

Jail for Judges – Legal Brief

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APPELLANT'S OPENING BRIEF

DIXIANNE HAWKS, No. 95-16714

Appellant USDC EAST. DIST. CAL.
Civ. No. 93-82 WBS

vs.

COUNTY OF BUTTE,
MICHAEL RAMSEY, APPELLANT'S
FEDERAL JUDGE EDWARD OPENING
GARCIA and BRIEF
CIRCUIT JUDGES SCHROEDER,
CANBY and WIGGINS,

Appellees

(Excerpts)

INTRODUCTION TO THE ISSUE

The facts underlying this appeal are easy to understand. It is the “law” of “[judicial immunity](#)“ to violate the Constitution that is complex and incomprehensible; it is a false body of law that begins with a contradiction:

1. Judges are immune from redress to those they injure in violation of constitutional rights under color of office.
2. “Congress shall make no law ... abridging the right of the People ... to petition government for a redress of Grievances.”
3. The “Coup de Grace” emasculating the Petition Clause is found in [28 USC 2674](#), in the 1988 amendments.

“Personal” immunities created by the judiciary now completely immunize the government from accountability to those its immunized officers injure in violation of constitutional rights. Today, most government officers who have direct contact with the People can find an immunity to hide behind.

What happened to the Petition Clause? If it speaks true, wherefrom comes immunity to violate the Constitution? We are told the judges created it; but under Article I, only Congress can make law; under Article IV, only the Constitution and law made pursuant to it, not in derogation of it, are the Supreme Law of the Land; and under Article VI, all judges are sworn to support “This Constitution.” The contradictions rage on.

Judges contend the authority is implied in a constitutional doctrine that is also implied, called the “[Separation of Powers](#).” [Judicial Immunity](#), they say, comes not from law, but from its own constitutional separation from the Legislature. It cannot make law breaching that separation. That is the basis of immunity.

The problem with that rationalization is not only that its premise is twice removed from the Constitution, so that we can’t find it except by blind faith in our judiciary, but immunity to violate Constitutional Rights also has nothing to do with separation of powers. **The issue is accountability to the People for violating their rights**, not accountability to another branch. *[Emph. J4J]*

A constitution that “implies” a right for judges to violate it with impunity is not a constitution at all, but a license to violate rights under color of [judicial fiat](#).

Another weakness of that argument is that the judiciary also created immunities for the rest of government. That violates the same separation principle said to justify it, in four ways:

First, its extensions of immunity to other branches are not merely making rules for itself, but making laws that apply to all of government. That invades the legislative function.

Second, those laws also apply to the People, denying them redress for constitutional wrongs under “law” designed by judges. That also invades the legislative function, albeit beyond the legislative power.

Third, by setting the terms and conditions under which government, in all branches, is immune to violate rights, it achieves the opposite of separation: It consolidates and **organizes government against the People’s exercise of rights**.

For example, judges created immunities over 120 years, then in 1988 Congress insulated government by amending [28 USC 2674](#), thereby consolidating two branches of government. Then the executive branch defends government before the courts, thereby consolidating all three branches against the People.

Fourth, another “separation principle” also violated is [Tenth Amendment](#) States’ Rights. The Federal Judiciary has not just created immunity for itself and for federal officers, but, disguised as constitutional doctrine, it has created immunity for state officers as well. This not only unites the federal branches against the People, it also unites them with state and local governments, all against the People’s civil rights.

What begins to appear is that the **judges**, by grant of immunity to themselves and to select government officials at all levels, **have completely redesigned our Constitution**. As we shall see herein, this redesign goes far beyond simple civil immunity. It renders the People incapable of enforcing any rights against anyone judges want to protect, for any reason, or for no reason.

Unenforceable rights are not rights at all.

The effect of these immunities over time is to create an elite ruling class, bound not by the general law, nor to our constitution, but bound only by personal loyalty to government.

That is a New Nobility, and it emerged this way:

As the separation fallacy became apparent, the judiciary created another rationale that had been brewing for a hundred years to justify the same end. As nations are sovereign from each other, the judges ruled, governments are sovereign from their own People. Since it is sovereign, government can decide if, when, and how to waive its sovereignty and subject itself to the Petition Clause, within whatever limits it wants. If it wants not, the Petition Clause is not.

That is the argument of “sovereign immunity.” Stripped of its mystique, it is “[The Divine Right of Kings](#),” a barbarian doctrine that died at the Convention and was buried under the Petition Clause until resurrected under the doctrine of *stare decisis* and “ancient common law,” and pulled past the Revolution and through the Constitution. For an example, see [Edelman v Jordan, 415 US 651](#), where the Court amended both the Petition Clause and the Eleventh Amendment based on the ancient English doctrine of [The Divine Right of Kings](#).

Again, the People are subjugated to the whims of kings by another name, without right of redress through compulsory process of law. Law, inaccessible to the People to redress grievances with government, is not law, but tyranny. The new civilized relationship of government to governed -- won in war, written in blood, and sealed into our Constitution -- was lost, one “judicial interpretation” at a time. The awesome forces it was designed to protect us from, are unchained.

That is [judicial immunity](#) and from where it came. There is no justification for it in a nation tending to be civilized. It is not lawful under our Constitution, nor is it rational to our democratic institutions. Yet, today judicially created immunities have become the dominant force of government, organized against the People.

