I.

The only way slavery and genocide can exist openly in a society is with the participation of the government – and indirectly the people. In the United States the final check on tyranny was supposed to be the judicial department, composed of courts governed by judges whose judicial power was intended to be checked by juries of citizens.

But a predictable thing occurred when the judges nixed juries (by employing procedural technicalities to get around their constitutional authority) and mixed with the rich and powerful… The judges took sides; the wrong side — the side of the rich of powerful against providing justice for the people. *See e.g.* Dahlia Lathwick, "This Court Erred: The Supreme Court has almost always sided with the wealthy, the privileged, and the powerful, a new book argues" Slate (September 30, 2014)

reviewing 2014 book by Constitutional Law Professor Erwin Chemerinsky, The Case Against the Supreme Court. See also "*Do the "Haves" Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925-1988*", 33 Law & Soc'y Rev. 811 (1999); Galanter, Mark, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" (1994).

As my two previous articles on "the evolution of debt slavery in modern times" assert, american courts have consistently used their Article III judicial power to benefit the rich and powerful at the cost of providing justice for the people. In the *Dred Scott v Sanford* ruling the Supreme Court concluded the entire race of black people was *not* entitled to seek justice in american courts because they were merely *property* which was meant to be bought and sold by wealthy white americans.

This travesty of judicial review (criticized by President Abraham Lincoln both in the context of constitutional doctrine and with regard to the Dred Scott case specifically) spawned the great Civil War which the people had to fight to undo the injustice of the judicial branch. The War *cost this nation the lives of 620,000 people* simply because a calloused judicial branch turned its back on that basic truth that government's overriding purpose is to achieve justice by protecting the inalienable rights of all people…

And unfortunately american judges have typically had no clue about the difference between good and evil or right and wrong or justice and injustice because of their longstanding and unflinching loyalty to the rich and powerful.

Regrettably… this hasn't changed.

One of the Supreme Court's most recent cases perpetuating modern day debt slavery is its unanimous opinion in *Henson v Santander Consumer USA Inc.* In that case the Court held the Fair Debt Collection Practices Act, which was enacted by Congress to prevent "debt collectors" from using unfair and unconscionable debt collection practices against the consumers, including homeowners, does not apply to *debt buyers*. Translation: Debt Buyers can use unfair and unconscionable practices to collect debts they have purchased for pennies on the dollar and cannot

be held liable for those injuries such practices cause to the lives, liberties, property, and happiness of the people.

Santander is the modern day moral equivalent of *Dred Scott* in that it treats debtors as property the wealthy can abuse. Santander eschews any notions of justice or equity in order to motivate the sale of bad debt to unethical hedge funds who use every unconscionable trick in the book to attack and hurt american consumers to collect bad debt.

Congress' goal in enacting the Fair Debt Collection Act was to prevent unscrupulous downstream debt buyers from bombarding Americans with bad faith debt collection practices and then the Supreme Court comes along and tells these creep companies and their soulless lawyers that they can mistreat the people in order to collect purported debts, which often are not owed.

How does *Santander* reflect justice or even good public policy?

The obvious answer is it does not. *Santander,* just like the *Dred Scott* case, starts from the dubious proposition that: "[i]t is not the province of the court to decide upon the justice or injustice…" and then misinterprets legislation to insure the continued redistribution of wealth to the 1%, which has always been its practice except for a brief period of time when FDR threatened to pack the Supreme Court in order to squelch this habit.

If it is true (and I think it is) that American courts are not about justice, then we as a people must ask do we need (or want) Article III courts at all? For as James Madison so famously wrote in Federalist Paper No. 51:

… Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, *or until liberty be lost in the pursuit*. …

II.

There is circumstantial evidence the Supreme Court sought to facilitate the impact the 2008 financial collapse. This collapse was utilized to transfer middle class wealth from this Nation's people to its Wall Street sociopaths; a plan which the facts suggest has resulted in one of the one of the

most massive genocides ever known. *Cf.* Miller, Pam, Church of the Gardens Press, *El Abandonado,* (2017); The Guardian,"Mortality rate for homeless youth in San Francisco is 10 times higher than peers" (April 14, 2016); "Homeless die 30 years younger than average (December 11, 2011). See also infra and bibliography, part IV.

The circumstantial evidence against the Supreme Court includes, among other things, an unusual (perhaps unlawful) change in the Federal Rules of Civil Procedure which occurred in 2007.

28 USC §2072(a) provides the Supreme Court shall have the power to promulgate general rules of practice and procedure of the United States District Courts. But going through the judicial rule-making process would have taken more time than was needed to help the bankers.

So in 2007 (just before the 2008 financial collapse) the Supreme Court judicially interpreted Federal Rules of Civil Procedure 8 and 12(b) in such a way as to give judges almost absolute power to prevent homeowners' cases from being decided pursuant to a trial by jury. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), and *Ashcroft v. Iqbal,* 556 U.S.554 (2009).

The Supreme Court determined in *Iqbal* and *Twombly* that to obtain a trial, including a trial by jury, a party must prepare a complaint which would be *plausible to a federal judge*. Prior to this time it was only necessary to establish a possible claim, not one a federal judge found plausible.

The concern over the Supreme Courts unusual change in the rules was palpable. Indeed, it was immediately criticized by many of this nations most well known and respected legal scholars. *See* Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure, 60 Duke L.J. 1 (October 2010); Stephen N. Subrin, Thoma O. Main, THE FOURTH ERA OF AMERICAN CIVIL PROCEDURE, 162 U. Pa. L. Rev. 1839 (June 2014) *See also* Bibliography below, section I. And many state court's refused to fall in line because of the Supreme Court's underhanded use of judicial decision making as a basis for changing the rules of procedure for district courts. *See Hawkeye Foodservice Distrib. v. Iowa Educators Corp., 812 N.W.2d 600, 607-608 (2012). See also Bibliography below, section I.*

The 2007 rule change had an extremely negative impact on the American people who owed debt, homeowners particularly.

Many of us believe the new rule was perpetrated by those who knew the result would likely be the genocide which is still ongoing today.

By 2011 criticism of the Supreme Court's usurpation of power reinterpreting Rules 8 and 12 had grown to the point where the Federal Advisory Committee on the Rules apparently felt it was necessary to ask the Federal Judicial Conference to provide "cover" for the Supreme Court's unilateral change in the Federal Rules. The Federal Judicial Center attempted to do so by suggesting that the rule change had not made much of a difference in having cases dismissed, except in the area of financial instruments (cases involving American homeowners). *See e.g.* *Joe S. Cecil, Et. Al., Fed. Judicial Ctr., Motion To Dismiss For Failure To State A Claim After IQBAL: Report To The Judicial Conference Advisory Committee On Civil Rules (2011)*

This is significant because even the Federal Judicial Center had to admit the effect of the instantaneous rule change on homeowners and others litigating financial instruments was devastating. *See Id.*, page 14, Table 4 which substantiates that over 91% of claims filed by lawyers in these type of cases got dismissed under *Iqbal/Twombly*'s judge-centric plausibility standards.

III.

America's 21st century court system doesn't even resemble the judicial department which our forefathers intended we should have.

