SUMMARY OF KEY CONCEPTS

Section 1. The Nature of Law

The law is comprised of the legal principles and standards applied by the courts in deciding the controversies brought before them. Some might believe that the law is found solely in the legislative acts of Congress and the state legislatures. But those statutes are only one source of the law. It is found also in the U.S. Constitution, state constitutions, government regulations, and the decisions of the courts. The latter form of law is known as “common law” or “case law.”

The body of law is so vast and complex that no lawyer can possibly know it all. In law school, students learn the major principles of law and how to apply them to the facts of different situations. They learn to reason logically, and how to find the law. But the law is not static because new statutes, regulations, and court decisions constantly add to the body of law, and often change the legal rules established in earlier days. Even constitutions are changed now and then.

As vast as the body of law is, it can never provide a precise answer to every possible situation. No one can foresee every possible situation. Consequently, the courts often must derive legal principles from the entire body of law—constitutions, statutes, regulations, and prior court decisions—and craft a resolution to the controversies brought before them. Thus, the body of common law grows.

Unfortunately, the law often lacks precision. Ambiguity, poor organization, and inconsistency create problems for attorneys and the courts. Simply reading a statute or court decision does not always resolve a legal issue which that statute or decision was intended to resolve.

When laws conflict with each other, several basic rules apply. Statutes take precedence over court decisions. When several state statutes are inconsistent with each other, the most recently enacted governs. The same rule applies to conflicts between federal statutes. However, inconsistencies often raise the question of legislative intent. When statutes are unclear, the courts often attempt to discover the intent of the legislature.

Unfortunately, laws that appear to be stated in “clear and simple language” can be the most difficult of all to understand and apply. The First Amendment states, in part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” Before one can understand that statement, however, she must know the meaning of “religion”—or at least what the Founding Fathers thought it to be. Does it mean “organized” religion, as in congregations, temples, or churches? Does the First Amendment protect a solitary individual’s practice of a faith or belief that might be shared by no other
person on earth? The court system exists to deal with exactly this type of uncertainty about the law and to resolve the competing interests that always arise between opposing parties.

A free society requires a rule by law—not by the prejudices or whims of public officials. That means that courts must base their decisions upon established legal principles and sound logic. But, of course, judges are humans with their own biases and life experiences. If a legal assistant is to work effectively in the law, he must appreciate the importance of logical analysis and recognize how difficult it can be to know which legal principles should apply to a given situation. One must resist the tendency to adopt the “obvious” conclusion which quickly comes to mind.

One thing that is generally clear is the distinction between criminal and civil law, whether federal or state. Criminal law prohibits and punishes conduct that is so serious that it offends society at large. Criminal offenses can be punished by imprisonment or death—violations of civil law may not. Even when there is no single individual victim of a criminal act, the concept of criminal law is that all of society is harmed by that act. For that reason, the plaintiff in every criminal case is the government acting in the name of “the people.”

Civil law governs “private” relationships between persons, such as contracts, property rights, marriage and parenthood, and a person’s duty not to harm others. Civil law also regulates “public” relationships, including public education, the election of public officials, the licensing of attorneys, and the operation of the court system. Sometimes, civil law (e.g., marriage) is enforced by criminal law (prohibiting bigamy, for example). In the same way, criminal law prohibits election fraud, fraud in private contracts, and the practice of medicine without a license.

There is a hierarchy of legal authorities with four levels. Constitutional law is the highest legal authority, followed in descending order by statutes, regulations, and common law. Constitutional law establishes a system of government and determines the powers and limitations of that government. Federal and state statutes implement the powers granted by the U.S. Constitution and by the state constitutions, respectively. The constitutions establish basic principles, and the statutes spell out the details of the law. No other legal authority may conflict with constitutional law. In the same way, statutes override any conflicting regulation or common law decision. Government regulations, and the court decisions which interpret and apply them, are known as administrative law. Executive orders issued by the President or a state governor are also part of administrative law. As the lowest rank in the hierarchy, common law must yield to regulations, statutes, and constitutions.

Common law is often called “judge-made” law, simply because it is found in the decisions written by judges. Although at the bottom of the hierarchy, it continues to have enormous importance in our legal system. That is because so many legal questions lie beyond the scope of existing statutes and administrative law. In that circumstance, a court usually relies upon earlier court decisions to find a rule of law for the controversy before it. When a court relies upon an earlier case, that earlier case is known as a precedent. The rulings by the U.S. Supreme Court and the state courts of last resort (in most states, known as the “supreme court”) provide the most important precedents.

Courts always follow the highest legal authority that applies to the facts of any given case. Thus, a court will use common law only if no higher authority can be found to resolve a controversy. Regardless of the legal authority being applied, the court must always apply its own legal analysis to determine how that legal authority applies to the facts of the specific case before it. Thus, statutory law becomes stamped with the views of the judges who apply it to particular cases. Sometimes, Congress and the state legislatures revisit a statute and amend it because they are displeased with the interpretation that the courts have applied to the original words of that statute.

The U.S. Constitution establishes a division of powers between the federal and state governments. Some powers, such as bankruptcy, patents and copyrights, and coining money, are reserved exclusively to the federal government. Other powers, such as the conduct of the election of federal officials, are delegated to the states within certain limitations established in the Constitution. Any power not given to the federal government, and not prohibited to the states, becomes a power of state government, but all state powers are subject to the limitations placed upon them by the Constitution.

Article VI, Section 2, of the Constitution is known as the Supremacy Clause. It states that federal law (the Constitution, and federal statutes and treaties) shall be the Supreme Law of the Land. And it specifically requires the judges of state courts to be bound by federal law. Therefore, state constitutions and state laws must not conflict with the U.S. Constitution or other forms of valid federal law—treaties, administrative regulations, etc. Not only are state constitutions and statutes subordinate to federal law, but so are state administrative law and the actions of state courts, officers, and employees. Of course, a federal statute or executive action is
not valid federal law if it conflicts with the Constitution. So, an unconstitutional presidential action, or act by Congress, cannot override a valid state law.

Cities, counties, and other local agencies are creatures of state government. They, too, must comply with the U.S. Constitution and other federal laws. Of course, they also are subject to the constitutions and statutes of their states. Consequently, city and county ordinances can be challenged under state statutes, the state constitution, the U.S. Constitution, and federal statutes.

Questions under the Supremacy Clause often arise in state and federal courts. State laws are challenged as being unconstitutional, or on grounds that they conflict with some other federal law. When courts examine state or federal statutes for potential conflict with higher legal authority, they are exercising the power of judicial review. In effect, the court is faced with two conflicting laws. Which one shall the court enforce? In every case, if the court finds a genuine conflict between the two, the court will enforce the higher legal authority. In any conflict between state and federal law, the federal law is always the superior legal authority, and must be enforced.

The principle of judicial review was established by the U.S. Supreme Court in *Marbury v. Madison*, 5 U.S. 137 (1803). In that case the Supreme Court found unconstitutional a federal statute which would have granted the courts more power than the Constitution permitted. In rejecting an illegitimate gift of power from the Congress, the Supreme Court simultaneously claimed for the courts the power to hold congressional acts to be unconstitutional. Judicial review is not mentioned in the Constitution, but is the result of the Supreme Court’s own interpretation of the judiciary’s role under the Constitution. Of course, without judicial review, the constitutional system of limited government might have disappeared, as Congress and the President claimed for themselves ever greater powers.

When interpreting the Constitution and statutes, the courts generally follow the precedents set in earlier court decisions. In other words, the courts do not often make a dramatic departure from their prior interpretations of the Constitution. The importance of this continuity in constitutional principles is difficult to overemphasize. It prevents constitutional law from becoming whatever the majority of Supreme Court justices—the majority of the moment, perhaps—simply prefer that it be. Judicial discipline requires that the justices honor earlier decisions with which they might strongly disagree.

Decisions by state courts or lower federal courts on federal constitutional law do not often forge new territory. Instead, they simply apply prior Supreme Court decisions to the cases before them. When a clearly applicable Supreme Court decision cannot be found, then state and other federal courts sometimes reach their own innovative holdings on a constitutional question, but those decisions are always subject to reversal by the Supreme Court.

Not only must a statute not conflict with constitutional law, there also must be actual constitutional authority for government to legislate on the subject of that statute. That authority to legislate might be:

- explicitly *expressed* in the words of the constitution;
- *implied* by the provisions of the constitution; or,
- *inherent* in the nature of government.

For example, the U.S. Constitution gives express authority for Congress to define and punish crimes. The authority to regulate immigration is not expressed in the Constitution, but is implied by the express authority to grant citizenship and regulate foreign commerce. Although the Constitution does authorize Congress to raise an army and navy, if military forces had not been mentioned, it is likely that the Supreme Court would have upheld their establishment as an exercise of the inherent self-defense power of a sovereign nation.

### Section 2. Laws of the State Governments

The legislative authority of the state governments is found in the Tenth Amendment to the U.S. Constitution (the “reserved powers” clause) and in the various state constitutions. States must meet a constitutional authority test for all state statutes and policies. But that test is less stringent, because the Tenth Amendment reserves to the states all powers “not delegated to the United States by the Constitution, nor prohibited by it to the states….” Thus, the states have all governmental powers not mentioned in the Constitution. That gives enormous significance to the general police powers of the states.

The general police powers of the state governments encompass the protection of public health, safety, welfare, and morals. The broad scope has caused the courts to uphold a broad range of state laws that find no specific grant of authority in either the U.S. Constitution, nor in the state constitutions. Thus, the states are the greater beneficiaries of the “inherent powers” concept. Inherent powers derive from the inherent self-defense concept. Inherent powers are those powers that states and local governments need to ensure the safety and welfare of their citizens.
Because state police powers are so broad, the courts tend to uphold any state policy that protects public safety, health, welfare, or morals. The exceptions occur when the state policy conflicts with the U.S. Constitution or state constitution, particularly any guaranteed individual freedoms. States routinely do such things as regulating the freedom of parents to educate their children at home, dictating the retail price of milk, and requiring owners of ocean-front property to provide free public access across their property to the beach. Each of these policies is based upon the state's general police powers.