THE RATIONALITY OF [JUDICIAL IMMUNITY](#)

Reason imposes limits on the justifications for judicial concepts of immunity. We address three separate considerations:

1. [JUDICIAL IMMUNITY](#) PREVENTS DEMOCRATIC CHANGE

First, moral or legal concepts are not born in full bloom. They emerge, are examined and refined, and take on a gloss defining the limits of application in various contexts. Ideas in law or ethics are like ideas in science: only a few are really basic and the rest give way to competing ideas that make more sense in the changing world that measures their worth.

An interesting thing about ideas: wrong ideas imposed by law prevent development of better ideas necessary to evolving culture. So, for example, wrong ideas of governmental immunity carried into an age of constitutional democracy stagnate development of democratic relationships and prevent the new institutions necessary to the changing times.

When dogmatic institutions are enforced beyond their time, pressure builds for democratic replacements, without which civil strife and war fill the void. An example of judicial support of a coercive institution beyond its time was [Scott v Sanford, 60 US 393 \(1857\)](#). The moral foundations of slavery had already crumbled, but seven Justices found the institution was written into our Constitution, and thrust the Nation into civil war.

As we will see, [judicial immunity](#), which comes from the same intellectual era as [Dred Scott](#), **prevents development of ideas and institutions for government accountability to the People under the Constitution for its wrongs to them.** [*Emph. J4J*]

It is an anti-democratic institution in a democratic age.

2. [JUDICIAL IMMUNITY](#) UNDERMINES JUDICIAL CREDIBILITY

Second is the context of intellectual evolution in which ideas are examined. The moral, legal and scientific world into which ideas are born changes over time. Judicial ideas, developed when governments ruled through alliances with the Church and under authority of the "[Divine Right of Kings](#)," are not in the same moral, legal or scientific world in which they originated.

The result is justifications that once seemed irrefutable are now obviously false or irrational. So, for example, once it was acceptable to argue "[Judicial Immunity](#) is justified by [Divine Right of Kings](#) because the King appointed the Judge who acts in the King's place." But today, such arguments are absurd and, to reasonable minds, they are arguments against immunity, not for it.

In context, judicial concepts must keep pace with the intellectual and theoretical basis of culture to be meaningfully understood by the People. Justifications of privileges and immunities not otherwise allowed to anyone, from common law doctrines of the Divine Right of Kings to a People who reject both [Divine Right and Kings](#), undermine judicial credibility.

The Principle: If the Judiciary is not reasonable in terms the People understand, it is seen as an irrational dogmatic belief system the People will progressively reject.

3. [JUDICIAL IMMUNITY](#) VIOLATES TWO AMERICAN REVOLUTIONS

Third are the Revolutionary Changes in accepted legal theory. **America has had two revolutions separating it from the British.**

The first was the [Revolution of 1776](#). It freed the Nation from British Rule. Thereafter, the law of England had no legal force in America. We set up our own laws and institutions and were free to accept or reject any basis for law, until the next revolution, only fourteen years later.

We sometimes fail to appreciate the significance of adopting the Constitution. Unlike any other in history, it revolutionized the relationship between the government and the governed into one now accepted as the basis for governmental legitimacy around the world.

British Common Law inconsistent with our Constitution is legally incompetent, regardless of the supporting justifications for it. There could be no more complete a break in the legal bonds of two nations than a war to separate them, and a constitution from which to go their separate ways.

There is no more compelling a legal reason to adopt [English Common Law](#), than the ancient law of Rome or of Greece.

Neither the fact (if it is a fact) that [Judicial Immunity](#) was found in [English Common Law](#), nor that judicially created rules of *stare decisis* allow courts to refer to Common Law, allows let alone compels us to adopt particular bodies of that law.

Ultimately, it is consistency with the Constitution, both in process and substance, not a rule purporting to authorize adoption that determines whether rules of antiquity can become the law in these United States.

“Laws” inconsistent with the Constitution are not the law of the United States. For government to coercively insist that it is, is to court civil war. In this age of science, it is only a matter of time until the People see it and call it for what it is: Open Rebellion by Government against the Constitution. [*Emph. J4J*]

CONCLUSION OF THIS PART

Reason places constitutional limits on judicial doctrine. When examined, **immunity is an irrational policy of government coercively taking rights and property, without due process**; it is a systemic injustice by government upon the governed.

The evaluation herein undertakes a three-step process:

First, to define the doctrine to see exactly what [Judge Shubb](#) says is barred from redress.

Second, what is the historic justification for immunity and what does it mean to Americans of the twenty-first century? If the doctrine is not justified by today’s standards of reason, it is exposed as a holdover from legal theory long past its time.

Third, is the immunity [Judge Shubb](#) applied Constitutional?

Each of these issues will now be examined in turn.

I

THE SCOPE OF THE JUDICIAL IMMUNITY APPLIED

[Judge Shubb](#) found Hawks “alleges that the judges violated her civil rights under *Bivens v Six Unknown Named Agents*, 403 US 388, and engaged in conspiracy to deprive her of her federally protected rights. She seeks damages as well as injunctive and declaratory relief.” Memorandum and Order (M&O) 2:5-11.

He ruled that “**judges are absolutely immune from civil liability for damages for their judicial acts**,” citing *Mullis v US Bankruptcy Court*, 828 F2d 1385, 1388, and he found that all the actions of the judges “occurred within the course of their judicial duties.” (M&O 2:12-17). He went on at M&O 2:17: “In this circuit, federal judges also have [judicial immunity](#) against claims seeking injunctive or declaratory relief to the same extent that they are immune from damages. See Mullis, 828 F2d 1385, and to actions brought under 42 USC 1985. See *O’Conner v State of Nevada*, 686 F. 2d 749, 750. The only exception to this rule is where a judge acts in the clear absence of all jurisdiction. *Stump v Sparkman*, 435 US 348, 356-357. Here, all four judges acted well within their jurisdiction, See *Mullis*, 828 F2d at 1389.”

