DISTRICT COURT OF THE UNITED STATES [1]
(FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION)

David Schied,
Sui Juris Grievant

v.
Karen Khalil, et al
Defendants /

Case No. 2:15-cv-11840
Judge: Avern Cohn

GRIEVANT DAVID SCHIED'S "*MEMORANDUM OF LAW*"
IN SUPPORT OF
GRIEVANT'S "*WRIT OF MANDAMUS FOR INTERLOCUTORY APPEAL*")
WITH *QUESTIONS OF LAW*
PERTAINING TO
WHETHER JUDICIAL "*LEGISLATION*" IS CONSTITUTIONAL;
AND
WHETHER JUDICIAL *INDEPENDENCE* AUTHORIZES "*BAD*" BEHAVIOR;
AND
WHETHER "*SUBSTANTIVE*" EVIDENCE CAN BE "*PROCEDURALLY*" STRICKEN;
AND
WHETHER EVIDENCE OF A "*PATTERN & PRACTICE*" OF GOVERNMENT *COERCION* CONSTITUTES *TREASON* AND/OR "*DOMESTIC TERRORISM*"

[1] "The term 'District Courts of the United States,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States." *Mookini v. United States*, 303 U.S. 201 (1938) citing from *Reynolds v. United States*, 98 U.S. 145 , 154; *The City of Panama*, 101 U.S. 453 , 460; *In re Mills*, 135 U.S. 263, 268 , 10 S.Ct. 762; *McAllister v. United States*, 141 U.S. 174, 182 , 183 S., 11 S.Ct. 949; *Stephens v. Cherokee Nation*, 174 U.S. 445, 476 , 477 S., 19 S.Ct. 722; *Summers v. United States*, 231 U.S. 92, 101 , 102 S., 34 S.Ct. 38; *United States v. Burroughs*, 289 U.S. 159, 163 , 53 S. Ct. 574.

Sui Juris Grievant
David Schied
P.O. Box 1378
Novi, Michigan 48376
248-974-7703

Defendants
The Insurance Company of the State of Pennsylvania
AND
American International Group, Inc.
Plunkett Cooney
Charles Browning
Warren White
38505 Woodward Ave., Suite 2000
Bloomfield Hills, Michigan 48304
248-901-4000

Defendants
Michigan Municipal Risk Management Authority
James T. Mellon
Mellon Pries, P.C.
2150 Butterfield Dr., Ste. 100
Troy, Michigan 48084-3427
248-649-1330

Defendant
Charter County of Wayne
Davidde A. Stella
Zenna Elhasan
Wayne County Corporation Counsel
500 Griswold St., 11th Floor
Detroit, Michigan 48226
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Defendants
Karen Khalil
Redford Township 17th District Court
Cathleen Dunn
John Schipani
Redford Township Police Department
Joseph Bommarito
James Turner
David Holt
Jonathan Strong
"Police Officer" Butler
Tracey Schultz-Kobylarz
Charter Township of Redford
DOES 1-10
Jeffrey Clark, attorney
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734-261-2400

David Schied (hereinafter "*Grievant*"), being one of the People[2] and having established this case as a *suit of the sovereign*[3] acting in his own capacity, herein

[2] PEOPLE. "*People are supreme, not the state*." [*Waring vs. the Mayor of Savannah*, 60 Georgia at 93]; "*The state cannot diminish rights of the people*." [*Hertado v. California*, 100 US 516]; Preamble to the US and Michigan

accepts for value the oaths[4] and bonds of all the officers of this court, including attorneys. Having already presented his causes of action to this Article III District

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Constitutions – "*We the people ... do ordain and establish this Constitution...*;" *"...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves*..." [*Chisholm v. Georgia* (US) 2 Dall 419, 454, 1 L Ed 440, 455, 2 Dall (1793) pp471-472]: "*The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative*." [*Lansing v. Smith*, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7]. See also, *Dred Scott v. Sandford*, 60 U.S. 393 (1856) which states: "*The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people', and every citizen is one of this people, and a constituent member of this sovereignty*."

[3] *McCullock v. Maryland*, 4 Wheat 316, 404, 405, states "*In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution*," and *Colten v. Kentucky* (1972) 407 U.S. 104, 122, 92 S. Ct. 1953 states; "*The constitutional theory is that we the people are the sovereigns, the state and federal officials only our agents*." See also, *First Trust Co. v. Smith*, 134 Neb.; 277 SW 762, which states in pertinent part, "*The theory of the American political system is that the ultimate sovereignty is in the people, from whom all legitimate authority springs, and the people collectively, acting through the medium of constitutions, create such governmental agencies, endow them with such powers, and subject them to such limitations as in their wisdom will best promote the common good*."

[4] OATHS. Article VI: "*This Constitution, and the laws of the United States... shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding... All executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution*."

Court of the United States as a *court of record*[5], *Grievant* hereby proceeds according to the course of Common Law[6].

Incorporated herein by reference are the Statements and Evidence contained in accompanying documents of: [7]

1) *"Memorandum of Law and Jurisdiction"* **(**as being a copy also of "*Exhibit #4*" that was previously filed with the "*Writ for Change of Judge...and Change of Venue...*" previously **served on these defendants and their attorneys on 6/27/15**) (Bold emphasis added)

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5 "*A Court of Record is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial*". [*Jones v. Jones*, 188 Mo.App. 220, 175 S.W. 227, 229; *Ex parte Gladhill*, 8 Metc. Mass., 171, per Shaw, C.J. See also, *Ledwith v. Rosalsky*, 244 N.Y. 406, 155 N.E. 688, 689].

6 COMMON LAW. – According to *Black's Law Dictionary* (Abridged Sixth Edition, 1991): "*As distinguished from law created by the enactment of legislatures [admiralty], the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs*." *"[I]n this sense, particularly the ancient unwritten law of England*." [1 Kent, Comm. 492. *State v. Buchanan*, 5 Har. & J. (Md.) 3G5, 9 Am. Dec. 534; *Lux v. Ilaggin*, G9 Cal. 255, 10 Pac. G74; *Western Union Tel. Co. v. Call Pub. Co*., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; *Barry v. Port Jervis*, 72 N.Y.S. 104, 64 App. Div. 268; *U. S. v. Miller*, D.C. Wash., 236 F. 798, 800.]

7 The referenced documents in this list, as having all been provided in "hard copy" Evidence of court entries – submitted under Oath of accuracy by Grievant and others – that provide undeniable Evidence that defendant attorneys and their clients have a long history of FRAUD upon the Court, and that the numerous state and federal judges associated with and dismissing these previous cases without proper address of the filings and the Evidence have criminally aided and abetted in the treasonous usurpation of power and authority, committing themselves to what amounts to "*domestic terrorism*" in the unauthorized takeover and tyrannical railroading of legitimate government *policy and practice under color of law*.

