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United States v. Kozminski: On the Threshold of Involuntary Servitude

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I. INTRODUCTION

The motivation behind adoption of the thirteenth amendment could scarcely be doubted at the time of its passage. The nation, recently reunified after four years of bloody civil war, was controlled by a Congress composed entirely of northern unionists. They were the victors and the spoil they claimed was abolition of the South's "peculiar institution."[1] "Neither slavery nor involutary servitude . . . shall exist within the United States . . . ."[2] With these words the abolitionists embedded their long cherished goal into the Constitution.

At a minimum, the amendment forbids chattel slavery of the kind known in the antebellum south. It has also been accepted that the amendment gives Congress the power to reach "badges and incidents of slavery,"[3] thus providing a constitutional basis for limited civil rights legislation.[4] Courts have recently been challenged, however, to give definitive content to the words themselves.[5] The task was to

1. For a comprehensive discussion of the thirteenth amendment and its history, see tenBroek, *Thirteenth Amendment to the Constitution of the United States, Consummation to Abolition and Key to the Fourteenth Amendment*, 39 CALIF. L. REV. 171 (1951). Professor tenBroek presents an exhaustive history of the congressional debates preceding the amendment's passage. *See also* Note, *The "New" Thirteenth Amendment: A Preliminary Analysis*, 82 HARV. L.REV. 1294, 1299-1300 (1969). "The framers' debates were directed more to the desirability of emancipation than to the meaning of the language. . . . Attention was focused south of the Mason-Dixon line [and] . . . [i]f the understanding of the framers alone were to determine the amendment's scope, it would be largely obsolete today." *Id.* *See also* Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 71 (1872).

2. U.S. CONST. amend. XIII. Section 1 of the amendment provides: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Section 2 of the amendment provides: "Congress shall have power to enforce this article by appropriate legislation." *Id.*

3. Civil Rights Cases, 109 U.S. 3, 20 (1883). The scope of the amendment as it relates to civil rights legislation continues to expand. *See generally* Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968); Note, *supra* note 1, at 1300.

4. *Civil Rights Cases*, 109 U.S. at 20.

5. United States v. Warren, 772 F.2d 827 (11th Cir. 1985), *cert. denied*, 455 U.S. 1022 (1986); United States v. Mussry, 726 F.2d 1448 (9th Cir.), *cert. denied*, 469 U.S. 855 (1984); United States v. Booker, 655 F.2d 562 (4th Cir. 1981); United States v. Bibbs, 564 F.2d 1165 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007 (1978); United States v. Shackney, 333 F.2d 475 (2d Cir. 1964).

formulate a definition of "involuntary servitude" capable of application to complex situations—situations much less obvious than nineteenth century chattel slavery, but no less insidious to their twentieth century victims. The search involved numerous considerations: the framers' intent,[6] construction of enabling statutes passed by various congresses,[7] and constitutional concerns regarding the criminal defendant's right to receive notice of proscribed conduct.[8]

In *United States v. Kozminski*,[9] the Supreme Court addressed the issue of what is encompassed by the term "involuntary servitude." The Court focused on construing the statutes under which the defendants were prosecuted. Its primary concerns were those of congressional intent and constitutional notice. The Court interpreted the term narrowly, concentrating on the means of subjection and holding that only physical or legal coercion could render a servitude "involuntary" under the current enforcement statutes.[10]

This note will examine the opinion of the Court as well as those of concurring Justices Brennan and Stevens in light of both the Supreme Court's own precedent and the past split among the circuit courts of appeals. It will attempt to show that the Court, as the result of an overly technical construction of the current enforcement statutes, unnecessarily restricted the thirteenth amendment and its enabling statutes by improperly focusing on the means of subjection instead of the condition produced thereby.

II. THE STATE OF THE LAW PRIOR TO *KOZMINSKI*

A. *Supreme Court Precedent*

Although *Kozminski* represents the first time the Court has rendered a definition of "involuntary servitude," it is not the first time the Court has expounded upon the term.[11] The amendment and various enabling statutes have been discussed in a variety of other con-

6. *See, e.g.*, United States v. Shackney, 333 F.2d 475 (2d Cir. 1964); *see infra* notes 37-51 and accompanying text; *see also* tenBroek, *supra* note 1, at 177.

7. Although the amendment is self-executing, *Civil Rights Cases*, 109 U.S. at 20, and involuntary labor may not legally exist in the United States, "[w]ithout implement[ing legislation,] the executive branch of the federal government would be powerless to act against [such] conditions." Brodie, *The Federally-Secured Right to be Free from Bondage*, 40 GEO. L.J. 367, 390 (1952). The current implementing statutes are contained in sections 1581-1588 of Title 18 of the United States Code. 18 U.S.C. §§ 1581-1588 (1969). The "useful and usable statutes" are section 1581 (peonage), section 1583 (enticement into slavery or involuntary servitude), and section 1584 (holding or selling into involuntary servitude). *Id.*

8. *See, e.g., Mussry*, 726 F.2d at 1454-55.