Basically, [Judge Shubb](#) relies upon the Mullis case. But, in point of fact, Hawks did not seek damages and her “injunctive and declaratory relief” is predicated upon a trial by jury and does not fall within the ambit of the Mullis holding on that issue. In fact, one may say Hawks’ case is pleaded under [Pulliam v Allen](#) and around Mullis to obtain jury findings of rights violations.

But Judge Shubb’s holding ignores those differences and finds **that it doesn’t matter what rights the judges violated, nor how clear they are, nor the malice with which a judge acts, nor the relief sought. Federal Judges cannot be sued as long as their acts are within an undefined “[subject matter jurisdiction](#).”** That no judge has “jurisdiction” to violate constitutional rights is immaterial. For the purposes of this appeal, Hawks seeks Remedies and the Right to sue for damages, notwithstanding that the constitutional violators are Federal Judges.

Initially, within a week of filing a complaint intended to be amended before service, Judge Garcia dismissed without notice or hearing and with prejudice, based on IFP status. In addition to the lack of due process, the complaint was against local government for its political persecution of Hawks; it was (and is) a Petition to the Federal Government to Redress Grievances of a Constitutional Magnitude with local government, under an act of Congress specifically authorizing it ([42 USC 1983](#)). Given those facts, it is hard to conceive of anything more constitutionally protected. (The Court may take judicial notice of facts from [Hawks v Butte Co., 9th Cir. No. 93-15346](#).)

Judge Garcia had no [subject matter jurisdiction](#). According to Judge Shubb, the hypothetical fact that Judge Garcia conspired with Butte County D.A. Defendant Ramsey to dismiss, and that Ramsey paid him \$10,000 to do just that and promised to exercise his official state power to get Judge Garcia’s son out of state prison in exchange for the dismissal, doesn’t matter. But, under the Mullis rationale, what could matter is that summons wasn’t returned; no defendant appeared and no motion to dismiss was made; for those reasons, no subject matter was before Judge Garcia as a judge, but only as an administrator, for which he has no [judicial immunity](#), even under Mullis.

Further, after the appeal was assigned in this court, Judge Garcia hypothetically may have met with Judges Canby, Schroeder and Wiggins in a smoke-filled room behind a San Francisco bar, split the \$10,000 four ways, and negotiated favors that Ramsey would do for them, in exchange for upholding his dismissal; which initially they did. (Reversal occurred on reconsideration.)

The point is not that this happened, but that it is possible under the pleadings. Under Judge Shubb’s ruling, it doesn’t matter as to the appeals court judges. But, as to Judge Garcia, he is again outside his [subject matter jurisdiction](#), and the fact that he conspired with other judges does not protect him. See [Dennis v Sparks, 449 US 24, 28-29](#).

That such important constitutional issues should turn on whether he had, in some undefinable sense, “subject matter” jurisdiction blatantly to violate First Amendment Rights as he undeniably did, is an absurdity in its own right.

“Absolute [judicial immunity](#)“ protects not only “judicial acts” with [subject matter jurisdiction](#), but the conspiracy and conspirators that surround those acts. Given what immunity means, its implication being that if you can’t sue, you have no discovery vehicles of truth determination, few can ever know the effect of judicial corruption on their Petitions for Redress. The basis for determining a rights violation in a case like this is not to see first a conspiracy ... but to see first a “judicial order” that **is so incredible on its face as to imply judicial arrogance to the constitution and some unknown irregularity behind the scenes** (not apparent on its face) to account for a “motive” that is necessary to explain why the order issued.

What does “Jurisdiction” mean in this context? Judge Garcia [dismissed with prejudice](#), without a motion before him; without notice or hearing; and he assumed this “right” because of Hawks’ IFP status? If that is “jurisdiction” on which to predicate immunity, then he has “jurisdiction” to shred the files assigned to him in his office; and to execute those he finds guilty, without trial, on the spot, in his own courtroom. (*Reductio ad absurdum*)

Take the hypothetical of defendants’ selling judicial orders for \$10,000. Taking bribes, obtaining favors, conspiring in back rooms + these are all part of the one indivisible transaction and not within judicial jurisdiction. But because the “favor” they trade, the order they sold, is “subject to their jurisdiction,” immunity attaches to violate constitutional rights of the persons whose cause is assigned in form only, to a constitutionally corrupt judge?

In that context, “jurisdiction” takes on a very onerous meaning. It means a judge can do as he pleases with the matters that are before him in form only.

This is not Lewis Carroll’s Wonderland. Judges are not free, in a constitutional context, to twist words to mean what they want them to mean. The Mullis treatment of “jurisdiction” is not jurisdiction but ownership. That’s what it means to be free to do as you want with a matter under your control, and not according to the trust of the Constitution.

In the sense by which immunity attaches, “jurisdiction” means the “personal right of the judge to do as he pleases.” As so used, **it is an arbitrary and capricious designation that violates Due Process of Law.** A “Jurisdiction” arising under the Constitution that violates due process is a contradiction and can hardly be the basis for a legitimate judicial doctrine.

