No. 05-1431

In The
Supreme Court of the United States

MICHAEL L. KATHREIN,

Petitioner,

v.

BRIGID M. MCGRATH, *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL L. KATHREIN
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Pro se Petitioner

QUESTIONS PRESENTED

The following questions are presented by the petitioner:

I. Does an American citizen have a Constitutional right to petition the federal grand jury to investigate crimes committed against him?

II. Does an American citizen have a statutory right to petition the federal grand jury to investigate crimes committed against him?

III. Do members of the executive or judicial branches of government have the authority to block access to the grand jury?

PARTIES BELOW

Petitioner Michael L. Kathrein was the plaintiff-appellant in three appeals that were consolidated in the court below. Respondents Brigid M. McGrath, Michael P. Moner, Jeffrey R. Rosenberg, Daniel V. Kinsella, Schuyler, Roche & Zwirner, P.C., and Paddy H. McNamara were defendants-appellees in one case and R. J. Siegel was the defendant-appellee in the other two cases in the court below.

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PETITION FOR WRIT OF CERTIORARI

Michael L. Kathrein, on behalf of himself, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, filed on February 7, 2006. There was no good-faith determination of the law in petitioner's consolidated cases in either the district court or in the Seventh Circuit Court of Appeals.

OPINIONS BELOW

The unreported Court of Appeals' Opinion affirming the judgment of the consolidated cases of the district court, entered February 7, 2006, is reproduced at Pet. App. 1. The District Court's final judgment of June 9, 2005 is reproduced at Pet. App. 13, its June 28, 2005 judgment is reproduced at Pet. App. 20 and App. 39, and its August 23, 2005 judgment is reproduced at Pet. App. 33.

JURISDICTIONAL STATEMENT

The Court of Appeals' final judgment was entered on February 7, 2006. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fifth Amendments to the United States Constitution.

The First Amendment, U.S. Constitution, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment, U.S. Constitution, provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTORY PROVISIONS INVOLVED

This case involves Federal Rule of Criminal Procedure 6(a) and Title 18 U.S.C. § 3332(a).

Federal Rule of Criminal Procedure 6(a) provides:

> (a) Summoning a Grand Jury.
>
> (1) *In General.* When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.
>
> (2) *Alternate Jurors.* When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

Title 18 U.S.C. § 3332(a) provides:

> (a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

STATEMENT OF THE CASE

Jeffrey R. Rosenberg and Daniel V. Kinsella, of the law firm Schuyler, Roche & Zwirner, P.C., are attorneys employed by Michael P. Moner. The attorneys engaged in the practice of 'padding' their petitions for fees. Their acts were aided and abetted by two judges in the Circuit Court of Cook County, Brigid M. McGrath and Paddy H. McNamara. All are respondents.

When petitioner moved the two district court judges to convene a grand jury to investigate the mail frauds and other crimes perpetrated by the attorney respondents against petitioner, the lower courts avoided the questions and allegations within petitioner's complaints by the improper application of abstention doctrines.

The Seventh Circuit Court of Appeals dispensed with petitioner's request to have the lower courts convene, or allow access to a grand jury, as follows:

> Before leaving Kathrein's suit against Siegel, we address an argument he makes both here and in his appeal from the dismissal of his other federal complaint. In both federal actions Kathrein sought and was denied an order compelling a federal grand jury to investigate alleged crimes committed by the various defendants. In challenging those denials, Kathrein persists with his frivolous contention that he is entitled to appear before a grand jury to present his allegations. See *Korman v. United States*, 486 F.2d 926, 933 (7th Cir. 1973) (holding that authority to convene federal grand jury is vested in district court); cf. *Cook v. Smith*, 834 P.2d 418, 420-21 (N.M. 1992) (recognizing New Mexico's procedure permitting citizens to petition for convening a grand jury as rare). Kathrein admits that the goal of his proposed investigation is to lead to the prosecution of the individuals that he has sued, but a private citizen lacks standing to demand the prosecution of another. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *Johnson v. City of Evanston, Ill.*, 250 F.3d 560, 563 (7th Cir. 2001).

Note the words, "Kathrein persists in his frivolous contention that he is entitled to appear before a grand jury to present his allegations."

Kathrein's request is legitimate. It is supported by the Constitution, Congressional statute, a rule of federal criminal procedure, substantial case law, learned treatises, and hundreds of years of common law practice. His approach may be unconventional and unwelcome, but frivolous it is not.

Petitioner's request is slighted by reflex. He moves to exercise a hoary right. A right of which ordinary citizens are unaware, that attorneys would not dare to seek, that prosecutors have no need to request, and that judges commonly believe, is not cognizable.

"It's a recession when your neighbor loses his job; it's a depression when you lose yours." – Harry S. Truman. Or in this case, it's frivolous when a common citizen asserts this right; it's a legitimate argument when a member of the legal community does so.

Petitioner, and millions of independents like him, are thusly separated from the protection of federal criminal law. They must accept whatever ration of justice the legal profession – judges and lawyers – is inclined to dispense.

REASONS FOR GRANTING THE WRIT

The Writ must be granted because the Seventh Circuit Court of Appeals' decision conflicts with the original intent of Federal Rule of Criminal Procedure 6, 18 U.S.C. § 3332(a), this Court's prior decisions, decisions of the other Circuit Courts of Appeals, and their own precedent.

As petitioner will also demonstrate, *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) was wrongly decided and must be corrected either by this Court or by Congress.

I. An American citizen has a Constitutional right to petition the federal grand jury to investigate crimes committed against him.

The history of the grand jury plainly demonstrates that citizens have a right to present their evidence to the grand jury.

The First Amendment, U.S. Constitution, guarantees the right "to petition the government for redress of grievances." *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 81 S.Ct. 523 (1961) and *California Motor Transport Co. v. Trucking Unlimited*, 92 S.Ct. 609 (1972) hold that the Petition Clause protects people's rights to make their wishes and interests known to government representatives in the legislature, judiciary, and executive branches. *Noerr Motor Freight, Inc.*, 81

S.Ct. at 530-531, *Trucking Unlimited*, 92 S.Ct. at 611-612. See also *McDonald v. Smith*, 105 S.Ct. 2787, 2789 (1985) (noting that James Madison in congressional debate on petition clause made clear that people have the right to communicate their will through direct petitions to the legislature and government officials).

