

Suing the Government Does Not Work: Lawsuits Are Not Useful For Securing Your Liberty

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Lawsuits are the judicial equivalent of ballots. If [ballots are a substitute for bullets](#), then wouldn't that mean lawsuits are also a substitute for bullets? Reformists insist that if "[we](#)" Americans sue the government more often for their corrupt abuses of our common freedoms, then our liberty would become secured. I contend instead that reformists have not satisfied their burden of proof for demonstrating the efficacy of lawsuits in shrinking the power of [the State](#).

Reformists incompletely praise any goal of lawsuits, because for them to do so would be to reveal some ugly truths about the nature of modern American democracy. Certainly, while it is true that lawsuits could (hypothetically) be used by patriots, libertarians, and other types of dissidents to hold the government (somewhat) accountable by constraining its power (somehow), [revenge](#) against "public sector"

employees is also an equally probable reason for suing the government. Enrichment for the plaintiff's own wallet is an less frequently admitted motive, especially considering the damage such a "[money-grubbing](#)" image would cast upon the reputations of various litigants.



Hypothesizing about the efficacy of anything is not very useful if your [a priori](#) reasoning is less than convincing. This is largely why I prefer, when dealing with my opponents, to rely more heavily on whatever empiricism I can muster on behalf of human liberty. To that end, I will be examining a little over half a dozen lawsuits in order to determine, within the parameters of the sample, whether lawsuits are conducive to the restoration of our common freedom.

Judge Alice Batchelder ruled in the [American Civil Liberties Union v. National Security Agency, Nos. 06-2095/2140 \(2007\)](#) case that the plaintiffs lacked standing to challenge the NSA's [Stellar Wind](#) surveillance program because they couldn't prove they were **directly** targeted by it. In other words, the ACLU was unable to challenge the constitutionality of the wiretapping itself because, by its very nature, Stellar Wind was a [dragnet](#). According to that line of judicial reasoning, then I suppose those [mobile X-ray vans](#) roaming neighborhood streets are just as equally "constitutional" in their warrantless searches, am I right?

Judge John Bates ruled in the [Oberwetter v. Hilliard & Salazar, No. 09-0588 \(2010\)](#) case that the plaintiff's lawsuit was dismissed because "expressive dancing" was a "public demonstration," and therefore it was categorically disruptive to the tranquil and contemplative mood enforced at the Jefferson Memorial by the National Park Service. This is not an attempt by the government at [chilling free expression](#), to paraphrase the judge, since the government is being "viewpoint neutral" by prohibiting *all* demonstrations; apparently, it also turned out that the Jefferson Memorial is a "nonpublic forum," which is why "public demonstrations" are banned. Needless to say, this didn't stop [Adam Kokesh](#) from dancing at the Jefferson Memorial on both

May 28th and June 4th of 2011.

Besides the property ownership issue, there is also an element here regarding the use of force, which is why I think this case uniquely angers philosophically consistent libertarians. Oberwetter was accosted by Hilliard who ripped out her earbud, violently twisted her arm, shoved her against a pillar, and subsequently arrested her for “disturbing the peace,” releasing her 5 hours later. A few days later, Hilliard issued her two citations, one for “demonstrating without a permit,” and another for “interfering with an agency function.” Hilliard failed to properly prepare the matter for a court hearing and he neglected to proceed further in prosecuting Oberwetter.

Why is this significant? Judge Bates ruled that Hilliard cannot be sued by Oberwetter because Oberwetter did not have the right to “expressively dance” within a “nonpublic forum.” Due to this, Hilliard did have probable cause to arrest Oberwetter, because she was violating the [administrative regulation](#) against demonstrating within a “nonpublic forum.” Furthermore, Hilliard, as an officer, had the “[authority](#)” to use **coercion** during the course of an arrest in order to successfully effect it; since there was no observable injury to Oberwetter after the fact, Hilliard’s use of force was, therefore, not excessive.

So, if a domestic abuser were to mimic the result of Hilliard’s violence with a sack of oranges, considering Judge Louie Brandeis’ warning in 1928 that [the government teaches the whole people by its example](#), does that mean the battered spouse cannot seek financial recompense? Oh, wait, silly me...I assumed that the State existed within the ethical boundaries the rest of humanity commonly abides by. Yet, despite the [spontaneous order](#) of the free market, I tremble to contemplate that, without any government, who would violently slam dancing women against stone pillars?

