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In The
Supreme Court of the United States

WHY YOU HAVE NO CIVIL RIGHTS
and

WHAT YOU CAN DO ABOUT IT

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In the year 1800, American people were fed up with out-of-control judges. Back then, voters understood that elected representatives were supposed to protect them from judicial misbehavior. Thomas Jefferson certainly understood. His contemporaries refused to clean up the mess and the people voted them out of office. Jefferson won the presidential election in a landside.

Those days are gone. These days, judicial dishonesty is institutionalized.

Dishonesty is the enemy of justice. What can we do to bring fairness back into our courtrooms? The same thing people did in 1800. Remove the incumbents in Congress who refuse to clean house – and in this case, that means all 535 of them.

Americans today seem to have forgotten that we have the same power voters had in 1800. Our representatives tell us, “We can’t remove judges; that would violate the Constitutional principle of separation of powers.” Where did they get that idea? Those words appear *nowhere* in the United States Constitution.

Our representatives do have the power. *Our* job is to make them do *their* job. If the people can’t remove bad judges directly, we need to remove the people who can, but won’t.

Let those who want to *keep* their job, *do* their job, which is to protect their constituents from corrupt, self-serving, activist judges.

Let them know that our way of life is at stake.

In this next election, cast a blanket vote against every sitting incumbent. Eventually, the message will get through.

IT ALL COMES BACK TO
We the People

About the Cover

Rodney King was savagely beaten by L.A. police officers who apparently never expected to be held accountable for their actions. Unfortunately for them, their criminal actions were captured on videotape and their brutality became national news.

Unfortunately for us, similar "hard" evidence of criminal acts by police, judges, lawyers, and prosecutors is rare. Proving abuse is tough. It is almost impossible to get anyone to hear the defendant's side of the story, *especially* when the abuse is subtle, and comes at the hand of a judge or prosecutor.

The tool to remove dishonest judges has been taken away from us. That tool is called the Federal Grand Jury.

The time has come to take it back.

WHAT IS A GRAND JURY?

Members of the federal grand jury are not prosecutors or law enforcement officers. They are ordinary citizens just like you, chosen at random from the community. There is only one difference between a grand jury and a trial jury. Grand juries don't hear trials. Their sole purpose is to investigate federal crimes (including civil rights violations) committed against you. That's all they do. If they decide there is enough evidence to go

forward with a trial, they will issue an indictment, which is like an arrest warrant. Once that is done, they're finished. Trial jurors take over and hear the case.

When someone commits a crime against you, the prosecutor and judge are supposed to work together to help. Suppose for a moment that the person who breaks the law and violates your rights is the judge or the prosecutor? Where can you turn for help? Certainly not to the judge or prosecutor. The instant you complain to either one about the other, you become their common enemy. They will do everything in their power to bury you *and* your complaint, whether legal or illegal.

That scenario is the heart of Mr. Kathrein's (pronounced Kath'-rine) Petition to the Supreme Court – see ***Petition for Writ***, second half of this booklet. Kathrein is not a lawyer. He is an ordinary citizen trying to protect himself and his family.

KATHREIN'S COMPLAINT *is* EVERYONE'S COMPLAINT

This booklet explains why you should care about Kathrein's struggle. As long as the courts and prosecutors continue to block our right of unfiltered access to a grand jury, they win. As you will read here, when they win, we lose. We lose our lives, our liberty and our property.

Theoretically, judges and prosecutors are no better than or different from any other people. They are certainly not above the law...or are they?

Put yourself into Kathrein's situation for a minute.

Imagine you are in the middle of an ordinary legal claim arising from a personal injury, contract dispute, bankruptcy or

divorce. If your opponent's case is weak, an unspoken doctrine that insiders know as "*reasonable* dishonesty" comes into play. An unethical opposing counsel will introduce inflammatory or prejudicial material against you that has nothing whatsoever to do with the case. They do this for the singular purpose of prejudicing the judge. A judge will believe a prosecutor before he believes a stranger, especially if that stranger is a non-lawyer. This tactic can be spectacularly effective.

If yours is a criminal case, the prosecutor can "stack the charges" against you or withhold evidence in your favor. He can lie outright or cut a deal with a "flexible" informant. Eventually, the judge simply "decides" that the prosecutor "deserves" to win or that you "deserve" to lose. The complexion of the contest changes from a battle of facts and law to a demonstration of superiority. Once that happens, the game is over. You will be rolling down the rail of certain defeat.

That leaves you three choices: (1) Give up, (2) Appeal, or (3) Fight back.

If you choose number one, stop reading now. Pass this booklet along to someone else.

If you choose number two, you might as well choose number one. On appeal, the presumption of a "fair" trial always lies with the winner in the lower court. It is almost impossible to reverse a lower court judgment by alleging abuse of discretion, abuse of process, prejudice, or procedural error.