In Mullis, this court quotes the distinction drawn by the Supreme Court in [Stump, at 828 F2d 1389](#): “If a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, **if a judge of a criminal court should convict a defendant of a nonexistent crime, he would be merely acting in excess of his jurisdiction and would be immune.**”

This is an interesting standard when applied to federal judges. More like state probate courts than criminal courts, federal courts have limited jurisdiction in “all Cases in Law or Equity, arising under this Constitution”

(Art. III) which they are sworn to support. (Art. VI) When a case “arising under this Constitution” is brought to a federal judge and he decides it, not according to the Constitution, but according to his own personal prejudice against poverty, that is much more akin to a probate court deciding a criminal case than a court of general jurisdiction making a mistake about law or fact.

With respect to a criminal court convicting on a non-existent crime, there are tremendously different levels of wrong, from simple error to constitutional outrage, and the Court gives no guidance. It is one thing for a judge to convict on mistake of fact or law diligently entertained and otherwise having jurisdiction and protecting rights of due process, counsel, confrontation and jury. But it is another thing to convict in absentia without notice or hearing in a private “trial” in chambers without a reporter.

The Quality of Judicial Conduct is not changed with the more likely scenario that the conspiracy is not for money, but to maintain an illegal policy of clearing cases from the docket. IFP [Pro Per’s](#) are an opportunity like little old ladies carrying purses in dark parks. They are easy pickings for judges to get rid of cases without getting to the merits, and the Court of Appeals conspired with Judge Garcia to maintain that policy.

Creating or maintaining illegal policy is no more within the jurisdiction of judges than conspiring to sell their orders. But if they do it on cases assigned to them, “jurisdiction” for immunity attaches? That is form over Constitutional substance.

That, by analogy to the Mullis case, is what these federal judges did. If these differences don’t make a difference as to application of [Judicial Immunity](#), then Appellant concedes that this case is under Mullis; but in no way does she concede that Mullis represents the Supreme Law of this Land.

The Constitution either sets the limits of “Jurisdiction” or it does not. If it does, then a judge has no jurisdiction to do what it forbids, nor to do what it commands or allows in ways it forbids; nor can he change that legal reality by redefining words. “[Subject matter jurisdiction](#)” means the jurisdiction to do what the supreme law of the land commands, and no other.

But if it does not set those limits, then wherefrom does such authority come to “courts of limited jurisdiction?” The Constitutional Authority to Violate the Constitution is a contradiction in terms denying its own legal supremacy. Unless we think the Framers were fools, we ought not thrust such a bizarre result upon them; but we should look for other causes.

THE MULLIS DISTINCTION FROM [PULLIAM v. ALLEN](#)

As mentioned in the factual statement, and contrary to what [Judge Shubb](#) “found,” Appellant did not seek damages from the judges, except for attorney fees and costs. The major distinction between this case and Mullis is that she seeks trial by jury to decide if the defendants violated her rights, and that her declaratory and injunctive relief be based on the jury’s findings. (Pursuant to this Court’s decision in [Gobel v Maricopa County, 867 F2d 1201, fn 6 at 1203](#), Appellant also demands a public apology. As will be apparent infra, even if a court cannot order an apology, she is in a position to demand it.)

Thus, the case should come under [Pulliam v Allen, 466 US 522](#), with a twist: whether or not the Judges violated her civil rights is to be determined by a jury, just like any other defendant who is accused of violating her rights. The orders that issue, if any, are those required by jury findings.

Why is this distinction important? It is important on this appeal because it distinguishes Mullis from Pulliam, beginning at [828 F2d 1391](#). But it is important in the underlying case because, in actual reality, Hawks has no other remedy.

What the Defendants did (FAC Fifth Cause) violated her Constitutional Rights. She is a victim of civil rights torts, and crimes under [18 USC 241/242](#). Because of [Judicial Immunity](#), she has no civil damage remedy. Because of interpretations like Mullis, she has no injunctive relief by which to stop them from violating her rights and to render to her the human respect she is due under the Constitution.

Just as [judicial immunity](#) determined by courts have cut off her civil remedies, they have cut off her criminal remedies. So, for example, [42 USC 1987](#) commands the U.S. Attorney to prosecute for crimes all persons who violate (now) [18 USC 241/242](#). But judicial decisions have left such prosecutions up to the discretion of the U.S. Attorney. (See [Attica Cor. Fac. v Rockefeller, 477 F2d 375](#) and [Peek v Mitchell, 419 F2d 575](#).) And what U.S. attorney is going to exercise his discretion to prosecute federal judges, let alone Appeals Judges?

Thus, because of [judicial immunity](#) and holdings like Mullis, Appellant is exercising the furthest reaches of her remedies to get a jury trial and jury finding of rights violations from which she can compel an apology from the Defendants, and a criminal prosecution by U.S. Attorneys who may be less reluctant to prosecute a judge after a civil jury finding of civil rights violations.

If this seems as if Appellant is going to extremes to be treated as a human being, it is because of the constitutionally contradictory demands of [Judicial Immunity](#). As we have seen, that **immunity is an immensely effective device for depreciating human dignity**. As we shall see in the next part, **that immunity is also not lawful**.

