed on judges compelled to answer in civil actions for their judicial acts); Brazier, *supra* note 6, at 399 ("The unacceptable spectre of a flood of groundless actions by persistent litigants is [a] powerful deterrent to subjecting judges to civil actions."); Kates, *Immunity of State Judges Under the Federal Civil Rights Acts: Pierson v. Ray Reconsidered*, 65 Nw. U.L. Rev. 615, 617-19 & n.10 (1970) (judicial immunity provides protection against "harassment of state judges" by institution of frivolous suits). But see Note, *Liability of Judicial Officers Under Section 1983*, 79 Yale L.J. 322, 334 n.63 (1969) (summary judgment appropriate in case of compulsive litigant) [hereinafter cited as *Liability*].

⁸ 435 U.S. 349 (1978).

⁹ Id. at 356-57 (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872)).

¹⁰ 435 U.S. at 360.

¹¹ See *supra* note 4 and accompanying text.

¹². Commentators have criticized absolute judicial immunity and have urged a qualified immunity in certain instances. See, e.g., Nagel, *supra* note 5, at 237-38, 268; Rosenberg, *Stump v. Sparkman: The Doctrine of Judicial Impunity*, 64 Va. L. Rev. 833, 833 (1978); Note, *Immunity of Federal and State Judges from Civil Suit-Time for a Qualified Immunity?*, 27 Case W. Res. L. Rev. 727, 727-29 (1977) [hereinafter cited as *Immunity of Federal and State Judges*]; Note, *Judges-Immunities-Judicial Act and Jurisdiction Broadly Defined*, 62 Marq. L. Rev. 112, 122-23 (1978) [hereinafter cited as *Judicial Act and Jurisdiction*]; 22 How. L.J. 129, 140-41 (1979).

¹³. Compare *Dykes v. Hosemann*, 743 F.2d 1488, 1495 (11th Cir. 1984) ("[E]ven advance agreements between a judge and other parties as to the outcome of a judicial proceeding do not pierce a judge's immunity from suits for damages.") and *Scott v. Dixon*, 720 F.2d 1542, 1546 (11th Cir. 1983) (if clerk were a judge absolute immunity would be assured despite assertion by appellant that defendant conspired or reached an understanding with the clerk about the issuance of a warrant), cert. denied, 105 S. Ct. 122 (1984) with *Beard v. Udall*, 648 F.2d 1264, 1270 (9th Cir. 1981) (per curiam) (proof of prior agreement between judge and prosecutor would preclude claim of immunity because the agreement is not a judicial act) and *Rankin v. Howard*, 633 F.2d 844, 847 (9th Cir. 1980) ("We conclude that a judge's private, prior agreement to decide in favor of one party is not a judicial act."), cert. denied, 451 U.S. 939 (1981).

¹⁴. See Nagel, *supra* note 5, at 241 ("[T]he scope of immunity is, in fact, broader for judges because the method of defining the judicial function has been less restrictive."); *Judicial Misconduct*, *supra* note 3, at 573-74 ("The approach taken by Justice White [in *Stump*] is too broad."); *Judicial Act and Jurisdiction*, *supra* note 12, at 112 ("[The Supreme Court put] forward a broad definition of judicial act. ..."); Comment, *Judicial Immunity: An Unqualified Sanction of Tyranny from the Bench?*, 30 U. Fla. L. Rev. 810, 819 (1978) ("Clearly, the factors established by the Court for determining the judicial nature of an act are not viable.") [hereinafter cited as *Judicial Immunity*].

¹⁵. See *infra* notes 41-47 and accompanying text.

¹⁶. See *infra* notes 80-82 and accompanying text.

¹⁷. 42 U.S.C. § 1983 (1982) protects every citizen from any violation of all rights, privileges, and immunities secured by the Constitution. See *id.* A judge's secret agreement to rule against a party, prior to any judicial proceeding, violates the right to a fair and impartial tribunal guaranteed by the due process clause of the Fourteenth Amendment. See U.S. Const. amend. XIV. See *infra* note 83 and accompanying text.

¹⁸. See *infra* notes 84-86 and accompanying text.

¹⁹. 435 U.S. 349 (1978).