Number three is your *only* choice. When the judge attacks you personally, you must defend yourself right then and there. It is far better to fight while you are in the ring, than to try to overturn the decision after the bell.

Could you go to your lawyer or public defender for help? Yes and no. *Yes*, because their job is to defend you vigorously,

but *no* because they would never "pick a fight" within their own (legal) community. Lawyers are not trained that way and they don't think that way. Their culture vilifies traitors.

If an attorney even attempts to sue a judge or prosecutor, he risks his license, his friendships, his inside connections and his livelihood. If he is part of a law firm, his partners will forbid it. Turning on one of your own is a betrayal of the most unforgivable kind. A good lawyer will fight against anyone for you, even the police, but he will **not** bite the hand that feeds him. He could count on losing not only your case, but every case after that for the rest of his doomed career. Your lawyer is more likely to feign gratuitous indignation, then slip backwards out of the room.

Remember…defenders do not actually "lose" cases, their clients do. While you are broke or in prison or both, your lawyer is busy collecting judgments (fees) against you.

Yours is the "hit and run" that will NOT be investigated.

Assuming you are not the type of person who will lie down and take a "Rodney King beating," your only hope for fairness is to fire your lawyer and sue the offending judge or prosecutor yourself. (A person representing himself is said to be acting *pro se*.)

That is what happened to Kathrein, and that is what Kathrein did. He sued them all…the *first* judge and the *second* judge, then the lawyers *and* their law firm. The harder he fought to report the judicial crimes committed against him, the more they gang-beat him, each one supporting the others.

Now he comes to his last stop – the Supreme Court of the United States. (More accurately, his last "judicial" stop.) If the Supreme Court refuses to answer his question, Kathrein will press for a solution from Congress.

THIS COULD NEVER HAPPEN TO ME

Why should you care about an obscure lawsuit, by a person you do not know, who is in a situation you (think you) will never be in? What possible difference could it make in your life?

These are fair questions.

Imagine one day you or someone you love, find yourself in Kathrein's place. When that dark day comes, (which it eventually does for everyone) doesn't it make sense to work now to ensure a fair hearing then?

Let's start with this.

Until three years ago, Kathrein truly believed courtrooms were places where judges carefully listened to the facts and honestly decided the cases. Then he got the lesson of his life. The judges in his case could, and did, cheat. The lawyers could, and did, cheat. And once they coordinated their cheating, no fact, law, or procedure could save him.[1] He was *set up* to lose.

Kathrein has already taken his beating and has little left to gain for himself. He is moving this fight forward because the argument is too important and far-reaching to ignore. Men are defined by what they stand up against. Taking back for everyman, what has been taken away from everyman, is well worth the effort and sacrifice.

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[1] To be fair, many judges, prosecutors, and lawyers work hard to be honest. Unfortunately, they are only honest *most* of the time. But if this case was *your* case, most of the time would not be good enough. You still got cheated. Your right to a fair trial does not go away just because nine out of ten people *did* get one. Justice cannot tolerate exceptions. Just like a cop, a priest, or a bank teller, if they cross the line **once**, they have to go.

Federal judges and federal prosecutors routinely block the access common citizens are supposed to have to the federal grand jury. There is a logical but not legal, reason for this. If you have ever been dragged through the courthouse cattle chute, you will understand that “equity” and “justice” have nothing to do with the process. Judges are *determined* to make things turn out the way they want them to and prosecutors are *determined* to get convictions. In many ways, equity, justice, facts and law, actually interfere with the process.

Have you ever stopped to consider that public defenders (the poor man’s lawyer) don’t investigate anything? Public defenders do *not* have police or detective resources at their disposal…only prosecutors do.[2] Your defense will rely almost entirely upon the evidence the prosecutor decides to “share” with your lawyer. If the prosecutor “forgets” or “loses” evidence that would help your case, or decides to ignore an important lead, he will win and you will lose.

That is not merely misbehavior, that is criminal behavior. The very last thing a judge wants is a properly operating grand jury. What judge wouldn’t want the power to block access to a grand jury – especially if that grand jury was about to investigate *him*? Judges and prosecutors have total control over the grand jury. They took it from us and they gave it to themselves, and they use it to protect themselves all the time.

This type of abuse is exactly why our forefathers granted ordinary citizens the right to access the grand jury **directly**. It was a system of checks and balances installed to protect against judicial tyranny.

Direct access to a grand jury is the victim’s path *around* the victimizer’s roadblock.

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[2] For a fine example of prosecutorial corruption, read *George Jones v. City of Chicago*, 856 F. 2d 985 (7th Cir. 1988).

That is why it's such a BIG secret and that is why Kathrein has taken such a steady beating – he understands what judges are doing and refuses to let them get away with it.

HOW THE GRAND JURY (should) PROTECT OUR CIVIL RIGHTS

The second half of this book is a copy of Kathrein's Petition for a Writ of Certiorari. A Writ of Certiorari is a request to the Supreme Court of the United States asking for permission to bring a case before them. If the writ is granted, the petitioner may then ask the Supreme Court to either agree with the lower court's decision or tell the lower court it was wrong, and why.