II

THE HISTORICAL BASIS FOR [JUDICIAL IMMUNITY](#)

[Judge Shubb](#) based his dismissal on [Mullis v Bankruptcy Court, 828 F2d 1385](#). The [Judicial Immunity](#) holdings of Mullis are, in turn, based in [Stump v Sparkman, 435 US 349 \(1978\)](#); and [Bradley v Fisher, 80 US \(13 Wall\) 335 \(1872\)](#). The history of Judicial Immunity in the United States begins with Bradley, a lawyer who in 1867 defended [John Suratt](#) on the charge of murdering President Lincoln and obtained a hung jury. Fisher was the trial judge. During a recess, Bradley confronted Judge Fisher in an allegedly rude and insulting manner, accusing him of insulting and demeaning Bradley from the beginning of trial. After trial, Judge Fisher disbarred Bradley from practice in his court because of the aforesaid. Bradley sued Fisher.

(Note: The verbal conduct Fisher punished Bradley for would be protected speech today. (Court was in recess.) See [Bridges v California, 314 US 252 \(1941\)](#); and [In Re Hallinan, 71 C2d 1179](#). Under the Mullis standard, the recessed court would not have [subject matter jurisdiction](#) over Bradley's speech under Bridges, and therefore, [Judicial Immunity](#) would not attach today.)

A reading of Bradley demonstrates that issues of Constitutional rights either didn't arise, or weren't addressed. The issue that is the foundation of [Judicial Immunity](#) begins at [80 US 649](#):

“For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself.”

CHECK THE PREMISE: Is the same not true of at least every professional person, without the conclusion of immunity following? You hire an attorney so that, in exercising his professional competence, he will do so according to his own good judgment; but if he fails to meet the standard, he is liable. Is the same not true of a doctor, an engineer, an electrician, and so on?

Next, Bradley says: “Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom and would destroy that independence without which no judiciary can be either respectable or useful.”

CHECK THE PREMISE: “Subject to liability for violation of Constitutional Rights” is not “liability to answer everyone who might feel himself aggrieved by the action of the judge.” There are many reasonable differences, i.e. the grievance must be of constitutional significance; it must be well enough founded to survive [summary judgment](#); it must be of a “known” constitutional right.

Moreover, while, in a sense, everyone is accountable under the law for just grievances of others against him, there are tools to weed out the just from the unjust. So, for example, in California, a medically injured person needs a written opinion of professional negligence before suing.

Justice Field would have us believe that judges would be terrified of their financial liability. But, the point of fact is that, absent punitive damages, tradition and the "[Tort Claims Act](#)" have established that, if an official is sued, the Attorney General Appears for him and the government indemnifies him.

In other words, the "terrifying financial implications" of judicial liability are simply false; **unlike doctors or lawyers, judges would not even carry the burden of insurance.**

With respect to the impairment of judicial function, the day of judicial mystique is past. A People whose basic lifestyle is based upon science must question the foundations of judicial decisions; and more and more the respectability and usefulness of the judiciary depends upon the soundness of judicial principle and reasoning, not immunity from accountability.

Conversely, today, in the "heyday of immunity," the judiciary is at its lowest ebb of respectability.

Next, Justice Field cites an unnamed "distinguished English Judge" from [Taaffe v Downes, 3 Moore P.C. 41, n.](#), to wit:

"The principle therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well ordered system of jurisprudence. It has been the settled doctrine of the English Courts for many centuries and has never been denied, that we are aware of, in the courts of this country. "It has, as Chancellor Kent observes, 'a deep root in the common law.'" [Bradley v Fisher, 80 US at 649.](#)

CHECK THE PREMISE: It is not true. What was, in fact, happening was that the Commonwealth was developing a more civilized law as they came to recognize the "Unalienable Rights" of man that gave birth to the United States. The major premise of Bradley was factually incorrect when made. [English Common Law](#) had grown to permit judicial liability claims. In [Kendillon v Maltby, 174 Eng. Rep. 562, 566 \(N.P. 1842\)](#) (see the Excerpts), Chief Justice Lord Denman stated the law in 1842:

"I have no doubt on my mind, that a magistrate, be he the highest judge in the land, is answerable in damages for slanderous language, either not relevant to the cause before him or uttered after the cause is at an end; but for words uttered in the course of his duty, no magistrate is answerable, either civilly or criminally, unless express malice and the absence of reasonable or probable cause be established."

Kendillon is a suit for slander by a policeman against a judge for statements from the bench. Under First Amendment standards, without [judicial immunity](#), but according the judge the same immunities due every American, both the same Rule of Law, and the same result, would obtain. That is, the officer would be treated as a public figure for which rules of "conscious disregard of truth" or malice would apply. It is noteworthy that the reason Lord Denman finds a duty of the judge to speak his opinion, is basically the same "public interest" upon which Americans are privileged under the First Amendment.

Next, note, in context with Lord Denman's statement of English law in 1842, re malice, what Justice Field quotes in 1872:

“Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry. This was adjudged in the case of Floyd and Barker, reported by Coke, in 1608, (12 Coke 25) where it was laid down that the judges of the realm could not be drawn in question for any supposed corruption impeaching the verity of their records, except before the King himself”

That ancient England in 1608 had developed systems of immunities to insulate its nobility from accountability to those they wrongly injured does not highly recommend that system to Post Revolutionary America; it merely threatens to recreate the causes of the Revolution.

Realizing that the right to petition government for redress of grievances underlies all other rights, including speech and press, the United States Supreme Court in [Bridges v California, 314 US at 263-264](#), made short work of the argument that such ancient doctrines of “common law” have any impact on our law:

“For, the argument runs, the power of judges to punish by contempt out of court publications tending to obstruct the orderly and fair administration of justice in a pending case was deeply rooted in [English Common Law](#) at the time the Constitution was adopted. That this historical contention is dubious has been persuasively argued elsewhere. (Cites Omitted, but see *Kendillion supra*) In any event, it does not detain us, for to assume that [English Common Law](#) in this field became ours is to deny the generally accepted historical belief that ‘one of the objects of the Revolution was to get rid of the English common law on liberty of speech, and of the press in the United States.’ 9 Publications American Sociological Society 67, 76.”

