**MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING POSITION**

**THAT THERE IS NO PROPER JUDICIAL IMMUNITY UNDER THE COMMON LAW OR THE CONSTITUTION, AND CONSEQUENTLY, NO OFFICIAL IMMUNITY FOR ANY GOVERNMENT OFFICIAL.**

Lies must be supported by even more lies, the truth, however, is able to stand on its own no matter how old, and long ago, the knowledge of that truth may be!

Justice Bandeis eloquently affirmed his condemnation of abuses practiced by Government officials, who were defendants, acting as Government officials. In the case of Olmstead v. U.S. 277 US 438, 48 S. Ct. 564, 575; 72 L Ed 944 (1928) he declared:

**“Decency, security, and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are the commands to the citizen. In a Government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher.**

**For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker , it breeds contempt for the law: it invites every man to be a law unto himself. It invites anarchy. To declare that, in the admission of the law, the end justifies the means would bring a terrible retribution. Against that pernicious doctrine, the court should resolutely set its face.”**

**“The people are masters of both Congress and courts, not to overthrow the Constitution, but to overthrow the men who pervert it!” Abraham Lincoln Feb 12, 1865**

**Law is History, History Teaches the Law!**

**"In the United States Senate, one of the things I observed in the early days - and it's still used and that is that you take someone's argument and then you misrepresent it and misstate and disagree with it and it's very effective. I've done it myself a number of times. But eventually, eventually people catch on."**

**Sen. Edward M. Kennedy, (a Democrat) speaking at the National Press Club Washington**

"The officers of the law, in the execution of process, are required to know the requirements of the law, and if they mistake them, whether through ignorance or design, and anyone is harmed by their error, they must respond in damages." Roger v. Marshall (United States use of Rogers v. Conklin), 1 Wall. (US) 644, 17 Led 714.

"It is a general rule that an officer, executive, administrative, quasi-judicial, ministerial, or otherwise, who acts outside the scope of his jurisdiction, and without authorization of law may thereby render himself amenable to personal liability in a civil suit." Cooper v. O`Conner, 69 App DC 100, 99 F (2d)

"Public officials are not immune from suit when they transcend their lawful authority by invading constitutional rights." AFLCIO v. Woodard, 406 F 2d 137.

"Immunity fosters neglect and breeds irresponsibility while liability promotes care and caution, which caution and care is owed by the government to its people." (Civil Rights) Rabon vs Rowen Memorial Hospital, Inc. 269 N.S. 1, 13, 152 SE 1 d 485, 493.

Government Immunity - “In Land court noted, “that when the government entered into a commercial field of activity, it left immunity behind.” Brady v. Roosevelt, 317 US 575 (1943); FHA v. Burr, 309 US 242 (1940); Kiefer v. RFC, 306 US 381 (1939).

The high Courts, through their citations of authority, have frequently declared, that “...where any state proceeds against a private individual in a judicial forum it is well settled that the state, county, municipality, etc. waives any immunity to counters, cross claims and complaints, by direct or collateral means regarding the matters involved.” Luckenback v. The Thekla, 295 F 1020, 226 Us 328; Lyders v. Lund, 32 F2d 308;

“When enforcing mere statutes, judges of all courts do not act judicially (and thus are not protected by “qualified” or “limited immunity,” - SEE: Owen v. City, 445 U.S. 662; Bothke v. Terry, 713 F2d 1404)

“but merely act as an extension as an agent for the involved agency -- but only in a “ministerial” and not a “discretionary capacity...” Thompson v. Smith, 154 S.E. 579, 583; Keller v. P.E., 261 US 428; F.R.C. v. G.E., 281, U.S. 464. Immunity for judges does not extend to acts which are clearly outside of their jurisdiction. Bauers v. Heisel, C.A. N.J. 1966, 361 F.2d 581, Cert. Den. 87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed. 2d 457 (see also Muller v. Wachtel, D.C.N.Y. 1972, 345 F.Supp. 160; Rhodes v. Houston, D.C. Nebr. 1962, 202 F.Supp. 624 affirmed 309 F.2d 959, Cert. den 83 St. 724, 372 U.S. 909, 9 L.Ed. 719, Cert. Den 83 S.Ct. 1282, 383 U.S. 971, 16 L.Ed. 2nd 311, Motion denied 285 F.Supp. 546).

"Judges not only can be sued over their official acts, but could be held liable for injunctive and declaratory relief and attorney's fees." Lezama v. Justice Court, A025829.

