

2010

# Dealing with Sovereign Immunity



*The Bane of America and Target for Guerilla Autocrats*

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## Executive Summary

Sovereign immunity constitutes the scourge of America. It allows people in government to ignore their loyalty oaths to support the Constitution, and whimsically commit all kinds of crimes with impunity that you would get jailed for committing. Of all the pockets of crime in government, the judiciary and law enforcers compete for low honors. To the end of revealing a remedy for this, I want to focus your attention on the judiciary and judicial immunity, discuss the remedy for lack of remedy for government perpetrators of crimes (Gerps), and explore the challenges within in that collective or autocratic remedy.

## The Impact of Judicial Immunity

The supreme courts create rules of procedure and administration to guide judges, but judges still have a lot of autonomy. Every judicial microcosm operates under its own rules and administrative orders as a quasi-independent oligarchic empire.

Judges have administrative and ministerial duties which they **MUST** perform without exercise of judicial discretion, and judicial duties which they **MAY** perform as they see fit and according to their own judgment. Judges get immunity from judicial errors, but not from ministerial errors. In other words, you can sue a judge with a tort complaint for failing to perform or flubbing the performance of a *ministerial* duty that results in an injury to you and consequent damages. But you cannot successfully sue a judge with a tort complaint for malfeasance in associated *judicial* duties.

Advocates of judicial immunity claim it allows judges to remain independent from adverse influence like the mob, big business, powerful law firms, and the like. They fail to realize that threats of violence to a judge's family, and financial and social entanglements can pressure a judge to ignore the oath. And such pressures happen all the time. Judicial immunity does not protect judges from those influences which have historically proven effective in subverting judges.

The judge can suffer discipline from the Supreme Court and Judicial Qualifications Commission for ethics violations, or from the Legislature through impeachment for serious judicial errors or criminal conduct.

You can and should file a criminal complaint against a judge who commits a crime, regardless of the circumstances. Unless the judge commits a truly heinous offense like murder or pederasty in judicial functions, law enforcers will probably not arrest, courts will probably not convict, and legislatures will probably not impeach the judge. But that should not stop you from complaining both to the law enforcers and to the Legislature Committee on the Judiciary in both houses.

Furthermore, the U.S. Supreme Court ruled in *Pulliam v. Allen* 466 U.S. 522 (1984) (see synopsis below) that the English common law in which judicial immunity has its roots did not prohibit federal courts from awarding injunctive relief to victims of state court abuse. In other words, if a state or federal court judge abuses you by depriving you of your rights, you might get a federal court to enjoin a court from depriving you of those rights, and award you attorney fees and court costs. While that humiliation won't punish the judge or compensate your injury, it can stop the abuse.

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Judicial immunity constitutes the single worst policy in government, for it lies at the root of all continued malfeasance everywhere else in Government. Next to that in egregiousness comes any other government prerogative to allow or disallow anyone to sue the government and obtain damages for unlawful injuries. I suppose it makes sense that everyone in government wants immunity from punishment for crimes. But the loyalty oaths the Constitutions and laws require them to swear puts them on notice that we know they will feel pressure to show disloyalty to us, so we require them to state the solemn intention and commitment to support the Constitution.

We think, perhaps stupidly, and in many cases wrongly, that their scruples will make them actually obedient to the Constitution in respect to retaining the republican form of government and enforcing the guarantees of our rights. But regardless of what they swear or what we the people think, many, if not most, jurists commit throughout their careers an array of felonies, misdemeanors, and malfeasances against the People through judicial, administrative, and ministerial misconduct.

Because judges *can* get away with many and varied crimes under the protection of that immunity, they actually *do* get away with them. In the process, they illegally create laws, interpret laws as meaning the opposite or something other from what the laws say, and they often ruin people's lives willy-nilly with terrible rulings and abuse litigants in fits of rage and retribution. And there's nothing easy you can do about it... not much, anyway.

## **What You Can Do About Judicial Immunity and Crooks in Government**

If you don't like judicial abuse and the undeserved and corrupting immunity judges enjoy, you can take action to correct the situation. You won't find much of this action easy. But at least you can do it, up to a point, without getting killed for it.