No act of Congress can authorize a violation of the Constitution. *United States v. Brignoni-Ponce*, 95 S.Ct. 2574, 2578 (1975). The Constitution cannot be interpreted safely *except* by reference to common law and to British institutions as they were when the instrument was framed and adopted. *Ex Parte Grossman*, 45 S.Ct. 332, 333 (1925). That this applies with equal force to federal grand juries is equally clear. *Costello v. United States*, 76 S.Ct. 406, 408 (1956); *Blair v. United States*, 39 S.Ct. 468, 471 (1919); *In Re Grand Jury Proceedings*, 479 F.2d 458, 460-461 n. 2 (5th Cir. 1973) (collecting cases); *In Re Grand Jury January, 1969*, 315 F.Supp. 662, 675 (D. Md. 1970).

The Fifth Amendment had in view the rule of the *common law*, governing the mode of prosecuting those accused of crime. *Mackin v. United States*, 117 U.S. 348 (1886); *United States v. Deisch*, 20 F.3d 139, 145 n. 11 (5th Cir. 1994). The grand jury had common law origins. *In re April 1956 Term Grand Jury*, 239 F.2d 263, 268 (7th Cir. 1956).

Today's federal judges appear to have little or no understanding of how the grand jury operated under common law, or how rich was its tradition.

> The very fact of the presence of the prosecutor in the grand jury room *contradicts* the historically defined role of that body. How can the grand jury protect the accused from the accuser if the accuser is alone with the grand jury and can effectively *control* the course of its investigation?

> Schwartz, *Demythologizing The Grand Jury*, 10 American Criminal Law Review 701, 759 (1972); see also p. 758, n. 291.
>
> On November 3, 1806, Joseph Hamilton Daviess, United States Attorney for Kentucky, moved that a grand jury be convened to consider indicting Aaron Burr for attempting to involve the United States in a war with Spain. On December 3rd the grand jury was called. Daviess immediately moved "to be permitted to attend the grand jury in their room." This motion was considered "novel and unprecedented" and was denied. After hearing the evidence in secret the grand jury deliberated and, on December 5th, an ignoramus bill was returned.
>
> *Id.* at 734.

See also *United States v. Burr*, Fed. Cas. No. 14,892 (C.Ct.D.Ky. 1806).

> A solicitor is *not* a judicial officer. He *cannot* administer an oath. He *cannot* declare law. He *cannot* instruct the grand jury in the law. That function belongs to the *Judge alone*. If the grand jury desire to be informed of the law or of their other duties, they *must* go into court and ask instructions from the bench.
>
> *Lewis v. The Board of Commissioners of Wake Co.*, 74 N.C. 194, 197-199 (Superior Court of Wake County, 1876), quoted with approval in *United States v. Virginia-Carolina Chemical Co.*, 163 F. 66, 75 (C.Ct.M.D. Tenn. 1908) and *United States v. Kilpatrick*, 16 Fed. 765 (D.C.W.D.N.C. 1883).
>
> [A grand jury is] "a spear in the hands of ambitious prosecutors anxious to silence dissent or to climb to greater political heights over the backs of hapless defendants caught up in the system."

> Abourzek, *The Inquisition Revisited*, 7 Barrister 19 (1980).

In this case, the judiciary and the executive branches steadfastly block petitioner's *access* to his fellow citizens on the grand jury.

As a federal judge in the nineteenth century remarked, "The moment the executive is allowed to control the action of the courts in the administration of criminal justice, their independence is *gone*." *In re Miller*, Fed. Cas. No. 9,552 (C.Ct.D.Ind. 1878).

> [I]t is clear that the emperor and his servants assumed more and more direct control of legal procedure, at first paralleling surviving courts and procedures, but eventually superseding them. Gradually the sources of law were narrowed down to one—the edict of the emperor.
>
> Peters, *Inquisition*, pp. 14-15 (1988).

That prosecutors were not allowed in the grand jury room, under the indictment by grand jury clause of the Fifth Amendment, was well understood in this country for over 100 years. See *United States v. Rosenthal*, 121 Fed. 862, 874 (S.D.N.Y. 1903) and the cases cited therein.

In order to overcome the *Rosenthal* decision and the intention of the Framers of the Fifth Amendment, Congress then enacted, on June 30, 1906, the statute that has come down to us as 28 U.S.C. § 515(a) and the Rule that has come down to us as Federal Rule of Criminal Procedure 6(d), permitting the attorneys for the government to "attend the grand jury in their room."

> The VICE-PRESIDENT. The bill will be read for the information of the Senate.
>
> The Secretary read the bill and there being no objection, the Senate, as in Committee of the Whole, proceeded to its

consideration. It authorizes the Attorney-General, the Solicitor-General, the Assistant to the Attorney-General, the Assistant Attorneys-General, special assistants to the Attorney-General, special assistants to the district attorneys, and special counsel appointed under any provision of law to begin and conduct any kind of legal proceeding, civil or criminal, in any court of any judicial district, or before any commission or commissioner or quasi-judicial body created under the laws of the United States, including grand jury proceedings, whether they reside in the judicial district where such proceedings are brought or not. But all such proceedings shall be begun and conducted by such officials, attorneys, and counsel only under the direction, supervision, and control of the Attorney-General.

Mr. HOPKINS. I should like to have the Senator presenting the bill give a little explanation of the reason for the legislation.

Mr. KNOX. I ask that the report on the bill, which is less than half a page, be read. It is the most succinct statement of the purpose of the bill I could possibly suggest.

The VICE-PRESIDENT. The report will be read.