2) All previous filings admitted to this case on this and all other co-Defendants as also found at: **http://cases.michigan.constitutionalgov.us/david-schied/2015_SchiedvJudgeKarenKhaliletalinUSDCEDM/**
3) All Statements, Affidavits, and Evidence previously filed in this case to include the initial filing to open this case and the more recent filing of
   a) "*Writ for Change of Judge Based on Conflict of Interest and Change of Venue Based on Proven History of Corruption*" and its accompanying *"Sworn and Notarized Affidavit of Truth of David Schied"* and all supporting "*exhibits*".
   b) Grievant's "*Combined 'Response' and 'Reply' to Attorney James Mellon's and Mellon Fries, P.C.'s Fraudulent Conveyances in Their 'Motion to Dismiss in Lieu of Answer' and Their 'MMRMA's Response to Plaintiff's Writ for Change of Judge Based on Conflict of Interest and Change of Venue on Proven History of Corruption"* and all supporting "*exhibits*";
   c) Grievant's "*Response of Denial of 'MMRMA's Motion to Strike Grievant's Previous Combined Response and Reply to Attorney James Mellon's and Mellon Fries, P.C.'s Fraudulent Conveyances in Their Motion to Dismiss in Lieu of Answer and Their MMRMA's Response to Plaintiff's Writ for Change of Judge Based on Conflict of Interest and Change of Venue on Proven History of Corruption*" and "*Grievant's Order adding Attorney James Mellon and Mellon Fries, P.C. as Co-Defendants for Reason of Obstruction of Justice and Dishonoring This Article III Court by 'Fraud Upon This Court' and for the Reasons Stated in Grievant's Previously Filed 'Combined Response and Reply to Attorney James Mellon's and Mellon Fries, P.C.'s Fraudulent Conveyances...*" and all supporting "*exhibits*";
   d) Grievant's "*Objections and Order to Strike 'Defendant, The Insurance Company of the State of Pennsylvania ("ISCOP" and the American International Group, Inc.'s ("AIG") 'Answer to 'Plaintiff's' Complaint' Based on a Pattern of Gross Omissions, Intentional Deception, Frivolous Filing, and Obstruction of Justice (Under F.R.C.P. Rule 11); and for Summary Judgment and/or Declaratory Ruling and Sanctions Against Defendants' Intentional Failure to Answer Within 20 Days (as required under F.R.C.P. Rule 56a)*" and all supporting "*exhibits*";
   e) "*Grievant David Schied's Order of Denial of Defendants' ("Judge") Khalil and Redford Township, et. al Seeking Dismissal by Judgment on the Pleadings [UNDER FED.R.CIV.P.12(c)] Based on Defendants' Intent to Defraud the Court and to Violate Attorney Code of Ethics Through a 'Pattern and Practice' of Attorney Testifying and Gross Omissions Proven in Connection to a Past History of the Same*" + 27 itemized "*Exhibits*" of Evidence.

f) "*Grievant David Schied's Order of Denial of Defendants' ('Judge') Khalil and Redford Township, et. al Motion Seeking Permission to Expand Page Limit for Brief [in Support of Motion by Redford Defendants Seeking Dismissal by Judgment on the Pleadings Under Fed.R.Civ.P.12(c)] Based on Defendants' Intent to Defraud the Court and to Violate Attorney Code of Ethics Through a 'Pattern and Practice' of Attorney Testifying and Gross Omissions Proven in Connection to a Past History of the Same*" + 18 itemized "*Exhibits*" of Evidence.

g) "*Grievant David Schied's 'Objection' and 'Writ of Error' to Magistrate Michael Hluchaniuk's 'Order' and 'Amended Order' Striking Responses and Motions (DKT. 36, 38, 58, 63), Granding Motion to Strike (DKT. 57), Granting Motion to Stay (DKT. 75) and Setting Deadlines' Based Upon Constitutional Issues Related to the Supremacy Clause and Due Process Clause of the Constitution of the United States; the Thirteenth Amendment of the Constitution; and Based Upon Grievant's Previously Filed 'Writ for Change of...Venue Based on Proven History of Corruption' and Grievant's 'Writ of Error and Reversal in Assignment of Magistrate and Engagement of Ex Parte Proceedings and Mandamus for Proceeding in Common Law Under the Constitution in an Article III Court of Record*."

This action is being taken because **I DO NOT CONSENT to the reference of Grievant David Schied as a corporate fiction in ALL CAPS of lettering as "*plaintiff*"** ("DAVID SCHIED, plaintiff"), **nor do I consent** to the mischaracterization of *sui juris* Grievant David Schied as operating in a "*pro per*" or "*pro se*" capacity. **Note that all "*summons*" were issued with notice to all co-Defendants that Grievant David Schied is "*sui juris*."**

This action is being taken because **I DO NOT CONSENT** to the assignment of this case, otherwise attempted to be "*filed*" in Ann Arbor and ultimately filed in Flint, being subsequently sent to Detroit, in the heart of Wayne County, situated in a building believed to be leased by Defendant Charter County of Wayne to the

United States District Court with a proven proclivity toward contributing to the *domestic terrorism* being carried out, hand-in-hand with state and county government imposters, as usurpers of *The People's* power and authority.

"*Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . .*" ***U.S. v. Tweel*, 550 F.2d 297, 299. See also *U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmine v. Bowen*, 64 A. 932**

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QUESTIONS PRESENTED

Question #1:

> **"*Does a federal District Court judge's (or magistrate's) failure to observe state laws and state court rules governing the judicial obligation to investigate one litigant's (Grievant Schied's) criminal 'complaint' – and the selective application instead of 'local court rules' against that same litigant in response to a fellow State BAR of Michigan member's 'motion' to strike Grievant's criminal allegations and Evidence against the judge's peer group of other judges (or the magistrate's supervisory judges) – constitute a violation of the Rules of Decision Act (June 25, 1948, Ch. 646, 62 Stat. 944) as codified in 28 U.S.C. § 1652*"** ("*The laws of the several states, except where the Constitution or treaties of the United States or acts of Congress otherwise require or provide, **shall** **be regarded as rules of decision in civil action in the courts of the United States**, in cases where they apply*.")
>
> Grievant Schied answers "*absolutely*."
>
> Defendants would answer "*no*."

Question #2:

> **"*Is the federal judiciary barred under the Rules of Decision Act (1948) and the Rules Enabling Act (1934) from using Article I ('legislative') rulings to limit or 'abridge' substantive state and federally granted rights as was done recently when Magistrate Hluchaniuk issued his 'Order' and 'Amended Order' to 'strike' the substantive Evidence and Allegations that Grievant Schied entered into the Court of Record in support of Grievant's 'Writ for Change of Venue' out of the District Court in located in Detroit based upon clear evidence of theft and corruption infiltrating that federal court?"*"**
>
> Grievant Schied answers "*absolutely*."
>
> Defendants would answer "*no*."

Question #3:

> ***"Is the federal judiciary barred from both legislating and adjudicating its own legislation using a Magistrate subject to Article I limitations – on an issue concerning allegations of "bad" and/or criminal behavior against federal judges – as was done in context of Magistrate Hluchaniuk using 'local court (procedural) rules' to summarily and substantially strike the incriminating Evidence of Grievant's filings without adjudicating the 'merits' of the controversy?***
>
> Grievant Schied answers "*absolutely*."
>
> Defendants would answer "*no*."

Question #4:

> ***"Does the federal judiciary have any obligation to 'independently' investigate and/or adjudicate controversy against the infringement of rights by government when the judiciary itself – though being constitutionally 'independent' is also lawfully 'bound' to constitutional guarantees under Article III – is the entity being charged with that unconstitutional behavior?***
>
> Grievant Schied answers "*absolutely*."
>
> Defendants would answer "*no*."

