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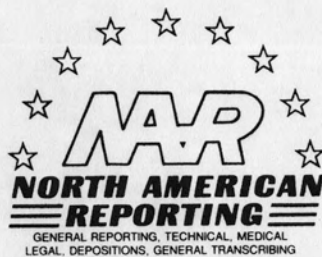
Supreme Court of the United States

OFFICIAL TRANSCRIPT OF PROCEEDINGS • ~~NOT FOR QUOTATION OR DUPLICATION IN ANY FORM~~

ORVILLE E. DENNIS,)	
)	
)	PETITIONER,
)	
)	
)	V.
)	
)	No. 79-1186
)	
SIDNEY SPARKS AND)	
R. L. LYND, ETC.,)	
)	
)	
)	RESPONDENTS.
)	

Washington, D.C.
October 8, 1980

Pages 1 thru 46.



1 IN THE SUPREME COURT OF THE UNITED STATES

2 ----- :
3 ORVILLE E. DENNIS, :

4 Petitioner, :

5 v. :

No. 79-1186

6 SIDNEY SPARKS AND :
7 R. L. LYND, ETC., :

8 Respondents. :
9 ----- :

10 Washington, D. C.

11 Wednesday, October 8, 1980

12 The above-entitled matter came on for oral argument
13 at 1:05 o'clock p.m.

14 BEFORE:

- 15 HON. WARREN E. BURGER, Chief Justice of the United States
- 16 HON. WILLIAM J. BRENNAN, JR., Associate Justice
- 17 HON. POTTER STEWART, Associate Justice
- 18 HON. BYRON R. WHITE, Associate Justice
- 19 HON. THURGOOD MARSHALL, Associate Justice
- 20 HON. HARRY A. BLACKMUN, Associate Justice
- 21 HON. LEWIS F. POWELL, JR., Associate Justice
- 22 HON. WILLIAM H. REHNQUIST, Associate Justice
- 23 HON. JOHN PAUL STEVENS, Associate Justice

24 APPEARANCES:

25 FINLEY L. EDMONDS, ESQ., Meredith, Donnell & Edmonds,
P. O. Box 2624, 1515 Bank & Trust Tower, Corpus Christi,
Texas 78403; on behalf of the Petitioner.

GARLAND F. SMITH, ESQ., Smith, McIlheran, Lauderdale &
Jones, P. O. Drawer 1104, Weslaco, Texas 78596;
on behalf of the Respondents.

C O N T E N T S

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ORAL ARGUMENT BY

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PROBING FALLS
ERASE
COTTON CONTENT

1 to put it in terms that is judicial immunity an affirmative
2 defense raises the question what if the judge who sued doesn't
3 raise the offense?

4 QUESTION: Well, are you suggesting that it's com-
5 parable to, analogous to the posture of a United States
6 Senator under the Speech or Debate Clause, that he may not be
7 questioned in any other place?

8 MR. EDMONDS: I'm saying, yes, that it's analogous
9 to legislative immunity, congressional immunity under the
10 Speech or Debate Clause if the judge, if the purpose for ques-
11 tioning the judge or for suing the judge is because of his
12 act or conduct while a judge, acting within his jurisdiction.

13 QUESTION: But we don't have a speech or debate
14 clause typed for judges, do we?

15 MR. EDMONDS: No, Your Honor.

16 QUESTION: That's a judicially constructive concept.

17 MR. EDMONDS: It's a common law of construction; yes,
18 Your Honor. And if the scope of judicial immunity, just
19 going back to Bradley v. Fisher and throw out the cases that
20 have been cited by this Court: Pierson, Embler, more recently
21 in the Consumer Union case.

22 The analysis of legislative immunity, the analysis
23 of judicial immunity, that if the public interest or rationale
24 behind this immunity is to free the judge from the intimi-
25 dation, harassment, et cetera, as the Court has many times

1 discussed in these cases. If that is the rationale, then
2 rhetorically does not the rationale require that judicial
3 immunity apply regardless of whether the judge raises it as a
4 defense? So, in answer to your question, Judge Rehnquist,
5 I would say that it's more than an affirmative defense, as
6 would be a qualified immunity whereon a state officer or a
7 federal officer is asserting that he is immune because of his
8 good faith carrying out of discretionary functions.

9 QUESTION: So what if the judge is served with
10 a complaint in an action such as this and simply lets the time
11 for answer go by and a default judgment is taken against him?
12 Would you say that that judgment is no good?

13 MR. EDMONDS: Or he answers -- yes.

14 QUESTION: Or he answers and litigates the case
15 without ever raising the claim that judgment is against him.
16 Is that judgment good?

17 MR. EDMONDS: Petitioner's position is that judi-
18 cial immunity, that the public interest behind judicial
19 immunity is that it's not in the judge's discretion to raise
20 the question of judicial immunity. It's the adjudicating
21 court's function to apply, it's a matter of jurisdiction.

22 QUESTION: So, even if he said I want to answer this
23 on the merits and clear my name of these allegations in the
24 complaint he would not be permitted to do so under your
25 theory?

1 MR. EDMONDS: Your Honor, my response to that is
2 does that not raise the question, or beg the issue, about the
3 underlying rationale for the immunity? Is it up to the judge
4 to decide whether he wants to respond or not, or is it in
5 the public interest that he not respond? Because how does
6 that place a judge --

7 QUESTION: As you say, on your submission, it's
8 a matter almost of jurisdiction.

9 MR. EDMONDS: Yes, Your Honor. Because if one judge
10 agrees that, okay, I will participate in this lawsuit, I
11 won't raise my affirmative defense of judicial immunity, and
12 I'll go in there and we'll straighten this thing out, well,
13 what about all the other judges? What about the public
14 interest behind judicial immunity?

15 QUESTION: What could you do about it? What could
16 you or anybody else do about it?

17 MR. EDMONDS: What can my client do about it?

18 QUESTION: What could you or anybody else do if a
19 judgment was obtained against Judge Joe Bloke who never told
20 anybody that he was a judge and never raised a question?
21 Now, what could anybody do about it? Nothing.

22 MR. EDMONDS: Well, Your Honor, they know he was a
23 judge.

24 QUESTION: But he says that it's not jurisdictional.

25 MR. EDMONDS: If he came to me and was sued for

1 conduct while not carrying out his judicial function, I would
2 agree. But in case he's being sued because of carrying out
3 his judicial function, we know he's a judge.

4 QUESTION: Then it's not jurisdictional-- In fact,
5 if you'd sue him as John Jones and he happens to be a judge,
6 what would happen?

7 MR. EDMONDS: Well, why am I suing him? For carry-
8 ing out his judicial function or for --

9 QUESTION: For just what he did here, and you didn't
10 mention that he was a judge?

11 MR. EDMONDS: I would say that the public interest
12 requires that the reviewing court apply judicial immunity and
13 say that this judge is immune because he was acting as a judge
14 when he did what he is alleged to have done.