Although federal law is supreme, in many areas the state and federal governments share concurrent powers. That is, each level of government is free to legislate on the same subject matter. The most obvious concurrent powers are to collect taxes, define and punish crimes, defend against armed invasion, and spend public monies for the general welfare. The state and federal governments also regulate banks and the sale of securities (e.g., stocks and bonds), prohibit various forms of discrimination in employment, and establish pollution standards for motor vehicles. Because of the Supremacy Clause, none of these state laws may conflict with federal law. Therefore, states may establish stricter pollution laws, but they may not exempt vehicle manufacturers from meeting federal standards. In other words, state laws may not defeat the purpose of federal law.

All states in the Union have enacted various statutes based upon model statutes proposed jointly by legal scholars of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These enacted statutes are known as the “Uniform Acts.” Their adoption is entirely at the discretion of each state legislature, and some states adopt some Uniform Acts in a modified form. The purpose of these acts is to establish common legal standards, rules, and procedures for matters that often “cross” state boundaries. Examples of widely adopted Uniform Acts include:

- Uniform Commercial Code;
- Uniform Partnership Act;
- Uniform Child Custody Jurisdiction Act; and,
- Uniform Anatomical Gifts Act.

One benefit of Uniform Acts is the body of case law that develops based upon them. Although case law from one state is only persuasive authority in the courts of another state, when the statutes are identical, the case law of the various states tends to develop common concepts. It would defeat the purpose of the Uniform Acts if the courts of each state imposed their unique interpretations upon identical statutory language. For that reason, state courts give exceptional weight to the interpretations already made in other jurisdictions.

Except for Louisiana, which follows French legal tradition, the American system of law is based upon the English system developed in medieval times. As a court system developed in England, there was very little statutory law upon which to base the court’s decisions. Instead, the judges made their rulings based upon common cultural values, and gradually came to rely on the decisions made by other courts in earlier cases. Those prior decisions became precedent, establishing the rules of law to be followed when similar cases came before the courts in later years. Over time, these precedents became known as the “common law,” which was so called because it was intended to be “common” to the entire English nation.

Those early English courts became known as “courts of law.” While a great improvement over the unpredictable decisions of hereditary lords—who held quasi-judicial powers before the court system was developed—the courts of law came to enforce the common law with little flexibility. Old legal principles were applied even after they lost their relevance to changing times, and the law became so rigid that it often bore little resemblance to justice, in any human sense.

Consequently, a second, parallel court system was established to provide a remedy where the common law turned a blind eye to justice. These were known as the “courts of equity.” Their standard was fairness, rather than rigid adherence to precedent. In most of the United States, the judicial functions of law and equity have been combined within a single court system.

Common law continues to be an essential part of the American system, and courts attempt to follow precedents closely, so long as the result is not a grave injustice. American courts will depart from precedent when changing social and economic conditions render earlier common law principles irrelevant to modern realities. In effect, “new precedents” are established, and common law becomes an evolving body of legal principles. In practice, this evolution is a very gradual process. In addition, departure from established precedent is rather rare in trial courts and unusual in the lower appellate courts. The most dramatic changes in common law usually occur in the decisions of the state courts of last resort. Once made, those new precedents tend to stand undisturbed for many years.

When the U.S. Constitution was being drafted, a key concern was the sanctity of state laws and official state acts. Would the courts of one state try
to overturn the marriages, wills, and contracts that another state had officially recognized? Would court judgments from one state be enforceable in other states? The result of this concern was the Full Faith and Credit Clause in Article IV, Section 1, of the Constitution.

This clause requires—with very few exceptions—that the courts of each state must recognize and uphold the statutes, administrative law and court judgments, and official records of all other states. Congress has enacted statutory procedures for authenticating official state and federal government records.

One exception to Full Faith and Credit occurs when a state has acted without proper jurisdiction—that is, without legal authority—over the person or matter involved. A second exception occurs when to uphold a particular action would violate public policy (i.e., the well-established conscience of society regarding human relationships). For example, public policy concerns might cause a Utah court to refuse enforcement of a New Jersey judgment on a gambling debt incurred in a New Jersey casino.

The U.S. Supreme Court has held that a state’s jurisdiction may be examined by the courts of another state before giving full faith and credit to court judgments of other states. However, if a judgment appears to be the official record of a court of general jurisdiction (i.e., a court of unlimited trial jurisdiction), there is a presumption that the court had proper jurisdiction. *Milliken v. Meyer*, 311 U.S. 457 (1940). Of course, this presumption may be challenged by evidence that proper jurisdiction was actually lacking. If the jurisdiction is found to have been proper, a state court is prohibited from exercising any form of judicial review over the decision made in the court of another state.

The question of state residency often has been the basis for examining the jurisdiction of another state. A classic example is the controversy over so-called “quickie” or “easy” divorces granted by one state to the citizens of another state. Before the modern era of “no-fault” divorce laws, many people traveled from their own “strict standard” states to seek divorce in the courts of states with more relaxed standards. Thus, one could divorce a spouse for reasons of “irreconcilable differences” without the necessity of proving such conduct as infidelity or physical abuse. Similarly, people who wished to remarry as soon as possible would travel to states where the divorce decree became final immediately, rather than endure the statutory waiting period of their home state. Because these persons would return to their true home state immediately after obtaining the divorce decree, the jurisdiction of the “foreign” state could be challenged in the courts of their home state, and the divorce decree might not be recognized there.

Although only the federal government is permitted by the Constitution to regulate interstate and foreign commerce, the meaning of that restriction is not always clear. By enacting the Uniform Commercial Code, the states have established a standardized set of rules for conducting interstate commerce. How can that be constitutional? The answer lies in two parts:

- Congress has not enacted a uniform law for commercial contracts in interstate commerce—which it clearly could do.
- State laws affecting interstate commerce are usually valid if they do not impose excessive burdens on, or discriminate against, interstate commerce.

If Congress were to enact a “Federal Uniform Commercial Code,” the existing state laws would become suspect, and subject to a constitutional challenge. Since no such federal act exists, the Uniform Commercial Code actually facilitates interstate commerce by establishing uniform standards for interpreting and enforcing commercial contracts. Since it does not impose an excessive burden on interstate commerce, it does not violate the constitutional protections for interstate commerce.

Basically, it is the interstate and foreign aspects of commerce that states may not regulate. For example, the states may not restrict the destinations for the airline or trucking industries, but they may impose highway speed limits on interstate truckers and specify the landing fees at public airports serving interstate flights, so long as those state actions do not impose unreasonable burdens.

### Section 3. The State and Federal Courts

There are two parallel court systems in the United States. The state courts—including county, parish, municipal, and other local courts—apply state and local law, primarily. However, they are bound to recognize and enforce the Supreme Law of the Land (i.e., federal law) as well. The federal courts apply state and/or federal law—whichever is appropriate to the case before them—but always give primacy to the Supreme Law of the Land.

Both state and federal courts hear civil cases (e.g., lawsuits) and both hear criminal cases. Some types of cases arising under state law (probate and family law, for example) rarely find their way into
federal courts. A fundamental question before the court in every case is its authority to hear and decide that controversy.

The authority of a court to hear and determine a case is called its jurisdiction. There are three basic types of jurisdiction:

- subject matter jurisdiction;
- in rem jurisdiction; and,
- personal jurisdiction.

Under the Fifth and Fourteenth Amendments’ due process clauses, a court must have subject matter jurisdiction, and also personal jurisdiction over the defendant. Federal courts receive their jurisdiction from the U.S. Constitution and the federal statutes implementing it. State courts receive their jurisdiction under the Supremacy Clause, by implication of the Tenth Amendment, and from state constitutions and statutes.

Subject matter jurisdiction is the court’s authority to determine the type of case before it. Several federal courts have very narrow subject matter jurisdiction: the Bankruptcy Court, Tax Court, Court of International Trade, etc. Courts with unrestricted subject matter jurisdiction are known as courts of general jurisdiction.

In rem jurisdiction is the court’s authority to determine the status of real or personal property located within its geographical territory. A common example is a suit to quiet title (i.e., a suit to resolve uncertainty about legal title to property). In rem jurisdiction also arises when a ship or aircraft is present within the territory of the court’s jurisdiction.

Personal jurisdiction (also known as in personam jurisdiction) is the authority of the court over the particular defendant being sued, and its power to determine that person’s legal rights, duties, and liabilities in that case. Plaintiffs automatically accept a court’s jurisdiction when they file a lawsuit in that court, so personal jurisdiction over the plaintiff is never an issue.

Personal jurisdiction over a civil defendant depends upon both geography and proper service of process. Service of process is the delivery of court documents (e.g., a summons or subpoena) to the person named in them, so that she might appear in court to respond. The usual method is personal service, done by hand delivering the documents to the defendant or (in some states) leaving them with a responsible person at his residence or office.

An appearance occurs whenever a person or his attorney files written documents with the court, or is physically present in court for the purpose of affecting the outcome of the proceedings. A defendant who makes a general appearance has accepted the court’s jurisdiction and cannot later challenge it. A general appearance is one in which the defendant addresses the merits of the case. Defendants who want to challenge the court’s personal jurisdiction over them make a special appearance for that limited purpose. A special appearance does not constitute acceptance of the court’s jurisdiction.

Long arm statutes permit a state’s court to exercise jurisdiction over persons (individuals and companies) that are located far beyond their geographical territory. Long arm jurisdiction generally is based upon that individual or company having some form of involvement in events occurring within the state claiming long arm jurisdiction. Advertising and selling products within the state could establish the “minimum contacts” required to establish jurisdiction.

Long arm criminal jurisdiction has its roots in centuries-old international maritime law. So that criminals may not evade punishment for crimes committed on the high seas, international law gave jurisdiction to the nation where the ship next made port. In modern times, that jurisdiction is shared by the nation where a ship or aircraft is registered. Some federal statutes extend United States jurisdiction to persons who participate in criminal activity outside of the U.S., which substantially affects American national interests. The most famous example was the apprehension of Panamanian dictator General Manuel Noriega, who was arrested by American troops in Panama (following the 1989 U.S. invasion of that nation). He was transported to the United States, where he was convicted of aiding the transportation of illegal drugs into the United States.

Criminal defendants who are apprehended in another jurisdiction—another state, or a foreign nation, for example—are returned to the state claiming jurisdiction through a process known as “extradition.” The U.S. Constitution provides for mandatory extradition of fugitives who flee to another state (Article IV, Section 2). The United States has extradition treaties with many foreign nations. Most states have adopted the Uniform Criminal Extradition Act which establishes uniform procedures.