0. Internal - I suppose I should add this to the list: "Reform your own scruples, keep yourself moral, ethical, intelligent, educated, honorable, and righteous." For surely you realize that dishonor, corruption, ethics lapses, and criminality among the voting public lead to those same characteristics among public servants. But I'll save that admonition for a Sunday sermon.
1. Personal Notice – inform the judge through personal correspondence of the judge's unacceptable behavior and the need to correct it through personal reform.
2. Political – change the Constitutions to eliminate immunity from government in general and from judges in particular. Remember that a Republic binds the rulers with the same laws as the ruled. ANY immunity for a government operative constitutes an element of destruction of the Republic.
3. Legal – file administrative, civil, and criminal complaints against the bastards. Complain in writing to the Judicial Qualifications Commission to get them disciplined, and the House Committee on the Judiciary to get them impeached.
4. Administrative – file injury complaints with their insurers and bonding agencies, and the State and County Risk Management agencies, and the bar insurer. In most jurisdictions this will not work without a court order. Fat chance you will get that.

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5. Social – hire private investigator to dig into their personal lives and expose their dirt to their friends, neighbors, family members, employers, colleagues, fellow members of social clubs and professional associations.
6. Roll Your Own Remedy with Constitutional Guerilla Activism –
  - a. Declaration of Independence (1776) – ***“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”***
  - b. Read CUSA Amendments 9 and 10 (1791) - ***“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”***
  - c. Review Article I Section 2 of the Florida Constitution of 1838 - ***“Section 2. That all political power is inherent in the people, and all free governments are founded on their authority, and established for their benefit; and, therefore, they have, at all times, an inalienable and indefeasible right to alter or abolish their form of government, in such manner as they may deem expedient.”***
  - d. These acknowledge your right and power to roll your own remedy where none exists or an existing remedy has no remedial effect.

## Let’s Roll... Autocrat Remedy: When Sovereign Immunity Obstructs or Denies Official Remedy

I want to point out the significance in #6 above, just in case the text I quoted did not “ring” your bell. It means that when you cannot get remedy in and from the law and its practitioners, particularly jurists, for wrongs committed against you in or out of government, you have the right AND (if you can wield it) the POWER to create your own remedy. In other words, the lack of official remedy constitutes the path to remedy by the autocrat: *YOU*.

For example, let us suppose you try all the administrative and legal methods for making a crooked judge honest and making that judge compensate you for a wrong the judge did to you or permitted someone else to do to you. You lobby your politicians to change laws to remove judicial immunity. You sue to no avail. You file a criminal complaint to no avail. You file bar, JQC, and impeachment complaints, and

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claims against the judge's insurance policy, to no avail. You dig up dirt on the judge and expose it to the news media and everyone able to pressure the judge to do right, to no avail. Now what do you do?

You may, with permission of the Constitutions of the USA and your state, summarily remove a crooked judge from office, all by your self. And you may do it "in such a manner as" you "deem expedient." Don't look at me or accuse me of advocating anarchy here. I have quoted to you directly from the U.S. and Florida Constitutions. And according to my reading of the quoted text, they do indeed acknowledge (not merely permit, which they have no authority to do) your POWER to create your own remedy when you cannot get one from Government.

The term "power" provides a bit of a bone of contention, for it implies the ability to deploy psychic and/or physical *FORCE* to accomplish an objective. Obviously, if a judge commands marshals, bailiffs, and the entire Sheriff's department to come after you for trying to remove the judge, you must have the "power" to stave off their attack and convince them to put the judge, not you, under arrest.

Where, oh where, will you get such power? Maybe in the ranks of the veterans returning from the wars in Iraq and Afghanistan. Maybe in the people getting trained in the Dismal Swamp area of North Carolina known as "Blackwater." Maybe among your family, friends, and neighbors.

In other words, you have the *power* to take remedial action when the government does not sufficiently provide it, *IFF* (if and only if) you have and can command and deploy sufficient *force*. Why? Because they, the crooks in government, will "not go gentle into that good night."