**The wording of Title 42 USC 1983 is as follows:**

**“EVERY PERSON WHO**, **under color of any statute, ordinance, regulation, custom or usage, of any State or Territory. subjects, or causes to be subjected, ANY CITIZEN of the United States or other persona TO THE DEPRIVATION OF ANY RIGHTS, privileges or immunities SECURED BY THE CONSTITUTION and laws, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, equity, or any other proper proceeding for redress.**

**Everyone will note the the Statute does NOT say; “Every person EXCEPT JUDGES AND GOVERNMENT EMPLOYEES.” The Statute says “every person”. A judge is a person. Every employee of government is “a person.”**

Section 1983 has been held to provide a civil action to protect persons against misuse of power possessed by virtue of state law and made possible because the Defendant (Official) “was clothed with the authority of the state. “ Davis v Johnson (1955 DC I11) 138 F Supp 572; Jobson v Henne (1966, CA2 NY) 355 F2d 129.

“That an officer or employee of a State or one of its subdivisions is deemed to be acting under “color of law” as to those deprivations of right committed in the fulfillment of the tasks and obligations assigned to him. Monroe v Pape, (1961) US 167.

Actions by state officers and employees, even if unauthorized or in excess of authority, can be actions under “color of law” Stringer v Dilger, (1963, CA 10 Colo) 313 F2d 536.

It has been stated that there is no convincing proof the Congresses responsible for the Civil Rights Act ever intended to immunize any State or Territorian officials or employees, and that it is more likely that the Congers intended to do away with whatever common law immunities existed. Congressional Globe, 42 Cong. 1St Sess., 365 6, 368, (1871)

In an 1880 case, Ex parte Virginia (1879), 100 US 339. The Supreme Decided that a Judge was not immune to the criminal statutes under the Civil Rights Act.

Although it was held in Pierson v Ray, (1967) 386 US 547 that Judges acting within the course and scope of their political duties are immune from damage suits, it is here pointed out that the emphasis must be on “WITHIN THE SCOPE OF THEIR JUDICIAL DUTIES”. It is here alleged that to deprive the Plaintiff of his Constitution rights is NOT WITHIN THE SCOPE OF ANY JUDICIAL

It is also pointed out that here proof of lack of judicial immunity is to be demonstrated. It follows that if judges lack judicial immunity for depriving a person of Constitutional rights, then prosecuting attorneys, marshals, bailiffs, court-clerks, deputies, and all officials of bureaus and commissions have no official immunity for their acts which deprive a person of Constitutional rights.

It cannot be truthfully and lawfully alleged that judges do have immunity when depriving one of Constitutional rights. It must be plainly to the contrary. Under Article VI Clause 3 of the Constitution of the United States:

“ …. all …. judicial officers, both of the United States and of the several States, SHALL BE BOUND BY OATH or affirmation to support this Constitution. ...” In Clause 2 proceeding the foregoing, we have:

“\*\* This Constitution and the laws of the United States which shall be made in pursuance thereof …. shall be the supreme law of the land, AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, anything in the Constitution or laws of any State to the contrary notwithstanding.

Here we have the crux to the entire problem. A judge, by law, must swear to support the Constitution and constitutional laws of the United States over and above all laws and constitutions of States which may be in conflict. Needless to add, custom and usage have even less weight than constitutions and laws which are in conflict with the Constitution of the United States and with its valid laws.

“No state legislator or executive or judicial officer can war against the Federal Constitution without violating his oath, taken under Article 6, Clause 3 thereof, to support it; if the legislatures of the several states may at will, annul the judgments of the courts of the United States and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery.” Cooper v Anton, 358 US 1, 3 L ed 2d 5, 78 S Ct 1401.

Any State or Federal Judge, or any other official, State or Federal, who is engaged in War against the Constitution of the United States, regardless of the form that his hostility may manifest itself, is liable to anyone injured by his unlawful conduct in violation of any other duty spells out liability. Any other rule would permit a conspiracy by public officials to overthrow the Constitution of the United States.

If a judge swears to support the Constitution, he swears to uphold and support the rights of citizens and persons under the jurisdiction of the judge and according to that Constitution. It matters not that he claims that by law, custom or usage he has the authority or duty to deprive one of his rights as a United States citizen; if a judge commits such an act, he loses all claim to acting “WITHIN THE COURSE AND SCOPE” of his “duty”.