9. 108 S. Ct. 2751 (1988).

10. *Id.* at 2763.

11. *See* Hodges v. United States, 203 U.S. 1, 16 (1906); Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872). Having quoted the amendment, the Court noted "[t]he meaning of this is as clear as language can make it." *Hodges*, 203 U.S. at 16.

texts. In the *Slaughter-House Cases*,[12] with the amendment "almost too recent to be called history,"[13] the Court found that "[i]ts two short sections seem hardly to admit of construction."[14] The result of the case was a rather straightforward holding that restrictions on the use of property cannot constitute involuntary servitude within the amendment. The Court believed the amendment clearly contemplated only personal servitude.[15] In reaching its decision, however, the Court engaged in an extended discussion of congressional intent and the language chosen to effectuate it. Of most significance definitionally was its recognition that "[t]he word servitude is of larger meaning than [the word] slavery," and the "obvious purpose" of including the former was to forbid "all shades and conditions" of the latter.[16]

Following this initial foray into the amendment's terminology, the Court was not called upon to construe the language itself until near the turn of the century. In *Plessy v. Ferguson*,[17] the argument was made that segregation was a form of servitude.[18] This argument, however, was not "strenuously relied upon," and the Court considered its negative holding "too clear for argument."[19] The Court focused on slavery as a legal status, "the ownership of mankind as a chattel, or at least the contol of the labor and services of one man for the benefit of another, and the absence of a *legal* right to the disposal of his own person, property and services."[20]

At the time of the amendment's passage, the framers were concerned that the former slave states would concoct schemes by which the newly-freed slaves could be returned to a condition of subjection.[21] Their concern eventually proved to be justified,[22] and while

12. 83 U.S. (16 Wall.) 36 (1872).
13. *Id.* at 71.
14. *Id.* at 69.
15. *Id.*
16. *Id.*
17. 163 U.S. 537 (1896).
18. *Id.* at 542-43.
19. *Id.* at 542.
20. *Id.* (emphasis added).
21. *See* tenBroek, *supra* note 1, at 173-74. Discussing the legislative history of the amendment in detail, the author argued both its sponsors and opponents recognized that the objective "was not only to free the negroes but to 'make them our equals before the law.'" *Id.* at 174 (quoting CONG. GLOBE, 38th Cong., 2d Sess. 179-80, 216 (1865)). *But see* Note, *supra* note 1, at 1297 ("The northern public, which the framers represented . . . was accustomed to distinguishing a strictly 'theoretical right to life, liberty, and property' from protection for Negroes' enjoyment of these rights equally with white men.").

passage of the fourteenth amendment abrogated the grossest and most overt of these evasions,[23] some of the devices lingered on. One such device was peonage, which typically involved the working off of money previously advanced by an employer.[24] Congress sought to eradicate this practice in 1867 with the Anti-Peonage Act, but peonage simply took on new guises and continued unabated in certain areas of the country.

In *Clyatt v. United States*,[25] the Court upheld the constitutionality of the Peonage Act based on Congress's power to enforce the thirteenth amendment. In doing so, the Court stated that "[t]his amendment denounces a status or condition, irrespective of the manner or authority by which it is created."[26] In *Pollock v. Williams*,[27] under authority of the Act, the Court struck down one of the means used to evade the Peonage Act. In *Pollock*, a Florida law created a presumption of fraud from mere failure to perform a labor contract. The result of the law was twofold: employees could be imprisoned for simply walking off the job, or were kept from doing so by the threat of such consequences. The Court noted: "The undoubted aim of the Thirteenth Amendment as implemented by the Anti-peonage Act was not merely to end slavery but to maintain a system of *completely free and voluntary* labor throughout the United States."[28]

These general principles concerning the scope of the amendment and its implementing statutes constituted the only Supreme Court guidance available at a time when borderline cases requiring a precise definition of involuntary servitude began arising in the lower courts.[29] Needless to say, this guidance was of limited precedential value because the outer limits of the term "involuntary servitude," as

22. Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 70 (1872). The Court noted that "[a]mong the first acts of legislation adopted by several of the [newly readmitted] States . . . were laws which imposed upon the colored race onerous disabilities and burdens . . . ." *Id.*

23. The fourteenth amendment gave Congress power to reach these discriminatory laws since they constituted the clearest form of state action. *See id.* at 80-81.

24. The Supreme Court defined peonage as "a status or condition of compulsory service, based upon the indebtedness of the peon to the master . . . . [P]eonage, however created, is compulsory service, involuntary servitude." Clyatt v. United States, 197 U.S. 207, 215 (1905).

25. 197 U.S. 207 (1905).

26. *Id.* at 216.

27. 322 U.S. 4 (1944).

28. *Id.* at 17 (emphasis added). *Pollock* represents a culmination in terms of the Court's unwillingness to accept any form of state-condoned involuntary servitude. The other peonage cases are collected and discussed at some length. *Id.* at 7-13.