WHO IS OUR KING: Notice that Justice Field does not quote Coke as saying Judges are not accountable for malice. Rather, the exception to question motives of judges was “Before the King, himself.” How do you transpose that to America? Is the Constitution not clear on who is “King” in our constitutional democracy?

It is so clearly the right of the jury to determine the motives of judges, that **unless it be so**, our own history has taught us, **there be no accountability of government at all.** [*Emph. J4J*]

In the evolution of “well ordered systems of jurisprudence” the limiting function of constitutions creates systems different in kind from those that pre-existed. When Bradley refers to “any well ordered system of jurisprudence,” there simply was not the time in world history necessary to compare to constitutionally based systems; **AND BRADLEY ITSELF prevented development of concepts of judicial accountability** [*Emph. J4J*] in America and in countries that looked to us for leadership in developing such concepts.

Does the Bradley rationale still obtain after Commonwealth Countries had time to develop the Constitutional Limits of Government which America had begun in 1789? Modern cases suggest that it does not. But, of primary importance is the effect the Bradley doctrine has had in stagnating the development of constitutional law throughout the world.

WE ARE THREE WORLDS AWAY FROM ANCIENT ENGLISH LAW.

To be sure, the Revolution and Constitution each created such legal change so as to separate us legally from England, as if into separate worlds. But today a third worldwide development in law is occurring, even as we address this issue. The United States is not an island, or even a continent. It is a leader, perhaps THE ONLY leader, of the civilized world. As that leader, it set treaties into motion by which nations become more civilized with respect to each other, and in respect to their own People.

Today the United States is bound by Treaties, entered in good faith with the United Nations, requiring that it provide effective remedies and redress for violations of Constitutional Rights, “notwithstanding that the violation has been committed by persons acting in an official capacity” and to “develop the possibilities of judicial remedy.” See The International Covenant on Civil and Political Rights; [U.N. Gen. Assem. Res. 2200 A\(XXI\) of 16 Dec. 1966](#); Ratified by the U.S. Senate in June 1992. See Article 2. See also the Universal Declaration of Human Rights, [U.N. Gen. Assem. Res. 217-A\(III\) of 10 Dec 48; Art. 8](#). It states:

“Everyone has the right to an **EFFECTIVE REMEDY** by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” [emphasis added] It is long overdue for the Supreme Court to revisit Bradley in light of the impact of Constitutions on the evolution of “well ordered systems of jurisprudence.” Bradley was eighty years out-of-date when it was written. Its teachings are now two centuries past their prime and cannot survive in a world of limited government and constitutional rights. The Treaties mentioned are the “handwriting on the wall” before the entire world: “[Judicial Immunity](#)” is an embarrassing, and dying institution.

Plaintiff draws the Court’s Attention to Three Points:

First, Plaintiff does not contend that there is no “judicial immunity.” She contends that, under the Constitution, it is the same for judges as for everyone else. As we understand the Constitution today, privileges from liability for speech are so substantial that much of the [judicial immunity](#) doctrine is redundant, unnecessary, and unconstitutional.

Second, *Kendillion* should be examined in conjunction with Note 3641 from The Digest of Annotated British, Commonwealth and European Cases which states: “No Liability for acts done in Judicial Capacity -- UNLESS interference with rights or freedoms under Constitution -- Award of Damages.” Common law countries now award damages when judges violate constitutional rights. Note 3641 is in the Excerpts.

When examined together, we see that constitutions develop clear lines of demarcation between what is and what is not “duty.” By adopting such guidelines, judges know both the limits of authority and of duty. Those limits today are generally well settled constitutional doctrines that achieve much of the purpose of judicially created immunities and simplify constitutional law immensely.

As for judicial liability, existing doctrines that apply to everyone equally, incidentally benefit judges specially. For example, if a judge is not sure whether a particular right exists or an interest is protected, he can ask for more argument, certify questions, and take reasonable steps to protect interests. Constitutional Rights have never been interpreted to imply strict liability to those who violate them without fault. They would not be now

Third, treaties with the U.N. require the U.S. to provide effective remedies for violations of rights, “notwithstanding that the violation has been committed by persons acting in an official capacity” and to “develop the possibilities of judicial remedy.” See The International Covenant on Civil and Political Rights; [U.N. Gen. Assem. Res. 2200 A\(XXI\) of 16 Dec. 1966](#); Article 2 and Universal Declaration of Human Rights, [U.N. Gen. Assem. Res. 217 A\(III\) of 10 Dec 48; Art. 8](#))

But whether this court agrees with the above or not, the fact is, as we shall see in Part III, [judicial immunity](#) violates the Constitution. As such, it is a “*nullum pactum*.”

III

JUDICIAL IMMUNITY VIOLATES THE CONSTITUTION

Is a suit against judges for violating constitutional rights a Petition to Government for Redress of Grievances within the meaning of the Petition Clause of the First Amendment?

The affirmative answer seems self-evident. It is self-evident. But, given its prominent position in the Constitution, few cases have addressed the issue, especially in the context of distinguishing, as we do here, “the right to sue,” on the one hand, from The Right to Sue Government for Redress of its Constitutional Wrongs, on the other.