In both civil and criminal cases, questions of venue and forum often arise. Venue is a matter of geography—should the trial be held in Houston or Dallas? In criminal cases, a change of venue is sometimes granted to avoid the affects of prejudicial pretrial publicity in the community where the crime was committed. Forum is a matter of state or federal court—should the defendant be prosecuted under federal drug laws, or state drug laws? In civil cases, if both federal and state courts have
jurisdiction, the plaintiff may file in either one. If the case is filed in state court, the defendant may ask that the case be removed to federal court.

The courts of most states are organized in a three- or four-tier system, with the top tier occupied by a single court of last resort. In most states, the court of last resort is known as the “supreme court,” but in New York the Supreme Court is a trial court of general jurisdiction. Most states have one or two tiers of trial courts that hear evidence and reach decisions about the facts and the law. Where two tiers exist, the lower court usually has limited jurisdiction. Most states also have a small claims court which hears cases without the participation of attorneys.

The losing party in a court case usually may request that the decision be reviewed by a higher court. In civil cases, both parties sometimes appeal different aspects of the decision. The right to request a review, however, is no guarantee that a higher court will grant the review unless there is a statutory right to review. When a higher court reviews a lower court decision, its review is usually limited to legal and procedural issues.

Generally speaking, questions of fact are determined finally and forever in the trial court. A trial court’s procedures and its rulings on questions of law, however, are subject to review. In order to gain a review, the appealing party must have raised that objection or legal argument during the trial. The party appealing the decision is called the appellant or petitioner. The opposing party is called the appellee or respondent. A party’s status as appellant or appellee has no relationship to being either the plaintiff or defendant at the trial stage. Some of the common grounds for appeal of a trial court decision are:

- lack of proper jurisdiction in the trial court;
- incorrect application of the law to the facts of the case;
- unreasonable or arbitrary action taken by the trial court without due consideration of the facts and the law (termed an “abuse of discretion”);
- incorrect instructions to the jury about the law to be applied;
- incorrect rulings on the admissibility of evidence; and,
- premature dismissal of a lawsuit without permitting the plaintiff to revise his allegations and present evidence to support them.

At times, an attorney must walk a fine line between his duty of vigorous representation and the risk of presenting a frivolous appeal. This dilemma raises the same ethical issues which were discussed in Chapter 3. An appeal is considered to be frivolous when it fails to raise any relevant legal question that the court could resolve, or when an objective attorney would recognize that it is completely without merit and has no prospect of success. For fear of discouraging vigorous representation, the courts are reluctant to impose penalties unless it appears obvious that the attorney has acted in bad faith.

The appellate court hearing is very different from the trial. The facts have been established by the trier of fact—whether judge or jury. On appeal, the issues are legal, not factual. Harmless errors will not cause reversal of the trial court’s decision. The appealing party must have suffered an injustice for the trial court decision to be set aside.

Most appeals end with the state court of last resort. However, a state court case may be appealed to the federal courts if there is a substantial question of federal law. Theoretically, one can appeal such a case “all the way to the Supreme Court.” In reality, however, the Supreme Court accepts very few petitions for review.

The U.S. Constitution establishes a Supreme Court and authorizes Congress to establish trial courts and additional appellate courts. The U.S. District Court serves as the trial court of general jurisdiction, and the Courts of Appeals serve as the intermediate appellate courts. Congress has established some special courts of limited jurisdiction (e.g., Bankruptcy Court) and a completely separate military court system (the Courts Martial).

The Constitution grants federal courts the jurisdiction over all actions, civil and criminal, brought under federal law. This is known as federal question jurisdiction. The statutes and actions of state and local government may be challenged in federal court if they conflict with the U.S. Constitution or other federal law. In addition to federal question jurisdiction, the Constitution provides for federal jurisdiction:

- whenever the United States is a party to a lawsuit;
- whenever a state is a party to a suit, and the opposing party is another state or the citizen of another state;
- in lawsuits between a state or U.S. citizen and a foreign nation or a citizen of a foreign nation;
- when foreign diplomats are parties to the action; and,
- in lawsuits under state law between citizens of different states.
Federal courts have concurrent jurisdiction (together with state courts) over lawsuits arising under state law if diversity of citizenship exists and the amount in controversy exceeds a minimum amount set by Congress (currently $75,000). The original reason for providing federal jurisdiction in diversity cases was the fear that the courts of one state might favor parties who were citizens of that same state. Federal jurisdiction was intended to provide a neutral court for lawsuits between citizens of different states.

There are some exceptions to concurrent jurisdiction in diversity cases. In multiple-party cases, if any one defendant and any one plaintiff are citizens of the same state, the federal courts will not have concurrent jurisdiction. Of course, diversity of citizenship is required only if the basis for the lawsuit arises under state law—it is never required for cases arising under federal law.

Federal courts can take jurisdiction in some cases arising under state law, even if diversity does not exist. If a case is in federal court for an issue arising under federal law, that court can assume jurisdiction over state law claims arising from the same factual situation. This is known as “pendent jurisdiction.” Federal courts may exercise pendent jurisdiction, or refuse to do so, in the court’s own discretion.

At the trial level, the personal jurisdiction of a U.S. District Court is limited to those persons within the state in which the court sits. Under the long arm statutes discussed previously, however, that “geographic” jurisdiction can be extended to establish personal jurisdiction over persons outside of the state. There is a minimum of one District Court for each state, although a few larger states have as many as four or five.

There are thirteen federal Courts of Appeals, and eleven of those serve geographic regions referred to as “circuits.” This term originated in earlier times, when the appellate justices would “ride a circuit”—sometimes on horseback—through the states and territories of the court’s regional jurisdiction, hearing cases in various cities and towns. These eleven circuits are numbered, as in the “Seventh Circuit” (the U.S. Court of Appeals for Wisconsin, Illinois, and Indiana). There also is a Court of Appeals for the District of Columbia, and a Court of Appeals for the Federal Circuit (which hears appeals from customs, patent, and trademark cases, and cases involving claims against the federal government). Some of the larger circuits are further divided into north, east, south, west, and central “districts,” and the U.S. District Courts in those areas are identified by the district in which they sit (e.g., the U.S. District Court for the Central District of California).

The District Courts within a circuit are bound by the decisions of the Court of Appeals for that circuit. At times, the various circuits adopt conflicting rules of law on a given issue, but the District Courts may not pick and choose among those—they must follow the lead of their “own” circuit court. When the issue is of substantial importance, this circumstance often leads the U.S. Supreme Court to grant review for an exemplar case on that issue. The Supreme Court’s ruling on that case then resolves the conflict among the circuits, and all federal courts henceforth will follow the ruling of the Supreme Court.

The Supreme Court has original jurisdiction (i.e., trial jurisdiction) over cases involving foreign diplomats, and also lawsuits in which a state is either defendant or plaintiff. In practice, however, it is extremely unusual for the Supreme Court to hear a case under its original jurisdiction. Instead, the Court usually appoints a distinguished jurist to serve as a special master, hearing both evidence and legal argument and then rendering a report to the Supreme Court. The full Court then reviews the master’s report and issues its formal ruling.

The vast majority of Supreme Court cases come before the Court by:

- writ of certiorari;
- mandatory review; and,
- original jurisdiction.

The greatest number are heard under writ of certiorari, and the least number under original jurisdiction. Mandatory review occurs when Congress has required by statute that the Court review cases of a particular category. In those cases, the Court has no discretionary power to deny a hearing in the case. In recent decades, however, Congress has substantially reduced the number of categories in which mandatory review is available.

Nearly all cases coming before the Supreme Court today are discretionary—the Court may accept or reject them at will. Appellants file a petition for review, but the sheer number of cases, some 5,000 petitions each year, forces the Court to grant a writ of certiorari in only a small portion of those cases. When the Supreme Court refuses to hear a case, that has the effect of making the lower appellate court decision final.

A writ of certiorari is an order to the lower court to certify the record in the case and forward it to the Supreme Court. The litigating parties then submit written legal arguments (known as “appellate briefs”) to the Court. Sometimes, the Court permits interested third parties, who are not directly involved in the case, to submit additional
briefs as “friends of the court.” When the case comes before the Court for oral argument, it is common for the justices to question the attorneys and engage in brief discussion with them. Following oral argument, the Court meets in closed session to discuss the case. One justice among the majority is assigned by the Chief Justice to write the opinion of the court. Other justices may write concurring or dissenting opinions, which will be published immediately following the Court’s opinion.

Judges enjoy an extraordinary measure of independence. All federal judges—and judges in some states, as well—serve for life unless they are impeached and removed for misconduct. In addition, all judges are absolutely immune from civil liability for their official acts, no matter how injurious and reprehensible. The Supreme Court has ruled that such immunity applies even to judicial acts that are alleged to have been done maliciously or corruptly. The reason for such blanket immunity is the chilling effect which civil liability would have on the judicial system. Without immunity, judges would be the constant target of lawsuits by disgruntled litigants, convicted criminals, and victims of crimes not adequately punished. Judges might be inclined to practice “defensive adjudication” with constant concern for those litigants most likely, and most financially able, to “sue the judge.”

Civil immunity for judges is “purchased” at the price of the occasional gross injustice, with no civil remedy available to those who are harmed. Of course, judges are not immune from criminal prosecution for crimes they commit, either as private citizens or as judges. Now and then, a judge is convicted of bribery. In October 2000, a superior court judge in California pled guilty to using his powers to coerce a defendant before his court to have a sexual relationship with him. Such incidents, of course, are extremely rare exceptions.

Most people probably agree that public opinion and politics should not govern court decisions. The reality is that both politics and public opinion exercise significant influence, although indirectly, over the courts. In part, this is because the courts might lose credibility if the public sees them as too isolated from the realities of modern times. The other influential factor is the political process by which judges are nominated and confirmed. This factor is amplified when the President makes an appointment to the U.S. Supreme Court. Because Supreme Court justices can be removed only upon impeachment and conviction for “high crimes and misdemeanors,” the Senate confirmation process is the only opportunity to limit the President’s ability to shape the legal philosophy of the Supreme Court.