15 QUESTION: Let's assume -- can't we start with an
16 assumption that this judge is immune and go on to your client
17 who is not a judge, is he?

18 MR. EDMONDS: That's right, Your Honor. He's not a
19 judge. And how can my client raise the --

20 QUESTION: -- vicarious exemption, if it is an
21 exemption?

22 MR. EDMONDS: Right. My client's position is that
23 like the Barra v. Jackson case that involved the defendant who
24 had sold property in violation of a restrictive covenant to
25 folks of another race, the question was, could that defendant

1 raise the constitutionality of that restrictive covenant as it
2 had applied to the other race, assuming the defendant sold?

3 And this Court held, yes.

4 In *Griswold v. Connecticut*, there the physician had
5 been convicted of the crime of an accessory and an accomplice
6 to third parties having to do with the state's ban on contra-
7 ceptives. And this Court held that the physician had standing
8 to raise the constitutionality argument that was more
9 directly applicable to the third party -- he's the person for
10 whom the physician had treated.

11 QUESTION: That's a matter of -- those cases really
12 turn on standing --

13 MR. EDMONDS: Yes, Your Honor.

14 QUESTION: -- and as one person has the interest
15 through the rights of *jus tertii*, the rights of a third person.
16 Is that what this is, a standing case, kind of? Not exactly.

17 MR. EDMONDS: Well, no, no. I mention those because
18 I think they're applicable. I was thinking, I guess, of the
19 question raised by the amicus, one of the amicus in the case,
20 questioning our ability to raise the judge's immunity because
21 we're not a judge. We were sued by the plaintiffs for partici-
22 pating in a state judicial function and -- well, our first
23 point about the definition of person, the scope of judicial
24 immunity, this to me logically turns in, goes into the ques-
25 tion about was it congressional intent back in 1866 and again

1 in 1871 and with subsequent amendments to the various civil
2 rights acts, specifically this Act, 1983. Is it congressional
3 intent to superimpose federal court oversight or federal court
4 jurisdiction over the litigation among parties of private
5 rights in the state court authorities?

6 Here we don't have a case of Mr. Dennis and the other
7 parties mugging the respondent on a highway. What we've got
8 here is, the other parties are not before the Court right now
9 having gone to state court, having filed a suit in state court,
10 a temporary injunction having been entered by Judge Carrillo,
11 and that temporary injunction being dissolved in the ordinary
12 course of events in the state proceedings by the Court of
13 Appeals.

14 QUESTION: What would be your analysis if the United
15 States -- a member of the United States Congress, House or
16 Senate, was involved in a conspiracy with a private citizen
17 and then the private citizen is a defendant, but not the
18 Member of Congress? Do you think the Speech or Debate Clause
19 could carry over to the coconspirator who was not protected by
20 the Speech or Debate Clause directly?

21 MR. EDMONDS: My answer is yes, Your Honor.

22 QUESTION: I must say that here because if it isn't
23 true there it couldn't possibly be true here, could it be?

24 MR. EDMONDS: I tend to agree with Your Honor.

25 QUESTION: Something like pendent immunity.

1 QUESTION: Vicarious immunity is --

2 MR. EDMONDS: I am very reluctant to get into the
3 area of using the terms of immunity, I suppose. I can't say
4 that Mr. Dennis had an immunity at common law. I can't say that
5 he had any of the immunities that this Court has held were
6 not abrogated by Congress when they passed the civil rights
7 statute we're dealing with. However, I am saying that the pub-
8 lic interest, the rationale, the logic behind judicial immunity
9 requires this result. And if we want to call it "vicarious"
10 or "pendent" or "derivative," so be it.

11 QUESTION: Why does the rationale require it?

12 MR. EDMONDS: The rationale requires it, as pointed
13 out by the dissent in the en banc decision before the 5th
14 Circuit. And it's pointed out by others. It requires it
15 because --

16 QUESTION: The judge is home free?

17 MR. EDMONDS: The judge is home free, but to allow
18 -- he's home free from a liability standpoint, but I guess the
19 answer has to be almost rhetorical. To allow prosecution of a
20 claim against a private citizen conspirator under -- how is
21 the private citizen even liable under 1983? It's because of
22 conspiracy with a judge under the Adickes v. Kress. So we've
23 got to have a conspiracy with the judge. So the judge is in-
24 volved, the judge's interest is involved because of the liti-
25 gation against a private person. The case is necessarily going

1 to involve whether there was a conspiracy with this judge, even
2 though he's immune, even though he can't be made to partici-
3 pate, even though he can't be made to testify.

4 QUESTION: Who said he couldn't testify?

5 QUESTION: Why can't he be made to testify or is
6 that what you said?

7 QUESTION: Where -- what case holds that?

8 MR. EDMONDS: There is no case that holds that,
9 Your Honor. It's petitioner's construction that the concept
10 of judicial immunity requires that the judge not participate,
11 just as this Court recently held --

12 QUESTION: Well, what about -- no, no, a judge isn't
13 immune from criminal indictment on grounds of official immu-
14 nity.

15 MR. EDMONDS: That's quite true, Your Honor, but
16 this is a civil case.

17 QUESTION: Incidentally, has he been prosecuted?

18 QUESTION: Yes, this judge is in jail, isn't he?

19 MR. EDMONDS: But not for this, Your Honor.

20 QUESTION: Has Manges been prosecuted?

21 MR. EDMONDS: To my knowledge he has not been pro-
22 secuted in a state district court for misconduct. He was
23 removed from his office because of conduct including mis-
24 conduct. Again --

25 QUESTION: But he hasn't been prosecuted criminally?

1 Do you know why not?

2 MR. EDMONDS: No, I don't, Your Honor.

3 QUESTION: You're suggesting this judge couldn't
4 be called as a witness against his coconspirators?

5 MR. EDMONDS: Well, I'm suggesting that if we say --

6 QUESTION: He might not even -- all right, go ahead.

7 MR. EDMONDS: Well, if we say that public interest
8 requires that judges not be subjected to a pleading contest
9 that can be brought about by any dissatisfied litigant in any
10 state court action, that -- to say that, okay, immunity means
11 that you can't -- that he's entitled to dismissal as a party
12 and immunity means that you can't get --

13 QUESTION: Well then, immunity for these people
14 isn't required, then, to implement any of the policies of
15 giving judges immunity. They can't be bothered for anything.
16 If they can't be called as witnesses, then why do you need to
17 give their coconspirators immunity just to protect the judge,
18 if the judge is already protected by -- from being called as
19 a witness or dragged through cases? I thought your argument
20 would be that if you didn't give these people immunity the
21 judge could be called as a witness, and would be involved in
22 this case -- if you take him away from his judicial duties and
23 have his motives questioned?

