

OAK

a national consortium of grassroots advocates

Organizations Associating for the Kind of Change America Really Needs

<http://oak4change.ning.com>

888.478.4439 Ext 3



April 21, 2010

Grass On The Hill Day

Congressional Information Package

- Message from Rodney A. Logal, President – OAK’s Board of Directors;
- OAK Fact Sheet;
- Overview of OAK’s Joint Submission for the Universal Periodic Review (UPR);
- OAK’s Joint Submission for the UPR, November 2010.





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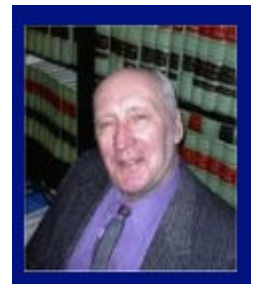
In care of the administrative office of:

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April 15, 2010

Greetings My Friend:

Please accept my apologies for being unable to meet with you personally. My absence should not suggest a lack of commitment to OAK nor a lack of interest in working with your office. I am extremely committed to OAK and look forward to working with you and your congressional office to accomplish shared goals.



Rodney A. Logal

The administrative capabilities, resources, sophistication, and experience of OAK members as advocates vary dramatically. However they all can be invaluable allies in a quest to restore the arguably fading American dream. They obviously care about America and are on the frontlines of persuading others about its virtues and shortcomings.

With your help, OAK members can be more effective in communicating and working with your congressional office. I hope you welcome our acquaintance and will help shepherd us through to a mutually beneficial relationship. Count on me to do my part.

Have a great meeting with OAK's 2010 Grass On The Hill Day delegation and a wonderful day.

Sincerely,

Rod Logal

Rodney A. Logal, President
OAK's Board of Directors

RAL/abm

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Fact Sheet

- ✓ OAK is a national consortium of grassroots advocates;
- ✓ OAK is a project of National Judicial Conduct and Disability Law Project, Inc.;
- ✓ OAK is committed to protecting and advancing all aspects of human rights for low and moderate income Americans through strategic planning, appropriate activism, and mutual support;
- ✓ OAK was created to assemble a wide spectrum of grassroots advocates; help them transcend obvious differences to harness their critical similarities; otherwise help maximize their efficiency and effectiveness; and gear them to function much like a large voting bloc;
- ✓ Most of OAK's founding members hail from the national grassroots legal reform community and work closely with government whistleblowers. But OAK represents housing, health, and education advocates as well as legal system and work related activists;
- ✓ OAK's network site features:
 - Discussion groups on housing, health, legal system, education, and work related issues;
 - A bi-weekly speaker series entitled "Lunch Under the OAK";
 - "Shaking the OAK" - an aggregate news blog with some original publications;
 - "OAK' Corner for Free Tips" and much more.

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Overview of OAK's Joint Submission for the Universal Periodic Review of America's Human Rights Record

- The Office of the High Commissioner for Human Rights (OHCHR) will address, among other things, the “(a)ministration of justice and the rule of law” in America;
- Our basic premise is that the Rule of Law can't be accomplished without meaningful citizen oversight;
- OAK's submission at least begins to establish a lack of meaningful citizen oversight in America:
 - *Disciplinary processes can be easily manipulated to punish legal professionals who are government critics and / or represent controversial clients. **Paradox:** lawyers are the first line of defense for the rights of vulnerable people;*
 - *The DOJ does not adequately redress criminal violations of free speech, freedom of association and assembly, and the right to petition government;*
 - *Major media is not an adequate check on government waste, fraud, and abuse;*
 - *Even with major media exposure, too many private citizens must exhaust their financial resources and emotional fortitude through years (sometimes decades) of advocacy to redress government waste, fraud, and abuse in America;*
 - *We do so with an unspoken but apparent threat of government retaliation; and*
 - *The access to public officials of average Americans, pales in comparison to that of the country's elite.*
- Without meaningful citizen oversight, what would otherwise be our constitutional and human rights are no more than privileges, doled out at government discretion –
 - A state less obvious when the government is generally fair and magnanimous;
 - And most apparent in the government's treatment of anti-corruption advocates / government whistleblowers;
- So OAK's submission makes a case that America's administration of justice is not firmly anchored by the rule of law.