29. Along the way, the Court had excepted specific types of involuntary servitude as being within the letter but not the spirit of the law. *See, e.g.*, Butler v. Perry, 240 U.S. 328 (1916) (six days compulsory roadwork required of all men by state law not involuntary servitude but within police power of state); Robertson v. Baldwin, 165 U.S. 275 (1897) (statute punishing desertion from a commercial ship did not render servitude involuntary).

applied to a state of personal subjugation, was never truly in issue.[30]

B. *Construction and Definition of the Conspiracy and Holding Statutes in the Courts of Appeals*

Prior to *Kozminski*, numerous district courts[31] and roughly half the circuit courts of appeals[32] had addressed the issue of what constitutes "involuntary servitude." However, most did so under circumstances that did not require giving the term specific content.[33] Thus, any support for an expanded definition from these courts would properly be characterized as dicta.[34] Nevertheless, two cases, *United States v. Shackney*[35] and *United States v. Mussry*,[36] are especially significant as they required such a decision.

In *Shackney*, the defendant had induced several Mexican families to travel to Connecticut to work on his chicken farm.[37] Prior to arranging transportation from Mexico for one of these families, the Oroses, Shackney drafted written employment contracts and promissory notes for Mr. Oros to sign.[38] The contract provided for a seven-day work week for a term of two years at an initial salary of $160 per month.[39] The promissory notes covered Shackney's outlay for transportation and were co-signed by a friend of the Oroses who owned his own home in Mexico.[40]

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30. For further analysis of these cases, especially those arising under the Peonage Act, see Brodie, *supra* note 7, at 377-83; Shapiro, *Involuntary Servitude: The Need for a More Flexible Approach*, 18 RUTGERS L. REV. 65, 71-79 (1964); Note, *Involuntary Servitude: Modern Conditions Addressed in United States v. Mussry*, 34 CATH. U.L. REV. 153, 162-66 (1984) [hereinafter *Involuntary Servitude*]; Note, *supra* note 1, at 1303-06.

31. United States v. Ingalls, 73 F. Supp. 76 (S.D. Cal. 1947); Peonage Cases, 123 F. 671 (M.D. Ala. 1903); Tyler v. Heidorn, 46 Barb. 439 (N.Y. App. Div. 1866); *see also* Brodie, *supra* note 7, at 386.

32. *See supra* note 5 and accompanying text.

33. The vast majority of the cases represented clear holdings by actual physical force. *See, e.g.*, United States v. Warren, 772 F.2d 827 (11th Cir. 1985), *cert. denied*, 475 U.S. 1022 (1986); United States v. Booker, 655 F.2d 562 (4th Cir. 1981); United States v. Bibbs, 564 F.2d 1165 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007 (1978).

34. For example, the Court stated in *Bibbs*: "In a prosecution for involuntary servitude the law takes no account of the means of coercion." *Bibbs*, 564 F.2d at 1167. However, since the case involved actual physical abuse and threats, the statement was not necessary to the Court's decision.

35. 333 F.2d 475 (2d Cir. 1964).

36. 726 F.2d 1448 (9th Cir.), *cert. denied*, 469 U.S. 855 (1984).

37. *Shackney*, 333 F.2d at 477. Shackney had found it difficult to find American workers due to the necessity of a seven-day work week. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* These took the form of 12 notes of $100 each, considerably more than the actual cost of transportation. In addition, Shackney allegedly made Oros sign six addi-

Upon arrival, Oros and his family found the living conditions drastically different from Shackney's representations.[41] Oros and his eldest daughter testified that from the day of their arrival they wanted to leave, but they never communicated this desire to Shackney.[42] There were no allegations of force and there were long periods of time in which the Oroses were alone while the Shackneys were away from the farm.[43] Testimony indicated, however, that Shackney threatened the family with deportation and collection of the promissory notes from the co-signer in Mexico.[44] In addition, the children did not attend school and the Oroses were actually paid only ten dollars during the entire period as Shackney simply tore up promissory notes when their wages became due.[45]

Judge Friendly began his analysis by first reviewing the legislative history of section 1584 and then reviewing Supreme Court decisions under the peonage statute. Finding both inconclusive,[46] he proceeded further into the history of the term "involuntary servitude," looking to the Northwest Ordinance from which it was taken.[47] He concluded:

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tional $100 notes simply to gain leverage over the family once they had arrived. *Id.* at 477-78.

41. *Id.* at 478. "[T]he walls were of corrugated cardboard; and there were holes in the floor . . . ." *Id.*

42. *Id.* at 479. According to the government, the Oroses were concerned that they would be deported or that Shackney would foreclose on the co-signer's home.

43. *Id.*

44. *Id.* The government's case primarily rested on these two threats. The trial judge had instructed the jury that enforcement of the notes was within Shackney's rights and could not be held against him. Judge Friendly not only approved of the instruction, but felt that the government's claim, that Oros's will was overcome by the threat of deportation, was weakened by Oros's testimony about his desire to protect his friend. *Id.* at 486 n.17.