In Kathrein's Petition you will see a perfect example of justice thwarted by the very people (judges and the U.S. Attorney) who are supposed to ensure that justice is done.

An attorney would never bring Kathrein's complaint to court. It could *only* come from a pro se litigant – someone who does not have a Bar card to lose. If Kathrein prevails, the floodgates of accountability open. Bad judges and prosecutors will be in the same boat the Los Angeles police were in after they were caught (unable to deny) beating Rodney King – they would have to answer for their crimes.

When we regain direct access to the grand jury, bad judges and prosecutors will run for cover. If they have to give this power back, they will have to answer. We the People win.

Everything will change.

What exactly, does it mean when we say "Civil Rights?"

> **Civil right.** (*usu. pl.*) **1.** The individual rights of personal liberty guaranteed by the Bill of Rights and

> by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. Civil rights include esp. the right to vote, the right of due process, and the right of equal protection under the law. **2.** CIVIL LIBERTY.
>
> **Civil Rights Act.** One of several federal statutes enacted after the Civil War (1861-1865) and, much later, during and after the civil-rights movement of the 1950s and 1960s, and intended to implement and give further force to the basic rights guaranteed by the Constitution, and esp. prohibiting discrimination in employment and education on the basis of race, sex, religion, color, or age.
>
> *Black's Law Dictionary*, p. 240 (7th Ed.).

While such words seem majestic on paper, in real life you have *no* civil rights. They are not tangible "things" that follow you wherever you go. The rights granted to American citizens in our Constitution are [in effect] merely licensed to us by judges.

What does that mean? Let's examine two simplified scenarios.

Suppose your civil rights are challenged by a third party, *i.e.*, the police, your neighbor or City Hall. (Every right we have is merely an extension of a civil right.)

If you have been accused of a harmful civil action or a crime, the Constitution and various statutes provides certain *defensive* protections, beginning with the presumption that you are innocent until proven guilty.

Or, suppose you attempt to exercise a guaranteed right such as freedom of speech or religion but someone prevents you from doing so. Again, the Constitution and various statutes provide

certain *offensive* protections, beginning with the opportunity to redress your grievances (file a lawsuit).

In either event however, you have no means to enjoy or enforce those rights *except* through the court system. What that really means is that without a mechanism for remedy, (the court) you have no rights. If a judge refuses to order relief, you don't get any. Therefore, citizens have no choice but to (literally) pray to a judge for leave to assert their rights. Where their prayers are blocked, their rights are denied.

It wasn't always like this. Judges have taken control of the "right" to assert your guaranteed rights, *i.e.*, they are no longer inalienable. You have them *only* when a judge feels like letting you have them. If he doesn't, you don't. There is nothing you can do.

Judges "dispense" civil rights at will.

Here is what you probably *do* know: No citizen can bring criminal charges against another citizen, regardless of their position or influence. Only the law enforcement personnel can do that, *i.e.*, police (through the state's attorney), FBI agents, federal prosecutors, etc.

Here is what you probably do *not* know: Citizens *do* have the right to bring their evidence directly to a grand jury and request that they investigate criminal acts against them – not prosecute…*investigate*. This right is guaranteed to you by the Constitution, federal statutes, and common law. If the grand jury decides to indict, a prosecutor will take over and handle your case. Kathrein proves this in his Petition. The courts once recognized this right. Now they do not. And as Kathrein has learned, those who dare to remember, get punished.

Why don't you know this?

Because the judiciary does not *want* you to know.

And why don't they want you to know? Because to allow a common citizen direct access to the federal grand jury is to expose their Achilles heel. Judges may be immune from prosecution for civil misbehavior, but they are NOT immune from prosecution for criminal behavior.

The only way to make a judge answer for his criminal behavior is to bring criminal charges against him.

However, as explained above, no citizen can bring criminal charges against another citizen. Under present "case law" the only way a citizen can bring criminal charges against a judge is if another judge allows it (via access to the grand jury).

After the American Revolution, our Constitution was conceived and adopted as the mechanical foundation of our government. For ordinary citizens, the independent grand jury was the *only* tool of salvation from judicial corruption. Without this tool, American civil rights are damned.

Judges simply snatched this redress away. They did it by enacting "judicial legislation," *i.e.*, by "ruling" to block public access to the grand jury. Who decided, "What will be the law?" Judges did. Who is supposed to decide, "What will be the law?" Congress is.

The entire judicial branch of our government placed itself out of reach, behind the back of Congress. Judges are now, **above the law.**

It is no longer possible to get a complaint *against* a judge *past* a judge.

If you *do* try, (as Kathrein did) the judge will characterize your complaint as frivolous. He will treat you as if you are

unstable and even a little dangerous. Your case will be dismissed swiftly by application of the powerful tools at their discretion, including the mother of all tools — "*judicial discretion*." And before they send you out the door (or off to jail) they will slap you with sanctions and penalties (or a few extra years if it's a criminal case) for having the audacity to challenge their infallibility.

