

# TRANSCRIPT OF PROCEEDINGS

IN THE SUPREME COURT OF THE UNITED STATES

CYNTHIA A. FORRESTER, )  
 )  
 Petitioner, )

v. )

No. 86-761

HOWARD LEE WHITE )

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IN THE SUPREME COURT OF THE UNITED STATES

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CYNTHIA A. FORRESTER, :

Petitioner, :

v. : No. 86-761

HOWARD LEE WHITE :

-----x

Washington, D.C.

Monday, November 2, 1987

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:58 a.m.

APPEARANCES:

MARY ANNE SEDEY, ESQ., St. Louis, Missouri;

on behalf of the Petitioner.

ROSALYN B. KAPLAN, ESQ., Assistant Attorney General of Illinois, Chicago, Illinois;

on behalf of the Respondent.

C O N T E N T S

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ORAL ARGUMENT OF

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on behalf of Petitioner

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on behalf of Respondent

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## P R O C E E D I N G S

(10:58 a.m.)

1  
2  
3 CHIEF JUSTICE REHNQUIST: We'll hear argument next in  
4 No. 86-761, Cynthia Forrester versus Howard Lee White.

5 Ms. Sedey, you may proceed whenever you are ready.

6 ORAL ARGUMENT OF MARY ANN SEDEY, ESQ.

7 ON BEHALF OF PETITIONER

8 MS. SEDEY: Mr. Chief Justice, and may it please the  
9 Court.

10 The Petitioner in this case, Cynthia Forrester, sued  
11 her employer, Judge Howard Lee White, for intentional sex  
12 discrimination under 42 U.S.C. Section 1983, when he demoted  
13 and then discharged her from her position as Director of a  
14 Juvenile Court diversion program and juvenile probation officer  
15 for the Jersey County Illinois Circuit Court.

16 The issue for decision in this Court is whether a  
17 State Court Judge is engaged in a judicial act and therefore  
18 protected from a suit for damages by the Doctrine of Judicial  
19 Immunity when he makes a personnel decision regarding a Court  
20 employee.

21 We submit that the Seventh Circuit's ruling that the  
22 Doctrine of Judicial Immunity bars Cynthia Forrester's claim  
23 for damages expands the Doctrine of Judicial Immunity far  
24 beyond the limits created by this Court's decisions and beyond  
25 the scope necessary to effectuate its legitimate historical

1 purposes.

2 We ask this Court to rule that a personnel decision  
3 is not a judicial act, and that the Doctrine of Judicial  
4 Immunity does not bar a suit for damages under Section 1983 for  
5 employment discrimination.

6 This Court's prior decisions clearly articulate what  
7 is a judicial act. I think it's clear from those decisions  
8 that a judge's decision to fire a court employee does not fit  
9 within the category of acts which this Court has defined as  
10 judicial acts.

11 The first principle in trying to determine whether or  
12 not an act is a judicial act is that that determination must be  
13 made on the basis of the characteristics of the act, not the  
14 status of the actor. In other words, the fact that the person  
15 is a judge does not make every act that that person engages in  
16 a judicial act. This Court established that principle in a  
17 case decided in 1880, Ex Parte Virginia, a case in which the  
18 facts were quite similar to the facts of the case of Forrester  
19 versus White. In addition, this Court has held explicitly that  
20 judicial acts are acts of adjudication. And I'd direct the  
21 Court's attention to its decision in Supreme Court of Virginia  
22 v. Consumers Union, a 1980 case in which this Court ruled that  
23 even an official action taken by a State Court Judge pursuant  
24 to explicit statutory authority is not a judicial act when that  
25 Judge acts not on parties litigant, and when the act does not

1 arise out of a controversy which is before the Judge for  
2 adjudication.

3 I think that these cases together stand for the  
4 proposition that Judges are protected by the Doctrine of  
5 Judicial Immunity only when they are engaged in acts of  
6 adjudication, by that, we mean acts connected with a case, a  
7 controversy, a matter before a Judge for a decision by him or  
8 her acting as an adjudicator.

9 That principle has also been restated in two other  
10 recent decisions of this Court, the 1978 decision in Butz v.  
11 Economou and the Court's 1985 decision in Cleavinger v. Saxner.  
12 In the Butz case, this Court held that hearing officers in  
13 Federal administrative agencies are entitled to judicial  
14 immunity when they are hearing cases and controversies. In  
15 that decision, this Court noted that the officials in those  
16 cases issued subpoenas, ruled on proffers of evidence, make and  
17 recommend decisions, and these are acts which are integral  
18 elements of the adjudicatory process. Again, the kinds of  
19 things that the hearing officers in these Federal  
20 administrative agencies were going to be protected by the  
21 Doctrine in connection with were acts of adjudication.

22 In Cleavinger v. Saxner, 1985 case decided by this  
23 Court, the question arose whether prison officials acting as a  
24 disciplinary committee holding disciplinary proceedings with  
25 regard to prisoners were engaged in judicial acts and therefore

1 protected from suit by these prisoners by the Doctrine of  
2 Judicial Immunity, and again, in that case, this Court held as  
3 recently as 1985 that when the attributes of judicial  
4 proceeding are missing, that there is no judicial immunity.

5           The decisions of this Court clearly hold that a  
6 judicial act is an act of adjudication, an act connected with  
7 or arising out of a case before a judge for adjudication. The  
8 judge's acts at issue in this case were two decisions; a  
9 decision to demote an employee, and a decision to discharge an  
10 employee, basically personnel decisions about a court employee.

11           Those decisions do not fit within the category of  
12 acts which this Court has ruled are judicial acts. Personnel  
13 decisions, no matter what the nature --

14           QUESTION: What would happen if the judge fired his  
15 clerk? Would that be judicial?

16           MS. SEDEY: It's our opinion, Your Honor, that it  
17 would not be, because it is not an act of adjudication.

18           QUESTION: Well, suppose he fired his law clerk.  
19 Would that be judicial?

20           MS. SEDEY: Under the Seventh Circuit's opinion, that  
21 would be a judicial act. Under the rule which we propose that  
22 this Court adopt here, it would not be a judicial act because  
23 it wouldn't be arising from a case or a controversy before the  
24 judge for adjudication.

25           QUESTION: Well, suppose the judge fired his

1 assistant, his chauffeur? What would that be?