Judge Sam Lindsay ordered that the [Dobbs v. Farrell & Helleson, No. 3:12-CV-5141-L \(2013\)](#) case be **dismissed with prejudice**, with all parties bearing their respective litigation costs. Farrell forced Dobbs into a traffic stop because he claimed she and her niece were littering on the highway. During the stop, Farrell believed he smelled the scent of cannabis within the car, and after questioning Dobbs, he called for backup. Helleson arrived on scene in order to execute *warrantless* cavity searches of **both** women, which included inserting her fingers inside both the anuses and vaginas of these woman; keep in mind too that Helleson used the same glove for the entirety of these searches. [All of this was captured on Farrell’s dashcam.](#)

The contesting parties entered into an **agreed stipulation of dismissal with prejudice** because they had reached [an initially undisclosed settlement](#). Later that day after the close of the case, Scott Palmer, the Dobbs’ attorney, told a CBS affiliate in the Dallas-Fort Worth area that [the settlement was in the amount of \\$185,000](#) from the Texas Department of Public Safety (DPS). I guess the lesson to be learned here then, is, don’t litter while driving through Texas, because you just might get finger raped by DPS. Too bad Dobbs didn’t push for a jury trial, because it would have been more satisfying for me if the jury had convicted Helleson of sexual assault and Farrell of aiding and abetting, unless that would be more appropriate for a criminal case.

Speaking of settlements, such was also the result in [Eckert v. Hidalgo & Deming, No. 1:13-CV-00727 \(2014\)](#) case. Eckert was forced into a traffic stop, and during the course of it, the cops lied by claiming that Eckert was hiding illicit narcotics within his anus. Eckert was subsequently arrested, and then taken to Gila Regional Medical Center, where he was [forcibly anally probed repeatedly](#); this entailed two [X-rays](#), three [enemas](#), and a surgical [colonoscopy](#). Ultimately, Eckert [settled for \\$1,600,000](#) from both Hidalgo County and the City of Deming.

Interestingly enough, the settlement mentioned that Eckert must bear the cost of his own legal counsel, and is also liable for paying federal income tax. This raises a rather interesting question – are settlements, or even damages, tax exempt from federal income tax liability? If not, then that would suggest the abused

citizen gets raped twice: first, by the rape itself, and secondly, by way of [taxation](#).

Judge Edward Lodge ordered in the [Miller v. City of Post Falls, No. 2:13-cv-00517-EJL \(2014\)](#) case that [the lawsuit be dismissed with prejudice](#) because the parties had reached an undisclosed settlement. [According to the complaint](#), Miller was raided in the middle of the night by the Post Falls Police Department. Officer Uhrig ran up to her home, bursted through the front door, and informed Miller he was going to search her house. Despite her objection, he grabbed her arm, twisted it up behind her back, kned her in the middle of her back, and then handcuffed her while telling her to “stop resisting.” Next, Uhrig drew his gun and searched the house while repeatedly yelling, “POST FALLS POLICE DEPARTMENT!,” and “GROW!,” despite the hysterical shrieking of children in the home.

Requests to the officers on scene to shut the door because of the 23 degree outside weather, or to be quieter because of the sleeping infant baby, went unheeded. Miller was placed under arrest for growing cannabis, and the rest of the household were either placed into “protective custody” or were otherwise evicted from the premises. Miller was released approximately 48 hours later; 6 months later, a court hearing was set, on the grounds that she was charged with simple possession of cannabis, yet, the court ended up suppressing all evidence because the [government police](#) had made an **unlawful** entry.

As part of her lawsuit, Miller was [ordered by the court](#) to submit to a Defense Psychological Exam. Following the undisclosed results of that exam, the parties reach a similarly [undisclosed settlement](#). It’s awfully too bad that neither the corporate nor the alternative media were able to discover the settlement amount.

Uniquely, a jury found in the [Genovese v. Town of Southampton, No. 10-CV-3470 \(2014\)](#) case that malicious prosecution had occurred. [Nancy Genovese](#) was detained for over 5 hours at the side of the road because she was photographing a displayed helicopter shell at a National Guard base. Genovese’s legally stored rifle was seized from her car, and she was threatened with being charged as a **terrorist** in order to *specifically* intimidate other Tea Partiers; also, defamatory statements were made about her by the government police to the mainstream press.

[According to the complaint](#), the cops also stole \$5,300 from Genovese’s wallet, she was forced to disrobe in front of one of them while getting a medical examination, and they eventually put her on suicide watch, which required her to wear a suicide gown (this is essentially what mental patients in a padded room wear); despite her continued pleas for a clean gown once it had become soiled over the course of several days of being forcibly bound, these pleas went unheeded. Thankfully, the [jury verdict](#) found Deputy Robert Carlock guilty of malicious prosecution, yet, for whatever reason, they also thought that Genovese had failed to prove either battery or political oppression. The jury only awarded Genovese \$1,112,000 for compensatory damages, but nothing for punitive damages against Carlock, simply because they could not reach a unanimous decision.