DISCUSSION

As prefaced in Grievant's previously filed "*Objection...and...Writ of Error*" mailed on 10/14/15 to the District Court in FLINT but time-stamped by the District Court in DETROIT on 10/19/15, there are a number of Constitutional fixtures that "*trump*," "*nullify*," or otherwise predicate "*limits*" upon Congress' delegation of rulemaking authority by the judiciary as set forth by the *Rules Enabling Act of 1934*. Those fixtures include, but are not limited to, the Supremacy Clause and Due Process Clause of the Constitution; the Thirteenth Amendment, and the Act's own restrictions as codified by 28 U.S.C. §2072 which states, in relevant part:

> *"[T]he Supreme Court of the United States shall have the power to prescribe by general rules . . . the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law.* ***Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.****"*
>
> (Bold emphasis added)

Notably, in *Willy v. Coastal Corp*. 503 U.S. 131 (1992) and *Sibbach v. Wilson*, 312 U.S. 1 (1941). Pp.134-135, the Supreme Court further clarified that, **"*the Rules must be deemed to apply only if their application will not impermissibly expand the judicial authority conferred by Article III*."** (Bold emphasis)

NEITHER CONGRESS NOR THE FEDERAL JUDICIARY CAN LEGISLATE AND THEN ADJUDICATE ITS OWN LEGISLATION TO OVERRIDE THE SUBSTANTIVE APPLICABLE LAW OF ANY STATE

It is well known that for decades the distinction between "*constitutional*" and "*legislative*" courts "*has been productive of much confusion and controversy*." *Glidden Company v. Zdanok*, 370 U.S. 530 (1962).

Such confusion is enhanced by the fact that, though employed as an adjunct to the Article III District Court, any magistrate[8] summarily "*striking*" substantive Allegations and Evidence of the government's infringement upon a litigant's constitutionally guaranteed rights – without *litigating the merits*[9] of that

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[8] *"[T]he existing system has been made functional by improvising with an adjunct judiciary, which does not have the status, tenure, and/or accountability of Article III judges*." Magistrates do not receive Article III lifetime tenure; instead, they "*are appointed for an eight-year term pursuant to statutory procedures*." Silberman, Linda. *Judicial Adjuncts Revisited: The Proliferation of Ad Hoc Procedure*. 137 Univ. of Penn. L. Rev. (1989) pp. 2131-2178. (*See* p. 2133).

[9] "*The proponents of the Rules Enabling Act were not interested in uniformity for its own sake;* ***they saw uniformity as a tool for streamlining litigation and for arriving promptly at an assessment of the merits****....Thomas Shelton initially spoke about uniformity as a means toward homogenizing procedure, but by 1918 he had made clear that he valued uniformity for its* ***ability to make procedure the mere conduit of the merits*** *– 'a clean pipe, an unclogged artery, a clear viaduct, or a bridge.' William Howard Taft's agenda was not uniformity per se, but 'expedition and thoroughness in the enforcement of public and private rights in our courts, thus cheapening the cost of litigation by simplifying judicial procedure and expediting final judgment. Roscoe Pound thought procedure should be 'mere etiquette,'* ***never interfering with the direct consideration of the merits. This is hardly the kind of thinking that insists on procedural uniformity for its own sake regardless of the consequences for the merits.***" Weinstein, Jack. *After Fifty Years of the Federal Rules of Civil Procedure: Are the Barriers to Justice Being Raised?* University of Pennsylvania Law Review. Vol. 137; pp. 1901-1923.

controversy[10] involving *common law trespass*[11] – **is doing so without "*the essential attribute of judicial power reserved of Article III courts*."**[12] (Bold emphasis added)

Causing an even further muddling of the issue is that the dichotomy between substantive law and procedural law "*was neither time- nor battle-tested when it*

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10 "*The legislature cannot, to be sure, constitutionally give power to the courts to make laws covering substantive rights. The making of such laws is a legislative and not a judicial function. The courts may not make substantive law except in so far as the decision of an actual controversy serves as a precedent for the determination of subsequent controversies, if, indeed, this process can be called making and not merely pronouncing or discovering law. In the Senate bill, it is expressly provided that the rules of the Supreme Court shall not affect the substantive rights of any litigant.*" Scott, *Actions at Law in the Federal Courts*, 38 Harv. L. Rev. 1, 3-4 (1924) as cited by Stephen B. Burbank in *The Rules Enabling Act of 1934* (1982) pp. 1018-1197. (*See* p.1080)

11 Notably, common law offenses including, but not limited to "*tort*" and "*trespass*," were claimed in Grievant David Schied's initial filing of "*Complaint / Claim of Damages*" in what Grievant has routinely addressed as an "*Article III District Court of the United States*." As such, any action taken by or on behalf of the United States District Court, if it is indeed acting under Article III jurisdiction, can and should explain those actions in terms of impact upon "*trespass, case and trover*" in order to address the potential for impacting "*substantive law*." (See Main, Thomas. *The Procedural Foundation of Substantive Law*. Washington University Law Review, Vol. 87 (2009) p. 6 in reference to Robert G. Bone, *Mapping the Boundaries of a Dispute: Conceptions of Ideal Lawsuit Structure From the Field Code to the Federal Rules*, 89 Colum. L. Rev. 1, 21 n.42 (1989).

12 Fullerton, Maryellen. *No Light at the End of the Pipeline: Confusion Surrounds Legislative Courts*. 49 Brook L. Rev. (1983). *See* footnote #116, pp.225-226 in which the author discusses the "*plurality's*" ruling in view that "*neither federal magistrates nor administrative agencies exercised 'the essential attributes of judicial power*.'"

was codified as a foundational precept of our contemporary jurisprudence."[13] **The fact is that procedure is embedded in substantive law[14], such as that found in state statute(s)[15], which take precedence in the absence of Congressional legislation to the contrary of those state statute(s).[16]** (Bold emphasis)

Essentially, the Supreme Court also upheld in *Sibbach v. Wilson & Co., Inc.*, 312 U.S. 1 (1941) that,

> *"There* ***are other limitations upon the authority to prescribe rules*** *which might have been, but were not, mentioned in the [Rules*

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13 Main, Thomas. *The Procedural Foundation of Substantive Law*. Washington University Law Review, Vol. 87 (2009) p. 3. See also p.7, *"[S]ubstantive law was subsumed within the procedural form*."

14 "*The perception that parallel court systems were applying substantially similar substantive rules of law under different procedural schemata led inevitably to the ultimate merger of law and equity. The merger of law and equity, on one hand, and the emergence of a substance-procedure duality, on the other, thus presented interlocking narratives: a purely procedural merger of Law and Equity purported to leave the grand substantive jurisprudence of both systems intact*." See again, Main. *The Procedural Foundation of Substantive Law*, p. 8.

