The American Civil Rights Restoration Act

Preamble

There is a rising tide of public dissatisfaction with the federal courts and the federal prison system. The problems have been noticed for some time. For example:

> After many years of public service at the national capital, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction.
>
> *Standard Oil Co. v. United States*, 221 U.S. 1, 105, 31 S.Ct. 502, 533 (1911) (Justice Harlan, concurring in part and dissenting in part).

> The aggrieved party read and reread the briefs as well as the transcripts. His mind is fed on nothing else during the three months waiting for the action of the court. He knows every point raised. He can repeat every argument advanced. All his savings through a lifetime are tied up in the case. He knows he is right. Then comes the decision. It deals with none of the points argued. It shows on its face the court refused to read the brief. He had been tossed aside like a white chip. He knows, and his friends know, he has been denied his day in court.
>
> To that man, to his family and to his friends, organized society is organized iniquity.
>
> And the present system is manufacturing citizens of such sentiments by the thousands every year.
>
> Underneath the social unrest of the world today, as its main underlying cause, is the feeling in the breasts of the masses that justice is not for them. They do not know the cause, nor can they suggest the remedy,—and so they only want to destroy. Society to them has come to mean organized injustice.
>
> John Rustgard,[1] *Dry Bones—The Remedy for the Evil*, 88 Central Law Journal, p. 341, 344 (May 9, 1919).

> Richard Arnold of Arkansas, a judge who sits on the U.S. Court of Appeals for the 8th Circuit, is a product of the Old South school of courtly manners. He is equally comfortable holding forth on an early 19th-century British case, the U.S. Constitution or a richly embellished anecdote. But he is less genteel when talking about what is happening to the federal courts. Speaking at the Drake University Law School last week, Arnold was asked about a story in The New York Times

> reporting that because of crushing workloads, some federal appeals courts are resorting to perfunctory one-word rulings—"Affirmed" or "Denied"—with no written opinion giving the court's reasoning.
>
> The practice is an "abomination," Arnold said. He told of participating recently in a court session where more than 50 cases were decided in two hours. "We heard many, many cases with no opinions or unpublished opinions," Arnold said. "I felt dirty. It was a . . . betrayal of the judicial ethos. It makes me feel terrible."
>
> *Perfunctory justice: Overloaded federal judges increasingly are resorting to one-word rulings,* Des Moines Register (March 26, 1999).

In order to restore public confidence in the federal judiciary, the court system, and the prison system, be it enacted by the Senate and House of Representatives:

I

Federal Prisoners working in prison industries that provide products or services sold to the public or other government entities must be paid the minimum wage under the Fair Labor Standards Act.[2]

II

No defendant in a criminal case may be sentenced to more than twice the time offered in a "plea bargain."[3]

III

That no witness in a criminal case may be bribed with a shorter or lighter sentence in exchange for his testimony against a co-defendant in the same case.[4]

IV

Any citizen may present his grievances (petition the government for a redress of grievances) concerning violations of federal criminal law to a federal grand jury without interference or "blocking" by any federal law enforcement official, a United States Attorney, or any Assistant United States Attorney, or federal judge.[5]

An indictment may be issued and prosecuted without the signatures of a United States Attorney, or an Assistant United States Attorney.[6]

V

All prison, parole, and/or probation sentences fully served entitle the convicted defendant to full restoration of all the civil rights enjoyed by all other United States citizens, including the right to vote, the right to sit on grand and trial juries, the right to bear arms, and whatever other rights United States citizens enjoy.

