



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, [EI 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.

BIBLIOGRAPHY

I. WAS IQBAL PLANNED BY THE COURTS TO FACILITATE FORECLOSURES?

Suja A. Thomas, [*Why the Motion to Dismiss Is Now Unconstitutional*](#), 92 Minn. L. Rev. 1851 (2008)
Article can be downloaded from Link

Jeffery Rosen, The New York Times Magazine, "[*Supreme Court, Inc.*](#)" (March 16, 2008)

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)

Clermont, Kevin M. and Yeazell, Stephen C., "[*Inventing Tests, Destabilizing Systems*](#)" (2010).
Cornell Law Faculty Publications. Paper 201.

Lisa Eichhorn, [*A Sense of Disentitlement: Frame-Shifting and Metaphor in Ashcroft v. Iqbal*](#), 62 Fla. L. Rev. 951 (2010).

Robert G. Bone, [*Plausibility Pleading Revisited and Revised: A Comment on Ashcroft v. Iqbal*](#), 85 Notre Dame L. Rev. 849, 849 (2010) This article can be downloaded from link.

[*McCurry v. Chevy Chase Bank, FSB*](#), 169 Wn.2d 96, 103 (2010) "[T]his court [Washington Supreme Court] would be hesitant to effectively rewrite CR 12(b)(6) based on policy considerations. The appropriate forum for revising the Washington rules is the rule-making process. See *Twombly*, 550 U.S. at 579, 595 (Stevens, J., dissenting). This process permits policy considerations to be raised, studied, and argued in the legal community and the community at large."

[*Hawkeye Foodservice Distrib. v. Iowa Educators Corp.*](#), 812 N.W.2d 600, 607-608 (2012).

"For the most part, state high courts have declined to adopt the new standard announced in *Twombly* and *Iqbal*. See *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011); [*Webb v. Nashville Area Habitat for Humanity, Inc.*](#), 346 S.W.3d 422, 424 (Tenn. 2011); *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861, 863-64 (Wash. 2010); [*Roth v. DeFeliceCare, Inc.*](#), 226 W. Va. 214, 700 S.E.2d 183, 189 n.4 (W. Va. 2010). But see *Doe v. Bd. of Regents*, 280 Neb. 492, 788 N.W.2d 264, 278 (Neb. 2010). These courts have given a variety of reasons for refusing to incorporate the new federal standard in their state rules. For

example, the Washington court concluded that the *plausibility* factor adds a determination of the likelihood of success on the merits, so that a trial judge can dismiss a claim, even where the law does provide a remedy . . . , if that judge does not believe it is plausible the claim will ultimately succeed.

Helen Hershkoff & Arthur R. Miller, *Celebrating Jack H. Friedenthal: The Views of Two Coauthors*, 78 Geo. Wash. L. Rev. 9, 28–29 (2009);

Kenneth S. Klein, [Ashcroft v. Iqbal Crashes Rule 8 Pleading Standards onto Unconstitutional Shores](#), 88 NEB. L. REV. 261 (2009).

Stephen B. Burbank, [Summary Judgment, Pleading, and the Future of Transsubstantive Procedure](#), 43 Akron L. Rev. 1189, 1190 (2010);

Kenneth Klein, [Is Ashcroft v. Iqbal the Death \(Finally\) of the “Historical Test” for Interpreting the Seventh Amendment?](#), 88 Neb. L. Rev. 467, 471–72 (2010).

[“Conclusory” Is Still Quite Elusive: The Story of a Word, Iqbal, and a Perplexing Lexical Inquiry of Supreme Importance](#), 73 U. Pitt. L. Rev. 215 (2011) This article can be downloaded from the link.

(“There is a sense in Iqbal that conclusory statements are like procedural pornography so profane and lacking in quality that they are not entitled to protection of otherwise liberal pleading standards.”)

Alexander A. Reinert, [Pleading as Information-Forcing](#), 75 L. & Contemp. Probs. 1, 22–28 (2012);

[Hawkeye Foodservice Distrib. v. Iowa Educators Corp.](#), 812 N.W.2d 600, 607-608 (2012).

“For the most part, state high courts have declined to adopt the new standard announced in *Twombly* and *Iqbal*. See *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011); [Webb v. Nashville Area Habitat for Humanity, Inc.](#), 346 S.W.3d 422, 424 (Tenn. 2011); *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861, 863-64 (Wash. 2010); [Roth v. DeFeliceCare, Inc.](#), 226 W. Va. 214, 700 S.E.2d 183, 189 n.4 (W. Va. 2010). *But see Doe v. Bd. of Regents*, 280 Neb. 492, 788 N.W.2d 264, 278 (Neb. 2010). These courts have given a variety of reasons for refusing to incorporate the new federal standard in their state rules. For

example, the Washington court concluded that the *plausibility* factor adds a determination of the likelihood of success on the merits, so that a trial judge can dismiss a claim, even where the law does provide a remedy . . . , if that judge does not believe it is plausible the claim will ultimately succeed.

Joe. S. Cecil, Federal Judicial Center, "[Of Waves and Water: A Response to Comments on FJC Study Motions to Dismiss for Failure to State a Claim after Iqbal](#)," Draft Posted March 19, 2012. Paper can be downloaded from link.