2 MS. SEDEY: Well, the Seventh Circuit's opinion would  
3 say --

4 QUESTION: I'm not talking about that. I'm asking  
5 you.

6 MS. SEDEY: All right, that would be an  
7 administrative act, not an act of adjudication because it  
8 doesn't arise out of any kind of matter before the judge.

9 QUESTION: Suppose he appoints a master to hear the  
10 case and fires him. Would that be judicial?

11 MS. SEDEY: I think it would depend on how the attack  
12 was made on the firing of the master. In other words, if the  
13 master himself brought suit --

14 QUESTION: Well, if the master happened to be a  
15 woman, would that be enough?

16 MS. SEDEY: The fact that she was a woman would not  
17 be enough, no, Your Honor.

18 QUESTION: You need more than that, don't you?

19 MS. SEDEY: I think we do.

20 QUESTION: And where is that here?

21 MS. SEDEY: What we have here is an action under  
22 Section 1983.

23 QUESTION: That doesn't mean -- you can assert  
24 anything in a pleading. That doesn't do it. I've read the  
25 statute and everything in this statute is judicial. Everything



1 that this woman was doing was judicial. Everything that I read  
2 in here. On pages 84, for example.

3 MS. SEDEY: Everything that this woman did, assisted  
4 the judge --

5 QUESTION: Well, isn't assisting the judge judicial?

6 MS. SEDEY: She was assisting the judge in carrying  
7 out his judicial functions, but the judge's decision to  
8 terminate her was not judicial, it was administrative. It  
9 didn't arise out of any case or controversy before the judge  
10 for decision. And that's the distinction here that we urge the  
11 Court to adopt, that an act that arises out of a case or a  
12 controversy before a judge for decision is a judicial act, an  
13 act of adjudication.

14 QUESTION: May I give you another example, somewhat  
15 like Justice Marshall's, I guess. Supposing you have in a give  
16 county in a State judicial system, a chief judge who has the  
17 assignment power to assign cases. And he decides to assign a  
18 woman judge to the criminal calendar for the month of October.

19 And she brings a lawsuit and says you did it only  
20 because you don't like women, you like them to have the  
21 undesirable assignments. Would she have a claim?

22 MS. SEDEY: I believe she would, because I believe  
23 that that's a decision about assigning work, which is a  
24 personnel decision. On the other hand, if a litigant who was  
25 coming before her for a decision of a case tried to attack that

1 decision, I don't think that the litigant could attack that  
2 decision because it's a judicial act viz a viz the litigant.

3 QUESTION: Supposing in a multi-judge appellate  
4 court, one of the judges didn't like his opinion assignments,  
5 and he claimed that the chief judge was just assigning him  
6 because he didn't like his religion or his race or his sex.

7 Would he have a claim?

8 MS. SEDEY: In theory, I believe that that judge  
9 would have a claim, because again, with regard to that judge's  
10 work assignment, it is essentially a personnel decision, an  
11 administrative decision of the chief judge to assign certain  
12 work to that individual.

13 On the other hand, if an attorney who was going to  
14 appear before the court wanted to attack that decision, I  
15 believe that that would not lie because again --

16 QUESTION: I understand that.

17 MS. SEDEY: -- viz a viz the litigant, it's an act of  
18 adjudication. So I think that's the important distinction  
19 here, Mr. Justice.

20 Essentially, personnel decisions are administrative  
21 acts. There are many acts that a judge takes, any judge at any  
22 level, which are official acts, acts assigned to the judge as a  
23 part of his or her official functions, acts that perhaps are in  
24 fact authorized by statute, but as this Court has ruled in Ex  
25 Parte Virginia and Consumers Union, the fact that an act is an

1 official act of the judge, the fact that an act is carried out  
2 pursuant to statutory authority does not make it a judicial act  
3 for purposes of judicial immunity.

4 Our position that it is only acts of adjudication  
5 which are protected by judicial immunity also derives  
6 additional support from the Doctrine's historical development.  
7 The earliest cases --

8 QUESTION: Well, let me interrupt you for just a  
9 minute, Ms. Sedey, if I may, to follow up on some of the  
10 earlier questions.

11 Supposing that a judge is conducting a proceeding in  
12 Court, and he has a clerk sitting there, a clerk of the court,  
13 who he thinks is unduly loquacious, talking with people coming  
14 in. And so he tells her not to do that, and she says, you  
15 know, when a man sits here on alternate days to me, you let him  
16 talk that way. I think you're just discriminating against me.  
17 He says, you do it again, I'm going to hold you in contempt.  
18 And so she does it again, he holds her in contempt.

19 Now, is he immune from that? I mean, that's closer,  
20 much closer to being a judicial thing, I think, than the  
21 examples previously given.

22 MS. SEDEY: I think it is because it arises in  
23 connection with the judge carrying out his judicial function,  
24 the function of adjudication, which is a different matter I  
25 think than the matter of an employment decision to hire, fire,

1 demote, whatever, which I believe is a different kind of an  
2 act.

3 QUESTION: Of course, your argument is still the  
4 same. You're discriminating on the basis of sex between two  
5 similarly situated deputy clerks of the court.

6 MS. SEDEY: Well, for instance, I don't think that a  
7 litigant who felt that a judge was discriminating between two  
8 different litigants in similar law suits could bring an action  
9 attacking the judge's decision in her case.

10 QUESTION: No, that's pretty clear.

11 MS. SEDEY: Right.

12 QUESTION: Could I ask you, what if the suit were  
13 brought against the clerk? What if this particular law clerk  
14 or officer, probation officer, suppose the suit is against the  
15 probation officer, and the claim is that the probation officer  
16 has been misleading the judge because of sexual or racial  
17 discrimination? So what if it's a racial discrimination claim  
18 against the probation officer in connection with her work?

19 MS. SEDEY: Is it by a litigant, somebody who  
20 complains about the kind of advice?

21 QUESTION: Yes.

22 MS. SEDEY: Then I believe that the probation officer  
23 would have derivative judicial immunity to suit by a litigant  
24 who was unhappy about the advice that she was giving the judge  
25 in connection with decisions about say probation or sentencing,

1 that kind of thing.

2 QUESTION: But the judge doesn't have absolute  
3 immunity when he fires her?

4 MS. SEDEY: That's correct. The judge would have  
5 absolutely --

6 QUESTION: Does he have any immunity?

7 MS. SEDEY: I think he has qualified immunity exactly  
8 the same as any other governmental official would have with  
9 respect to administrative acts, in other words, qualified good  
10 faith immunity similar to that provided to every governmental  
11 official.

