

IT Systems of the US Federal Courts, Justice, and Governance

Joseph Zernik

II. METHODS

Abstract—Validity, integrity, and impacts of the IT systems of the US federal courts have been studied as part of the Human Rights Alert-NGO (HRA) submission for the 2015 Universal Periodic Review (UPR) of human rights in the United States by the Human Rights Council (HRC) of the United Nations (UN). The current report includes overview of IT system analysis, data-mining and case studies. System analysis and data-mining show: Development and implementation with no lawful authority, servers of unverified identity, invalidity in implementation of electronic signatures, authentication instruments and procedures, authorities and permissions; discrimination in access against the public and unrepresented (*pro se*) parties and in favor of attorneys; widespread publication of invalid judicial records and dockets, leading to their false representation and false enforcement. A series of case studies documents the impacts on individuals' human rights, on banking regulation, and on international matters. Significance is discussed in the context of various media and expert reports, which opine unprecedented corruption of the US justice system today, and which question, whether the US Constitution was in fact suspended. Similar findings were previously reported in IT systems of the State of California and the State of Israel, which were incorporated, subject to professional HRC staff review, into the UN UPR reports (2010 and 2013). Solutions are proposed, based on the principles of publicity of the law and the separation of power: Reliance on US IT and legal experts under accountability to the legislative branch, enhancing transparency, ongoing vigilance by human rights and internet activists. IT experts should assume more prominent civic duties in the safeguard of civil society in our era.

Keywords—E-justice, federal courts, United States, human rights, banking regulation.

I. INTRODUCTION

VALIDITY, integrity and impact of the current IT systems of the US federal courts, which were developed and implemented over the past two decades, are reviewed in the current report. The systems provide unique insights into the conduct of the federal justice system in particular and the US government in general, since the systems were developed and implemented at the national level. They provide unique evidence, which is largely independent of review of the circumstances and legal aspects of individual cases, and the opportunity for data mining and global perspectives, which are hardly possible otherwise. An expanded report is provided as online Appendix1, and corresponding sections of online Appendix2 are indicated in parenthesis (e.g., Section G2a).

A. IT System Analysis and Data Mining

The current study is based on system analysis and data mining of the IT systems of the US federal courts. The systems were analyzed by review of the implementation of the universal platforms (PACER, CM/ECF) in the individual federal district and appeals courts. Data mining was largely conducted using the inherent built in search engines. System rules were inferred through review of the limited sources, which are publicly provided by the various courts, such as users' manuals, instruction materials, and general orders of the individual courts. Additional, rules were inferred through data mining.

B. Case Studies

Case studies are provided to demonstrate the impact of the IT systems of the US federal courts on the administration of justice in the US today. Of a large number of cases, the examples, which were presentation here, pertain mostly to liberty, to banking matters, to the fundamentals of the government system in the United States, and to international matters.

C. Human Rights, National and International Legal Implications

The legal analysis is largely restricted to technical matters, which needed to be addressed in the course of implementing any IT system of the courts, e.g., maintenance of court records and the safeguard of their validity and authority through signatures, authentication, and certification, authorities and permissions. Accordingly, invalid, ineffectual, unenforceable – "simulated" records are identified [1].

Particular emphasis is given to the records pertaining to the initiation (e.g. summonses) and termination (judgments) of litigation, recognized for centuries as critical for the safeguard of integrity of the courts.

Even such limited legal analysis permits allegations of human rights violations, particularly in the areas of maintenance of honest and effectual courts (section B1).

D. Media Coverage

Media reports are examined, regarding the coverage of conditions of the US justice in general, and coverage of individual cases of national and international significance.



(a)



(b)

Fig. 1 (a) PACER is the public access system of the US district courts and US courts of appeals; (b) CM/ECF is the respective case management and electronic filing system. Access to CM/ECF is permitted to authorized attorneys, but public access is denied - even to parties in their own cases. The NEFs (Notices of Electronic Filing) in the US district courts and NDAs (Notices of Docket Activity) in the US courts of appeals - the authentication instruments that were implemented in these systems - are issued and are accessible only through CM/ECF

III. IT SYSTEM ANALYSIS

A. The Systems

The current report primarily reviews the IT systems of the US district courts and US courts of appeals - PACER and CM/ECF. PACER is employed for Public Access to Court Electronic Records, while CM/ECF - for Case Management and Electronic Court Filing. Separately, the IT systems of the US Supreme Court are addressed (name unknown).

B. Development, Implementation with no Lawful Authority

The IT systems of the US federal courts represent a sea-change in court procedures and court administration. US Congress has never enacted these profound changes in court procedures. Therefore, such changes, implemented by the judiciary, should be deemed lacking in lawful authority.

Furthermore, the public has no access to adequate documentation of the specification, development management, and validation of the systems. Therefore, the rules, which are embedded in the systems, and outlined here, should be considered only an approximation. The resulting situation in itself - where the law is vague and ambiguous, or hidden from the public, should be deemed contrary to the fundamental principle of Publicity of the Law.

Regardless, the common theme of the current IT systems of the US courts is clear: Each and every US court implemented and operates its local variation of the IT systems, based on the common PACER and CM/ECF platforms, in a manner that enables it to generate and publish online judicial and clerical records, as well as case dockets, which are deemed valid and effectual neither pursuant to the US law, nor by the respective court, (Fig. 3) but would appear as valid and effectual records to the unwitting parties and the public at large.

The same deficiencies were previously identified in the IT systems of the State of California and State of Israel courts. [2], [3].

C. Servers of Unverified Identity

Review of the identity of the PACER servers of the various courts, using standard browsers, failed to discover a single server of certified identity (section C1b). IT experts are likely to deem the systems invalid, based on the failure to certify the identity of the servers alone.

D. Invalid Implementation of Electronic Signatures

Today, all records of the US district and appeals courts are presented as electronic records. However, no valid, visible electronic signatures are to be found on any such records. The courts use various forms of invalid signatures: Scanned images of hand-signatures (Fig. 4), initials, /s/, typed names (Fig. 5), or no signature at all (Fig. 2). In authentication instruments (NEFs and NDAs) checksum strings were implemented in lieu of signatures (Fig. 3) (section C1c).