###

Joint Stakeholders' Universal Periodic Review Submission – U.S. of America – November 2010

Names of all submitting stakeholders:

OAK (Organizations Associating for the Kind of Change America Really Needs) with its sponsor, National Judicial Conduct and Disability Law Project, Inc. (NJCDLP); Tom Devine, Legal Director, Government Accountability Project; and OAK Anchor Members: National Forum On Judicial Accountability (NFOJA); POPULAR, Inc. (POPULAR – Power Over Poverty Under Laws of America Restored); and the National Whistleblowers Center (NWC).

Stakeholders' Profile:

OAK is a national consortium of grassroots advocates which launched on March 1, 2010.¹ It is committed to protecting and advancing all aspects of human rights for low and moderate income Americans. The uniqueness and strength of this broad based association are in it being a management tool more than an activist, particularly for advocates without major institutional support. OAK was created to assemble a wide spectrum of grassroots advocates; help them transcend obvious differences to harness their critical similarities; otherwise help maximize their efficiency and effectiveness; and gear them to function much like a large voting bloc. Helping to guide OAK's social justice agenda and corresponding activities are attorney Tom Devine, Legal Director, Government Accountability Project (www.whistleblower.org), and OAK's Anchor Member, the National Whistleblowers Center (www.whistleblowers.org).

Introductory Executive Summary:

The Program on Human Rights and the Global Economy of Northeastern University School of Law aptly notes that “Access to Legal Counsel is a Critical Component of Access to Justice.”² However this submission and the information it references at least begins to establish the hypocrisy of supplying legal counsel without the rule of law. As New York Times reporter Adam Liptak once hinted, ***there is no rule of law without meaningful citizen oversight***, “. . . a counterweight to central authority . . . and . . . as important an element in the constitutional balance as the two houses of Congress, the three branches of government and the federal system itself.”³

When rogue agents of America's local, state, and / or federal government align to subvert the law, no amount of legal training, talent, skill, or experience guarantees any American appropriate relief. We certainly have members and constituents who will attest to that reality as does this submission. Moreover it confirms that the ability of average Americans to effectively petition their government is so diluted or compromised that what would otherwise be our constitutional and universal human rights are no more than privileges, doled out at government discretion. Such is not the rule of law. And while it can be magnanimous, America's ruling class could not actually respect the constitutional and universal human rights of its underclass.

Our democracy is so heavily weighted against the disenfranchised that considering America a republican form of government requires a leap of faith. Budget constraints, competing social agendas, unprecedented natural disasters, ongoing wars, national security threats, and human frailty notwithstanding; this “weight” must be lifted for America to realize respect for human rights as a country. In the words of that great corporate institution, NIKE, we have got to “Just Do It.” Because when even a relatively few experience,

¹ OAK (<http://oak4change.ning.com>) and its Anchor Member, NFOJA - National Forum On Judicial Accountability (<http://50states.ning.com>), are projects of National Judicial Conduct and Disability Law Project, Inc. (NJCDLP). NJCDLP is a grassroots, nonprofit corporation founded in late 2004. It combats abuses of the American legal system that are facilitated by judicial misconduct. (www.njcdlp.org).

² See, ***ACCESS TO CIVIL JUSTICE: Racial Disparities and Discriminatory Impacts Arising from Lack of Access to Counsel in Civil Cases*** by Northeastern University School of Law (12/10/2007), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN24.doc>

³ See, *Cases Keep Flowing In, But The Jury Pool Is Idle*; Adam Liptak, “The New York Times”, 4/30/2007.

but find it virtually impossible to overcome their government's oppression, the majority of their countrymen enjoy a freedom too tenuous to be more than illusory.

For the foregoing reasons, we seek the legislative initiatives and other relief specified at the conclusion of this submission.

Key Words / Phrases: ruling class; human rights; First Amendment; due process; U.S. Constitution; conspiracy against federal rights; criminal violation of rights under color of law; House Judiciary Committee; Chairman John Conyers, Jr.; Attorney General Eric Holder; attorney Thomas N. Todd; Reverend Theodore M. Hesburgh; U.S. Civil Rights Commission; access to courts; whistleblowers; Transactional Records Access Clearinghouse; war on poverty; Whistleblower Protection Act; No FEAR Act; attorney Richard I. Fine; U.S. Solicitor General; rule of law; Culture of Quiescence; late Georgia State Senator Nancy Schaefer; Child Protective Services; judicial accountability; citizen oversight; attorney Tom Devine; National Whistleblowers Center

Joint Submission:

1. Social justice advocates applauded last year as Attorney General Eric Holder announced plans for the Civil Rights Division of the U.S. Justice Department to reinvigorate enforcement of anti-discrimination laws. According to the New York Times, the division is rebuilding "more traditional efforts on behalf of minorities." Within months of that report, the Justice Department (DOJ) hosted a "National Symposium on Indigent Defense."
2. While speaking at the DOJ's symposium, Attorney General Holder and his chief for the Civil Rights Division reportedly grappled with the failings of America's criminal justice system, plagued by inadequate defense for the poor. True to their stated commitments, prominent Harvard law professor Laurence H. Tribe subsequently joined the DOJ "to lead an effort focused on increasing legal access for the poor."
3. Of course America's indigent generally lack adequate representation in civil legal matters, even when parental rights, a child's welfare, and / or basic human needs are at stake.⁴ The U.S. obviously needs a counterpart to professor Tribe, tackling this egregious situation.⁵
4. Timely, competent, and affordable legal counsel would have certainly circumvented some if not many difficulties our organizations, members, and constituents address. But when rogue agents of America's local, state, and / or federal government align to subvert the law, no amount of legal training, talent, skill, or experience guarantees any American appropriate relief.

Lawyer disciplinary processes are easily misused to silence government critics; the devastating impact extends beyond targeted lawyers and their families; in fact scores if not hundreds or thousands of poor and other disadvantaged Americans lack access to affordable, competent legal representation as a result; and the most fundamental, underlying problem is that state regulation of speech among lawyers and judges,

⁴ See, Northeastern University School of Law's *ACCESS TO CIVIL JUSTICE: Racial Disparities and Discriminatory Impacts Arising from Lack of Access to Counsel in Civil Cases* (12/10/2007).

⁵ The late Georgia State Senator Nancy Schaefer who believed "Child Protective Services nationwide has become corrupt and that the entire system is broken almost beyond repair" concluded "poor parents often times are targeted to lose their children because they do not have the where-with-all to hire lawyers and fight the system." See, <http://fightcps.com/2008/02/29/report-of-georgia-senator-nancy-schaefer-on-cps-corruption/>

transgresses the Privileges and Immunities Clause, Commerce Clause, and First Amendment of the U. S. Constitution beyond considerations of orderly, fair trials.

5. In “Culture of Quiescence”, tenured law professor Carl T. Bogus expresses his “. . . thesis that there is a strongly enforced taboo within the Rhode Island legal culture against criticizing the state’s governmental institutions, particularly its courts.” See, Roger Williams University Law Review, Vol. 9, No. 2, p 351 at 353 (6/9/04), *Culture of Quiescence* – <http://www.projo.com/news/pdf/20040630bogus.pdf> He notes, “(t)his is a problem in the wider professional culture – a culture that equates disagreement with confrontation, institutional criticism with ad hominem attack, and anything that even smacks of personal criticism with contemptuousness.” *Id. at 392*.
6. Bogus concludes that “Rhode Island lawyers live in a culture in which criticism is considered professional treason and punished by both courts and colleagues.” *Id. at 397*. We cannot affirm or refute the accuracy of his assessment.⁶ However similar allegations and their implications prompted POPULAR, Inc. (POPULAR – Power Over Poverty Under Laws of America Restored), a grassroots legal reform organization, to begin rallying for judicial whistleblower protection in 2008. See, **Protecting Judicial Whistleblowers In The War On Poverty – A Proposed International Initiative Focusing On The United States (November 2008)**.⁷ Associate law professor Margaret Tarkington essentially embraced, fortified, and expounded upon many of its premises just weeks ago. See, Margaret Tarkington, *A Free Speech Right to Impugn Judicial Integrity in Court Proceedings*, 51 B.C. L. Rev. 363 (2010).
7. Attorney Thomas N. Todd, an accomplished civil rights activist and former constitutional law professor, shifted the problem and national dialogue among grassroots reformers from the plight of some disciplined lawyers to that of current and prospective clients. In 2007 Todd personally called on House Judiciary Committee Chairman John Conyers, Jr. (D-Mich) to move towards federalizing the regulation of speech among lawyers. In a prerecorded interview, Todd vividly describes the difficulties lawyers face in zealously advocating for clients without running “afoul of what (their) judge may personally feel or think.” Todd notes the predicament “is a problem which (he) talked about in the deep South, (and) a problem which lawyers grapple with every day now, and especially in this complicated era . . .”⁸
8. So whether a lawyer or judge is an avid ethics watchdog and anti-corruption advocate or impugns one or more judges primarily to expose flaws of a judicial decision, his or her career could easily end through antics such as Bogus describes. In fact lawyers willing to publicly challenge what they contend are knowing, intentional violations of law by judges may well look through bars; that is jail and prison bars,