45. *Id.* at 478.

46. *Id.* at 481-83. As a matter of statutory construction, Judge Friendly found that the "search must be for the meaning of § 1584 rather than of its two parents." *Id.* at 482. The paucity of legislative history surrounding section 1584, however, made such a search illusive. Thus, noting that the comment to the code indicated no "attempt to change existing law," he *still* read the statute as "covering the same type of compulsory holding as was proscribed by its parent statutes, comparable to the holding which was a necessary element of the crime of peonage." *Id.* Having come full circle, he reviewed the Supreme Court's decisions under the peonage statutes but found no "clear answer." *Id.* at 483. Interestingly, no other court addressed the legislative history of the statute until the Sixth Circuit in United States v. Kozminski, 821 F.2d 1186, 1189-92 (6th Cir. 1987), *aff'd*, 108 S. Ct. 2751 (1988).

For other reviews of the history of section 1584 and the peonage cases, see Brodie, *supra* note 7, at 376-83 (focusing on the current enforcement statutes and the need for modernization) and Shapiro, *supra* note 30, at 71-82 (critiquing *Shackney*).

47. The language of the thirteenth amendment was taken almost verbatim from the Northwest Ordinance of 1787, believed to have been written by Thomas Jefferson. *Shackney*, 333 F.2d at 483; *see also* Note, *supra* note 1, at 1298-99 n.34 (broader language based upon the French constitutions was proposed by Senator Sumner but rejected in favor of "good old Anglo-Saxon language" that would be "perfectly well understood").

> This survey indicates to us that the prime purpose of those who outlawed "involuntary servitude" in the predecessors of the 13th Amendment, in the Amendment itself, and in statutes enacted to enforce it, was to abolish all practices whereby subjection having some of the incidents of slavery was *legally* enforced, either directly, by a state's using its power to return the servant to the master . . . or indirectly, by subjecting persons who left the employer's service to criminal penalties.[48]

In his judgment, while a threat of deportation came "close to the line," it had not rendered the Oroses choice to stay involuntary under this standard.[49]

Judge Dimock objected that Judge Friendly's focus on the means of subjugation was unwarranted by the text of the statute, improper as a matter of policy, and "arbitrary." He felt instead that the proper focus was on the victim: "Where the subjugation of the will of the servant is so complete as to render him incapable of making a rational choice, the servitude is involuntary within the terms of the statute and it is only where there is such subjugation that the servitude is involuntary."[50] He nonetheless concurred, finding that on the facts of the case the jury could not properly have found "willful subjugation" even within his broader interpretation of the statute.[51]

Similarly, *United States v. Mussry*[52] involved a group of defendants who had lured poor Indonesians to the United States to work as household servants and gardeners.[53] The indictment charged that upon arrival their passports and airline tickets were taken from them[54] and that they were required to work seven days a week, up to fifteen hours a day, for very little money.[55] An allegation was also made that the defendants told the servants they would be arrested should they attempt to leave the houses where they were employed.[56] The district court, accepting *Shackney's* definition of "involuntary servitude," dismissed all counts charging peonage, slavery, or involuntary servitude because the indictment did not allege the use or threatened use of law or force.[57]

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48. *Shackney*, 333 F.2d at 485-86 (emphasis added).
49. *Id.* at 486.
50. *Id.* at 488 (Dimock, J., concurring).
51. *Id.* (Dimock, J., concurring).
52. 726 F.2d 1448 (9th Cir.), *cert. denied*, 469 U.S. 855 (1984).
53. *Id.* at 1450.
54. *Id.* These acts had greater significance than might otherwise be expected, because in Indonesia, citizens are required to carry a pass at all times and are subject to arrest if caught without it. The government alleged the defendants were aware of this fact. *See Involuntary Servitude*, *supra* note 30, at 174-75 (quoting appellant's brief).
55. *Mussry*, 726 F.2d at 1450.
56. *Id.*
57. *Id.* A necessary element of involuntary servitude is a "holding."

The Ninth Circuit reversed, holding that the facts alleged were sufficient to constitute a finding of involuntary servitude if proven at trial.[58] Significantly, the court did not rely on nor even address the legislative history of the enforcement statutes, assuming instead that use of the thirteenth amendment's terminology in the statute was intended to give it coextensive reach.[59] Taking into consideration "the realities of modern economic life,"[60] the court easily concluded that *Shackney's* definition was "too narrow to fully implement the purpose of the [thirteenth] [a]mendment."[61] Relying in part on Judge Dimock's concurring opinion in *Shackney*[62] and on similar dicta in a line of Fifth Circuit cases,[63] the court rejected Judge Friendly's means-based definition in favor of one focusing on the status or condition of the victim.[64] According to the court, involuntary servitude could be found if an individual employed "improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor."[65] Under this standard, the government would have to show both actual subjugation and that the alleged conduct would have had the same effect on "a reasonable person *of the same general background and experience*" as the victim.[66]