E. Invalid Implementation of Authentication, Service Instruments and Procedures

Fig. 2 Paper-type Certificate of Service, Wright v Bank of America (10-cv-01723), US District Court, Northern District of California,

Dkt #10-1. The record is unsigned and therefore invalid. The Certificate of Service was the authentication instrument in the traditional, paper court files. In this unusual example, it was issued in 2010 and incorporated into PACER

The paper-type authentication instrument was the Certificate of Service (Fig. 2). It stated the name and authority (Clerk, or Deputy Clerk) of the individual, who issued it, included the certification statement "I the undersigned hereby certify...", and was executed by a hand-signature. It was sent as an accompanying record to the actual court record, which it

authenticated, and was by law incorporated into the paper court files, which were publicly accessible.

Although never lawfully established, and never explicitly defined as such, the US courts implemented the NEFs (Notices of Electronic Filing) and the NDAs (Notices of Docket Activity) as the authentication instruments in CM/ECF in the district and appeals courts, respectively (Fig. 3).

(a)

(b)

01/12/2010	73	ORDER: For the reasons stated from the bench today, see tr. 1/11/10, the Court hereby denies the Securities and Exchange Commission's request for leave to file a second amended complaint, without prejudice to the SEC's bringing the new causes of action as a separate lawsuit. (Signed by Judge Jed S. Rakoff on 1/11/2010) (jfe) (Entered: 01/12/2010)
01/19/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 1/19/2010. (mro) (Entered: 01/25/2010)

(c)

01/11/2012	DOCUMENT number 4, 01/11/2012 ORDER OF DISBARMENT/SUSPENSION by Judge Audrey B. Collins that [REDACTED] be disbarred from the practice of law in this Court. (Case Terminated.) (ly) (ly). deleted for the following reason: Reported that the NEF was not generated. Deleted and will redocket entry. (jj)
------------	---

(d)

Fig. 3 (a) NEF (Notice of Electronic Filing) including the "Electronic Document Stamps" (red frames added), *Perry v Premier Mortgage Funding et al*, US District Court, California Eastern District. (b) NEF, missing the "Electronic Document Stamp", Mandate of the US Court of Appeals, 9th Circuit, as docketed in *Fine v Sheriff of Los Angeles County*, US District Court California Central District (section C3a). (c) Two PACER docket entries in *SEC v Bank of America Corporation*, US District Court, New York Southern District (section C2h). The January 12, 2010 entry (Dkt #73, Order) is linked to an actual record. In contrast, the January 19, 2010 entry (Dkt #none, Minutes) is not linked to any record, and therefore, such "docket text only" notation couldn't possibly be authenticated by an NEF. Therefore, the January 19, 2010 telephone hearing and its minutes should be deemed simulated court hearing and simulated minutes, like many others similar entries in the same case (section C2h) [1] (d) January 11, 2012 Docket entry in *In RE: Ronald Gottschalk*, US District Court, California Central District, "Order of Disbarment by Judge Audrey B. Collins that Ronald Gottschalk be disbarred from the practice of law in this Court... deleted for the following reason: Reported that the NEF was not generated." This unique text provide affirmation by Chief Judge of the US District Court that a record with no valid NEF is an invalid judicial record

The NEFs and NDAs are invalid on their faces as authentication instruments: They fail to state the name and authority of an individual, who issues them; they fail to include the certification statement, and they bear no valid hand or electronic signature. Instead, the NEFs and NDAs often, but not always, include an alphanumeric checksum string, which is titled by the US courts "Electronic Document Stamp" (Fig. 3). A checksum string does not infer assuming of responsibility, which is inherent to the imprinting of a signature, whether a hand-signature or an electronic one.

Moreover, the significance of the Electronic Document Stamp, relative to the validity of the NEF or NDA was left vague and ambiguous. Only a couple of courts were discovered, where the Electronic Document Stamp was defined as representing the execution of the NEF or NDA, akin to a signature (section E6) The Docket entry in *In RE: Ronald Gottschalk*, in the US District Court, California Central District (Fig. 3 (d)) is a unique document in this respect, reaffirming that according the US judiciary, a court record with no valid NEF or NDA is an invalid court record.

In addition, the NEFs or NDAs are not sent and delivered as an accompanying record to the respective court record, only a hyperlink is provided in the NEF or NDA to the record - - an insecure association of the authentication instrument and the respective court record.

The most notable deficiency in the NEFs and NDAs is that they are excluded from the public records in PACER. Therefore, the public at large and pro se filers are denied the ability to distinguish between valid and void court records.

The Appendices provides detailed documentation of numerous cases, where void records with invalid NEF/NDA are published in PACER dockets - missing the Electronic Document Stamp.

In addition, the US courts implemented, with no lawful authority, the NEFs and NDAs to substitute the paper-type Notice of Entry of Judgment, which is explicitly prescribed by US law, (section E5), a key due process procedure. Extensive research failed to discover a single Notice of Entry of Judgment in PACER dockets. With it, the public at large and pro se parties in their own cases were left unable to distinguish between entered and unentered judgments, if judgments can at all be lawfully deemed entered today.

Under such circumstances, the courts of appeals often conduct appeals from unentered judgment of the district courts with no lawful authority (section C2a,m,n).

F. Invalid Implementation of Authorities and Permissions

Under CM/ECF, unauthorized court employees as well as attorneys, routinely enter records and docket notations bypassing the authority of the Clerk of the Court. Such conditions permit the routine appearance of unauthorized attorneys, particularly in cases involving financial institutions and public officers, and the filing of invalid court records by them (section C1h).

G. Discrimination in Access to Courts

Practically in all US district courts, which have been examined, only attorneys, who are authorized by the specific US court as CM/ECF users, are permitted access to CM/ECF. Service on attorneys is by email, on pro se filers - by paper mail. Filing by authorized attorneys is conducted through CM/ECF, anytime, from any locations, while others must file on paper through the office of the Clerk of the Court, during opening hours.