The Constitution clearly intended the people would be entitled to trials by jury pursuant to a traditional common law adversarial judicial system. *See e.g.* Todd Peterson: Restoring Structural Checks on Judicial Power in the Era of Managerial Judging, 29 U.C. Davis L. Rev. 41 (Fall, 1995)(("[Judges] are limited by prior case law and by congressional statutes. In defending the independent judiciary, Hamilton expressly relied on the power of precedent as a check on judicial power: 'To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that

comes before them . . . .' The framers did not grant judges the right to exercise their own unlimited discretion or will instead of judgment.")

But we certainly don't have these rights any longer thanks to the Supreme Court, which has systematically usurped these rights to benefit the rich at the expense of the people.

The government has intentionally transformed the american adjudication process into a system of judicial tyranny reminiscent of the inquisition, especially for the poor. *See* Criminalization Justice Policy Program, Harvard Law School, Criminalization of Poverty (last accessed on October 12, 2017); Rogayah Chamseddine, SPIN, "The Criminalization of Poverty," (February 6, 2017; *Cf.* Stannard, Matt, Occupy.com, "Part I: 34 Ways America's Legal System Hurts the Poor" (April 22, 2017); Part II (April 30, 2017)

Indeed, most people get so bludgeoned via abusive federal judicial processes that few can last long enough to ever obtain a trial. *See* Scott E. Stafne, scottstafne.com, Scorched Earth Litigation Model, September 15, 2015. It is no understatement to suggest america's judicial system kills and/or injures those who are forced to encounter its abuse. *See* e.g., Caught.net & the Pro Se Way (last accessed October 10, 2017); Huffer, Karin,Legal Abuse Syndrome: 8 Steps for Avoiding the traumatic Stress Caused by the Justice System (2013).

And I am not the only one who has noticed this nation's systematic abuse of america's middle class by the federal and state judicial branches of government has negated those protections our founders intended we have against judicial tyranny. See e.g. Jessica K. Steinberg, "Adversary Breakdown and Judicial Role Confusion in 'Small Case' Civil Justice", 2016 B.Y.U.L. Rev. 899 (2016). ("The adversary ideal favors a passive judge, but the unrealistic demands of such a paradigm in today's "small case" civil justice system have sparked role confusion among judges, who find it difficult to both maintain stony silence and reach merits-based decisions in the twelve million cases involving unrepresented parties. This Article contends that the adversary ideal is untenable in the lower civil courts. Appellate courts and ethics bodies have virtually ignored this problem, with the result that judges are left to improvise a solution."

In September of this year well respected Seventh Circuit Court of Appeals Judge Richard Posner, actually retired because of the unfair treatment other federal judges gave *pro se* litigants.

Pro se litigants include those people who can't afford a lawyer to represent them and must therefore negotiate the byzantine, bizarre, and corrupt federal judicial gauntlet by themselves before staff attorneys and federal judges who do not like them very well.

According to Posner (and consistent with my observations over the last decade) "most judges regard [pro se litigants who can't afford lawyers] as kind of trash not worth the time of a federal judge." Because these arrogant judges believe *pro se* arguments are worthless their appeals are not decided by federal judges or law clerks, but staff attorneys. Posner reports the judges of the 7th Circuit simply rubber stamp the decisions of these "staff lawyers" who decide the *pro se* appeals.

Here is a copy of an interview with Judge Posner which describes his observations in his own words.

DL: As you've explained in several interviews — with the Chicago Daily Law Bulletin, with me for these pages, and with Adam Liptak of the New York Times — you resigned in part because of your disagreements with colleagues about the Seventh Circuit's treatment of *pro se* litigants. I know you discuss this in detail in your new book (affiliate link) — can you offer us a little preview?

RAP [Richard A. Posner]: Pro se litigants, by definition, don't have a lawyer. This generally means they don't have money to hire a lawyer. So they have to litigate for themselves. They're handicapped by not having money and not having a lawyer, and they also tend to have limited education. About half of our appeals are by pro se's, and about half of those are prison inmates.

When *pro se* litigants appeal, their appeal papers are given to a staff attorney. We have about 20 staff attorneys who are appointed for two years, and a few supervisors. The staff attorneys tend to be good students from good schools, ***hired right after they graduate***. ***Despite their good credentials, they tend to be hostile to the pro se's. It's not their own feelings; it's that they sense — correctly — that the judges don't really care much about the pro se's, find them***

nuisances, and are not interested in them. So that percolates down to the staff attorneys, and they have a tendency to go against the pro se appeals even when they have apparent merit.

So very often, a staff attorney memo recommending dismissal of the appeal gives rise to a very short, very rapidly issued order by a judicial panel, not published in the Federal Reporter, that tends to be perfunctory. ***One of my former colleagues thinks that two words are enough for an order dismissing a pro se appeal: "Appeal dismissed."***

I didn't think the *pro se* litigants were getting a fair break. I made various suggestions, all of which were rejected. I wasn't making progress in helping the *pro se's*. And I didn't have good relations anymore with the other judges — not really on a personal level, but we just didn't see eye to eye on the *pro ses*.

So I stepped down from the bench and published my newest book, which is now out: *Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments* (affiliate link).

(Emphasis Supplied)

Judge Posner, who took the time to review some of these staff attorney's decisions, correctly discerned that delegating judicial power to "baby lawyers", without any meaningful supervision by active Article III judges, was improper. To me, this is rather obvious!!!

It is important to understand Judge Posner did not resign until after all the other judges on the Seventh Circuit refused to require (or even allow) these baby "staff lawyers" decisions regarding pro se appeals to be meaningfully reviewed by active Article III judges, as I believe is required by the Constitution.

The American Bar Association Journal asked the Seventh Circuit for a comment on Judge Posner's accusations. In response Dianne Wood, the Chief Judge of the Seventh Circuit (a liberal appointed by Bill Clinton) responded:

"First, while [Judge Posner] is certainly entitled to his own views about such matters as our Staff Attorney's Office and the accommodations we make for *pro se* litigants, it is worth noting that his views about that office are not shared by the other judges on the court, and his assumptions about the attitudes of the other judges toward *pro se*litigants are nothing more than that—assumptions.

In fact, the judges and our staff attorneys take great care with *pro se* filings, and the unanimous view of the eleven judges on the 7th Circuit (including actives and seniors) is that ***our staff attorneys do excellent work, comparable to the work done by our chambers law clerks. We are lucky to attract people of such high caliber for these two-year positions.***"

(Emphasis Supplied)

Significantly, the Seventh Circuit's response concedes Judge Posner's point and establishes the corruption of 21st century american courts. *See* Brian Vukadinovich, American Thinker"Reforming the 7th Circuit" (October 19, 2017) Wood admits on behalf of the Seventh Circuit that staff attorneys are performing the functions of Article III judges in *pro se* appeals without the same type of oversight as is provided a judicial clerk wrestling with an appeal where both sides are represented by an attorney. As Vukadinovich such conduct by the 7th Circuit is just plain wrong and likely unconstitutional:

Merely saying that the judges who are the subject of Posner's allegations "don't share Posner's views" about their alleged wrongdoing does nothing to reassure the public that the 7th Circuit's attitude toward pro se litigants is as frivolous as Posner has alleged.