It is indeed a contradiction to say that a judge “deprived a citizen of his Constitutional rights while acting “within the course and scope” of the judge's duties. It is impossible for a judge to deny Constitutional rights of a citizen while lawfully and faithfully adhering to the judge's oath of office. This is so obvious that it doesn't even require case law to substantiate it. Common Sense and knowledge of the English language is all that is required.

“When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authorities to grant or deny, he has perpetuated a “non-judicial” action.” Yates v Hiffman Estates, (1962 DC I11 ) 209 F Supp 757.

“ It is well established that judges may be enjoined from interfering with citizen's civil rights.” Bramlett v Peterson (1969, DC Fla) 307 F Supp 1049. See also Pierson v Ray, supra.

“Judicial immunity is no defense to a judge acting in clear absence of jurisdiction.” Bradley v Fisher (1871 US) 13 Wall 335.

The United States Circuit Court of Appeals, Second Circuit has said:

“The Civil Rights Act in general, and Sec 1983 in particular, are cast in terms so broad as to suggest that in suits brought under these sections common law doctrines of immunity can never be a bar. It should equally clear that both the language and the purpose of the “Civil Rights Acts are inconsistent with the application of common law notions of official immunity in all suits brought under these provisions.” Jacobsen v Henne (1966 CA2 NY 355 F2d 129, 133-4, followed in Anderson v Nosser (1971, CA5, Miss) 428 F2d 183 F 2d 183, so must on other grounds 456 F 2d 835.

“By the great weight of authority it is acknowledged that generally 'public officials' are not immune from suit when they allegedly violate the civil rights of citizens and that a “public officials' defense of immunity is to be sparingly applied in these kinds of cases.” James v Ogilvie (1970 DC I11) 310 F Supp 661, 663.

The Court of Appeals for the Sixth Circuit has affirmed its view that;

“ .. a judge loses all immunity when he acts in absence of all jurisdiction ...” Lucarell v McNair, (1972, CA6 Ohio) 453 F2d 836.

The Seventh Circuit Court of Appeals has held that;

“ a public official does not have immunity because he operates in a discretionary situation. It is indicated that public servants are to be held liable when they abuse their discretion or acted in a way that is arbitrary, fanciful or clearly unreasonable.” Littleton v Berbling, (1972, CA7 I11) 468 F2d 389.

The doctrine of judicial immunity is entirely judge-made. Nowhere in the Constitution of the United States does the doctrine that a any man is above the law prevail. Even Congressmen, who have attempted to protect themselves (Article I. Section 6) from challenge for speeches or debates on the floor of Congress may have well left the door open wider than they believed by not including their “vote” – but only their “speech and debate”.

It is maintained on behalf of the Defendant (Official) that a judge has absolute judicial immunity under the common law. Nothing could be further from the truth. Again, this is judge-made doctrine, and despite the claim that it is based in the common law, again we have judge-made deviations of the common law as the source of this misconception.

Assuming, without admitting that there was common law immunity for judges, the clear language of the Civil Rights

Statute, 1983, would do away with it. The language, “EVERY PERSON” does not mean, nor was it intended to mean, “Every Person except judges”. If such had been the intent, the statute would certainly have said so; but its lack of judicial immunity was the reason the statute was vetoed by President Johnson and had to be supported by two thirds of Congress to override the President's support of “judicial immunity”.

In actuality, since the measure (Sec. 1983) passed as a consequence of the Civil War and the liberation of slaves, it was particularly intended to protect Negros from the loss of Constitutional rights “under the color of law”. It is common sense apparent that the Negros' deprivations of rights were coming with official actions of deputies, sheriffs, bailiffs, but more than anyone else, with the complicity of judges, who were the final arbiters in such cases.

At the time of the adoption of the Act, 1871, only 13 States out of 32 had adopted the “judicial immunity” doctrine. Let us ask the question, if judicial immunity was an absolute right under the common law, why had only 13 of 32 States adopted it by the end of the Civil War – almost a hundred years after the founding of this Republic? Not only had a majority of the States adopted such doctrine, but the idea was judge-made doctrine, rather than demanded by the people, who don't care to have anyone, including judges, above the law. (YLJ, infra)

Again, even had judicial or official immunity been an absolute right under the common law, said law would have been wiped out by the language and the intent of Congress when they passed the fore runner of Title 42 USC Sec. 1983.

Sec. 1983 is intended to give a remedy for money damages to those who suffer constitutional deprivations under the “color” of State law, custom or usage.

“The bill was introduced by Rep. Shellaburger, who stated that the model for Section 1983 was the second section of the Civil Rights Act of 1866 and 'that section provides a criminal proceeding in identically the same case as this one provides a civil remedy for.