H. Appearance of Attorneys, Who Are Unauthorized as Counsel of Record

Memorandum Opinion of US Judge Jeff Bohm in the Case of Borrower Parsley documents that appearance of unauthorized outside attorneys with "no communications with clients clause", has become a routine conduct of Countrywide Financial Corporation (until 2008 - the largest mortgage bank in the US) in courts across the United States. [4] The Memorandum Opinion is based on Countrywide's conduct in that case and on a year-long study by the office of US Trustee of Countrywide's conduct in other US courts. It notes "misconduct... a disregard for the professional and ethical obligations of the legal profession and judicial system... bad faith... lying to the court..." However, at the end no individual and no corporations were held accountable.

The Memorandum Opinion was issued only three months after Countrywide's collapse, which itself resulted from the news of the filing by Countrywide's attorneys of false records as evidence in a US court as well. Judge Bohm's decision was widely reported by national media. Regardless, the evidence shows that Countrywide, its successors and their outside counsel continued the same practices in the following years.

Similar conduct was documented in other cases, relative to attorneys, purporting to appear on behalf of California judges in *Fine v Sheriff of Los Angeles County* and other cases in the US District Court, California Central District (sections C2a,f).

Such conduct was facilitated by the invalid implementation of authorities and permissions in the IT systems of the courts. CM/ECF allows attorneys and judges to file records and construct dockets, bypassing the authority and accountability of the Clerk of the Court.

I. Universal Failure to Docket Summonses

The issuance of valid summonses, their execution, and their docketing, as prescribed by US law, is critical for commencing valid litigation and for the safeguard of integrity of the courts. In the courts, originating in the English common law, the summonses establish the authority of the court in a given matter over specific parties. Litigation that is conducted with no valid summonses is inherently of dubious validity (section E5).

Review of the US courts from coast to coast shows universal, inexplicable failure to docket summonses in the PACER dockets. In parallel, invalid summonses have been discovered in numerous cases, including cases of high public policy significance, e.g., *SEC v Bank of America Corporation* (Fig. 4) (section C2h).

J. Adulterated and Missing Court Records

In various cases, key records are deleted from the PACER dockets of the US courts; commencing record (Petition) in *Fine v Sheriff of Los Angeles County* was adulterated (section G2a); decision in the Habeas Corpus petition of Guantanamo Bay detainee was adulterated [5], and the judgment record in *Citizens United* in the Supreme Court of the United States is missing (Fig. 4) (sections C2o,p). Missing and adulterated court records are a cardinal sign of invalidity and insecurity of the IT systems, and deficient integrity of the courts.

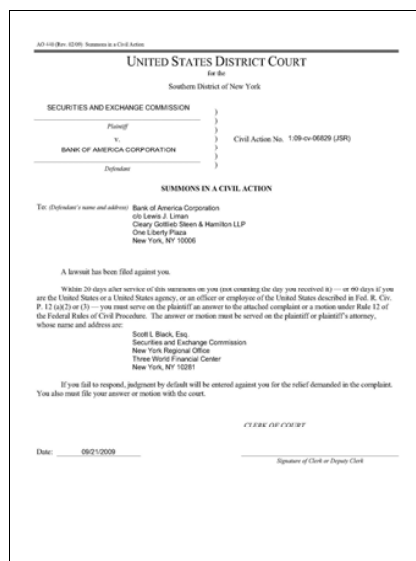
K. PACER and CM/ECF - Inter-Court Survey

Inexplicable differences are found among the IT systems of the various US district courts. PACER, the common platform, is implemented with various modifications in the various US courts and courts of appeals, and public access is arbitrarily and capriciously denied in various courts to certain parts of the system: Judgment Index, Calendars of the Courts, Docket Activity Report, Corporate Parent Reports, etc. Nevertheless, the common theme is clear: Each and every US court implements and operates its local IT system in a manner that would enable it to generate and publish online judicial and clerical records, as well as case dockets, which are neither deemed valid and effectual, pursuant to the US law, nor by the respective court, but would appear as valid and effectual to the unwitting public.

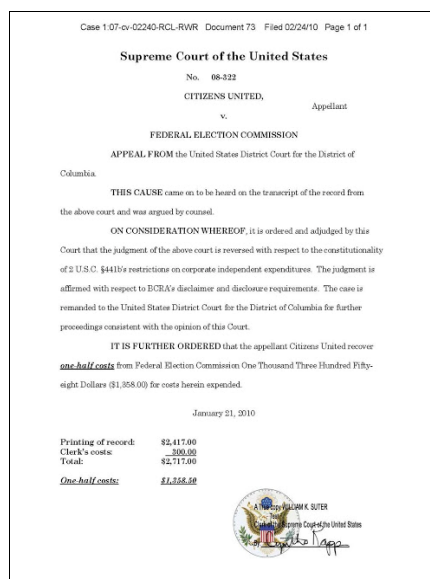
L. IT system of the US Supreme Court

Review of the data in the IT systems (name unknown) of the Supreme Court of the United States uncovered data in the journals, dockets, and decisions, which are inherently inconsistent and contradictory. The systems enable the

publication of dockets, journals, decisions, and judgments of ambiguous validity by personnel of unknown authority.



(a)



(b)

Fig. 4 (a) Invalid Summons record in *Securities and Exchange Commission (SEC) v Bank of America Corporation*, US District Court, New York Southern District (section C2h). The summons was not docketed, but was discovered through a Freedom of Information request on SEC. The summons is unsigned, and fails to bear the seal of the court. (b) Invalid Judgment record in *Citizens United v Federal Elections Commission (FEC)*, Supreme Court of the United States (USSC) (section C2o.p). No Judgment record is found in the USSC's public access system, although a Judgment is listed in the case docket. The record shown here was received in response to a Freedom of Information request on FEC. The record was neither issued, nor signed by a justice, only by a Deputy Clerk, and its date does not match the date of the Judgment, listed in the USSC docket

IV. CASE STUDIES

A larger series of cases is presented in greater detail in the online Appendices with links to the relevant court records.