Since the issues involve a high matter of public importance, there should be a very thorough investigation of the 7th Circuit. Federal Rule of Appellate Procedure 4 explicitly states that an appeal is a matter of a "right." The rule doesn't give the judges of the 7th Circuit, or any circuit for that matter, any discretion in diminishing that right when it comes to a *pro se* appeal. Furthermore, the "Standards for Professional Conduct Within the Seventh Federal Judicial Circuit", item 6, explicitly states "We will give the issues in controversy deliberate, impartial, and studied analysis and consideration." Item 8 states "…that a litigant has a right to a fair and impartial hearing…" A custom

of systematically dismissing pro se appeals hardly meets the threshold standard of "…a right to a fair and impartial hearing…"

It is a major red flag when judges aren't even willing to follow the rules of their own court, and that certainly does appear to be the case with the judges in the 7th Circuit. Systematic discrimination by judges against a class of people, pro se litigants in this case, is wrong and against the law. Wood's public response is not good enough. A grand jury should be empanelled and the judges and staff attorneys and law clerks should be required to testify under oath so that a factual determination may be made as to whether or not the judges on the 7th Circuit are systematically discriminating against the pro se litigants.

Id. (emphasis added)

This admission has staggering repercussions when one realizes most court cases today involve *pro se* litigants. See e.g. ABA Law Journal, "86 percent of low-income Americans' civil legal issues get inadequate or no legal help, study says" (June 14, 2017); Legal Services Corporation, The Justice Gap: measuring the Unmet Civil Legal Needs of Low-income Americans (June 2017); Lawyerist.com, "Measuring the Access-to-Justice Gap: Nearly 70% of All Civil Defendants Aren't Represented" (2016) ; ABA Journal, "Can the access-to-justice gap be closed" (2016).

The reality that our courts more often than not decide cases where only one side is able to effectively present their side to a judge or jury is at odds with those basic tenets of justice the Revolutionary war was fought to achieve. Clearly, constitutional history establishes that the people who ratified the Constitution were led to believe the Constitution was designed so judges would not become judicial tyrants, unchecked by juries and the Congress. See Federalist Paper No. 78.

Yet, that is exactly what has happened.

And scholars the world over who observe the American judicial system quickly appreciate america's courts and judges have little, if anything, to do with justice or fairness.

IV.

The “honest to God” truth is America’s Article III judicial department has dismantled those basic constitutional checks on its power which were established to prevent it from devolving into the tyrannical judocracy it has become. Looks at the facts. The facts dispute virtually all the myths our courts perpetuate to make us believe our judicial branch performs its constitutional duties.

- MYTH: “Only the United States makes routine use of jury trials in a wide variety of non-criminal cases.” *See*Wikipedia.

TRUTH: Less than 5% of cases filed ever get to trial let alone a trial by jury.

- MYTH: America has an adversarial system of justice where both sides are competently represented before a neutral judge and jury.

TRUTH: Over half the cases presented to these supposedly neutral judges (who apparently don’t like or respect 99% of us) are handled by non-lawyers who have no experience with the mostly counter intuitive archaic rules of procedure and evidence which make litigation more a game than a search for truth. *See* Bibliography, Past IV.

- MYTH: the United States judicial system is based on the common law.

TRUTH : The common law system of precedent has not existed in America for sometime. *Compare e.g. Anastasof v. United States*, 223 F.3d 898 (8th Cir. 2000) (Courts are required to make and follow precedent) *with Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001)(Judges can decide when they want and if they want to create precedent) *with* Judge Posner’s observations that today courts need not even explain their reasons for their decisions by simply stating “Appeal Dismissed”. *See supra.*

A recent law review, Unpublished Decisions and Precedent Shaping: a Case Study of Asylum Claims, 31 Geo. Immigr. L.J. (Fall 2017) considered a decades worth of data following the Supreme Court absolving federal courts of appeal of the responsibility for creating (and apparently following) precedent. According to Professor Scott Rempell, the author of the study:

The federal courts of appeal now publish fewer than twenty percent of their decisions. The effects of depriving so many decisions of precedential value are disputed. Critics believe selective publication harms law development and distorts legal doctrine, while selective publication's defenders are unconvinced that the available evidence demonstrates pervasive problems in need of reform. Accounting for the flaws and limitations of past empirical assessments, this article provides the results of a study that was designed to establish a more concrete understanding of how selective publication impacts development of the body of law. ***The study draws on a comprehensive dataset of all asylum cases in the Ninth Circuit that addressed the issue of persecution over a six-year period. The results show that the court incorrectly perceived how often it reached certain outcomes in past decisions, because many of the outcomes were buried in unpublished dispositions. Additionally, many of the rule statements the court applied in unpublished decisions contradicted rules it promulgated in its public decisions, which indicates the "book law" is not completely settled. The court also reached inconsistent outcomes regarding a significant percentage of its unpublished cases. Finally, panels failed to address highly germane precedents that losing parties raised in their briefs….***

(Emphasis Supplied)

V.

In case No. 3 of the Nuremberg Trials 16 defendants who were former German judges, prosecutors or officials in the Reich Ministry of Justice, were found guilty of committing war crimes and crimes against humanity. The tribunal found, in effect, that while on paper the rights established by the Weimar Constitution were retained by the Nazis, there was a progressive degeneration of the judicial system under Nazi rule and that substantially every principle of justice enumerated by prior German law was violated by the Hitler regime.

The same can be said about about the United States judicial system. Our courts have attacked our constitutionally protected jury system to the point where it is for all practical purposes now extinct. The common law is no longer predictable because judges no longer believe their rulings must be

anchored to precedent. Far too many judges act as despots who can berate, belittle, and harm those who appear in their ostentatious court rooms.

Obviously, if as James Madison postulated *justice* is the goal of government, our courts and the other two branches of our government have failed us. We need good competent judges who are paid to ferret out the truth in a pragmatic way; not baby or senile lawyers awed by their power and the courtesan legal cabals which seek their favor. If our constitutional system is now dead let's move on to one that actually attempts to provide justice for a free people.

Ever wonder how many millions of people the american courts have caused to be evicted since the Supreme Court made it so easy for them to do so in 2007? Me too.

Unfortunately, looks like the government doesn't keep very good track of this. See Bibliography, Parts V & VI. The last estimate I recall reading in a non-government article was that as of 2013 over 30,000,000 people had been forced from their homes. Unfortunately, that article appears to have been scrubbed from the internet. But such numbers are consistent with a May 2015 article in the Washington Post, which states:

The scale of this entire foreclosure migration is deceptively large. The 10 million households that lost their homes dwarf the number that left the Great Plains during the Dust Bowl (that was about 2.5 million people). In fact, it is larger than the 6 million blacks who moved north during the Great Migration — a movement that spanned decades.

Emily Badger, **"How the Housing Crisis Left Us More Racially Segregated,"** Washington Post, May 8, 2015.

Next question. What happens to the people our courts force onto the streets? Just as you would expect, there are very few recent studies on this as well.

However, way back in 2011 when courts were accelerating foreclosures and homelessness, virtually everyone knew the banks had rigged the system and were blatantly using forged documents to take people's homes. (*see e.g.* 2011 60 Minutes programs and Congressional Hearings). Turns

out the courts didn't care about either the forgeries or the health crises, including deaths, such injustice was causing the people. See Bibliography, Part V.