24 QUESTION: I thought so too. It brought to my mind
25 the controversy between Jefferson and Burr, when -- and when

1 John Marshall was sitting in the treason trial and tried to
2 get Jefferson to appear as a witness. And I think they settled
3 it by Jefferson simply furnishing papers, and Jefferson's
4 response was if the President could be subpoenaed from one
5 court to another, he can be prevented from doing his presi-
6 dential business. But if you say he can't -- that the judge
7 can't even be subpoenaed to testify, it seems to me there's
8 no reason in the policy that Justice White has mentioned, to
9 say that the coconspirators share his immunity.

10 QUESTION: Between the Burr case and one more recent
11 case, the Courts have held that even the President must respond
12 and be a witness if necessary.

13 MR. EDMONDS: Again, that was a criminal action
14 though, was it not, Your Honor?

15 QUESTION: It happened to be. But if there were
16 several actions that followed before she arrived, it would
17 seem clear that they would have to come as witnesses.

18 MR. EDMONDS: Well, Petitioner is arguing that
19 there is a distinction between the scope of judicial immunity
20 in a civil action, and the scope in a criminal action.

21 QUESTION: Well --

22 MR. EDMONDS: I think there are other state or public
23 interests that are floating in that scheme of things; the
24 rationale behind the protections of the system of prosecutors
25 and grand juries and indictments and the state itself, but when

1 you get to the civil action area under Section 1983, you're
2 talking about enforcement, about albeit harassment of judges
3 by private persons, the same constitutional or statutory safe-
4 guards don't apply. But I do agree there is a conflict there
5 that I think is resolved by differing public policy interests.

6 QUESTION: Mr. Edmonds, would there be a state law
7 civil remedy against your clients for the alleged bribery
8 attempts?

9 MR. EDMONDS: Yes, Your Honor.

10 QUESTION: And no immunity claim would defeat that
11 action? You're asking the federal court to grant a broader
12 immunity than the state courts of Texas grant, is that right?

13 MR. EDMONDS: There would be judicial immunity,
14 with respect to a civil action, for the bribery. With respect
15 to a criminal prosecution for the bribery, there would not be.

16 QUESTION: No, I'm asking about a damage remedy
17 brought by the Plaintiffs in this case against the non-judicial
18 Defendants in this case, making the same allegations that are
19 made here.

20 MR. EDMONDS: There is a damage remedy, and that
21 remedy is being pursued by the Respondent in the form of a
22 wrongful injunction suit. Under Texas law, the dissolution of
23 an injunction creates the cause of action for the wrongful
24 injunction. But in that case, the motives of the judge, in
25 entering the injunction, is not a critical or a turning factor.

1 But here, we're talking about how do you get to the private
2 citizen under 1983? You get to him only because of a con-
3 spiracy with the state actor; in this case it's a judge.

4 QUESTION: Is the judge liable under Texas law,
5 under the wrongful injunction action?

6 MR. EDMONDS: No. No, only the -- Mr. Manges,
7 who was the party that got the injunction, and my client's
8 liability would be limited solely to the bond that he signed.

9 QUESTION: So that apart from that action on the
10 bond, is there a tort action in Texas available -- in a
11 matter of common law for bribing a judge -- to harm you in
12 some way?

13 MR. EDMONDS: I don't know the answer to that
14 question, Your Honor. If I may, I'd like to reserve the
15 balance of my time for rebuttal, if that please the Court.

16 MR. CHIEF JUSTICE BURGER: Very well. Mr. Smith.

17 ORAL ARGUMENT OF GARLAND F. SMITH

18 ON BEHALF OF THE RESPONDENTS

19 MR. SMITH: Mr. Chief Justice, may it please the
20 Court, the question, I think, is pretty well before the Court.
21 The question is whether or not the private individuals who do
22 conspire with a state judge and do cause the state judge to
23 enter the bench and enter unlawful orders that result in
24 damage to the claim -- do they automatically derive immunity
25 for their wrongdoing simply because the judge is, himself,

1 immune?

2 Now, this case, of course, is before Your Honors
3 as -- on the pleadings, on a motion to dismiss, and the
4 pleadings, of course, have to be taken as true. But we would
5 point out to the Court that there's nothing in these pleadings,
6 in this case, that has not already been adjudicated in the
7 state of Texas. The bribery was adjudicated, on a motion to
8 disqualify Judge Carrillo. The comments of the judge, after
9 both parties had rested is included and attached to our plead-
10 ings, which is in the Appendix. And the Order that the judge
11 entered, holding that the judge was disqualified because the
12 transactions between the judge and Mr. Manges amounted to a
13 disqualifying situation -- that's been decided.

14 Now, Judge Carrillo has, subsequently, been impeached
15 by the Texas legislature. The House included the transactions
16 involved in the disqualification matter as one of the articles
17 of impeachment -- there were 12 articles, but this is only one
18 of them. He was convicted by the Texas Senate and removed
19 from office for corruption, various items. He was later tried
20 and convicted in federal court for tax fraud. Thereafter, he
21 was tried and convicted in the Texas state courts for theft.
22 Now we are not here on a jailhouse-type pleading that's
23 accusing an honorable judge and trying to besmirch the char-
24 acter of an honorable judge who simply made an error in one
25 of his rulings.

1 QUESTION: Of course, one of the reasons for the
2 immunity doctrine is that it's awfully hard to separate out,
3 you know, before you go to trial and appeal, and so forth, the
4 honorable judge who made a mistake in his ruling and the
5 corrupt judge who's been jailed for theft.

6 MR. SMITH: I think Learned Hand addressed that
7 question in one of his decisions. He said that if you could
8 determine that, then it would be monstrous not to allow relief.

9 Now, in this case, that determination has been made;
10 we're not before you --

11 QUESTION: But it wasn't made at the time you filed
12 your 1983 action, was it?

13 MR. SMITH: Oh yes. It was made then. Now, at the
14 time the wrongful injunction was issued, the attorneys who
15 represented the Respondents in that case -- which was not our
16 firm -- the attorneys who represented the Respondents in that
17 case did not know of the bribery. The bribery itself was not
18 determined until May the 20th, 1973. But the judge who made
19 the determination said that because of the bribery, the judge
20 was disqualified as of February 1, 1971. Now, the wrongful
21 injunction came after that date, so the wrongful injunction
22 came after the judge had accepted the bribe and after he was
23 disqualified because of it.

24 QUESTION: But this wasn't the rationale of the Court
25 of Appeals?

1 MR. SMITH: How's that?

2 QUESTION: This isn't the rationale of the Court of
3 Appeals, the en banc decision of the Court of Appeals?

4 MR. SMITH: Oh, no sir.

5 QUESTION: Now, you're going to defend that, aren't
6 you?

7 MR. SMITH: Oh yes, I'm going to address that. The
8 rationale of the Court of Appeals --

9 QUESTION: I take it you would not agree --

10 MR. SMITH: I beg your pardon?

11 QUESTION: I take it you would not agree with your
12 friend that a coconspirator with a member of Congress would
13 have the cloak of the speech or debate clause around him?