The Supreme Court has declared, “Certainly the right to petition extends to all departments of the Government. The right of access to the courts is but one aspect of the right of petition.” [*California Transport v Trucking Unlimited*, 404 US 508, 510 \(1972\)](#).

The California Supreme Court, based on an analysis of U.S. Supreme Court holdings, found that:

“The authorities make it clear that the right of petition protects attempts to obtain redress through the institution of judicial proceedings as well as through importuning executive officials and the Legislature. It is equally apparent that the right encompasses the act of filing a lawsuit solely to obtain monetary compensation for individualized wrongs, as well as filing suit to draw attention to issues of broader public interest or political significance. As the Supreme Court declared in [*Mine Workers v Illinois Bar Assn.*, supra, 318 US 217, 223](#), ‘The First Amendment does not protect speech and assembly only to the extent it can be characterized as political.’ (see also [*Thomas v Collins*, supra, 323 US 516, 531](#)) Hence, the act of filing suit against a governmental entity represents an exercise of the right of petition and thus invokes constitutional protection.” [*City of Long Beach v Bozek*, 31 Cal.3d 527, at 533-534 \(1982\)](#). The court went on at page 535 to address the issue:

“The right of petition is of parallel importance to the right of free speech and the other overlapping, cognate rights contained in the [First Amendment](#) and in equivalent provisions of the California Constitution. Although it has seldom been independently analyzed, it does contain an inherent meaning and scope distinct from the right of free speech. It is essential to protect the ability of those who perceive themselves to be aggrieved by the activities of governmental authorities to seek redress through all the channels of government. A tort action against a municipality is but one of the available means of seeking redress.” [*City of Long Beach v Bozek*, 31 Cal.3d 527, at 535](#).

In [*U.S. v Hylton*](#) the Fifth Circuit held that filing a complaint against federal officers with state agencies is a petition for redress protected by the Petition Clause, at [710 F2d 1111](#):

“As the U.S. Supreme Court has held, the right to petition for redress of grievances is ‘among the most precious of the liberties safeguarded in the bill of rights’. (Cites) Inseparable from the guaranteed rights entrenched in the First Amendment, the right to petition for redress of grievances occupies a ‘preferred place’ in our system of representative government and enjoys a ‘sanctity and a sanction not permitting dubious intrusions.’ [*Thomas v Collins*, 323 US 516; 65 S.Ct 315, 322](#). Indeed, ‘It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances.’ Id. at 323.”

It seems to reason that if the filing is protected, then surely the object of the protected right – of obtaining a due process guaranteed fair hearing of the grievance and redress thereon – is the very essence of the Petition Clause.

In fact, the characteristic which distinguishes petitioning through courts from other forms of petition is the access to compulsory process of law, wherein the parties are equal before the law. Without ultimate recourse to that compulsory process, there is no reason for government to listen to grievances at all, let alone to redress them fairly.

It is therefore axiomatic that, underlying all civil relations between government and the governed is the right of the governed to compel government's obedience to law through the compulsory process of the law. [*Emph. J4J*] If that is not so, we can end this discussion now, for you will say that our only rights to redress are really gifts of government, and we will not accept your substitution of “gifts” for rights, for then we will threaten war. And you will not accept our threat of war as a substitute for the real thing; and that war will come about, even though neither of us wants it. Those are the battle lines for civil war.

Now, let us talk peace based on the mutual respect each has due. The Government and the Governed are Partners. We go nowhere without each other. Is not that lesson of history so complete that it need never be tested again? Now, therefore: Given judicial, quasi-judicial, prosecutorial, and limited immunities that apply to major portions of federal and state government functionaries, as determined by courts over the last 123 years; and, Given the 1988 amendments to [28 USC 2674](#) that “the United States shall be entitled to assert any defense based upon judicial or legislative immunity which would otherwise be available to the employee of the United States whose act or omission gave rise to the claim (for redress of grievances)”; and, Given that such immunity applies to violations of Constitutional Rights;

Then, is there any question but that Congress and the Judiciary have combined to make “law ... abridging ... the right of the people ... to petition the Government for a redress of grievances,” in direct violation of the Petition Clause?

When judges conspire to maintain a policy to deprive persons of “life, liberty, or property, without due process of law” under a claim of right due to IFP status, do we really have any dispute as to whether that violates the Fifth Amendment?

When the judiciary creates an institution to deprive injured persons of redress based upon twists in the meaning of “jurisdiction,” and when it creates case law (with roots in “Floyd and Barker, reported by Coke, in 1608, (12 Coke 25)”) to deprive injured persons of remedies for violating Our Constitution, why is that not an institution of involuntary servitude prohibited by the Thirteenth Amendment? The Supreme Court in [Yick Wo v Hopkins, 118 US 356, 370 \(1886\)](#) found that:

“Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, **while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.** And the law is the definition and limitation of power.... But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth “may be a government of laws and not of men.” For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.”

Here, the Supreme Court declared that the essence of slavery is the holding of any material right essential to the enjoyment of life at the mere will of another. **How much worse a betrayal of the human spirit that such rights be lost at the whim of the judicial branch of one's own government to whom he turns for protection of those rights!** [Emph. J4J]

This is not a dispute. There is not a Judge in this Circuit who does not KNOW that [Judicial Immunity](#), without question, violates Our Constitution. The problem is that **your judicial ancestors rebelled against Our Constitution**, [Emph. J4J] and now you don't know how to get back to a state of judicial constitutionality.