'The Civil Rights Act of 1866 had been vetoed by President Johnson, PARTLY BECAUSE IT SUBJECTED STATE JUDGES TO CRIMINAL LIABILITY.

In the successful fight to overcome the veto, the chairman of the Senate Judiciary Committee attacked the entire concept be liable under the bill.” (Emphasis added. From Vol 79, Yale Law Journal, page 327, citations from Congressional Globe omitted, but given in original).

Nothing could be more clear as to the intent of the Congress which passed Sec. 1983. It was PASSED OVER A PRESIDENTIAL VETO (the 1866 Civil Rights Act on which Sec. 1983 was based) so that criminal sanctions could be imposed against judges who would be claiming that they were of course their duty and using their proper jurisdiction and not abusing their discretion nor acting outside the proper scope of their lawful duties.

The Civil Rights Act of 1866 was passed SO THAT CRIMINAL SANCTIONS COULD BE IMPOSED UPON JUDGES.

At this point we might add, “ How inconsistent to claim that a federal judge is immune from the punishment which a State judge, swearing to uphold the same Constitution, is subjected to .” Discussing further the debates in Congress relating to the passage of what is now Title 42 Sec 1983, the Yale Law Journal, supra. Continues on page 328:

On three occasions during the debates, legislators explicitly stated that “JUDGES WOULD BE LIABLE UNDER THE ACT.” (Emphasis added, Congressional Globe, 42nd Congress, 1st session 385 (1871) “No one denied the statements.” Bauers v

Heisel, 361 F 2d 581 (3rd Cir 1966)

Statements made during Congressional debate over what is now Sec. 1983 include the following, from the Congressional Globe, 39th Cong. 1St Sess. 1680 (1866) (applied to the criminal counter part of Sec. 1983, what is now Title 18 USC 241) and the President's Message to Congress giving his basis for objecting to the bill –

THE LACK OF JUDICIAL IMMUNITY.

The statement of Senator Trumbull, ibid, at page 1758:

(The doctrine of immunity) ”places officials above the law. It is the very doctrine out of which the rebellion was hatched.”

The statement of Senator Johnson, id, at page 1778:

“Any judge …. who is called upon to decide whether the State Law is in force because this law is unconstitutional, shall it be in force not withstanding this law, is to be punished.”

Here again we have the intent of one of the framers of the statute, that a judge should be punished for incorrectly using his discretion.

The remarks of Representative Lawrence, who also stated that judges would be liable under the 1866 Act:

“I answer it is better to invade the judicial power of the States than to permit it to invade, strike down, and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded … And if an officer shall intentionally deprive a citizen of a right, knowing him to be entitled to it, than he is guilty of a willful wrong which deserves punishment.” Id, 1837.

It is alleged that, notwithstanding the forgoing to show that Congress had no intention of granting judicial immunity in Civil Rights suits, that such immunity was a part of the common law pervasive in England at the time of the founding of the Republic.

Were it so, and such is not conceded, although from time to time Kings and judges has encroached upon the common law and had attempted to make their corruptions a part of it, the entire concept of “official immunity” was thrown off by the Declaration of Independence, which had some pointed remarks about judges and trials and juries.

The Colonists, and particularly the Founding Fathers and those who ratified the Constitution and the Bill of Rights, were sick of so-called “judicial immunity”. Many of the judges were hung in effigy; may had to flee during the Revolutionary War. The Colonists had been dragged into “Admiralty Courts” (as in Equity Courts and as in 'Traffic Courts'), deprived of the common law right of a jury of the Defendant's peers. Judges served at the pleasure of the Crown, and the people were in general, powerless to punish judges who deprived them of their rights, other than through Boston Tea Parties and the like.

It is clear that in the formation of the independent States, doctrines such as “judicial immunity” were among the basic causes of the American Revolution. This sentiment echoes through the entire Declaration of Independence, in such phrases as:

“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 of these ends, it is the right of the people to alter or abolish it, and 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.”

“But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them to absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.”

**Abraham Lincoln stated the following on February 12, 1865:**

"The people are the rightful masters of both Congress and the Courts. Not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

“The history …. is a history of repeated injuries and usurpations, all having in direct object, the establishment of an absolute tyranny over these States.”

It is respectfully pointed out that this tyranny cannot be imposed without the active cooperation and indulgence of officials of the state, including judges, who uphold unlawful statutes and their implementation. Why should a single person who stoops to impose tyranny and deprivation of natural rights, be above the law, even though his acts be “under color of law”? – and for that matter, State or Federal Law?

