My Statement to the Judiciary, Lori Parker, MCJ, September 22, 2019

U.S. District Court Judge John L. Kane made a very prophetic statement in 2010, after the collapse of the economy, and the reduction in staff in courts around the country, and the lack of access to the courts by most Americans:

"The primary reason is that any system of government, including the legal one, requires public acceptance. Without the confidence that justice is predictable reality, social life degenerates into violence, chaos and narcissism. Without a complete modernization of our courts and their procedures, we will get to the point, sooner rather than later, where justice isn't even sought and access to justice is considered irrelevant. We are rapidly shifting from a system of adjudication to one of bureaucratic administration of disputes."

Remarks by John L. Kane, U.S. Senior District Judge to the Faculty of Federal Advocates, Arraj U.S. Courthouse, Denver, Colorado (Oct. 21, 2010)

What I would like to say to the judiciary is the future is here. The future predicted by U.S. Senior District Judge, John L. Kane is here. Social life has degenerated into violence, chaos, and narcissism. We have mass shootings in such places as Walmart, or the movie theater, or a kindergarten class. We have a society where children are raised with hate, anger, racism, and violence. We have families ripped apart in family law courts where full custody of children is given to documented abusers and rapists - all based upon pseudo-science based upon such concepts as "parental alienation syndrome" and "reunifications camps."

These dangerous trends of cult science from Richard Gardner - who promoted sympathetic pedophilia concepts in his books that formed the basis for these cult science fads in family court – are being forced upon parents in today's family law courts – and they cannot object or they will lose their children. His cult science created a massive influx into family courts of these parental alienation syndrome and reunification fads that contract court personnel such as guardian ad-litems, reunification therapists, and parent administrators base their services upon. And, these parents – already suffering the trauma of the break-up of a family - must endure the additional trauma of paying to these people thousands and thousands and thousands of dollars that will in the end bankrupt them.

What happened? My opinion is it was the massive takeover of the legal system by lawyers and legal professionals and bureaucratic administrators to handle the common disputes of life – and the slow end to people representing themselves in court. I am old enough to remember twenty and thirty

years ago when the courts were not so hard-hearted. I can remember when they did not operate like fast-food restaurants with cases processed like an order of food. I can remember when the legal system had humility. I can remember when court personnel acted like public servants I can remember when a person could appear in court without a lawyer, and they were treated in a friendly, respectful manner by judges, court clerks, and others in the court. I can remember when lawyers did not act like the case was a "kill or be killed" situation. I can remember when a pro se litigant's case would be listened to by a judge with equal regard to someone who was represented by a lawyer.

But those days are gone. Now, when a pro se litigant goes to court – they are treated like the enemy. They are treated like a pest that needs to be eradicated. They are treated with disrespect and disdain. Their pleadings are thrown in the garbage. They are not notified of hearings. Tricks are used by the clerks and others in tandem with the opposing counsel to force the loss of their case. And when they try to ask questions of these public servants whom they – the taxpayers - pay the salaries of - they spit at them "We can't give you legal advice" - only to turn around in a few minutes and answer those very same questions to a new attorney trying to learn their way around the court.

Lawyers now practice Rambo Litigator tactics. They engage in "scorched earth tactics" - they lie, they cheat, they commit forgery, they have clients commit perjury, they conceal evidence, they ignore court orders, they make false statements in courts – to the judges and to the juries. And their fellow lawyers pat them on the back, and cheer them on for their "zealous advocacy." But let a pro se litigant engage in these same tactics, and they will have their case dismissed as punishment, and they will be thrown in jail for contempt, and fined.

Today, judges have been pushed into the corners, and back rooms. They are told they can't give legal advice. Law clerks and interns – fresh out of school or still in school, with no wisdom, no real legal experience, and certainly no real life experience - churn out the legal opinions, and orders across the United States – using Westlaw and other research databases to tell them the formula for the case. Then they make recommendations to the judges of how to rule at a hearing, or on a case.