THE JOURNEY BACK TO JUDICIAL CONSTITUTIONALITY

Justice Brennan faced this question, thirteen years ago in [Briscoe v Lahue, 460 US 325, at 346](#) in his dissent. It is short enough to be quoted in the entirety:

“Justice Marshall’s Dissenting opinion, post, presents an eloquent argument that Congress, in enacting Section 1983, did not intend to create any absolute immunity from civil liability for ‘government officials involved in the judicial process ...’ (post, 346-347) Whatever the correctness of his historical argument, I fear that this court has already crossed that bridge in [Pierson v Ray, 386 US 547](#), and [Imbler v Pachtman, 424 US 409](#).

“I entirely agree with Justice Marshall, however, that the policies of section 1983 and of common-law witness immunity, as they apply to witnesses who are police officers, do not justify any absolute immunity for perjurious testimony. I therefore dissent for the reasons stated in Part IV of [Justice Marshall’s Opinion](#).” (In Part IV, [Justice Marshall](#) argues that **absolute police immunity for perjury is not a compelling or even rational state policy.**)

We, the People, must live with and under the policy decisions of our government, whether it be the judicial, executive or legislative branch. But, whether right or wrong in some remote esoteric sense we cannot understand, the Constitution entrusts such policy-making into the hands of the Legislature. If the Judiciary is effectively to balance that policy-making power, it cannot do so by legislation disguised as “case law” in usurpation of power reserved to Congress; it must instead relinquish that illegitimate power back to the People, through the jury trial process.

Just as the majority policy made in [Briscoe v Lahue](#) has given us the likes of [Mark Fuhrman](#) to police our streets and testify falsely with impunity, the judicial policy to cover-up the constitutional violations of “Brothers of the Robe” has created and maintains a “good ol’ boy” network of [Mark Fuhrmans](#) within its own ranks.

The problem is that “[Mark Fuhrman](#)“ is [US. Judges Garcia, Wiggins, Canby](#) and [Schroeder](#) are US. To “weed them out” in a system that corrupts is to replace them with US, and then we too will become corrupt in that system. **The only solution is to fix the system. It is broken, and it needs fixing desperately.** [Emph. J4J]

How to Fix It: **The problem is unaccountability** to those it injures in violation of Constitutional Rights. **The solution is accountability** to those it injures in violation of Constitutional Rights. [Emph. J4J] The idea of accountability to those you injure is that the injured party, through the process of law seeking redress, polices the system. Immunity **blocks that policing of their government by the People.** [Emph. J4J]

It is written that the longest journey begins with but one step in the right direction. When, as Brennan, Marshall and Blackmun found in 1982, we “fear that the Court has already crossed that bridge,” if it is a bridge in the wrong direction and you cannot go back, then you must, at least, not continue on to cross more bridges in the same wrong direction.

All is not lost. The Nation’s future can still be enriched by the lessons learned, and a price too horrible to contemplate can still be avoided.

Each case of [Judicial Immunity](#) presents to each judge a moral decision: “Shall I obey my oath and support the Constitution? Or, shall I ignore my oath in support of the more temporal interests that surround us all?”

In this case, there are three choices:

- 1.** You can violate your oath and advance anti-constitutional forces by extending the doctrine of Mullis v US Bankruptcy Court to cover the facts and pleading of this case, and deny the right to a trial by jury to determine any constitutional violations, notwithstanding that damages are not sought.
- 2.** You can expressly limit the Mullis Doctrine to its facts, bring this case under [Pulliam v Allen](#) “with a twist,” allowing this suit to go forward as pleaded, and begin to question the whole concept of “Judicially Created Immunities.” That will give the Judiciary the notice necessary to adjust to, and adopt, its own rules of accountability, designed to prevent the need for people to sue judges for violations of Constitutional Rights.
- 3.** For those whose courage and integrity are of the heart of the lion, you can refuse to honor the disgraceful doctrine in any form. From you, Appellant seeks the right to amend her complaint to seek damages as a jury may find “just and proper.” This Court should also consider the long-range national interests of the Judiciary in a world progressively tending toward democracy.

On the one hand, it can fight to stagnate the inevitable, but then it will be confronted with the “future shock” of a People refusing to listen to Government as **the Judiciary has obstructed the processes by which Government must listen to the People.** [*Emph. J4J*]

Alternatively, it can and should prepare itself for inevitable democratic changes and, in its own embrace of those changes, assist and guide them in coming into being.

The Judiciary will become “democratized.” The question is whether it will embrace, assist, and guide that process. In this case, what it should do, whether by way of Points Two or Three above, is to deny any [judicial immunity](#) at this stage and to allow all questions of defense to go to the jury.

The Principle: The policy of [judicial immunity](#) is wrong and that wrong principle was created by the Judiciary. It is a maxim of jurisprudence: “No one may benefit from their own wrong.” “Democratizing the Judiciary” means in this case: “Let the Jury decide the constitutional credibility of the defense.” If they reject it, let that be your guide, for the Constitution is theirs no less than yours. If they accept it, the Mullis doctrine is vindicated and extended in this case, without the need for government coercion.

In either case, government and governed shall have given each his due recognition, and have crossed a bridge into a new democratic partnership in judicial democracy under a Constitution that embraces interpretation by the governed, no less than by those who are chosen to govern.

The Jury is the Great Equalizer of disputes between government and governed.
Let it do its work.

Dated: December 11, 1995

Dixianne Hawks by J.E.W. [John E. Wolfgram - CA. JAILer - J4J]