**REVIEW QUESTIONS**

1. Laws enacted by a legislature are known as ________.
2. Legislative ________ is the purpose which the legislature had in mind when it enacted a particular statute.
3. In every criminal case, the plaintiff is the ________.
4. Regulations established by government agencies, and the court decisions which interpret them, are part of ________ law.
5. Executive ________ issued by the President or a state governor carry the force of law.
6. The court of last ________ is the highest appellate court in that jurisdiction.
7. The Supreme ________ comprises all federal constitutional, statutory, treaty, and administrative law.
8. The authority to enact legislation must be found in a constitution. That authority can be:
   - explicitly ________ in the words of the constitution;
   - ________ by the provisions of the constitution; or,
   - ________ in the nature of government.
9. The general ________ powers of the state governments encompass the protection of public health, safety, welfare, and morals.
10. The powers to impose taxes and define and punish crimes are examples of ________ powers held by both the state and federal governments.
11. When English courts of law became inflexible in their application of the common law, courts of ________ were established to resolve disputes more fairly.
12. Article IV, Section 1, of the U.S. Constitution states, in part:
   “Full ________ and ________ shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”
13. The authority of a court to determine the legal issues and the rights and obligations of the parties that are before it is that court’s ________.
14. A state court of ________ has the authority to hear and determine any civil or criminal case arising under the laws of that state.
15. The ________ (UCC) establishes the law of commercial contracts for the sale of goods and merchandise.

16. Business transactions and transportation that cross state lines, or have a substantial impact on commercial activity among the states, fall within the laws of ________ commerce, which only Congress may regulate.

17. There are three basic types of jurisdiction:
   • ________ matter jurisdiction;
   • ________ jurisdiction; and,
   • ________ jurisdiction.

18. The court’s authority to determine the status of real or personal property located within its geographic jurisdiction is known as ________ jurisdiction.

19. Service of process is the delivery of ________ in accordance with procedures established by law.

20. Whenever a party or her attorney files written documents with the court, or is physically present in court, for the purpose of affecting the outcome of the proceedings, that party has made an ________ before the court.

21. Long arm statutes permit a state’s courts to exercise ________ over non-resident persons that are located outside of that state.

22. Unlawful flight is leaving a jurisdiction for the purpose of avoiding ________ or ________.

23. If the location of a court is greatly inconvenient for a civil defendant and witnesses, the defendant can petition for a change of ________.

24. A trial court hears and makes a final determination of all questions of ________.

25. In most states, a(n) ________ may not be the plaintiff in a small claims court.

26. If a court decision lacks any reasonable foundation, either in the evidence or the law, that is termed an ________ of discretion.

27. A ________ appeal is one completely without merit, lacking any reasonable basis under the facts and the law.

28. When all opposing parties in a lawsuit are from different states (i.e., no one defendant and no one plaintiff are citizens of the same state), ________ of citizenship exists.

29. Under pendent jurisdiction, a federal court may hear and decide a matter under state law if it arises from the same set of ________ as another matter which is properly before the federal court.

30. In addition to the eleven numbered circuits, there is a Court of Appeal for the ________ of ________, and a Court of Appeal for the ________ Circuit.

31. To have the U.S. Supreme Court review the decision of a lower court, one must file a ________ for review.

32. Most cases heard by the Supreme Court come before it on a ________ of certiorari.

33. Under the doctrine of judicial immunity, judges are absolutely immune from any ________ liability for their official acts.

**KEY TERMS**

**Act of Congress**

Your “best effort” definition:

Your revised definition:

**case law**

Your “best effort” definition:

Your revised definition:

**circuit court of appeals**

Your “best effort” definition:

Your revised definition:

**civil law**

Your “best effort” definition:

Your revised definition:

**common law**

Your “best effort” definition:

Your revised definition:
concurring opinion
Your “best effort” definition:
Your revised definition:
criminal law
Your “best effort” definition:
Your revised definition:
damages
Your “best effort” definition:
Your revised definition:
dissenting opinion
Your “best effort” definition:
Your revised definition:
diversity jurisdiction
Your “best effort” definition:
Your revised definition:
ed extradition
Your “best effort” definition:
Your revised definition:
Federal question jurisdiction
Your “best effort” definition:
Your revised definition:
felony
Your “best effort” definition:
Your revised definition:
forum
Your “best effort” definition:
Your revised definition:
judicial review
Your “best effort” definition:
Your revised definition:
misdemeanor
Your “best effort” definition:
Your revised definition:
ordinance
Your “best effort” definition:
Your revised definition:
overrule
Your “best effort” definition:
Your revised definition:
personal jurisdiction
Your “best effort” definition:
Your revised definition:
precedent
Your “best effort” definition:
Your revised definition:
public policy
Your “best effort” definition:
Your revised definition:
question of law
   Your “best effort” definition:
   
   Your revised definition:

question of fact
   Your “best effort” definition:
   
   Your revised definition:

reverse
   Your “best effort” definition:
   
   Your revised definition:

statute
   Your “best effort” definition:
   
   Your revised definition:

subject matter jurisdiction
   Your “best effort” definition:
   
   Your revised definition:

Supreme Law of the Land
   Your “best effort” definition:
   
   Your revised definition:

trial court
   Your “best effort” definition:
   
   Your revised definition:

trier of fact
   Your “best effort” definition:
   
   Your revised definition:

venue
   Your “best effort” definition:
   
   Your revised definition:

WORKING ON-LINE
Go to the Federal Judiciary Home Page:
   http://www.uscourts.gov

Using the “Newsroom” link from that page, find a story about court developments. Use your browser’s search engine to locate additional information about the same story. Check the Web site for the National Law Journal, as well:
   http://www.nlj.com

Prepare a report using information from the various sources you have found.

ETHICAL CHALLENGE
Roger Ellsworth is a legal assistant in the county public defender’s office. Before coming to this office, he worked in a criminal defense law firm. Over the years he has come to know a number of attorneys and paralegals in the district attorney’s office, and occasionally a group from both offices have lunch together.

At one of these lunches, a deputy D.A. talked about a recent case in which the suspect fled the state. No one knew where the suspect had gone. That evening, Roger learned that his wife’s second cousin was once involved with a man by the same name. “He was always in trouble, and they finally split up. But she can’t seem to get over him,” Marie said. “Whenever he shows up, she takes him in.”

The following evening Marie informed Roger that her aunt had confirmed that the cousin’s old boyfriend had moved back in several weeks before. When Roger stated his intention to call a friend in the D.A.’s office, Marie urged him not to make the call. “We don’t even know for sure that it’s the same person,” Marie pointed out. “And, if he is, my aunt and cousin would never forgive me.”

Roger spent a restless night, torn between his loyalty to Marie and his sense of ethical responsibility.

ETHICAL ANALYSIS
Roger truly faces a dilemma. Like any citizen, he has a civic duty to cooperate with law enforcement in the search for a fugitive from the law. Of course, he also has a moral responsibility to his wife, as
well as a personal interest in protecting their relationship from discord.

Unless the law of his state so requires, Roger does not have a legal duty to report the information he has learned. And, at this point, it is sheer speculation that the cousin’s boyfriend might be the fugitive suspect. So, it appears that this is an ethical dilemma, not a legal one.

Roger is not an attorney and officer of the court. He is not employed in the D.A.’s office, and the public defender’s office is not involved at this time, so Roger has no ethical duty as an employee to volunteer the information. There is no special ethical standard for legal assistants which gives Roger a greater duty in this situation than he would have if he were not a paralegal. In effect, Roger has the same ethical duty as any member of the public.

Consequently, Roger must balance the risk of damage for the marital and family relationships against the general obligation to assist law enforcement in apprehending a fugitive. If Roger reports the information, and the cousin’s boyfriend turns out not to be the suspect, Marie and her relatives might still feel betrayed by his action. Roger and Marie might pay a very high emotional price for a futile effort to aid law enforcement.

Does Roger have other options, not mentioned here?

READING CASE LAW

The full text of Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099 (1978) follows. Read the opinion of the court (beginning immediately following “Mr. Justice WHITE delivered the opinion of the Court”), and then Justice Stewart’s dissenting opinion.

Make a list of Justice Stewart’s key points for denying to Judge Sparkman the immunity usually granted judges for their official actions. Then, re-read the majority opinion and summarize an argument opposing each of Justice Stewart’s key points. Finally, write a few paragraphs explaining which view you agree with—the Court’s or Justices Stewart’s.

ANSWERS TO REVIEW QUESTIONS

1. Laws enacted by a legislature are known as statutes.
2. Legislative intent is the purpose which the legislature had in mind when it enacted a particular statute.
3. In every criminal case, the plaintiff is the government/people.
4. Regulations established by government agencies, and the court decisions which interpret them, are part of administrative law.
5. Executive orders issued by the President or a state governor carry the force of law.
6. The court of last resort is the highest appellate court in that jurisdiction.
7. The Supreme Law of the Land comprises all federal constitutional, statutory, treaty, and administrative law.
8. The authority to enact legislation must be found in a constitution. That authority can be:
   • explicitly expressed in the words of the constitution;
   • implied by the provisions of the constitution; or,
   • inherent in the nature of government.
9. The general police powers of the state governments encompass the protection of public health, safety, welfare, and morals.
10. The powers to impose taxes and define and punish crimes are examples of concurrent powers held by both the state and federal governments.
11. When English courts of law became inflexible in their application of the common law, courts of equity were established to resolve disputes more fairly.
12. Article IV, Section 1, of the U.S. Constitution states, in part:
   “Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”
13. The authority of a court to determine the legal issues and the rights and obligations of the parties that are before it is that court’s jurisdiction.
14. A state court of general jurisdiction has the authority to hear and determine any civil or criminal case arising under the laws of that state.
15. The Uniform Commercial Code (UCC) establishes the law of commercial contracts for the sale of goods and merchandise.
16. Business transactions and transportation that cross state lines, or have a substantial impact on commercial activity among the states, fall within the laws of interstate commerce, which only Congress may regulate.
17. There are three basic types of jurisdiction:
   - subject matter jurisdiction;
   - in rem jurisdiction; and,
   - personal jurisdiction.
18. The court’s authority to determine the status of real or personal property located within its geographic jurisdiction is known as in rem jurisdiction.
19. Service of process is the delivery of court documents in accordance with procedures established by law.
20. Whenever a party or her attorney files written documents with the court, or is physically present in court, for the purpose of affecting the outcome of the proceedings, that party has made an appearance before the court.
21. Long arm statutes permit a state’s courts to exercise personal jurisdiction over non-resident persons that are located outside of that state.
22. Unlawful flight is leaving a jurisdiction for the purpose of avoiding arrest or prosecution.
23. If the location of a court is greatly inconvenient for a civil defendant and witnesses, the defendant can petition for a change of venue.
24. A trial court hears and makes a final determination of all questions of fact.
25. In most states, a(n) attorney may not be the plaintiff in a small claims court.
26. If a court decision lacks any reasonable foundation, either in the evidence or the law, that is termed an abuse of discretion.
27. A frivolous appeal is one completely without merit, lacking any reasonable basis under the facts and the law.
28. When all opposing parties in a lawsuit are from different states (i.e., no one defendant and no one plaintiff are citizens of the same state), diversity of citizenship exists.
29. Under pendent jurisdiction, a federal court may hear and decide a matter under state law if it arises from the same set of facts as another matter which is properly before the federal court.
30. In addition to the eleven numbered circuits, there is a Court of Appeal for the District of Columbia and a Court of Appeal for the Federal Circuit.
31. To have the U.S. Supreme Court review the decision of a lower court, one must file a petition for review.
32. Most cases heard by the Supreme Court come before it on a writ of certiorari.
33. Under the doctrine of judicial immunity, judges are absolutely immune from any civil liability for their official acts.
98 S.Ct. 1099
55 L.Ed.2d 331
(Cite as: 435 U.S. 349, 98 S.Ct. 1099)