Howard M. Wasserman, [The Roberts Court and the Civil Procedure Revival](#), 31 Rev. Lit. 313, 334 (2012) Article can be downloaded at from link. (noting that *Twombly* "short circuited a preliminary discussion of notice pleading by the Advisory Committee");

Alexander A. Reinart, ABA Human Rights Magazine, "[Lurking in the Shadows: The Supreme Court's Quiet Attack on Civil Rights: The Supreme Court's Civil Assault on Civil Procedure](#)," Vol 1, No. (2015);

[Amicus Brief on behalf of Public Justice PC](#) filed with Supreme Court on October 24, 2016 in support of Respondents in *VISA, Inc. v Sam Osborn*, which petition was dismissed as improvidently granted argue Supreme Court has no authority to amend rule of civil procedure without going through rule-making procedure or alternatively interpreting such rules away. 27-29

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

Stein, Alex and Parchomovsky, Gideon, "[Empowering Individual Plaintiffs](#)" (2017).

("[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.)

Luke K. Norris, "[LABOR AND THE ORIGINS OF CIVIL PROCEDURE](#)", 92 N.Y.U.L. Rev. 462 (2017) Article can be downloaded from link

("T]his Article argues that the recent transformations in civil procedure both undermine the economic purposes that were central to the regime's rise and diminish the ability of diffuse economic actors to exercise countervailing power – threatening once-enduring procedural commitments.)

Alexandra D. Lahav, [ARTICLE & ESSAY: THE ROLES OF LITIGATION IN AMERICAN DEMOCRACY](#), 65 Emory L.J. 1657(2016) paper can be downloaded from link.

("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.")

Professor [Alexander Reinart interviews Professor Brooke Coleman of Seattle Law about her her article "One percent Procedure"](#) at Cardozo School of Law civil procedure workshop. Link is to recording of that interview.

Jonathan H. Adler, [SYMPOSIUM: BUSINESS IN THE ROBERTS COURT- Introduction: Still in Search of the Pro-Business Court](#), 67 Case W. Res. L. Rev. 681 (2017)

Sarah Staszak, SYMPOSIUM: "[Procedural Change in the First Ten Years of the Roberts Court](#)". Cardozo Law Review 38.2 (2016). Web.

Alexander A. Reinert, [MEASURING THE IMPACT OF PLAUSIBILITY PLEADING](#), 101 Va. L. Rev. 2117 Cordozo Legal Studies Research Paper No. 455 (December, 2015) (Article can be downloaded from link)

American Bar Association, Human Rights Magazin, "Lurking in the Shadows: The Supreme Court's Quiet Attack on Civil Rights: [The Supreme Court's Attack on Civil Procedure](#), Vol 41, No. 1 (2015)

New York Times "[Supreme Court Ruling Altered Civil Suits to Detriment of Individuals](#)" (MAY 18,2015)

Scott E. Stafne, scottstafne.com, *Scorched Earth LitigationModel*" (September 15, 2015)

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);

Suja. A. Thomas, "THE MISSING BRANCH OF THE JURY", 77 Ohio St. L.J. 1261 (2016) Article can be downloaded from link) (" In the past, the Supreme Court has used the doctrines of the separation of powers and federalism to protect the power of the traditional actors including the branches, while it has not used any similar doctrine to preserve jury authority. At the same time, the power of the jury has eroded. This article argues that the jury is effectively a "branch" of government — similar to the executive, the legislature, and the judiciary — that has not been recognized and protected."

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

SYMPOSIUM: THROUGH A GLASS STARKLY: CIVIL PROCEDURE RE-ASSESSED: CELEBRATING THE SCHOLARSHIP OF STEPHEN SUBRIN: Finding the Civil Trial's Democratic Future After Its Demise, 15 Nev. L.J. 1523 (Summer 2015)

Stephen N. Subrin, Thoma O. Main, [THE FOURTH ERA OF AMERICAN CIVIL PROCEDURE](#), 162 U. Pa. L. Rev. 1839 (June 2014)

Andre Guthrie Ferguson, "[The Jury As Constitutional Identity](#)", 47 U.C. Davis L. Rev. 1105 (April 2014)

Scott E. Stafne, River City Reader, [How Jury Trial Could Have Softened the Blow of the Financial Crisis](#) (May, 2015)

Scott E. Stafne, scottstafne.com, [How the Republic of the United States has been Corrupted \(Part Two – Jury trials\)](#)(May 22, 2014)

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

Arthur R. Miller, [SIMPLIFIED PLEADING, MEANINGFUL DAYS IN COURT, AND TRIALS ON THE MERITS: REFLECTIONS ON THE DEFORMATION OF FEDERAL PROCEDURE](#), 88 N.Y.U.L. Rev. 286 (April 2013)

Jeffrey W. Stemel, [Taking Cognitive Illiberalism Seriously: Judicial Humility, Aggregate Efficiency, and Acceptable Justice](#), 43 Loy. U. Chi. L.J. 627 (2012)

Honorable Jennifer Walker Elrod, "[Essay. Is the jury Still Out?](#): A case for the continued viability of the American Jury?" 44 Tex. Tech. L. Rev. 303 (Winter 2012) (article not available for free down, link is to Lexis/Nexis, which may charge a fee)

Culhane v. Aurora Loan Servs., [826 F. Supp. 2d 352](#), 355 *1-3, n.1 (D. Mass. 2011) *aff'd* 708 F.3d 282 (1st Cir. 2013)

Stephen B. Burbank & Stephen N. Subrin, [Litigation and Democracy: Restoring a Realistic Prospect of Trial](#), 46 HARV. C.R.-C.L. L. REV. 399, 408 (2011). (The article can be downloaded from the link, which is to Lexis Advance)

Honorable William G. Young, "[A Lament for What Was and Can Yet Be.](#)" 32 Boston College International and Comparative Law Review (2009).