14 MR. SMITH: I don't think so, Your Honor. I think
15 -- I don't think that is exactly parallel. The Congressional
16 immunity is based on a specific constitutional provision.
17 The judicial immunity is based on common law. And the -- the
18 exception being --

19 QUESTION: You could concede the former arguendo,
20 and still --

21 MR. SMITH: Yes, I would say --

22 QUESTION: --maintain your position?

23 MR. SMITH: I would say it's irrelevant to our posi-
24 tion. The Civil Rights Act, in dealing with this matter, they
25 did not specifically make an exception. But in approaching our

1 problem, we have to start with the Civil Rights Act. And that
2 of course does not make an exception even of the judge. But
3 the Court, in construing that statute, concluded that the
4 Congress did not intend to abolish the common law immunities
5 that existed at that time, and the immunities did exist for
6 judges. But no immunity existed for those who conspire with
7 judges, under common law. So therefore, the rationale that
8 supports the immunity for the judges does not in any way give
9 any immunity whatever --

10 QUESTION: Well, if it's that clear, it's rather
11 strange that most of the Courts of Appeals have decided
12 against you.

13 MR. SMITH: Your Honor, that was the case when this
14 was first briefed. But it has been three circuits that have
15 changes their minds and the majority of the Courts of Appeals
16 are now on our side.

17 QUESTION: Well, what -- the Seventh has changed its
18 mind?

19 MR. SMITH: The Seventh has changed its mind.

20 QUESTION: Are you sure? Is that from that en banc --

21 MR. SMITH: I construe Lucas v. Vanderwater as --

22 QUESTION: Was that the en banc per curiam, or was
23 that the --

24 MR. SMITH: No, that's a subsequent case.

25 QUESTION: That's the later one, all right.

1 MR. SMITH: Okay, this was decided in April of --

2 QUESTION: All right, what other one has changed its
3 mind?

4 MR. SMITH: Okay. I would say that the Tenth Cir-
5 cuit, in Norton v. Ledell.

6 QUESTION: Well that isn't a -- that isn't a change
7 of mind --

8 MR. SMITH: Well, you're correct, it was not a change
9 of mind, but it is -- at issue --

10 QUESTION: All right.

11 MR. SMITH: It's the addition of another circuit.

12 QUESTION: All right, tell me another one that's
13 changed its mind? The Fifth has, of course, in this case.

14 MR. SMITH: The Fifth has, specifically. And you
15 add them all up, I would say the circuits that now support our
16 position are the Seventh -- now, I construed that en banc
17 decision. You have to -- you have to analyze about seven
18 different specific decisions, but when you tabulate the vote,
19 I think they have come down pretty hard --

20 QUESTION: Well, the Ninth is still against you.

21 MR. SMITH: I suppose I know they are, but --

22 QUESTION: And the Third is still against you.

23 MR. SMITH: That's correct.

24 QUESTION: The Fourth is still against you.

25 MR. SMITH: Correct.

1 QUESTION: The Sixth is still against you.

2 MR. SMITH: That's right. But there you end.

3 QUESTION: All right, well, it's about even then,
4 isn't it?

5 QUESTION: You want to straighten them out, is that
6 it, counsel?

7 MR. SMITH: I don't think --

8 QUESTION: My only point was that there's been an
9 awful lot of Courts of Appeals that have felt that the
10 policies of judicial immunity required immunity for private
11 parties.

12 MR. SMITH: Well those cases, I say, were not really
13 thought through very much; they weren't presented very well,
14 they were mostly pro se cases, and the court took an easy way
15 out to get rid of frivolous cases.

16 QUESTION: Well, what happened to the -- in this --
17 in this case, Mr. Smith, before any of the Texas proceedings
18 had taken place, your client filed his 1983 action and the
19 judge was asked to give a deposition and said he had cases set
20 for all week and all the next week, and your client said well,
21 I planned that the deposition is going to last at least two
22 weeks so you had better adjourn that calendar. And the federal
23 judge said you're going to have to participate in these depo-
24 sitions and if it takes two weeks, it takes two weeks.

25 MR. SMITH: Well, Your Honor, Number one, judges are

1 amenable to subpoena and to testimony in Texas, and we haven't
2 had any problem with it in Texas. The rules of procedure give
3 ample opportunity for any witness to be protected from harass-
4 ment, and that would certainly be doubly true with respect to
5 judges. Now, that's number one.

6 And number two is it doesn't apply to this case
7 because we don't have to have Judge Carrillo's testimony in
8 this case.

9 QUESTION: But certainly the Fifth Circuit en banc
10 opinion would include many cases in which you did need the
11 testimony of the judge?

12 MR. SMITH: Yes, I would say that they discussed that
13 question and they said the inconvenience to the judges would
14 be relatively insignificant, when you compare the disadvantages
15 of not having this ruse -- of allowing derivative immunity.
16 So, that's the way they disposed of it.

17 QUESTION: Are there not many situations in which a
18 sitting judge might be subpoenaed and required to spend time
19 in Court as a witness, either to an automobile accident or to
20 a rule that he had drawn when he was in private practice, or
21 even when he was on the bench ruling?

22 MR. SMITH: The fact that he's a judge doesn't mean
23 that he's not a citizen of the United States, and has an obli-
24 gation to his citizenship. If he has knowledge of crime or
25 anything else that's been committed that -- and he's the only

1 person that can testify, sure he ought to testify.

2 QUESTION: His immunity is a narrow immunity relating
3 to --

4 MR. SMITH: That's right.

5 QUESTION: -- his judicial functions.

6 MR. SMITH: It's just designed to protect the
7 integrity of the Court. Now when you get down to what the
8 immunity really is after, the end is integrity.

9 Now independence is only the means -- now, it's an
10 important means; if the judge is not independent he possibly
11 cannot be entirely fair and impartial and free in his decisions.
12 But if he uses his independence as a means of aiding corruption
13 as happened in this case, then to say that you exalt the
14 independence of the judge over and above and make it more
15 important than integrity, then you are reversing the whole
16 application. Now --

17 QUESTION: Well that argument would remind that
18 concept of judicial immunity.

19 MR. SMITH: That -- it would, yes, but the doctrine
20 of judicial immunity is the law. But if we are free to pro-
21 ceed against those who conspire with the judge and those who
22 corrupted him, they are not completely left out in the cold.

23 Now, the -- I don't think anyone argues that the
24 doctrine of judicial immunity is justified on any basis except
25 to preserve an independent judiciary and the integrity of the

1 Courts against fallacious and frivolous charges. And if we
2 are allowed to proceed against those who corrupted the judge,
3 then we're still not completely left out in the cold.