15 Again, see Main's *The Procedural Foundation of Substantive Law* p.3.

16 "*Erie [Railroad v. Tompkins, 304 U.S. 64 (1938)] called attention to the constitutional restrictions on federal lawmaking with respect to rules governing* ***decisions in cases brought in federal court to enforce state-created rights****. Congress was given limited substantive powers and responsibilities under Article I; substantive rights created in the exercise of those powers can, of course, be enforced in state as well as federal courts, unless Congress provides for exclusive jurisdiction in one of the forums. But in matters not controlled by the laws it creates under Article I that are brought to federal courts for resolution, Congress only has an undefined power over procedure in federal courts, which is implied from its Article III powers to create such courts.* ***These constitutional powers find one of their bounds in a distinction between matters of substance and procedure.*****"** Carrington, Paul. *Substance and Procedure in the Rules Enabling Act*. Duke Law Journal. (Vol. 1989; No. 2; April) pp. 281-327 in discussion of the redundancy of the second sentence of the *Rules Enabling Act of 1934*.

> *Enabling Act of 1934 (i.e., the Act of June 19, 1934)] for instance,* ***the inability of a court, by rule, to extend or restrict the jurisdiction conferred by a statute.****"*[17]

Therefore, the legal "*objection*"[18] raised by Grievant in this case is in regard to the extent that Magistrate Hluchaniuk and his peer group have utilized – in a documented "*pattern and practice*" and "*under color of law*" – the "*local court rules*"[19] to overstep and/or undermine their Article III status as federal judges, and/or to (perhaps intentionally and criminally)[20] exceed and/or subvert the federal

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[17] Here, the Supreme Court was citing *Hudson v. Parker*, 156 U. S. 277, 156 U. S. 284; *Venner v. Great Northern Ry. Co.*, 209 U.S. 24, 209 U. S. 35; *Davidson Bros. Marble Co. v. Gibson*, 213 U. S. 10, 213 U. S. 18; *Meek v. Centre County Banking Co.*, 268 U. S. 426, 268 U. S. 434.

[18] See the instant case, "*David Schied v. Karen Khalil, et al*" and the Article III Court of Record's "*Docket Item #79*" for Grievant's specific filing of "'*Objection' and 'Writ of Error' to Magistrate Michael Hluchaniuk's 'Order...' and 'Amended Order Striking Responses and Motions (DKT. 36, 38, 58, 63), Granting [Defendant Michigan Municipal Risk Management Authority's] Motion to Strike (DKT.57), Granting [Grievant Schied's] Motion to Stay [DKT.75] and Setting Deadlines [Against Grievant Schied]' Based Upon Constitutional Issues Related to the Supremacy Clause and Due Process Clause of the Constitution of the United States; the Thirteenth Amendment of the Constitution; and Based Upon Grievant's Previously Filed 'Writ for Change of...Venue Based on Proven History of Corruption' and Grievant's 'Writ of Error and Reversal in Assignment of Magistrate and Engagement of Ex-Parte Proceedings and Mandamus for Proceedings in Common Law Under the Constitution in an Article III Court of Record'.*"

[19] See again, *Willy v. Coastal Corp*. 503 U.S. 131 (1992) and *Sibbach v. Wilson*, 312 U.S. 1. Pp.134-135 stating, ***"the Rules must be deemed to apply only if their application will not impermissibly expand the judicial authority conferred by Article III.***"

[20] Grievant Schied maintains that the Evidence to which he "objects" to being stricken from the District Court record by Magistrate Hluchaniuk presented a "*pattern and practice*" of contemptuous and obstructionist acts by both state judges

authority otherwise allocated to the United States Supreme Court by Congress under Article I.[21]

See 28 U.S.C. §2071 which reads, in relevant part:

> *"(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business.* ***Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title****."*

28 U.S.C. §2072 thus also reads, in relevant part:

> ***"(b) Such rules shall not abridge, enlarge or modify any substantive right.*** *All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."*

The answer to the above-referenced "*objection*" of Grievant then should be simple: If the District Court operating in Detroit is an Article III *constitutional* court, the instant *controversy* over the four (4) sets of documents – submitted by Grievance as Evidence against Mag. Hluchaniuk's supervisory judges, that is otherwise being "*stricken*" by Mag. Hluchaniuk in response to what was deemed

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and the U.S. District Court judges operating for the Eastern District of Michigan in Detroit – along with the attorneys for the numerous government co-defendants named in Mr. Schied's numerous previous cases – as all being members of a *corrupted* State BAR of Michigan, and being supervised and regulated by a severely *corrupted* Michigan Supreme Court. **(See also, *Judicial Deceit: Tyranny and Secrecy at the Michigan Supreme Court*, written by retired former Michigan Supreme Court "*chief*" judge, the late Justice Elizabeth Weaver, as published in 765 pages in 2012.)** (Bold emphasis added)

[21] "*The terms 'article I court' and 'legislative courts' are generally used interchangeably...and refer[s] to all systems of adjudication that Congress establishes, but does not endow with the guarantees of judicial independence specified in Article III*." Fullerton, Maryellen. *No Light at the End of the Pipeline: Confusion Surrounds Legislative Courts*. 49 Brook L. Rev. (1983)

by Grievant Schied as the Defendants' ("MMRMA's") fraudulent "*motion*" – must be ***judicially*** resolved *independently*, in the proper and objective **context** of the **facts** presented[22]; and with the proper deference toward the ***substantive*** rights of the litigant(s) as guaranteed by the *Bill of Rights* [23] and the *Separation of Powers* design[24] that is mandated by the U.S. Constitution itself, as is also set forth in the *Rules Enabling Act of 1934* as follows:

> *"[T]he Supreme Court of the United States shall have the power to prescribe by general rules . . . the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law.* ***Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."***

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[22] The Court of Record clearly shows that Grievant's "*Objection and Writ of Error...*" filing (Docket Item #79) consisted of 16 pages of "*brief*" **plus a 1-page "*Affidavit of Truth*."**

[23] Importantly, U.S. District Court Magistrate Hluchaniuk's "*Order*..." and "*Amended Order*..." (both dated 9/30/15) included the threat to "*recommend dismissal of this lawsuit in its entirety*" despite the constitutional guarantee under the *Bill of Rights* (Amendment VII) which states, *"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."*

[24] Under a *Separation of Powers* analysis, the inquiry is whether one branch (i.e., in this case the federal judiciary) has performed a function assigned to another branch. Generally, Congress has dealt with the need for judicial independence by assigning judicial matters to Article III courts as established under the Judiciary Act of 1789 for federal District and Circuit courts. Separation of Powers requires, "*[a] Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government*." *Northern Pipeline Co. v. Marathon Pipeline Co.*, 458 U.S. 50 102 S. Ct. 2858 (1982) citing *United States v. Will*, 449 U.S. 200, 217 218 (1980).

Essentially, the only way in which the District Court could possibly "*establish and ordain*"[25] the Rules upon which it also administrates is if that court were conducting the *business of the court* in Article I jurisdiction[26] and as an Article I court.[27] For a District Court judge or magistrate to have done this is, by default, to have surrendered sovereign status and "*independence*" under Article

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[25] This quote is derived from the famous preamble that recognizes that it was the *sovereign* people themselves that authored the Constitution, by conflating the act of writing with the process of ratification: "*We the People of the United States, in Order to form a more perfect Union . . .do ordain and establish...*"

[26] Congress has also established tribunals known as "*Article I*" or "*legislative*" courts that are not "*independent*" and are otherwise staffed by judges that are not entitled to lifetime tenure and irreducible salaries "*during good behavior*." The Supreme Court first recognized Congress' inherent power under Article I in *American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828)*, which substantiated **the creation of *territorial* courts[26] created by article I, as not being part of the independent federal judiciary:**

> *"These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government,* ***or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States****....The powers of the territorial legislature extend to all rightful objects of legislation,* ***subject to the restriction that their laws shall not be inconsistent with the laws and constitution of the United States.****"* (Bold emphasis)

[27] When an Article I court acts *legislatively* it does not, at the same time, also act *constitutionally* with the endowment of guarantees of judicial independence specified in Article III. Conversely, when an Article III Court, magistrate or judge *legislates*, as it appears to be doing when applying *local court rules* written by the judiciary against litigants in ways described by Grievant Schied to "*strike*" substantive Evidence of history and laws from the official Court "*of record*", the magistrate, judge and the Article III Court are violating the *Separation of Powers* doctrine.