12 QUESTION: Ms. Sedey, I'm not sure I understood your  
13 response to the Chief Justice's hypothetical. I was admiring  
14 your rigorous adherence to the logic of your position, but ten  
15 I didn't really understand that logic in connection with the  
16 Chief Justice's question. Did you say that there would be  
17 judicial immunity, absolute judicial immunity if the judge  
18 fired a clerk for making noise during the argument of a case?

19 MS. SEDEY: Yes. No. Not if he fired her for making  
20 noise during a decision in a case. I believe that the  
21 hypothetical had to do with the issuance of some kind of  
22 contempt order in connection with the proceeding, and it seems  
23 to me that a contempt order in the context of a hearing is  
24 different from the administrative decision to fire that  
25 employee for her conduct or his conduct in the courtroom.

1           QUESTION: What's the magic about it, that it is a  
2 contempt order, and therefore itself a judicial act, or rather  
3 that it is a contempt order issued in connection with another  
4 judicial proceeding?

5           MS. SEDEY: Exactly, the fact that --

6           QUESTION: The latter?

7           MS. SEDEY: The latter, the fact that it's a contempt  
8 order issued in connection with a judicial proceeding, rather  
9 than an administrative personnel decision issued in the judge's  
10 capacity as the employer to discharge the employee.

11          QUESTION: So having held her in contempt, if he  
12 should fire this contemptuous clerk, would there be a cause of  
13 action for that firing?

14          MS. SEDEY: Yes, I believe there would be.

15          QUESTION: There would be, so he could hold her in  
16 contempt but couldn't fire her?

17          MS. SEDEY: That's correct. That would be our  
18 position.

19          QUESTION: What if he fired her and truthfully said  
20 the reason I'm firing you is because I don't retain people whom  
21 I've had to hold in contempt?

22          MS. SEDEY: Then, Justice, I would say that he has a  
23 good defense to the law suit. But the cause of action for  
24 money damages is not barred. It is simply that he has a good  
25 defense, as any other governmental official would be required

1 to put on a good defense. That judge in that situation could  
2 do that as well.

3 But what we're dealing with here is not the merits of  
4 the jury's determination here that there was sex discrimination  
5 or the merits of the judge's decision to discharge the  
6 petitioner in this case. We're talking about the question of  
7 whether the petitioner has a remedy at all. Whether she can  
8 bring the claim.

9 And I would remind the Court that even an action  
10 against a judge for injunctive relief is not barred by the  
11 Doctrine of Judicial Immunity, so that --

12 QUESTION: No, but here, we're talking about money  
13 damages?

14 MS. SEDEY: We are, that's correct.

15 Again, I would suggest that the historical  
16 underpinnings of this Doctrine provide strong support for our  
17 position that suits about employment decisions are not barred  
18 by the Doctrine of Judicial Immunity.

19 QUESTION: What would the judge have to do? File  
20 charges against this person?

21 MS. SEDEY: No. The judge could and should discharge  
22 that person if the judge has a legitimate nondiscriminatory  
23 reason for doing so.

24 QUESTION: That's this case, I'm talking about this  
25 case here?

1 MS. SEDEY: Right.

2 QUESTION: What could he have done in this situation  
3 that would have satisfied you?

4 MS. SEDEY: He could have fired her if he had a  
5 legitimate reason not based on her sex.

6 QUESTION: No, you know that's not my question. With  
7 the exact same facts as this case, what could he do?

8 MS. SEDEY: He could put on a defense to her law suit  
9 that said that it wasn't discrimination, and that's what he did  
10 here. But a jury determined that it was.

11 QUESTION: And that's all he can do?

12 MS. SEDEY: That's correct.

13 QUESTION: He has no protection at all?

14 MS. SEDEY: He has the same protection that any other

15 --

16 QUESTION: Suppose the probation officer's a man and  
17 punches the judge in the mouth, what could the judge do then?

18 MS. SEDEY: Well, I think the judge could discharge  
19 that individual regardless of their sex?

20 QUESTION: He could?

21 MS. SEDEY: Absolutely.

22 QUESTION: Oh, he can get some relief sometimes.

23 And what's the difference between that case and this  
24 case?

25 MS. SEDEY: The difference between that case and this



1 case is that in this case --

2 QUESTION: She didn't punch him in the mouth.

3 MS. SEDEY: -- that's right.

4 QUESTION: That's the difference.

5 MS. SEDEY: That's one of the differences. But the  
6 other difference is that in that case, the judge's decision was  
7 not based on that individual's sex, race, religion, age,  
8 national origin. In that case, the judge's decision was a  
9 legitimate non-discriminatory one.

10 QUESTION: So then you come back that if this were a  
11 man, he wouldn't have any cause of action?

12 MS. SEDEY: No.

13 QUESTION: But he has a cause of action if he's a  
14 woman. Is that your position?

15 MS. SEDEY: No, because a man has a cause of action  
16 for sex discrimination, just like a woman has.

17 QUESTION: In this case?

18 MS. SEDEY: In any case, certainly. And the judge  
19 would have a real strong defense in that case, I think, that  
20 the decision was a legitimate one based on the employee's  
21 behavior, not based on the employee's sex.

22 QUESTION: Well, if there's qualified immunity in  
23 this case which you concede there is to hold the judge liable  
24 for damages, it would have to be found that he had to know that  
25 he was firing for sex discrimination, because of gender.

1 MS. SEDEY: No. I think that what qualifies --

2 QUESTION: Or that he -- well, what do you think the  
3 test is for qualified immunity?

4 MS. SEDEY: I think that the qualified immunity would  
5 simply provide him with an opportunity to say that he didn't  
6 realize that the conduct that he's charged with violated a  
7 statute, and I don't really think it would do him much good.  
8 Qualified immunity in a discrimination case is not of much  
9 assistance to a public official.

10 QUESTION: It would be of some assistance to someone  
11 in the Seventh Circuit from the time the Seventh Circuit  
12 decided this case until if we came out with a different  
13 decision?

14 MS. SEDEY: That's exactly correct, it would.

15 QUESTION: Some administrative acts are so closely  
16 connected to the adjudicatory function that immunity would  
17 attach? For example, the closest example to that was the  
18 example that Justice Stevens posed about the assignment of an  
19 opinion.