The more Kathrein pressed for his right to bring the evidence of crimes committed against him to an independent federal grand jury, the more they kicked him, *i.e.*, he got the Rodney King treatment. It is not hard to guess where Rodney King would be today if not for that videotape.

Kathrein's evidence may not be on video, but it *is* on paper.

Two citations sum up the entire problem.

> Ultimately, 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).
>
> A passive judiciary merely ratifies the status quo; instead of acting as a bulwark against undue political power, it becomes an actor in concert with the political branches against the individual.
>
> Bandes, *Reinventing Bivens: The Self-Executing Constitution*, 68 So.Cal.L.Rev. 289, 317 (Jan. 1995).

Until the individuals (our elected representatives) who are responsible for ignoring judicial abuse are disciplined and/or replaced, nothing will improve.

Civil rights are not self-executing…we will either save them together or lose them together.

☑ IF YOU ARE CALLED FOR GRAND JURY DUTY

During "orientation" grand jurors are groomed to become a part of the judicial process "team." In part, that function is appropriate – but your part need not be passive. A critical role of the grand jury is to be a buffer against judicial or prosecutorial corruption.

Grand jurors must remember that they are an essential but independent cog in the greater mechanism of checks and balances.

As a grand jury member you have the right (and the duty) to present this question to the prosecutor: "All you've brought us are complaints by government agents. Where are the complaints from our fellow citizens that we need to investigate?"

Kathrein's case is a perfect example of a criminal complaint filed by a fellow citizen that the judge and prosecutor will never let you see…because it is against members of their own community.

If you and your fellow jurors *insist* on an answer, you will become what judges and prosecutors disparagingly characterrize as a "runaway grand jury." To the rest of us, you are simply a grand jury doing its job.

For an example of a strong grand jury, read about the Rocky Flats Grand Jury. The published decision is *In re Grand Jury Proceedings*, 813 F.Supp. 1451 (D. Col. 1992).

THE RIGHT TO FAIR TRIAL
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WHERE DID IT COME FROM
and
WHERE DID IT GO?

Let's review our civil rights history.

Timeline

1676.	First American War for Independence, Bacon's Rebellion. Nathaniel Bacon led an armed uprising of white indentured servants and black slaves. Of the last 100 men who refused to surrender, 80 were black.
1776.	American Declaration of Independence. Grants no rights to blacks, Indians, or women.
1783.	Colonies win their War of Independence from England.
1791.	Bill of Rights is enacted.
1861.	Civil War Between the States.
1863.	Lincoln issues the Emancipation Proclamation.
1865.	On April 14, 1865 Abraham Lincoln pays for his championship of the Union and emancipation.
1866-1871.	Congress enacts a series of federal civil rights statutes.
1868.	The Fourteenth Amendment is ratified.

AMENDMENT XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The civil rights statutes of today are found in Title 42 of the United States Code, Public Health and Welfare. The civil rights statute used most often is 42 U.S.C. § 1983, which was designed to allow those who were mistreated by those administering state law to file suit against them in federal court.

Title 42 U.S.C. § 1983, under different statute numbers, was originally enacted to protect not only freed slaves, but Union soldiers mistreated by Southern courts, in 1871, as a mechanism for enforcing the Fourteenth Amendment.

Earlier statutes had been enacted to enforce the Thirteenth Amendment. For example, 42 U.S.C. § 1982 first appeared as section 1 of the Civil Rights Act of 1866, which provided:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The United States Supreme Court slowly began to dismantle the civil rights legislation enacted by Congress, starting with a case titled *Bradley v. Fisher*, 13 Wall. 335. 163 U.S. 537 (1872).

That case held that state judges could not be sued in federal court for their misbehavior because they had "sovereign judicial immunity," though none of those words appear in the Constitution or in any of the civil rights statutes originally enacted by Congress.

Plessy v. Ferguson, 163 U.S. 537 (1896) eviscerated those laws still further in upholding segregated passenger trains.

1954. Rosa Parks leads the bus strike in Montgomery, Alabama and the Supreme Court decides *Brown v. The Board of Education*, 347 U.S. 483.

1963. Excerpt from Dr Martin Luther King's "I have a dream" speech:

> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal." I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at a table of brotherhood. I have a dream that one day even the state of Mississippi, a desert state, sweltering with the heat of injustice and oppression, will be transformed into an oasis of freedom and justice.

Obviously, America has not become an "oasis of freedom and justice." When Dr. King gave his speech, less than 240,000 people were behind bars. Today, prisons house over 2.3 million Americans. As a percentage of the total population, there are nine (9) times as many blacks incarcerated as whites. (U.S. Department of Justice, *Bureau of Justice Statistics*, 2004).