The defendants asserted that if *Shackney* were abandoned, the statutes would be rendered constitutionally void for vagueness.[67] On this issue, the court first noted the dual rationale in requiring sufficient definiteness in statutes defining criminal offenses: namely, to discourage "arbitrary and discriminatory enforcement" and to inform "ordinary people . . . what conduct is prohibited."[68] The court also noted that in passing upon a vagueness challenge not involving the first amendment, the court may consider only "the facts of the case at hand."[69] The issue was thus reduced to whether *these* defendants

58. *Id.* at 1455-56.

59. *Id.* at 1451; *see Involuntary Servitude*, *supra* note 30, at 178-79 (criticizing this failure as a significant weakness which could minimize the case's influence).

60. *Mussry*, 726 F.2d at 1451.

61. *Id.* at 1452.

62. United States v. Shackney, 333 F.2d 475, 487 (2d Cir. 1964) (Dimock, J., concurring); *see supra* notes 37-51 and accompanying text.

63. *See, e.g.*, United States v. Bibbs, 564 F.2d 1165 (5th Cir. 1977) (quoted *supra* note 34). "It is common ground among . . . all the courts . . . that have interpreted § 1584 that it encompasses, at a minimum, the compulsion of labor via the use or threat of physical or legal coercion." United States v. Kozminski, 108 S. Ct. 2751, 2765-66 (1988) (Brennan, J., concurring). The Fifth Circuit's statements are properly characterized as dicta since the evidence showed physical compulsion.

64. *Mussry*, 726 F.2d at 1452-53.

65. *Id.* at 1453.

66. *Id.* (emphasis added).

67. *Id.* at 1454.

68. *Id.*

69. *Id.*

had adequate notice that their conduct was prohibited.[70] Conceding that the language was "not the most precise," the court nonetheless felt that since close questions of interpretation alone do not render a statute vague, the statute's *mens rea* requirement largely alleviated any vagueness concern.[71] As to the defendants, the court believed that they had fair notice that the allegedly intentional and successful subjugation of their Indonesian servants was unlawful.[72]

At the time *Kozminski* came before the Sixth Circuit, the only two courts of appeals to squarely confront the issue had reached diametrically opposed conclusions. The Second Circuit, in *Shackney*, concluded as a matter of statutory construction that objectively verifiable force, either legal or physical, must be proven to find involuntary servitude. The Ninth Circuit, in *Mussry*, concluded as a matter of constitutional interpretation that the thirteenth amendment made no such distinction concerning the means of subjugation; rather, the amendment prohibited actual subjugation regardless of how it was brought about.

III. *UNITED STATES V. KOZMINSKI*

A. Facts and Findings in the Lower Courts

Ike Kozminski brought Louis Molitoris to his farm in Chelsea, Michigan in the early 1970's.[73] Molitoris had been living on the streets of Ann Arbor, having previously spent several years in a mental institution.[74] He had an I.Q. of about sixty.[75] At the farm he joined Robert Fulmer, whom the Kozminskis had picked up walking down a road several years earlier.[76] Fulmer's I.Q. was approximately sixty-seven.[77]

Officials, having been alerted by a former employee of the Kozminskis to Fulmer's and Molitoris' presence on the farm, found the two

70. *Id.*
71. *Id.* at 1455.
72. *Id.* The court summarized the point as follows: "It is difficult to argue that a person did not have notice that certain conduct was illegal when the offense requires that the conduct be improper or wrongful and that the actor intend that the conduct have a coercive effect." *Id.*
73. United States v. Kozminski, 108 S. Ct. 2751, 2755 (1988).
74. *Id.* at 2756.
75. *Id.* at 2755. In theory, the average I.Q. is 100. An I.Q. below 70 generally indicates mental retardation. *See* Eysenck, *The Nature and Measurements of Intelligence*, in J. FREEMAN, THE PSYCHOLOGY OF GIFTED CHILDREN 115, 126 (1985).
76. *Id.* at 2755-56.
77. *Id.* at 2755.

men in 1983 living in squalor,[78] poor health, and relative isolation.[79] The Kozminskis, Ike, Margarethe, and their son John, were charged with both conspiracy to hold the men in involuntary servitude[80] and with having succeeded in doing so.[81] There was evidence the men had been subjected to physical and verbal abuse and that Molitoris was threatened with institutionalization.[82] In addition, the government argued that the substandard living conditions, isolation, and severe work load[83] had resulted in a form of brainwashing that held Fulmer and Molitoris as "psychological hostages."[84]

The trial court accepted the government's theory of the case, which rested squarely on the Ninth Circuit's decision in *Mussry*, and charged the jury accordingly.[85] Ike and Margarethe were convicted as charged; John was convicted only of conspiracy.[86]