No United States citizen may be challenged or disqualified for jury service of any sort because of a prior conviction for which the punishment has been fulfilled.[7]

VI

Private for-profit prisons are hereby abolished.[8]

VII

All judicially created immunities—whether judicial immunity, prosecutorial immunity, qualified immunity, or any other immunity—are hereby abolished.[9]

VIII

Adjudication of cases and authoring of decisions

All judicial decisions shall be accompanied by:

(a) Findings of fact and conclusions of law.[10]

(b) Rewriting the facts of a case is a felony under the obstruction of justice statute, Title 18 U.S.C. § 1503. Any judge who affects the outcome of a case by rewriting the facts is in violation of Title 18 U.S.C. § 1503.[11]

(c) Every written opinion shall be accompanied by a statement detailing the name of each individual who contributed to the opinion, how much *time* that individual

spent on the case, and the job description of that individual: federal judge, magistrate, staff attorney, and/or law clerk.[12]

(d) Each decision reduced to writing must address the original intent of the authors of the Constitutional issue or legislative enactment, if available.[13]

(e) The *issues raised* must be the *issue addressed* in any court decision. Avoidance of an issue or "side stepping" is prohibited.[14]

(f) Supreme Court and other judicial decisions may not be considered binding precedent, only as guides to adjudication.[15]

IX

All federal judicial and law enforcement personnel shall be subject to random drug screening. There are far too many judges with substance abuse problems (alcohol, prescription drugs, and the like) and far too many law enforcement officers taking steroids (causing "roid rage" and the consequent abuse of citizens).

X

The Prison Litigation Reform Act and the Anti-Terrorism and Effective Death Penalty Act are hereby abolished.[16]

ENDNOTES

[1] John Rustgard was the associate city attorney of Duluth, 1897-1898, mayor of Nome 1903-1904, U.S. district attorney 1st Division of Alaska, 1910-1914, and Attorney General of Alaska, 1921-1933.

[2] A dissent pointed out that the court created its own legislation on prison labor.

> NORRIS, Circuit Judge, with whom Circuit Judge FLETCHER joins, dissenting:
>
> > [F]ree labor, properly compensated, cannot compete successfully with the enforced and unpaid or underpaid convict labor of the prison.
>
> *Whitfield v. Ohio,* 297 U.S. 431, 439, 56 S.Ct. 532, 535, 80 L.Ed. 778 (1936).
>
> Richard Berry worked at C/A Buckles, a business that employed about a dozen workers and produced belt buckles for groups such as the Marine Corps, U-Haul, and the University of Texas Longhorns booster club. Today, the majority holds that the State of Arizona is not required to pay Berry or his co-workers the federally-mandated minimum wage because they were inmates at the Arizona State Prison, working for a "prison-structured program" pursuant to Arizona's requirement that prisoners work at hard labor. In so holding, the majority removes by fiat a large, if ill-defined, group of workers from the coverage of the Fair Labor Standards Act ("FLSA"), judicially creating an exemption not found in the statute.
>
> *Hale v. Arizona*, 993 F.2d 1387, 1400 (9th Cir. 1993).

See Standard Oil, supra.

[3] Consider the case of Bradford Metcalf and Randy Graham, sentenced to 40 and 50 years respectively, after they refused to take a 36-month "plea bargain."

[4] Bribing a witness with immunity or a lower sentence for testimony has been used to entice a co-defendant to accept a "plea bargain" by our courts for decades. At first it was considered unethical.

> Not too long ago plea bargaining was an officially prohibited practice. Court procedures were followed to ensure that no concessions had been given to defendants in exchange for guilty pleas. But gradually it became widely known that these procedures had become charades of perjury, shysters, and bad faith involving judges, prosecutors, defense attorneys and defendants. This was scandalous. But rather than cleaning up the practice in order to square it with the rules, the rules were changed in order to bring them in line with the practice. …
>
> Kenneth Kipnis, *Criminal Justice and the Negotiated Plea, Ethics*, Volume 86 (1976).

After a defendant argued on appeal that the practice of bribing witnesses in exchange for less or no prison time was illegal and a Tenth Circuit panel agreed, the en banc panel rejected it vehemently as did other circuits. Here is a case that explains the full history of *United States v. Singleton*, 144 F.3d 1343 (10th Cir.1998) and the panels of lemmings that followed (the nightmare of more work for them was too much to bear).