⁶ It seems ‘the real problem for our country is not the reality or unwarranted perception of judicial misconduct’ . . . , but the lack of forums for addressing allegations of judicial misconduct that do not rely almost exclusively for effectiveness on judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled or substantially impacted by judges. This is not to suggest that judges, lawyers, and public officials whose power and/or careers are controlled or substantially impacted by judges are not generally honest people of great integrity. This report instead decries “a judiciary that is ‘. . . essentially final arbiter of whether it has been corrupted and exclusive regulator of any attorney or judge who would object’. *Final Report and Recommendations from the Citizens’ Forum On Judicial Accountability*, p 11- http://www.njcdlp.org/files/CFOJA_RR_7.pdf (May 2009).

⁷ Available at http://api.ning.com/files/7RRfurJQ1DKZbc-lyhtVuXCTyBvKsqEC0ElvVb5-KIxGQnLq0omfUXk5ZwGO4oxgp1AulV7Bn5WAlol6dsrVVHbucMJEMbg2/POPULAR_WhitePaper_finalized.pdf

⁸ To view the Todd interview, visit http://www.popular4people.org/Video_Viewer_TNT.html

not the state and federal bars of licensed attorneys. Yet these inherently conflicted stewards of justice are the first line of defense for the rights of America's most vulnerable citizens.⁹

Anyone legitimately pressing beyond local officials to America's federal government for relief, needs a DOJ committed to First Amendment protection as much if not more than anti-discrimination enforcement – but it seems at best that commitment is expressed through unwarranted disparities in prosecuting white and blue collar crimes.

9. As proverbial cream rises to the top, surely “good” lawyers and capable non-lawyer advocates can instigate criminal prosecutions under 18 U.S.C. §§241 (*conspiracy against federal rights*) and / or 242 (*violation of federal rights under color of law*) when their quests for exoneration or civil relief get subverted by sinister forces.
10. Alas, the Transactional Records Access Clearinghouse (TRAC) of Syracuse University reports that “. . . the role of the federal government as the court of last resort when it comes to dealing with abusive government officials has long been spotty, with almost all of the matters recommended for prosecution by the FBI being declined by the assistant U. S. Attorneys.” *See*, <http://trac.syr.edu/tracreports/civright/107>
11. At least last year the DOJ's Civil Rights Division acknowledged federal criminal violations of civil and / or constitutional rights “are invariably matters of intense public interest.” It also reported that “(a)llegations of official misconduct constitute the majority of all complaints reviewed by (its) Criminal Section.” Yet, “the declination rates for official abuse matters have been extremely high (i.e. almost 100%) under every administration going back to President Carter with only marginal differences relating to which party controlled the White House.” *See*, <http://trac.syr.edu/tracreports/civright/107>
12. TRAC notes that “competing social characteristics of the complainants and the accused (may) lead the prosecutors to make a social decision, to decline some cases that truly merited going to trial”. *Id.* Surely America has enough political scandals and been undermined by enough corporate fraud for prosecutors to accept that “high station” and “criminal conduct” are not mutually exclusive concepts.
13. Interestingly the “core mission” of our DOJ's Civil Rights Division, Criminal Section is supposedly prosecuting hate crimes and official misconduct. The division seems intent on revamping protection of minority rights without emphasizing prospects of official misconduct. But contending with official misconduct or public sector corruption has long been a challenge in America's quest for racial equality.
14. In 1965 the U. S. Commission on Civil Rights examined “the failure of local officials to prevent racial violence or to apprehend or punish those responsible for it, the failure of local prosecutors to pursue vigorously State criminal remedies, interference by local officials with the exercise of Federal rights, and abuse by local officials of the administration of justice.” Even then 18 U.S.C. §§ 241 and 242 were key provisions in combating “failure(s) of the States.”
15. By the time related circumstances warrant federal intervention, historically protected people are often more than discrimination victims, having become advocates for personal vindication and broader reform. As envisioned by our U. S. Civil Rights Commission in 1965, “(p)rimarily responsibility for

⁹ Based on her experiences and observations, Ohio family rights advocate L. Wilson generally refers to public defenders as “public pretenders.”

correcting (their) problems . . . rests with the individual States” which fail given obstacles more insidious than unlawful discrimination.