## **The Militia: The Autocrat-Citizen's ultimate tool for defeating Government abuse**

That fact about power should clue you in as to the reason the framers of the Constitutions so readily referred to "the militia." Only a militia can possibly have sufficient force to remove criminals from government *forthwith* when the government itself won't do it. The militia *MUST* have local commanders loyal not to government but to the *principles* of *good* government clarified in the Constitutions. The militia must have a sufficiently cellular, Rapid-Attack Fast-Escape (RAFE) nature to operate as a guerilla force against a much more powerful national guard or military. The militia must have sufficient armament, surveillance, intelligence-gathering, and planning ability to stand up against a national guard or military.

Reviewing these principles we quickly see how Saddam Hussein and other tribal thugs rise to power so quickly and keep power so long. They command an army that snuffs out opposition by surprise with overwhelming force. And look at the armament and surveillance tools of the modern US military forces – satellite and RPAVs that can detonate a house with an energy beam or smart bomb. What ghost of a chance does any militia have against that, if it comes down to a contest between the two?

Well, local sheriffs don't quite have that kind of power, but they have plenty of force, enough to beat any militia group today, if I don't miss my guess.

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## **No Militia? Well, how about Autocratic Guerilla Activism?**

But justice seekers should remind themselves that those who constitutionally remove criminals from government without discovery of their own identities don't necessarily need the backing of a militia. In fact, government snooping makes it difficult to hide communications such as that needed to coordinate militia activities. So maybe a justice seeker must operate alone. So, they could, if so inclined, become autocrats who employ guerilla tactics in their activism to effect honesty in government.

It goes without saying that engaging in the ultimate actions under #6 above will paint a huge target on the actor. But one should also recognize the personal risk in items #1 through #5 above. Those actions would make one known to the establishment as a rabble-rouser or political/patriot activist. Then members of the establishment, particularly powerful targets of the activism, who would become aware of the activist, might engage in pre-emptive retribution or reprisal against that activist. That would disable or cause the demise of the activist, and the crooks in government would go back to their rat-killing. As one ex-cop told me, a deputy or cop could stop the activist in traffic, crack a tail light on the activist's car, interview the activist, have an accomplice toss a rock of crack cocaine in the activist's car window, and then bust the activist for possession of narcotics. It has happened before, more than once. Therefore, any such activist should take special precautions to protect his identity, family, possessions, and personal safety.

Do I advocate taking the law into one's own hands? Well, no, for a number of reasons. But I cannot blame anybody from feeling outraged for the failure of government to give constitutional justice to the people, or for protecting crooks in government. And I don't blame anybody for circumventing a system of injustice that guarantees they will lose any case in court not on its merits but because of judicial corruption or malfeasance.

If someone were to ask me whether I'd miss half a dozen of the most crooked judges in any given judicial circuit of Florida, I'd have to answer "No. Good riddance." And it wouldn't matter much to me how they made their exit from office.

But I caution anyone considering how to cause the voluntary or involuntary exit of a corrupt judge from office to think carefully about the ramifications and consequences of the undertaking. If crooked judges started disappearing, the public should first broadly think of those judges as crooks. Otherwise, the public might support a government crackdown to protect crooked judges. Only a concerted effort to expose a judge through formal administrative and criminal complaints, lawsuits, private investigations, blogs, and news media announcements will make the public generally aware of the crookedness of that judge. So even if I did recommend, which I do not, taking out a judge through the constitutional method prescribed in #6 above, I would suggest taking all the other actions above first, and doing it in such a way as to retain anonymity.

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## Roll Your Own Remedy – Your Choice of Tyranny or Anti-Gerp Activism

I don't mean to single out Gerps (Government perpetrators of crimes under color of law) as targets for extinction. Actually, I want to witness the extinction of the "crimes" they "commit under color of law." I want to see this happen as a consequence of Gerps becoming honorable and lawful in their activities by their own personal choice. But, I believe they suffer an inertia that makes it virtually impossible, in today's society, for them to do that.

Furthermore, I don't want to go "against" anything in government. For I far prefer to work, lobby, and activate "for" honesty, honor, integrity, and lawfulness in government.

However, I have the country-boy attitude about Gerps the same as about snakes. Whoever stands closest to the snake grab a stick and whack it. Anybody who witness Gerp behavior should take immediate action to reign it in and turn it honorable. If we could effectively do that with words and gestures, we would. But so far, for the history of the world, that has resulted only in tyranny and more tyranny. Converting Gerps into people of honor, honesty, integrity, and lawfulness requires political process backed by brute force. And because America's electorate is itself so effete and corrupt, with upwards of 80 million having insufficient intelligence to graduate from high school, millions upon millions subsisting on government handouts and street crimes, and suffrage for virtually every non-felon Citizen over 18, even the ignorant, indigent, stupid, irresponsible, and dependent, we don't have much chance of getting honorable people elected into public office.