The Sixth Circuit, sitting en banc,[87] reversed and remanded. Citing *Shackney* and *Mussry*, the court first noted that the circuit courts were "squarely in conflict" on the issue.[88] Although they agreed on the end result necessary to find involuntary servitude—that the victim must believe there was no choice but to serve—the Second Circuit limited punishable means of coercion to physical or legal

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78. *Id.* Judge Merritt, writing for the Sixth Circuit, said: "The trailer they occupied was filthy, having no running water, a broken refrigerator and maggot infested food." United States v. Kozminski, 821 F.2d 1180, 1188 (6th Cir. 1987). Apparently the Kozminskis' explanation for this was that "Fulmer and Molitoris were responsible for cleaning their own quarters." *Id.* at 1189.

79. The government alleged that the Kozminskis discouraged visitors from talking to the men and told them their families did not care about them, when in fact attempts were made to contact them. *Kozminski*, 821 F.2d at 1189. It also appeared that the two men left the farm on several occasions and were brought back by the Kozminskis or their employees. *Kozminski*, 108 S. Ct. at 2756; *see also id.* at 2767 n.3 (Brennan, J., concurring).

80. 18 U.S.C. § 241 (1982). The statute reads in relevant part:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . They shall be fined at not more than $10,000 or imprisoned not more than ten years, or both.

Id.

81. 18 U.S.C. § 1584 (1982). The statute reads: "Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both." *Id.*

82. Testimony at the trial included "descriptions of the men being slapped, choked and kicked on several occasions." *Kozminski*, 821 F.2d at 1189.

83. *Kozminski*, 108 S. Ct. at 2756. The men apparently worked 7 days a week for up to 17 hours a day.

84. *Id.*

85. *Id.* at 2756-57. *See supra* notes 65-66 and accompanying text (discussing *Mussry*).

86. *Id.* at 2757.

87. A three-judge panel of the court affirmed the convictions. That judgment was vacated when the court granted en banc review. *Kozminski*, 821 F.2d at 1189.

88. *Id.*

intimidation while the Ninth Circuit specifically refused to accept such limitations.[89] Rejecting both of these conclusions, the Sixth Circuit created yet a third definition. Although it accepted *Shackney's* rationale for placing limitations on the means of coercion criminally punishable, the court felt that the legislative history allowed for a third method of compulsion based upon the need for protection of certain vulnerable classes. The Padrone Act, a predecessor to section 1584, was enacted specifically to provide protection to children brought into the country and held illegally.[90] The system it condemned involved a supposed voluntary consent which Congress and the courts, finding it to be a sham, punished as involuntary servitude.[91]

Based upon its reading of the Padrone Act and the cases interpreting it, which the court believed to be incorporated into section 1584 since that statute represented a mere consolidation,[92] the court added a third method of coercion to that found in *Shackney* to constitute a holding in involuntary servitude:

> [T]he master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent. . . . [I]t must be shown that the servant is under a disability to recognize or resist the master's fraud or deceit because of the servant's vulnerability as a member of one of these classes.[93]

Because "[t]he District Court's rulings and instructions would appear to criminalize general psychological coercion without fraud, deceit, force, or legal coercion and would include all individuals . . . not just the particularly vulnerable classes referred to," the court reversed

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89. *Id.* at 1189-90.

90. *Kozminski*, 108 S. Ct. at 2762. The act took its name from "padrones," men who brought young Italian children to the United States where they were put to work as beggars or street musicians. The statute was aimed at, and limited in application to, those who "knowingly and wilfully [brought] into the United States . . . any person inveigled or forcibly kidnapped in any other country, with intent to hold such person . . . [to] involuntary servitude." *Id.*

91. Several courts and articles provide detailed analysis of the Padrone Act, its history and its effect on interpretation of section 1584. *See Kozminski*, 108 S. Ct. at 2761-63; *Kozminski*, 821 F.2d at 1189-92; United States v. Shackney, 333 F.2d 475 (2d Cir. 1964); Shapiro, *supra* note 30, at 79-81; *Involuntary Servitude*, *supra* note 30, at 158-62. For an interesting view of the law immediately following its enactment, see Brodie, *supra* note 7, at 383-88 (*assuming* the statute would apply "where one causes another by force, *fraud or intimidation* to enter and remain in another's employment." (emphasis added)).

92. *Kozminski*, 821 F.2d at 1191. "We believe it is a mistake to read § 1584 in isolation from the older statutes which produced it." *Id.*

93. *Id.* at 1192. The court also relied on the contract principle of the incapacity of minors and the mentally ill to buttress its conclusion that these groups needed special protection. *Id.* at 1193.

and remanded for a new trial.[94]

In a scathing dissent, Judge Guy, joined by three other members of the bench, charged that "the majority has rewritten rather than interpreted 18 U.S.C. § 1584."[95] Concerned not by the breadth of the proposed definition but rather with its lack of flexibility, the dissenters favored the definition offered by Judge Dimock's concurring opinion in *Shackney*.[96]

B. The Supreme Court's Opinion

Speaking for the majority, Justice O'Connor relied upon a highly technical construction of the statutes under which the defendants were prosecuted. The first of these authorizes prosecution for conspiracy to violate any federally-secured right of a citizen of the United States.[97] The second authorizes criminal punishment for "knowingly and willfully" holding another in involuntary servitude.[98] In construing the first, the Court focused on the precedent concerning involuntary servitude; to construe the second, it looked to congressional intent.