Judge Jeffrey White ruled in the [Jewel v. NSA, No. 08-04373 \(2015\)](#) case that plaintiffs had failed to establish “a sufficient factual basis...[that] they have standing to sue under the Fourth Amendment regarding the possible interception of their Internet communications.” Former AT&T technician [Mark Klein](#)’s testimony was **useless**, because he could not determine “the content, function, or purpose” of [Room 641A](#) as a black room within the [SBC Communications building](#) in San Francisco. Again, plaintiffs’ case was dismissed since they were unable to challenge the constitutionality of the wiretapping because it was a [dragnet](#), just like 8 years previously.

Tabulating these cases briefly, I think, will concisely reveal some much needed truths regarding the effectiveness of suing the government. Assuming that settlements are draws, awarded damages are wins, and dismissals with prejudice are losses, then the results of the aforementioned data set are as follows:

- *ACLU*: **lost**
- *Oberwetter*: **lost**
- *Dobbs*: **draw**
- *Eckert*: **draw**
- *Miller*: **draw**
- *Genovese*: **won**
- *Jewel*: **lost**

Out of this sample of 7 cases, in terms of percentages, this means that only 14% of these cases were clearly won, and that 42% of these cases ended equally in either a loss or a draw. Even if I inflate the success ratio by considering draws the same as wins, then still only 57% of these cases ended in some sort of monetary awards, which could be considered a viable goal for the plaintiffs *if* the goal was simply financial recompense, and not necessarily any serious attempt to reign in government power.

What does all of this actually *mean*, though? First, let's take a look at the seldom mentioned [Seventh Amendment](#):

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Obviously, it's a little hard for plaintiffs to exercise the 7th Amendment with the federal judiciary if they end up, quite literally, settling nearly all the time (pun intended), as Angel Dobbs, David Eckert, and Melissa Miller did. I fail to see how settling with the King's guards reigns in the absolute power of the State. Secondly, consider the [following YouTube comments](#) by a user, **dodgeman7909**, who criticized Larken Rose for being a [self-defense advocate](#):

*"Now I am a police officer but I'll be the first to tell you there are some bad cops out there but an overwhelming majority of us are good. I believe in the constitution and everybodys rights. I am against gun bans and very restricting laws. If you are too then state it and try to change it....not by saying shoot police, because that is the dumbest thing anyone could say. If you feel you are mistreated or denied your rights **file a lawsuit** or whatever but putting a video like this out there is ridiculous. If I had someone who tried to shoot me because they didn't believe in government or whatever it will not end well for them because my main goal everyday I go to work is to go home when I get off and I'll do anything to make that happen.... And you [Larken Rose] are an extremist." [emphasis added]*

If indeed this "dodgeman" is part of the *gendarmarie*, and a "good" one to boot, then the only remaining

question would be is that, is he the exception or the rule when it comes to “good” [unconstitutional policing](#)? Notice also the quick use of the term, “extremist;” doesn’t that mimic the political oppression of Nancy Genovese? [Unjust profiling](#), much?

Let’s also consider some other factors that reformists, who advocate for suing the pants off of the government, frequently ignore. Policemen and judges enjoy [qualified immunity](#) and [judicial immunity](#), respectively. Contrasting this with the statements of “dodgeman” suggests that you must rely on the government’s own rules to hold itself accountable, even if the judge ends up dismissing the case later, quite possibly with negative repercussions toward yourself if he deems the case “[frivolous](#),” or worse, declares you to be a “[vexatious litigant](#)” for even taking your case to court in the first place.

If we are to learn from the government’s own example, then several more revelations present themselves for our remedial political education. Essentially, you have to wait around until the government hurts you, personally; should you receive a settlement or damages, the government will pay you using taxpayer money, or otherwise from some other source of wealth than it can easily replenish because of its taxing “authority.” At most, the State is only embarrassed by the notoriety caused by a lawsuit in the corporate media, not the substance of the lawsuit itself. If what happened to a plaintiff is horrendous enough, the government will be more than happy to offer a sacrifice in order to distance its legitimacy away from your case, usually under the auspices of “this is just an isolated incident,” as what happened in the *Dobbs* case with the firing of Helleson.

One reason to maintain as good health as possible is that once you are arrested as a [political prisoner](#), then you are denied medical attention you ask for, and whatever medical attention they force upon you, is always used against you somehow (as in the *Eckert* and *Genovese* cases). The repeated theme in these lawsuits of [narcotics prohibition](#), especially of cannabis (as in the *Dobbs* and *Miller* lawsuits), wouldn’t be tolerated for a moment in a truly free society.

The efficacy of lawsuits is approaching that of [jury nullification](#), quite frankly, and not just in the sense of uselessly waiting around, but also the fact that you are *still* reliant upon the [bar attorneys](#) to make the opportunity for these techniques to manifest themselves in the first place! There is absolutely no semblance of trying to escape from the system here, but rather, an attempt to “change the system from within” by not only embarrassing it, but also “making it pay” using *other* people’s money, namely the taxpayers. I have not seen ONE civil case where a government cop was forced to perform restitution to his victim *from his own pockets*. [Socializing losses](#), much?