III[28]; and for the judges (and magistrate) to have waived their judicial immunity[29] as Article I "*administrative*" or "*legislative*" judges (and magistrate); or worse, by being seditious usurpers of government fiduciary positions, as *domestic terrorists*, which Mr. Schied has alleged as he has also claimed to have properly submitted Evidence to the District Court's *Court of Record* revealing such usurpations in "*pattern and practice*."[30]

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28 *The statutory limitations [of the Rules Enabling Act of 1934] were intended to confine the power of the Court itself, a fact that requires that the Court ever be open to the reconsideration of past interpretation on sufficient demonstration that it has erred in ascertaining the statute's meaning.* Burbank, Stephen. "*The Rules Enabling Act of 1934*" (1982) pp. 1018-1197. (*See* pp. 1101-1102) Also, where "*the limits are being imposed on the courts themselves . . . the judicial constraints to act in accordance with legislatively imposed limits should be even stronger in order to counter the inherent tendency of any institution to extend its own reach and power*." See Mishkin, *Some Further Last Words on Erie-The Thread*, 87 Harv. L. Rev. 1687 (1974).

29 "*The Supreme Court has distinguished judicial acts to which absolute immunity necessarily attaches and* ***administrative acts for which such immunity is not available.***" See *Forrester v. White*, 484 U.S. 219, 229-30, 108 S. Ct. 538, 545-46, 98 L. Ed. 2d 555 (1988). "*Judicial acts are those involving the 'performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.*'" *Antoine v. Byers & Anderson, Inc*., - U.S. -, -, 113 S.Ct. 2167, 2171, 124 L.Ed.2d 391 (1993) at 2171 [quoting *Burns v. Reed*, U.S., 111 S. Ct. 1934, 1946, 114 L. Ed. 2d 547 (1991) (Scalia, J., concurring in part and dissenting in part)]. ***"Administrative acts are, among others, those 'involved in supervising court employees and overseeing the efficient operation of a court.'"*** *Forrester*, 484 U.S. at 229, 108 S. Ct. at 545.

30 As also found on the FBI's website, 18 U.S.C. §2331 defines "*domestic terrorism*" as acts that appear to be intended to influence or coerce a civilian population or the policy of government.

THE ARTICLE III "*DISTRICT COURT OF THE UNITED STATES*" CANNOT ENLARGE ITS ARTICLE III JURISDICTION THROUGH "*LOCAL COURT RULES*" WITHOUT VIOLATING THE "*SEPARATION OF POWERS*" DOCTRINE

"*Tenure that is guaranteed is the badge of an Article III Court*." Thus, *"[j]udges of the Article III courts work by standards and procedures which are either specified in the Bill of Rights or supplied by well-known historic precedents....*" This narrow scope of Article III jurisdiction serves the Framers' mandate of maintaining a *separation of powers* and safeguarding the independence of the judicial from the other branches, by confining the activities of Article III courts to cases and controversies "*of a Judiciary nature*." [31]

Meanwhile, *"[t]he power given Congress in Art. I § 8, cl.9 'to constitute Tribunals inferior to the supreme Court', plainly relates to the 'inferior Courts' provided for in Art. III, § 1* [32]*; it has never been relied on for establishment of any other tribunals." Glidden v. Zdanok, 370 U.S. 630, 643 (1962). Nevertheless, relying on its inherent power under article I, Congress has acted on a number of*

[31] See *Glidden Company v. Zdanok*, 370 U.S. 530 (1962).
[32] Notably, *U.S. Const. Art. I*, which specifies the powers of Congress, make no reference to "*legislative courts*."

occasions to establish "legislative courts," which are not part of the judicial branch of the federal government."[33]

> *"Article III courts are law courts, equity courts, and admiralty courts — all specifically named in Article III. They sit to determine 'cases' or 'controversies.' But* ***Article I courts have no such restrictions. They need not be confined to 'cases' or 'controversies' but can dispense legislative largesse.*** *See United States v. Tillamooks, 329 U.S. 40; 341 U.S. 48* ***Their decisions may affect vital interests; yet like legislative bodies, zoning commissions, and other administrative bodies they need not observe the same standards of due process required in trials of Article III 'cases' or 'controversies.'*** *See Bi-Metallic Co. v. Colorado*, 239 U.S. 441, 36 S. Ct. 141,60 L. Ed. 372, 1915 U.S.. *That is what Chief Justice Marshall meant when he said in American Ins. Co. v. Canter, 1 Pet. 511, 545-546, that an* ***Article I court (in that case a territorial court) could make its adjudications without regard to the limitations of Article III. On the other hand, as the Court in O'Donoghue v. United States, supra, at 546, observed, Article III courts could not be endowed with the administrative and legislative powers (or with the power to render advisory opinions) which Article I tribunals or agencies exercise."*** See *Glidden Company v. Zdanok*, 370 U.S. 530 (1962) – Justice Douglas, dissenting

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[33] *"The Supreme Court first recognized this power in American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828), which upheld* ***the creation of territorial courts that were not part of the independent federal judiciary created by article I****:* ***These Courts, then, are not constitutional Courts****, in which the judicial power conferred by the Constitution on the general government, can be deposited.* ***They are incapable of receiving it.*** *They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause* ***which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States***." Fullerton, Maryellen. *No Light at the End of the Pipeline: Confusion Surrounds Legislative Courts*. 49 Brook L. Rev. (1983). (See footnote #1.)

The *Erie Railroad v. Tompkins* ruling in 1938 brought the *Rules of Decision Act of 1789* [34] under intense focus, making apparent that *"**[t]he laws of the several states**, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, **shall be regarded as rules of decision** in civil actions in the courts of the United States, in cases where they apply*." Thus, though the *Rules Enabling Act of 1934*, enacted by Congress, awarded the Supreme Court the power "*to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts*,"[35] it was clear that **no such rule can be applied "*to the extent, if any, that it would defeat rights arising from state substantive law as distinguished from state procedure*."** (Bold emphasis added)

In the instant case, *David Schied v. Karen Khalil, et al*, Grievant Schied made amply clear, through his filing of the documents targeted by U.S. District Court Magistrate Hluchaniuk, that Grievant relied upon the following Michigan legislation (and Michigan Court Rule) as well as Article I, § 24 of the Michigan Constitution governing crime victims' rights, as **both a *substantive* and a**

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[34] *See* Section 34 of the *Federal Judiciary Act of 1789*, ch. 20, 1 Stat. 92 [codified as amended at 28 U.S.C. § 1652 (1982)].