16. Anyone legitimately pressing beyond local officials to America’s federal government for relief, needs a DOJ committed to First Amendment protection as much if not more than anti-discrimination enforcement. It seems at best that commitment finds expression in unwarranted disparities in prosecuting white and blue collar crimes.
17. The U.S. Solicitor General makes passing reference to 18 U.S.C. §242 in a recent brief condoning absolute prosecutorial immunity. The underlying case which settled is *Pottawattamie County v. McGhee*, formerly petition number 08-1065 before the U.S. Supreme Court.
18. As teenagers, African Americans Curtis McGhee and Terry Harrington were reportedly convicted of murdering a retired Caucasian police officer in Pottawattamie County, Iowa and sentenced to life in prison. After serving 25 years of that sentence, evidence revealed that their prosecutors fabricated critical trial testimony and failed to disclose evidence about an alternative suspect.
19. McGhee and Harrington were freed from prison and attempted to sue their prosecutors for civil and constitutional rights violations. Our U.S. Solicitor General encouraged the U.S. Supreme Court to disallow that litigation, contending “Adequate Safeguards Exist Against Prosecutors’ Illegal Behavior.”
20. In contrast, “Black Cops Against Police Brutality” submit that “Prosecutors Should Not Be Held To A Lower Standard Than Uniformed Officers.” The officers’ Supreme Court brief explains “(f)rom the standpoint of fairness, we are troubled by the prospect that after the law enforcement team is shown to have crossed the line into illegality, the white-collar prosecutors with better reason to know the line will be seen to walk away, while the blue-collar police with less reason to know the line will be held to answer.”
21. Such is the case so far for George Stokes, Michayl Mellen, their respective children, the families of Juan Manuel Albarado as well as Moishe Curtis Turner and other impacted residents of Taylor County, Texas. Evidence of what may be criminal attempts to chill their First Amendment Rights was submitted as complaint number 7709 to the DOJ.¹⁰ The alleged perpetrators presently are: (1) Deputy Taylor County, Texas District Attorney Harriet Hagg and/or unknown agents of the Taylor County, Texas District Attorney’s office; (2) Unknown agents of the Abilene, Texas City Attorney’s office; (3) Unknown agents of the Texas Department of Criminal Justice, Parole Division; (4) Martin Hernandez and/or unknown agents of the Abilene District Parole Office; and (5) a local attorney.
22. By letter of September 17, 2009, the Criminal Section of the DOJ’s Civil Rights Division reported it is “unable to authorize investigation of (the referenced) complaint . . .” until such time that it involves “the use of excessive force by law enforcement officials.” Apparently section 242 prosecutions are not a real threat for rogue prosecutors despite contrary suggestions to the U.S. Supreme Court by our U.S. Solicitor General.¹¹

¹⁰ The complaint, supplement, and related information are accessible at www.popular4people.org/OLTW_newsroom.html

¹¹ Compounding that problem is the increasingly limited, virtually extinct right of direct citizen access to grand juries in America. Moreover, the general proliferation of summary judgments suggest “(t)rials are on the verge of extinction.” *Cases Keep Flowing In, But The Jury Pool Is Idle*; Adam Liptak, “The New York Times”, 4/30/2007. A federal trial judge is reported to lament that the trend disavows ‘the most stunning and successful experiment in direct popular sovereignty in all history.’ *Id.* Reporter Adam Liptak adds that “(j)ury trials may be expensive and time-consuming, but the jury, local and populist, is a counterweight to central

Surely it could not be due process for beleaguered victims of unlawful bias, discrimination and / or retaliation in America to spend the better of two decades (or more) advocating for relief and reform, often in addition to running a gauntlet of costly, protracted civil proceedings for relatively rare vindication.

23. On multiple occasions, Justices of the U. S. Supreme Court have noted in regard to publicity that without it “. . . all other checks are insufficient: in comparison of publicity, all other checks are of small account.” See, *e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 at 569 (1980). After considering the effectiveness of major media as a check on America’s judiciary, participating panelists reporting on the 2008 Citizens’ Forum On Judicial Accountability (CFOJA) concluded:

This report was not created to advocate media reform, but comfortably concludes that major media is not combining with America’s well-established government processes for judicial oversight to provide what CFOJA’s witnesses Johnson, Swan, Moore, Combier, and Pak apparently need: one or more forums to attempt proving or refuting allegations of judicial misconduct that are not susceptible to exactly the same kind of corruption allegedly thwarting their vindication to date.