A. Habeas Corpus Actions of Richard I Fine [6],[7]

Former US prosecutor Richard I Fine exposed and rebuked the taking by Los Angeles judges of "not permitted" payments, which were called by media "bribes". In the aftermath, a bill was passed and signed into law by then California Governor Arnold Schwarzenegger on February 20, 2009, providing "retroactive immunity" (while retroactive laws are prohibited by the California Constitution), called by media "pardons", to all judges involved.

Two weeks later, on March 4, 2009, Richard Fine was arrested by the Warrant Detail of Los Angeles County Sheriff's Department in the Superior Court of California, County of Los Angeles, in the city of Los Angeles. The incident was covered by media, who were present in the courtroom. Subsequently, Fine was held in solitary confinement for 18 months by the Sheriff of Los Angeles County Lee Baca in the Los Angeles Twin Tower Jail. However, the booking records (public records by California law), under which he was arrested and held by the Sheriff, showed that Fine was arrested on location and by authority of the "Municipal Court of San Pedro", which did not exist.

The uniquely detailed documentation of the case provides evidence of the deprivation of liberty through coordinated operation of invalid electronic record systems in:

- The California Superior Court, County of Los Angeles;
- Sheriff's Department of the County of Los Angeles;
- US District Court, Central District of California;
- US Court of Appeals, 9th Circuit, and
- US Supreme Court.

In the US District Court, Central District of California, the commencing record (Petition) was adulterated (section C2a). The respondent, duly named in the Petition - Sheriff of Los Angeles County Lee Baca - refused to respond. Regardless, Magistrate Carla Woehle refused to release the prisoner. Instead, Judge David Yaffe was permitted to respond, although never named a party in the Petition. Unauthorized attorney appeared on behalf of Judge Yaffe and filed false and deliberately misleading records. None of the judicial records in this case was duly authenticated, relative to the General Orders of the US District Court itself - the NEFs are missing the Electronic Document Stamp (Fig. 3). Regardless, the US Court of Appeals, 9th Circuit, conducted an appeal from an invalid Judgment of the US District Court in this case (section C2a).

B. *Securities and Exchange Commission v Bank of America Corporation* [8], [9]

The case originated in the unlawful taking by Bank of America executives of \$5.8 billion during the 2009 merger of Bank of America with Merrill Lynch, after collapse of the latter.

None of the culprits executives was named Defendant. No valid summons was issued at the onset of the litigation (Fig.

4), and most hearings in this case were recorded in the docket as "docket text only", with no corresponding minutes record (Fig. 3), and therefore could not possibly be authenticated, and should be deemed invalid.

The litigation was concluded with none of the ill-gotten funds ever returned, no individual held accountable, and the victims - the shareholders - ordered to pay to themselves a fine of \$133 million.

A reasonable person would conclude upon review of the records that US Judge Jed Rakoff, SEC, and Bank of America Corporation colluded in the conduct of simulated litigation from the start.

The case is of particular interest, since it was widely reported by US national and international media, on the background of both national and international concerns regarding failing banking regulation in the United States (section C2h).

C. NML Capital v Republic of Argentina [10], [11]

NML Capital v Republic of Argentina originated in the default of the Republic of Argentina on sovereign debt. The outcome of the case may lead to the collapse of the Argentinean economy for the second time in 15 years, causing substantial harm and hardship to millions of people.

Notice, opining fraud (Fig. 5) on the Republic of Argentina in *NML Capital v The Republic of Argentina* was given to the government of the Republic of Argentina by the author of the current report, with copies to the governments of the German Federal Republic, the People's Republic of China, the Russian Federation, and the United States [11].

It should be noted that in this case, the UN Human Rights Council issued an unusual statement, objecting to the conduct of the US and its courts in the matter [12].

Date Filed	Document #	Attachment #	Short Description	Long Description
2008-08-05	1	0	Complaint	COMPLAINT against The Republic of Argentina. (Filing Fee \$ 350.00, Receipt Number 659127) Document filed by NML Capital, Ltd.(tve) (Additional attachment(s) added on 8/11/2008: # 1 Exhibit) (tve). (Entered: 08/11/2008)
2008-08-05	2	0	Rule 7.1 Corporate Disclosure Statement	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by NML Capital, Ltd.(tve) (Entered: 08/11/2008)
2008-08-05	3	0	Statement of Relatedness purs. to Rule 1.6	STATEMENT OF RELATEDNESS PURSUANT TO LOCAL RULE 1.6 re: that this action be filed as related to 1:07-cv-1910. Document filed by NML Capital, Ltd.(tve) (Entered: 08/11/2008)
2008-08-11	4	0	Affidavit of Service Complaints	AFFIDAVIT OF SERVICE of Summons and Complaint. Service was accepted by Gustavo Juana, Chief Compliance Officer. Document filed by NML Capital, Ltd.. (Shamoto, Susan) (Entered: 08/11/2008)
2008-08-28	5	0	Notice of Case Assignment/Reassignment	NOTICE OF CASE ASSIGNMENT to Judge Thomas P. Griesa. (rdz) (Entered: 09/03/2008)

(a)

Case 1:08-cv-06978-TPG Document 5 Filed 08/28/2008 Page 1 of 1

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X

NML Capital
V.
The Republic of Argentina

-----X

NOTICE OF ASSIGNMENT

1:08-cv-6978

Pursuant to the memorandum of the Case Processing Assistant, the above-entitled action is assigned to the calendar of

JUDGE Griesa

All future documents submitted in this action are to be presented in the Clerk's Office of the Southern District Court for filing and shall bear the assigned judge's initials after the case number.

The attorney(s) for the plaintiff(s) are requested to serve a copy of the Notice of assignment on all defendants.