The Secretary read the report submitted by Mr. Knox, May 28, 1906, as follows:

The Committee on the Judiciary, to whom was referred the bill (S. 2969) authorizing the Attorney-General and certain other officers of the Department of Justice to conduct legal proceedings in any court of the United States, having considered the same, report the bill favorably without amendment. It is frequently desirable and even necessary that the Attorney-General should detail an officer of his Department to assist some United States attorney in the investigation and prosecution of cases of unusual importance or interest, or to make an independent investigation and report the result to the Department, and,

> if necessary, to prosecute the same; or, where this latter is impracticable, to appoint a special assistant to the Attorney-General, particularly in criminal matters.
>
> In 1903 the Attorney-General appointed a special assistant to investigate and report in the Japanese silk fraud cases, and it was held (121 Fed. Rep. 826, *U. S. v. Rosenthal*) that a special assistant to the Attorney-General is not an officer of the Department of Justice under sections 359 and 367, Revised Statutes, or other provisions of the United States Statutes, and the indictment was quashed because of the presence of this attorney in the grand jury room. *That case further holds that neither the Attorney-General, the Solicitor-General, nor any officer of the Department has the power to conduct or aid in the conduct of proceedings before a grand jury.* It is clearly of great importance that they should have this power.
>
> Congressional Record, pp. 7913-7914 (June 6, 1906).

I.e., one hundred years ago this June, the Congress took the common law right to petition the grand jury away from the people and gave it to the Department of Justice.

The Congress cannot – merely by legislating – amend the Constitution. *United Transp. Union v. I.C.C.*, 891 F.2d 908, 915-916 (D.C. App. 1989). [Congress] . . . is not given power by itself . . . to amend the Constitution. *Myers v. United States*, 47 S.Ct. 21, 37 (1926), *In re Young*, 141 F.3d 854, 859 (8th Cir. 1998). The legislature cannot enact laws for the accomplishment of objects not entrusted to the federal government. *Linder v. United States*, 45 S.Ct. 446 (1925).

No one in 1791 entrusted the federal government with the authority to enact laws intended to turn the grand jury into a rubber stamp for federal prosecutors. Ironically, federal prosecutors employed by the Department of Justice did not even *exist* until late in the following century. The Department of Justice is wholly a creation of Congress, June 22, 1870. At its

creation the *only* authority members of that agency possessed was to "have the case of prosecutions for mail depredations and penal offenses against the postal laws," Sec. 7, and to "compile statistics of crime," Sec. 12, 16 U.S. Statutes At Large 162-164.

The grand jury is a pre-constitutional institution, given constitutional stature by the Fifth Amendment. *United States v. Chanen*, 549 F.2d 1306, 1312 (9th Cir. 1977). If this is in fact true, then the grand jury would have to function in the same manner and fashion as its British predecessor, anything less would constitute an unconstitutional procedure:

> "I know not how long the practice in that matter of admitting counsel to a grand-jury hath been; I am sure it is a very unjustifiable and unsufferable one. If the grand-jury have a doubt in point of law, they ought to have recourse to the court, and that publicly, and not privately, and not to rely upon the private opinion of counsel, especially of the king's counsel, who are, or at least behave themselves as if they were parties."
>
> Sir John Hawles, *Remarks on Colledge's Trial*, 8 How. St. Tr. 724 (1681).

The Declaration of Rights of 1689 is antecedent of our own constitutional text. The original meaning and circumstances of that enactment are relevant. See *Harmelin v. Michigan*, 111 S.Ct. 2680, 2687 (1991).

Merely *allowing* a prosecutor in the grand jury room was a violation of the grand jurors' oath. *Proceedings Against The Earl Of Shaftesbury*, 8 How. St. Tr. 759, 773 (1681), quoted in *Hale v. Henkel*, 26 S.Ct. 370, 373 (1906).

To this day this is the law in Connecticut State grand juries. *Cobbs v. Robinson*, 528 F.2d 1331, 1338 (2nd Cir. 1975).

Under the procedures followed by our ancestors before their migrations from England the prosecution of offenses was left

entirely to private persons, or to public officers who acted in their capacity of private persons and who had hardly any legal powers beyond those which belonged to private persons. Stephen, *A History of the Criminal Law of England*, Volume I, at 493, quoted in *United States v. Marion*, 92 S.Ct. 455, 468 n. 2 (1971).

The idea of a public prosecutor is a *French* practice. *Id.*

The English practice was that followed in the United States for some time. *Id.*

Private individuals conducted the bulk of prosecutions in colonial times. Dongel, *Is Prosecution A Core Executive Function? Morrison v. Olson and the Framers Intent*, 99 Yale L. J. 1069 (1990). See also *United States v. Baird*, 85 F. 633 (C.Ct.D.N.J. 1897) (complaint by postal inspector); *In Re Price*, 83 F. 830 (C.Ct.S.D.N.Y. 1897) (complaint by private citizen); *United States v. Farrington*, 5 F. 343, 346 (D.C.N.Y. 1881) (evidence of grand jurors competent to ascertain who *was* prosecutor).

II. An American citizen has a statutory right to petition the federal grand jury to investigate crimes committed against him.

Petitioner devoted thirty pages and cited nearly two hundred authorities in his 'frivolous' lower court briefs supporting his right to access the federal grand jury. His arguments were dismissed with one sentence. This would hardly reflect an earnest deliberation.

> Painting black lines on the sides of a horse and calling it a zebra does not make it one.
>
> *United States v. Vazquez-Rivera*, 135 F.3d 172, 177 (1st Cir. 1998).

> The bending of the meanings of words is symptomatic of a diseased institution, with the angle of linguistic deflection indicating the seriousness of the cancer within. The Spanish Inquisition represented an advanced case. *Rawson's Dictionary of Euphemisms and Other Doubletalk*, rev. ed., p. 35 (1995).
>
> "When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you *can* make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."
>
> Lewis Carroll, *The Annotated Alice: Alice's Adventures In Wonderland & Through The Looking Glass*, p. 269 (Martin Gardner 1960).

Alice-in-Wonderland was a world in which words had no meaning. *Welch v. United States*, 90 S.Ct. 1792, 1803 (1970).

> [U]ltimately, the guarantee of [our] rights is no stronger than the integrity and fairness of the judge to whom the trial is entrusted.
>
> *Bracy v. Gramley*, 81 F.3d 684, 703 (7th Cir. 1996) (dissent), *reversed*, 520 U.S. 899, 117 S.Ct. 1793 (1997).

The dishonest application of the English language by the lower courts demonstrates that the rights granted to American citizens in their Constitution are [in effect] merely licensed. Citizens must pray to the legal community for leave to assert those rights. Where their prayers are blocked, their rights are denied. The legal community has taken control of the right to assert our guaranteed rights, *i.e.*, they are *not* inalienable, they are dispensed at will.