“ He has made judges dependent on his will alone , for the tenure of their offices, and the amount of salaries .”

“He has erected a multitude of new offices and sent hither swarms of officers to harass our people, and eat out their substance.”

“He had combined with others to subject us to a jurisdiction foreign to our constitution and acknowledged by our laws; giving his assent to their acts of pretended legislation.”

“For imposing upon us without our consent:” and; for depriving us, in many cases, of the benefits of trial by jury.”

Jury Nullification was well known from the Magna Carta and the protections from such oppressive actions such as “The Right of First Night” where agents of the Crown had been declared by the King to be Immune from prosecution for such crimes as the Rape of Women whose children were known to inherit property followed “bloodline” and the Jurisdiction of the King was limited only to those who were “blood relatives” of his domain.

All of the impositions complained above, have been imposed through the courts by judges. And it was a principal cause of the American Revolutionary War.

If the Colonists had available to them Civil Rights Statutes such as 42 USC Lec. 1983, Sec. 1985, Sec. 1986 and Sec 1994 (and there is really no use for even having them if there is “official immunity”) and had they been able to properly implement similar statutes against the protested abuses of the Crown, there would likely have been no Revolution.

If citizens oppressed by judges could readily sue those judges and have the matter determined by a jury, rather than by judges tempted to grant dismissals and summary judgments for their fellow judges and tyrannical workers, the officers of government, why would there ever be a need for a revolution?

Courts of Equity as in today's Traffic Courts abusively ignore Constitutional Rights and Protections holding mock trials were the fate of the victim is preordained and the only question allowed is “what will the penalty imposed upon the victim be” Having the “prosecutor” “work the back room” while the Judge “works the front room”!

Is it not the likes of “judicial immunity” and “official immunity” which causes the people to resort to things like “The Second Amendment Right to bear arms”? When these abuses of power become commonplace and the education of people is deprived of our Constitutional History, the only result is what we are seeing today. The least educated member of the public lashes out in frustration and violently at the most accessible government agent available – the police officer!

Pierson v Ray, 386 US 547 is often pointed to as justifying judicial immunity.

To again quote from 79 Yale Law Journal pages 327-7 (1969):

“... Three separable reasons, however, may be discerned from the opinion.

The first of these is that a judge's decision is appealable, and therefore, the party need not sue the judicial officer to vindicate his rights.” (See Jennings, Note 11 Supra, at 272 (E. Jennings, Tort Liability of administrative officers 21 MINN L. Rev.)

“But decisions of judicial officers are not necessarily appealable, (The appealability argument applies to most judges but not subject to judicial officers generally. For example, there are no procedures for appealing from the decisions of a prosecuting attorney or a prison warden.”

“ .. an appeal is not always a satisfactory remedy. The Court itself has recognized that a citizen's rights may be seriously violated even if he is not ultimately convicted.” (Dombroaski v Pfister, 380 US 479 (1965). “A plaintiff need not pursue his State remedies before instituting a Sec, 1983 action, Monroe v Page, 365 US 167

(1961). which would seem to recognize that appealability simply is not sufficient protection.)”

Other grounds for judicial immunity, advanced in Pierson, supra, are that judges would be subject to lawsuits, without immunity, and that fear of such lawsuits could detract from their “principled and fearless decision making”. Plaintiff points out that no principled judge should let the concern of a lawsuit impede his duty to follow his oath of office to support the Constitution, and that if he is afraid to follow his conscience because of a possible lawsuit he should resign.

To paraphrase. “Un-principled and awesome decision-making, backed by smug :\”judicial immunity” would and does, wreak great harm upon the nation and upon individual rights.

The suggestion of impeachment as a remedy for wayward judges is inadequate and it “assumes something to be true which, by the very passage of the 1871 Act, Congress determined to be untrue: That State Governments are always willing and able to enforce individual rights.” 79 Yale Law Journal p. 333.

To go to the common law itself, we find that its basic cornerstone is TRIAL BY JURY – and the denial of a proper jury is part of the basis of this suit; and its denial deprived the Defendant judge of jurisdiction over the subject matter and over the person of the Defendant, and Defendant judge's acts became his personal acts which he is personally liable to the Plaintiff.

DUE PROCESS, demonstrable through common law and early history of this country, means that NO RIGHT OF LIBERTY OR PROPERTY CAN BE TAKEN WITHOUT A JURY OF PEERS CONSENTING THAT IT IS PROPER.