1964. Civil Rights Act (1964). This act signed into law by President Lyndon Johnson on July 2, 1964, prohibited discrimination in public places, provided for the integration of schools and other public facilities, and made employment discrimination illegal. This document was the most sweeping civil rights legislation since Reconstruction.

1965. Congress passed the Voting Rights Act of 1965 on August 10, making it easier for Southern blacks to register to vote. Literacy tests, poll taxes, and other such requirements that were used to restrict black voting were made illegal.

In *Reynolds v. United States*, 98 U.S. 145 (1879), the Supreme Court held that a potential juror could not be asked embarrassing questions such as, "Have you ever been convicted of a felony?" The Voting Rights Act kept this barrier intact.

Congress then enacted the juror qualification act prohibiting convicted felons from jury duty. 28 U.S.C. § 1865.

As civil rights columnist Barbara Rowland pointed out some time ago, at the present rate of incarceration, by the year 2010 every black male between the ages of 18 and 40 will be (or will have been) under some type of judicial supervision.

In many states, convicted felons can't vote. This means that by 2010 black males will be right back where they were in 1963. They will not be able to participate in the justice system *or* vote. Two of the three branches of our government (executive and judicial) are slowly closing the door to black males. Blacks are being made into *non*-citizens. Discrimination used to come from the bottom up. Now it comes from the top down. Either way, it is still discrimination.

1968. On April 4, 1968 (Memphis, Tennessee) Martin Luther King pays for his championship of civil rights.

In less than a hundred years, the percentage of lawsuits that make it *past* the judge and *to* the jury has dwindled from nearly one hundred percent to less than two percent. Even if you demand a jury and pay the jury fee, the chance that a judge will allow you to exercise your right to a jury is extremely small. With little more than his unmitigated power, a judge can simply deny your rights and decide the case himself…*his* way. The lucky two percent who are blessed with a jury are usually wealthy or powerful, or have managed to receive wide media attention. That tiny "two percent" permit the judiciary to sustain the illusion that liberty and justice is for all.

SOME BACKGROUND ON JUDICIAL AND PROSECUTORIAL IMMUNITY

In *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), the Supreme Court held that judges are immune from liability for damages in suits under 42 U.S.C. § 1983. *I.e.*, this was *Bradley v. Fisher* all over again. What had been cast in stone, was re-cast in steel. In his strongly worded dissent, Justice William O. Douglas stated, "it does not say 'any person except judges'." Since Congress would not volunteer to give judges total immunity, they just gave it to themselves. By that ruling, the court had just enacted a "judicial" law. Apparently judiciary interest is superior to the public interest.

Title 42 U.S.C. § 1983 "on its face does not provide for *any* immunities." *Heck v. Humphrey*, 114 S.Ct. 2364, 2375-76 n. 1 (1994).

In other words, what good is the Civil Rights Act (1964)

"the most sweeping civil rights legislation since Reconstruction" if a judge who ignores the Act, and who denies our rights, is not held accountable? Where is the incentive for him to behave?

Under Title 18 U. S. C. § 242, Congress provides that judges are liable for criminal acts committed under "color of law." The U.S. Attorney can charge a judge under this statute, but it is extremely rare and happens only when the behavior is so gross and obvious that it cannot be hidden.

That statute reads:

> 18 U.S.C. § 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

When you think of a "corrupt" judge, you may think of one who trades rulings for cash. As far as we know, that risky sort of corruption is rare. You must appreciate however, that corruption takes many subtle but equally destructive forms. A dishonest judge can ignore evidence, twist procedure, obstruct the record, retaliate, manufacture facts and ignore others, dismiss valid claims, suborn perjury, mischaracterize pleadings, engage in ex parte communication and misapply the law. When he does these things intentionally, he commits a crime. Petty or grand, the acts are *still* crimes. It takes surprisingly little to "throw" a case.

The U.S. Attorney will never pursue a judge under § 242 for these offenses. Judges know they will never have to answer for this type of crime. They are immune, not by law, but by "judicial legislation" and professional courtesy. Judges violate § 242 *all day long*. This sort of criminal activity is so systemic, that many "bad" judges are incapable of recognizing their own misbehavior or the misbehavior of their brethren. As President Bush said, "We must make no distinction between terrorists, and those who harbor terrorists."

The ultimate problem here is that the *only* way to get relief against a judge is to ask a judge for permission to sue a judge. As noted above, that never happens. As long as the subjects of the investigation are the gatekeepers of the investigation, there will *be* no investigation. Therefore, 18 U. S. C. § 242 is meaningless.

If Kathrein cannot win this fight to bring evidence of judicial misbehavior *directly* to a grand jury, then all Americans who are victims of § 242 crimes are denied their civil rights.

Judges argue that America cannot endure a judiciary that is subject to political pressures. Their constant refrain is "Independence!" and "Freedom from retaliation!" What they *really* want is, "Independence from *accountability*" and "Freedom *to* retaliate." We cannot allow the judiciary to spin

accountability as “political pressure.” Ultimately, it is the people who need protection from bad judges, not the other way around, (and the people will always praise a judge who obeys the rules).