IV. PRO SE LITIGANTS

Jon Goldschmidt, [The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance](#), 40 Fam. Ct. Rev. 36 (January 2002)

Tiffany Buxton, [Foreign Solutions to the U.S. Pro Se Phenomenon](#), 34 Case W. Res. J. Int'l L. 103 (2002)

Washington Supreme Court, "[Washington State 2003 Civil Legal Needs Study](#)" (2003)

Russell G. Pearce, [Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help](#), 73 Fordham L. Rev. 969, 978 (2004)

Drew A. Swank, [IN DEFENSE OF RULES AND ROLES: THE NEED TO CURB EXTREME FORMS OF PROSE ASSISTANCE AND ACCOMMODATION IN LITIGATION](#), 54 Am. U.L. Rev. 1537 (August 2005) ("This article suggests that these proponents of greater pro se assistance and accommodation are wrong. Just as with schools and drinking fountains, 'separate but equal' justice systems will be neither equal nor just.")

Drew A. Swank, [The Pro Se Phenomenon](#), 19 BYU J. Pub. L. 373 (2005).

ARTICLE: [JUDICIAL ASSISTANCE TO SELF-REPRESENTED LITIGANTS: LESSONS FROM THE CANADIAN EXPERIENCE](#), 17 Mich. St. J. Int'l L. 601 (2008-2009)

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

non-assistance in U.S. case law. Yet most U.S. trial judges have realized that they must assist SRLs to some extent to avoid the harsh results that can occur when SRLs lacking sufficient legal knowledge represent themselves in court.

Legal services Corporation, An Updated Report of the Legal Services Corporation, "[Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income Americans](#)" (2009)

Gillian K. Hadfield, "Higher Demand, Lower Supply? [A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans](#)", 37 Fordham Urb. L.J. 129 (2009) Article can be obtained from link.

Deborah L. Rhode, [SYMPOSIUM: WHATEVER HAPPENED TO ACCESS TO JUSTICE?](#), 42 Loy. L.A. L. Rev. 869 (Summer 2009) ("'Equal justice under law' is a principle widely embraced and routinely violated. Although the United States has the world's highest concentration of lawyers, it fails miserably at making their assistance accessible to those who need it most. Litigants who remain unrepresented are less likely to obtain a fair outcome in court. The gap between our rhetorical commitments and daily practices regarding access to justice is a function of inadequate funding, restrictions on cases and activities by government-funded legal aid programs, insufficient concern by courts, overbroad restrictions on nonlawyer services, and inadequate pro bono involvement by lawyers and law students. Narrowing the justice gap will require a coordinated effort by all of the stakeholders-the bench, bar, clients, nonprofits, and legal educators.")

Michael Correll, [FINDING THE LIMITS OF EQUITABLE LIBERALITY: RECONSIDERING THE LIBERAL CONSTRUCTION OF PRO SE APPELLATE BRIEFS](#), 35 Vt. L. Rev. 863 (2011)

Center for American Progress, "[The Justice Gap: Civil Legal Assistance Today and Tomorrow](#)" (2011)

[COLLOQUIUM: THE LEGAL PROFESSION'S MONOPOLY ON THE PRACTICE OF LAW: OVERSTEPPING ETHICAL BOUNDARIES?](#) (2014)

Jack P. Stahl, COLLOQUIUM: THE LEGAL PROFESSION'S MONOPOLY ON THE PRACTICE OF LAW: [CRACKS IN THE PROFESSION'S MONOPOLY ARMOR](#), 82 Fordham L. Rev. 2635 (2014)

Jessica Dixon Weaver, [Overstepping Ethical Boundaries? Limitations on State Efforts To Provide Access to Justice in Family Courts](#), 82 Fordham L. Rev. 2705 (2014).

Washington Supreme Court, [Washington State 2015 Civil Legal Needs Study Update](#) (2015)

ARTICLE: [Adversary Breakdown and Judicial Role Confusion in "Small Case" Civil Justice](#), 2016 B.Y.U.L. Rev. 899 (2016) This article can be downloaded from link.

("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.")

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).

Deborah L. Rhode, [WHITE PAPER: WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#), 67 S.C. L. Rev. 429 (Winter 2016)

(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.

[Table of Contents](#)

[FORWARD](#) – *William C. Hubbard & Judy Perry Martinez*

[INTRODUCTION: WHAT WE KNOW AND NEED TO KNOW ABOUT THE STATE OF “ACCESS TO JUSTICE” RESEARCH](#) – *Elizabeth Chambliss, Renee Newman Knake & Robert L. Nelson*

[WHAT WE KNOW AND NEED TO KNOW ABOUT DISRUPTIVE INNOVATION](#) – *Raymond H. Brescia*

[WHAT WE KNOW AND NEED TO KNOW ABOUT CIVIL GIDEON](#) – *Tonya L. Brito, David J. Pate Jr., Daanika Gordon, & Amanda Ward*

[WHAT WE KNOW AND NEED TO KNOW ABOUT COURT-ANNEXED DISPUTE RESOLUTION](#) –*Deborah Thompson Eisenberg*

[WHAT WE KNOW AND NEED TO KNOW ABOUT PRO BONO SERVICE DELIVERY](#) – *April Faith-Slaker*

[WHAT WE KNOW AND NEED TO KNOW ABOUT OUTREACH AND INTAKE BY LEGAL SERVICES PROVIDERS](#) – *D. James Greiner*

[WHAT WE KNOW AND NEED TO KNOW ABOUT IMMIGRANT ACCESS TO JUSTICE](#) – *Elinor R. Jordan*

[WHAT WE KNOW AND NEED TO KNOW ABOUT ONLINE DISPUTE RESOLUTION](#) – *Ethan*

Katsh & Colin Rule

[WHAT WE KNOW AND NEED TO KNOW ABOUT GAMIFICATION AND ONLINE ENGAGEMENT](#)