“The jury has the right to determine both the law and the facts.” Samuel Chase, U. S. Supreme Court Justice, 1796; Signer of the unanimous Declaration.

“The jury has the right to judge both the law as well as the fact in controversy.” John Jay, 1st Chief Justice, U. S. Supreme Court, 1789.

“The pages of history shine on instances of the jury’s exercise of its prerogative to disregard instructions of the judges...” U. S. v. Dougherty, 473 F 2nd 1113, 1139 (1972)

"The Common Law is absolutely distinguished from the Roman or Civil Law systems." People v Ballard 155 NYS 2d 59

Jurisdictions all over this land have held that “due process of law”, “due course of law” were synonymous.

In giving meaning to Due Process of Law, the United States Supreme Court has said:

“In the words “Due Process of Law” are intended to convey THE SAME MEANING AS THE WORDS BY THE LAW OF THE LAND IN MAGNA CARTA.” (Emphasis added, Murry v Hoboken Land Co. 58 US (18 How) 272, 15 L Ed 372.

On a plaque “Presented by the Virginia State Bar May 17, 1959”

“The Common Law – Here the Common Law of England was established on this continent with the arrival of the first settlers on May 13, 1607. The first chapter granted by James I to the Virginia Company in 1606 declared that the inhabitants of the colony “...shall have and enjoy all liberties, franchises and immunities … as if they had been abiding and borne within this our realm of England ...”. Since Magna Carta the Common Law has been the cornerstone of individual liberties, even as against the Crown summarized later in the Bill of Rights its principles have inspired the development of our system of freedom under law, which is at once our dearest possession and proudest achievement.

The “law of the land” as meant in Magna Carta is apparent from reading from that base of the English constitution and the common law:

Chapter 39:

No free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will We proceed against him, except by the lawful judgment of his peers and by the law of the land.

Chapter 52:

If anyone has been disseized or deprived by US, without the legal judgment of his peers, of lands, castles, liberties, or rights, We will immediately restore the same, and if any dispute … With regard to all those things, however, of which any man has disseized or deprived, without the legal judgment of his peers … We will st once do justice.

Chapter 55:

All fines unjustly and unlawfully given to US, and all amercements levied unjustly and against the law of the land, shall be entirely remitted or the matter settled by judgment of the barons … (the forerunner of our Grand Jury)

Chapter 56:

If we have disseized or deprived the Welsh of lands, liberties, or other things, without legal judgment of their peers, in England or Wales, they shall immediately be restored to them, and if a dispute shall arise thereon, the question shall be determined in the Marches by judgment of their peers according to the law of England.

Chapter 57:

But with regard to all those things of which an Welshman was disseized or deprived, without legal judgment of his peers, We will do full justice.

Chapter 58:

With regard to … his liberties and rights … this shall be determined by judgment of his peers in Our Court.

The United States Supreme Court has stated what a jury of one’s peers is in the case of Strauder v. West Virginia, 100 U.S. 303 [never over-turned]: "the jury should be drawn from a group "composed of the peers or equals [of the defendant]; that is, of his neighbors, fellows, associates, persons having the same legal status in society as he holds." [bracketed comment added by Defendant]. The phrase "jury of one's peers" is not included in the 6th Amendment to the U.S. Constitution, however, the courts have consistently interpreted peer to mean one’s "equal" legal status. Webster defines the word, ‘PEER’, a noun, as ‘One’s Equal.’

From the forgoing Chapters of Magna Carta, it is most apparent that due process as understood by our Founding Fathers and those who accepted and ratified the Constitution and the Bill of Rights, meant that life, liberty or property could not be taken except by the method understood under the “law of the land” of Magna Carta. Nothing could be more plain than that the “law of the land” of Magna Carta meant no right or property deprivation without the consent of a jury of peers.

This of course, acknowledged the lack of immunity of judges – in that all of their fines and seizures which had been unlawfully imposed had to be corrected and returned.