20 What if it isn't just the assignment of an opinion  
21 but the assignment of a judge to a particular case by the chief  
22 judge of a district, and the litigant comes in and says, this  
23 judge is a judge that is known to be a hanging judge or  
24 whatever, to be a judge that finds the facts against the  
25 plaintiff, and the only reason that that judge was assigned to

1 this case was because I'm a woman.

2 MS. SEDEY: I think that that litigant could not  
3 bring a suit in connection with that decision.

4 QUESTION: But that's an administrative decision,  
5 isn't it?

6 MS. SEDEY: But viz a viz the litigant, it's a  
7 judicial act, it's an act connected with the proceedings that  
8 the litigant is involved in.

9 QUESTION: I see, so you'd allow the litigant to sue,  
10 but you would not allow the judge who had been assigned to sue,  
11 is that right?

12 MS. SEDEY: I would not allow the litigant to sue  
13 because of judicial immunity.

14 QUESTION: I'm sorry. You would not allow the  
15 litigant, but you would allow the judge to sue?

16 MS. SEDEY: That's correct, because viz a viz the  
17 judge whose unhappy about the assignment, there's nothing going  
18 on with regard to her that has to do with the adjudication of  
19 any particular controversy, it's simply an administrative  
20 decision to assign her work which she believes was made on the  
21 basis of her sex. And in that situation, I don't believe that  
22 the Doctrine of Judicial Immunity would bar the suit.

23 I've reserved some of my time, so I'll sit down for  
24 the time being.

25 Thank you.

1 CHIEF JUSTICE REHNQUIST: You may proceed, Ms.  
2 Kaplan.

3 ORAL ARGUMENT OF ROSALYN B. KAPLAN, ESQ.

4 ON BEHALF OF RESPONDENT

5 MS. KAPLAN: Mr. Chief Justice, and may it please the  
6 Court.

7 The Seventh Circuit properly upheld a grant of  
8 judicial immunity in connection with the actions of Judge White  
9 in this case. And I would ask this Court today to recognize  
10 that where an employee's tasks are an integral part of the  
11 discretionary judicial decision making process acts in regard  
12 to personnel decisions regarding this employee ought also to be  
13 recognized as judicial acts, and the judge ought to be entitled  
14 to immunity for executing such acts.

15 The duties of a probation officer have been well  
16 recognized as substantive functions that assist the  
17 discretionary decision making process. The substance of a  
18 judge's sentencing decisions, his disposition in juvenile cases  
19 are going to reflect the quality, the advice, the  
20 recommendations of his probation officer. The soundness of  
21 those decisions is an important consideration and a judge who  
22 is concerned about the quality of his decisions has got to make  
23 a personnel decision reflecting his concerns for his decision  
24 making tasks.

25 QUESTION: What about a United States attorney who

1 fires an assistant United States attorney on the claimed ground  
2 that the person's incompetent, but the individual fired claims  
3 that it was because of sex discrimination?

4 MS. KAPLAN: The immunity that would be addressed  
5 there would likely be an executive type of immunity and the  
6 considerations are going to have to be different accordingly.

7 QUESTION: Why? Why? I don't see why. I mean, you  
8 have the same function. The prosecutor has immunity only with  
9 respect to his prosecutory decisions that are related to the  
10 judicial function.

11 MS. KAPLAN: To the extent that Your Honor is talking  
12 about the quasi judicial immunity that's extended to a  
13 prosecutor in connection with prosecutorial decisions and he  
14 has to address a situation where his employee is assisting him  
15 in making discretionary decisions, I would agree that the same  
16 analysis would apply.

17 I'm sorry if I misunderstood Your Honor.

18 The point I'm making here is that when an employee is  
19 involved in a task that is an integral part of a judicial  
20 process for which immunity applies, the personnel decisions  
21 regarding that employee should equally be recognized as  
22 judicial acts and entitled to the same sort of immunity.

23 QUESTION: So assistant U.S. attorneys can be fired  
24 without being liable for suits.

25 MS. KAPLAN: To the extent that assistant U.S.

1 attorneys are engaged in the same discretionary function.

2 QUESTION: I don't know what you mean by, to the  
3 extent that. They are. I mean, they all are, aren't they?  
4 That's what they do. They prosecute cases, right? So  
5 therefore, if one is fired for incompetence, allegedly for  
6 incompetence, no suit would lie for sex discrimination?

7 MS. KAPLAN: Yes. The same reasoning would apply,  
8 Your Honor.

9 This Court has recognized that for a member of  
10 Congress, for example, that member of Congress cannot execute  
11 all of his legislative functions by himself. He must have  
12 legislative aides, and the duties of those to the extent that  
13 they are legislative duties which are those of the member of  
14 Congress --

15 QUESTION: Let me just pursue Justice Scalia's  
16 example a little further. Say a prosecutor adopted a policy  
17 that he would hire only white males. He announced it publicly,  
18 this is all I want, because my experience is they're the best  
19 prosecutors. And that could not be challenged in court?

20 MS. KAPLAN: Certainly, it could be challenged, Your  
21 Honor. But the question here is whether he would be subject to  
22 an action for damages. This Court has noted that prosecutors  
23 are subject to very strict internal controls.

24 QUESTION: But to be challenged in an injunction suit  
25 is the only you could do it?

1 MS. KAPLAN: Could be that way. Could be done  
2 through --

3 QUESTION: So then what he does, he just says, I'll  
4 repeal that policy, then he just continues along doing exactly  
5 the same thing, and he couldn't be --

6 MS. KAPLAN: Your Honor, he could be disciplined  
7 internally as a prosecutor. He could be subject to criminal  
8 sanctions for an intentional violation of the Federal law, as  
9 of course could a judge. The immunity that we're arguing here  
10 is only an immunity from liability for a civil action and  
11 damages.

12 And it further is a policy that is a policy that has  
13 often been recognized --

14 QUESTION: Are you saying that this particular  
15 plaintiff could bring an action for reinstatement and get her  
16 job back?

17 MS. KAPLAN: An equitable action has been allowed by  
18 this Court under Pulliam v. Allen. As to whether or not this  
19 individual would be entitled to the relief of reinstatement, I  
20 believe that --

21 QUESTION: If she proved that the only reason for the  
22 discharge was this sex discrimination?

23 MS. KAPLAN: I believe that would however pose  
24 another difficulty. The courts even in addressing equitable  
25 relief, for example, under Title VII, have recognized that they

1 will find other relief than to require that an individual work  
2 very closely with an individual who has been fired.

3 QUESTION: But you answer on my male whites only  
4 prosecutor was well, he could get equitable relief, but now  
5 you're saying, well we can't give that either.