Read sections 1 and 2 of Article III of the U.S. Constitution *very* carefully. Congress is authorized to make rules for the Supreme Court and create (and by implication, *dissolve*) the lower courts.

> Section 1: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.
>
> Section 2, Clause 2: In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

If Congress can make rules for the Supreme Court, then the Supreme Court is **not** “independent” of Congress. Congress is the master of the courts. The Supreme Court cannot “rule” away the power of Congress and it cannot “rule” away its duty to put the people’s interests ahead of its own.

Judges are supposed to be our public servants. If they disobey Congress, Congress has the right and the power to make them answer for it. We the People used to have this power. We

don't anymore because our public servants "decided" to take it away from us. In our trust and ignorance, we let them do it.

A citizen's right of access to an independent grand jury is our only hope of restoring honesty and fair play in the court system. Self-serving judges took that right away from us, and Kathrein seeks to take it back.

Dishonest judges have turned Dr. King's *dream* into Dr. King's *mirage*.

WHAT YOUR CONGRESSMAN CAN (and should) DO

If enough members of Congress follow the example of Thomas Jefferson, we can clean up this mess.

All we need are a few simple amendments to 42 U.S.C. § 1983 and the Federal Rules of Civil Procedure.

The Bible offers a foundation to support the changes we need.

> Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honor the person of the mighty: but in righteousness shalt thou judge thy neighbour.
>
> Leviticus 19:15 (King James Version).

In other words, "Be fair, no matter who is on trial – don't favor either the poor or the rich." Leviticus 19:15

(Contemporary English Version).

> And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.
>
> Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.
>
> Deuteronomy 1:16-17 (King James Version).

In other words, "When you settle legal cases, your decisions must be fair. It shouldn't matter whether the dispute is between two Israelites, or between an Israelite and a foreigner living in your community. And it shouldn't matter if one is helpless and the other is powerful. Don't be afraid. No matter who shows up in your court, God will help you make a fair decision. If any case is too hard for you, bring the people to me, and I will make the decision." Deuteronomy 1:16-17

(Contemporary English Version).

The oath of office taken by every federal judge, is derived from those two passages.

> 28 U.S.C. § 453. Oaths of justices and judges

> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _ _ _ , do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God."

When you read Kathrein's Petition for Certiorari you will see that the judges in his case ignored their oath, especially the section swearing to impartial judgment.

The Civil Rules of Procedure are the rules everybody is supposed to follow while their case is in the court. When a judge refuses to follow the rules, there is almost nothing you can do.

It's tolerable to lose a case fair and square. It's infuriating to get cheated. It's awful to have no explanation. It's discouraging to know that the guy in line behind you is going to be thrown into the pit on top of you. And it is unforgivable that the ones who intentionally rob you of your Constitutional right to a fair hearing should be immune from their criminal acts.

A MESSAGE TO CONGRESS: MAKE THE RULES OF THE GAME FAIR

1. TITLE 42 U.S.C. § 1983

The civil rights statutes of today are found in Title 42 of the United States Code, Public Health and Welfare. The civil rights statute used the most is 42 U.S.C. § 1983, which was designed to allow those who were mistreated by those administering state law to file a lawsuit in federal court.

Title 42 U.S.C. § 1983, under different statute numbers, was originally enacted in 1871 as a mechanism for enforcing the Fourteenth Amendment to protect freed slaves and Union soldiers mistreated by Southern courts (judges).

The current statute reads as follows (note the italics):

> § 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, 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*. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In 1996 Congress added a phrase to 42 U.S.C. § 1983, *"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."*

We could end judicial evasion and erosion of our civil rights if Congress replaced that phrase at the end of § 1983 with this sentence:

"*No judicially created abstention, comity, immunity or other doctrine may be applied by the courts which might foreclose, impede, or otherwise obstruct a federal civil rights complaint*."

2. RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

All cases consist of three parts: facts (what happened), law (statutes enacted by the legislature or prior rulings on similar

cases), and procedure (operating rules).

A basketful of judicial “doctrines” such as “abstention” and “comity” allow the judge to throw out your complaint almost immediately. The “prosecutorial immunity” doctrine allows a prosecutor to manufacture evidence or false testimony that could send you to prison for life. Even if you have solid evidence to prove he was corrupt, the law will not allow you to sue him. Therefore, if you are a prosecutor, a crime is not a crime, *i.e.*, prosecutors are also above the law.

As discussed earlier, it is common for judges to simply ignore, manufacture or distort the “facts” of a case in order to support the outcome they desire. If necessary, they will ignore or misinterpret the statutes or laws and, if all else fails, they will employ the most unstoppable tool in their bag – *judicial discretion*. On appeal, it is almost impossible to reverse a judgment by alleging “abuse of discretion.” Another “doctrine” states that a reviewing (Appeals Court) court will always “defer” to the judgment of a trial court on “discretionary” matters. Unfortunately, almost *everything* is “discretionary.”