> Ever since *United States v. Singleton*, 144 F.3d 1343 (10th Cir.1998), defendants throughout the nation have been arguing that § 201(c)(2) forbids receipt of testimony by witnesses who stand to gain via immunity or lower sentences. Section 201(c)(2) provides that "[w]hoever ... directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom ... shall be fined under this title or imprisoned for not more than two years, or both." The panel in *Singleton* thought that immunity or a lower sentence is a "thing of value" given in exchange for testimony, a swap that it deemed an unambiguous violation of the statute — and for which it deemed exclusion of testimony the appropriate response.
>
> Long before *Singleton* we held, in an opinion the tenth circuit did not mention, that 18 U.S.C. § 201(h), the predecessor to § 201(c)(2), does not require the exclusion of evidence obtained by a promise of immunity. *United States v. Barrett*, 505 F.2d 1091, 1100-03 (7th Cir.1974). Now the tenth circuit *en banc* has come to agree with *Barrett*, *see United States v. Singleton*, 165 F.3d 1297 (10th Cir.1999) (en banc), and five other circuits are in accord with that *en banc* ruling. *United States v. Haese*, 162 F.3d 359, 366-68 (5th Cir.1998); *United States v. Ware*, 161 F.3d 414, 418-25 (6th Cir.1998); *United States v. Johnson*, 169 F.3d 1092 (8th Cir. 1999); *United States v. Lowery*, 166 F.3d 1119 (11th

> Cir.1999); *United States v. Ramsey*, 165 F.3d 980 (D.C.Cir.1999). No other circuit—indeed, no other circuit judge—has subscribed to the view adopted by the *Singleton* panel. We adhere to the position adopted in *Barrett*, and thus to what is now the unanimous view of the six other circuits that have addressed this contention in published opinions.
>
> *United States v. Condon*, 170 F.3d 687, 688-689 (7th Cir. 1999).

Only the first Tenth Circuit appellate panel "got it right." The Seventh Circuit and all other subsequent panels in all federal courts of appeal rewrote the statute by judicial construction, some even holding that a person's freedom was not "anything of value" and others rewriting history in order to uphold the bribing of witnesses.

The error of this practice has not gone unnoticed.

> Our criminal justice system, as presently practiced, is basically a plea bargain system with actual trials of guilt or innocence a bit of showy froth floating on top.
>
> Glenn Harlan Reynolds, *Ham Sandwich Nation: Due Process When Everything Is a Crime*, 113 Colum. L. Rev. Sidebar 102, 107 (2013) (footnote omitted).

[5] Informing the grand jury of a crime is a constitutional right frowned on by both prosecutors and judges.

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

> T]he common practice is for the grand jury to investigate any alleged crime, no matter how or by whom suggested to them ...
>
> *In re Hale*, 139 F. 496, 498 (C.Ct. S.D.N.Y. 1905) (quoting *Frisbie v. United States*, 157 U.S. 160, 163, 15 Sup.Ct. 586, 39 L.Ed. 657 (1895)).

> [[I]nforming is a right or privilege secured by the Constitution or laws of the United States.
>
> *Velarde-Villarreal v. United States*, 354 F.2d 9, 15 n. 3 (9th Cir. 1965).

> [A citizen] has a constitutional right to inform the government of violations of federal law . . . [a] privilege of citizenship guaranteed by the Fourteenth Amendment.
>
> *E.E.O.C. v. Pacific Press Pub. Ass'n*, 676 F.2d 1272, 1280 (9th Cir. 1982) (citations omitted).

[6] Using only government prosecutors can lead to abuse and reduce the grand jury to puppets.