6 MS. KAPLAN: I don't know that each assistant  
7 prosecutor would work so closely with the United States  
8 Attorney.

9 QUESTION: Well, say you had right before the change  
10 of Administration, you had five women and five black assistant  
11 prosecutors and ten whites. And they fire all except the ten  
12 white males, and just replace them with ten other white males.  
13 Nothing could be done about it as I understand you.

14 MS. KAPLAN: No, Your Honor, I'm sorry. That's not  
15 what I mean. In the situation of a staff of attorneys working  
16 for one prosecutor, I believe that equitable relief would lie.  
17 That situation has got to be distinguished from this situation.

18 QUESTION: Well, why wouldn't it lie here? That's  
19 what I don't understand.

20 MS. KAPLAN: I'd like to distinguish that on the  
21 basis of the close and personal relationship in a very small  
22 office in a county court where there is a judge working closely  
23 with one probation officer and all of those functions are  
24 performed together. I think it's a difference in degree and  
25 equitable relief would have to take that into consideration.



1           QUESTION: So if it was Cook County instead of where  
2 the case arose, you have a whole lot of probation officers,  
3 then you could grant equitable relief?

4           MS. KAPLAN: I think that perhaps equitable relief  
5 would lie. There's a different procedure involved.

6           QUESTION: If that's true, how does that really solve  
7 the problem that the Immunity Doctrine's supposed to solve in  
8 part of avoiding a lot of law suits and not tying up the  
9 judge's time. Because if you just say to this person who's  
10 been improperly or allegedly improperly discharged, you can't  
11 sue for damages, I would assume they'd come in and sue and ask  
12 to get their jobs back.

13          MS. KAPLAN: I think that's a possibility. I think  
14 that's a possibility that this Court allowed to exist through  
15 its decision in Pulliam v. Allen, and that there are still  
16 other interests inherent in the Doctrine of Judicial Immunity  
17 and one of those is the potential liability of a judge for an  
18 action in damages.

19          The state of the law on judicial immunity as it  
20 exists now is that an action for injunctive relief will lie.  
21 That has to be acknowledged. Nonetheless, I think there are  
22 still important considerations under the function of judicial  
23 immunity and that a judge ought to be able to take those into  
24 account and not be risking his personal action for damages and  
25 to cut back on some of the time that he must spend involved in

1 litigation in order to fulfill his decision making process.

2 Certainly, his fears of retaliation are realistic  
3 fears. In Pulliam v. Allen, the dissent of this Court noted  
4 that actions for discrimination had geometrically increased  
5 since the enactment of Section 1988. Last year alone, civil  
6 rights employment litigation increased in the Federal District  
7 Courts by 14 percent, and this was at a time when other civil  
8 actions, the filing of other civil cases had decreased for the  
9 first time since I believe 1977.

10 The fear is there. It's a realistic fear perhaps a  
11 judge that knows more about the process than anyone is going to  
12 be more concerned than anyone of risking this kind of  
13 litigation. So the question becomes, when a judge is faced  
14 with a decision of retaining a probation officer in whom he  
15 lacks confidence, should he have to weigh in the balance the  
16 threat of litigation by that particular individual?

17 There's always a balance involved in any case of  
18 judicial immunity. And the balance has to be addressed. And I  
19 believe the balance in a particular situation where an employee  
20 is part of the substantive decision making process that a  
21 favorable decision for judicial immunity will further the  
22 judicial process.

23 Certainly the judge may be disciplined. Certainly  
24 the judge may be subject to an action for criminal violations  
25 of the Federal law. But I ask this Court to conclude that the

1 balance is in favor of a finding of immunity for this kind of  
2 personnel action by a judge.

3 Not only is immunity proper as a matter of policy,  
4 but I believe it is consistent with the precedent of this  
5 Court. Certainly as a general proposition, it's recognized  
6 that judicial immunity shields a judge from liability for  
7 damages for his judicial acts taken within the general scope of  
8 his jurisdiction.

9 QUESTION: May I ask, because as I understood -- the  
10 Seventh Circuit opinions a little hard for me to know just  
11 where they draw the line between this kind of immunity.

12 Do you think it applies, for example, to secretaries,  
13 law clerks, other employees in an office?

14 MS. KAPLAN: I think that the Seventh Circuit's  
15 opinion would apply very likely to an individual like a law  
16 clerk, and perhaps to a staff attorney in certain courts. It  
17 would not I believe apply to a secretary, and that five days  
18 after the Court entered this opinion in Forrester v. White, it  
19 entered an opinion in McMillan v. Svetanoff, and in that case,  
20 a Judge had fired his court reporter, and the Court did not  
21 disavow its reasoning in Forrester v. White, but it explained  
22 that in the case of a court reporter, the individual employee  
23 did not assist the judge in his decision making functions, and  
24 because of that distinction, the relationship was more that of  
25 an employee and an employer, rather than a judge and an

1 assistant to a judge.

2 As a matter of fact, the McMillan rationale was later  
3 applied by the Sixth Circuit in Guercio v. Brody, and in that  
4 case, a federal bankruptcy judge was held not immune from an  
5 action for damages for firing his personal secretary. So I  
6 believe that that is where the line is drawn under the Seventh  
7 Circuit's reasoning. And it's a line just based upon the  
8 contributions that the employee makes to the judicial process.

9 It's by looking at the relationship to the judicial  
10 process that I believe this Court has identified what is a  
11 judicial act. In Stump v. Sparkman, the Court established its  
12 two criteria; whether the challenged act is a function that is  
13 normally performed by a judge, and whether the parties dealt  
14 with a judge in his judicial capacity.

15 Now, the case law establishes that these criteria  
16 were not intended to narrow the scope of what is a judicial  
17 act. In Stump, the matter before the Court was an ex parte  
18 petition. The person affected by the petition was not before  
19 the Court in person or by counsel. There was no right of  
20 appeal for the affected person.

21 But nonetheless, it was regarded as a judicial act  
22 and entitled to immunity.

23 QUESTION: What if there are several judges in a  
24 certain place and there's a chief judge. And a probation  
25 officer serves one or two of the judges but he gets fired by

1 the chief judge whom the probation has never ever helped, and  
2 isn't about to. The chief judge doesn't need a probation  
3 officer to help him. Is that judge absolutely immune?