– *Stephanie Kimbro*

[WHAT WE KNOW AND NEED TO KNOW ABOUT MEDICAL-LEGAL PARTNERSHIP](#) – *Bharath*

Krishnamurthy, Sharena Hagins, Ellen Lawton, & Megan Sandel

[WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL STARTUPS](#) – *Daniel W. Linna Jr.*

[WHAT WE KNOW AND NEED TO KNOW ABOUT WATSON, ESQ.](#) – *Paul Lippe*

[WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#) – *Deborah L. Rhode*

[WHAT WE KNOW AND NEED TO KNOW ABOUT THE LEGAL NEEDS OF THE PUBLIC](#) –

Rebecca L. Sandefur

[WHAT WE KNOW AND NEED TO KNOW ABOUT GLOBAL LAWYER REGULATION](#) – *Carole*

Silver

[WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL PROCUREMENT](#) – *Silvia Hodges*

Silverstein

[WHAT WE KNOW AND NEED TO KNOW ABOUT LAW SCHOOL INCUBATORS](#) – *John Christian*

Waites & Fred Rooney

Paul R Tremblay. "[Surrogate Lawyering: Legal Guidance, sans Lawyers.](#)" *Georgetown Journal of Legal Ethics*, Forthcoming (2017).

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);

Scott E. Stafne, scottstafne.com "[BETTER TO HAVE ADA ADVOCATE THAN LAWYER IN STATE COURTS](#)" (July 7, 2017)

V. HEALTH CONSEQUENCES OF FORECLOSURE AND HOMELESSNESS

CDC, Office for State, Tribal and Territorial Support, [Homelessness as a Public Health Law Issue: Selected Resources](#)(March 2, 2017)

Pam Miller, [El Abandonado](#), Church of the Gardens Press (April 2017)

Boston Globe, [An innovative, practical solution for preserving the health and well-being of the homeless](#), March 9, 2017

The Guardian,"[Mortality rate for homeless youth in San Francisco is 10 times higher than peers](#)" (April 14, 2016)

Policy Matters Ohio, [Ohio foreclosures: Damage in the wake of housing crisis](#) (November 4, 2016)

Scott Keyes, [Surge In Homeless Deaths Expected Over Next Decade Unless We Act](#) (January 21, 2014)

Kriston Capps, [Suicides Related to Foreclosure and Eviction Doubled During the Housing Crisis](#) (February 20, 2015)

Mariana Arcaya, M. Maria Glymour, Prabal Chakrabarti, Nicholas A. Christakis, Ichiro Kawachi, S.V. Subramanian, [Effects of Proximate Foreclosed Properties on Individuals' Systolic Blood Pressure in Massachusetts, 1987 to 2008](#)(Originally published May 12, 2014)

[Jason N. Houle](#) PhD, and [Michael T. Light](#) PhD, [The Home Foreclosure Crisis and Rising Suicide Rates, 2005 to 2010](#)(Published Online: May 13, 2014)

Katherine A. Fowler PhD, R. Matthew Gladden PhD, Kevin J. Vagi PhD, Jamar Barnes MPH, and Leroy Frazier MSPH, [Increase in Suicides Associated With Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005–2010](#) (Published Online: July 17, 2014)

Kathleen Ziol-Guest and Ariel Kalil, [Frequent Moves in Childhood Can Affect Later Earnings, Work, and Education](#) *The impact of childhood moves between ages 6 and 10 reverberates long into adulthood* (March 2014)

Julia B. Isacs, [The Ongoing Impact of Foreclosures on Children](#) (April 8, 2012)

Kathryn L.S. Pettit and Jennifer Comey, [The Foreclosure Crisis and Children: A Three-City Study](#) (March 1, 2012)

Janet Currie Princeton University and NBER Department of Economics and Erdal Tekin Georgia State University and NBER Department of Economics, [Is the Foreclosure Crisis Making Us Sick?](#) (December 2011)

NHS choices; your health, your choices “[Homeless die 30 years younger than average](#) (December 11, 2011)

Thomas Kingsley, Robin Smith, and David Price The Urban Institute, [The Impacts of Foreclosures on Families and Communities](#) (May 2009)

National Coalition for the Homeless Health Care and Homelessness, “[Health Care and the Homeless](#)” (July, 2009)

(“As a result of these factors, homeless people are three to four times more likely to die than the general population (O’Connell, 2005). This increased risk is especially significant in people between the ages of 18 and 54. Although women normally have higher life expectancies than men, even in impoverished areas, homeless men and women have similar risks of premature mortality. In fact,

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.***")

Jennifer Comey and Michel Grosz, [Where Kids Go: The Foreclosure Crisis and Mobility In Washington, D.C.](#) (no date provided)

VI. DATA REGARDING NUMBER OF FORECLOSURES IN U.S.

CBS News, [America's foreclosure crisis isn't over](#) (January 26, 2016)

FDIC, NeighborWorks America, [Foreclosure Statistics](#)

Wall Street Journal, [Many Who Lost Homes to Foreclosure in Last Decade Won't Return — NAR](#) (April 5, 2015)

PBS Newshour, [Get ready for another round of the foreclosure crisis](#) (March 5, 2015)

HuffPost, [Foreclosed 'Zombie' Homes Exceed 300,000 Properties: Study](#) (May 30, 2013)

CNN Money, [Million-dollar foreclosures rise as rich walk away](#) (February 23, 2012)

ProPublica, [Despite Warnings From States, Federal Regulators Failed to Act on Foreclosure Problems](#) (Nov. 8, 2010)

NBC News, Study: [1.2 Million Households Lost to the Recession](#) (April 8, 2010)

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 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.