> "As a practical matter, a federal grand jury will almost always return an indictment presented to it by a prosecutor. This is the basis for Judge Sol Wachtler's famous saying that a prosecutor can get a grand jury to 'indict a ham sandwich.'"
>
> Solomon L. Wisenberg, *Federal Grand Jury Crash Course*.
>
> This Court shares with the nation's founders a concern that on occasions prosecuting officers will expand too far and abuse the powers granted to them. A grand jury is not a prosecutor's plaything and the awesome power of the State should not be abused but should be used deliberately, not in haste. A prosecutor should at all times avoid the appearance or reality of a conflict in interest with respect to his official duties.
>
> *State v. Capps*, 275 S.E.2d 872, 276 S.C. 59, 61 (1981).

[7] Barring disqualification for previous crimes committed to serve on a jury was once a practice in this country:

> The juryman may be asked upon voir dire, whether he hath any interest in the cause; whether he hath a freehold; for these do not make him criminal. But you shall not ask a witness or juryman whether he hath been whipped for larceny or convicted for felony, or whether he was ever committed to Bridewell for a pilferer, or to Newgate for clipping and coining, or whether he is a villain or outlaw, because that would make a man discover that of himself which tends to shame, crime, infamy or misdemeanor."
>
> *Reynolds v. United States*, 98 U.S. 244, 245, 80 S.Ct. 30, 25 L.Ed. 244 (1878) (citation omitted).

[8] For-profit prisons can be a tempting cash cow for judges and other government officials as well as corporations whose reason for existence is to make a profit for their stockholders.

> [P]rivatization created the atmosphere that made the "Kids For Cash" scandal possible, in which two Pennsylvania judges received $2.6 million in kickbacks from for-profit juvenile detention centers for sending more kids to the facilities and with unusually long sentences. The influence of private prisons creates a system that trades money for human freedom, often at the expense of the nation's most vulnerable populations: children, immigrants and the poor.
>
> Michael Cohen, *How for-profit prisons have become the biggest lobby no one is talking about* (Washington Post April 28, 2015).

> Indeed, a tragic consequence of today's decision is the clear incentive it gives to corporate managers of privately operated custodial institutions to adopt cost-saving policies that jeopardize the constitutional rights of the tens of thousands of inmates in their custody.
>
> *Correctional Services Corp. v. Malesko*, 534 U.S. 61, 81, 122 S.Ct. 515, 151 L.Ed.2d 456 (2001) (Sevens, J., dissent).

[9] Judicially-created immunity goes against the intention of Congress when it enacted Title 42 U.S.C. § 1983, Civil action for deprivation of rights.

> JUSTICE BRENNAN, dissenting.
>
> JUSTICE MARSHALL's dissenting opinion, post, presents an eloquent argument that Congress, in enacting § 1983, did not intend to create any absolute immunity from civil liability for "government officials involved in the judicial process . . . ." *Post*, at this page and 347. Whatever the correctness of his historical argument, I fear that the Court has already crossed that bridge in *Pierson v. Ray*, 386 U.S. 547 (1967), and *Imbler v. Pachtman*, 424 U. S. 409 (1976).
>
> I entirely agree with JUSTICE MARSHALL, however, that the policies of § 1983 and of common-law witness immunity, as they apply to witnesses who are police officers, do not justify any absolute immunity for perjurious testimony. I therefore dissent for the reasons stated in Part IV of JUSTICE MARSHALL's opinion.
>
> JUSTICE MARSHALL, with whom JUSTICE BLACKMUN joins, except as to Part I, dissenting.

I cannot agree that police officers are absolutely immune from civil liability under 42 U.S.C. § 1983 (1976 ed., Supp. V) for testimony given in criminal proceedings. The extension of absolute immunity conflicts fundamentally with the language and purpose of the statute. I would therefore be reluctant in any case to conclude that § 1983 incorporates common-law tort immunities that may have existed when Congress enacted the statute in 1871. But in this case the conclusion is especially unjustified. First, absolute immunity for witnesses was by no means a settled legal proposition in 1871. Most notably, in 1845 this Court had cast serious doubt on the existence of absolute immunity for testimony given in judicial proceedings. Second, the origins and history of § 1983 strongly suggest that Congress meant to abrogate any absolute immunity for government officials involved in the judicial process, including police officers. Finally, considerations of public policy deemed necessary to justify absolute immunity in our past cases do not support an absolute immunity for officer-witnesses.