Early English courts understood what “discretion” really meant.

> “The discretion of a Judge is the law of tyrants: it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable.”
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> Lord Camden, L.C.J., *Case of Hindson and Kersey*, 8 Howell State Trials 57 (1680).

To fix this part of the problem, Congress need only amend Federal Rule of Civil Procedure 52(a), which reads:

> Rule 52. Findings by the Court; Judgment on Partial Findings
>
> (a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. *Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.*

Remove that last sentence in 52(a), which reads:

"*Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule*."

If Congress removed this sentence, judges would be forced to explain their rulings. Whim and prejudice are much harder to conceal if a judge has to explain *why* your rights were denied, and they could no longer rule on pleadings they haven't read.

3. RULE 56: SUMMARY JUDGMENT

Rule 56 is summary judgment. A judge cannot determine the truth of your facts; that job is the sole dominion of the jury. Judges have a little dance they use to get around this technicality. They call it the "Two-Step." *Step One*: The judge arbitrarily decides that there are no "material" facts in dispute. Without facts in dispute, there is nothing for a jury to "decide." Since there is no longer a need for a jury, the judge can process your complaint himself. *Step two*: Case dismissed. Pro se litigants call this practice the "Bum's Rush."

Rule 56 neatly evades the Seventh Amendment, which guarantees your right to a jury trial.

Congress should add the following text to rule 52:

> "*Every judicial decision must be accompanied by a statement of facts and conclusions of law.*
>
> *Every federal judge, law clerk, and staff attorney shall keep time records in six-minute increments on every pleading, motion, brief, memorandum or other paper submitted in each case they adjudicate and summarize the nature of the work performed.*"

The six-minute rule might sound a little odd but it isn't. Most lawyers bill their clients in six-minute increments. This rule will prevent unethical judges from "processing" three hundred hours worth of caseload in a thirty hour work week.

With the above legislative amendments Federal Rule of Civil Procedure 52 would read as follows:

> Rule 52. Findings by the Court; Judgment on Partial Findings

> (a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Every judicial decision must be accompanied by a statement of facts and conclusions of law. Every federal judge, law clerk, and staff attorney must clock in and clock out, in six-minute increments on each and every pleading, motion, brief, or other paper submitted in each case they administer, work on, or review, and sign off on what they did.

What is the difference between a well-reasoned opinion and one that is arbitrary or retaliatory? Without an explanation, it is impossible to know which kind they gave you. "Due Process" demands that a judge give reasons for his ruling(s).

> I could stop right here and have no trouble concluding that the judge committed misconduct. It is wrong and highly abusive for a judge to exercise his power without

the normal procedures and trappings of the adversary system-a motion, an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is-and is seen to be-based on law, not the judge's caprice. The district judge surely had the power to enjoin enforcement of the state-court eviction judgment once he assumed jurisdiction over the bankruptcy case, but he could legitimately exercise that power only if he had sufficient legal cause to do so. Here, the judge gave no indication of why he did what he did, and stonewalled all the Trust's efforts to find out.

In re Complaint of Judicial Misconduct, 425 F.3d 1179 (9th Cir. 2005) (Kozinski, C.J., dissenting).

RANDOLPH, Circuit Judge: When a district court's ruling on a pretrial motion involves factual issues, Rule 12(e) of the Federal Rules of Criminal Procedure commands the court to "state its essential findings on the record." The rule serves several functions. Findings on the record inform the parties and other interested persons of the grounds of the ruling, add discipline to the process of judicial decision-making and enable appellate courts properly to perform their reviewing function. If the district court not only fails to make "essential findings on the record," but also expresses nothing in the way of legal reasoning, if it simply announces a result, it may frustrate these objectives.

U.S. v. Williams, 951 F.2d 1287 (D.C. Cir. 1991).

Your Congressman will probably not want to be the first one to "rock the boat" by amending § 1983 or Rules 52 and 56. If we make it clear that his job depends on it, he will change his mind in a hurry.

In this last section you will see that blacks and whites are not the only victims of an agenda-orientated legal system.

HARVESTING MEXICANS

The world stands in "shock and awe" at the surgical efficiency of the U.S. Military's invasion of Iraq. In less than 30 days our armed forces toppled the government of Saddam Hussein and destroyed his army.

A Congress that sent hundreds of thousands of men a third of the way around the world to defeat a nation of 17 million people in 30 days, is the same Congress that cannot seem to stop a leaking border right next door.

This is the same Congress that puts Mexicans in a *U.S. prison* if they are caught trying to cross the border a second time.

This the same Congress that enacted NAFTA, bringing Mexican agricultural products north for higher prices, raising the price poor Mexicans had to pay for food grown in their own country.