J. Michael McMahon, CLERK

Dated: 8/28/08

By: Roberto A. Diaz
Deputy Clerk

cc: Attorneys of Record

(b)

Fig. 5 *NML Capital v Republic of Argentina*, US District Court, New York Southern District (section C2k): (a) PACER docket entries, Dkt #1-5 - the Summons was not docketed. (b) Notice of Case Assignment to Judge Griesa, Dkt #5 is unsigned - a typed name appears in lieu of a valid signature of the Deputy Clerk. Therefore, Judge Griesa was acting with no lawful authority in the case. The case may cause the collapse of the Argentinean economy

D. Citizens United v Federal Elections Commission (FEC)

Citizens United v Federal Elections Commission (FEC) is no doubt one of the landmark decisions of the US Supreme Court in recent decades, if not in its entire history. It transformed the US political process through expanding the notion of "corporate personhood" by according corporations Free Speech rights, expressly - "Free Speech" through the right to "spend unlimited amounts of money in election campaigns... a stunning example of judicial activism..." [13]. It was also described as a license to corrupt government.

Conduct of the US Supreme Court in this case is disputed by various grass-root activist groups, by US Congress, and by US law professors. Volumes were written regarding the case in main-stream media in scholarly publications.

And yet, review of the electronic records of the US Supreme Court, Freedom of Information request on FEC, and inquiries with other parties failed to discover the Judgment record, which is listed in the case docket. Only a record, falsely represented by FEC as Judgment, was discovered (Fig. 4).

V. MEDIA COVERAGE

A number of the cases, which are reviewed in the current report and the Appendices, were extensively covered by

national mainstream media, e.g.: *Citizen United v FEC* (sections C2o,p), *SEC v Bank of America Corporation* (C2h), and *Log Cabin Republicans v USA et al* (C2m,n). It is difficult to believe that professional legal writers, who reported on these cases and followed them on a routine basis never noticed the fundamental deficiencies in court records and court procedures.

The report of the adulteration of the decision record in the Habeas Corpus petition of the Guantanamo Bay detainee was published by an alternative media outlet... [5].

VI. DISCUSSION

The fundamental deficiencies in matters of high constitutional significance in a national, long-term project, overseen by senior national judicial authorities, cannot be reasonably be deemed the result of oversight or human error.

A. US Law: Simulated Records, Related Conduct

"Simulated Litigation", "Simulated Court Record", "Simulated Litigation/Records" are used here pursuant to the Texas Penal Code §32.48, which is instructive in detailing the underlying conduct [1]. Simulated court records are records, which are defective, for example, relative to signatures, authentication, and authorities. In such records, US judges often issue rulings that are inconsistent with the US law. With it, the parties involved, are often unaware of the invalidity of the same records, and the courts induce the enforcement and/or extort compliance with such records.

In terms of US federal law, the same conduct of court officers, including judges, clerks, and attorneys, relative to the issuance of simulated court records and the conduct of simulated litigation, should be deemed "Fraud upon the Court" (section B2a). Such conduct should be considered "extra-judicial" conduct, which is not covered by any immunity (section B2c).

Such conduct by judges has been known for centuries as a common form corruption. The office of the Clerk of the Court, and its authority and accountability relative to the safeguard of the integrity of court records in general, and the execution of service, authentication and certification of judicial record in particular, evolved centuries ago specifically to prevent such conduct.

B. US Law: Rules Enabling Act

The Rules Enabling Act (USC §2072) of 1934 gave the judicial branch the power to promulgate the Federal Rules of Civil Procedure, subject to review by the US Congress. In 1973, Congress refused to allow the Federal Rules of Evidence to go into effect after their approval by the Supreme Court, and since then, the Act was of lesser significance.

The evidence, reviewed in the current reviewed, documents that the development, implementation, and operation of the IT systems of the US courts in fact violates the Rules Enabling Act (section E4). Such systems represent the seizing by the US judiciary of unlawful authority to enact changes to the Federal Rules of Civil Procedure and numerous other laws. Moreover, since the rules, embedded in such systems have neither been

disclosed nor published, such systems also violate the fundamental principle of Publicity of the Law.

C. US Law: Federal Rules of Civil Procedure Duties of the Clerk (section E5)

The Rules prescribe that: Summons must be signed by the clerk and bear the court's seal; Certificates of Service must be filed; the clerk must sign and enter judgments; when the Court is open – it is open for filing any paper, issuing and returning process, making a motion, or entering an order; immediately after entering an order or judgment, the clerk must serve notice of the entry; the clerk must record the service on the docket, and the clerk must mark with file number and enter in chronological order all papers filed with the clerk, process issued, proofs of service, appearances...

As documented in the current study, the clerks no longer perform their prescribed duties in these matters.

D. US Law: Signatures, Seals, Authentication, Certification

Matters, related to establishing the nature of valid and effectual court records, relative to signatures, seals, authentication and certification, are addressed in: The US Constitution, Article IV, §1; the Act of May 26, 1790; the Act of March 27, 1804, and US law, 28 USC § 1691.

No order or judgment of the US courts is issued today under the seal of the court and under the signature (either hand-signature or electronic signature) of the Clerk of the Court. And as shown in the current study, in numerous cases, also the Summons is left unsigned and bears no court's seal. Neither is any judicial record authenticated through a Certificate of Service bearing the signature of the clerk of the court.

E. US Law: Electronic Signatures and E-Government

As part of the transition to electronic administration of government, the US Congress passed the E-Government Act (2002) and the E-Sign Act (2000). The US Department of Homeland Security Presidential Directive-J (2004) further established policies for validation and authentication of electronic systems and electronic records of the Executive Branch agencies. Standards were accordingly promulgated and applications were implemented. In contrast, the IT systems, implemented by the US courts show fundamental deficiencies relative to electronic signatures, authentication of individual records, as well as IT system validity and integrity (section E7).

F. US Law: First Amendment – Filing Papers in Court, Public Access to Records

The IT systems of the US courts have effectively established double standards in access to filing papers in court, discriminating against unauthorized attorneys and pro se filers and in favor of authorized attorneys.

Such conditions facilitate on the one hand the unauthorized appearance and the filing of false records by attorneys, and on the other hand are linked to the establishment of an effective policy, excluding from the First Amendment right "to petition the Government for a redress of grievances" and the right to file any paper, records, which document judicial corruption.

