

VOL 62 ISS 1 ART 6 | III | CONCLUSION

It is evident from Sparkman that the two exceptions to judicial immunity do not have clearly enunciated standards. The court of appeals argued vigorously that the act of authorizing a sterilization procedure was in clear absence of all jurisdiction; the same act was held by the Supreme Court majority to have been performed as an exercise of jurisdiction. Three Supreme Court justices said the respondent's actions were not "judicial," but five had no doubt that it was a judicial act.

In recent decisions, the Supreme Court has qualified the common-law immunities provided other government officials when suit is brought against them under section 1983. Federal officials were immune from suit⁵⁸ until the Supreme Court recently modified that rule in Butz v. Economou.⁵⁹ The prior absolute immunity afforded state officials⁶⁰ was also qualified in Scheuer v. Rhodes.⁶¹ Longstanding law holding municipalities immune⁶² was overturned when the Court recently held that local governments were intended to be included among the "persons" to which section 1983 applies. Yet, in the face of these trends, the doctrine of judicial immunity has held fast. The most solid conclusion to be drawn from Sparkman v. Stump is that regardless of the degree of injury resulting from judicial conduct, the judiciary will continue to immunize its brethren with a generous hand,

(Copyright © Marquette Law Review. All rights reserved. Anne Bowe)

Footnotes

⁵⁸. Barr v. Mateo, 360 U.S. 564 (1959); Spalding v. Vilas, 161 U.S. 483 (1896).

⁵⁹. 46 U.S.L.W. 4952 (1978). The Court held that federal executive officials are entitled only to qualified immunity, and that there is no substantial basis for holding that executive officers may with impunity discharge their duties in a way that is known to them to violate the Constitution.

⁶⁰. Spalding v. Vilas, 161 U.S. 483 (1896).

⁶¹. 416 U.S. 232 (1974).

⁶². Monroe v. Pape, 365 U.S. 167 (1961).