4 MS. KAPLAN: Yes, Your Honor, I believe that that  
5 judge is absolutely immune because he is assisting the decision  
6 making process, I would assume, in firing a probation officer  
7 if that is his responsibility. Ordinarily, this kind of  
8 decision --

9 QUESTION: Well, that's quite a different rationale  
10 than you just stated awhile ago.

11 MS. KAPLAN: Your Honor, I'm proposing a rationale --

12 QUESTION: On that basis, I would think you would say  
13 that he should be absolutely immune for firing his secretary.

14 MS. KAPLAN: The secretary does not contribute to the  
15 decision making process and the probation officer does.

16 QUESTION: The secretary doesn't participate in the --  
17 - who types the opinion?

18 MS. KAPLAN: I think that, Your Honor, is not a  
19 discretionary function. I hope not. I beg your pardon. I'm  
20 referring to someone who has substantive input in the  
21 discretionary functions.

22 QUESTION: What if the judge used his secretary to do  
23 legal research for him and analyze the record and check  
24 citations. Some secretaries have skills that others don't  
25 have. Wouldn't that make her decision immune?

1 MS. KAPLAN: I think that that could change the  
2 decision, Your Honor, because it sounds to me as if you're  
3 describing a situation of someone whose more like a paralegal  
4 assistant, than simply a secretary who is engaged in what you  
5 might call more ministerial type functions, as the Court has  
6 recognized a distinction there.

7 QUESTION: The line you're asking us to draw, as the  
8 last few questions indicate, really requires very specific  
9 inquiry into the character of the particular individual  
10 involved, as opposed to the line which your opponent would  
11 draw, which is one that can be drawn sitting back in an  
12 armchair and just thinking about the function involved.

13 And there's some trouble in having such a vague line.  
14 It means you always need a lawsuit before you can decide  
15 whether there's a lawsuit. And the judge is to some extent  
16 placed at risk all the time.

17 MS. KAPLAN: I think that as the reasoning of the  
18 Seventh Circuit is applied, that the line is going to become  
19 rather clear. A judge will have a limited number of employees.

20 QUESTION: Depends on how you use your secretary as  
21 your response to Justice Stevens just indicated.

22 MS. KAPLAN: Yes, again. But to just call someone a  
23 secretary if in fact what they're doing is the work of a  
24 paralegal, I think that they are not going to be a great  
25 number.

1           QUESTION: Yes, but I think you've overlooked a point  
2 Justice Scalia just made. I'm the defendant. I file an  
3 affidavit and I say my secretary did all this stuff. The  
4 secretary comes out, I never did any of that. You'd have to  
5 have a trial to decide what she really did. And then don't you  
6 defeat the purpose of the absolute immunity is to free the  
7 judge of the necessity of defending the law suit.

8           MS. KAPLAN: I think that in most cases, Your Honor,  
9 a very limited inquiry based on the kind of job description of  
10 the individual should be sufficient. It's obviously not going  
11 to be workable if there's going to become an inquiry where  
12 every individual's going to say well I did this and I did this  
13 and the reason that this particular individual didn't do  
14 anything further was that the judge didn't trust that  
15 individual in the first place.

16           I believe that is getting more complex than would  
17 serve the purposes of immunity. But I don't think that means a  
18 line absolutely cannot be drawn. And to the extent that a line  
19 has to be explored, I think that it should be explored on the  
20 basis of what type of individual is serving the judge in a  
21 judicial capacity. I don't think that is going to create a  
22 huge number of lawsuits in order to isolate the kinds of tasks  
23 that are involved. And I think that certainly it's worth the  
24 trouble for the courts to engage in that function.

25           A judicial process is being served, and that's how a

1 judicial act is identified. As in Stump, that was a judicial  
2 act. This Court noted that the issuance of a warrant, even  
3 when there's no case pending, and there may never be a case  
4 pending, that also is a judicial act. Jurors have derivative  
5 judicial immunity because of the way they engage in the  
6 judicial process, their participation in the judicial process,  
7 witnesses have judicial immunity because of their participation  
8 in the judicial process. And indeed, as this Court observed,  
9 probation officers have often been granted absolute immunity  
10 because of their substantive contributions to the process.

11 QUESTION: You mean probation officers have been  
12 granted absolute immunity as against a suit by disappointed  
13 prisoners?

14 MS. KAPLAN: Yes, Your Honor, that is what I mean.

15 And this type of function is what I believe the Court  
16 needs to look at. This Court has not addressed many  
17 circumstances where personnel decisions are at issue. In Nixon  
18 v. Fitzgerald, I recognize that was a very particular  
19 situation.

20 In Davis v. Passman, a minority of this Court did  
21 recognize that an employee who assisted a legislator that those  
22 duties were bound up with the function of the legislator. And  
23 that kind of analysis has been examined in depth by the First  
24 Circuit Court of Appeals and by the District of Columbia  
25 Circuit Court of Appeals. And the reasoning that I'm urging



1 this Court today is reasoning that can be found in the  
2 decisions of those Courts, and I think it's very persuasive  
3 reasoning.

4 In Agromayer v. Colberg, the First Circuit considered  
5 a situation where an individual had applied for a position as a  
6 press officer with the Puerto Rican House of Representatives.  
7 The District Court, in that case, in evaluating the claim of  
8 the individual who was refused the position, did apply the kind  
9 of bright line test that is being urged by the petitioner  
10 today. And it said, well, hiring or firing, that's  
11 administrative, there's no immunity.

12 But the Court of Appeals examined the situation and  
13 felt that that kind of evaluation was too narrow, because to  
14 the extent that a particular employee was considered essential  
15 to the legislative process, then his qualifications and his  
16 selection ought also to be considered essential to the  
17 legislative process.

18 In Browning v. Clerk, U.S. House of Representatives,  
19 the District of Columbia Circuit Court echoed similar  
20 reasoning. There, a lawsuit was brought by an official  
21 reporter who had been fired by the House of Representatives.  
22 And the Court recognized that the ultimate issue before it was  
23 not the personnel act involved, but rather the issue was the  
24 duties of that employee. And if the duties implicated speech  
25 or debate concerns, then personnel action ought to be found to

1 implicate the same concerns.

2 I think that that analysis is equally useful in  
3 evaluating a claim of judicial immunity for a personnel  
4 decision. If a probation officer's duties are -- and I submit  
5 that they are -- an integral part of the judicial process, then  
6 a personnel decision regarding that employee ought also --

7 QUESTION: Ms. Kaplan, excuse me for interrupting  
8 again, but your opponent relies heavily on Ex Parte Virginia.  
9 The selection of jurors for racially impermissible grounds by a  
10 judge. Why is the selection of jurors different than the  
11 selection of probation officers?