Such policy is exercised by collaboration of judges and court personnel (Fig. 6) (section E2).

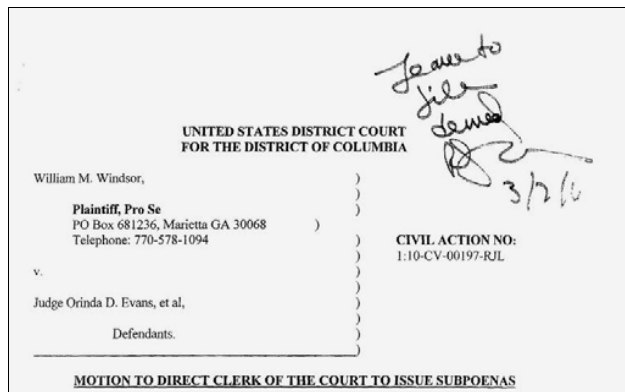


Fig. 6 One of five (5) papers with "Leave to File Denied, RJL" in *Windsor v Evans et al.* in the US District Court, District of Columbia. The Plaintiff in this case, William Windsor, is a well-known activist for reform of the courts, while Defendant in this case is a US Judge. The Clerk of the US Court failed to docket papers, which were filed by the Plaintiff, in disregard of First Amendment rights and the duties and obligations of the clerk. Instead, such papers were directly forwarded to US Judge Richard Leon, who hand scribbled on them "Leave to File Denied", and had them returned to the Plaintiff. Similar conduct was documented in other cases as well [14]

In *Nixon v. Warner Communications, Inc.* 435 U.S. 589 (1978), the US Supreme Court reaffirmed the common law right to access judicial records to inspect and to copy, and justified it "in the citizen's desire to keep a watchful eye on the workings of public agencies... and in a newspaper publisher's intention to publish information concerning the operation of government..."

The right to access court records to inspect and to copy is essential for maintaining public transparency and integrity of the courts. However, through the implementation of the IT systems of the US courts, the US public is today denied access to court records, at times, even a party to records in own litigation (section E3). For example, William Windsor was denied access to his own case records in the US District Court, Northern District of Georgia (section C2j).

G. US Law: Habeas Corpus

The US Constitution, declares that the "Privilege of the Writ of Habeas Corpus shall not be suspended...". Justice William Brennan Jr (Associate Justice 1956-1990) called the Habeas Corpus "the Great Writ", and the "cornerstone of the US Constitution". Justice Louis Brandeis (Associate Justice 1916-1939) called the Habeas Corpus 'the greatest achievement of the English speaking legal system - establishing Liberty by law'.

The procedure, applicable for Habeas Corpus is commenced by a Petition for Writ of Habeas Corpus, and the responsive writ (Fig. 7), if issued by the court, is a summons with the force of a court order, addressed to the custodian (a prison official for example) and demanding that a prisoner be taken before the court, and that the custodian present proof, allowing

the court to determine whether the custodian has lawful authority to detain the prisoner.

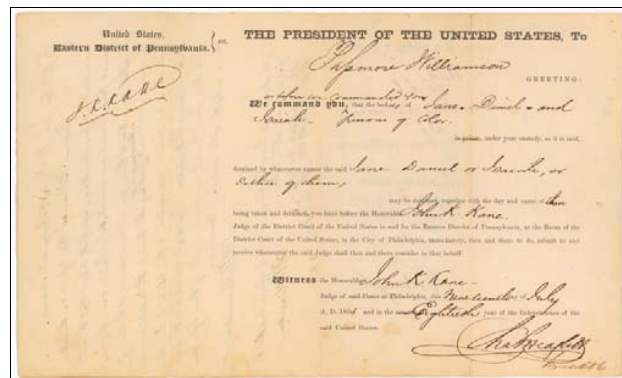


Fig. 7 Writ of Habeas Corpus, *U.S. ex. rel. John Wheeler v. Passmore Williamson* (July 19, 1855), US District Court, Pennsylvania Eastern District, It reads in part: "THE PRESIDENT OF THE UNITED STATES, To Passmore Williamson, GREETING: as before we commanded you, We command you, as before we commanded you, that the bodies of Jane, Daniel, and Isaiah- persons of color under your custody, as it is said, detained by whatsoever names the said Jane Daniel or Isaiah, or Either of them, may be detained, together with the day and cause of their being taken and detained, you have before the Honorable John K. Kane. Judge of the District Court of the United States in and for the Eastern District of Pennsylvania, at the Room of the District Court of the United States, in the City of Philadelphia, immediately, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf. Witness the Honorable John K. Kane - Judge of said Court"

The privilege of Habeas Corpus has not been openly suspended by the US government, but conditions in the Guantanamo Bay detention center and other prisons, operated by the US government in various locations around the world, as well as provisions of the National Defense Authorization Act (NDAA) for 2012, which authorize the indefinite military detention of civilians, including U.S. citizens, amount to the same effect.

The UN HRC UPR Report on the United States (2010) recommended that the US restore the right for Habeas Corpus.

However, the case of Richard Fine and other cases (sections 32a,b) demonstrate that Habeas Corpus was and is effectively suspended also in the territorial United States even prior to 2012 [15]. Generally, no writs of Habeas Corpus are issued in the US courts any longer, leading to the conduct of litigation of Petitions for a Writ of Habeas Corpus of dubious validity.

In parallel, the American Civil Liberties Union (ACLU) reports that since 1970, the US prison population has risen 700%, and with only 5% of the world's population, the US has 25% of the world's prison population - making it the world's largest jailer [16]. Substantial parts of it - in private, for profit prisons [17]. Large-scale, long-term, well-documented (even in government reports) false imprisonment in Los Angeles County, California, was a key subject of the HRA 2010 report [18], [19].

*H. Treaties, Conventions: Hague Apostille Treaty (1961),
Basel Accords on Banking Supervision*

The Hague Apostille Treaty abolished the requirement for legalization of foreign public documents, and established instruments for mutually recognized certification of court records [20]. The United States entered the Treaty in 1981, but the current study documents lack of integrity in the certification of US court records, undermining compliance with the Treaty (see section C1d).