> ROBERTS: "So to the extent you are talking about the injustices in society and the discrimination in society, the best thing the courts can do is enforce the rule of law and provide a level playing field for people to come in and vindicate their rights and enforce the rule of law."
>
> Judge John Roberts, Transcript of Senate Confirmation Hearing, September 13, 2005

By its redefinition of words, the lower court amended the Constitution and denied Kathrein the right to petition a mechanism of his government for the redress of his grievances.

The prosecutor was a private individual. *United States v. Rawlinson*, 27 Fed. Cas. 715, Fed. Case No. 16,123 (C.Ct.D.C. 1802) (Court of the opinion his name should be written at foot of the indictment); *United States v. Shackelford*, 27 Fed. Cas. 1037, Fed. Case No. 16,261 (C.Ct.D.C. 1828) (indictment quashed).

The "prosecutor" means a person who prosecutes in the name of the United States, or in the name of the United States and himself. *United States v. Sandford*, 27 Fed. Case 952, Fed. Case No. 6,221 (C.Ct.D.C. 1806).

Public prosecutors are . . . not part of America's heritage from British common law. Jacoby, *The American Prosecutor: A Search For Identity*, p. 7 (1980).

[U]ntil 1853 there was nowhere any general, organized control of Federal prosecution. *Id.* at p. 20.

U.S. Attorneys and their subordinates use dishonest application of the language to avoid culpability in the denial of citizen's rights. Compare a request petitioner submitted to the U.S. Attorney, Exhibit A, App. 40, with the deflective response petitioner received two weeks later, Exhibit B, App. 43.

The improper motives and methods of today's prosecutors, *i.e.*, government attorneys, have become systemic.

> Centac can identify the Exxons of international crime, can pursue them, infiltrate them, gather roomsful of intelligence and evidence against them. But it cannot prosecute them. Only U.S. Attorneys can do that. And U.S. Attorneys around the country are not in a hurry to tie up prosecutors on such time-consuming, highly complex conspiracy cases. Buy-bust cases, swift and simple, are easier, more immediately gratifying, and visible to the voters. Centac frequently finds itself facing the same old problem – how to find a prosecutor with the intelligence, energy, and humility to study, master, and bring to trial a case with dozens of defendants, hundreds of witnesses, and documentation filling a roomful of filing cabinets.
>
> This time the problem's name is Scott Miller. The Steinberg Centac has been promised two full-time prosecutors and one part-time, but has received only Scott Miller, who is very part-time indeed. He is a whiz at buy-bust prosecutions, and DEA agents who like rapid-fire, cops-and-robbers cases speak highly of him. He is not about to spend months laboriously unraveling the intricate relationships of hundreds of Steinberg employees and associates. Better to indict Steinberg and a couple of top executives, bask momentarily in the headlines, and let it go at that. He justifies this philosophy with a boast. "I don't want sparrows, I want peacocks." Centac is based on the proposition that peacocks cannot exist without sparrows. Sparrows grow up to be peacocks. Donald Steinberg was once a sparrow. So was Sicilia-Falcon. So was Lu Hsu-shui. Miller isn't listening. He is a close friend of Pat Sullivan, chief of the criminal division in the South Florida U.S. Attorney's Office. It was Sullivan who, after his meeting in Washington with Dennis Dayle and other prosecutors, assigned Scott to the Steinberg Centac. To convince Sullivan to remove Scott, his friend, would be a delicate, difficult operation.

> James Mills, *The Underground Empire, Where Crime and Governments Embrace*, pp. 439-440 (Doubleday & Co. 1986).

To be independent and informed, the grand jury must be able to obtain all relevant evidence, since only then can its judgment truly be informed. *United States v. Mandujano*, 425 U.S. 564, 573, 96 S.Ct. 1768, 48 L.Ed.2d 212 (1976) (plurality opinion); *United States v. Calandra*, 414 U.S. 338, 343-44, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974).

The wisdom of maintaining grand jury independence from a public prosecutor has deep roots in our system of justice.

> A grand juror cannot carry on systematic persecution against a neighbor whom he hates, because he is not permanent in the office. The judges generally, by a charge, instruct the grand jurors in the infractions of law which are to be noticed by them; and our judges are in the habit of printing their charges in the newspapers.
>
> *Thomas Jefferson to Edmund Randolph*, 1793. ME 9:83.

> They bring into the grand jury room the experience, knowledge and viewpoint of all sections of the community. They have no axes to grind and are not charged personally with the administration of the law. No one of them is a prosecution attorney or law-enforcement officer ferreting out crime.
>
> *In Re Groban's Petition*, 77 S.Ct. 510, 520 (1957) (dissent).

III. Members of the executive and judicial branches of government do not have the authority to block a citizen's access to the federal grand jury.

Petitioner relied upon the following authorities in his "frivolous" request to present evidence of criminal wrongdoing

to a federal grand jury.

The Seventh Circuit completely failed to address *Application of Wood*, 833 F.2d 113 (8th Cir. 1987) (district court judge ordered U.S. Attorney to present petitioner's evidence to federal grand jury).

[The grand jurors] are not appointed for the prosecutor or for the court, they are appointed for the government *and* for the *people*. *Hale v. Henkel*, 26 S.Ct. 370, 373 (1906).

Shall diligent inquiry be enjoined? *Id.* at 374.

Members of the grand jury are supposed to act *independently* of either the prosecuting attorney or judge. See *United States v. Singer*, 660 F.2d 1295, 1302 n. 14 (8th Cir. 1981).

Where federal judges and U.S. Attorneys block or control the flow of information about criminal violations of federal law, all grand jury independence is lost.

> A grand jury is a group of 16-23 individuals drawn at random from the citizens of this district. They are impaneled by order of the Chief Judge of this Court. Their role as an independent body is to inquire into alleged violations of the law to ascertain whether the evidence presented by the government is sufficient to warrant a trial by a petit jury or judge. The grand jury has broad investigative authority due its ability to compel testimony, to order the production of documents and its power to indict.
>
> *Grand Jury Foreperson's Handbook*, U.S. District Court for the N.D. of Illinois, Eastern Division (8/97).