Final Report on CFOJA at pp 10-11, http://www.njcdlp.org/files/CFOJA_RR_7.pdf (May 2009).

“When asked whether media is like a sleeping watch dog as to the courts, embattled media and legal reform activist Dr. Mark Adams substantially responded, ‘it’s more like the judiciary’s attack dog.’ See, *The Media As Judicial Monitor: A Sleeping Watchdog?*, BlogTalkRadio – “Change Of Venue” – September 8, 2008.” *Id.* at p 10.

24. Obviously profound movements have been ignited and stoked by media coverage. Societal norms are often shifted for the better or worse as a result. However, contending with deeply entrenched government corruption in America presents different dynamics. As the plague does not immediately impact most Americans, a persistent challenge is to convey why they should find it intolerable. That effort is complicated by the somber reality that Americans are inundated with news of atrocities, competing for their attention and concern. Moreover, should the targeted corruption be truly systemic, at least initially its redress pits American reformers against vast segments of their own government. Such a foe is typically recalcitrant to the point of seeming relentless. Usually the will and stamina to resist it must be nurtured.
25. To spark righteous indignation, lawful protest, and escalating demands for appropriate relief in America, good government advocates must do more than “publicize” a corresponding need for reform. They must enlighten and inspire an ever increasing base of support on the subject. Major or mainstream media can be a critical and integral part of, but cannot supplant that continual process. It should be an intense, multifaceted, and coordinated promotional effort, using a variety of communication mechanisms. Adequate momentum for the underlying cause rarely erupts from a single news item or event or somewhat haphazard series of either.
26. Such is the lot of many if not most beleaguered victims of unlawful bias, discrimination and / or retaliation in America. Some spend the better of two decades (or more) advocating, often in addition to

authority and is as important an element in the constitutional balance as the two houses of Congress, the three branches of government and the federal system itself.” *Id.*

running a gauntlet of costly, protracted civil proceedings for relatively rare vindication.¹² Surely this could not be due process.

There is a distinct difference in how America generally responds to the alleged persecution of its elites versus that of its marginalized citizenry.

27. California legislature reform advocate Michael Warnken contends the right of average Americans to effectively petition government is unduly diluted because of inadequate representation in one or both chambers of each state legislature. Quoting the U.S. Supreme Court quoting founding father James Madison, Warnken notes, ‘(a) Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect.’ *U.S. Term Limits v. Thornton*, 514 U.S. 779 at 790-791 (1995).
28. Chairman John Conyers, Jr. recently released a nearly 500 page report “documenting numerous abuses and excesses of the Bush administration.” Chairman Conyers’ corresponding press release does not specifically mention his committee’s consideration of various criminal cases, successfully prosecuted during the Bush administration against wealthy, powerful, and otherwise influential Democratic supporters. The committee’s review of that matter was apparently precipitated in part by an October 22, 2007 letter from one of those former party contributors, Mississippi lawyer Paul Minor.
29. Minor’s October 2007 letter makes an impassioned plea to the U. S. House Judiciary Committee, claiming that “. . . you are the only people who can help me prove that the Bush Justice Department’s prosecution of me and Justice Oliver Diaz, Jr., and Judges Wes Teel and John Whitfield was politically motivated.” Minor goes on to confirm that he remains or was once a multi-millionaire and had the benefit of major media coverage throughout his legal ordeals and related events. Yet Minor essentially proposes that his situation presents an occasion for the House Judiciary Committee to restore faith to the press and honest Americans, “deeply distressed by the notion that the government could engage in selective political prosecutions of its citizens.”
30. In a related letter to Chairman Conyers and an international press release, good government advocate Zena Crenshaw-Logal pointed out that “wealthy or once wealthy lawyers such as Minor are better positioned to correct trial and/or appellate error without legislative action than most American litigants, respondents, and defendants.” She concluded that “(t)he concern Minor evokes and corresponding response by the House Judiciary Committee marks a difference in how America generally responds to the alleged persecution of its elites versus that of its marginalized citizenry.”
31. Reverend Theodore M. Hesburgh, President Emeritus of the University of Notre Dame at South Bend, Indiana, recently wrote Conyers and Attorney General Holder on behalf of Crenshaw-Logal. Noting that he welcomed President Barack Obama to the university’s campus for its 2009 commencement address but had yet to meet them, Hesburgh encouraged Conyers and Holder to meet with Crenshaw-Logal, describing her as “a young woman with whom (he has) much in common.”