Supreme Court of the United States

Harold D. STUMP et al., Petitioners,
v.
Linda Kay SPARKMAN and Leo Sparkman.

No. 76-1750.


Woman, who had been sterilized by order of Indiana circuit court when she was 15 years old, and her husband brought civil rights action against her mother, her mother's attorney, the medical practitioners who performed the sterilization and judge who ordered it. The United States District Court for the Northern District of Indiana dismissed the federal claims, holding that the Indiana judge, the only state agent, was absolutely immune from suit. The Court of Appeals, 552 F.2d 172, reversed, and certiorari was granted. The Supreme Court, Mr. Justice White, held that: (1) under the Indiana statute granting a broad general jurisdiction, the circuit court had jurisdiction to consider the petition; (2) neither the procedural errors the judge may have committed nor the lack of a specific statute authorizing his approval of the petition in question rendered him liable in damages, and (3) because the judge who performed the type of act normally performed only by judges and because he did so in his capacity as a circuit court judge, the informality with which he proceeded did not render his action "nonjudicial" for purposes of depriving him of his absolute immunity.

Reversed and remanded.

Opinion on remand, 601 F.2d 261.

Mr. Justice Stewart filed a dissenting opinion in which Mr. Justice Marshall and Mr. Justice Powell joined.

Mr. Justice Powell filed a dissenting opinion.

West Headnotes

[1] Judges ⇑ 36
227k36

Judge will not be deprived of immunity because action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in clear absence of all jurisdiction.

[2] Mental Health ⇑ 57
257Ak57

In view of broad jurisdictional grant given Indiana circuit court, and in view of absence of either statute or case law foreclosing such consideration, Indiana circuit court judge had jurisdiction to consider mother's petition for authority to have her "somewhat retarded" 15-year-old daughter sterilized. IC 1971, 16-13-13-1 to 16-13-13-4; IC 16-8-4-2, 33-4-4-3 (1976 Ed.).

227k36

Because Indiana circuit court is court of general jurisdiction, neither procedural errors circuit court judge may have committed in considering sterilization petition, nor lack of specific statute authorizing his approval of petition, rendered him liable in damages for consequences of his actions. IC 1971, 16-13-13-1 to 16-13-13-4; IC 16-8-4-2, 33-4-4-3 (1976 Ed.).

227k36

Factors determining whether act by judge is "judicial one", for purposes of conferring judicial immunity, relate to nature of act itself, i. e., whether it is function normally performed by judge, and to expectations of parties, i. e., whether they dealt with judge in his judicial capacity.

227k36

Because Indiana circuit court judge, in approving mother's ex parte petition to have her "somewhat retarded" 15-year-old daughter sterilized, acted in his capacity as circuit court judge, and performed type of act normally performed only by judges, lack of formality with which he proceeded did not render his action "nonjudicial" for purposes of depriving him of absolute immunity from damages liability. IC 1971, 16-13-13-1 to 16-13-13-4; IC 16-8-4-2, 33-4-4-3 (1976 Ed.).
Disagreement with action taken by judge does not justify depriving that judge of his immunity; fact that issue before judge is controversial one is all the more reason why he should be able to act without fear of suit.

**1100 Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 2d 499.

*349 A mother filed a petition in affidavit form in an Indiana Circuit Court, a court of general jurisdiction under an Indiana statute, for authority to have her "somewhat retarded" 15-year-old daughter (a respondent here) sterilized, and petitioner Circuit Judge approved the petition the same day in an ex parte proceeding without a hearing and without notice to the daughter or appointment of a guardian ad litem. The operation was performed shortly thereafter, the daughter having been told that she was to have her appendix removed. About two years later she was married, and her inability to become pregnant led her to discover that she had been sterilized. As a result she and her husband (also a respondent here) filed suit in Federal District Court pursuant to 42 U.S.C. § 1983 against her mother, the mother's attorney, the Circuit Judge, the doctors who performed or assisted in the sterilization, and the hospital where it was performed, seeking damages for the alleged violation of her constitutional rights. Holding that the constitutional claims required a showing of state action and that the only state action alleged was the Circuit Judge's approval of the sterilization petition, the District Court held that no federal action would lie against any of the defendants because the Circuit Judge, the only state agent, was absolutely immune from suit under the doctrine of judicial immunity. The Court of Appeals reversed, holding that the "crucial issue" was whether the Circuit Judge acted within his jurisdiction, that he had not, that accordingly he was not immune from damages liability, and that in any event he had forfeited his immunity "because of his failure to comply with elementary principles of procedural due process." Held: The Indiana law vested in the Circuit Judge the power to entertain and act upon the petition for sterilization, and he is, therefore, immune from damages liability even if his approval of the petition was in error. Pp. 1104-1109.

(a) A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority, but rather he will be subject to liability only when he has acted in the "clear absence of all jurisdiction," Bradley v. Fisher, 13 Wall. 335, 351, 20 L.Ed. 646. Pp. 1104-1105.

*350 b) Here there was not "clear absence of all jurisdiction" in the Circuit Court to consider the sterilization petition. That court had jurisdiction under the Indiana statute granting it broad general jurisdiction, it appearing that neither by statute nor by case law had such jurisdiction been circumscribed to foreclose consideration of the petition. P. 1105.

(c) Because the Circuit Court is a court of general jurisdiction, neither the procedural errors the Circuit Judge may have committed nor the lack of a specific statute authorizing his approval of the petition in question rendered him liable in damages for the consequences of his actions. P. 1106.

(d) The factors determining whether an act by a judge is "judicial" relate to the nature of the act itself (whether it is a function normally performed by a judge) and the expectation of the parties (whether they dealt with the judge in his judicial capacity), and here both of these elements indicate that the Circuit Judge's approval of the sterilization petition was a judicial act, even though he may have proceeded with informality. Pp. 1106-1108.

(e) Disagreement with the action taken by a judge does not justify depriving him of his immunity, and thus the fact that in this case tragic consequences ensued from the judge's action does not deprive him of his immunity; moreover, the fact that the issue before the judge is a controversial one, as here, is all the more reason that he should be able to act without fear of suit. Pp. 1108-1109.

552 F.2d 172, reversed and remanded.

George E. Fruechtenicht, Fort Wayne, Ind., for petitioners.

Richard H. Finley, Kendallville, Ind., for respondents.

*351 Mr. Justice WHITE delivered the opinion of the Court.
98 S.Ct. 1099
(Cite as: 435 U.S. 349, *351, 98 S.Ct. 1099, **1101)

This case requires us to consider the scope of a judge's immunity from damages liability when sued under 42 U.S.C. § 1983.

**1102 [ ]

The relevant facts underlying respondents' suit are not in dispute. On July 9, 1971, Ora Spitter McFarlin, the mother of respondent Linda Kay Spitter Sparkman, presented to Judge Harold D. Stump of the Circuit Court of DeKalb County, Ind., a document captioned "Petition To Have Tubal Ligation Performed On Minor and Indemnity Agreement." The document had been drafted by her attorney, a petitioner here. In this petition Mrs. McFarlin stated under oath that her daughter was 15 years of age and was "somewhat retarded," although she attended public school and had been promoted each year with her class. The petition further stated that Linda had been associating with "older youth or young men" and had stayed out overnight with them on several occasions. As a result of this behavior and Linda's mental capabilities, it was stated that it would be in the daughter's best interest if she underwent a tubal ligation in order "to prevent unfortunate circumstances . . . ." In the same document Mrs. McFarlin also undertook to indemnify and hold harmless Dr. John Hines, who was to perform the operation, and the DeKalb Memorial Hospital, where the operation was to take place, against all causes of action that might arise as a result of the performance of the tubal ligation. [FN1]

FN1. The full text of the petition presented to Judge Stump read as follows:

"STATE OF INDIANA) ss:
COUNTY OF DEKALB)

"PETITION TO HAVE TUBAL LIGATION PERFORMED ON MINOR AND INDEMNITY AGREEMENT
"Ora Spitter McFarlin, being duly sworn upon her oath states that she is the natural mother of and has custody of her daughter, Linda Spitter, age fifteen (15) being born January 24, 1956 and said daughter resides with her at 108 Iowa Street, Auburn, DeKalb County, Indiana.
"Affiant states that her daughter's mentality is such that she is considered to be somewhat retarded although she is attending or has attended the public schools in DeKalb Central School System and has been passed along with other children in her age level even though she does not

have what is considered normal mental capabilities and intelligence. Further, that said affiant has had problems in the home of said child as a result of said daughter leaving the home on several occasions to associate with older youth or young men and as a matter of fact having stayed overnight with said youth or men and about which incidents said affiant did not become aware of until after such incidents occurred. As a result of this behavior and the mental capabilities of said daughter, affiant believes that it is to the best interest of said child that a Tubal Ligation be performed on said minor daughter to prevent unfortunate circumstances to occur and since it is impossible for the affiant as mother of said minor child to maintain and control a continuous observation of the activities of said daughter each and every day.
"Said affiant does hereby in consideration of the Court of DeKalb Circuit Court approving the Tubal Ligation being performed upon her minor daughter does hereby [sic] covenant and agree to indemnify and keep indemnified and hold Dr. John Hines, Auburn, Indiana, who said affiant is requesting to perform said operation and the DeKalb Memorial Hospital, Auburn, Indiana, whereas [sic] said operation will be performed, harmless from and against all or any matters or causes of action that could or might arise as a result of the performing of said Tubal Ligation.
"IN WITNESS WHEREOF, said affiant, Ora Spitter McFarlin, has hereunto subscribed her name this 9th day of July, 1971.