The longstanding principle is that the public has a right to every man's evidence is *particularly* applicable to grand jury proceedings. *Branzburg v. Hayes*, 92 S.Ct. 2646, 2660 (1972) (citations omitted).

> Principles of law, whether embodied in the Constitution and laws of the United States, the Federal Rules of Criminal Procedure or the local rules of court must remain fixed and secure. The strictures government court and prosecutor alike are designed to insure that the processes of criminal justice are carried out with care and deliberation, for were the law applied casually, and without thought, the result would not be justice, and the enforcers of the law would become merely the custodians of power.
>
> *McCarthy v. Manson*, 554 F.Supp. 1275, 1279 (D. Conn. 1982).

Where there are no remedies, there are no rights. Where the U.S. District Court for the Northern District of Illinois and the Seventh Circuit Court of Appeals deny petitioner's remedies, they deny his rights. Petitioner's remedy is unfiltered access to the federal grand jury to present his evidence of violations of federal statutes against him by the respondents.

It is the duty and right . . . of every citizen to assist in prosecuting, and in securing the punishment of any breach of the peace of the United States. *In re Quarles*, 15 S.Ct. 959, 960-961 (1894).

[A citizen] has a constitutional right to inform the government of violations of federal law . . . [a] privilege of citizenship guaranteed by the Fourteenth Amendment. *Equal Employment Opportunity Commission v. Pacific Press Publishing Association*, 676 F.2d 1272 (9th Cir. 1982).

[I]nforming is a right or privilege secured by the Constitution or laws of the United States. *Velarde-Villarreal v. United States*, 354 F.2d 9 n. 3 (9th Cir. 1965).

The grand jury can insist upon the production of every person's testimony. *In re Subpoened Grand Jury Witness*, 171 F.3d 511, 513 (7th Cir. 1999).

The grand jury cannot review what it cannot (is not allowed to) see.

The Federal Rules of Criminal Procedure…have the force of statute. *United States v. Christian,* 660 F.2d 892, 899 (3rd Cir. 1981).

If this Rule [6(a)] is applied with full force in the Virgin Islands, it arguably would confer on the district court the authority to convene a grand jury to investigate crimes and indict where it found probable cause. *Id.* at 900.

There is a power that the court does not have – the power to fundamentally alter the historic relationship between the grand jury and its constituting court. *Whitehouse v. United States District Court For District of Rhode Island,* 53 F.3d 1349, 1357 (1st Cir. 1995) quoting *United States v. Williams,* 112 S.Ct. 1735, 1744 (1992).

As the case history cited herein illustrates, most of today's federal judges exercise no deference to that "historic relationship."

> At the outset, I would point out that plaintiffs do not seek to compel the U.S. Attorney to prosecute the named defendants. Rather, they seek to have either the court or the United States Attorney present certain information to the grand jury. This distinction is critical because almost the entirety of the opposition to plaintiffs' motion is based on the mischaracterization by the U.S. Attorney and the other defendants of plaintiffs' motion as one seeking to compel the U.S. Attorney to initiate proceedings against the other defendants.
>
> *In Re Grand Jury Application,* 617 F.Supp. 199, 201 (S.D.N.Y. 1985).

I.e., The Seventh Circuit applied the identical mischaracterization in *its* ruling.

> "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617, n.3, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973). *See Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 212, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972) (White, J., concurring); *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 6, 88 S.Ct. 651, 19 L.Ed.2d 787 (1968). When determining whether a plaintiff has standing, I need only examine the complaint to see if the plaintiff has alleged that he has suffered a cognizable injury. *Nash v. Califano*, 613 F.2d 10, 14 (2d Cir. 1980). 18 U.S.C. § 3332(a) creates a duty on the part of the United States Attorney that runs to the plaintiffs, and the breach of that duty gives the plaintiffs standing to seek its enforcement.
>
> *Id.* at 201 (footnote omitted).

It appears contradictory, and perhaps punitive, that the applications of 18 U.S.C. § 3332(a) and *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) can be so straightforward in the Southern District of New York, yet be completely ignored when seeking the benefit of the identical statute, 18 U.S.C. § 3332(a), in the N.D. of Illinois or the Seventh Circuit Court of Appeals.

The sole function of the court is to enforce the law according to the statute. *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194 (1917).

The goal of statutory interpretation is to implement congressional intent. *Cabell Huntington Hosp., Inc. v. Shalala*, 101 F.3d 984, 986 (4th Cir. 1996).

Courts cannot judicially rewrite statutes. *In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) quoting *Aptheker v. Secretary of State*, 84 S.Ct. 1659, 1668 (1964).

Policy considerations may not trump the plain language of the statute. *American Textile Mfrs. Institute v. The Limited*, 190 F.3d 729, 738-739 (6th Cir. 1999).

In the absence of legislative guidance, it is inappropriate for courts interpreting statutes to pick and choose based on the court's assessment of the relative importance of the interests served. *Suter v. Munich Reinsurance Co.*, 223 F.3d 150, 160 (3rd Cir. 2000) (citation omitted).

The Seventh Circuit Court of Appeals relied upon four cases as "precedent" to deny petitioner the relief he sought, *i.e.*, access to the federal grand jury to present his evidence, pursuant to Federal Rule of Criminal Procedure 6(a) and 18 U.S.C. § 3332(a).

Each case is addressed in turn.

> Appellants contend that under 18 U.S.C. § 3332(b) a District Court is empowered to impanel only two Special Grand Juries in a single district at any given time.
>
> *In re Korman*, 486 F.2d 926 (7th Cir. 1973) (footnote omitted).

It appears contradictory that the Seventh Circuit can quote a case that *addresses* 18 U.S.C. § 3332(b), then *ignore* 18 U.S.C. § 3332(a) as it applies to petitioner's case.

> Article II, Section 14 of the New Mexico Constitution states that "a grand jury shall be ordered to convene . . . upon the filing of a petition therefor signed by not less than the lesser of two hundred registered voters or five percent of the registered voters of the county." In this mandamus action we assumed original jurisdiction, N.M. Const. art. VI, § 3, to

> decide whether a district Judge enjoys discretionary authority to refuse to convene a grand jury requested by petition. We conclude a Judge is mandated to convene the grand jury or otherwise substantially comply with the request.
>
> *Cook v. Smith*, 834 P.2d 418, 114 N.M. 41, 53 (1992).

