

# The Burger Court Opinion Writing Database

## *Stump v. Sparkman*

435 U.S. 349 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

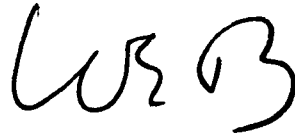
March 22, 1978

Dear Byron:

Re: 76-1750 Stump v. Sparkman

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WB' followed by a large 'B', likely representing Warren Burger.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 17, 1978

Re: No. 76-1750 - Stump v. Sparkman

Dear Byron,

I shall in due course circulate a dissenting  
opinion in this case.

Sincerely yours,

PS,  
1.

Mr. Justice White

Copies to the Conference

Mr. Justice Brennan  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1750

Harold D. Stump et al., Petitioners,  
v.  
Linda Kay Sparkman and  
Leo Sparkman. } On Writ of Certiorari to  
the United States  
Court of Appeals for  
the Seventh Circuit.

[March —, 1978]

MR. JUSTICE STEWART, dissenting.

It is established federal law that judges of general jurisdiction are absolutely immune from monetary liability "for 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*, 80 Wall. 335, 351. 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. 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.<sup>1</sup> Yet the proposition that judicial immunity extends only to liability for "judicial acts" was emphasized no less than seven times in Mr. Justice Fields' opinion for the Court in the *Bradley* case.<sup>2</sup> Cf. *Imbler v. Pachtman*, 424 U. S. 409, 430. And if the limitations inherent

<sup>1</sup> 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.

<sup>2</sup> See 13 Wall., at 347, 348, 349, 351, 354, 357.

Mr.  
Mr.  
✓ Mr.  
Mr. Ju  
Mr. Just  
Mr. Justice R  
Mr. Justice Stevens

From: Mr. Justice Stevens

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: 24 MAR 1978  
Recirculated:

No. 76-1750

Harold D. Stump et al., Petitioners, } On Writ of Certiorari to  
v. } the United States  
Linda Kay Sparkman and } Court of Appeals for  
Leo Sparkman. } the Seventh Circuit.

[March —, 1978]

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 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*, 80 Wall. 335, 351. 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. 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.

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<sup>1</sup> 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.

<sup>2</sup> See 13 Wall., at 347, 348, 349, 351, 354, 357.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 2-16-78

Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1750

Harold D. Stump et al., Petitioners,	} On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
v.	
Linda Kay Sparkman and Leo Sparkman.	

[February —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

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

## I

The relevant facts underlying respondents' suit are not in dispute. On July 9, 1971, Ora Spitler McFarlin, the mother of respondent Linda Kay Spitler 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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 3, 14

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 3/13

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1750

Harold D. Stump et al., Petitioners,	} On Writ of Certiorari to	
v.		the United States
Linda Kay Sparkman and		Court of Appeals for
Leo Sparkman.		the Seventh Circuit.

[February —, 1978]

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Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens ✓

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 3/18

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1750

Harold D. Stump et al., Petitioners,	}	On Writ of Certiorari to
v.		the United States
Linda Kay Sparkman and		Court of Appeals for
Leo Sparkman.		the Seventh Circuit.

[February —, 1978]

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1750, Stump v. Sparkman

I vote to affirm the judgment of the Court of Appeals. I cannot find, under all the circumstances of this case, that the signing of the petition and indemnification order was a judicial act.

*TM.*  
T.M.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 23, 1978

No. 76-1750, Stump v. Sparkman

Dear Byron:

I await the dissenting opinion.

Sincerely,

*J.M.*

T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 17, 1978

Re: No. 76-1750, Stump v. Sparkman

Dear Potter:

Please join me in your dissent.

Sincerely,

*JM*  
T. M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 22, 1978

Re: No. 76-1750 - Stump v. Sparkman

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 20, 1978

No. 76-1750 Stump v. Sparkman

Dear Byron:

As I was tentatively in dissent, I'll await other circulations.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

March 16, 1978

No. 76-1750 Stump v. Sparkman

Dear Potter:

One of the points I think you and I both mentioned at the Conference is that the respondent in this case had no right of appeal.

At my suggestion Bob Comfort has drafted a little opinion emphasizing that point. I think your opinion is excellent, but I would like for one of us to place somewhat greater emphasis on the appeal point. I would be happy for you to use any part or all of the enclosed draft, or - if you prefer - I will simply file it as a supplementary dissent to your opinion.

Sincerely,

Mr. Justice Stewart

lfp/ss

Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

1st DRAFT

Circulated: 23 MAR 1978

SUPREME COURT OF THE UNITED STATES

Re-circulated: \_\_\_\_\_

No. 76-1750

Harold D. Stump et al., Petitioners,	}	On Writ of Certiorari to
v.		the United States
Linda Kay Sparkman and		Court of Appeals for
Leo Sparkman.		the Seventh Circuit.

[March —, 1978]

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—petitioner's preclusion of any possibility for the vindication of respondent's rights elsewhere in the judicial system.

*Bradley v. Fisher*, 13 Wall. 335 (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 (1967). The *Bradley* 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 has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort."

*Bradley, supra*, 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.<sup>1</sup>

<sup>1</sup> See Handler & Klein, The Defense of Privilege in Defamation Suits

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

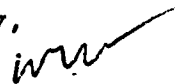
February 21, 1978

Re: No. 76-1750 - Stump v. Sparkman

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 21, 1978

Re: 76-1750 - Stump v. Sparkman

Dear Byron:

Please join me.

Respectfully,

A handwritten signature in dark ink, appearing to be "JPS", written over the word "Respectfully,".

Mr. Justice White

Copies to the Conference