The new research found that the average homeless person has a life expectancy of 47, compared to 77 for the rest of the population: a startling difference of 30 years…

NHS choices; your health, your choices "Homeless die 30 years younger than average (December 11, 2011).

So let's assume based on the data (and lack of data) set forth in Part V of the bibliography that at least 30,000,000 people have been evicted by the federal and state governments from their homes. Of that number only a third of these people are able to escape homelessness. *Cf.* Wall Street Journal, Many Who Lost Homes to Foreclosure in Last Decade Won't Return — NAR (April 5, 2015) This means our courts and governments have robbed these people collectively of 60,000,000 million years of life. This wouldn't happen in a just society of free people where the banks had already been bailed out of these losses which were a result of their own criminal behavior. Mark Collins, Forbes, "The Big Bank Bailout" (July 14, 2015)

I have written about american judges crimes against humanity. *See e.g.* Stafne, Scott, "Free House or Death Sentence?", scottstafne.com (April 27, 2017) , See also Stafne, Scott, "Happy Thanksgiving – 2016" scottstafne.com (November 23, 2016) . *Cf.* Stafne, Scott, "Judicial Review – A Slippery Slope", scottstafne.com (August 21, 2014). Others have also explained that the reasons American law is so similar to that created by the Nazi's is because Germany's judges and lawyers used American law as their example. Bill Moyers interview with James Whitman is a good example. *See*, For the Record,"Hitler's American Model: The United States and the Making of Nazi Race Law" (October 13, 2017). The interview discusses Whitman's new book Hitler's American Model: The United States and the Making of Nazi Race Law, Princeton University Press (2017)

But no one wants to have to care about their lost neighbors because then we all become complicit in these crimes by the united states against this nation's own people.

In *United States of America v. Alstötter, et al*. ("The Jurists' Trial"), 3 *T.W.C*. 1 (1948), 6 *L.R.T.W.C.* 1 (1948), 14 *Ann. Dig.* 278 (1948) the Court well stated the gravity of judges relying on false evidence when imposing death and/or severe sentences on citizens, who have been robbed of their freedom.

He [the judge defendant] formed his opinions from dubious records submitted to him before trial. By his manner and methods he made his court an instrumentality of terror and won the fear and hatred of the population. From the evidence of his closest associates as well as his victims, we find that Oswald Rothaug represented in Germany the personification of the secret Nazi intrigue and cruelty. He was and is a sadistic and evil man. ***Under any civilized judicial system he could have been impeached and removed from office or convicted of malfeasance in office on account of the scheming malevolence with which he administered injustice.***

Conclusion.

"In a well-functioning judicial system, negotiated resolutions of litigated disputes should reflect not only the interests of the disputants but also a reasonable approximation of the factual and legal merits of claims." Brooke D. Coleman, "THE EFFICIENCY NORM" 56 B.C. L. Rev 1777 (2015) Just as this observation did not apply in the *Dred Scott* case it does not apply to the vast majority of those of us who find ourselves trapped in court proceedings today. This is because our government views those of us who cannot shell out cash for a court's favorable ruling as something less than the free people our Constitution intended would be entitled to justice.

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II. IQBAL/TWOMBLY BENEFITS CORPORATIONS AND THE WEALTHY AT THE EXPENSE OF THE PEOPLE.

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("[A]s we show in this Essay, in many key sectors of our economy, suits by individual plaintiffs have become a rare phenomenon, if not a virtual impossibility. The architecture of liability, by making causes of action more complex and difficult to prove, while equipping defendants with multiple

defenses, coupled with the fact that large corporate defendants enjoy a vast cost advantage over individual plaintiffs on account of superior legal expertise and economies of scale and scope, make it nearly impossible for individual plaintiffs to prevail in court, or even get there. This problem pervades many industries, but, for the reasons we detail, it is particularly acute in the insurance, healthcare, medical, and consumer finance sectors.)

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("As in politics and economics, a system that gives too much control to the one percent risks undervaluing and under-serving the remaining ninety-nine. Using social and political science, the Article argues that the homogenous policy making of one percent procedure creates sub optimal results. The Article concludes that the structures giving rise to one percent procedure must be modified and proposes a set of reforms intended to allow the ninety-nine percent representation in, and access to, the process of constructing our shared civil litigation system.")

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The degeneration of the american empire's legal system has been accompanied by litigation models which rely on the disparity of resources between the parties (not the facts or law of any specific case) as the primary basis for resolving cases.

It is my observation that the "Scorched Earth" litigation model, named after General Sherman's infamous military campaign, is used in virtually 100% of all foreclosure litigation. This model is based on the business premise that banks and servicers should spend whatever money is necessary to win so as to deter homeowners (and any potential lawyers who might be inclined to represent them) from challenging any foreclosure judicially.

I have personally seen this multi-billion dollar industry spend more in litigation costs than the worth of the houses they are foreclosing on. I have been told by servicers' lawyers that their clients do not factor in defense costs for purposes of settling with homeowners (even where the homeowner has obtained a summary judgment of liability against the servicer) because they want homeowners and their lawyers to know that they will spend whatever it takes to win in court.

The point they are making is one Americans should contemplate: Are we now living in a totalitarian society where the courts are rigged and judicial decisions are decided not by the merits, but the money the parties are willing and/or can afford for litigation?

III. JURY TRIALS ARE VIRTUALLY EXTINCT IN THE UNITED STATES NOTWITHSTANDING THEY ARE GUARANTEED BY THE CONSTITUTION.

COLLOQUIUM: CIVIL LITIGATION ETHICS AT A TIME OF VANISHING TRIAL: SETTLEMENT IN THE ABSENCE OF ANTICIPATED ADJUDICATION, 85 Fordham L. Rev. 2017 (April 2017)

Benjamin Weiser, Trial by Jury, a Hallowed American Right, Is Vanishing, N.Y. Times (Aug. 7, 2016)

Honorable Mark W. Bennett, REINVIGORATING AND ENHANCING JURY TRIALS THROUGH AN OVERDUE JUROR BILL OF RIGHTS: A Federal Trial Judge's View, 48 Ariz. St. L.J. 481(Fall 2016)(Article can be downloaded from link)

Stephen D. Sussman, "35th Annual Conference of American Conference of American Society of Trial Consultants "Disappearing Civil Trials" pp. 4-16 (2016);

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Brooke D. Coleman, "THE EFFICIENCY NORM" 56 B.C. L. Rev 1777 (2015)

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Honorable Judge William G. Young, (2011)"In Celebration of the American Jury Trial" (2014);

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IV. *PRO SE* LITIGANTS

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In America, the judiciary has increasingly had to grapple with the question of how far a judge can go in guiding or assisting an SRL in such a way as to avoid the possibly harsh or unjust consequences resulting from their lack of familiarity with the judicial process? Despite calls for clarification of the judge's role in these circumstances, the current reluctance of the U.S. judiciary to assist SRLs is fostered by both the traditionally passive role of the adversarial trial judge, and by the general rule of

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("This Article calls attention to the breakdown of adversary procedure in a largely unexplored area of the civil justice system: the ordinary, two-party case. The twenty-first century judge confronts an entirely new state of affairs in presiding over the average civil matter. In place of the adversarial party contest, engineered and staged by attorneys, judges now face the rise of an unrepresented majority unable to propel claims, facts, and evidence into the courtroom. The adversary ideal favors a passive judge, but the unrealistic demands of such a paradigm in today's "small case" civil justice system have sparked role confusion among judges, who find it difficult to both maintain stony silence and reach merits-based decisions in the twelve million cases involving unrepresented parties.")