Instead of invading Iraq, Congress *could* have put a quarter million armed troops on our border with Mexico. A quarter million men stretched over 1700 miles equals one-armed soldier every 36 feet. (Prison watchtowers are several hundred feet apart.)

Our border with Mexico leaks because Congress *allows* it to leak.

To better understand this contradiction, let us take a brief look at U.S. labor history.

In a wealthy society, the elite do not want to work. They require an underclass of people to do the work for them. This includes menial *and* blue-collar jobs.

In the eighteenth century the elite bought slaves from Africa for these jobs. In 1865, Abe Lincoln and the Union Army eliminated that pool of labor. The need for cheap workers did not just go away. Someone had to replace the slaves.

In one of history's ironies, the wife of Ulysses S. Grant, commander of all the Union forces that freed the slaves, was asked why she hadn't freed her own slaves until 1867. Her answer was, "Good help is so hard to find these days."

After the Civil War the "giants of industry" encouraged foreign immigration to keep the workers flowing – Irish, Poles, Germans, Chinese, Italians, Greeks. Foreigners worked much cheaper than those raised on American soil.

History tells us of the Chinese Exclusion Acts and other laws passed to protect American jobs. For the most part, those laws did not work. They were the equivalent of putting a Band-Aid over a bullet wound. America rocked with labor unrest from 1870 through the beginning of World War II.

Between WWII and the Seventies, American labor unions became powerful enough to neutralize underclass work opportunities. Cheap labor went on hiatus, but the pressure stayed on. If the ruling class could no longer bring slaves or immigrant laborers *in*, they simply shipped the jobs *out*. It was a partial solution.

Shipping jobs out kept costs down and profits up but it couldn't solve the domestic (underclass) shortage. *Somebody* needs to be at the bottom here at home. Undocumented Mexicans have been made the slaves *du jour*.

If judges can keep them afraid, they can keep them "cheap." Judicial intimidation and threats of prison keeps them afraid. This source of cheap labor is sustained by our courts.

COMING FULL CIRCLE

As you read earlier, it is easy for the judiciary to pack our prisons.

There is a surprising but not accidental, by-product of judicial corruption; America, the "land of the free," has 5% of the world's population and 25% of the world's prison population.

A free man once convicted, is a slave for life. Release is *not* freedom.

While they are "in," prisoners are a source of cheap labor. When they get out, they stay cheap forever.

Who wants to hire an ex-con? Most ex-cons are lucky to find jobs as dishwashers or janitors. No one with a "record" is going to get a respectable position. Many federal and state government positions are "off-limits" to convicts by law. A convicted person cannot secure *any* employment at the U. S. Post Office.

Instead of paying 'good' citizens a decent wage, corrupt judges can "process" blacks and Mexicans through the criminal justice system and make them slaves for life.

It's easy to keep undocumented Mexicans and black men at the bottom. Most Mexicans are *not* U. S. citizens and blacks can be easily converted into "non" citizens. Neither group can serve on a jury, go near a ballot box, get a fair trial,[3] serve in the military, escape their illegal or felon status, or find a decent job. (But some however, *can* still be judges.)

An untouchable judiciary keeps the "slave trade" going and more importantly, keeps their voting voices silent.

History repeats itself. Harvesting blacks and Mexicans for slave labor today is the same as importing Africans for slave labor in the first half of the nineteenth century.

Our untouchable judicial system is the harvesting machine.

WHAT WE MUST DO – *TODAY*

Our judicial system is not immune from reform.

Read Kathrein's Petition to the U.S. Supreme Court. It is unlikely that the Supreme Court will decide to consider his question without a public outcry. Does the Supreme Court have the courage to make jurists accountable, as our forefathers originally provided? We need to make it loud and clear that members of the Supreme Court do not work for their subordinates, (other judges) they work for their bosses…We the People.

Mr. Kathrein has slim hope that the Supreme Court will face this question. If they refuse, all is not lost.

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[3] Many states allow the unfair practice of listing the defendant's previous convictions on his indictment, which the jury then considers for the most recent offense.

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

Should it be necessary, he will press this issue to Congress.

If our representatives in Congress will not make judges answerable to We the People (and NOT to each other) then *we* as a group, must vote *them* as a group, out of office.

When enough current members of Congress start to lose their jobs because they abandon us to the judicial, prosecutorial, and legal players, their replacements *will* listen.

Read Kathrein's Petition. It demands the return of everyone's rights. This might be our last and only chance to reclaim them. If the Petition is denied, a golden opportunity is lost.

The Supreme Court might decide whether to hear this Petition sometime in the next month or two, but no later than September 2006.

Together, we must tell Congress to tell the Supreme Court to accept this case.

The time to act is now. Our window of opportunity will close very soon. Tell your friends and neighbors. Call people who can get the message upstairs. If you don't know anyone on the inside, call someone who does, or someone who knows someone who does. Direct them to our website.

Take a few minutes *today* to make this happen.

God bless us all.

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