[35] "*This first sentence of the Act was a delegation of some federal law-making power created by Article III, which authorizes Congress to establish lower federal courts*." Carrington, Paul. *Substance and Procedure in the Rules Enabling Act*. Duke Law Journal. (Vol. 1989; No. 2; April) *See* p. 286.

procedural **guide** for how ***any judge*** should treat formal criminal **accusations** – **signed by sworn Affidavit of truthfulness** as a **"*complaint*"** – giving **"*reasonable cause to believe a crime or crimes have been committed*,"** by that judge initiating an immediate investigation and providing an *Order* for an arrest warrant on such an "*indictment*": (Bold emphasis added for below)

a. **MCL 18.351**-[Crime Victim's Compensation Board (definitions)] which defines a "Crime": *"(c) 'Crime' means an act that is 1 of the following: (i) A crime under the laws of this state or the United States that causes an injury within this state. (ii) An act committed in another state that if committed in this state would constitute a crime under the laws of this state or the United States, that causes an injury within this state or that causes an injury to a resident of this state within a state that does not have a victim compensation program eligible for funding from the victims of crime act of* 1984, *chapter XIV of title II of the comprehensive crime control act of* 1984, *Public Law 98-473 98 Stat. 2170."*
b. **MCR Rule 6.101** (Rules of the Court) holds that. *"**A complaint is described as a written accusation that a named or described person has committed a specified criminal offense.** The complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. (B)(Signature and Oath) **The complaint must be signed and sworn** to before a judicial officer or court clerk....."* [36]
c. **MCL 761.1** and **MCL 750.10** *describes an **"indictment" as "a formal written complaint or accusation written under Oath affirming that one or more crimes have been committed and names the person or persons guilty of the offenses".***
d. **MCL 767.3** holds that at the least. *"**The complaint SHALL give probable cause for any judge of law and of record to suspect that such offense or offenses have been committed...and that such complaint SHALL warrant the judge to direct an inquiry into the matters relating to such complaint".***
e. **MCL 764.1(a)** holds that, *"**A magistrate SHALL issue a warrant upon presentation of a proper complaint alleging the commission of an offense***

[36] This rule also corresponds near exactly with the wording of Federal Rules of Criminal Procedure, Rule 3.

***and a finding of reasonable cause to believe that the individual or individuals accused in the complaint committed the offense*" [37]**

f. **MCL 764.1(b)** calls for an *"arrest without delay".*

Notably, the protection of crime victims from "*accused*" is constitutionally guaranteed right under both the Michigan Constitution and the Title 18, § 3771 of the United States Code. 18 U.S.C § 3771 specifically defines "*crime victim*" in relevant part as follows:

> "*The term "crime victim" means a person directly and proximately harmed as a result of the commission of a federal offense...*"

Nevertheless, U.S. District Court Magistrate Hluchaniuk disregarded such notices by Grievant and administratively granted Defendants and their attorneys "*motion to strike*" instead, while reasoning *"[m]erely because plaintiff is pro se does not mean he is not bound by the Federal Rules of Civil Procedure and Local Rules for the Eastern District of Michigan*." Grievant subsequently raised his written "*objection*" to that administrative action by Hluchaniuk, citing that **it was not Grievant who was to be "*bound*" but the magistrate himself who was "*bound*" by the violations in his own federal actions.** Magistrate Hluchaniuk had not only "*abridged*" Grievant's substantive rights as a litigant, including

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[37] This Michigan law also corresponds with the wording and intent of the Federal Rules of Criminal Procedure, Rule 4, which states in relevant part: *"If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it."*

threatening "*dismissal of this lawsuit in its entirety*," **Hluchaniuk effectively also "*enlarged*" and "*expanded*" the enunciated Article III rights of the federal District Court itself, causing a *substantive*[38] encroachment of the federal judiciary, both against state rights and against the *limitations* imposed upon the federal District Court under Article III by Congress.**[39] (Bold emphasis added)

THE DISTRICT COURT'S "*PATTERN AND PRACTICE*" OF CHERRY-PICKING AND APPLYING PROCEDURE TO SUBSTANTIVELY AFFECT THE OUTCOME OF GRIEVANT'S CASE(S) CAN BE FOUND TO BE INTENTIONAL VIOLATIONS OF GRIEVANT'S INDIVIDUAL, STATE AND FEDERALLY GUARANTEED RIGHTS

"*Today...a Federal Rule of Civil Procedure is not a valid procedural rule under the Rules Enabling Act if it abridges, enlarges or modifies a substantive*

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38 "*The presence of the second sentence [i.e., as found in the Rules Enabling Act as codified in 28 U.S.C. §2072 pertaining to the 'substantive rights of any litigant'] more likely is a reflection of Congress's awareness that* ***the terms 'substance' and 'procedure' are not mutually exclusive. Indeed,*** *the seemingly redundant usage implies that the meanings of* ***these terms are purposive and contextual****...*"

39 Again, importantly, Congress had made it clear, **"*By shielding substantive rights from abridgment and modification, the first sentence of the [Rules Enabling Act of 1934] expresses constitutional principles that derive from Article III*." Thus, the District Court "*cannot make substantive rules by any means other than writing opinions in 'cases or controversies,' without taking leave of its role as defined by Article III*." This is because "*it [is] obvious that the Court cannot promulgate rules creating rights bearing on behavior external to it without fully taking leave of its assigned function in the constitutional scheme*."** See again, Carrington, p. 287.

right."[40] Inevitably, the distinction that separates substance and procedure is not only vexing but consequential. It appears that wherever the line is drawn between the two depends upon the purpose for drawing that line.[41] "*But of course flexibility cannot be achieved without severely compromising the values of predictability and uniformity*."[42] "*Thus, this jurisprudence is largely ad hoc because the categories of substance and procedure were not fully formed when codified and have not been crystalized since.*"[43]

As Thomas Main explains, "*procedure is substance*" because procedure has the power to change the outcome of cases. **"*No procedural decision can be completely neutral in the sense that it does not affect substance*."**[44]

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40 See Thomas Main, referring generally to Martin H. Redish and Dennis Murashko, *The Rules Enabling Act and the Procedural-Substance Tension: A Lesson in Statutory Interpretation*, 92 Minn. L. Rev. 26 (2008) and Stephen B. Burbank, *The Rules Enabling Act of 1934*.

41 See again Main, referring to Walter Wheeler Cook, *"Substance" and "Procedure" in the Conflict of Laws*, 42 Yale L.J. 333, 335-336 (1933) (arguing that the line between substance and procedure could only be drawn with knowledge of the purpose of the line-drawing). See also, *Hanna v. Plumer*, 380 U.S. 460, 471 (1965) ("*The line between substance and procedure shifts as the legal context changes*.")

42 Again Main, referring to Risinger, Michael. "*Substance" and "Procedure" Revisited: With Some Afterthoughts on the Constitutional Problems of "Irrebuttable Presumptions*," 30 UCLA L.Rev. at 190, 201 (1982) (suggesting that one commentator's functional definition is another's "*linguistic relativism*" or the "*abdication of analysis*").

43 *See* Main, *supra*, p.16.