12 MS. KAPLAN: In Ex Parte Virginia, the Court ruled on  
13 two alternative bases, and this Court has since recognized that  
14 it did not hold necessarily that a ministerial act was  
15 involved, but that if the act were ministerial or judicial,  
16 nonetheless, the judge in question could be held liable under  
17 the criminal civil rights laws. The Court in evaluating and in  
18 hypothesizing that the act was ministerial stated that because  
19 the act of selecting jurors could be performed by anyone, it  
20 admitted of no judicial discretion. Whether that would be held  
21 the same way, whether the same discussion would apply today as  
22 far as the selection of jurors, I do not know. But I don't  
23 believe that the selection and the contributions of the  
24 probation officer are indeed ministerial. I believe that the  
25 work that the probation officer does is substantive.

1           QUESTION: The work of a juror certainly is not  
2 ministerial.

3           MS. KAPLAN: I would agree with that, Your Honor.  
4 However, at the time, the qualifications of a juror and the  
5 performance of a juror, I don't believe were inquired into in  
6 the same manner that they are today, and I don't know that the  
7 Court would indeed find that the selections of jurors was a  
8 nondiscretionary task today. And of course the Court in Ex  
9 Parte Virginia did not specifically so hold.

10           The point is that if --

11           QUESTION: The point is that it didn't look into what  
12 jurors do. It looked into how jurors are selected. I mean,  
13 its whole point of departure was not to say, what do jurors do  
14 in order to determine whether the selection of them or the  
15 firing of them, or anything else constitutes a judicial act.  
16 What it looked to is there any judicial discretion in the  
17 selecting of them. If we applied that test here, there's no  
18 distinctively judicial discretion involved.

19           MS. KAPLAN: Well, Your Honor, I believe that there  
20 is discretion involved, that is, to the extent that a judge  
21 must use his own judicial skills in evaluating the work of the  
22 employee that he has selected to help engage in those skills.  
23 Again, the Ex Parte Virginia case was not a case involving a  
24 civil action. It was not decided on the basis of whether this  
25 was a judicial act or not. It was decided on the basis of the

1 Judge's liability to criminal law.

2 I believe that in a situation like this, a judge  
3 ought to be allowed to have the freedom to exercise his  
4 particular training and his particular skills in order to  
5 evaluate the kind of assistant that he is going to have to  
6 assist him in executing those skills. Certainly, that is the  
7 same position that I've been advocating that has been followed  
8 in cases of legislative immunity. And it only applies when the  
9 individual in question is engaged in the particular functions  
10 that are the functions of the official whom the immunity  
11 protects.

12 QUESTION: You think it makes any difference that in  
13 the case of legislators, there's the speech and debate clause  
14 which expressly provides privilege in the Constitution, whereas  
15 the immunity for judges is judicially created?

16 MS. KAPLAN: No, Your Honor, I do not.

17 First of all, the analysis that has been applied for  
18 legislative immunity has been applied equally to State  
19 legislators who are not protected by the speech or debate  
20 clause, and to Federal legislators. But I particularly would  
21 point out that this Court's observation in Nixon v. Fitzgerald  
22 that the source of the immunity is not so controlling as the  
23 nature and the reasons of the immunity. And I think that  
24 there's a very good analogy to be drawn in looking at the  
25 language used to describe the function and the extent of

1 legislative immunity that parallels quite closely the language  
2 used to describe the purpose and the extent of judicial  
3 immunity.

4 I think the parallels there are very apt.  
5 Legislative immunity exists to protect the due functioning of  
6 the legislative process, and it only extends so far as is  
7 necessary to protect those functions. Judicial immunity has  
8 the same sort of reasoning. It exists only insofar as  
9 necessary to protect the judicial process, and those particular  
10 functions that are identified as a part of the judicial  
11 process.

12 I'm asking the Court to recognize that in personnel  
13 questions, there is more than just a --

14 QUESTION: What about the executive process? Why  
15 isn't there any absolute executive immunity, or is there? Do  
16 we have some somewhere?

17 MS. KAPLAN: This Court did hold that there was  
18 absolute immunity in Nixon v. Fitzgerald for the President.

19 QUESTION: Anybody else?

20 MS. KAPLAN: And it did not decide whether his  
21 assistants in Harlow v. Fitzgerald might be entitled to absolute  
22 immunity for the same sort of decision. The case was remanded  
23 for that purpose.

24 QUESTION: But certainly not a cabinet secretary?

25 MS. KAPLAN: That's correct, Your Honor.

1           And the distinction has been made on the basis of  
2 the kinds of discretion that are executed. And for a judge,  
3 the discretion is very wide. His sentencing decisions  
4 certainly --

QUESTION:

5 Wider than a cabinet secretary's?

6           MS. KAPLAN: This Court I believe has so held, Your  
7 Honor, yes, that the judicial --

8           QUESTION: Don't you think it has more to do, as  
9 Judge Posner's dissent suggested, that if there is a  
10 distinction between let's say a cabinet secretary and a judge,  
11 that what it comes to is a judge is more likely to be sued by a  
12 litigant than a cabinet secretary, personally, you know, to be  
13 sued personally for alleged malfeasance than a cabinet  
14 secretary is? That the judicial function is much more likely  
15 to be gutted by litigation than is the executive function?

16           MS. KAPLAN: I agree that that is one reason for  
17 immunity, yes, Your Honor. Another reason is the exercise of  
18 the kind of discretion and the policy decisions that have been  
19 traditionally made in favor of protecting the judicial process  
20 from this kind of interference. It's that kind of policy  
21 decision that I believe applies in this case as well as to a  
22 litigant, and I would recall that this Court's earliest  
23 decisions based upon judicial immunity were not issued because  
24 a judge had been sued by a disappointed litigant. Rather, they  
25 were issued where a judge had disbarred an attorney, stricken

1 an attorney from the rolls of court.

2 It's a different kind of situation, and I suggest  
3 that the rationale there, although the Court did discuss the  
4 cases of disappointed litigants, the true rationale is the  
5 protection of the judicial process by enabling a court to have  
6 this authority over the appointment and the removal of these  
7 officers of the court.

8 A probation officer is also an officer of the court.  
9 And I think that the decisions made with regard to the  
10 probation officer ought also to be recognized as judicial  
11 decisions.