¹² A coalition of nearly 400 advocates collectively representing millions of members and constituents, some of which are signatories to this submission, report that last year, on average, 16 whistleblowers a month lost initial decisions from administrative hearings at the Merit Systems Protection Board (MSPB). Since 2000, only two out of 54 whistleblowers have received final rulings in their favor from the MSPB. The Federal Circuit Court of Appeals, the only court which can hear federal whistleblower appeals of administrative decisions, has consistently ruled against whistleblowers, with whistleblowers winning only three cases out of 202 since October 1994 when Congress last strengthened the law. Read their sign-on letter for swift action to restore strong, comprehensive whistleblower rights: www.whistleblower.org/storage/documents/WPASignonLetter.pdf

32. Reverend Hesburgh has been a priest of the Congregation of the Holy Cross since 1943. He served as Notre Dame's president from 1952 to 1987; accepted sixteen presidential appointments in the interim, including to chair the U.S. Civil Rights Commission; remains a national and international figure at more than 90 years of age; and is arguably the best known educator of the twentieth century. Hesburgh's 150 or so honorary degrees stand as a Guinness Book record. Added to his awards are the Presidential Medal of Freedom, the Congressional Gold Medal, and West Point's distinguished Sylvanus Thayer Award.
33. Hesburgh's letter to Conyers and Holder explains:

. . .

It is my understanding that as a good government advocate, Zena has encouraged President Obama and our U.S. Justice Department to fervently prosecute apparent violations of Title 18 U.S.C. §§ 241 (*private conspiracies against rights*) and 242 (*deprivations of rights under color of law*). She has also shared a bit with me about her quest for federal judicial whistleblower protection. Interestingly Zena's relevant concerns hasten to a 1965 report submitted to the President and Congress while I was a member and a few years before I became Chairman of the U.S. Commission on Civil Rights.

While gratified that Zena pursues related solutions, I am troubled to find America still grappling with the effectiveness of federal criminal remedies for civil and constitutional rights violations. Your personal attention to these matters with Zena would be greatly appreciated. Apparently she can personally attest to the difficulties of some legal professionals contending with the subject. In fact my then fellow commissioner who later became Solicitor General and is now the late Erwin N. Griswold spoke of such difficulties, noting in 1965 that U.S. lawyers "have been concerned, but have felt that they could not speak up" about certain transgressions of civil and constitutional rights.

. . .

Crenshaw-Logal reports that Reverend Hesburgh's letter on her behalf was never acknowledged as far as she is aware.

Local, state, and federal officials in America regularly defy prudent priorities to prosecute, incarcerate, or otherwise sanction many government critics through processes triggered by anonymous sources and / or riddled with irregularities.

34. Certain of our members and constituents attest to an ironic zeal among some local, state, and federal officials: they defy prudent priorities to prosecute, incarcerate, or otherwise sanction many government critics through processes triggered by anonymous sources and / or riddled with irregularities. One particularly compelling example is the case of attorney Richard I. Fine.
35. It is difficult to both summarize and adequately portray Dr. Fine's extensive and distinguished background. His many prestigious degrees and certificates include a Ph.D. in international law from the London School of Economics and Political Science. He has been a lawyer in multiple government antitrust divisions including that of the U.S. Justice Department and another he created and led for the city of Los Angeles, California. Fine is General Consul for the country of Norway.

36. On March 4, 2009, California state judge David P. Yaffee sentenced Fine to jail for contempt where he remains indefinitely under what is known as the Marina Strand case, cause number BS 109420 before Department 86 of the Los Angeles County Superior Court. At a March 20, 2008 hearing in that case, Judge Yaffee reportedly admitted in open court that he had received and was receiving payments from Los Angeles County which he did not disclose on his Form 700 Statement of Economic Interests.
37. Fine's various pleadings and motions make clear that his ongoing incarceration at age 70 is questionable to say the least.¹³ Central to the controversy is the alleged obligation of California state judges receiving "illegal payments of approximately \$46,300" annually from Los Angeles County, California to refrain from presiding over cases in which the county is a party; and state appellate as well as federal judges to refrain from addressing the propriety of that situation when they once received the referenced payments, having ascended from California state trial courts.
38. As controversial as the Fine matter clearly is, it would be closer to a garden variety legal than a political dispute and constitutional crisis if the underlying payments had not been deemed unconstitutional and become the subject of substantial media coverage; prompted clandestine, arguably unlawful legislation; did not arguably precipitate crimes and divert multi-millions of dollars in "extra pay" to judges for the financially strapped State of California as well as prompt Dr. Fine's extended incarceration in an overcrowded, wretched county jail.¹⁴

The ability of average Americans to effectively petition their government, is so diluted or compromised that what would otherwise be our constitutional and universal human rights are no more than privileges, doled out at government discretion.