Accords Basel I, Basel II and Basel III were issued by the Basel Committee on Banking Supervision (BCBS). The US, a party to the Basel Accords [21], should be deemed failing to fulfill its duties and obligations by decriminalizing banking fraud.

I. Constitutional Crisis in the United States: Unannounced Regime Change?

Both experts and the public at large today recognize that the US justice system is compromised in a manner that has not been seen in decades, or perhaps in the entire history of the United States [19],[22]-[26].

In particular, the current socio-economic crisis has been repeatedly tied to lack of integrity of the US justice system:

- The January 2008 collapse of Countrywide Financial Corporation, key event in eruption of the crisis, was directly caused by the New York Times' report of "recreated letters" filed in a US Court [24].
- Yale Law School Visiting Professor Brescia opined, "it's difficult to find a fraud of this size on the US court system in U.S. history... where you have literally tens of thousands of fraudulent documents filed in tens of thousands of cases" [22].
- US media have widely and repeatedly reported a "foreclosure fraud epidemic" in the courts [25].
- Economics Nobel Prize laureate Prof Krugman described "...a system in which only the little people have to obey the law, while the rich, and bankers especially, can cheat and defraud without consequences" [26].
- In 2011, more than 100 law professors have signed on to a letter that proposed "mandatory and enforceable" ethics rules for Supreme Court justices for the first time [23].



(a)



(b)

Fig. 8 (a) Cover of Time magazine for US Independence Day, July 4, 2011 - a shredded US Constitution. (b) Masthead of the Conference on the Constitutional Convention, Harvard Law School, September 24-25, 2011. Wide sections of the US public and experts in various fields today question, whether the US Constitution is in fact suspended

In a broader sense, wide segments of the people of the United States, from mainstream media, through right- and left-wing political activists today hold that the US government has undergone a transformation, and the US Constitution in no longer in force and effect (Fig. 8). To wit:

- In 2009, Chair of the Senate Judiciary Committee, Senator Patrick Leahy called for the institution of a Truth and Reconciliation Commission on the US Department of Justice [27]. Such commissions were typically instituted in nations that emerged from totalitarian regimes...
- In 2011, a "Conference on Constitutional Convention", was organized by acclaimed Harvard law professor Lawrence Lessig under the premise that "Democracy in America is stalled" with participation by law professors, politicians, leaders of activist groups, and considerable media attention. [28]-[30].
- In 2013 former US President Jimmy Carter stated that the US today "has no functioning democracy" [31].

In the extreme, such notion gives rise to dissident groups, such as "Sovereign People" [32], "Freemen" [33], and the armed "Well Regulated Militias" [34], [35], which deny the legitimacy of the current federal government in the US.

The current study provides ample evidence in support of the notion that the US Constitution was indeed voided or suspended. Moreover, the nation-wide implementation of invalid IT systems in the US courts by the judiciary should be considered a key event in this regard, and the systems – a key tool in enabling judicial conduct that is incompatible with the fundamentals of the US Constitution.

J. Proposed Corrective Actions

Given the nature of the situation, corrective actions are likely to be neither fast nor easy. Efforts may require an approach similar to a Truth and Reconciliation Commission, and/or a Second Constitutional Convention, to even permit the initiation of corrective actions.

Corrective efforts may require that the Administrative Office of the US Courts, which played a central role at the national level in the development and implementation of the current IT systems be restructured or entirely eliminated.

Undermining the authority of the office of the Clerk of the Court as custodian of court record is one of the central deficiencies of the current systems. A century ago, conditions in the US courts were described in the US Congress as "a burlesque". The Salary Act (1919) is credited as a key measure in addressing the situation and restoring the

autonomy and integrity of the office of the Clerk of the Court [36]. Similar measures may need to be considered now.

US legal and computing experts should be engaged in an initiative to restore the integrity of the IT systems of the US courts. As noted by Harvard law professor Lessig, "Code is Law" [37]. IT systems of the courts in fact represent translation of federal law (particularly the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure) from natural language into operational machine code. Therefore: a) Such efforts must include validation of the systems relative to the federal law, b) Design and operation of the systems should aim at the highest transparency possible, pursuant to the principle of based on the principle of Publicity of the Law, and c) Such efforts should be conducted under accountability to the legislative branch, pursuant to the principle of Separation of Powers.

K. General Recommendations

- In nations, where the separation of branches of government is established by law, the courts must not be permitted to develop and implement the courts' IT systems.
- Human Rights and internet activists must recognize the significance of IT systems of the courts and prisons in the safeguard of civil society and continuously keep a watchful eye on their validity and integrity.
- IT experts are called upon to assume more prominent civic duties in the safeguard of civil society in our era.

APPENDICES

Online Appendix1, [38] and online Appendix2. [39]

ACKNOWLEDGMENT

The author is grateful to unnamed IT and law experts, who have provided assistance in recent years.