BIBLIOGRAPHY

I. WAS *IQBAL* PLANNED BY THE COURTS TO FACILITATE FORECLOSURES?

Suja A. Thomas, [*Why the Motion to Dismiss Is Now Unconstitutional*](#), 92 Minn. L. Rev. 1851 (2008)
Article can be downloaded from [Link](#)

Jeffery Rosen, The New York Times Magazine, "[Supreme Court, Inc.](#)" (March 16, 2008)

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)

Clermont, Kevin M. and Yeazell, Stephen C., "[Inventing Tests, Destabilizing Systems](#)" (2010).
Cornell Law Faculty Publications. Paper 201.

Lisa Eichhorn, [A Sense of Disentitlement: Frame-Shifting and Metaphor in *Ashcroft v. Iqbal*](#), 62 Fla. L. Rev. 951 (2010).

Robert G. Bone, [Plausibility Pleading Revisited and Revised: A Comment on *Ashcroft v. Iqbal*](#), 85 Notre Dame L. Rev. 849, 849 (2010) This article can be downloaded from [link](#).

[McCurry v. Chevy Chase Bank, FSB](#), 169 Wn.2d 96, 103 (2010) "[T]his court [Washington Supreme Court] would be hesitant to effectively rewrite CR 12(b)(6) based on policy considerations. The appropriate forum for revising the Washington rules is the rule-making process. See *Twombly*, 550 U.S. at 579, 595 (Stevens, J., dissenting). This process permits policy considerations to be raised, studied, and argued in the legal community and the community at large."

[Hawkeye Foodservice Distrib. v. Iowa Educators Corp.](#), 812 N.W.2d 600, 607-608 (2012).

"For the most part, state high courts have declined to adopt the new standard announced in *Twombly* and *Iqbal*. See *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011); [Webb v. Nashville Area Habitat for Humanity, Inc.](#), 346 S.W.3d 422, 424 (Tenn. 2011); *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861, 863-64 (Wash.

2010); [Roth v. DeFeliceCare, Inc.](#), 226 W. Va. 214, 700 S.E.2d 183, 189 n.4 (W. Va. 2010). *But see Doe v. Bd. of Regents*, 280 Neb. 492, 788 N.W.2d 264, 278 (Neb. 2010). These courts have given a variety of reasons for refusing to incorporate the new federal standard in their state rules. For example, the Washington court concluded that the *plausibility* factor adds a determination of the likelihood of success on the merits, so that a trial judge can dismiss a claim, even where the law does provide a remedy . . . , if that judge does not believe it is plausible the claim will ultimately succeed.

Helen Hershkoff & Arthur R. Miller, *Celebrating Jack H. Friedenthal: The Views of Two Coauthors*, 78 Geo. Wash. L. Rev. 9, 28–29 (2009);

Kenneth S. Klein, [Ashcroft v. Iqbal Crashes Rule 8 Pleading Standards onto Unconstitutional Shores](#), 88 NEB. L. REV. 261 (2009).

Stephen B. Burbank, [Summary Judgment, Pleading, and the Future of Transsubstantive Procedure](#), 43 Akron L. Rev. 1189, 1190 (2010);

Kenneth Klein, [Is Ashcroft v. Iqbal the Death \(Finally\) of the “Historical Test” for Interpreting the Seventh Amendment?](#), 88 Neb. L. Rev. 467, 471–72 (2010).

[“Conclusory” Is Still Quite Elusive: The Story of a Word, Iqbal, and a Perplexing Lexical Inquiry of Supreme Importance](#), 73 U. Pitt. L. Rev. 215 (2011) This article can be downloaded from the link. (“There is a sense in Iqbal that conclusory statements are like procedural pornography so profane and lacking in quality that they are not entitled to protection of otherwise liberal pleading standards.”

Alexander A. Reinert, [Pleading as Information-Forcing](#), 75 L. & Contemp. Probs. 1, 22–28 (2012); [Hawkeye Foodservice Distrib. v. Iowa Educators Corp.](#), 812 N.W.2d 600, 607-608 (2012).

“For the most part, state high courts have declined to adopt the new standard announced in *Twombly* and *Iqbal*. See *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011); [Webb v. Nashville Area Habitat for Humanity, Inc.](#), 346 S.W.3d 422, 424 (Tenn. 2011); *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861, 863-64 (Wash.

2010); [Roth v. DeFeliceCare, Inc.](#), 226 W. Va. 214, 700 S.E.2d 183, 189 n.4 (W. Va. 2010). *But see Doe v. Bd. of Regents*, 280 Neb. 492, 788 N.W.2d 264, 278 (Neb. 2010). These courts have given a variety of reasons for refusing to incorporate the new federal standard in their state rules. For example, the Washington court concluded that the *plausibility* factor adds a determination of the likelihood of success on the merits, so that a trial judge can dismiss a claim, even where the law does provide a remedy . . . , if that judge does not believe it is plausible the claim will ultimately succeed.

Joe. S. Cecil, Federal Judicial Center, "[Of Waves and Water: A Response to Comments on FJC Study Motions to Dismiss for Failure to State a Claim after Iqbal](#)," Draft Posted March 19, 2012. Paper can be downloaded from link.

Howard M. Wasserman, [The Roberts Court and the Civil Procedure Revival](#), 31 Rev. Lit. 313, 334 (2012) Article can be downloaded at from link. (noting that *Twombly* "short circuited a preliminary discussion of notice pleading by the Advisory Committee");

Alexander A. Reinart, ABA Human Rights Magazine, "[Lurking in the Shadows: The Supreme Court's Quiet Attack on Civil Rights: The Supreme Court's Civil Assault on Civil Procedure](#)," Vol 1, No. (2015);

[Amicus Brief on behalf of Public Justice PC](#) filed with Supreme Court on October 24, 2016 in support of Respondents in *VISA, Inc. v Sam Osborn*, which petition was dismissed as improvidently granted argue Supreme Court has no authority to amend rule of civil procedure without going through rule-making procedure or alternatively interpreting such rules away. 27-29

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

Stein, Alex and Parchomovsky, Gideon, "[Empowering Individual Plaintiffs](#)" (2017).