44 Main, p.17-20, ("*All informed observers of the litigation process should already understand [this]....**When the discovery rules were adopted in 1938 they were expected to make a trial less about sport and ambush, and more about truth and***

Conversely, as also explained by Main, "*substantive law...is constructed with a specific procedural apparatus in mind to vindicate the rights created or the responsibilities assigned by that substantive law*." Yet, substantive law is not "*trans-procedural*" unless "*the rights and responsibilities assigned are could be fulfilled and realized in any procedural system*."[45]

Thomas Main suggests a *hybrid* approach to the resolve of the above perplexities involved with the procedure being inherently substantive, and substance being inherently procedural. Main simply suggests that current doctrine and procedures of the instant "(*federal) forum*" be "*bound up*" with state-created rights to substantially "*intertwine the rule with the basic right of recovery*."

Another analysis applied to this "*procedure-substance*" in deciding upon this the type of scenario as that presented by Grievant's allegations of a "*pattern and practice*" involving the judiciary themselves, might also be to consider – given that no procedural decision can be completely neutral of its control over substantive

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evidence.") Also, when "*scholars have analyzed the substantive capacity of numerous procedural devices and doctrines*...[they have reported that the bulk of] ***procedural reforms have intentionally, relentlessly and successfully weakened civil rights and discrimination laws....This is dangerous because procedural reforms can have the effect of denying substantive rights without the transparency, safeguards and accountability that attend public and legislative decision-making***." (As stated by Rep. John Dingell at a Regulatory Reform Act Hearing in 1983, "*I'll let you write the substance...you let me write the procedure, and I'll screw you every time*.") (Bold emphasis)

[45] Main, *supra*, pp. 20-21

consequences – the motives and the methodology used by the judges who are subjectively exercising their discretion on where to "*draw the lines*" in the application of procedural rules.

Such an analysis is comprehensively discussed by Columbia University Law School professor George P. Fletcher in his article, "*Parochial Versus Universal Criminal Law*."[46] Fletcher's article centers on **treason** and his analysis, in so many ways, pitches the self-interest (or "*parochial*") of the government against the protection of the ("*universal*") interests of the people at large (in the English-speaking world).[47]

Fletcher begins with the maxim, "*nullen crimen sine lege*" ("*no crime without law*"), which is presented with the reminder that *"[t]he legislation might come in many forms*," and "***to advise potential offenders of the criteria of liability,***

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[46] Journal of International Criminal Justice (Vol. 3) (2005), pp.20-34

[47] Because much of Fletcher's analysis about "*universal*" law concentrates upon "*serious crimes of concern to the international community as a whole*," which do not constitute assaults against individual or national "*sovereignty*" of Americans, for purposes of this instant "*Memorandum of Law...*", it should suffice to state simply that **such "*universal*" crimes are, "*by and large...[w]hat we would describe in the common law as wrongs in themselves...not wrong by force of the [written laws] that define them*."** Additionally, **Fletcher provides a convenient summary of the difference between "*parochial*" law and "*universal*" law, while accentuating a call to action that is already recognized by most civilized nations:** "*Parochial crimes reflect self-interest, while universal crimes express a commitment to justice for all persons. [The English Crown sought to protect its own interests by punishing traitors.] The same is true of all legal cultures that punish treason – **punishing traitors is a way of securing the state's stability and survival***." See Fletcher, *supra*, p.25. (Bold emphasis added)

to restrain judges in their exercise of discretion *and to seek a measure of uniformity and* ***equality in the prosecution of offenders***." The article explores what actions might be exercised by states (and the people intrinsically "*establishing and ordaining*" the state) in the expression of their "*sovereignty*."[48] The analyses presented in this article is constitutionally relevant since it points out that "*the first memorable statute to define a crime in English history addressed the subject of treason*."

Not so coincidentally, the first crime to be referenced by the Constitution of the United States – and giving cause for the disqualification and removal (of the President) **from government office – is Treason** (followed by Bribery, and "*other high Crimes and Misdemeanors*"). Just as importantly, **"*Treason*" was even given its own section ("*Section 3*") of the Constitution by the Founding Fathers, falling under Article III in reference to "*The Judicial Branch*." The American Constitution defines *treason* against the United States as consisting only "*in levying War against [the United States], or in***

[48] ***"****[P]owers were distributed among branches of the government that were equal among themselves and subject only to the sovereignty of "the people," who had delegated their powers through the Constitution."* Martin, Michael. *Inherent Judicial Power: Flexibility Congress Did Not Write Into the Federal Rules of Evidence.* 57 Tex. L. Rev. Vol. 2; pp.167-202. (Jan. 1979)

***adhering to their Enemies, giving them Aid and Comfort.*"[49]** (Bold emphasis added)

Considered historically as a "*parochial crime*," **treason** constituted a moral wrong that **could *only* be perpetrated by those otherwise expected to have openly professed their Oath and allegiance to protecting the stability of the**

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[49] See US Constitution, Art. III, s.3, clause 1. Also note that this definition aligns in certain ways with the statutory definition of "*domestic terrorism*" as found in a previous footnote: 18 U.S.C. §2331 defines "*domestic terrorism*" as **"*acts that appear to be intended to influence or coerce a civilian population or the policy of government.*"** Note that, ***"[a]s defined here [by Fletcher (p.21)], treason appears to be an offence committed first in the heart, by 'adhering to the enemy'.*"** Fletcher added, "*This subjective element was supplemented by a requirement of an overt act*." [See generally G. P. Fletcher, *Rethinking Criminal Law* (Oxford: Oxford University Press, reprinted 2000), pp. 207-213.] "*Even when nationals owe a duty of loyalty to the mother country, the bearers of that duty might have strong moral reasons for rejecting it. Americans know this well, for those who signed the Declaration of Independence all committed treason against the Crown. They were loyal neither in their hearts nor in their deeds*." Fletcher. "*Parochial Versus Universal Criminal Law*" (p.22) Fletcher additionally noted that though *"[t]reason has remained on the books in all Western countries, but it is invoked less and less often and treated as a suspect crime that reflects the climate of local political interests."* Grievant Schied concurs with this finding; however, **Grievant asserts that such "*local political interest*" rests with numerous state and federal judges themselves who are protecting their own personal interests and their "*conflict of*" interests by their associations with others, particularly with their peer group of other judges and attorneys as all members of the State BAR of Michigan under supervision of what has been otherwise deemed a "*thoroughly corrupt and broken*" Michigan judiciary. (This statement comes from Grievant Schied's personal relationship with the late Justice Elizabeth Weaver, in which she had invited Grievant to her home for an extensive discussion on this topic as the basis of her book, "*Judicial Deceit: Tyranny and Unnecessary Secrecy at the Michigan Supreme Court*"** co-authored by former newspaper reporter/editor, *cold-case* investigator and documentary filmmaker, and university professor, Dr. David Schock.) (Bold emphasis added)

existing (government) power. In other words, "*outsiders are not bound by the same [such] duties of loyalty*." **Therefore, "*domestic*" nationals, particularly those employed in government and endowed with fiduciary governmental power**, not foreigners, **can and do commit acts of treason.**

Grievant Schied maintains that this would stand true when the criminal (and/or "*coercive*") acts – **even when left unpunished and/or covered up by "*discretionary*" acts of the state and/or of the federal judiciary** – are substantively committed, either overtly or procedurally "*under color of law*" against the *person* (against a "*class*" of people, or against the populace at large), against the policies and laws of the *state*, or against the policies and laws of the federal United States. (Bold emphasis added)

CONCLUSION

Acts of individual judges and the "*patterns and practices*" documented by Grievant, as having emanated from the federal District Court, have presented reasonable questions about judicial legitimacy. Some of that documentation has prompted questions for abstract research analysis. Other of this documentation has led to rational questioning and speculation that can be appropriately attributed to a tortuous criminal spectrum of judicial and magistrate misconduct that ranges from malicious *abuse of discretion*, to routine *deprivations of rights under color of law*, to the commission of *treasonous acts of domestic terrorism*.