The Court had previously construed the conspiracy statute to prohibit "only intentional interference with rights made specific either by the express terms of the Federal Constitution or laws or by decisions interpreting them."[99] The Court saw its task as determining the scope given the thirteenth amendment in its prior decisions. From "the general intent to prohibit conditions 'akin to African slavery,' "[100] the Court readily deduced an intent to prohibit physical compulsion.[101] Then, "looking behind the broad statements of purpose to the actual holdings" of its cases, the Court found they had all rested on some form of legal coercion.[102] Based on these findings, the Court determined that in order to make out a case under this statute, the government must show that "the use or threatened use" of physical or legal compulsion was involved in the conspiracy.[103]

Turning to the second statute specifically aimed at holdings in involuntary servitude, the Court found that borrowing this "pivotal phrase" of the amendment "logical[ly], if not inevitab[ly]" leads to

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94. *Id.* at 1193.

95. *Id.* at 1213 (Guy, J., dissenting).

96. *Id.* at 1212 (Guy, J., dissenting). *See supra* notes 50-51 and accompanying text (discussion of Judge Dimock's opinion).

97. 18 U.S.C. § 241 (1982). *See supra* note 80 and accompanying text.

98. *Id.* § 1584. *See supra* note 81 and accompanying text.

99. United States v. Kozminski, 108 S. Ct. 2751, 2759 (1988).

100. *Id.*

101. *Id.* at 2760.

102. *Id.*

103. *Id.* at 2761.

the conclusion that they were intended to have the same reach.[104] The Court felt constrained as a matter of statutory construction, however, to limit the statute's reach to "the understanding of the Thirteenth Amendment that prevailed *at the time of [the statute's] enactment.*"[105] This inevitably led to the same analysis and conclusion already reached under the conspiracy section.[106] The Court believed its result was confirmed by the legislative history of the statute which represented a consolidation of two earlier enactments, the original Slave Trade statute of 1818 and the Padrone statute of 1874.[107] The Court found the former to reach only slavery as such and the latter to be consistent with the result it had reached.[108]

The government argued that the focus should be on the victim. It contended that involuntary servitude could be brought about by any means, including psychological coercion, as long as the victim either felt he had "no tolerable alternative" but to submit or had been deprived of the power to make a rational decision.[109] The Court rejected the argument on two grounds. First, in drawing a line between criminal conduct and that which was merely reprehensible, the test left too much discretion to prosecutors and juries.[110] Second, its inherently subjective focus on the victim's state of mind would provide "almost no objective indication" of what conduct it prohibited, thus invoking constitutional vagueness and notice concerns.[111]

The Court was careful to indicate its holding did not imply that "evidence of other means of coercion, or of poor working conditions, or of the victim's special vulnerabilities, is irrelevant."[112] The Court held simply that "the use or threatened use of physical or legal coercion is a necessary incident" of involuntary servitude,[113] a threshold which must be reached before a conviction can be obtained under the statutes.

Justice Brennan, with whom Justice Marshall joined, and Justice Stevens, with whom Justice Blackmun joined, filed separate opinions,

104. *Id.*
105. *Id.* (emphasis added).
106. *Id.*
107. *Id.* at 2761-63. *See supra* note 90 and accompanying text.
108. *Kozminski*, 108 S. Ct. at 2763.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.* at 2765.
113. *Id.*

both concurring in the judgment but departing significantly from the majority's reasoning.

Justice Brennan had a different view of congressional intent, one which focused not on a technical construction of the statutes but on the problem Congress sought to eradicate and the language it chose to effectuate its goal.[114] He began with the premise that the Court's vagueness concerns, "however serious, are not textual concerns, for the text suggests no grounds for distinguishing among different means of coercing involuntary servitude."[115] He too found the government's "no tolerable alternatives" test and its focus on the victim's state of mind to be too subjective.[116] He was concerned, however, that recent attempts to compel involuntary servitude were not limited to legal or physical coercion.[117] He concluded that, even where these were not present, a sufficiently objective guide would be to focus on the slave-like conditions Congress sought to eradicate.