Judges show up in court, listen to the parties arguments, and then announce the opinion or order they have been given to read – or say they will take it under advisement for appearance's sake – and then the law clerk will mail the opinion. In cases with pro se litigants – opposing counsel simply writes the order the way they want it written, and the judge signs it. People then lose their children, their homes, their money, their property, and in some cases their lives – when in such a state of despair of this madness we now call the legal system – they commit suicide from the sheer, gut-wrenching, and

abusive “justice” that has been inflicted upon them. And in some cases, in a fit of contorted rage and anguish and displaced anger, they kill the other parent, or their children.

Have You Forgotten?

During the formation of our government, our Founders created Section 35 of the Judiciary Act of 1789, 1 Stat. 73.92. This promise to us, the people, clearly stated that we – the people – would be welcome in the courts we pay for. The promise was that we – the people – could bring people to assist us. We could bring our own counselors to advise us. We could bring our own attorneys to assist us. If we chose to. In other words, we can bring an attorney if we want to. Or not bring an attorney if we don’t want to. We can bring counselors (to advise us – and these are not necessarily attorneys) if we want to. Or not bring counselors if we don’t want to. Nowhere in the promise does it say we have to have an attorney to represent us. Nowhere does it say we can’t bring our friend, or other person to counsel us, if we want to. Nowhere.

This is what it says:

> SEC . 35. And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.

But now, attorneys run the courts. Law clerks and interns and opposing counsel write the opinions, and orders. Guardian ad litems are usually attorneys. Many of the court contract “professionals” are attorneys. Magistrates are attorneys. Our senates, our legislatures, and other elected people are attorneys. And now, as of 2013, only attorneys are allowed to speak to the U.S. Supreme Court.

Now, we are governed by the Rule of Law, or in my opinion, the Rule of Lawyers. And, since the courts are based upon the “adversarial model” - and most lawyers now champion the Rambo Litigator myth - every court event is a “battle.” Every one. Even something as small as which parent should have the child on Sunday is worthy of a knock-down, drag-out, “kill or be killed battle,” to see who is going to see the child on Sunday. All with the lawyers, guardian ad litem’s, parenting coordinators, mediators, parent specialists, parent re-unificationists, parent therapists, and all the other highly-paid “professionals” charging $350 an hour to be on the sideline of each parent cheering, screaming, insulting, lying, and cheating so maybe their side will win. When it’s over, each parent is

handed an outrageous bill - which will likely cost them somewhere in the neighborhood of $10,000 for this pay-to-play circus show. Just to see who the child will see on Sunday. *Oh, c'mon*.

To be perfectly frank - from this old woman who is a mother, and a grandmother, and whose been on this earth a long, long time, and been around the block a time or two – this is absolutely ridiculous, plain and simple, unvarnished hogwash. The Rule of Law – or as I see it, the Rule of Lawyers – combined with "Rambo Litigation" has thrown civility, honesty, virtue, good will, and most importantly, common sense – into the gutter. This "justice for sale" model has created a legal system that looks more like Frankenstein is holding the scales of justice, rather than our lady of truth.

With justice for sale to the highest bidder - you get perverted justice. When a little toddler gets burned alive in a car because his father was angry - and you would not listen to his mother's warnings because of your pay-to-play Rule of Law- something is wrong. When a father you gave partial custody to kills his daughter by smashing her head in with dumbbells - because you wouldn't listen to her mother because of your pay-to-play Rule of Law- something is wrong. When people become homeless and end up living in their cars with their dogs because you let foreign companies come and buy up their neighborhood just to raise the rents and home prices to run them out of the neighborhood - all because they knew how to hire attorneys to legally do this through the pay-to-play Rule of Law - something is wrong. When elderly people get scammed out of their money and their inheritances and their homes and other valuables by white collar criminals - and then the thieves use the money they stole to hire the best lawyers to get away with their crimes through the pay-to-play Rule of Law – something is wrong. *I could go on and on*.