(“[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.)

Luke K. Norris, “[LABOR AND THE ORIGINS OF CIVIL PROCEDURE](#)”, 92 N.Y.U.L. Rev. 462 (2017) Article can be downloaded from link

(“T]his Article argues that the recent transformations in civil procedure both undermine the economic purposes that were central to the regime’s rise and diminish the ability of diffuse economic actors to exercise countervailing power – threatening once-enduring procedural commitments.)

Alexandra D. Lahav, [ARTICLE & ESSAY: THE ROLES OF LITIGATION IN AMERICAN DEMOCRACY](#), 65 Emory L.J. 1657(2016) paper can be downloaded from link.

(“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.”)

Professor [Alexander Reinart interviews Professor Brooke Coleman of Seattle Law about her her article “One percent Procedure”](#) at Cardozo School of Law civil procedure workshop. Link is to recording of that interview.

Jonathan H. Adler, [SYMPOSIUM: BUSINESS IN THE ROBERTS COURT- Introduction: Still in Search of the Pro-Business Court](#), 67 Case W. Res. L. Rev. 681 (2017)

Sarah Staszak, SYMPOSIUM: "[Procedural Change in the First Ten Years of the Roberts Court](#)".
Cardozo Law Review 38.2 (2016). Web.

Alexander A. Reinert, [MEASURING THE IMPACT OF PLAUSIBILITY PLEADING](#), 101 Va. L. Rev. 2117 Cordozo Legal Studies Research Paper No. 455 (December, 2015) (Article can be downloaded from link)

American Bar Association, Human Rights Magazin, "Lurking in the Shadows: The Supreme Court's Quiet Attack on Civil Rights: [The Supreme Court's Attack on Civil Procedure](#), Vol 41, No. 1 (2015)

New York Times "[Supreme Court Ruling Altered Civil Suits to Detriment of Individuals](#)" (MAY 18,2015)

Scott E. Stafne, scottstafne.com, *Scorched Earth LitigationModel*" (September 15, 2015)

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);

Suja. A. Thomas, "[THE MISSING BRANCH OF THE JURY](#)", 77 Ohio St. L.J. 1261 (2016) Article can be downloaded from link) (" In the past, the Supreme Court has used the doctrines of the separation of powers and federalism to protect the power of the traditional actors including the branches, while it has not used any similar doctrine to preserve jury authority. At the same time, the power of the jury has eroded. This article argues that the jury is effectively a "branch" of government — similar to the executive, the legislature, and the judiciary — that has not been recognized and protected."

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

SYMPOSIUM: [THROUGH A GLASS STARKLY: CIVIL PROCEDURE RE-ASSESSED: CELEBRATING THE SCHOLARSHIP OF STEPHEN SUBRIN: Finding the Civil Trial's Democratic Future After Its Demise](#), 15 Nev. L.J. 1523 (Summer 2015)

Stephen N. Subrin, Thoma O. Main, [THE FOURTH ERA OF AMERICAN CIVIL PROCEDURE](#), 162 U. Pa. L. Rev. 1839 (June 2014)

Andre Guthrie Ferguson, "[The Jury As Constitutional Identity](#)", 47 U.C. Davis L. Rev. 1105 (April 2014)

Scott E. Stafne, River City Reader, [How Jury Trial Could Have Softened the Blow of the Financial Crisis](#) (May, 2015)

Scott E. Stafne, scottstafne.com, [How the Republic of the United States has been Corrupted \(Part Two – Jury trials\)](#)(May 22, 2014)

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

Arthur R. Miller, [SIMPLIFIED PLEADING, MEANINGFUL DAYS IN COURT, AND TRIALS ON THE MERITS: REFLECTIONS ON THE DEFORMATION OF FEDERAL PROCEDURE](#), 88 N.Y.U.L. Rev. 286 (April 2013)

Jeffrey W. Stemel, [Taking Cognitive Illiberalism Seriously: Judicial Humility, Aggregate Efficiency, and Acceptable Justice](#), 43 Loy. U. Chi. L.J. 627 (2012)

Honorable Jennifer Walker Elrod, "[Essay. Is the jury Still Out?: A case for the continued viability of the American Jury?](#)" 44 Tex. Tech. L. Rev. 303 (Winter 2012) (article not available for free down, link is to Lexis/Nexis, which may charge a fee)

Culhane v. Aurora Loan Servs., [826 F. Supp. 2d 352](#), 355 *1-3, n.1 (D. Mass. 2011) *aff'd* 708 F.3d 282 (1st Cir. 2013)

Stephen B. Burbank & Stephen N. Subrin, [Litigation and Democracy: Restoring a Realistic Prospect of Trial](#), 46 HARV. C.R.-C.L. L. REV. 399, 408 (2011). (The article can be downloaded from the link, which is to Lexis Advance)

Honorable William G. Young, "[A Lament for What Was and Can Yet Be.](#)" 32 Boston College International and Comparative Law Review (2009).

