

Supreme Court Roundup; Court Reaffirms View That a Judge Can't Be Sued for Acts on the Bench

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Reaffirming its view that judges are immune from suit for virtually anything they say or do from the bench, the Supreme Court ruled today that a California judge who is accused of ordering a public defender to be dragged from a nearby courtroom and brought before him cannot be sued for damages.

By a vote of 5 to 3 in an unsigned opinion, the Court held that the judge is entitled to absolute immunity and that a Federal appeals panel in Los Angeles was wrong to let the public defender's damage lawsuit go forward.

Because there has never been a trial, the defense lawyer has not proven his accusation that the judge ordered the police to use excessive force in bringing him to the courtroom, where the lawyer was late for the judge's morning calendar call. For the purposes of deciding the immunity question, the Supreme Court assumed that the accusation was true and said that even on that assumption the case must be dismissed.

The incident took place in November 1989. Howard Waco, a Los Angeles County public defender, said that at the request of Judge Raymond Mireles of Superior Court in Van Nuys, police officers seized him from a courtroom in which he was waiting to represent a client before another judge, dragged him backward down the hallway while cursing him and calling him names, and slammed him through the swinging gates into Judge Mireles's courtroom. The lawyer, who said he was both bruised and humiliated, sued for \$350,000 in damages. Immunity Is Preserved

"Judicial immunity is not overcome by allegations of bad faith or malice," the Supreme Court said in its opinion today, *Mireles v. Waco*, No. 91-311. The opinion noted that under the Court's precedents, judges lose their immunity only in two circumstances: when they are sued for a "nonjudicial action," like a personnel decision, or when they are sued for an action that, "though judicial in nature," was "taken in the complete absence of all jurisdiction."

Neither exception applied in this case, the Court concluded. First, the opinion said, the judge's action could not be described as "nonjudicial" because "a judge's direction to court officers to bring a person who is in the courthouse before him is a function normally performed by a judge."

Second, the Court said, the action, even if mishandled, was within the judge's jurisdiction. "If Judge Mireles authorized and ratified the police officers' use of excessive force, he acted in excess of his authority," the opinion said. "But such an action -- taken in the very aid of the judge's jurisdiction over a matter before him -- cannot be said to have been taken in the absence

of jurisdiction."

Justices John Paul Stevens, Antonin Scalia and Anthony M. Kennedy dissented from the unsigned opinion. Justice Stevens said that, assuming the lawyer's accusation was true, the judge had ordered the police officers to "commit a battery." He added: "Ordering a battery has no relation to a function normally performed by a judge."

The other two dissenters did not take a position on the case. Rather, they said, the Court should not have taken the unusual step of overturning a lower court opinion without full briefing and argument. The Court had never granted review in this case. Instead, the majority decided it on the basis of the petition that Judge Mireles filed over the summer.