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Under the law, judicial liability for criminal activity is treated quite differently than judicial liability for tortious or other noncriminal wrongful conduct. With one minor exception for malfeasance or misfeasance in office, judges possess no immunity for their criminal behavior. Whatever threat criminal liability might pose to judicial independence, it is not strong enough to override the importance of enforcing the criminal law, even against judges. No one ought to be exempt from the criminal law, and it has been consistently recognized that judges should not be able to hide behind their office as shelter for criminal behavior that harms society.

On the other hand, judges enjoy a substantial degree of immunity from civil liability. Indeed, judges possess not only a qualified immunity from civil liability, like their fellow public servants in the executive branch, but also an absolute immunity that protects them even when they commit wrongs intentionally or maliciously. It is true that judicial immunity stops short of shielding nonjudicial actions or actions taken in the clear absence of all jurisdiction, but these limits on the doctrine of judicial immunity are applied sparingly, if not reluctantly. Within these limits, the intentional and malicious civil wrongs of judges, no matter how egregious, are cloaked with absolute immunity.

It is said that this grant of absolute immunity for judges is necessary to maintain judicial independence and to protect judges from harassment by disgruntled litigants. Surely these are admirable goals, but whether absolute immunity, as distinct from qualified immunity, is truly necessary to effectuate them is an open question. A grant of immunity for intentional and malicious civil wrongs has not been found necessary in the executive branch of government. Judicial independence should be scrupulously guarded and some degree of immunity from civil liability must be maintained for judges. But absolute judicial immunity from civil liability remains a debatable practice.

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