4 QUESTION: Well your lawsuit, you say, is not
5 frivolous and I assume that it isn't --

6 MR. SMITH: That's right.

7 QUESTION: -- but this rule of law through which
8 you contend, will it allow frivolous lawsuits?

9 MR. SMITH: Your Honor, I think the answer to that
10 is, there is no way you can keep frivolous lawsuits from being
11 filed in any field.

12 QUESTION: Well one way is to decide that the Court
13 of Appeals was mistaken in this case.

14 MR. SMITH: Now I think the Seventh Circuit, in the
15 McFarland case, probably has laid the groundwork for the proper
16 rule to take care of that.

17 You're going to have frivolous lawsuits unless you
18 have rules of procedure that can take care of them. Now that
19 question, really, is not reached in this case. I think you're
20 going to have to have some stringent rules on a case of this
21 kind, and the Seventh Circuit has said so. And we have pled
22 our case, specifically, and in great particularity, so that it
23 would satisfy the stringent requirements that are made by the
24 Seventh Circuit and we don't argue with that. We think they
25 ought to have those stringent requirements. I don't think

1 anybody ought to just be able to sit down and think up a
2 bunch of charges to make against a judge, and file suit.
3 I think that --

4 QUESTION: And just so long as he includes a
5 private citizen as a coconspirator, he can sue the private
6 citizen --

7 MR. SMITH: You can sue the private citizen and he's
8 the one -- you should be able to get most of your testimony
9 from him without having to go to the judge, but if there is
10 something that the judge feels like he's got an interest in it,
11 he can always --

12 QUESTION: And no matter how frivolous, any Plain-
13 tiff can do it.

14 MR. SMITH: I didn't say that.

15 QUESTION: Well, what are these rules set up by the
16 Seventh Circuit? How do you get --

17 MR. SMITH: Well the Seventh Circuit says --

18 QUESTION: How do you stop somebody from filing a
19 complaint?

20 MR. SMITH: Well of course, you can't do that.

21 QUESTION: No.

22 MR. SMITH: You can't stop them from filing a
23 complaint --

24 QUESTION: Of course you can't.

25 MR. SMITH: -- but you can stop them from carrying it

1 on to the point that it becomes a nuisance. The trial judge,
2 I think, can determine --

3 QUESTION: By dealing with the merits of the case.

4 MR. SMITH: By dealing with the -- well --

5 QUESTION: And that's exactly what judicial immunity
6 is supposed to prevent at the outset, nip in the bud; you don't
7 get to the merits of the case because the Defendant is immune,
8 cannot be sued.

9 MR. SMITH: Well that would be right, that would
10 be right if it was suit against the judge.

11 QUESTION: Right.

12 MR. SMITH: But this is not a suit against the judge,
13 this is a suit against the people that bribed him. So you don't
14 have that problem, it's just not --

15 QUESTION: Well the problem is still there, I
16 suggest.

17 MR. SMITH: Well, that issue was faced in the Fifth
18 Circuit, and the requirement of specific pleadings, of course,
19 puts the trial judge in a position to dismiss the case if
20 it isn't pled with particularity, and mannered -- or where
21 it overcomes the idea that it is a frivolous lawsuit. That's
22 really not too hard for the trial judge to do.

23 QUESTION: But a malicious person can plead with
24 particularity.

25 QUESTION: Absolutely so.

1 MR. SMITH: Well, of course, if it is a malicious
2 dealing, the Defendant has some action against the parties
3 that filed malicious litigation.

4 QUESTION: Well but that hasn't been the way -- 1983
5 has worked in the past, is that you get a judgment against
6 the judge and then he, in turn, turns around and sues the
7 person who sues him.

8 MR. SMITH: Well of course, the truth of the matter
9 is that the 1983 didn't really function until about the last
10 twenty years, and it's --

11 QUESTION: It has made up for lost time, though.

12 MR. SMITH: Well, very likely it has -- the dam
13 broke when they tried the first case, and it's to be expected
14 when anything is held back that long, there's going to be a
15 lot of litigation. But they are being weeded out, if -- if you
16 -- I don't think it's that serious. But when you are dealing
17 with a civil case you are in an entirely different situation
18 than you are with the fellow in the penitentiary that doesn't
19 have anything to do but sit around there and work around in
20 the library, and figure out ways he can try to bring a case
21 before the court. You're dealing with people that have been
22 suing in the state court; they've had lawyers involved with
23 it, and they are not -- no lawyer is going to get strung out
24 with a judge on a case unless he has valid grounds. I've been
25 practicing for 43 years --

1 QUESTION: Well --

2 MR. SMITH: -- and this is the first time I've ever
3 had a case --

4 QUESTION: -- you haven't been watching the flow
5 of cases in Appellate courts, either.

6 MR. SMITH: I realize that there has been a flow
7 of frivolous cases, and you have had to deal with them. But
8 what I --

9 QUESTION: With lawyers, and all with lawyers.

10 MR. SMITH: What I am saying is, as long as the
11 Courts are going to consider the frivolous cases, I don't think
12 they ought to throw my meritorious case out with the bad.

13 QUESTION: Well that's the -- that's what the doc-
14 trine of judicial immunity itself does.

15 MR. SMITH: It does if we sue the judge, we're not
16 suing the judge.

17 QUESTION: Yes. But your argument would undermine
18 the doctrine of judicial immunity itself.

19 MR. SMITH: No, we -- now, let me answer that
20 question. In the first place, they say that the judge is not
21 a person so far as 1983 is concerned. Well of course that's
22 a fiction, he is a person. He may be an immune person but he's
23 a person. And the fact that he is immune does not have anything
24 to do with his capacity to conspire; he has full capacity to
25 conspire, he has full capacity to commit any criminal act that

1 any individual has. And so he's -- the idea that he's not
2 a person is just, it's just a fiction, not even valid legal
3 fiction.

4 But now, when you get past that, he has conspired
5 and by virtue of his conspiracy, our clients have been denied
6 their right to try their case before a fair and impartial
7 judge because the case was tried before a bribed judge. Now
8 that's not what the constitution guarantees. We're not here
9 arguing with the idea of an independent judiciary -- we're
10 here because we didn't get a fair and impartial judge, to begin
11 with.

12 QUESTION: But the rule for which you contend could
13 not be confined to DuVal County, Texas and would enable any
14 person convicted, for example, of a criminal offense to
15 bring a 1983 lawsuit against the complaining witness in his
16 case and on the claim that the complaining witness conspired
17 with the judge to do him dirt.

18 MR. SMITH: The answer to that, Your Honor, is
19 simple. Corruption isn't restricted to DuVal County, Texas.
20 I read in the paper the other day that some judge up in Ohio
21 I believe, had been removed from office. The corruption they
22 recited in that case looked like it was just as bad as DuVal
23 County. So we've got to be able to deal with it when it
24 happens where it happens. And we cannot use the doctrine of
25 judicial immunity and derivative immunity to provide a cover-up

1 for -- judicial corruption -- if there's judicial corruption
2 that is one place, where --

3 QUESTION: Well, where you have judicial corruption
4 on the part of the judge alone, without -- who's not in cahoots
5 with anybody -- judicial immunity does provide a cover-up, to
6 use your words.