I

The majority opinion correctly states that this case presents a question of statutory construction. *Ante*, at 326. Yet it departs from generally accepted principles for interpreting laws.

In all other matters of statutory construction, this Court begins by focusing on the language of the statute itself. "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The language of § 1983 provides unambiguous guidance in this case. A witness is most assuredly a "person," the word Congress employed to describe those whose conduct § 1983 encompasses. The majority turns the conventional approach to statutory interpretation on its head. It assumes that common-law tort immunities provide an exemption from the plain language of the statute unless petitioners demonstrate that Congress meant to override the immunity. *See ante*, at 336. Thus, in the absence of a clearly expressed legislative intent to the contrary, the Court simply presumes that Congress did not mean what it said.

Absolute immunity for witnesses conflicts not only with the language of § 1983 but also with its purpose. In enacting § 1983, Congress sought to create a damages action for victims of violations of federal rights; absolute immunity nullifies "*pro tanto* the very remedy it appears Congress sought to create." *Imbler v. Pachtman*, 424 U.S. 409, 434 (1976) (WHITE, J., concurring in judgment). The words of a statute should always be interpreted to carry out its purpose. Moreover, Members of the 42d Congress explicitly stated that § 1983 should be read so as to further its broad remedial goals. As the sponsor of the 1871 Act, Representative Shellabarger, declared:

> "This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such

> statutes are liberally and beneficently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation. As has been again and again decided by your own Supreme Court of the United States, and everywhere else where there is wise judicial interpretation, the largest latitude consistent with the words employed is uniformly given in construing such statutes and constitutional provisions as are meant to protect and defend and give remedies for their wrongs to all the people." Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871).
>
> *Briscoe v. LaHue*, 460 U.S. 325, 346-349, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983) (footnotes omitted).

[10] Rule 52(a)(1) of the Federal Rules of Civil Procedure requires findings and conclusions but 52(a)(3) provides exceptions and some courts ignore the rule completely, leaving litigants with a bad taste in their mouth and a disrespect for the courts. *See Dry Bones, supra*.

> **(a) Findings and Conclusions.**
> **(1**) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58
> **(3) For a Motion.** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.
>
> Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings of the Federal Rules of Civil Procedure.

Judges have recognized this injustice over the years but one judge in a panel of ten is a low percentage of honesty.

> THE COURT: Denied; that's right.
>
> MR. KATZ: May I ask the reasons, your Honor?
>
> THE COURT: Just because I said it, Counsel.
>
> I could stop right here and have no trouble concluding that the judge committed misconduct. It is wrong and highly abusive for a judge to exercise his power without the normal procedures and trappings of the adversary system—a motion,

an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is—and is seen to be—based on law, not the judge's caprice.

In re Complaint of Judicial Misconduct, 425 F.3d 1179, 1184-1185 (9th Cir. 2005) (Kozinski dissenting).

[11] Again, this injustice has not gone unnoticed by honest judges and honest attorneys.

Do judges routinely display a casual attitude toward the facts of the case? I suggest that practicing attorneys be asked whether they have had cases where the judge's statement of the facts were false. Every practicing attorney to whom I have asked this question has responded in the affirmative; some have told me that the practice is, unfortunately, quite common, and that judicial misrepresentation of the facts of cases has produced a crisis in their professional lives. They feel that their work is subject to the whim of judges who play God with the facts of a case, changing them to make the case come out the way the judge desires. Some say that if they had known that the practice of law would be like this, they would have gone into a different profession. Professor Monroe Freedman recently stated in a speech to the Federal Circuit Judicial Conference:

> Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no-publication and no-citation rules.

Professor Freedman wrote a letter to me in which he stated that at the luncheon immediately following his speech, a judge sitting next to him said (apropos of the passage above quoted), "You don't know the half of it!"