However, the greatest proof of the false myth of “Judicial immunity” and of “official immunity” (again we point out that if there is no “judicial immunity” there is no “official immunity”) being at odds with the common law comes from the 61st chapter of Magna Carta:

“If We … Our chief judiciary fail to afford redress …**THE COMMONALITY OF THE WHOLE COUNTRY, SHALL**

**DISTRAIN AND DISTRESS US TO THE OUT MOST OF THEIR POWER, TO WIT, BY CAPTURE**

**OF OUR CASTLES, LANDS, AND POSSESSIONS AND BY ALL OTHER MEANS …**

There is no “the King can do no wrong” nonsense. This is absolute negation of any immunity whatsoever under the common law. If there is a truism and eternal maxim of the, common law, unperverted by judge-made doctrine, it is that

**NO MAN IS ABOVE THE LAW, AND EVERY MAN IS RESPONSIBLE FOR HIS OWN ACTS AND PUNISHABLE THEREFORE**.

Herein again to point out that it is the meaning given to all the world by that greatest pronouncement of the common law reduced to writing – the Declaration of Independence, wherein it says:

“But when a long train of abuses and usurpations, pursuing invariable the same object, evinces a design to reduce them under absolute despotism**, IT IS THEIR RIGHT, THEIR DUTY, TO THROW OFF SUCH GOVERNMENT**, and to provide new guards for their future security.”

The “common-law-injunction” is embodied in the Second Amendment right to bear arms to guarantee individual liberty, and that it is the “great-equalizer” when tyranny will not stop.

Tyranny is being imposed everyday in this country through its “constituted authorities” who are taking :the law into their own hands” by refusing to be restrained by their oaths to support the Constitution.

Tyranny is being imposed everyday in this country through its “constituted authorities” who seek to implement abortions of justice which perverted legislators seem to impose rather than the Constitution they are sworn to uphold.

These “constituted authorities” need have no fear in facing a jury of their peers if they have done no wrong. “A jury has the right to decide the “Law and the Facts” of the case.” Georgia v Brailsford, 3 Dall 1, (1794). Surely a jury would not rule against a ”constituted authority”, including a judge, government lawyer or tax collector, or any government official, unless that official has done wrong, and has violated the true law of the land.

For citizens to tolerate “judicial immunity” or “official immunity” is to waive their right against the “granting of titles of nobility”, which though not hereditary, amounts to putting some persons above the law and immune from a proper accounting of their acts. Congress, nor the Legislatures, nor the Courts, have the right, under the Constitution, to grant any such immunity, for if they do the citizens have the natural and inherent right to rebel against such an assault upon the Constitution.

“Legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of Federally created rights: it was concerned that State instrumentalities could not protect those rights; it realized State officers might, in fact, be

antipathetic to the vindication of those rights; and it believed that these failings extended to the State Courts.” Mitchum v Foster, 407

cited in Litteton v Berbler, 468 F2d 389 (1972), and which continued:

“Congress possessed the power to wipe out (absolute judicial immunity). We think that the conclusion is irresistible that Congress by enacting the Civil Rights Act Sub justice intended to abrogate the privilege to the extent indicated by that Act and in fact did so. Section 1 of the Third Civil Rights Act explicitly applied to 'any person'. We can imagine no broader definition. The statute must be deemed to include members of the state judiciary of the several states … but the policy involved is for Congress and not for the Courts.” Mitchum, supra, at 250.

Here we have the courts admitting that “judge-made-doctrine” has tampered with the intent of Congress in passing the statutes. It has been the courts, and not Congress, trying to claim that judicial and other governmental officials have “immunity” from the Civil Rights statutes.

“In so deciding what Congress meant when it referred to “every person” in 42 USC Sec. 1983, it is significant that Congress has earlier rejected specifically absolute judicial immunity by passing the Civil Rights Act of 1866.” Littleton v Berbler, 468 F2d 389n(1972)

There is no authority in the Constitution of the United States for judicial or official immunity, other than possible for speech and debate on the floor of Congress. Under the Ninth Amendment the people have the right to have their governmental officials face the responsibility of their own acts – even for attempting to implement in good faith statutes which clash with Constitutional rights of the individual. There is absolutely no valid reason why State officials should be liable under Civil Rights statutes while federal personnel should pretend to escape liability for similar deprivations.

Conclusion:

Judicial and official immunity under Sec. 1983:

There is no Constitutional authority, no statutory authority, and no common law authority for “immunity” of governmental officials who deprive individuals of their natural rights protected by the Constitution of the United States and particularly under the Federal Civil Rights Acts; such “immunity” is judge-made doctrine for their own protection; it was not intended by that Congressional majority which overrode President Johnson's veto of the Civil Rights Act of 1866, from whence derives Sec. 1983.

42 USC sec. 1985. (2)

“.... if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws, “

The forgoing statute does not say “any persons except judges”, or “any persons except State or Federal officials”. The case of Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics US 29 L Ed 2d 619, 91 S Ct in an opinion by Justice Brennan, J expressing the view of five members of the court. It was held that a violation of the Fourth Amendment's command against unreasonable searches and seizures, by federal agents acting under color of federal authority, give rise to a federal cause of action for damages consequent upon the agent's unconstitutional conduct.