IV. PRO SE LITIGANTS

Jon Goldschmidt, [The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance](#), 40 Fam. Ct. Rev. 36 (January 2002)

Tiffany Buxton, [Foreign Solutions to the U.S. Pro Se Phenomenon](#), 34 Case W. Res. J. Int'l L. 103 (2002)

Washington Supreme Court, "[Washington State 2003 Civil Legal Needs Study](#)" (2003)

Russell G. Pearce, [Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help](#), 73 Fordham L. Rev. 969, 978 (2004)

Drew A. Swank, [IN DEFENSE OF RULES AND ROLES: THE NEED TO CURB EXTREME FORMS OF PROSE ASSISTANCE AND ACCOMMODATION IN LITIGATION](#), 54 Am. U.L. Rev. 1537 (August 2005) ("This article suggests that these proponents of greater pro se assistance and accommodation are wrong. Just as with schools and drinking fountains, 'separate but equal' justice systems will be neither equal nor just.")

Drew A. Swank, [The Pro Se Phenomenon](#), 19 BYU J. Pub. L. 373 (2005).

ARTICLE: [JUDICIAL ASSISTANCE TO SELF-REPRESENTED LITIGANTS: LESSONS FROM THE CANADIAN EXPERIENCE](#), 17 Mich. St. J. Int'l L. 601 (2008-2009)

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 non-assistance in U.S. case law. Yet most U.S. trial judges have realized that they must assist SRLs to some extent to avoid the harsh results that can occur when SRLs lacking sufficient legal knowledge represent themselves in court.

Legal services Corporation, An Updated Report of the Legal Services Corporation, "[Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income Americans](#)" (2009)

Gillian K. Hadfield, "Higher Demand, Lower Supply? [A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans](#)", 37 Fordham Urb. L.J. 129 (2009) Article can be obtained from link.

Deborah L. Rhode, [SYMPOSIUM: WHATEVER HAPPENED TO ACCESS TO JUSTICE?](#), 42 Loy. L.A. L. Rev. 869 (Summer 2009) ("'Equal justice under law' is a principle widely embraced and routinely violated. Although the United States has the world's highest concentration of lawyers, it fails miserably at making their assistance accessible to those who need it most. Litigants who remain unrepresented are less likely to obtain a fair outcome in court. The gap between our rhetorical commitments and daily practices regarding access to justice is a function of inadequate funding, restrictions on cases and activities by government-funded legal aid programs, insufficient concern by courts, overbroad restrictions on nonlawyer services, and inadequate pro bono involvement by lawyers and law students. Narrowing the justice gap will require a coordinated effort by all of the stakeholders-the bench, bar, clients, nonprofits, and legal educators.")

Michael Correll, [FINDING THE LIMITS OF EQUITABLE LIBERALITY: RECONSIDERING THE LIBERAL CONSTRUCTION OF PRO SE APPELLATE BRIEFS](#), 35 Vt. L. Rev. 863 (2011)

Center for American Progress, "[The Justice Gap: Civil Legal Assistance Today and Tomorrow](#)" (2011)

[COLLOQUIUM: THE LEGAL PROFESSION'S MONOPOLY ON THE PRACTICE OF LAW: OVERSTEPPING ETHICAL BOUNDARIES?](#) (2014)

Jack P. Stahl, COLLOQUIUM: THE LEGAL PROFESSION'S MONOPOLY ON THE PRACTICE OF LAW: [CRACKS IN THE PROFESSION'S MONOPOLY ARMOR](#), 82 Fordham L. Rev. 2635 (2014)

Jessica Dixon Weaver, [Overstepping Ethical Boundaries? Limitations on State Efforts To Provide Access to Justice in Family Courts](#), 82 Fordham L. Rev. 2705 (2014).

Washington Supreme Court, [Washington State 2015 Civil Legal Needs Study Update](#) (2015)

ARTICLE: [Adversary Breakdown and Judicial Role Confusion in "Small Case" Civil Justice](#), 2016 B.Y.U.L. Rev. 899 (2016) This article can be downloaded from link.

("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.")

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).

Deborah L. Rhode, [WHITE PAPER: WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS](#), 67 S.C. L. Rev. 429 (Winter 2016)

(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.

[Table of Contents](#)

[FORWARD](#) – *William C. Hubbard & Judy Perry Martinez*

[INTRODUCTION: WHAT WE KNOW AND NEED TO KNOW ABOUT THE STATE OF "ACCESS TO JUSTICE" RESEARCH](#) – *Elizabeth Chambliss, Renee Newman Knake & Robert L. Nelson*

[WHAT WE KNOW AND NEED TO KNOW ABOUT DISRUPTIVE INNOVATION](#) – *Raymond H. Brescia*

[WHAT WE KNOW AND NEED TO KNOW ABOUT CIVIL GIDEON](#) – *Tonya L. Brito, David J. Pate Jr., Daanika Gordon, & Amanda Ward*

[WHAT WE KNOW AND NEED TO KNOW ABOUT COURT-ANNEXED DISPUTE RESOLUTION](#) –*Deborah Thompson Eisenberg*

[WHAT WE KNOW AND NEED TO KNOW ABOUT PRO BONO SERVICE DELIVERY](#) – *April Faith-Slaker*

WHAT WE KNOW AND NEED TO KNOW ABOUT OUTREACH AND INTAKE BY LEGAL SERVICES PROVIDERS – *D. James Greiner*

WHAT WE KNOW AND NEED TO KNOW ABOUT IMMIGRANT ACCESS TO JUSTICE – *Elinor R. Jordan*

WHAT WE KNOW AND NEED TO KNOW ABOUT ONLINE DISPUTE RESOLUTION – *Ethan Katsh & Colin Rule*

WHAT WE KNOW AND NEED TO KNOW ABOUT GAMIFICATION AND ONLINE ENGAGEMENT – *Stephanie Kimbro*

WHAT WE KNOW AND NEED TO KNOW ABOUT MEDICAL-LEGAL PARTNERSHIP – *Bharath Krishnamurthy, Sharena Hagins, Ellen Lawton, & Megan Sandel*

WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL STARTUPS – *Daniel W. Linna Jr.*

WHAT WE KNOW AND NEED TO KNOW ABOUT WATSON, ESQ. – *Paul Lippe*

WHAT WE KNOW AND NEED TO KNOW ABOUT THE DELIVERY OF LEGAL SERVICES BY NONLAWYERS – *Deborah L. Rhode*

WHAT WE KNOW AND NEED TO KNOW ABOUT THE LEGAL NEEDS OF THE PUBLIC – *Rebecca L. Sandefur*

WHAT WE KNOW AND NEED TO KNOW ABOUT GLOBAL LAWYER REGULATION – *Carole Silver*

WHAT WE KNOW AND NEED TO KNOW ABOUT LEGAL PROCUREMENT – *Silvia Hodges Silverstein*

WHAT WE KNOW AND NEED TO KNOW ABOUT LAW SCHOOL INCUBATORS – *John Christian Waites & Fred Rooney*

Paul R Tremblay. "[Surrogate Lawyering: Legal Guidance, sans Lawyers.](#)" Georgetown Journal of Legal Ethics, Forthcoming (2017).

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);

Scott E. Stafne, scottstafne.com "[BETTER TO HAVE ADA ADVOCATE THAN LAWYER IN STATE COURTS](#)" (July 7, 2017)

V. HEALTH CONSEQUENCES OF FORECLOSURE AND HOMELESSNESS

CDC, Office for State, Tribal and Territorial Support, [Homelessness as a Public Health Law Issue: Selected Resources](#)(March 2, 2017)

Pam Miller, [El Abandonado](#), Church of the Gardens Press (April 2017)

Boston Globe, [An innovative, practical solution for preserving the health and well-being of the homeless](#), March 9, 2017

The Guardian,"[Mortality rate for homeless youth in San Francisco is 10 times higher than peers](#)" (April 14, 2016)

Policy Matters Ohio, [Ohio foreclosures: Damage in the wake of housing crisis](#) (November 4, 2016)

Scott Keyes, [Surge In Homeless Deaths Expected Over Next Decade Unless We Act](#) (January 21, 2014)

Kriston Capps, [Suicides Related to Foreclosure and Eviction Doubled During the Housing Crisis](#) (February 20, 2015)

Mariana Arcaya, M. Maria Glymour, Prabal Chakrabarti, Nicholas A. Christakis, Ichiro Kawachi, S.V. Subramanian, [Effects of Proximate Foreclosed Properties on Individuals' Systolic Blood Pressure in Massachusetts, 1987 to 2008](#)(Originally published May 12, 2014)

[Jason N. Houle](#) PhD, and [Michael T. Light](#) PhD, [The Home Foreclosure Crisis and Rising Suicide Rates, 2005 to 2010](#)(Published Online: May 13, 2014)

Katherine A. Fowler PhD, R. Matthew Gladden PhD, Kevin J. Vagi PhD, Jamar Barnes MPH, and Leroy Frazier MSPH, [Increase in Suicides Associated With Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005–2010](#) (Published Online: July 17, 2014)

Kathleen Ziol-Guest and Ariel Kalil, [Frequent Moves in Childhood Can Affect Later Earnings, Work, and Education The impact of childhood moves between ages 6 and 10 reverberates long into adulthood](#) (March 2014)

Julia B. Isacs, [The Ongoing Impact of Foreclosures on Children](#) (April 8, 2012)

Kathryn L.S. Pettit and Jennifer Comey, [The Foreclosure Crisis and Children: A Three-City Study](#) (March 1, 2012)

Janet Currie Princeton University and NBER Department of Economics and Erdal Tekin Georgia State University and NBER Department of Economics, [Is the Foreclosure Crisis Making Us Sick?](#) (December 2011)

NHS choices; your health, your choices “[Homeless die 30 years younger than average](#) (December 11, 2011)

Thomas Kingsley, Robin Smith, and David Price The Urban Institute, [The Impacts of Foreclosures on Families and Communities](#) (May 2009)

National Coalition for the Homeless Health Care and Homelessness, “[Health Care and the Homeless](#)” (July, 2009)

“As a result of these factors, homeless people are three to four times more likely to die than the general population (O’Connell, 2005). This increased risk is especially significant in people between the ages of 18 and 54. Although women normally have higher life expectancies than men, even in impoverished areas, homeless men and women have similar risks of premature mortality. In fact, 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.***”)

Jennifer Comey and Michel Grosz, [Where Kids Go: The Foreclosure Crisis and Mobility In Washington, D.C.](#) (no date provided)

VI. DATA REGARDING NUMBER OF FORECLOSURES IN U.S.

CBS News, [America’s foreclosure crisis isn’t over](#) (January 26, 2016)

FDIC, NeighborWorks America, [Foreclosure Statistics](#)

Wall Street Journal, [Many Who Lost Homes to Foreclosure in Last Decade Won’t Return — NAR](#) (April 5, 2015)

PBS Newshour, [Get ready for another round of the foreclosure crisis](#) (March 5, 2015)

HuffPost, [Foreclosed ‘Zombie’ Homes Exceed 300,000 Properties: Study](#) (May 30, 2013)

CNN Money, [Million-dollar foreclosures rise as rich walk away](#) (February 23, 2012)

ProPublica, [Despite Warnings From States, Federal Regulators Failed to Act on Foreclosure Problems](#) (Nov. 8, 2010)

NBC News, Study: [1.2 Million Households Lost to the Recession](#) (April 8, 2010)

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%