39. All these are prerequisites for an environment promoting access to justice: the capacity of (usually) disadvantaged groups of citizens to gain access to courts (or alternative resolution mechanisms) by removing various institutional as well as corruption related barriers within the legal system. *Transparency International 2007 Global Corruption Report*. This "capacity," evidenced by the ability of average Americans to effectively petition their government, is so diluted or compromised that what would otherwise be our constitutional and universal human rights are no more than privileges, doled out at government discretion.
40. Such is not the rule of law. And while it can be magnanimous, America's ruling class could not actually respect the constitutional and universal human rights of its underclass.
41. Our democracy is so heavily weighted against the disenfranchised¹⁵ that considering America a republican form of government requires a leap of faith. Budget constraints, competing social agendas, unprecedented natural disasters, ongoing wars, national security threats, and human frailty notwithstanding; this "weight" must be lifted for America to realize respect for human rights as a country. In the words of that great corporate institution, NIKE, we have got to "Just Do It." Because

¹³ Relevant court papers are accessible at <http://sites.google.com/site/freerichardfine/Home/court-pleadings>

¹⁴ POPULAR posed the question, "Which is the greater crime – exercising or violating federal rights?" upon the imprisonment of Bradley Birkenfeld, the international banker who blew the whistle on secret offshore accounts in Switzerland to the great benefit of American taxpayers. See Facebook events: <http://www.facebook.com/#!/event.php?eid=267166194857&index=1>

¹⁵ For insight on what most Americans must overcome to positively impact public policy as a prerequisite for personal relief, see *Running Out Of Change* -- *Why it's so hard to make good things happen* at <http://prorev.com/runningout.htm>

when even a relatively few experience, but find it virtually impossible to overcome their government's oppression, the majority of their countrymen enjoy a freedom too tenuous to be more than illusory;

42. Article 33 of the U.N. Convention Against Corruption provides that "(e)ach State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with (that) Convention."
43. **For the foregoing reasons, we seek:**
- (a). a congressional hearing on the need to nationalize regulation of speech for America's lawyers and judicial officers;
 - (b). federal legislation protecting judicial whistleblowers such as POPULAR has proposed (*See footnote 7*);
 - (c). establishment of an international body to promptly investigate and conclude, as best as it can determine, whether any lawyer(s) and/or judicial officer(s) petitioning it has / have been subjected to retaliatory discipline or other sanction(s) for what would be First Amendment activity under the U. S. Constitution had it been properly applied, even when it is otherwise inapplicable;
 - (d). a congressional hearing on the propriety of a U.S. Justice Department that fervently prosecutes 18 U.S.C. §§241 and 242 violations and dispels its image of being more responsive to power, wealth and corresponding prestige than compelling evidence of criminal, civil, constitutional, and human rights violations;
 - (e). a congressional hearing on the national implications of issues addressed by the National Forum On Judicial Accountability (NFOJA) which advocates placing responsibility for state judicial discipline in the hands of rotating panels of randomly selected, adequately trained private citizens. *See <http://50states.ning.com>*
 - (e). a congressional investigation on the extent to which federal funding and substantive policies / law contribute to child protective services and family court abuses as well as the undermining of parental rights and American families;
 - (f). a congressional hearing on national strategies to increase citizen access to their respective state legislatures and Congress;
 - (g). prompt modernization of the Whistleblower Protection Act by passing all of the following reforms:
 - Grant employees the right to a jury trial in federal court;
 - Extend meaningful protections to FBI and intelligence agency whistleblowers;
 - Strengthen protections for federal contractors, as strong as those provided to DoD contractors and grantees in last year's defense authorization legislation;
 - Extend meaningful protections to Transportation Security Officers (screeners);
 - Neutralize the government's use of the "state secrets" privilege;
 - Bar the MSPB from ruling for an agency before whistleblowers have the opportunity to present evidence of retaliation;
 - Provide whistleblowers the right to be made whole, including compensatory damages;
 - Grant comparable due process rights to employees who blow the whistle in the course of a government investigation or who refuse to violate the law; and
 - Remove the Federal Circuit's monopoly on precedent-setting cases.
 - (h). prompt passage of No FEAR II, a proposed amendment of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.

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