Sec. 1985 in its third paragraph states:

“... in any case of conspiracy set forth in this section, if one of more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising ant right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one of more conspirators.” Sec. 1986 provides:

“Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (Sec. 1985 of Title 42) are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such neglect or refusal may be joined as defendants in the action ...”

Here again we see that we refer to “every person”, or to “any person” and there is no exception as to judges, State or Federal, or to any other government official, State or Federal.

CONCLUSION:

Judicial Immunity as to Title 42 USC 1983, 1985, and 1986:

Taking the above listed statutes together, we see that there is nothing in the Constitution of the United States or of most States which gives “judicial” of “official” immunity; likewise there is nothing in the statutes of the United States which makes a judge or any other government official above the law; judicial immunity and official immunity are for the most part myths and judge-made doctrine; even federal personnel are liable for civil rights damage suits as shown in Bivens supre.

Every judge is a fiduciary toward the public, to wit:

*“ ‘Fraud in its elementary common law sense of deceit — and this is one of the meanings that fraud bears in the statute, see United States v. Dial, 757 F.2d 163, 168 (7th Cir.1985) — includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud. . . .’ ”* McNally v. United States, 483 U.S. 350, 371–372 (1987), quoting Judge Posner in United States v. Holzer, 816 F.2d 304 (1987).

“A constructive trust may be imposed on anyone who knowingly participates in another’s breach of a fiduciary duty or knowingly benefits from the breach. The remedy ‘reaches all those who are actually concerned in the fraud, all who directly and knowingly participate in its fruits, and all those who derive title from them voluntarily or with notice.’ ” William V. Dorsaneo III, Texas Litigation Guide, Vol. 4, Ch. 55 (Matthew Bender & Company, Inc.: New York, 2016) (“Dorsaneo”), p. 55-14.

*“‘Fraud in its elementary common law sense of deceit — and this is one of the meanings that fraud bears in the statute, see United States v. Dial, 757 F.2d 163, 168 (7th Cir.1985) — includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud. . . .’” Justice Stevens (dissenting) in McNally v. United States, 483 U.S. 350, 371 (1987), quoting Judge Posner in United States v. Holzer, 816 F.2d 304 (1987).*

It is not difficult to recognize how destructive, not only to the public but also to those who faithfully serve the public and to the very integrability of our system of laws how Judicial Legislation and lower courts and such administrative bodies who feel that they can disregard the decisions of the higher courts which have been made in accordance to the Constitution of our Constitutional Republic (Remember: not a Democracy! - The pledge clearly states, “To the REPUBLIC for which it stands”! NOT “to the Democracy”)

If it were that the “Lower Courts” were to be autonomous with the power to ignore “the higher courts” then it follows that the nation could and should dispense with all of those venues.

To state that our Constitutions (contracts forming governments) are “Living Documents” would be as to say that ANY contract may be unilaterally rewritten after the fact!

Who would be so foolish as to be “paid less than agreed or to pay more than agreed” after a contract was otherwise properly fulfilled?

In the case of our nation such acts against our form of government might constitute Espionage or Treason! To promote making our nation in the image of any other nation is clearly an attempt to destroy the ONLY form of government which is designed to protect freedom no matter what the alleged intentions!

Our form of government is required to recognize and protect rights not “create them!” Our Government can only create “Privileges” it cannot create Rights and it must protect all Rights!

Of course, most would agree that one very important function of “the higher courts” is to keep “the lower courts in check and to be held accountable for any damage they might incur!

“A nation can survive its fools, and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and carries his banner openly. But the traitor moves amongst those within the gate freely, his sly whispers rustling through all the alleys, heard in the very halls of government itself. For the traitor appears not a traitor; he speaks in accents familiar to his victims, and he wears their face and their arguments, he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation, he works secretly and unknown in the night to undermine the pillars of the city, he infects the body politic so that it can no longer resist. A murderer is less to fear.” Still evident - Marcus Tullius Cicero

“The people are masters of both Congress and courts, not to overthrow the Constitution, but to overthrow the men who pervert it!” Abraham Lincoln Feb 12, 1865

Judges lack immunity as with all other agents of government without exception!

“If you don’t know the words you can’t ask the questions. If you can’t ask the questions you will never find the answers!”