It appears contradictory that the Seventh Circuit would address a *state* constitutional provision and *ignore* a federal statute, simultaneously.

The Constitution's requirements are as applicable to the police when they choose sides in a dispute among citizens as when they seize evidence for use in criminal prosecutions. *See, e.g., Soldal v. Cook County*, 506 U.S. 56 (1992); *Guzell v. Hiller*, 223 F.3d 518 (7th Cir. 2000).

> *Johnson v. City of Evanston*, 250 F.3d 560 (7th Cir. 2001).

Apparently this principle does not apply to judges and prosecutors who "choose sides" in order to protect corrupt state court judges and a law firm engaged in criminal violations of federal law.

Finally, there is the application (or, more correctly, misapplication) of *Linda R.S. v. Richard D., supra*.

Petitioner did not demand a *prosecution*; he requested *access* to a federal grand jury, pursuant to Federal Rule of Criminal Procedure 6(a) and/or 18 U.S.C. § 3332(a), to report criminal acts. To stand this argument on its head, even the United States Attorney cannot *demand* a prosecution. If the grand jury refuses to indict, that is the end of it.

Simply put, *Linda R.S.* was wrongly decided.

> Article 602, in relevant part, provides: "any parent who shall willfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children

> under eighteen years of age, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not more than two years." The Texas courts have consistently construed this statute to apply solely to the parents of legitimate children and to impose no duty of support on the parents of illegitimate children. *See Home of the Holy Infancy v. Kaska*, 397 S.W.2d 208, 210 (Tex. 1966); *Beaver v. State*, 96 Tex. Cr. R. 179, 256 S.W. 929 (1923). In her complaint, appellant alleges that one Richard D. is the father of her child, that Richard D. has refused to provide support for the child, and that although appellant made application to the local district attorney for enforcement of Art. 602 against Richard D., the district attorney refused to take action for the express reason that, in his view, the fathers of illegitimate children were not within the scope of Art. 602.
>
> Appellant argues that this interpretation of Art. 602 discriminates between legitimate and illegitimate children without rational foundation and therefore violates the Equal Protection Clause of the Fourteenth Amendment. *Cf. Gomez v. Perez*, 409 U.S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Glona v. American Guarantee & Liability Ins. Co.*, 391 U.S. 73 (1968); *Levy v. Louisiana*, 391 U.S. 68 (1968). But *cf. Labine v. Vincent*, 401 U.S. 532 (1971).
>
> *Linda R.S. v. Richard D.*, *supra*, 410 U.S. at 615-616 (footnote omitted).

Linda R.S. violates the Equal Protection Clause. This was *not* one of this Court's more sentient decisions, in that it abandoned *children* who, through no fault of their own, were not sanctioned by the state.

> To be sure, appellant no doubt suffered an injury stemming from the failure of her child's father to contribute support payments. But the bare existence of an abstract injury

> meets only the first half of the standing requirement. "The party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's] enforcement." *Massachusetts v. Mello*n, 262 U.S. 447, 488 (1923).
>
> *Id.* at 618.

Denial of food, clothing, and shelter is hardly an abstract injury.

> The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. *See Younger v. Harris*, 401 U.S. 37, 42 (1971); *Bailey v. Patterson*, 369 U.S. 31, 33 (1962); *Poe v. Ullman*, 367 U.S. 497, 501 (1961). Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.
>
> *Id.* at 619.

A prosecution is not an investigation.

Between 1701 and at least June 30, 1906, a private citizen had a judicially cognizable interest in the prosecution of another, as petitioner has demonstrated.

The dissenters in this 5-4 decision appeared willing to ignore status quo and consider the effect of the practice.

> Appellant, her daughter, and the children born out of wedlock whom she is attempting to represent have all allegedly been excluded intentionally from the class of persons protected by a particular criminal law. They do not get the protection of the laws that other women and children get. Under Art. 602, they are rendered non-

> persons; a father may ignore them with full knowledge that he will be subjected to no penal sanctions. The Court states that the actual coercive effect of those sanctions on Richard D. or others "can, at best, be termed only speculative." This is a very odd statement. I had always thought our civilization has assumed that the threat of penal sanctions had something more than a "speculative" effect on a person's conduct. This Court has long acted on that assumption in demanding that criminal laws be plainly and explicitly worded so that people will know what they mean and be in a position to conform their conduct to the mandates of law. Certainly Texas does not share the Court's surprisingly novel view. It assumes that criminal sanctions are useful in coercing fathers to fulfill their support obligations to their legitimate children.
>
> Unquestionably, Texas prosecutes fathers of legitimate children on the complaint of the mother asserting nonsupport and refuses to entertain like complaints from a mother of an illegitimate child. I see no basis for saying that the latter mother has no standing to demand that the discrimination be ended, one way or the other.
>
> If a State were to pass a law that made only the murder of a white person a crime, I would think that Negroes as a class would have sufficient interest to seek a declaration that that law invidiously discriminated against them. Appellant and her class have no less interest in challenging their exclusion from what their own State perceives as being the beneficial protections that flow from the existence and enforcement of a criminal child-support law.
>
> I would hold that appellant has standing to maintain this suit and would, accordingly, reverse the judgment and remand the case for further proceedings.
>
> *Id.* at 620-622.

Fortunately for children born out of wedlock, almost all states in the Union have enacted laws nullifying this decision.

Unfortunately, the proposition that a "private citizen lacks standing to demand the prosecution of another" has been interpreted by our courts to mean that citizens who have been damaged by the crimes of others, shall have no opportunity to present their evidence, except at the will of a judge or a prosecutor. It goes without saying that judges and prosecutors can have interests that conflict with the interests of the damaged party. Therefore, a citizen's right to assert his rights is fettered; it becomes a gift to be dispensed in conformity with the interests of the giver. The common law is lost.