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(It is a shameful irony that the nation with one of the world's highest concentrations of lawyers does so little to make legal services accessible. According to the World Justice Project, the United States ranks 67th (tied with Uganda) of 97 countries in access to justice and affordability of legal services."Equal justice under law" is one of America's most proudly proclaimed and routinely violated legal principles. It embellishes courthouse doors, but in no way describes what goes on behind

them. Millions of Americans lack any access to justice let alone equal access. Over four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.")

ABA Commission on the Future of Legal Services.

The Commission presents this compendium of scholarly papers on the future of legal services. With the generosity of the University of South Carolina Law Review and its faculty advisors and members, the papers of leading academicians have been gathered.

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young homeless women are four to 31 times as likely to die early as housed young women (O'Connell, 2005). ***The average life expectancy in the homeless population is estimated between 42 and 52 years, compared to 78 years in the general population***.")

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VII.THE BASIS FOR CREATING A PRIVATE JUSTICE SYSTEM IN LIEU OF ARTICLE III COURTS.

Andrew D. Bradt "A RADICAL PROPOSAL": THE MULTIDISTRICT LITIGATION ACT OF 1968," 165 U.Pa. Rev. 831 (March 2917)(hypothesizing that federal judges knew there was about to be a

mass tort explosion and accordingly developed and lobbied for the passage of of a statute to concentrate power in the hands of the federal judiciary. This much like the th conduct I hypothesize occurred when the Supreme Court changed the Federal Rules by abrogating the seminal case of Conley v Gibson.

Richard d. Freer, EXODUS FROM AND TRANSFORMATION OF AMERICAN CIVIL LITIGATION, 65 Emory L.J. 1491 (2016)

The story of American federal civil litigation over the past half century is one of exodus and of transformation – exodus from and transformation of the traditional model of "court litigation." The exodus has taken various paths, especially contractual arbitration. The Supreme Court has extended the Federal Arbitration Act to contracts of adhesion and to the adjudication of federal statutory rights. Thus arbitration has become mandatory for claims by consumers and employees. In approving this expansion, the Court increasingly makes clear that it sees nothing special about court litigation – that it and arbitration are mechanisms of equal dignity

Judith Resnik, Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights, 124 Yale L.J. 2804 (2015).

CRISIS in U.S. – Lack of Justice for 99%

I.

The only way slavery and genocide can exist openly in a society is with the participation of the government – and indirectly the people. In the United States the final check on tyranny was

supposed to be the judicial department, composed of courts governed by judges whose judicial power was intended to be checked by juries of citizens.

But a predictable thing occurred when the judges nixed juries (by employing procedural technicalities to get around their constitutional authority) and mixed with the rich and powerful… The judges took sides; the wrong side — the side of the rich of powerful against providing justice for the people. *See e.g.* Dahlia Lathwick, "This Court Erred: The Supreme Court has almost always sided with the wealthy, the privileged, and the powerful, a new book argues" Slate (September 30, 2014) reviewing 2014 book by Constitutional Law Professor Erwin Chemerinsky, The Case Against the Supreme Court. See also "*Do the "Haves" Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925-1988*", 33 Law & Soc'y Rev. 811 (1999); Galanter, Mark, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" (1994).

As my two previous articles on "the evolution of debt slavery in modern times" assert, american courts have consistently used their Article III judicial power to benefit the rich and powerful at the cost of providing justice for the people. In the *Dred Scott v Sanford* ruling the Supreme Court concluded the entire race of black people was *not* entitled to seek justice in american courts because they were merely *property* which was meant to be bought and sold by wealthy white americans.

This travesty of judicial review (criticized by President Abraham Lincoln both in the context of constitutional doctrine and with regard to the Dred Scott case specifically) spawned the great Civil War which the people had to fight to undo the injustice of the judicial branch. The War *cost this nation the lives of 620,000 people* simply because a calloused judicial branch turned its back on that basic truth that government's overriding purpose is to achieve justice by protecting the inalienable rights of all people…

And unfortunately american judges have typically had no clue about the difference between good and evil or right and wrong or justice and injustice because of their longstanding and unflinching loyalty to the rich and powerful.

Regrettably… this hasn't changed.

One of the Supreme Court's most recent cases perpetuating modern day debt slavery is its unanimous opinion in *Henson v Santander Consumer USA Inc.* In that case the Court held the Fair Debt Collection Practices Act, which was enacted by Congress to prevent "debt collectors" from using unfair and unconscionable debt collection practices against the consumers, including homeowners, does not apply to *debt buyers*. Translation: Debt Buyers can use unfair and unconscionable practices to collect debts they have purchased for pennies on the dollar and cannot be held liable for those injuries such practices cause to the lives, liberties, property, and happiness of the people.

Santander is the modern day moral equivalent of *Dred Scott* in that it treats debtors as property the wealthy can abuse. Santander eschews any notions of justice or equity in order to motivate the sale of bad debt to unethical hedge funds who use every unconscionable trick in the book to attack and hurt american consumers to collect bad debt.

Congress' goal in enacting the Fair Debt Collection Act was to prevent unscrupulous downstream debt buyers from bombarding Americans with bad faith debt collection practices and then the Supreme Court comes along and tells these creep companies and their soulless lawyers that they can mistreat the people in order to collect purported debts, which often are not owed.

How does *Santander* reflect justice or even good public policy?

The obvious answer is it does not. *Santander,* just like the *Dred Scott* case, starts from the dubious proposition that: "[i]t is not the province of the court to decide upon the justice or injustice…" and then misinterprets legislation to insure the continued redistribution of wealth to the 1%, which has always been its practice except for a brief period of time when FDR threatened to pack the Supreme Court in order to squelch this habit.

If it is true (and I think it is) that American courts are not about justice, then we as a people must ask do we need (or want) Article III courts at all? For as James Madison so famously wrote in Federalist Paper No. 51:

… Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, *or until liberty be lost in the pursuit*. …

II.

There is circumstantial evidence the Supreme Court sought to facilitate the impact the 2008 financial collapse. This collapse was utilized to transfer middle class wealth from this Nation's people to its Wall Street sociopaths; a plan which the facts suggest has resulted in one of the one of the most massive genocides ever known. *Cf.* Miller, Pam, Church of the Gardens Press, *El Abandonado,* (2017); The Guardian,"Mortality rate for homeless youth in San Francisco is 10 times higher than peers" (April 14, 2016); "Homeless die 30 years younger than average (December 11, 2011). See also infra and bibliography, part IV.

The circumstantial evidence against the Supreme Court includes, among other things, an unusual (perhaps unlawful) change in the Federal Rules of Civil Procedure which occurred in 2007.