Apart from these professional concerns, we should also ask ourselves what kind of a judiciary system this society has produced where judges can misstate the facts of a case and then proceed to apply the law to those fictitious facts. Can any person be safe in court if this practice is allowed to continue? If judges can listen to the evidence and then tell a contrary story, what remains of justice? The vaunted security we have in a free country and a just legal system turns to quicksand. Our case may be factually proven, legally required, and morally compelled, but we can still lose if the judge changes the facts. And if we complain no matter how loudly higher courts will not be interested in reviewing a "factual" controversy, and the legal community, as well as the general public, will

assume that the facts were those stated by the judge.

Anthony D'Amato, *The Ultimate Injustice: When a Court Misstates the Facts*, Cardozo Law Review, vol. 11, 1313, 1345-1346 (1990) (footnotes omitted).

The Symposium of which this essay is a part is entitled "Deconstruction and the Possibility of Justice." If we take the most elementary interpretation of the last term, "justice"—at a level even more basic than that explored by Jacques Derrida when he patiently deconstructed the title of this Symposium—we must acknowledge that justice, in any situation, depends upon a full and fair accounting of the *facts* of that situation. If, instead of facts, *fictions* are introduced that are *contrary* to the facts, then any claimed "just solution" based on such fictions cannot achieve justice in the real world. The proposition is so elementary that it usually goes without saying.

Id. at 1313 (footnotes omitted).

[12] Many law firms bill in 6-minute increments. Public service employees, such as judges, staff attorneys, and law clerks, should easily be able to do the same. In fact, the Criminal Justice Act requires such record keeping on vouchers submitted by court-appointed counsel for compensation:

Criminal Justice Act (CJA) Guidelines

These policies and procedures represent the guidelines of the Judicial Conference of the United States for the administration and operation of the Criminal Justice Act (CJA). The Sixth Amendment to the United States Constitution guarantees an accused the right to representation by counsel in serious criminal prosecutions. Enacted in 1964, the CJA establishes a comprehensive system for appointing and compensating legal representation for accused persons who are financially unable to retain counsel in federal criminal proceedings.

http://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines

Form Instructions

Item 15. IN-COURT SERVICES:

Enter the total number of hours claimed (in hours and tenths of an hour) for each applicable, in-court service category. To support the totals entered, attach an

> itemization of services, by date, and indicate the number of hours claimed for each service. Enter the total in-court hours where required on the form, and multiply the total number of in-court hours claimed by the hourly rate in effect at the time of service. Enter the total dollar amount claimed in the appropriate box on the form.
>
> http://www.uscourts.gov/forms/vouchers/appointment-and-authority-pay-court-appointed-counsel

[13] Increasingly, Americans are fed up with "judicial activism"—judges taking the Constitution and the statutes enacted by Congress and giving them meanings never intended by those who wrote them. In legal circles this is known as "activist judicial construction."

On March 8, 2004, however, the U.S. Supreme Court may have corrected itself in the case of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177. The decision concerned only the Confrontation Clause of the Sixth Amendment.

> **In all criminal prosecutions, the accused shall enjoy the right** to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; **to be confronted with the witnesses against him**; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense …
>
> U.S. Constitution, Amendment VI.

The fact that the Supreme Court addressed a constitutional provision is of little consequence. They do it all the time but the way they did it in *Crawford v. Washington* is significant.

Michael D. Crawford had stabbed a man who had allegedly attempted to rape his wife. However, Mrs. Crawford, after giving a statement to the police, refused to testify at her husband's trial.

The Washington state courts then allowed her statement to be introduced without her being subject to cross-examination because of "adequate 'indicia of reliability,'" a test met when the evidence either falls within a "firmly rooted hearsay exception" or bears "particularized guarantees of trustworthiness ..."

The Washington state courts were following an earlier U.S. Supreme Court precedent in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980) (witness was "constitutionally unavailable" to testify at trial).

