



1 Recently, there has been growing criticism with regard to the Judiciary and its involvement in  
2 American politics at all levels. In one book, a contributing point was raised in the Afterward by former  
3 Attorney General Edwin Meese and he states:

4 *"The Judiciary was not established to divorce the power and reach of the public sector*  
5 *from the people it is supposed to serve. Nor was it intended to strip the state*  
6 *governments — the entities most responsive to the people, from whom the sovereignty*  
7 *flows — of the authority to act as those governments generally choose, as long as they*  
8 *don't violate the federal powers and rights specifically enumerated in the Constitution."*  
9 *Men in Black Pg. 211.*

10 To be sure, it does seem that the Judiciary has made sweeping changes in matters and at times,  
11 as this book suggests that it does, make sweeping decisions. However, if one looks at the fundamental  
12 reality of the circumstances, citizens today have greater access to the Courts than they do their own  
13 Legislature or the Representatives in them! There are far more Judges and far more attorneys than there  
14 are representatives to which we may seek redress. Thus, that is where we go for our needs.

15 I read various political commentators and listen to a few personal friends who decry that America  
16 has become a total theocracy and explain to them that in some ways, this *might* be true. However, walk  
17 into any Church, Synagogue or Mosque you want, even that of the most popular preacher in the state,  
18 and upon simple inspection you will realize that the average parishioner has greater access to the Clergy  
19 than they do to their own representative. Consequently, the common citizen is more likely to pray,  
20 especially in Court, since they have a greater chance of having their problem dealt with by the Judge or  
21 perhaps even God than they do with the Representative they elected!

22 So while I empathize with Mr. Meese that in many cases it does seem that the Judiciary has  
23 stepped over the line, it is not because of the Judiciary nor is it the fault of the Judiciary. As our  
24 founders noted, *"The members of the executive and judiciary departments are few in number, and can*  
25 *be personally known to a small part only of the people."* (Ibid) At this time, they just simply are more  
26 accessible and the Representatives are not. So, the Courts have become fodder for much undue criticism  
27 as a symptom of poor Representation. Diminution of the value of our vote and the weight of our  
28 elective franchise is the real problem, not because Judges enter the fray of controversy unnecessarily.

29 If there is judicial excess, it is because of legislative insufficiency. It seems to me that until  
30 representation is restored, critics of judicial activism should consider how overly dependent upon

1 litigation our society has become, since legislative access has atrophied. The system right now is  
2 hobbling along with the Judiciary having to make far too many decisions while the other branches,  
3 delinquent in their duties, seemingly encourage the populace to criticize the Judiciary for doing this!

#### 4 5 **Other Detractors of the Judiciary**

6 I almost marvel at the fact that detractors of the Judiciary exist on both sides of the issue. As Mr.  
7 Meese is attacking the Judiciary for perhaps probing into too many matters, other detractors seemingly  
8 bite hard on the notion that the Judiciary doesn't go far enough. This one gentleman has gone so far as  
9 to suggest that the Judiciary itself has "stolen the right to petition."

10 *"The Court has addressed the Petition Clause in many contexts, but four central*  
11 *aspects of it have been completely ignored. Those central aspects tell the story of how*  
12 *the Judiciary stole the most important parts of the First Amendment Petition Clause:*  
*The right of the individual to enforce his rights against government and its agents.*  
*John Wolfgram, How the Judiciary stole the Right to Petition*

13 Mr. Wolfgram seems to place the entire blame of abuses by Government agents solely on the  
14 shoulders of the Judiciary as if they were the only source of redress and the only ones responsible for  
15 the abuses of Government. He never seems to attempt to make the case that the Legislature has some  
16 hand in the correction of such abuses. He avidly states:

17 *"But while there are many methods of petitioning for redress with government, up to*  
18 *and including assembly to riot or to use force against it, only one method can use the*  
19 *law to subject the government to the law and to the redress consequences of violating*  
20 *it. That is to petition the government for redress through the courts. That is the right*  
21 *of the citizen to use the compulsory process of the law to compel the government, just*  
22 *like any other party, to answer and to be accountable for its wrongs to the citizen,*  
23 *under the law." John Wolfgram, How the Judiciary stole the Right to Petition.*

24 Interestingly enough, he advances the notion of rioting physically against the Government in  
25 conjunction with not having access to the Judiciary for redress. And yet when we re-examine the  
26 petition clause as it was first proposed in Congress by James Madison he clearly states:

27 *"The people shall not be restrained from peaceably assembling and consulting for their*  
28 *common good; nor from applying to the Legislature by petitions, or remonstrances, for*  
*redress of their grievances." James Madison's Introduction of the Bill of Rights, The*  
*Annals of Congress, House of Representatives, First Congress, 1st Session, pp 448-460.*

The final language of the First Amendment was written in a more sweeping manner as it states:

*"Congress shall make no law respecting . . . the right of the people peaceably to*  
*assemble, and to petition the Government for a redress of grievances." Amendment I*

1 The latter and enacted verbiage in the U.S. Constitution is much more inclusive than just the  
2 Legislature. However, history shows the direct intent was for access to the Legislature and bears out  
3 the same, that is, petitions were intended to be taken to the Legislatures, trial Courts were an option.  
4 It just happens to be that in California today, the Courts (the number of Judges) have grown more  
5 directly in proportion to the population than the legislative bodies have.

6 Justice Story further clarifies this matter by noting that it was the King the English demanded the  
7 right to petition as the right to petition Parliament was assumed if not "provided for" and "guarded"  
8 since the language is written in a manner of "prohibition." So the liberty is interpreted to be given  
9 greater force since it is a restriction of an infringement on a freedom and not an authority for a right.

10 *"The provision was probably borrowed from the declaration of rights in England, on*  
11 *the revolution of 1688, in which the right to petition the king for a redress of grievances*  
12 *was insisted on, and the right to petition parliament in the like manner has been*  
13 *provided for, and guarded by statutes passed before, as well as since that period. Mr.*  
14 *Tucker has indulged himself in a disparaging criticism upon the phraseology of this*  
15 *clause, as savouring too much of that style of condescension, in which favours are*  
16 *supposed to be granted. But this seems to be quite overstrained; since it speaks the*  
17 *voice of the people in the language of prohibition, and not in that of affirmance of*  
18 *a right, supposed to be unquestionable, and inherent."* Justice Story's Commentaries  
19 *§ 1888 On the First Amendment of the U.S. Constitution.*

20 We must take into consideration our Founders' distrust for Lawyers at the time the Constitution  
21 was written. Not only were they distrusted, but were often barred from 'pleading for hire' in many of  
22 the founding states. We can only assume that the original intent for the redress of grievances was not  
23 a presumption that those seeking such should retain an attorney to seek redress in the courts, but in fact  
24 to have direct access to their Representative in the Legislature.

25 *"In the American Colonies the insistence upon a right of self-representation was,*  
26 *if anything, more fervent than in England.*

27 *The colonists brought with them an appreciation of the virtues of self-reliance*  
28 *and a traditional distrust of law-years. When the Colonies were first settled, 'the lawyer*  
29 *was synonymous with the cringing Attorneys-General and Solicitors-General of the*  
30 *Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those*  
31 *who opposed the King's prerogatives, and twisting the law to secure convictions.' This*  
32 *prejudice gained strength in the Colonies where 'distrust of lawyers became an*  
33 *institution.' Several Colonies prohibited pleading for hire in the 17th century. The*  
34 *prejudice persisted into the 18th century as 'the lower classes came to identify lawyers*  
35 *with the upper class.' The years of Revolution and Confederation saw an upsurge of*  
36 *anti-lawyer sentiment, a 'sudden revival, after the War of the Revolution, of the old*  
37 *dislike and distrust of lawyers as a class.' In the heat of these sentiments the*  
38 *Constitution was forged."* Mr. Justice Stewart, *Faretta v. California* 422 U.S. 806, 827

1 We must acknowledge that the Constitution was also written in a similar light with regard to  
2 access to the Legislatures themselves as that was the general counsel of the land. Access to "Counsel"  
3 (be it of the law courts or the general legislature) was deemed of such great importance, that it was  
4 extended and guaranteed to those persons who were being criminally prosecuted as one of the many  
5 minority rights established counter to the great centralized power of the State. It is hard to argue that  
6 a person accused of a crime with the whole force of the state up against them as anything less than a  
7 minority and they too had and still have the right to "Counsel" in the law courts.