So, Gerps abound. And they cause tyranny.

The Masters of Public Servants must do something to get the Gerps to change to full-time honorable behavior, or excise them from Government by whatever means necessary, beginning with the benign methods, and not stop till successful, one Gerp at a time.

If the People do not act effectively in this, Gerps will proliferate until the tyranny becomes abject, then absolute. Thus, you either become a Pro-Honor, Anti-Gerp Activist, or you let the Gerps enslave you to their tyranny.

How will you express your activism effectively? Will you prefer to do nothing? On this very point, Elizabethan literary genius John Donne wrote:

***No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friend's or of thine own were: any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bells tolls; it tolls for thee. Devotions Upon Emergent Occasions, Meditation XVII, 1624***

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You might keep this in mind when you wonder who should toil at the onerous work of reforming government.

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## U.S. Supreme Court - Pulliam v. Allen, 466 U.S. 522 (1984)

Link to the Case Preview: <http://supreme.justia.com/us/466/522/>

Link to the Full Text of Case: <http://supreme.justia.com/us/466/522/case.html>

### *Syllabus*

After respondents were arrested for nonjailable misdemeanors, petitioner, a Magistrate in a Virginia county, imposed bail, and when respondents were unable to meet the bail, petitioner committed them to jail. Subsequently, respondents brought an action against petitioner in Federal District Court under 42 U.S.C. § 1983, claiming that petitioner's practice of imposing bail on persons arrested for nonjailable offenses under Virginia law and of incarcerating those persons if they could not meet the bail was unconstitutional. The court agreed and enjoined the practice, and also awarded respondents costs and attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976. Determining that judicial immunity did not extend to injunctive relief under § 1983 and that prospective injunctive relief properly had been awarded against petitioner, the Court of Appeals affirmed the award of attorney's fees.

### *Held:*

1. Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, such as petitioner, acting in her judicial capacity.

(a) Common law principles of judicial immunity were incorporated into the United States judicial system, and should not be abrogated absent clear legislative intent to do so. Although there were no injunctions against common law judges, there is a common law parallel to the § 1983 injunction at issue here in the collateral prospective relief available against judges through the use of the King's prerogative writs in England. The history of these writs discloses that the common law rule of judicial immunity did not include immunity from prospective collateral relief.

(b) The history of judicial immunity in the United States is fully consistent with the common law experience. There never has been a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence. Limitations on obtaining equitable relief serve to curtail or prevent harassment of judges through suits against them by disgruntled litigants. Collateral injunctive relief against a judge, particularly when that relief is available through § 1983, also raises a concern relating to the proper functioning of federal-state relations, but that concern has been addressed directly as a matter of comity and federalism, independent of principles of judicial immunity. While there is a need for restraint by federal courts called upon to enjoin actions of state judicial officers, there is no support for a conclusion that Congress intended to limit the injunctive relief available under § 1983 in a way that would prevent federal injunctive relief against a state judge. Rather, Congress intended § 1983 to be an independent protection for federal rights, and there is nothing to suggest that Congress intended to expand the common law doctrine of judicial immunity to insulate state judges completely from federal collateral review.

2. Judicial immunity is no bar to the award of attorney's fees under the Civil Rights Attorney's Fees Awards Act. Congress has made clear in the Act its intent that attorney's fees be available in any action to

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enforce § 1983. And the legislative history confirms Congress' intent that an attorney's fee award be made available even when damages would be barred or limited by immunity doctrines.

[690 F.2d 376](#), affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, and STEVENS, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C.J., and REHNQUIST and O'CONNOR, JJ., joined, *post*, p. [466 U. S. 544](#)

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## About the Author

I consider myself a philosopher, truth-seeker, and perpetual student of the law. I live in Florida with my wife Maria. I play country and classical guitar, read law and The Urantia Book, and write commentaries and post items to the Lawmen group (subscribe at below link).



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