28 USC §2072(a) provides the Supreme Court shall have the power to promulgate general rules of practice and procedure of the United States District Courts. But going through the judicial rule-making process would have taken more time than was needed to help the bankers.

So in 2007 (just before the 2008 financial collapse) the Supreme Court judicially interpreted Federal Rules of Civil Procedure 8 and 12(b) in such a way as to give judges almost absolute power to prevent homeowners' cases from being decided pursuant to a trial by jury. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), and *Ashcroft v. Iqbal,* 556 U.S.554 (2009).

The Supreme Court determined in *Iqbal* and *Twombly* that to obtain a trial, including a trial by jury, a party must prepare a complaint which would be *plausible to a federal judge*. Prior to this time it was only necessary to establish a possible claim, not one a federal judge found plausible.

The concern over the Supreme Courts unusual change in the rules was palpable. Indeed, it was immediately criticized by many of this nations most well known and respected legal scholars. *See* Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil

Procedure, 60 Duke L.J. 1 (October 2010); Stephen N. Subrin, Thoma O. Main, THE FOURTH ERA OF AMERICAN CIVIL PROCEDURE, 162 U. Pa. L. Rev. 1839 (June 2014) *See also* Bibliography below, section I. And many state court's refused to fall in line because of the Supreme Court's underhanded use of judicial decision making as a basis for changing the rules of procedure for district courts. *See Hawkeye Foodservice Distrib. v. Iowa Educators Corp., 812 N.W.2d 600, 607-608 (2012). See also Bibliography below, section I.*

The 2007 rule change had an extremely negative impact on the American people who owed debt, homeowners particularly.

Many of us believe the new rule was perpetrated by those who knew the result would likely be the genocide which is still ongoing today.

By 2011 criticism of the Supreme Court's usurpation of power reinterpreting Rules 8 and 12 had grown to the point where the Federal Advisory Committee on the Rules apparently felt it was necessary to ask the Federal Judicial Conference to provide "cover" for the Supreme Court's unilateral change in the Federal Rules. The Federal Judicial Center attempted to do so by suggesting that the rule change had not made much of a difference in having cases dismissed, except in the area of financial instruments (cases involving American homeowners). *See e.g. Joe S. Cecil, Et. Al., Fed. Judicial Ctr., Motion To Dismiss For Failure To State A Claim After IQBAL: Report To The Judicial Conference Advisory Committee On Civil Rules (2011)*

This is significant because even the Federal Judicial Center had to admit the effect of the instantaneous rule change on homeowners and others litigating financial instruments was devastating. *See Id.*, page 14, Table 4 which substantiates that over 91% of claims filed by lawyers in these type of cases got dismissed under *Iqbal/Twombly*'s judge-centric plausibility standards.

III.

America's 21st century court system doesn't even resemble the judicial department which our forefathers intended we should have.

The Constitution clearly intended the people would be entitled to trials by jury pursuant to a traditional common law adversarial judicial system. *See e.g.* Todd Peterson: Restoring Structural Checks on Judicial Power in the Era of Managerial Judging, 29 U.C. Davis L. Rev. 41 (Fall, 1995)(("[Judges] are limited by prior case law and by congressional statutes. In defending the independent judiciary, Hamilton expressly relied on the power of precedent as a check on judicial power: 'To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them . . . .' The framers did not grant judges the right to exercise their own unlimited discretion or will instead of judgment.")

But we certainly don't have these rights any longer thanks to the Supreme Court, which has systematically usurped these rights to benefit the rich at the expense of the people.

The government has intentionally transformed the american adjudication process into a system of judicial tyranny reminiscent of the inquisition, especially for the poor. *See* Criminalization Justice Policy Program, Harvard Law School, Criminalization of Poverty (last accessed on October 12, 2017); Rogayah Chamseddine, SPIN, "The Criminalization of Poverty," (February 6, 2017; *Cf.* Stannard, Matt, Occupy.com, "Part I: 34 Ways America's Legal System Hurts the Poor" (April 22, 2017); Part II (April 30, 2017)

Indeed, most people get so bludgeoned via abusive federal judicial processes that few can last long enough to ever obtain a trial. *See* Scott E. Stafne, scottstafne.com, Scorched Earth Litigation Model, September 15, 2015. It is no understatement to suggest america's judicial system kills and/or injures those who are forced to encounter its abuse. *See* e.g., Caught.net & the Pro Se Way (last accessed October 10, 2017); Huffer, Karin,Legal Abuse Syndrome: 8 Steps for Avoiding the traumatic Stress Caused by the Justice System (2013).

And I am not the only one who has noticed this nation's systematic abuse of america's middle class by the federal and state judicial branches of government has negated those protections our founders intended we have against judicial tyranny. See e.g. Jessica K. Steinberg, "Adversary Breakdown and Judicial Role Confusion in 'Small Case' Civil Justice", 2016 B.Y.U.L. Rev. 899 (2016). ("The

adversary ideal favors a passive judge, but the unrealistic demands of such a paradigm in today's "small case" civil justice system have sparked role confusion among judges, who find it difficult to both maintain stony silence and reach merits-based decisions in the twelve million cases involving unrepresented parties. This Article contends that the adversary ideal is untenable in the lower civil courts. Appellate courts and ethics bodies have virtually ignored this problem, with the result that judges are left to improvise a solution."

In September of this year well respected Seventh Circuit Court of Appeals Judge Richard Posner, actually retired because of the unfair treatment other federal judges gave *pro se* litigants.

Pro se litigants include those people who can't afford a lawyer to represent them and must therefore negotiate the byzantine, bizarre, and corrupt federal judicial gauntlet by themselves before staff attorneys and federal judges who do not like them very well.

According to Posner (and consistent with my observations over the last decade) "most judges regard [pro se litigants who can't afford lawyers] as kind of trash not worth the time of a federal judge." Because these arrogant judges believe *pro se* arguments are worthless their appeals are not decided by federal judges or law clerks, but staff attorneys. Posner reports the judges of the 7th Circuit simply rubber stamp the decisions of these "staff lawyers" who decide the *pro se* appeals.

Here is a copy of an interview with Judge Posner which describes his observations in his own words.

DL: As you've explained in several interviews — with the Chicago Daily Law Bulletin, with me for these pages, and with Adam Liptak of the New York Times — you resigned in part because of your disagreements with colleagues about the Seventh Circuit's treatment of *pro se* litigants. I know you discuss this in detail in your new book (affiliate link) — can you offer us a little preview?

RAP [Richard A. Posner]: Pro se litigants, by definition, don't have a lawyer. This generally means they don't have money to hire a lawyer. So they have to litigate for themselves. They're handicapped by not having money and not having a lawyer, and they also tend to have limited education. About half of our appeals are by pro se's, and about half of those are prison inmates.