7 MR. SMITH: Frankly, I don't see any way around that.
8 If the judge is just corrupt by himself.

9 QUESTION: Well, there is no way around that.

10 QUESTION: By the way, is there a judicial immunity
11 under Texas law?

12 MR. SMITH: Yes sir.

13 QUESTION: For damage -- is it absolute immunity,
14 like, similar to what has been announced in 1983 suits?

15 MR. SMITH: My opinion is that there hasn't been
16 enough case law on it to answer the question. I think it's --

17 QUESTION: But to the extent there is, the judges
18 are immune?

19 MR. SMITH: I would guess that the Texas courts will
20 come down pretty much the same way you have here.

21 QUESTION: Well what about, you haven't had any
22 third-party cases then?

23 MR. SMITH: Oh no, no. No derivative immunity at
24 all, under Texas law, that I know of. I'm sure they haven't
25 had any. And but then, you get past that and get into

1 derivative immunity, and the cases that have considered it
2 and decided against it begin -- like this, number one in
3 the plain language of the statute, doesn't provide for deriv-
4 ative immunity because it says any person --

5 QUESTION: Or for judicial immunity?

6 MR. SMITH: Or for judicial immunity. But judicial
7 immunity has been provided under the theory that it existed
8 in common law. Now derivative immunity did not exist in common
9 law. So therefore, the cases that have held that the judge --

10 QUESTION: You mean therefore there are some cases
11 that held that it didn't, or just that there weren't any
12 cases?

13 MR. SMITH: That -- you mean there was a common law
14 question? My research has failed to disclose a single case --

15 QUESTION: All right, so that you really -- so that
16 there were cases that said it didn't exist?

17 MR. SMITH: I have had numerous Law Review articles
18 and I have seen the quotation in cases and in briefs and so
19 forth, that there was no derivative immunity at common law.
20 Now, I can't cite you a case that says -- that specifically
21 says that -- that was a British case, as of the date of --
22 1983.

23 Now the next thing is, that any such immunity that
24 is awarded to the private individuals who conspire with the
25 judge, constitutes an invitation to corruption. That's just

1 engraved into the idea; that if you are going to allow a man
2 to become immune from liability if he can bribe a judge and
3 make him party to the scheme, he automatically gets immune
4 for his act. To pose that question is almost to answer it,
5 I think.

6 QUESTION: Couldn't you say the same about judicial
7 immunity, that it almost invites a judge to be corrupt?

8 MR. SMITH: Right, well, of course, I think that
9 -- I think that is there, and our protection -- and the only
10 protection we have is, that I think we have been very fortu-
11 nate in the quality of lawyers who have taken the bench as
12 a career. There have been exceptions of course and we have been
13 embarrassed by them, the profession has and the judiciary
14 has --

15 QUESTION: But official immunity doesn't insulate
16 a judge from either criminal liability nor from disbarment,
17 or from investigation by -- or removal?

18 MR. SMITH: It doesn't change his--

19 QUESTION: Or impeachment, his not being re-elected.

20 MR. SMITH: It doesn't change his character in any
21 way.

22 QUESTION: Mr. Smith, what's the rationale of the
23 cases that have been against your position? And I've said that
24 there was a derivative --

25 MR. SMITH: Well the rationale there is substantially

1 what Mr. Edmonds said; that the fact that -- we'll take,
2 simplify it, we've got two parties; the judge and one party,
3 so the one party who bribes the judge finds out that the judge
4 is immune and then you file your conspiracy suit on 1983 and
5 you cannot have a conspiracy with only one party. So with the
6 judge removed, they say, well, he didn't conspire with any state
7 official against whom we could allege a cause of action.

8 Well, of course, that's a fiction, he conspired with
9 him, and as in this case, the injunction was issued as a result
10 of the bribe. It lasted for 31 months, our client abated -- he
11 abated because it had the force of state law, it was state
12 action, it had the color of state law, everything that was
13 required was there. And he abated for 31 months. And the
14 trial that he had was before a judge that was bribed. Now,
15 that doesn't meet the standard that the constitution guar-
16 antees.

17 QUESTION: I don't think I understand yet what the
18 rationale is of these cases --

19 MR. SMITH: Well, the rationale was that because it
20 takes two to conspire, when you remove the state, the immune
21 state officer, you just have one left; therefore, there was no
22 conspiracy because you can't conspire with yourself.

23 QUESTION: Well isn't there more than that? Isn't
24 it the discouragement of frivolous lawsuits for one thing and
25 secondly, the --

1 MR. SMITH: Well, of course, that's involved
2 in it, too --

3 QUESTION: -- infringement by federal courts on
4 state judicial processes and the like?

5 MR. SMITH: That's right. That's right.

6 QUESTION: And aren't those expressed in some of
7 the other opinions --

8 MR. SMITH: Those matters are expressed, yes sir.
9 And the opinions do -- the opinions do sustain it, we point
10 out, that there were pretty frivolous lawsuits, but my posi-
11 tion is that we've had those frivolous lawsuits and we haven't
12 had derivative immunity up until now. So I think you can
13 allow a suit under 1983 when it's meritorious, and if you
14 follow the pleadings requirements of the Seventh Circuit, you
15 are going to almost be sure that it's meritorious before it
16 -- before you get very far -- certainly before you get to the
17 discovery, anyway.

18 QUESTION: So long as the pleader told the truth?--

19 MR. SMITH: I beg your pardon?

20 QUESTION: So long as the pleader told the truth?

21 MR. SMITH: That's right, that's right. But of
22 course, --

23 QUESTION: It's not even that, is it, Mr. Smith?
24 Even if it's a frivolous lawsuit, if the judge isn't a defendant
25 he can get out -- I mean, he doesn't have much of a burden

1 on him, the fact that somebody alleged to have bribed him is
2 being sued, --

3 MR. SMITH: If he could --- because he
4 did get loose. But I think any frivolous lawsuit certainly
5 would be disposed of because before they haul a judge off his
6 bench and tie him up for two weeks in testimony, I just can't
7 see a federal district judge allowing that to happen under
8 the rooves that allow protection against that sort of harass-
9 ment. I think to bring a state judge off his bench, I think
10 the federal judge would have to be convinced that there's some
11 merit to this case. And of course --

12 QUESTION: So there is a brand of -- the judge would
13 have a degree of immunity from being hauled into the case?

14 MR. SMITH: Well certainly, certainly. I think any
15 witness has protection against harassment.

16 QUESTION: But you don't think the judge would have
17 any more than anybody else?

18 MR. SMITH: I think he would have more, because
19 I think --

20 QUESTION: He would have more?

21 MR. SMITH: I think he would have more and I think
22 the courts would allow him more. I think they would recognize
23 that the judge, because of his responsibilities to the public,
24 that they just can't haul him off of the bench and tie him up
25 for two weeks. I think the courts would consider --

1 QUESTION: Of course, your colleague suggests that
2 he couldn't be called at all.

3 MR. SMITH: Well, that would -- that would be his
4 position, and his preference, I'm sure. But the --

5 QUESTION: What protection, Mr. Smith? You say
6 it would be available even if it was an accident case and the
7 judge was a witness, you say the federal judge isn't going to
8 drag him off the bench and inconvenience him unnecessarily.
9 That's all you're saying there, isn't it?