12 Your Honors, in these days where judicial case loads  
13 are increasing and a judge must increasingly rely on the  
14 substantive aid of his assistants, such as a probation officer,  
15 I believe that a judge is entitled to absolute judicial  
16 immunity for his acts, and I would ask this Court to affirm the  
17 judgment of the Seventh Circuit Court of Appeals.

18 Thank you.

19 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Kaplan.

20 Ms. Sedey, you have eight minutes remaining.

21 ORAL ARGUMENT OF MARY ANNE SEDEY, ESQ.

22 ON BEHALF OF PETITIONER - REBUTTAL

23 MS. SEDEY: Thank you.

24 I think it's important to remember that the threat  
25 which the Doctrine of Judicial Immunity was developed to

1 protect judges against was in fact the threat of lawsuits  
2 against judges by litigants who were dissatisfied with the  
3 outcome of a case or a controversy that that judge was  
4 deciding. And basically, there are two reasons why the common  
5 law wanted to protect judges against that kind of threat; one  
6 was to assure that judges would feel safe making principled,  
7 independent judicial decisions, free of the threat of that kind  
8 of litigation by parties who were dissatisfied with the result  
9 in their cases; and in addition, to protect final judgments  
10 from collateral attack, again, collateral attack by litigants  
11 who were dissatisfied with the outcome of the cases that were  
12 before the judge for adjudication, for decision.

13           Judicial immunity is an absolute immunity. Most  
14 governmental officials have only a qualified immunity and it is  
15 the function that judges uniquely carry out in this system of  
16 adjudicating cases or controversies and the threat which is  
17 unique to judges of litigation by litigants unhappy with the  
18 determination of their cases which justifies the granting of  
19 judicial immunity.

20           The decisions of this Court in all the absolute  
21 immunity cases have adopted a functional approach to absolute  
22 immunities. Only where there's some special function, some  
23 unique function that requires protection is absolute immunity  
24 extended. And only when the governmental official who is  
25 protected by absolute immunity is engaged in that function is



1 judicial immunity a bar to suit.

2 The protection extends no farther than the  
3 justification that warrants the absolute immunity. Since it is  
4 the adjudicatory function which is the function to be protected  
5 by the Doctrine of Judicial Immunity, adjudication of disputes  
6 is the thing that judges do which must be protected.

7 They are similar to any other governmental official  
8 in hiring, firing, disciplining, assigning work to employees.  
9 Those are administrative acts. All governmental officials are  
10 required to carry out those kinds of acts. As an  
11 administrator, a judge is required to carry out those acts.  
12 There's nothing unique about the judicial function that makes a  
13 judge any more likely to be sued say for employment  
14 discrimination, than any other governmental official.

15 QUESTION: Do you think you could have gotten an  
16 injunction for reinstatement here?

17 MS. SEDEY: We requested reinstatement in this case,  
18 Justice White. And the trial court denied reinstatement.

19 QUESTION: Just for lack of equity, I suppose.

20 MS. SEDEY: That's correct. And in fact, Cynthia  
21 Forrester is like many judicial employees that really her only  
22 remedy is going to be damages.

23 QUESTION: Suppose there had been a reinstatement  
24 with back pay. Would the \$86,000 equal the back pay? Or what  
25 was your measure of damages?

1 MS. SEDEY: The back pay was approximately \$26,000.

2 (Continued on next page.)

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1 There were some additional amounts for the costs of seeking  
2 employment and compensation for humiliation, embarrassment,  
3 pain and suffering. But those were the elements.

4 QUESTION: And the jury awarded the damages, I take  
5 it?

6 MS. SEDEY: That is correct.

7 QUESTION: And is there any provision for the judge  
8 to be reimbursed by the state or by the county or?

9 MS. SEDEY: In fact, there is an indemnification  
10 statute in Illinois and Judge White would never have paid one  
11 penny of that monetary award. The State of Illinois would have  
12 paid that award.

13 QUESTION: Well, so you think the situation is just  
14 as though the State said, well we know there's a policy about  
15 immunity that the Supreme Court will protect our State  
16 officers, but we don't want protection for our State officers,  
17 for our Judges. If they commit Constitutional violations, it  
18 should be stopped, and we will let judgment be entered against  
19 them, but we will pay them, we will pay the damages?

20 MS. SEDEY: A State could make that choice to not  
21 indemnify judges against these kinds of suits.

22 QUESTION: Yes, yes. They could say, let them pay.  
23 Or they could say, let judgment be entered, but we'll pay.

24 MS. SEDEY: That's correct.

25 QUESTION: Which is what you think should be the case

1 here?

2 MS. SEDEY: That's correct.

3 And I think one important point to recall is that  
4 Congress decided to create this remedy under 1983. And no  
5 decision of this Court has ever suggested that Congress did not  
6 intend for judges to be subject to suit under 1983. The most  
7 this Court has ever said is that when Congress passed 1983, it  
8 did not intend to abrogate the common law doctrine of judicial  
9 immunity as it existed at the time the statute was passed. And  
10 clearly, the common law Doctrine of Judicial Immunity did not  
11 anticipate barring suits by employees for employment  
12 discrimination.

13 QUESTION: I hate to get on this point, but 1983  
14 didn't apply to women.

15 MS. SEDEY: 1983 provides a general remedy for  
16 various kinds of violations of constitutional rights and this  
17 Court has certainly found in the interim that 1983 can be used  
18 to attack sex discrimination in employment.

19 QUESTION: Just out of curiosity, does Illinois  
20 provide indemnification for any of its other public officials,  
21 or just judges?

22 MS. SEDEY: Yes. There is an indemnification statute  
23 that's much broader than just judges.

24 Thank you.

25 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Sedey.

1                   The case is submitted.

2                   (Whereupon, at 11:48 a.m., the case in the above-  
3 entitled matter was submitted.)

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REPORTER'S CERTIFICATE

1  
2  
3 DOCKET NUMBER: 86-761

4 CASE TITLE: Cynthia A. Forrester vs. Howard Lee White

5 HEARING DATE: November 2, 1987

6 LOCATION: Washington, D.C.

7  
8 I hereby certify that the proceedings and evidence  
9 are contained fully and accurately on the tapes and notes  
10 reported by me at the hearing in the above case before the  
11 Supreme Court of the United States,  
12 and that this is a true and accurate transcript of the case.

13 Date: November 2, 1987

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