When *pro se* litigants appeal, their appeal papers are given to a staff attorney. We have about 20 staff attorneys who are appointed for two years, and a few supervisors. The staff attorneys tend to be good students from good schools, ***hired right after they graduate***. ***Despite their good credentials, they tend to be hostile to the pro se's. It's not their own feelings; it's that they sense — correctly — that the judges don't really care much about the pro se's, find them nuisances, and are not interested in them. So that percolates down to the staff attorneys, and they have a tendency to go against the pro se appeals even when they have apparent merit.***

So very often, a staff attorney memo recommending dismissal of the appeal gives rise to a very short, very rapidly issued order by a judicial panel, not published in the Federal Reporter, that tends to be perfunctory. ***One of my former colleagues thinks that two words are enough for an order dismissing a pro se appeal: "Appeal dismissed."***

I didn't think the *pro se* litigants were getting a fair break. I made various suggestions, all of which were rejected. I wasn't making progress in helping the *pro se's*. And I didn't have good relations anymore with the other judges — not really on a personal level, but we just didn't see eye to eye on the *pro ses*.

So I stepped down from the bench and published my newest book, which is now out: *Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments* (affiliate link).

(Emphasis Supplied)

Judge Posner, who took the time to review some of these staff attorney's decisions, correctly discerned that delegating judicial power to "baby lawyers", without any meaningful supervision by active Article III judges, was improper. To me, this is rather obvious!!!

It is important to understand Judge Posner did not resign until after all the other judges on the Seventh Circuit refused to require (or even allow) these baby "staff lawyers" decisions regarding pro se appeals to be meaningfully reviewed by active Article III judges, as I believe is required by the Constitution.

The American Bar Association Journal asked the Seventh Circuit for a comment on Judge Posner's accusations. In response Dianne Wood, the Chief Judge of the Seventh Circuit (a liberal appointed by Bill Clinton) responded:

"First, while [Judge Posner] is certainly entitled to his own views about such matters as our Staff Attorney's Office and the accommodations we make for *pro se* litigants, it is worth noting that his views about that office are not shared by the other judges on the court, and his assumptions about the attitudes of the other judges toward *pro se*litigants are nothing more than that—assumptions.

In fact, the judges and our staff attorneys take great care with *pro se* filings, and the unanimous view of the eleven judges on the 7th Circuit (including actives and seniors) is that ***our staff attorneys do excellent work, comparable to the work done by our chambers law clerks. We are lucky to attract people of such high caliber for these two-year positions.***"

(Emphasis Supplied)

Significantly, the Seventh Circuit's response concedes Judge Posner's point and establishes the corruption of 21st century american courts. *See* Brian Vukadinovich, American Thinker"Reforming the 7th Circuit" (October 19, 2017) Wood admits on behalf of the Seventh Circuit that staff attorneys are performing the functions of Article III judges in *pro se* appeals without the same type of oversight as is provided a judicial clerk wrestling with an appeal where both sides are represented by an attorney. As Vukadinovich such conduct by the 7th Circuit is just plain wrong and likely unconstitutional:

Merely saying that the judges who are the subject of Posner's allegations "don't share Posner's views" about their alleged wrongdoing does nothing to reassure the public that the 7th Circuit's attitude toward pro se litigants is as frivolous as Posner has alleged.

Since the issues involve a high matter of public importance, there should be a very thorough investigation of the 7th Circuit. Federal Rule of Appellate Procedure 4 explicitly states that an appeal is a matter of a "right." The rule doesn't give the judges of the 7th Circuit, or any circuit for that matter, any discretion in diminishing that right when it comes to a *pro se* appeal. Furthermore,

the “Standards for Professional Conduct Within the Seventh Federal Judicial Circuit”, item 6, explicitly states “We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.” Item 8 states “…that a litigant has a right to a fair and impartial hearing…” A custom of systematically dismissing pro se appeals hardly meets the threshold standard of “…a right to a fair and impartial hearing…”

It is a major red flag when judges aren’t even willing to follow the rules of their own court, and that certainly does appear to be the case with the judges in the 7th Circuit. Systematic discrimination by judges against a class of people, pro se litigants in this case, is wrong and against the law. Wood’s public response is not good enough. A grand jury should be empanelled and the judges and staff attorneys and law clerks should be required to testify under oath so that a factual determination may be made as to whether or not the judges on the 7th Circuit are systematically discriminating against the pro se litigants.

Id. (emphasis added)

This admission has staggering repercussions when one realizes most court cases today involve *pro se* litigants. See e.g. ABA Law Journal, “86 percent of low-income Americans’ civil legal issues get inadequate or no legal help, study says” (June 14, 2017); Legal Services Corporation, The Justice Gap: measuring the Unmet Civil Legal Needs of Low-income Americans (June 2017); Lawyerist.com, “Measuring the Access-to-Justice Gap: Nearly 70% of All Civil Defendants Aren’t Represented” (2016) ; ABA Journal, “Can the access-to-justice gap be closed” (2016).

The reality that our courts more often than not decide cases where only one side is able to effectively present their side to a judge or jury is at odds with those basic tenets of justice the Revolutionary war was fought to achieve. Clearly, constitutional history establishes that the people who ratified the Constitution were led to believe the Constitution was designed so judges would not become judicial tyrants, unchecked by juries and the Congress. See Federalist Paper No. 78.

Yet, that is exactly what has happened.

And scholars the world over who observe the American judicial system quickly appreciate america's courts and judges have little, if anything, to do with justice or fairness.

IV.

The "honest to God" truth is America's Article III judicial department has dismantled those basic constitutional checks on its power which were established to prevent it from devolving into the tyrannical judocracy it has become. Looks at the facts. The facts dispute virtually all the myths our courts perpetuate to make us believe our judicial branch performs its constitutional duties.

- MYTH: "Only the United States makes routine use of jury trials in a wide variety of non-criminal cases." *See*Wikipedia.

TRUTH: Less than 5% of cases filed ever get to trial let alone a trial by jury.

- MYTH: America has an adversarial system of justice where both sides are competently represented before a neutral judge and jury.

TRUTH: Over half the cases presented to these supposedly neutral judges (who apparently don't like or respect 99% of us) are handled by non-lawyers who have no experience with the mostly counter intuitive archaic rules of procedure and evidence which make litigation more a game than a search for truth. *See* Bibliography, Past IV.

- MYTH: the United States judicial system is based on the common law.

TRUTH : The common law system of precedent has not existed in America for sometime. *Compare e.g.* *Anastasof v. United States*, 223 F.3d 898 (8th Cir. 2000) (Courts are required to make and follow precedent) *with* *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001)(Judges can decide when they want and if they want to create precedent) *with* Judge Posner's observations that today courts need not even explain their reasons for their decisions by simply stating "Appeal Dismissed". *See supra.*

A recent law review, Unpublished Decisions and Precedent Shaping: a Case Study of Asylum Claims, 31 Geo. Immigr. L.J. (Fall 2017) considered a decades worth of data following the Supreme Court absolving federal courts of appeal of the responsibility for creating (and apparently following) precedent. According to Professor Scott Rempell, the author of the study:

The federal courts of appeal now publish fewer than twenty percent of their decisions. The effects of depriving so many decisions of precedential value are disputed. Critics believe selective publication harms law development and distorts legal doctrine, while selective publication's defenders are unconvinced that the available evidence demonstrates pervasive problems in need of reform. Accounting for the flaws and limitations of past empirical assessments, this article provides the results of a study that was designed to establish a more concrete understanding of how selective publication impacts development of the body of law. ***The study draws on a comprehensive dataset of all asylum cases in the Ninth Circuit that addressed the issue of persecution over a six-year period. The results show that the court incorrectly perceived how often it reached certain outcomes in past decisions, because many of the outcomes were buried in unpublished dispositions. Additionally, many of the rule statements the court applied in unpublished decisions contradicted rules it promulgated in its public decisions, which indicates the "book law" is not completely settled. The court also reached inconsistent outcomes regarding a significant percentage of its unpublished cases. Finally, panels failed to address highly germane precedents that losing parties raised in their briefs.…***

(Emphasis Supplied)

V.