"/s/ ORA SPITLER MCFARLIN
Ora Spitter McFarlin

Petitioner

"Subscribed and sworn to before me this 9th day of July, 1971.

"/s/ WARREN G. SUNDAY
Warren G. Sunday

Notary Public

"I, Harold D. Stump, Judge of the DeKalb Circuit Court, do hereby approve the above Petition by affidavit form on behalf of Ora Spitter McFarlin, to have Tubal Ligation performed upon her minor daughter, Linda Spitter, subject to said Ora Spitter McFarlin covenanting and agreeing to indemnify
and keep indemnified Dr. John Hines and the DeKalb Memorial Hospital from any matters or causes of action arising therefrom.

"/s/ HAROLD D. STUMP
Judge, DeKalb Circuit Court
"Dated July 9, 1971"

*352 **1103 The petition was approved by Judge Stump on the same day. He affixed his signature as "Judge, DeKalb Circuit Court," to the statement that he did "hereby approve the *353 above Petition by affidavit form on behalf of Ora Spiter McFarlin, to have Tubal Ligation performed upon her minor daughter, Linda Spiteri, subject to said Ora Spiter McFarlin covenanting and agreeing to indemnify and keep indemnified Dr. John Hines and the DeKalb Memorial Hospital from any matters or causes of action arising therefrom."

On July 15, 1971, Linda Spiteri entered the DeKalb Memorial Hospital, having been told that she was to have her appendix removed. The following day a tubal ligation was performed upon her. She was released several days later, unaware of the true nature of her surgery.

Approximately two years after the operation, Linda Spiteri was married to respondent Leo Sparkman. Her inability to become pregnant led her to discover that she had been sterilized during the 1971 operation. As a result of this revelation, the Sparkmans filed suit in the United States District Court for the Northern District of Indiana against Mrs. McFarlin, her attorney, Judge Stump, the doctors who had performed and assisted in the tubal ligation, and the DeKalb Memorial Hospital. Respondents sought damages for the alleged violation of Linda Sparkman's constitutional rights; [FN2] also asserted were pendent state claims for assault *354 and battery, medical malpractice, and loss of potential fatherhood.

FN2. The District Court gave the following summary of the constitutional claims asserted by the Sparkmans:

"Whether laid under section 1331 or 1343(3) and whether asserted directly or via section 1983 and 1985, plaintiffs' grounds for recovery are asserted to rest on the violation of constitutional rights. Plaintiffs urge that defendants violated the following constitutional guarantees:

1. that the actions were arbitrary and thus in violation of the due process clause of the Fourteenth Amendment;

2. that Linda was denied procedural safeguards required by the Fourteenth Amendment;

3. that the sterilization was permitted without the promulgation of standards;

4. that the sterilization was an invasion of privacy;

5. that the sterilization violated Linda's right to procreate;

6. that the sterilization was cruel and unusual punishment;

7. that the use of sterilization as punishment for her alleged retardation or lack of self-discipline violated various constitutional guarantees;

8. that the defendants failed to follow certain Indiana statutes, thus depriving Linda of due process of law; and

9. that defendants violated the equal protection clause, because of the differential treatment accorded Linda on account of her sex, marital status, and allegedly low mental capacity." Sparkman v. McFarlin, Civ. No. F 75-129 (ND Ind., May 13, 1976).

Ruling upon the defendants' various motions to dismiss the complaint, the District Court concluded that each of the constitutional claims asserted by respondents required a showing of state action and that the only state action alleged in the complaint was the approval by Judge Stump, acting as Circuit Court Judge, of the petition presented to him by Mrs. McFarlin. **1104 The Sparkmans sought to hold the private defendants liable on a theory that they had conspired with Judge Stump to bring about the allegedly unconstitutional acts. The District Court, however, held that no federal action would lie against any of the defendants because Judge Stump, the only state agent, was absolutely immune from suit under the doctrine of judicial immunity. The court stated that "whether or not Judge Stump's 'approval' of the petition may in retrospect appear to have been premised on an erroneous *355 view of the law, Judge Stump surely had jurisdiction to consider the petition and to act thereon." Sparkman v. McFarlin, Civ. No. F 75-129 (ND Ind., May 13, 1976). Accordingly, under Bradley v. Fisher, 13 Wall. 335, 351, 20 L.Ed. 646 (1872), Judge Stump was entitled to judicial immunity. [FN3]

FN3. The District Court granted the defendants' motion to dismiss the federal claims for that reason and dismissed the remaining pendent state claims for lack of subject-matter jurisdiction.

On appeal, the Court of Appeals for the Seventh Circuit reversed the judgment of the District Court, [FN4] holding that the "crucial issue" was "whether
Judge Stump acted within his jurisdiction" and concluding that he had not. 552 F.2d, at 174. He was accordingly not immune from damages liability under the controlling authorities. The Court of Appeals also held that the judge had forfeited his immunity "because of his failure to comply with elementary principles of procedural due process." Id., at 176.


We granted certiorari, 434 U.S. 815, 98 S.Ct. 51, 54 L.Ed.2d 70 (1977), to consider the correctness of this ruling. We reverse.

II

The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that 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, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." Bradley v. Fisher, supra, at 347. [FN5] For that reason the Court held that "judges *356 of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." [FN6] 13 Wall., at 351. Later we held that this doctrine of judicial immunity was applicable in suits under § 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, for the legislative record gave no indication that Congress intended to abolish this long-established principle. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).

[FN5] Even earlier, in Randall v. Brigham, 7 Wall. 523, 19 L.Ed. 285 (1869), the Court stated that judges are not responsible "to private parties in civil actions for their judicial acts, however injurious may be those acts, and however much they may deserve condemnation, unless perhaps where the acts are palpably in excess of the jurisdiction of the judges, and are done maliciously or corruptly." Id., at 537. In Bradley the Court reconsidered that earlier statement and concluded that "the qualifying words used were not necessary to a correct statement of the law . . . ." 13 Wall., at 351.

[FN6] In holding that a judge was immune for his judicial acts, even when such acts were performed in excess of his jurisdiction, the Court in Bradley stated: "A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in those particulars the validity of his judgments may depend." Id., at 351-352.

[1] The Court of Appeals correctly recognized that the necessary inquiry in determining **1105 whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Because "some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction . . . ." Bradley, supra, at 352, the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only *357 when he has acted in the "clear absence of all jurisdiction." [FN7] 13 Wall., at 351.

FN7. In Bradley, the Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples: if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune. Id., at 352.

[2] We cannot agree that there was a "clear absence of all jurisdiction" in the DeKalb County Circuit Court to consider the petition presented by Mrs. McFarlin. As an Indiana Circuit Court Judge, Judge Stump had "original exclusive jurisdiction in all cases at law and in equity whatsoever . . . ." jurisdiction over the settlement of estates and over guardianships, appellate jurisdiction as conferred by law, and jurisdiction over "all other causes, matters and
proceedings where exclusive jurisdiction thereof is not conferred by law upon some other court, board or officer." Ind.Code § 33-4-4-3 (1975). [FN8] This is indeed a broad jurisdictional grant; yet the Court of Appeals concluded that Judge Stump did not have jurisdiction over the petition authorizing Linda Sparkman’s sterilization.

FN8. Indiana Code § 33-4-4-3 (1975) states as follows:
"Jurisdiction.—Said court shall have original exclusive jurisdiction in all cases at law and in equity whatsoever, and in criminal cases and actions for divorce, except where exclusive or concurrent jurisdiction is, or may be conferred by law upon justices of the peace. It shall also have exclusive jurisdiction of the settlement of decedents’ estates and of guardianships: Provided, however, That in counties in which criminal or superior courts exist or may be organized, nothing in this section shall be construed to deprive such courts of the jurisdiction conferred upon them by laws, and it shall have such appellate jurisdiction as may be conferred by law, and it shall have jurisdiction of all other causes, matters and proceedings where exclusive jurisdiction thereof is not conferred by law upon some other court, board or officer."

*358* In so doing, the Court of Appeals noted that the Indiana statutes provided for the sterilization of institutionalized persons under certain circumstances, see Ind.Code §§ 16-13-13-1 through 16-13-13-4 (1973), but otherwise contained no express authority for judicial approval of tubal ligation. It is true that the statutory grant of general jurisdiction to the Indiana circuit courts does not itemize types of cases those courts may hear and hence does not expressly mention sterilization petitions presented by the parents of a minor. But in our view, it is more significant that there was no Indiana statute and no case law in 1971 prohibiting a circuit court, a court of general jurisdiction, from considering a petition of the type presented to Judge Stump. The statutory authority for the sterilization of institutionalized persons in the custody of the State does not warrant the inference that a court of general jurisdiction has no power to act on a petition for sterilization of a minor in the custody of her parents, particularly where the parents have authority under the Indiana statutes to "consent to and contract for medical or hospital care or treatment of [the minor] including surgery." Ind.Code § 16-8-4-2 (1973). The District Court concluded that Judge Stump had jurisdiction under § 33-4-4-3 to entertain and act upon Mrs. McFarlin’s petition. We agree with the District Court, it appearing that neither by statute nor by case law has the broad jurisdiction granted to the circuit courts of Indiana been circumscribed to foreclose consideration of a petition for authorization of a minor’s sterilization.