> Respondent filed this suit under 42 U. S. C. §1983 alleging that petitioner violated the Fourteenth Amendment's Due Process Clause when its police officers, acting pursuant to official policy or custom, failed to respond to her repeated reports over several hours that her estranged husband had taken their three children in violation of her restraining order against him. Ultimately, the husband murdered the children. The District Court granted the town's motion to dismiss, but an en banc majority of the Tenth Circuit reversed, finding that respondent had alleged a cognizable procedural due process claim because a Colorado statute established the state legislature's clear intent to require police to enforce restraining orders, and thus its intent that the order's recipient have an entitlement to its enforcement. The court therefore ruled, among other things, that respondent had a protected property interest in the enforcement of her restraining order.
>
> Held: Respondent did not, for Due Process Clause purposes, have a property interest in police enforcement of the restraining order against her husband. Pp. 6-19.
>
> *Town of Castle Rock, Colorado v. Gonzales*, 125 S.Ct. 2796 (2005).
>
> In other contexts, we have explained that "a private citizen lacks a judicially cognizable interest in the prosecution or

> non-prosecution of another." *Linda R. S. v. Richard D.*, 410 U. S. 614, 619 (1973).
>
> *Id.* at n. 13.

One must wonder whether, had this incident happened to a citizen of influence as opposed to a citizen with none, the question would have risen to this Court or if so, what this Court's decision would have been.

These sworn statements, as the District Court determined, adequately documented injury in fact. We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972). *See also Defenders of Wildlife*, 504 U.S., at 562-563 ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.").

> *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).

Birdwatchers have standing but mothers of murdered children do not.

> Petitioners, state correctional officials, seek review of a decision of the United States Court of Appeals for the Fourth Circuit finding petitioners in violation of 42 U.S.C. § 1983 for opposing respondents' application for an arrest warrant. We grant the motion of respondents for leave to proceed *in forma pauperis* and the petition for writ of *certiorari* and reverse on the basis of our decision in *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973).
>
> Respondents were prison inmates in the Central Correctional Institution in Columbia, S. C., at the time of a prison uprising in August 1973. Respondents contend that

during the uprising they were unnecessarily beaten by prison guards. Respondent Timmerman sought criminal arrest warrants against four prison guards. In support of his action, Timmerman presented sworn statements to a Magistrate along with alleged "confidential information" from an employee at the prison who purportedly investigated the incident and concluded that respondents were victimized by the prison guards. Although a subsequent hearing in the Federal District Court indicated that the information provided by Timmerman was "suspect at best," it provided sufficient evidence to convince the state-court Magistrate that probable cause existed for issuance of arrest warrants against the prison guards. The Magistrate informed the legal adviser to the South Carolina Department of Corrections of his intent to issue the warrants and the legal adviser relayed this information to the prison Warden.

In an effort to have the criminal action against the correctional officers dropped, the legal adviser and Warden met with the County Sheriff, Deputy Attorney, and State Solicitor. At the meeting, the State Solicitor reviewed the facts and stated that there would be no indictment against three of the accused guards, but that he was unsure whether an indictment would be sought against the fourth guard. As a result of the meeting, the State Solicitor wrote a letter to the Magistrate requesting that the warrants not be issued. The Solicitor also stated that he intended to ask the State Law Enforcement Division to conduct an investigation concerning the charges made against the officers involved; the Magistrate did not issue the warrants and no state investigation was initiated.

Respondents subsequently filed suit in the United States District Court for the District of South Carolina contending, among other claims, that petitioners conspired in bad faith to block the issuance of the arrest warrants for the prosecution of the prison guards. The District Court concluded that petitioners denied respondents their right to

> "a meaningful ability to set in motion the governmental machinery because [petitioners' activities] stopped the machinery unlawfully, not in a proper way, as for example, upon a valid determination of lack of probable cause." Although the State Solicitor and the Magistrate were found to be immune from damages, the District Court concluded that the legal adviser to the prisons and the Director of the Department of Corrections were liable for their actions in requesting the State Solicitor to discourage issuance of the warrants. Respondents were awarded $3,000 in compensatory damages, $1,000 in punitive damages and attorney's fees against the two petitioners.
>
> The United States Court of Appeals for the Fourth Circuit affirmed and acknowledged that under *Linda R. S. v. Richard D.*, *supra*, at 619, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another."The Court of Appeals concluded, however, that *Linda R. S.* did not foreclose respondents' right to seek an arrest warrant.
>
> *Leeke v. Timmerman*, 454 U.S. 83, 84-86, 102 S.Ct. 69 (1981) (footnote omitted).

This case conspicuously failed to address the following:

Whites comprise 67.2% of South Carolina's general population and blacks comprise 29.5%.

The population of South Carolina prisons is exactly opposite. Of those incarcerated, blacks comprise 67% and whites comprise 31%.

I.e., the "Rodney King treatment" perpetrated on prison inmates, most of whom were black, was apparently looked on with approval by eight upper class whites and one black (Thurgood Marshall) who spent most of his time on the U.S. Supreme Court authoring dissenting opinions.

Control of the grand jury by government attorneys and lower court judges can be corrected even without a grant of certiorari by this Court.

Congress has the authority to overrule wrongly decided cases. *Wesson v. United States*, 48 F.3d 894, 901 (5th Cir. 1995).

Congress . . . may cure any error made by the courts. *Fast v. School Dist. Of City of Ladue*, 728 F.2d 1030, 1034 (8th Cir. 1984) (en banc).

Congress has the power to counter judicial doctrine. *Belgard v. State of Hawaii*, 883 F.Supp. 510, 514 (D. Hawaii 1995).

It should not be necessary for Congress to visit this issue.

CONCLUSION

Petitioner's question tests the application of checks and balances. It asks this Court to settle the intent of Congress in 18 U.S.C. § 3332(a) and to determine whether the "public interest" in Federal Rule of Criminal Procedure 6(a) should be excepted by those against whom it is invoked.

Did Congress intend that the subjects of inquiry be the gatekeepers of inquiry and if so, would this sanction a conflict of interest against the public interest?

For the reason set forth above, this petition for a writ of certiorari should be granted.