10 MR. SMITH: Well, --

11 QUESTION: Using a parallel, Mr. Smith, with
12 many of the suits against cabinet officers, now under the
13 new statutes a cabinet officer may be sued in any federal
14 jurisdiction in the country and --

15 MR. SMITH: Of course.

16 QUESTION: -- including Hawaii and Alaska. And
17 haven't the courts seen to it that their testimony can be taken
18 by deposition and by interrogatory and not drag them away from
19 their cabinet work?

20 MR. SMITH: I think those orders of protection could
21 be given in judicial cases. I think the rules are more relaxed
22 with respect to executive officers, those who have what they
23 call a limited immunity. You see, a lot of these public offi-
24 cers have only limited immunity. But the courts still pro-
25 tect them. They don't allow them to just be taken away from

1 their jobs. They can make them take a deposition by written
2 interrogatories or --

3 QUESTION: Of course, a judge doesn't have any
4 immunity at all for conduct that occurs outside of his judicial
5 office. I mean if a judge hits you with his automobile on
6 some afternoon he's not immune at all, any more than any other
7 negligent driver is.

8 MR. SMITH: It's when he gets on the bench and
9 responds. Of course, we don't know where this bribe was given,
10 whether it was out on the ranch or in town, in the cafe, in
11 the coffee shop, or whether it was in chambers.

12 QUESTION: But the act --

13 MR. SMITH: But what he did was when he got on the
14 bench and entered the wrongful injunction in response to that.

15 QUESTION: And he clearly had the authority to enter
16 an injunction?

17 MR. SMITH: He has authority to enter an injunction.
18 I think the appellate court drew that he abused his discretion
19 They -- this particular injunction because it wasn't pled
20 for, number one, and they could have him -- the suit asked for
21 an injunction against pollution. They alleged that they were
22 operating the wells in a manner to pollute the surface of the
23 land, but the surface of the land in this case wasn't owned
24 by the Petitioner. But, the injunction could have enjoined
25 pollution, but under Texas law there is no way they could have

1 enjoined him from the lawful operation of producing oil.
2 They could have enjoined him from pollution but not from
3 operating the property, and that's where it was fatally defec-
4 tive and that's why the appellate courts ruled that it was an
5 abuse of discretion that he entered it and of course he entered
6 it without taking any evidence to speak of, it was practically
7 on the pleadings. But those were in the case, that's really
8 not too much involved here, but that's what the background is.

9 But anyway, in the extension of immunity to private
10 parties is simply not necessary to preserving the integrity
11 of the judiciary as I see it. And that's what the courts have
12 observed that have taken our position in the case.

13 Now, the courts that have taken an opposite position
14 has, it's been notice, talked about these frivolous lawsuits.
15 Now, we don't deny that frivolous lawsuits are going to be
16 filed. They're going to be filed whether or not you allow a
17 suit from, you have a meritorious lawsuit. But we think the
18 meritorious should be allowed certainly. If you're going to
19 hear all these frivolous cases.

20 Now, and as observed by the 5th Circuit, there's
21 very little inconvenience to the judge and it's relatively
22 insignificant when you compare it with the benefits to be
23 derived by allowing suits under general immunity.

24 Now, with respect to a state court case, there is a
25 case pending. I think I should explain that since it has been

1 mentioned.

2 When this case was filed, Judge Carrillo was still
3 sitting as judge of the court in Bigelow County. As it was
4 proceeding, we realized we had a more serious question here
5 on this matter of judicial immunity that we thought when we
6 started out. Frankly, my mind at the beginning just couldn't
7 conceive of a holding that a judge could accept a bribe and
8 he not be immune, and certainly that he would confer that
9 immunity to other parties. I didn't grasp that.

10 MR. CHIEF JUSTICE BURGER: Your time has expired
11 now, Mr. Smith.

12 MR. SMITH: But that's substantially our case. That
13 case in the state court was mainly protective.

14 MR. CHIEF JUSTICE BURGER: Very well. Do you have
15 anything further, Mr. Edmonds?

16 MR. EDMONDS: Yes, Your Honor, if I may take a few
17 minutes to respond to several matters that have been raised.

18 ORAL ARGUMENT OF FINLEY L. EDMONDS

19 ON BEHALF OF THE PETITIONER -- REBUTTAL

20 MR. EDMONDS: Mr. Smith makes the statement in his
21 argument that his client is left out in the cold. Again, I
22 think this consideration is critical when we talk about the
23 rationale for this statute, the rationale of Congress in
24 implementing this and passing this statute to implement the
25 Fourteenth Amendment.

1 Judge Carrillo did enter this injunction but that
2 injunction in the course of the procedures and the substantive
3 law that exists in the State of Texas, that injunction was set
4 aside by a Texas court.

5 Sparks and Lynd, Mr. Smith's clients, did not have
6 to go to a federal court to get the Texas courts to do right.
7 The Texas courts resolved the question. He was not left out
8 in the cold.

9 Secondly, they were not left out in the cold because
10 they have pending a lawsuit in a Texas court under Texas law
11 for the wrongful injunction.

12 QUESTION: Yes, I know, but they say that's a briar
13 patch down in Duval County, that they can't get justice.

14 MR. EDMONDS: Well, part of that lawsuit is pending
15 in Nueces County, Your Honor, as was pointed out in our brief.
16 Part of that lawsuit under the Texas venue procedure, the
17 lawsuit as it applies to my client, Mr. Dennis, is pending in
18 Nueces County.

19 QUESTION: What's that? Corpus Christi?

20 MR. EDMONDS: Yes, Your Honor, which I submit is not
21 a hornet's nest in Texas.

22 QUESTION: A briar patch is their place.

23 MR. EDMONDS: Or briar patch.

24 QUESTION: Mr. Edmonds, if you had four conspirators
25 here, alleged conspirators, rather than just one and the judge,

1 but one of the four was a state judge, would you still be here?

2 MR. EDMONDS: If one of the four was a state judge?

3 QUESTION: Yes.

4 MR. EDMONDS: Well, that's --

5 QUESTION: So that his immunity applies to all the
6 other conspirators, not just a single one. Is that your posi-
7 tion?