We need to face the reality that Judge Kane warned us of. If you wonder why people have no faith in the legal system anymore, it's because they know what it has become. It is pay-to-play justice. It is not any different than pay-to-play television or movies. You got the money? You win. People no longer have faith in the legal system. And I can tell you - not just from my own experience, but from the stories, and conversations, and cases I have read from all of the others who have been churned in our current legal system – they have good reason not to have faith in this pay-to-play legal system.

I remember a Bible verse from my childhood that reminds me of what our legal system has become like today:

John 2:13-16

> And the Jews' passover was at hand, and Jesus went up to Jerusalem. And found in the temple those that sold oxen and sheep and doves, and the changers of money sitting: And when he had made a scourge of small cords, he drove them all out of the temple, and the sheep, and the oxen; and poured out the changers' money, and overthrew the tables; And said unto them that sold doves, Take these things hence; make not my Father's house an house of merchandise.

Our courts are our temple of justice. This is where we – the people – go to find justice for our everyday disputes. They are not a place to sell justice. They are not a place where justice is for sale to the highest bidder. They are not a place that should ever promote, in any form or fashion, or manner pay-to-play justice. And anyone who comes into these halls of justice to promote this pay-to-play scheme of justice should be thrown out – and driven out - like the changers of money.

The attorneys did not pay to build the courthouses – we did. The American Bar Association doesn't pay your generous salaries – we do. The attorneys and the bar associations across the United States don't pay for your medical and dental benefits, and your generous pensions – we do.

Let Us Back Into Our Courts

We were promised by our Founding Fathers that we would always be welcome in our courts. And we were promised that we could bring people to counsel us with us, or bring attorneys to *assist* us – if we wanted to.

In 1975, in the case of *Faretta v. California*, our justices of the U.S. Supreme Court described our right to be in our own courts, and the long history that underlies the foundation of our right to be in our own courts:

"In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment [422 U.S. 806, 813] was proposed, provided that "in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of . . . counsel . . . ." The right is currently codified in 28 U.S.C. 1654. [..]

In the American Colonies the insistence upon a right of self-representation was, if anything, more fervent than in England. The colonists brought with them an appreciation of the virtues of self-

reliance and a traditional distrust of lawyers. When the Colonies were first settled, "the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions." This prejudice gained strength in the Colonies where "distrust [422 U.S. 806, 827] of lawyers became an institution." Several Colonies prohibited pleading for hire in the 17th century. The prejudice persisted into the 18th century as "the lower classes came to identify lawyers with the upper class." The years of Revolution and Confederation saw an upsurge of antilawyer sentiment, a "sudden revival, after the War of the Revolution, of the old dislike and distrust of lawyers as a class." In the heat of these sentiments the Constitution was forged.

This is not to say that the Colonies were slow to recognize the value of counsel in criminal cases. Colonial judges soon departed from ancient English practice and allowed accused felons the aid of counsel for their defense. At the same time, however, the basic right of [422 U.S. 806, 828] self-representation was never questioned. We have found no instance where a colonial court required a defendant in a criminal case to accept as his representative an unwanted lawyer. Indeed, even where counsel was permitted, the general practice continued to be self-representation.

The right of self-representation was guaranteed in many colonial charters and declarations of rights. These early documents establish that the "right to counsel" meant to the colonists a right to choose between pleading through a lawyer and representing oneself. After the [422 U.S. 806, 829] Declaration of Independence, the right of self-representation, along with other rights basic to the making of a defense, entered the new state constitutions in wholesale fashion. The right to counsel was clearly thought to [422 U.S. 806, 830] supplement the primary right of the accused to defend himself, utilizing his personal rights to notice, confrontation, and compulsory process. And when the Colonies or newly independent States provided by statute rather than by constitution for court appointment of counsel in criminal cases, they also meticulously preserved the right of the accused to defend himself personally. [422 U.S. 806, 831]