[Opportunity costs](#) abound in lawsuits against the government. Civil lawsuits usually take months or even **years** (the *Genovese* case took 4 and ½ years!); imagine the emotional stress involved while the case is being adjudicated over that period of time. Should you win, consider also the opportunity costs incurred when you are doing things like reading law, talking to your lawyer, and waiting around in courtrooms. These occur even if you do “win” and receive money from the government, because that’s time and effort you can’t **ever** get back.

Worst of all, suing the government reinforces the legitimacy of the State itself. Lawsuits legitimize the [coercive monopoly](#) that is the judiciary. Reformists prefer *other* people to incur opportunity costs by learning all the [rules of civil procedure](#), instead of focusing on developing free market alternatives to *replace* the judiciary.

To add insult to injury, nearly all the cases I’ve presented (except for the *ACLU*, *Oberwetter*, and *Jewel* cases), inherently rely on the 14th Amendment’s nefarious [incorporation doctrine](#)! Every single time a reformist suggests that a Title 42 civil lawsuit should be filed against an entity from one of the several state governments, they are invoking the forceful application of the United States Constitution against the several state constitutions, by way of the 14th Amendment. [Title 42 United States Code § 1983](#) says, in

part, that:

*“Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person **within the jurisdiction thereof** 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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” [emphasis added]*

To be “within the jurisdiction thereof” might as well be “subject to the jurisdiction thereof,” as far as I can figure it, unless there’s a [legalistic](#) distinction between the word “within” and the words “subject to.” You can never tell with lawyers how they are going to mangle the plain English language *this* week. In other words, reformists are morons who willfully neglect to [read law](#).

The only real exception to my hypothesis that suing the government does not work is that, if what the government did to you was particularly egregious, and they impoverished you in the process, then a civil lawsuit might be your only plausible recourse towards getting your life back on track, but again, this is, at best, just a rearguard action (much like jury nullification) where the goal is to simply recoup your losses so you are not completely destitute, but it is certainly *not* a method you want to rely on as part of some overall strategy to secure your liberty.

Again, the best case scenario I can perceive is that the settlement or damages awarded to you make you potentially liable for paying federal income taxes, presumably because the IRS assumes the monies are the equivalent of “windfall profits,” and in that sense, are much like a capital gains tax. In other words, the government still wins, thereby making “successful” grassroots lawsuits more of a [Pyrrhic victory](#), than anything else. Sometimes when you “win,” you still end up losing, simply because it’s not a [tactical victory](#), since at the end of the day, you don’t come out ahead of the government in any real way, much less any sort of [decisive](#) or even [strategic victories](#), that is, *real* victories.

Once you comprehend the truth that [the law is a racket](#), then you begin to understand why really any sort of legalistic solution, unless it helps you escape or avoid the State, is truly little else other than a notorious reformist project of some kind. If the most successful result I can find from lawsuits against the government for committing explicit **political oppression** resulted in only compensatory damages after over 4 years in litigation, then I think any hope of “suing for freedom,” much like the [freedom suits](#) of old, should be given up entirely. The fact of the matter is that [America is a police state](#), and anybody wasting time in a government monopoly courtroom attempting to hold statist “accountable,” is just as naïve or delusional as [“copblockers,”](#) at this point.

If for whatever reason anyone wants to bother with suing government agents, might I suggest exploring “your” state governments laws for doing so, such as the [Texas Civil Practice and Remedies Code](#)? At least that way, you won’t be invoking the 14th Amendment, and therefore it would be consistent with the legal concept of [state citizenship](#). And for goodness’ sake, fund your own legal (mis)adventures, instead of trying to socialize it onto others through [activist legal defense fund scams](#).

When it comes to the efficacy of suing the government, I think what I have discovered here just reinforces to me that [Gustave de Molinari](#) really was correct about the privatization of security services, especially considering that these rampant abuses committed by government police would *never* be tolerated by the customers of privately produced security, because they would be able to boycott those corrupt producers right into bankruptcy, and rightfully so.

In summation, when a reformist is grandstanding that you aren't being patriotic enough or in accordance with libertarian principles if you fail to file a lawsuit, tell them, politely, to just [bugger off](#). These nincompoops have failed to bear their burden of proof that lawsuits systematically work to restore or otherwise secure one's liberty. Maybe if they spent half of their advocacy time on using the [economic means of making money](#), then perhaps they would realize that the political means of making money only leads us down to the road to perdition.

Postscript: *I'd like to thank [Tennessee Rose](#) for her invaluable assistance in getting the court documents that are now currently hosted and available for free download on [Liberty Under Attack](#), for without her, this article would have been impossible.*