The Court of Appeals also concluded that support for Judge Stump’s actions could not be found in the common law of Indiana, relying in particular on the Indiana Court of Appeals’ intervening decision in A. L. v. G. R. H., 163 Ind.App. 636, 325 N.E.2d 501 (1975). In that case the Indiana court held that a parent does not have a common-law right to have a minor child sterilized, even though the parent might "sincerely believe the child’s adulthood would benefit therefrom." Id., at 638, 325 N.E.2d, at 502. The opinion, however, *359* speaks only of the rights of the parents to consent to the sterilization of their child and does not question the jurisdiction of a circuit judge who is presented with such a petition from a parent. Although under that case a circuit judge would err as a matter of law if he were to approve a parent’s petition seeking the sterilization of a child, the opinion in A. L. v. G. R. H. does not indicate that a circuit judge is without jurisdiction to entertain the petition. Indeed, the clear implication of the opinion is that, when presented with such a petition, the circuit judge should deny it on its merits rather than dismiss it for lack of jurisdiction.

Perhaps realizing the broad scope of Judge Stump’s jurisdiction, the Court of Appeals stated that, even if the action taken by him was not foreclosed under the Indiana statutory scheme, it would still be "an illegitimate exercise of his common law power because of his failure to comply with elementary principles of procedural due process." 552 F.2d, at 176. This misconceives the doctrine of judicial immunity. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. The Court made this point clear in Bradley, 13 Wall., at 357, where it stated: "[T]his erroneous manner in which [the court’s] jurisdiction was exercised, however it may have affected the validity of the act, did not make the act any less a judicial act; nor did it render the defendant liable to answer in damages for it at the suit of the plaintiff, as though the court had proceeded without having any jurisdiction whatever . . . ."

[3] We conclude that the Court of Appeals, employing an unduly restrictive view of the scope of Judge Stump’s jurisdiction, erred in holding that he was not entitled to judicial immunity. Because the
court over which Judge Stump presides is one of general jurisdiction, neither the procedural errors he may have committed nor the lack of a specific statute authorizing his approval of the petition in question rendered *360 him liable in damages for the consequences of his actions.

The respondents argue that even if Judge Stump had jurisdiction to consider the petition presented to him by Mrs. McFarlin, he is still not entitled to judicial immunity because his approval of the petition did not constitute a "judicial" act. It is only for acts performed in his "judicial" capacity that a judge is absolutely immune, they say. We do not disagree with this statement of the law, but we cannot characterize the approval of the petition as a nonjudicial act.

Respondents themselves stated in their pleadings before the District Court that Judge Stump was "clothed with the authority of the state" at the time that he approved the petition and that he was acting as a county circuit court judge. Plaintiffs' Reply Brief to Memorandum Filed on Behalf of Harold D. Stump in Support of his Motion to Dismiss in Civ. No. F 75-129, p. 6. They nevertheless now argue that Judge Stump's approval of the petition was not a judicial act because the petition was not given a docket number, was not placed on file with the clerk's office, and was approved in an ex parte proceeding without notice to the minor, without a hearing, and without the appointment of a guardian ad litem.

This Court has not had occasion to consider, for purposes of the judicial immunity doctrine, the necessary attributes of a judicial act; but it has previously rejected the **1107 argument, somewhat similar to the one raised here, that the lack of formality involved in the Illinois Supreme Court's consideration of a petitioner's application for admission to the bar prevented it from being a "judicial proceeding" and from presenting a case or controversy that could be reviewed by this Court. In re Summers, 325 U.S. 561, 65 S.Ct. 1307, 89 L.Ed. 1795 (1945). Of particular significance to the present case, the Court in Summers noted the following: "The record does not show that any process issued or that any appearance was made. . . . While no entry was placed by the Clerk in the file, on a docket, or in a judgment roll, the Court took cognizance of the petition and *361 passed an order which is validated by the signature of the presiding officer." Id., at 567, 65 S.Ct., at 1311. Because the Illinois court took cognizance of the petition for admission and acted upon it, the Court held that a case or controversy was presented.

Similarly, the Court of Appeals for the Fifth Circuit has held that a state district judge was entitled to judicial immunity, even though "at the time of the altercation [giving rise to the suit] Judge Brown was not in his judge's robes, he was not in the courtroom itself, and he may well have violated state and/or federal procedural requirements regarding contempt citations." McAlester v. Brown, 469 F.2d 1280, 1282 (1972). [FN9] Among the factors relied upon by the Court of Appeals in deciding that the judge was acting within his judicial capacity was the fact that "the confrontation arose directly and immediately out of a visit to the judge in his official capacity." Ibid. [FN10]

FN9. In McAlester the plaintiffs alleged that they had gone to the courthouse where their son was to be tried by the defendant in order to give the son a fresh set of clothes. When they went into the defendant judge's office, he allegedly ordered them out and had a deputy arrest one of them and place him in jail for the rest of the day. Several months later, the judge issued an order holding the plaintiff in contempt of court, nunc pro tunc.

FN10. Other Courts of Appeals, presented with different fact situations, have concluded that the challenged actions of defendant judges were not performed as part of the judicial function and that the judges were thus not entitled to rely upon the doctrine of judicial immunity. The Court of Appeals for the Ninth Circuit, for example, has held that a justice of the peace who was accused of forcibly removing a man from his courtroom and physically assaulting him was not absolutely immune. Gregory v. Thompson, 500 F.2d 59 (1974). While the court recognized that a judge has the duty to maintain order in his courtroom, it concluded that the actual eviction of someone from the courtroom by use of physical force, a task normally performed by a sheriff or bailiff, was "simply not an act of a judicial nature." Id., at 64. And the Court of Appeals for the Sixth Circuit held in Lynch v. Johnson, 420 F.2d 818 (1970), that the county judge sued in that case was not entitled to judicial immunity because his service on a board with only legislative and administrative powers did not constitute a judicial act.

[4][5] *362 The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i. e., whether it is a function normally performed by a
judge, and to the expectations of the parties, i. e.,
whether they dealt with the judge in his judicial
capacity. Here, both factors indicate that Judge
Stump's approval of the sterilization petition was a
judicial act. [FN11] **1108 State judges with general
jurisdiction not infrequently are called upon in their
official capacity to approve petitions relating to the
affairs of minors, as for example, a petition to settle
a minor's claim. Furthermore, as even respondents
have admitted, at the time he approved the petition
presented to him by Mrs. McFarlin, Judge Stump was
"acting as a county circuit court judge." See supra,
at 1106. We may infer from the record that it was
only because Judge Stump served in that position that
Mrs. McFarlin, on the advice of counsel, submitted
the petition to him for his approval. Because Judge
Stump performed the type of act normally performed
only by judges and because he did so in his capacity
as a Circuit Court Judge, we find no *363 merit to
respondents' argument that the informality with which
he proceeded rendered his action nonjudicial and
deprived him of his absolute immunity. [FN12]

FN11. Mr. Justice STEWART, in dissent, complains
that this statement is inaccurate because it nowhere
appears that judges are normally asked to approve
parents' decisions either with respect to surgical
treatment in general or with respect to sterilizations
in particular. Of course, the opinion makes neither
assertion. Rather, it is said that Judge Stump was
performing a "function" normally performed by
judges and that he was taking "the type of action"
judges normally perform. The dissent makes no
effort to demonstrate that Judge Stump was without
jurisdiction to entertain and act upon the specific
petition presented to him. Nor does it dispute that
judges normally entertain petitions with respect to the
affairs of minors. Even if it is assumed that in a
lifetime of judging, a judge has acted on only one
petition of a particular kind, this would not indicate
that his function in entertaining and acting on it is not
the kind of function that a judge normally performs.
If this is the case, it is also untenable to claim that in
entertaining the petition and exercising the
jurisdiction with which the statutes invested him,
Judge Stump was nevertheless not performing a
judicial act or was engaging in the kind of conduct
not expected of a judge under the Indiana statutes
governing the jurisdiction of its courts.

FN12. Mr. Justice STEWART'S dissent, post, at
1111, suggests that Judge Stump's approval of Mrs.
McFarlin's petition was not a judicial act because of
the absence of what it considers the "normal
attributes of a judicial proceeding." These attributes
are said to include a "case," with litigants and the
opportunity to appeal, in which there is "principled
decisionmaking." But under Indiana law, Judge
Stump had jurisdiction to act as he did; the
proceeding instituted by the petition placed before
him was sufficiently a "case" under Indiana law to
warrant the exercise of his jurisdiction, whether or
not he then proceeded to act erroneously. That
there were not two contending litigants did not make
Judge Stump's act any less judicial. Courts and
judges often act ex parte. They issue search
warrants in this manner, for example, often without
any "case" having been instituted, without any
"case" ever being instituted, and without the issuance
of the warrant being subject to appeal. Yet it would
not destroy a judge's immunity if it is alleged and
offered of proof is made that in issuing a warrant he
acted erroneously and without principle.

[6] Both the Court of Appeals and the respondents
seem to suggest that, because of the tragic
consequences of Judge Stump's actions, he should not
be immune. For example, the Court of Appeals
noted that "[t]here are actions of purported judicial
character that a judge, even when exercising general
jurisdiction, is not empowered to take," 352 F.2d, at
176, and respondents argue that Judge Stump's action
was "so unfair" and "so totally devoid of judicial
concern for the interests and well-being of the young
girl involved" as to disqualify it as a judicial act.
Brief for Respondents 18. Disagreement with the
action taken by the judge, however, does not justify
depriving that judge of his immunity. Despite the
unfairness to litigants that sometimes results, the
doctrine of judicial immunity is thought to be in the
best interests of "the proper administration of justice
. . . [f]or it allows] a judicial officer, in exercising
the authority vested in him [to be free to act upon his
own convictions, without apprehension of personal
consequences to himself." Bradley v. Fisher, 13 *364
(Cite as: 435 U.S. 349, *364. 98 S.Ct. 1099,
**1108) Wall., at 347. The fact that the issue before
the judge is a controversial one is all the more
reason that he should be able to act without fear of suit.
As the Court pointed out in Bradley:
"Controversies involving not merely great pecuniary
interests, but the liberty and character of the parties,
and consequently exciting the deepest feelings, are
being constantly determined in those courts, in
which there is great conflict in the evidence and
great doubt as to the law which should govern their
decision. It is this class of cases which impose
upon the judge the severest labor, and often create
in his mind a painful sense of responsibility." Id.,
at 348.