8 *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public  
9 trial, by an impartial jury of the State and district wherein the crime shall have been  
10 committed, which district shall have been previously ascertained by law, and to be  
11 informed of the nature and cause of the accusation; to be confronted with the witnesses  
12 against him; to have compulsory process for obtaining witnesses in his favor, and to  
13 have the Assistance of Counsel for his defense." Amendment VI, U.S. Constitution*

12 Again, the original intent to this did not mean a lawyer. The right to Counsel in criminal matters  
13 infers that there was counsel as a right outside such circumstances. I believe it also infers the right and  
14 ability of a criminal defendant to have access to the State's Legislature as well.

15 *"The first lawyers were personal friends of the litigant, brought into court by him so  
16 that he might 'take counsel' 'with them' before pleading. I F. Pollock & F. Maitland,  
17 The History of English Law 211 (2d ed. 1909). Similarly, the first 'attorneys' were  
18 personal agents, often lacking any professional training, who were appointed by those  
19 litigants who had secured royal permission to carry on their affairs through a  
20 representative, rather than personally. Id., at 212-213." Mr. Justice Stewart, Faretta  
21 v. California 422 U.S. 806, 820*

19 In England, the matter was clear through the ages. Access to Parliament was presumed. As a  
20 member of the House of Commons, Edward Coke exemplified the use of his seat to remedy grievances.

21 *"Coke's primary objective in the parliaments of 1621 and 1624 was to remedy specific  
22 grievances and not to expand parliamentary power, attack royal authority, or engage  
23 in constitutional controversies with the king or court. His efforts to remedy grievances  
24 by bill and petition, moreover, occasioned relatively little constitutional controversy.  
25 The substance of these remedies was sometimes heatedly debated, but only rarely did  
26 anyone dispute the Commons's or Parliaments power to implement them. Few questions  
27 were raised about Parliament's efforts to regulate court procedure, about the  
28 Common's quasi-judicial proceedings against monopoly patents, or about the limits  
placed on the royal prerogative by the bills against monopolies and concealments." Sir  
Edward Coke and the Grievances of the Commonwealth 1621-1624, Pg. 142*

27 It is important to note how essential not only access to Parliament was to the English (at least in  
28 the 1600's), but the Parliaments ability resolve problems and its ability to maintain its own capacity to

1 do its duties. The Commons were reticent on how this in turn extended the citizens their rights. So  
2 Parliament was vigorous in the retention of these abilities for the defense of the citizens:

3 *"The Common's debates on the Protestation . . . indicate their increasing propensity*  
4 *to believe that minor concessions in controversies over their privileges and powers*  
5 *might undermine their ability to remedy grievances. They were coming to believe in*  
6 *four propositions whose implications were particularly conducive to parliamentary*  
7 *conflict and stalemate: that the survival of English subjects' liberties depended on*  
8 *Parliament's ability to remedy grievances effectively, that Parliament's ability to do*  
9 *this depended upon its ability to maintain its own privileges and powers, that all*  
10 *parliamentary privileges and powers had to be scrupulously maintained and actively*  
11 *defended if any of them were going to survive, and that because these privileges and*  
12 *powers could be seen as 'the inheritance' of English subjects, attacks on them*  
13 *threatened property rights and individual liberties."* Sir Edward Coke and the  
14 *Grievances of the Commonwealth 1621-1624, Pg. 143.*

15 The Stamp Act of 1774 (U.S. Petition of Right), passed by the Continental Congress clarifies the  
16 matter in almost totality as the colonists were reaffirming their rights as English citizens to have access  
17 to Parliament and as section 13 notes, the right to "*petition the king, or either house of parliament.*"

18 *"The members of this congress, sincerely devoted, with the warmest sentiments of*  
19 *affection and duty to his majesty's person and government, inviolably attached to the*  
20 *present happy establishment of the protestant succession, and with minds deeply*  
21 *impressed by a sense of the present and impending misfortunes of the British colonies*  
22 *on this continent; having considered, as maturely as time will permit, the circumstances*  
23 *of the said colonies, esteem it our indispensable duty to make the following*  
24 *declarations of our humble opinion, respecting the most essential rights and liberties*  
25 *of the colonists, and of the grievances under which they labour, by reason of several*  
26 *late acts of parliament."*

27 **1. That his majesty's subjects in these colonies, owe the same allegiance to the crown**  
28 **of Great Britain, that is owing from his subjects born within the realm, and all due**  
**subordination to that august body the parliament of Great Britain.**