Whatever theories are developed respective of these state and federal government activities, these theories are no more or less as varied and befuddling as the actions of the judges and magistrates themselves. What we do know is that, according to the research of Dr. Richard Cordero of *Judicial Discipline Reform* in New York City, 98.82 % of the 9,466 formalized "*judicial misconduct*" complaints against federal judges filed in the 12-year period between 1996 and 2008 were dismissed without even an investigation. Moreover, by that same research, up to 100% of complainants' petitions for a review of those summary dismissals of complaints were denied by each of the all-judge judicial councils for the thirteen (13) federal Judicial Circuits throughout this nation. To put this in another perspective, astoundingly, in the 225 years since the creation of the federal judiciary in 1789 until 2014, only eight (8) judges had been impeached and removed from the bench.[50] Compare that to one (1) in every thirty-one (31) adults in America being under some type of criminal correction supervision at the year end of 2008.[51]

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[50] Cordero, Richard. *Exposing Judges' Unaccountability and Consequent Riskless Wrongdoing*. A full report to include all these statistics from Dr. Cordero's research can be found at: http://judicial-discipline-reform.org/frontpage/OL/DrRCordero-Honest_Jud_Advocates.pdf

[51] Fields, Gary, and Emshwiller, John. *As Criminal Laws Proliferate, More Are Ensnared* published on 7/23/11, by the Wall Street Journal stating that, according to a 2008 study, there were then an estimated 4,500 crimes listed in the federal statutes. *See* the link to that WSJ article, located at: http://www.wsj.com/articles/SB10001424052748703749504576172714184601654

The acts depicted by Grievant Schied documents, as well as the "*judicial misconduct*" complaints referenced above give rise to even further questioning about the true nature and general character of the United States District Courts, as well as the Federal Rules of Civil Procedure ("FRCP") and Local Court Rules that are being supposedly used as the procedural guide for the substantive decisions and conduct[52] of the federal judiciary.[53]

Title 28 of the United States Code makes amply clear in its own *disclaimer*[54] that what is written for the "*Judiciary and Judicial Procedure*" may not be entirely

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[52] Cordero's research, as well as this "*Memorandum of Law*," focus on the behavior of the plethora of judicial officials who ignore the application of state and federal laws and court rules that should otherwise apply to *cases and controversies* that pertain to criminal malfeasance, misfeasance, and other obstructions of government obligations and failures of duties in office. This is particularly as these allegations target the peer group of these judicial officials. Title 18 U.S.C. §4 ("*Misprision of Felony*") is but one of those federal laws not being properly applied.

[53] The judicial branch has the constitutional function of deciding controversies. "*That function is performed by determining the "facts" involved in the controversies and applying the "law" (from whatever source) to the facts so determined. If evidence rules are framed so that the facts that courts are allowed to determine are not relevant to the resolution of the issues raised by the substantive rules governing controversies between parties, then courts cannot decide those controversies as they are required to do*." See Martin, *supra*, p.183.

[54] Congress' legal disclaimer is the deliberate reference to the "*Legislative Construction*" found under the "*Historical and Statutory Notes*" located in the *frontal matter* section of Title 28 which states: "*Section 33 of Act of June 25, 1948 c. 646, 62 Stat. 991, provided that, '**No inference of a legislative construction is to be drawn** by reason of the chapter in Title 28, Judiciary and Judicial Procedure, as set out in Section 1 of this Act, in which any section is placed, nor by reason of the catchlines used in such title.*"

of a legislative construction. The Federal Rules of Civil Procedure definitely are not. As a matter of practice and by authorization of Congress under 28 U.S.C. §§ 2071 and 2072, these rules are drafted by committees of the Judicial Conference of the United States [55], approved by the Judicial Conference and then submitted to the Supreme Court for adoption.

Importantly, **Title 28, as well as the other titles found in the FRCP, was created within a "*continuum of existing laws*," specifically those found in the *Statutes at Large*** [56] which both preceded and take *substantive* precedence over federal procedures as earlier outlined. Hence, there is conditional significance of 28 U.S.C. § 2072(b) requiring, *"Such rules shall not abridge, enlarge or modify any substantive right."*

Judges then, are required to apply such rules under context of those Statutes at Large at the federal level, while also acting under superseding state laws in the absence of Congressional legislation on the "*cases*" and "*controversies*" before the

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[55] From its creation in 1922, the Judicial Conference of the United States was formally known as the Conference of Senior Circuit Judges, reflective of the consistency of membership entirely of judges.

[56] As also found under the "*Historical and Statutory Notes*" in the *frontal matter* section of Title 28: *"Section 2(b) of Act [of] June 25, 1948, c. 646, 62 Stat. 985, provided that: 'The provisions of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, **shall be construed as continuations of existing law**, and the tenure of judges....*"

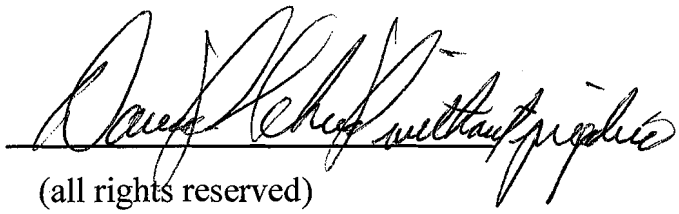
Court. To do otherwise is to transform the Court's Article III status and jurisdiction into that of an Article I "*legislative*" court. Similarly, the status of the judge transforms from "*judicial*" decision-making to "*legislative*" and/or "*administrative*" decision-making, resulting in the consequential waiver of "*judicial immunity*." When found as a "*pattern and practice*," such violations of federal and state laws are deemed to force or "*coerce*" civilian populations, resulting also in an unconstitutional and unlawful coercion of constitutionally recognized governmental policy. This is precisely what the Constitution refers to by "*treason*," and what 18 U.S.C. §2331 legally defines "*domestic terrorism*."

AFFIDAVIT OF TRUTH

I declare under penalty of perjury that the forgoing is true to the best of my knowledge and belief. If requested, I will swear in testimony to the accuracy of the above if requested by a competent court of law and of record.

Respectfully submitted,

David Schied
P.O. Box 1378
Novi, Michigan 48376
248-974-7703



David Schied Dated: 11/10/15

ACKNOWLEDGEMENT

STATE OF MICHIGAN)

) SS

OAKLAND COUNTY)

On this 10TH day of November, 2015, before me appeared David Schied to me known or identified to me to be the person described in and who executed the forgoing instrument.

ANTHONY BARBOSA
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
MY COMMISSION EXPIRES 08/17/2021
ACTING IN OAKLAND COUNTY

NOTARY PUBLIC MY COMMISSION EXPIRES