The Indiana law vested in Judge Stump the power to

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entertain and act upon the petition for sterilization. He is, therefore, under the controlling cases, immune from damages liability even if his approval of the petition was in error. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further ***1109 proceedings consistent with this opinion. [FN13]

FN13. The issue is not presented and we do not decide whether the District Court correctly concluded that the federal claims against the other defendants were required to be dismissed if Judge Stump, the only state agent, was found to be absolutely immune. Compare Kermit Constr. Corp. v. Banco Credit y Ahorro Ponceño, 547 F.2d 1 (CA1 1976), with Guedry v. Ford, 431 F.2d 660 (CAS 1970).

It is so ordered.

Mr. Justice BRENNAN took no part in the consideration or decision of this case.

Mr. Justice STEWART, with whom Mr. Justice MARSHALL and Mr. Justice POWELL join, dissenting.

It is established federal law that judges of general jurisdiction are absolutely immune from monetary liability "for their *365 judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." Bradley v. Fisher, 13 Wall. 335, 351, 20 L.Ed. 646. It is also established that this immunity is in no way diminished in a proceeding under 42 U.S.C. § 1983. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288. But the scope of judicial immunity is limited to liability for "judicial acts," and I think that what Judge Stump did on July 9, 1971, was beyond the pale of anything that could sensibly be called a judicial act.

Neither in Bradley v. Fisher nor in Pierson v. Ray was there any claim that the conduct in question was not a judicial act, and the Court thus had no occasion in either case to discuss the meaning of that term. [FN1] Yet the proposition that judicial immunity extends only to liability for "judICIAL acts" was emphasized no less than seven times in Mr. Justice Field's opinion for the Court in the Bradley case. [FN2] Cf. Imbler v. Pachtman, 424 U.S. 409, 430, 96 S.Ct. 984, 995, 47 L.Ed.2d 128. And if the limitations inherent in that concept have any realistic meaning at all, then I cannot believe that the action of Judge Stump in approving Mrs. McFarlin's petition is protected by judicial immunity.

FN1. In the Bradley case the plaintiff was a lawyer who had been disbarred; in the Pierson case the plaintiffs had been found guilty after a criminal trial.

FN2. See 13 Wall., at 347, 348, 349, 351, 354, 357.

The Court finds two reasons for holding that Judge Stump's approval of the sterilization petition was a judicial act. First, the Court says, it was "a function normally performed by a judge." Second, the Court says, the act was performed in Judge Stump's "judicial capacity." With all respect, I think that the first of these grounds is factually untrue and that the second is legally unsound.

When the Court says that what Judge Stump did was an act "normally performed by a judge," it is not clear to me whether the Court means that a judge "normally" is asked to approve a mother's decision to have her child given surgical *366 treatment generally, or that a judge "normally" is asked to approve a mother's wish to have her daughter sterilized. But whichever way the Court's statement is to be taken, it is factually inaccurate. In Indiana, as elsewhere in our country, a parent is authorized to arrange for and consent to medical and surgical treatment of his minor child. Ind.Code Ann. § 16-8-4-2 (1973). And when a parent decides to call a physician to care for his sick child or arranges to have a surgeon remove his child's tonsils, he does not, "normally" or otherwise, need to seek the approval of a judge. [FN3] On the other hand, ***1110 Indiana did in 1971 have statutory procedures for the sterilization of certain people who were institutionalized. But these statutes provided for administrative proceedings before a board established by the superintendent of each public hospital. Only if after notice and an evidentiary hearing, an order of sterilization was entered in these proceedings could there be review in a circuit court. See Ind.Code Ann. §§ 16-13-13-1 through 16-13-13-4 (1973). [FN4]

FN3. This general authority of a parent was held by an Indiana Court of Appeals in 1975 not to include the power to authorize the sterilization of his minor child. A. L. v. G. R. H., 163 Ind.App. 636, 325 N.E.2d 501.

Contrary to the Court's conclusion, ante, at 1106, that case does not in the least demonstrate that an Indiana judge is or ever was empowered to act on the merits of a petition like Mrs. McFarlin's. The parent in that case did not

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petition for judicial approval of her decision, but rather " filed a complaint for declaratory judgment seeking declaration of her right under the common-law attributes of the parent-child relationship to have her son . . . sterilized." 163 Ind.App., at 636-637, 325 N.E.2d, at 501. The Indiana Court of Appeals' decision simply established a limitation on the parent's common-law rights. It neither sanctioned nor contemplated any procedure for judicial "approval" of the parent's decision. Indeed, the procedure followed in that case offers an instructive contrast to the judicial conduct at issue here:

"At the outset, we thank counsel for their excellent efforts in representing a seriously concerned parent and in providing the guardian ad litem defense of the child's interest." Id., at 638, 325 N.E.2d, at 502.

FN4. These statutes were repealed in 1974.

*367 In sum, what Judge Stump did on July 9, 1971, was in no way an act "normally performed by a judge." Indeed, there is no reason to believe that such an act has ever been performed by any other Indiana judge, either before or since.

When the Court says that Judge Stump was acting in "his judicial capacity" in approving Mrs. McFarlin's petition, it is not clear to me whether the Court means that Mrs. McFarlin submitted the petition to him only because he was a judge, or that, in approving it, he said that he was acting as a judge. But however the Court's test is to be understood, it is, I think, demonstrably unsound.

It can safely be assumed that the Court is correct in concluding that Mrs. McFarlin came to Judge Stump with her petition because he was a County Circuit Court Judge. But false illusions as to a judge's power can hardly convert a judge's response to those illusions into a judicial act. In short, a judge's approval of a mother's petition to lock her daughter in the attic would hardly be a judicial act simply because the mother had submitted her petition to the judge in his official capacity.

If, on the other hand, the Court's test depends upon the fact that Judge Stump said he was acting in his judicial capacity, it is equally invalid. It is true that Judge Stump affixed his signature to the approval of the petition as "Judge, DeKalb Circuit Court." But the conduct of a judge surely does not become a judicial act merely on his own say-so. A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity. [FN5]

FN5. Believing that the conduct of Judge Stump on July 9, 1971, was not a judicial act, I do not need to inquire whether he was acting in "the clear absence of all jurisdiction over the subject matter." Bradley v. Fisher, 13 Wall., at 351. "Jurisdiction" is a coat of many colors. I note only that the Court's finding that Judge Stump had jurisdiction to entertain Mrs. McFarlin's petition seems to me to be based upon dangerously broad criteria. Those criteria are simply that an Indiana statute conferred "jurisdiction of all . . . causes, matters and proceedings," and that there was not in 1971 any Indiana law specifically prohibiting what Judge Stump did.

*368 If the standard adopted by the Court is invalid, then what is the proper measure of a judicial act? Contrary to implications in the Court's opinion, my conclusion that what Judge Stump did was not a judicial act is not based upon the fact that he acted with informality, or that he may not have been "in his judge's robes," or "in the courtroom itself." Ante, at 1107. And I do not reach this conclusion simply "because the petition was not given a docket number, was not placed on file with the clerk's office, and was approved in an ex parte proceeding without notice to the minor, without a hearing, and without the appointment of a guardian ad litem." Ante, at 1106.

It seems to me, rather, that the concept of what is a judicial act must take its content from a consideration of the factors that support immunity from liability for the performance of such an act. Those factors **1111 were accurately summarized by the Court in Pierson v. Ray, 386 U.S., at 554, 87 S.Ct., at 1218: "[I]t is . . . for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences'. . . . It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation."

Not one of the considerations thus summarized in the Pierson opinion was present here. There was no "case," controversial *369 or otherwise. There were no litigants. There was and could be no appeal.
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(Cite as: 435 U.S. 349, *369, 98 S.Ct. 1099, **1111)

And there was not even the pretext of principled decision-making. The total absence of any of these normal attributes of a judicial proceeding convinces me that the conduct complained of in this case was not a judicial act.

The petitioners' brief speaks of "an aura of deism which surrounds the bench . . . essential to the maintenance of respect for the judicial institution." Though the rhetoric may be overblown, I do not quarrel with it. But if aura there be, it is hardly protected by exonerating from liability such lawless conduct as took place here. And if intimidation would serve to deter its recurrence, that would surely be in the public interest. [FN6]

FN6. The only question before us in this case is the scope of judicial immunity. How the absence of a "judicial act" might affect the issue of whether Judge Stump was acting "under color of" state law within the meaning of 42 U.S.C. § 1983, or the issue of whether his act was that of the State within the meaning of the Fourteenth Amendment that need not, therefore, be pursued here.

Mr. Justice POWELL, dissenting.

While I join the opinion of Mr. Justice STEWART. I wish to emphasize what I take to be the central feature of this case--Judge Stump's preclusion of any possibility for the vindication of respondents' rights elsewhere in the judicial system.

Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872), which established the absolute judicial immunity at issue in this case, recognized that the immunity was designed to further the public interest in an independent judiciary, sometimes at the expense of legitimate individual grievances. Id., at 349; accord, Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 1217, 18 L.Ed.2d 288 (1967). The Brady Court accepted those costs to aggrieved individuals because the judicial system itself provided other means for protecting individual rights:

"Against the consequences of [judges'] erroneous or irregular action, from whatever motives proceeding, the law *370 has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort." 13 Wall., at 354.

Underlying the Bradley immunity, then, is the notion that private rights can be sacrificed in some degree to the achievement of the greater public good deriving from a completely independent judiciary, because there exist alternative forums and methods for vindicating those rights. [FN1]


But where a judicial officer acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be available, the underlying assumption of the Bradley doctrine is inoperative. See Pierson v. Ray, supra, 386 U.S., at **1112(Cite as: 435 U.S. 349, *370, 98 S.Ct. 1099, **1112) 554, 87 S.Ct., at 1213, 1218. [FN2] In this case, as Mr. Justice STEWART points out, ante, at 1111, Judge Stump's judicial conduct insured that "[i]t is here was and could be no appeal." The complete absence of normal judicial process foreclosed resort to any of the "numerous remedies" that "the law has provided for private parties." Bradley, supra, at 354.

FN2. In both Bradley and Pierson any errors committed by the judges involved were open to correction on appeal.

In sum, I agree with Mr. Justice STEWART that petitioner judge's actions were not "judicial," and that he is entitled to no judicial immunity from suit under 42 U.S.C. § 1983.

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