**2. That his majesty's liege subjects in these colonies, are entitled to all the inherent**  
**rights and liberties of his natural born subjects, within the kingdom of Great Britain.**

3. **That it is inseparably essential to the freedom of a people, and the undoubted right**  
**of Englishmen, that no taxes be imposed on them but with their own consent, given**  
**personally, or by their representatives.**

**4. That the people of these colonies are not, and, from their local circumstances,**  
**cannot be, represented in the House of Commons in Great Britain.**

**5. That the only representatives of the people of these colonies, are persons chosen**  
**therein by themselves; and that no taxes ever have been, or can be constitutionally**  
**imposed on them, but by their respective legislatures.**

**13. That it is the right of the British subjects in these colonies, to petition the king,**  
**or either house of parliament.**

*United States Petition of Right (The Stamp Act, 1774)*

It is clear that King George III's active ignorance of the colonies grievances in the U.S. Petition  
of Right led us to the Declaration of Independence and to the Revolutionary War. It is shown in many

1 of its Clauses that it was access to the Legislature, be it our own *Legislatures* or *Parliament* not the  
2 local Judiciary that was demanded by our Founders:

3 *He has dissolved Representative Houses repeatedly, for opposing with manly firmness*  
4 *his invasions on the rights of the people.*

5 *He has refused to pass other Laws for the accommodation of large districts of people,*  
6 *unless those people would relinquish the right of Representation in the Legislature,*  
7 *a right inestimable to them and formidable to tyrants only.*

8 *He has called together legislative bodies at places unusual, uncomfortable, and*  
9 *distant from the depository of their public Records, for the sole purpose of fatiguing*  
10 *them into compliance with his measures.*

11 *He has dissolved Representative Houses repeatedly, for opposing with manly firmness*  
12 *his invasions on the rights of the people.*

13 *He has refused for a long time, after such dissolutions, to cause others to be elected;*  
14 *whereby the Legislative powers, incapable of Annihilation, have returned to the People*  
15 *at large for their exercise; the State remaining in the mean time exposed to all the*  
16 *dangers of invasion from without, and convulsions within.*

17 *For taking away our Charters, abolishing our most valuable Laws, and altering*  
18 *fundamentally the Forms of our Governments:*

19 *For suspending our own Legislatures, and declaring themselves invested with power*  
20 *to legislate for us in all cases whatsoever.*

21 *For imposing Taxes on us without our Consent:*

22 When discussing the Judiciary, the Declaration of Independence is quite clear:

23 *He has obstructed the Administration of Justice, by refusing his Assent to Laws for*  
24 *establishing Judiciary powers.*

25 *He has made Judges dependent on his Will alone, for the temure of their offices, and*  
26 *the amount and payment of their salaries.*

27 *For depriving us, in many cases, of the benefits of Trial by Jury:*

28 The will of the Judiciary was towards the King's interest which was not the interest of the  
Colonists, thus to have some means of equity in the matter, they needed access to the Legislature. So,  
from the Declaration of Independence, we can only hold that access to the Legislature is what was  
intended by our Founders, not the trial Courts. Attempts to access Parliament were met with violence:

*"In every stage of these Oppressions We have Petitioned for Redress in the most*  
*humble terms: Our repeated Petitions have been answered only by repeated injury.*  
*A Prince whose character is thus marked by every act which may define a Tyrant, is*  
*unfit to be the ruler of a free people." Declaration of Independence*

## History and Proportions

*"The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people . . . The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large."*(Supra)

This is a powerful statement since it denotes what the proportions of the Legislature in relation to the Judiciary should be. What is even more powerful is that history confirms this proportion.

The Legislature of the United States originally had twenty-six (26) U.S. Senators and sixty-five (65) members in the U.S. House of Representatives. The number of members of the Senate is governed by the U.S. Constitution and the fact that there were Thirteen (13) States at the time:

*"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote."* Article I, Section 3, U.S. Constitution.

The number of House members was initially set by the U.S. Constitution as well:

*"The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three." Article I, Section 2, Part 3, U.S. Constitution.*

The Judiciary Act of 1789 established the initial number of Federal Judges. The Judiciary at that time had nineteen (19) members, thirteen (13) for the States and the Supreme Court had six (6) Justices who acted en banc for appeals and also rode circuit at designated times!