REFERENCES

- [1] "Simulated Legal Process", *Texas Penal Code* §32.48 – see full text in online Appendices.
- [2] J. Zernik, "Beyond voting machines - case management systems of the courts - Sustain - CMS of the Los Angeles Superior Court" - unpublished.
- [3] J. Zernik, "Integrity, or lack thereof, of the electronic record systems of the courts of the State of Israel". Appendix to the Human Rights Alert (NGO) Submission; 15th UPR, UN HRC - State of Israel, May 10, 2012.
- [4] J. Bohm, "Memorandum Opinion", in: *Case of Borrower William Parsley* (05-90374), US Bankruptcy Court, Texas Eastern District, Dkt #248, March 5, 2008.
- [5] D. Linzer, "In Gitmo Opinion, Two Versions of Reality", *ProPublica*, April 25, 2011.
- [6] J. Zernik, "Habeas Corpus in the United States - the case of Richard Isaac Fine - Review" - unpublished.
- [7] J. Zernik, "Attorney Richard Fine - dissident's false hospitalization in Los Angeles County, California", *OpEdNews.com*, January 21, 2010.
- [8] J. Zernik, "Design and Operation of Information Systems of the US Courts are Linked to Failing Banking Regulation", *Data Analytics* 2012.
- [9] J. Zernik, "Fraud and Corruption in US Courts are Tightly Linked to Banking Fraud and the Global Economic Crisis", 16th World Criminology Congress, 2011.
- [10] J. Zernik, "ARGENTINA: Again on the verge of economic collapse - again the victim of US treachery!", *OpEdNews.com*, June 30, 2014.
- [11] J. Zernik, "In RE: *NML Capital v The Republic of Argentina* (1:08-cv-06978): Robbing Argentina in the US court in Manhattan - fraud of medieval style and proportions" - Opinion filed with the Government of Argentina, September 7, 2014.
- [12] "UN Human Rights Council backs Argentina on US debt row", *BBC*, September 26, 2014.
- [13] E. Chmerinksy, "Conservatives embrace judicial activism in campaign finance ruling", *Los Angeles Times*, January 22, 2010.
- [14] J. Zernik, "Duplicious US judges: Jed Rakoff, Richard Leon", *OpEdNews.com*, January 6, 2014.
- [15] C. Woehrle, "Report and Recommendation", in: *Richard Fine v Sheriff of Los Angeles County* (2:09-cv-01914), Dkt #26, US District Court, California Central District, June 12, 2009.
- [16] "The Prison Crisis", American Civil Liberties Union (ACLU) – a series of reports, published on the ACLU web site.
- [17] J. Filipovic, "America's private prison system is a national disgrace", *Guardian*, June 13, 2013.
- [18] Human Rights Alert (NGO), Submission to the UN Human Rights Council, "The United States Human Rights Record – Allegations, Conclusions, Recommendations", UN web site, April 8, 2010.
- [19] J. Zernik, "False Imprisonments in Los Angeles County, California", *OpEdNews.com*, January 18, 2010.
- [20] Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, *The Hague Conference on Private International Law*.
- [21] "Basel Committee membership", *The Basel Committee*, August 31, 2014.
- [22] S. Paltrow, "Special Report: The watchdogs that didn't bark", *Reuters*, December 22, 2011.
- [23] "Law Profs Urge Ethics Rules for Supreme Court Justices", *Blog of the Legal Times*, February 24, 2011.
- [24] G. Morgenson, "From East and West, Foreclosure Horror Stories", *New York Times*, January 7, 2012.
- [25] "Foreclosure fraud: The homeowner nightmares continue", *Fortune*, April 7, 2011.
- [26] P. Krugman, "Another Inside Job", *New York Times*, March 13, 2011.
- [27] "Sen. Leahy Discusses A Truth and Reconciliation Commission", Video of Speech in Georgetown University, February 9, 2009.
- [28] "Conference on the Constitutional Convention"- at Harvard Law School, September 24-25, 2011.
- [29] "Tea Party and Liberals convene at HLS to discuss Constitutional Convention" (video) October 5, 2011.
- [30] A. Houdek, "Has a Harvard Professor Mapped Out the Next Step for Occupy Wall Street?", *The Atlantic*, November 17, 2011.
- [31] A. Riva, "Jimmy Carter: US 'has no functioning democracy'", *Salon*, July 19, 2013.
- [32] "Sovereign Citizens - A Growing Domestic Threat to Law Enforcement", *FBI*, September, 2011.
- [33] J. Kersey, "The Freeman on the Land Movement: Grass Roots Libertarianism in Action", *Libertarian Alliance*, 2010.
- [34] "Well Regulated American Militias", Website.
- [35] M. Berman, "Bundy ranch standoff 'invigorated' anti-government groups, report says", *Washington Post*, July 10, 2014.
- [36] I. S. Messinger, "Order in The Court - History of Clerks of United States Courts", *Federal Judicial Center*, 2002.
- [37] L. Lessig, "Code and Other Laws of Cyberspace", *Basic Books*, 1999.
- [38] J. Zernik, "IT Systems of the US Federal Courts, Justice, and Governance", ICEG 2015: <http://www.scribd.com/doc/248161901/>
- [39] Human Rights Alert (NGO) Submission and Appendix for the UPR of Human Rights in the United States by the UN Human Rights Council, "Large-scale fraud in IT systems of the US courts - Unannounced regime change?", 2015. Submission: <http://www.scribd.com/doc/239652334/> Appendix: <http://www.scribd.com/doc/239647129/>



Joseph Zernik, received his PhD degree in the field of molecular biology (BioStructure and Function) from the University of Connecticut, Farmington, Connecticut, in 1988, served on the faculty of the University of Connecticut, the University of Southern California, and University of California, Los Angeles.

Under Human Rights Alert -NGO (HRA), he filed human rights reports with the United Nations Human Rights Council (HRC), which were incorporated into the HRC Periodic Review Reports regarding Human Rights in the United States (2010), with the note: "Corruption of the courts and the

legal profession and discrimination by law enforcement in California", and regarding Human Rights in Israel (2013), with the note: "Lack of integrity of the electronic records of the Supreme Court, the district courts and the detainees courts in Israel."

Textbook on "Machine Learning" found Dr Zernik's application of data-mining to Human Rights research among "Notable uses", summed: "Data mining of government records - particularly records of the justice system (i.e., courts, prisons) - enables the discovery of systemic human rights violations in connection to generation and publication of invalid or fraudulent legal records by various government agencies."

- [1] J. Zernik. "Design and Operation of the Electronic Record Systems of the US Courts are Linked to Failing Banking Regulation", *Data Analytics*, 2012.
- [2] J. Zernik, "Integrity, or Lack Thereof, of the Electronic Record Systems of the Courts of the State of Israel", *Data Analytics*, 2012.
- [3] J. Zernik, "Data Mining as a Civic Duty – Online Public Prisoners' Registration Systems", *International Journal on Social Media: Monitoring, Measurement, Mining*, 1: 84-96, 2010.