In the *Crawford* case the Supreme Court did not issue its decision using the "judicial activism" that brought us *Roe v. Wade*, 410 U.S. 113 (1973) (legalizing abortion based on the right of "personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments"), *Lawrence v. Texas*, 539 U.S. 558 (2003) (striking down sodomy laws as unconstitutional, violating the "right to liberty" under "the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment") and a plethora of other decisions. Instead the Court went back to the original intent of the framers in 1791.

In *Crawford* not only did seven out of nine justices address original intent, the justices addressed the history of the Confrontation Clause for almost the last 200 years to demonstrate exactly what the intent of the framers was.

Normally, the Supreme Court merely builds on its previous decisions in order to arrive at a predetermined result. The *Crawford* case was different. *Crawford* should have—as it may yet, if Congress acts—set the standard for all court decisions involving the Constitution, from the Supreme Court on down.

Under Article III, Section 2, Congress has the power to make regulations for the Supreme Court. That Congress may regulate the lower federal courts is also seen in Section 1 of Article III.

[14] Consider the case of *United States v. Hansel*, 70 F.3d 6 (2d Cir. 1995). The issue Hansel raised—did Congress have the Constitutional authority to change grand jury proceedings from what its authors intended—was *not* the issue the appellate panel addressed when it ruled the following:

> Hansel's objection to the presence of a government attorney during the grand jury proceedings fails, because Rule 6(d) of the Federal Rules of Criminal Procedure expressly states that government attorneys may "be present while the grand jury is in session."
>
> *Id.* at 8.

The judicial dishonesty in that statement is evident because when Congress enacted Rule 6(d) of the Federal Rules of Criminal Procedure and Title 28 U.S.C. § 515(a), it changed the grand jury's purpose and the manner of proceeding.

> We do not protect the integrity and independence of the grand jury by closing our eyes to the countless forms of prosecutorial misconduct that may occur inside the secrecy of the grand jury room. After all, the grand jury is not merely an investigatory body; it also serves as a "protector of citizens against arbitrary and oppressive governmental action." *United States v. Calandra*, 414 U. S., at 343. Explaining why the grand jury must be both "independent" and "informed," the Court wrote in *Wood v. Georgia*, 370 U. S. 375 (1962):
>
> > "Historically, this body has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will." *Id.*, at 390.
>
> It blinks reality to say that the grand jury can adequately perform this important historic role if it is intentionally misled by the prosecutor—on whose knowledge

> of the law and facts of the underlying criminal investigation the jurors will, of necessity, rely.
>
> *United States v. Williams*, 504 U.S. 36, 67-68, 112 S.Ct. 1735, 1753, 118 L.Ed.2d 352 (1992) (Stevens, J., dissenting).

[15] The test of a statute is by the Constitution, regardless of Supreme Court precedent.

> It is the duty of the courts to hold fast to the separation of powers under our system of government. The delicate duty of the Judicial Department to hold an act enacted by the Congress void because in conflict with the Constitution should never be exercised unless the judge feels a clear and strong conviction of their incompatability beyond a reasonable doubt. No judge should ever by his conduct in passing on the constitutionality of an act subject the judiciary to the criticism that it was exercising legislative power or the power of the executive to veto.
>
> *R.C. Tway Coal Co. v. Glenn*, 12 F.Supp. 570, 595 (W.D. Ky. 1935).

[16] The Prison Litigation Reform Act (PLRA), passed in 1996, was intended "to deter inmates from bringing frivolous lawsuits," said the New York Times in an editorial in 2010. "What the law has done instead is insulate prisons from a large number of very worthy lawsuits, and allow abusive and cruel mistreatment of inmates to go unpunished."

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), passed after the Oklahoma City bombing with broad bipartisan support, undermines the habeas corpus rights of U.S. prisoners. AEDPA placed severe limitations on prisoners' ability to challenge death sentences—or life sentences, or any unjust convictions—in federal courts, even when they had new evidence of their innocence.

Former President William Clinton publicly stated he should never have signed them into law in the first place.