The recognition of the right of self-representation was not limited to the state lawmakers. As we have noted, 35 of the Judiciary Act of 1789, signed one day before the Sixth Amendment was proposed, guaranteed in the federal courts the right of all parties to "plead and manage their own causes personally or by the assistance of . . . counsel." 1 Stat. 92. See 28 U.S.C. 1654. At the time James Madison drafted the Sixth Amendment, some state constitutions guaranteed an accused the right to be heard "by himself" and by counsel; others provided that an accused was to be "allowed"counsel. The various state proposals for the Bill of Rights had similar variations in terminology. [422 U.S. 806, 832] In each case, however, the counsel provision was embedded in a package of defense rights granted personally to the accused. There is no indication that the differences in phrasing about "counsel" reflected any differences of principle about self-representation. No State or Colony had ever forced counsel upon an accused; no spokesman had ever suggested that such a practice would be tolerable, much less advisable. If anyone had thought that the Sixth Amendment, as drafted, failed to

protect the long-respected right of self-representation, there would undoubtedly have been some debate or comment on the issue. But there was none.

In sum, there is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel. To the contrary, the colonists and the Framers, as well as their English ancestors, always conceived of the right to counsel as an "assistance" for the accused, to be used at his option, in defending himself. The Framers selected in the Sixth Amendment a form of words that necessarily implies the right of self-representation. That conclusion is supported by centuries of consistent history."

Faretta v. California, 422 U.S. 806 (1975)

In 2018, it was estimated there were about 100 million cases filed in the U.S. For that same year, there were about 1.3 million attorneys. No matter how you look at it, no matter how you move the numbers around, there will never be enough lawyers to represent 100 million cases filed per year. The law schools around this country could never graduate enough lawyers in the next century to represent every one who needs to go to court. One-third of all Americans would have to become lawyers for everyone in this country to be represented by a lawyer. And, that is just not possible.

The only means by which all Americans will have a fair chance to have access to the courts is by accepting the fact that people *must* represent themselves in court. People *must* have the support services provided to them to represent themselves in court. People *must* be able to use lawyers in limited scope capacity. People *must* be able to hire lawyers to *assist* them – not to take over the entire case and tell them what to do - nor to make back room deals with the other side's lawyers to line their pockets with all available money of the parties, by dragging the case on and on and on.

Our courts must find a way to lower the costs of going to court. Our courts must make the experience for pro se litigants more user friendly, and do so with emphasis on the respect, dignity, fairness, and equal treatment that pro se litigants deserve. Perhaps court room professionals will have to agree to work on sliding scales if they want work from the court – including lawyers, court reporters, experts, and other professionals. Perhaps it is time for courts to offer introductory classes to people who represent themselves to go over the basics – what is a motion, how does the court work, what does each person in the court do, what are basic steps to progress through a case, what are the basic rules of evidence, how do you enter evidence, and so on.

Perhaps more pro se litigant support service providers need to become part of the economy – of what is likely easily a substantial service market sitting untapped to provide support services for pro se

litigants. We are a nation of innovators, and this is a very important problem we must solve so that all Americans can have fair and equal access to the courts.

As Judge Kane said "Without the confidence that justice is predictable reality, social life degenerates into violence, chaos and narcissism." Although I disagree with much of his beliefs about the approach to provide access to justice to pro se litigants, I do believe he saw the imminent collapse of our legal system if we did not do something to make the legal system available to all Americans. And I agree with him. We must make the legal system available to all Americans. But we can only do it if we accept the fact that people *must* be able to represent themselves in court, and we *must* do whatever we can to make it possible for them to do so.

When justice is for sale to the highest bidder, as it is today, then we are at risk of losing our republic that was fought for so long ago. When justice is for sale, anyone who has the money can buy the justice. The pedophiles. The child abusers. The insurance companies. The corporations. The toxic waste purveyors. The foreign countries and their agents who want to see the demise of America. The robbers. The thieves.

So what I would like to say to our judiciary is this:

Dear judiciary,

Please have the courage to take back your proper role in our legal system. Please don't let our legal system be for sale to the highest bidder. Please, bring us back into our courts. We were promised by our Founding Fathers that we would always be welcome there.