Dated: May 8, 2006

Respectfully submitted,

MICHAEL L. KATHREIN
7601 NORTH EASTLAKE
CHICAGO, IL 60626
(773) 761-6000
Pro se Petitioner

EXHIBIT 1

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June 8, 2005

VIA FACSIMILE

Michael Kathrein
7601 Eastlake Terrace
Chicago, IL 60626

Re: *Michael L. Kathrein v. R.J. Siegel*; Case No. 05 C 1718

Dear Mr. Kathrein:

This is to put you on notice that we represent R.J. Siegel in the above-captioned lawsuit. For the reasons stated in our Motion to Dismiss, etc. which has been served on you and for the reasons stated in our Motion for Sanctions, we have concluded and will assert that this action has been filed for improper purposes. It is frivolous and without merit. We, therefore, request that you voluntarily dismiss the action before any further costs and expenses are incurred.

Although you are not a lawyer, your complaint is still subject to the requirements of Rule 11, which require that every pleading or other paper signed by a party certifies

that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the paper:

(1) is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. . . .

Fed. R. Civ. Pro 11 (a) and (b).

We have filed our motion to dismiss in the above-captioned complaint. We have also prepared our Motion for Sanctions which is served on you together with this letter. Pursuant to Rule 11 you have 21 days to voluntarily dismiss this action.

Very truly yours,

/s/ Daniel V. Kinsella
Daniel V. Kinsella

DVK/etl
435733_1.DOC

United States District Court
Northern District of Illinois
Eastern Division

Michael Kathrein **JUDGMENT IN A CIVIL CASE**

v. Case Number: 05 C 1718

R.J. Siegel

- ❑ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- ❑ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that final judgment is entered granting defendant's motion to dismiss pursuant to the Rooker-Feldman doctrine.

Michael W. Dobbins, Clerk of Court

Date: 6/28/2005 /s/ Sandy Newland, Deputy Clerk

Michael L. Kathrein
7601 North Eastlake Terrace
Chicago, Illinois 60626
773-761-6000
773-465-7755 fax
federalcase@gmail.com

February 28, 2006

Patrick J. Fitzgerald
United States Attorney
Northern District of Illinois
United States Attorney's Office
219 S. Dearborn Street – 5th Floor
Chicago, IL 60604-1702

Sent by Certified Mail
No. 7003 3110 0002 6517 9209

Dear Mr. Fitzgerald,

I am the victim of an ongoing mail fraud conducted by members of the law firm Schuyler, Roche & Zwirner, P.C., among others, with a business address of 130 East Randolph Street, Suite 3800, One Prudential Plaza, Chicago, IL 60601.

Attached to this letter is partial evidence of that fraud.

As the exhibits show, this is not a case of a law firm merely "padding" its billings. Indeed, SRZ's actions extend well beyond the bounds of reasonable criminal activity.

By comparing the extraordinary fees sought, to their minimal work product, it is plain that the evidence against them is ample and that the fraud nearly proves itself.

Note that SRZ's Petition for Fees includes tens of thousands of dollars for fees previously collected, for services rendered to separate actions, for costs unrelated to that instant action, and for fees charged (as co-defendants)

to themselves, for representing themselves. (Illegal hybrid-representation is another matter.)

I already possess considerable supporting physical evidence of this crime and have good reason to believe that discovery would reveal additional statutory violations.

Therefore, and by this letter, I request direct access to the Special Grand Jury in Chicago, pursuant to my statutory right under 18 U.S.C. § 3332(a). See also *In the matter of In re Grand Jury Application*, 617 F.Supp. 199 (S.D.N.Y. 1985).

This letter is not a request or a demand for you or your office to investigate or prosecute.

Very specifically, this is a limited request for you to arrange for me to present my evidence to the Special Grand Jury in Chicago so that they may consider and perhaps investigate these crimes. Of course, whether or not to indict will and should be, the sole and unfettered determination of the Special Grand Jury.

In addition to the fraudulent Petition for Fees filed by the above named parties, I expect to present other legal information for the Special Grand Jury's consideration:

The elements of mail fraud are a scheme to defraud and use of the mail in furtherance of that scheme. *United States v. Biesiadecki*, 933 F.2d 539, 545 (7th Cir. 1991).

The mail fraud statute proscribes only fraudulent schemes to defraud, and it is not necessary that the scheme to defraud actually succeed. See, *e.g., United States v. Wellman*, 830 F.2d 1453, 1461 (7th Cir. 1987) (the essential elements of a mail fraud offense under 18 U.S.C. § 1341 are a scheme to defraud and the use of the mails in furtherance of that scheme).

Conspiracy to commit mail fraud requires proof of these elements:

(1) that the conspiracy to commit mail fraud existed;

(2) that the defendant(s) became a member of the conspiracy to commit mail fraud with an intention to further that conspiracy; and

(3) that an overt act was committed by at least one conspirator in furtherance of the conspiracy to commit mail fraud.

See *United States v. Shelton*, 669 F.2d 446, 450-51 (7th Cir. 1982) and *United States v. Craig*, 573 F.2d 455, 486 (7th Cir. 1977).

Please advise me as to when I may submit my evidence of these material violations of federal criminal law to the Special Grand Jury in Chicago.

I look forward to your earnest response to this request.

Sincerely,

Michael Lee Kathrein

Attached: PETITION FOR FEES EXPENSES AND COSTS IN SUPPORT OF DEFENDANT MICHAEL MONAR'S RENEWED MOTION FOR SANCTIONS AGAINST PLAINTIFF MICHAEL LEE KATHREIN

MOTION TO STRIKE CO-DEFENDANT CONWAY'S MOTION FOR RECONSIDERATION OF HIS MOTION FOR SANCTIONS

U.S. Department of Justice

[Logo]

United States Attorney
Northern District of Illinois

Everett McKinley Dirksen Building
(312) 353-5300
219 S. Dearborn St., 5th Floor
Chicago, Il. 60604

March 9, 2006

Mr. Michael Kathrein
7601 North Eastlake Terrace
Chicago, Illinois 60626

Dear Mr. Kathrein:

This letter is to acknowledge receipt of your complaint by this office on March 3, 2006. Your complaint does not form the basis for any action by the United States Attorneys Office. Therefore, we are unable to assist you regarding this matter.

It is suggested that you direct any evidence of violations of federal law to the Federal Bureau of Investigation, U.S. Department of Justice, 219 South Dearborn, 9th Floor, Chicago, IL 60604 for any action it deems appropriate.

Very truly yours,

PATRICK J. FITZGERALD
United States Attorney

BY: /s/ Chrissy Stein
Chrissy Stein
Paralegal Specialist