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the supreme court of the United States shall consist of a chief justice and five associate justices," Section 1.*

*"And be it further enacted, That the United States shall be, and they hereby are divided into thirteen districts," Section 2.*

*"And be it further enacted, That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge," Section 3. The Judiciary Act of 1789, 1 Stat. 73, *An Act to establish the Judicial Courts of the United States.**

The same form was true for California upon its formation as a State. The initial allotment of State Senators was sixteen (16) and the Assembly had thirty-six (36) members. The first Judiciary for California had twelve (12) total Judges with nine (9) District Judges and three (3) Supreme Court

1 Justices who sat for all State appeals in 1951 (*See Attachment*).

2 It is important to note that this quote came from Federalist 49 which has to do with dealing with  
3 the encroachments of one department against others. "*Method of Guarding Against the Encroachments*  
4 *of Any One Department of Government . . .*" Federalist 49. By direct implication, there is an  
5 encroachment when there are more Judges than members of the Legislature. This directly suggests that  
6 having more Judges than Legislators is improper as is having more members of the Executive branch  
7 than Legislators (or even Judges) as well.

8 We can glean this again by the fact that our founders deplored Lawyers for a time to the point  
9 where they made it illegal to plead for hire. It may also be noted that there is a fair bit of anger towards  
10 the Judiciary these days. In fact, Former Justice Sandra Day O'Connor recently wrote:

11 *"While scorn for certain judges is not an altogether new phenomenon, the breadth and*  
12 *intensity of rage currently being leveled at the judiciary may be unmatched in American*  
13 *history. The ubiquitous activist judges who legislate from the bench have become*  
14 *central villains on today's domestic political landscape. Elected officials routinely*  
15 *score cheap points by railing against the elitist judges . . . Several jeremiads are*  
*published every year warning of the dangers of judicial supremacy and judicial*  
*tyranny. Though these attacks generally emit more heat than light, using judges as*  
*punching bags presents a grave threat to the independent judiciary." Sandra Day*  
*O'Connor, Wall Street Journal*

16 It is plausible that our litigious society in which no one has access to the collaborative aspects of  
17 the Legislature in the dispute resolution process is causing this tension. In dispute resolution, most  
18 people have to deal with the expensive and complicated process of Judicial resolution and the Judiciary  
19 is likely taking the brunt whereas in the legislative process, participants would be able to approach the  
20 Representatives in a much less formal manner.

### 22 A Convention

23 Federalist 49 advances the notion that a Convention is a method for which this matter may be  
24 resolved as it states in its title, "*Method of Guarding Against the Encroachments of Any One*  
25 *Department of Government by Appealing to the People Through a Convention.*" A Convention is one  
26 manner in which this issue may be addressed. However, Publius notes in this same Federalist paper that  
27 there are problems with going to Convention and even goes so far as to suggest that it is proper to  
28 appeal to either the Executive or the Judiciary, and thus Plaintiff has chosen that course.



**JUSTICES OF THE SUPREME COURT.**

**S. C. HASTINGS, Chief Justice.**

**H. A. LYONS,  
NATHIEL BENNETT,\* } Justices.**

**DISTRICT JUDGES.**

Enacted, according to act of Congress, in the year 1852, by

**NATHANIEL BENNETT,**  
In the Clerk's office of the District Court of the United States, for the Northern  
District of California.

**FIRST DISTRICT,**

**O. S. WETHERBY.**

**SECOND DISTRICT,**

**HENRY A. TERRY.**

**THIRD DISTRICT,**

**JOHN H. WATSON.†**

**FOURTH DISTRICT,**

**LEVI PARSONS.**

**FIFTH DISTRICT,**

**CHARLES M. ORRANTZ.**

**SIXTH DISTRICT,**

**JAMES S. THOMAS.‡**

**SEVENTH DISTRICT,**

**ROBERT HOPKINS.**

**EIGHTH DISTRICT,**

**WILLIAM R. TURNER.**

**NINTH DISTRICT,**

**WINFIELD S. SHERRWOOD.**

**JAMES A. McDUGGALL, Attorney General.**

\* Resigned in October, 1851, and the Hon. HUGH C. MURRAY appointed in his place.

† Resigned in the former part of the year 1851, and the Hon. MR. HESTER appointed in his place.

‡ Removed from the State, and the Hon. THOMAS ROBINSON appointed in his place.