In case No. 3 of the Nuremberg Trials 16 defendants who were former German judges, prosecutors or officials in the Reich Ministry of Justice, were found guilty of committing war crimes and crimes against humanity. The tribunal found, in effect, that while on paper the rights established by the Weimar Constitution were retained by the Nazis, there was a progressive degeneration of the judicial

system under Nazi rule and that substantially every principle of justice enumerated by prior German law was violated by the Hitler regime.

The same can be said about about the United States judicial system. Our courts have attacked our constitutionally protected jury system to the point where it is for all practical purposes now extinct. The common law is no longer predictable because judges no longer believe their rulings must be anchored to precedent. Far too many judges act as despots who can berate, belittle, and harm those who appear in their ostentatious court rooms.

Obviously, if as James Madison postulated *justice* is the goal of government, our courts and the other two branches of our government have failed us. We need good competent judges who are paid to ferret out the truth in a pragmatic way; not baby or senile lawyers awed by their power and the courtesan legal cabals which seek their favor. If our constitutional system is now dead let's move on to one that actually attempts to provide justice for a free people.

Ever wonder how many millions of people the american courts have caused to be evicted since the Supreme Court made it so easy for them to do so in 2007? Me too.

Unfortunately, looks like the government doesn't keep very good track of this. See Bibliography, Parts V & VI. The last estimate I recall reading in a non-government article was that as of 2013 over 30,000,000 people had been forced from their homes. Unfortunately, that article appears to have been scrubbed from the internet. But such numbers are consistent with a May 2015 article in the Washington Post, which states:

The scale of this entire foreclosure migration is deceptively large. The 10 million households that lost their homes dwarf the number that left the Great Plains during the Dust Bowl (that was about 2.5 million people). In fact, it is larger than the 6 million blacks who moved north during the Great Migration — a movement that spanned decades.

Emily Badger, **"How the Housing Crisis Left Us More Racially Segregated,"** Washington Post, May 8, 2015.

Next question. What happens to the people our courts force onto the streets? Just as you would expect, there are very few recent studies on this as well.

However, way back in 2011 when courts were accelerating foreclosures and homelessness, virtually everyone knew the banks had rigged the system and were blatantly using forged documents to take people's homes. (*see e.g.* 2011 60 Minutes programs and Congressional Hearings). Turns out the courts didn't care about either the forgeries or the health crises, including deaths, such injustice was causing the people. See Bibliography, Part V.

The new research found that the average homeless person has a life expectancy of 47, compared to 77 for the rest of the population: a startling difference of 30 years…

NHS choices; your health, your choices "Homeless die 30 years younger than average (December 11, 2011).

So let's assume based on the data (and lack of data) set forth in Part V of the bibliography that at least 30,000,000 people have been evicted by the federal and state governments from their homes. Of that number only a third of these people are able to escape homelessness. *Cf.* Wall Street Journal, Many Who Lost Homes to Foreclosure in Last Decade Won't Return — NAR (April 5, 2015) This means our courts and governments have robbed these people collectively of 60,000,000 million years of life. This wouldn't happen in a just society of free people where the banks had already been bailed out of these losses which were a result of their own criminal behavior. Mark Collins, Forbes, "The Big Bank Bailout" (July 14, 2015)

I have written about american judges crimes against humanity. *See e.g.* Stafne, Scott, "Free House or Death Sentence?", scottstafne.com (April 27, 2017) , See also Stafne, Scott, "Happy Thanksgiving – 2016" scottstafne.com (November 23, 2016) . *Cf.* Stafne, Scott, "Judicial Review – A Slippery Slope", scottstafne.com (August 21, 2014). Others have also explained that the reasons American law is so similar to that created by the Nazi's is because Germany's judges and lawyers used American law as their example. Bill Moyers interview with James Whitman is a good example. *See*, For the Record,"Hitler's American Model: The United States and the Making of Nazi Race Law"

(October 13, 2017). The interview discusses Whitman's new book Hitler's American Model: The United States and the Making of Nazi Race Law, Princeton University Press (2017)

But no one wants to have to care about their lost neighbors because then we all become complicit in these crimes by the united states against this nation's own people.

In *United States of America v. Alstötter, et al*. ("The Jurists' Trial"), 3 *T.W.C*. 1 (1948), 6 *L.R.T.W.C.* 1 (1948), 14 *Ann. Dig.* 278 (1948) the Court well stated the gravity of judges relying on false evidence when imposing death and/or severe sentences on citizens, who have been robbed of their freedom.

He [the judge defendant] formed his opinions from dubious records submitted to him before trial. By his manner and methods he made his court an instrumentality of terror and won the fear and hatred of the population. From the evidence of his closest associates as well as his victims, we find that Oswald Rothaug represented in Germany the personification of the secret Nazi intrigue and cruelty. He was and is a sadistic and evil man. ***Under any civilized judicial system he could have been impeached and removed from office or convicted of malfeasance in office on account of the scheming malevolence with which he administered injustice.***

Conclusion.

"In a well-functioning judicial system, negotiated resolutions of litigated disputes should reflect not only the interests of the disputants but also a reasonable approximation of the factual and legal merits of claims." Brooke D. Coleman, "THE EFFICIENCY NORM" 56 B.C. L. Rev 1777 (2015) Just as this observation did not apply in the *Dred Scott* case it does not apply to the vast majority of those of us who find ourselves trapped in court proceedings today. This is because our government views those of us who cannot shell out cash for a court's favorable ruling as something less than the free people our Constitution intended would be entitled to justice.

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The degeneration of the american empire's legal system has been accompanied by litigation models which rely on the disparity of resources between the parties (not the facts or law of any specific case) as the primary basis for resolving cases.

It is my observation that the "Scorched Earth" litigation model, named after General Sherman's infamous military campaign, is used in virtually 100% of all foreclosure litigation. This model is based on the business premise that banks and servicers should spend whatever money is necessary to win so as to deter homeowners (and any potential lawyers who might be inclined to represent them) from challenging any foreclosure judicially.

I have personally seen this multi-billion dollar industry spend more in litigation costs than the worth of the houses they are foreclosing on. I have been told by servicers' lawyers that their clients do not factor in defense costs for purposes of settling with homeowners (even where the homeowner has obtained a summary judgment of liability against the servicer) because they want homeowners and their lawyers to know that they will spend whatever it takes to win in court.

The point they are making is one Americans should contemplate: Are we now living in a totalitarian society where the courts are rigged and judicial decisions are decided not by the merits, but the money the parties are willing and/or can afford for litigation?

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ABA Commission on the Future of Legal Services.

The Commission presents this compendium of scholarly papers on the future of legal services. With the generosity of the University of South Carolina Law Review and its faculty advisors and members, the papers of leading academicians have been gathered.

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