8 MR. EDMONDS: Yes, Your Honor. That's the situation
9 we have here.

10 QUESTION: Well, what if the plaintiffs in a lawsuit
11 file the lawsuit against your clients and they claim the
12 immunity and your clients come in and claim immunity, based
13 on the immunity of a state judge? And the answer of the plain-
14 tiffs is, we stipulate that we'll never bother that judge,
15 we'll never call him as a witness, he'll never be a witness
16 against any of you, we'll not bother him at all. But we'd
17 have to admit that in the course of our lawsuit we're going to
18 try to prove that he was corrupt. Now, would you think your
19 claim of immunity would be satisfied by, on any stipulation
20 like that?

21 MR. EDMONDS: The public interest behind judicial
22 immunity would definitely not be satisfied.

23 QUESTION: Why? Why not?

24 MR. EDMONDS: Your statement, that in the course of
25 these proceedings we're going to prove that there was a

1 conspiracy for this judge to do wrong. That's the very
2 essence of judicial immunity, the very essence of it.

3 And my man is raising that immunity, not because he's a judge
4 but because of this Court's decision in Pierson v. Ray that
5 judicial immunity is applicable in 1983 despite the fact that
6 there's nothing said in that statute about judicial immunity
7 or any immunity.

8 QUESTION: Well, do you think that the public
9 interest rationale is meant to kind of put up a facade to the
10 public that all judges are much more honest than normal people?

11 MR. EDMONDS: To use Mr. Smith's term, I guess that
12 would be a fiction that we'd be dealing with, Your Honor.
13 I don't think that the purpose of immunity is to create a
14 fiction. I think the purpose of this immunity that goes back
15 to the King's Bench, hundreds of years ago, is that there was
16 presumption that it does exist. And if we wanted to find that
17 what if we get into a situation where the majority of judges
18 are corrupt?

19 QUESTION: Well, the public interest connection --

20 MR. EDMONDS: Perhaps public interest will be changed
21 then.

22 QUESTION: The public interest rationale certainly
23 doesn't prevent the filing of a complaint, which may get great
24 publicity in the papers as to what the claims are about what
25 some judge did. And despite any stipulation or the immunity

1 of the judge from being called as a witness, there it is, and
2 if the case goes forward against him and there's a judgment
3 against the plaintiffs -- namely that the -- that nobody did
4 anything wrong, why, the judge is going to be vindicated, I
5 suppose.

6 MR. EDMONDS: Yes.

7 QUESTION: And if the finding is that the conspira-
8 tors really did conspire with the judge, it doesn't add a
9 whole -- so what's the --

10 MR. EDMONDS: Just the mere fact of filing, the
11 ability to file a lawsuit.

12 QUESTION: Well -- oh, I know, but the immunity
13 doesn't protect their buddy from that.

14 MR. EDMONDS: That's right, that's right. And I have
15 to submit to the court that this isn't as easy a question to
16 answer as Mr. Smith's events. We're not trying to say that
17 there's a black and white side to this. It's a matter of
18 balancing.

19 QUESTION: Even with the explicit, very explicit
20 immunity and protection of the Speech or Debate Clause, a
21 member of Congress can be sued under 1983 or in many other
22 ways, and that doesn't stop that exposure.

23 MR. EDMONDS: No, but he's immune if the conduct
24 for which he was sued falls under the Speech or Debate Clause.

25 QUESTION: Yes but he isn't immune from having

1 someone file a complaint with a lot of scurrilous allegations.

2 MR. EDMONDS: Yes, Your Honor, that's right. If
3 we're not talking here about, should the scope of judicial
4 immunity be broad enough to somehow screen out lawsuits as
5 they're being filed as the Clerk's house, I guess the answer
6 there is to respond upon, depend upon responsible journalism
7 that they don't blow a lawsuit like that out of proportion when
8 it's filed, before it's adjudicated.

9 Under the respondent's view of 1983 and the ability
10 to pursue conspirators, these private citizens, I submit that,
11 to follow respondent's view of the case, that the respondent
12 could have gone to federal court immediately at the time that
13 Judge Carrillo entered the temporary injunction. even before
14 The Beaumont Court of Appeals in Texas had a chance to throw
15 it out. Mr. Smith is fortunate in that he can present to the
16 Court such a bad set of facts.

17 QUESTION: Well, he would have very big trouble doing
18 that in the face of the Anti-injunction Act and a few other
19 things.

20 MR. EDMONDS: Under 1983 if we have a conspiracy and
21 if the immunity of that judge does not in effect shield the
22 judicial proceeding --

23 QUESTION: Well, you aren't going to be, you wouldn't
24 be enjoining the judge or the judicial proceeding.

25 MR. EDMONDS: No. I'm saying that he could sue

1 for damages.

2 QUESTION: Well, you mean he could -- well, all
3 right. He could probably enjoin the conspirators from con-
4 tinuing to bribe the judge.

5 MR. EDMONDS: Well, Your Honor, that is bribery.
6 That's Mr. Smith's term.

7 QUESTION: That would be enjoining a crime. You
8 can't enjoin a crime.

9 MR. EDMONDS: Well, maybe I didn't state myself
10 clearly. What I was stating, that under the respondent's view
11 of the case, that that just after the trial court stage that
12 he would be entitled under Section 1983 to file a suit for
13 damages in federal court, despite what might happen in state
14 court.

15 QUESTION: What you say is that in any court action
16 that has more than one defendant and one of the defendants
17 is an immune judge, all of the others are equally immune.
18 Isn't that what you say?

19 MR. EDMONDS: If it's a suit under a -- a civil
20 action suit --

21 QUESTION: If it's a suit, 1983 or anything else --

22 MR. EDMONDS: And if it's based upon the Judge's
23 conduct as a judge.

24 QUESTION: If it has more than person involved and
25 one of the people is a judge, all of the others -- one, two,

1 or 87 -- are all immune.

2 MR. EDMONDS: Yes, Your Honor. And that the reason --

3 QUESTION: You notice I didn't ask you for any
4 support.

5 MR. EDMONDS: Yes, Your Honor. As far as the fic-
6 tion concerning whether a judge, given this Court's decisions,
7 that judicial immunity is applicable in 1983 cases, to say
8 that, trying to say that a judge is or isn't a person is fic-
9 tion, that -- one could almost say that judicial immunity
10 itself is a fiction when it comes to applying that to 1983.
11 I will submit that it was not the Congress's intent to liti-
12 gate in federal court all states' courts' civil proceedings.

13 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen, the
14 case is submitted.

15 (Whereupon, at 2:06 o'clock p.m., the case in the
16 above-entitled matter was submitted.)

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CERTIFICATE

1
2 North American Reporting hereby certifies that the attached
3 pages represent an accurate transcript of electronic sound re-
4 cording of the oral argument before the Supreme Court of the
5 United States in the matter of:

6 No. 79-1186

7 Dennis v. Sparks and Lynd

8 and that these pages constitute the original transcript of the
9 proceedings for the records of the Court.

10 BY: James K. McCarthy
11 James K. McCarthy

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