> Congress clearly intended to encompass coercion of any form that actually succeeds in reducing the victim to a condition of servitude resembling that in which slaves were held before the Civil War. While no one factor is dispositive, complete domination over all aspects of the victim's life, oppressive working and living conditions, and lack of pay or personal freedom are the hallmarks of that slave-like condition of servitude.[118]

As this definition differed from that of the trial court's jury instructions, Justice Brennan concurred in the remand.[119]

Justice Stevens, in his brief opinion, argued that Congress most likely "intended the definition to be developed in the common law tradition of case-by-case adjudication."[120] As to the vagueness concerns implicated by such an approach, he analogized involuntary servitude to the Sherman Act's "restraint of trade" standard, concluding that the involuntary servitude standard was no more vague.[121] He thus opted for a "totality of the circumstances" approach. Although he believed that under such an approach the defendants had notice that their conduct was prohibited and were therefore fairly con-

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114. *Id.* at 2769 (Brennan, J., concurring).

115. *Id.* at 2766 (Brennan, J., concurring).

116. *Id.* at 2769 (Brennan, J., concurring).

117. *Id.* at 2767 (Brennan, J., concurring). "[T]his case and others readily reveal that the typical techniques now used to hold persons in slave-like conditions are not limited to physical or legal means." *Id.* (Brennan, J., concurring). He then chronicled some of these techniques: trickery, isolation, "creating debt that is greater than the worker's income," disorienting the victims and controlling every detail of their lives, or weakening them "with drugs, alcohol, or by lack of food, sleep, or proper medical care." He concluded: "One presumes these methods of coercion would not reappear with such depressing regularity if they were ineffective." *Id.* (Brennan, J., concurring).

118. *Id.* at 2770 (Brennan, J., concurring).

119. *Id.* at 2771 (Brennan, J., concurring).

120. *Id.* at 2772 (Stevens, J., concurring).

121. *Id.* (Stevens, J., concurring). The "restraint of trade" standard was upheld against the same constitutional attack.

victed, he concurred in the judgment on other grounds.[122]

IV. ANALYSIS, PROPOSALS, AND IMPACT

A. Analysis

One concept that must be kept in mind when examining the Court's opinion is that the thirteenth amendment "is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances."[123] In light of this, it would appear that the Court's reliance on a highly technical method of statutory construction was misplaced. The conspiracy statute, section 241, prohibits interference with another's federally-secured rights—those "secured to him *by the Constitution or* laws of the United States."[124] Thus, the statute by its express terms called for an analysis of the conduct that is prohibited *by the thirteenth amendment*.[125] While the Court's prior decisions on the scope of involuntary servitude would certainly shed light on the inquiry, the Court unnecessarily limited the statute's reach to precedent; the Court had never specifically addressed the outer limits of the prohibition.

Section 1584, the "holding" statute, admittedly presents a different problem. Close inspection, however, would appear to render it open to the same thirteenth amendment analysis applied to section 241. The search for legislative intent is fraught with peril because without specific legislative findings made a part of the record, the possibility exists that 632 different intentions can be found behind an act's passage. As a consolidation of two prior statutes, section 1584 presents the additional complexity of deciding what history is relevant.

All three courts which have addressed the legislative history of section 1584 and its predecessors reached different conclusions as to its relevance. In *Shackney*, the Second Circuit, recognizing that "[t]he two [parent] statutes . . . had purposes and effects different from each

122. *Id.* at 2774 (Stevens, J., concurring).
123. Civil Rights Cases, 109 U.S. 3, 20 (1883).
124. 18 U.S.C. § 241 (1982) (emphasis added).
125. In United States v. Price, 383 U.S. 787, 800 (1966), the Court stated:

> The language of § 241 is plain and unlimited. As we have discussed, its language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. There is no indication in the language that the sweep of the section is confined to rights that are conferred by or "flow from" the Federal Government, as distinguished from those secured or confirmed or guaranteed by the Constitution.

Id.

other and from their 'consolidation,'" determined that its search "must be for the meaning of § 1584 rather than of its two parents."[126] In *Kozminski*, however, the Sixth Circuit expressed its belief that "it is a mistake to read § 1584 in isolation from the older statutes which produced it."[127] Finally, the Supreme Court majority in *Kozminski* reached yet a third conclusion: Section 1584 should stand on its own, but should be constued as understood "at the time of [its] enactment," that is, under the Court's decisions up to that time.[128] Justice Brennan also believed his position was "strongly bolstered by the legislative history."[129]

The variance of opinion on this matter suggests that rather than engage in illusive searches for legislative intent,[130] a court should preferably take the statute at face value as prohibiting the same involuntary servitude found in the *self-executing* thirteenth amendment.

The majority in *Kozminski* recognized that use of the amendment's "pivotal phrase, 'involuntary servitude'" in the statute, "makes the conclusion that Congress intended the phrase to have the same meaning in both places logical, if not inevitable."[131] Moving this far, it might have been expected that the Court would give the statute a reach that paralleled that of the amendment. Instead, the Court restricted section 1584's reach to *its own* case law as of the time of enactment.[132] Due to the statute's *enabling* character, which was intended to give the executive branch power *to enforce the thirteenth amendment*,[133] the use of "involuntary servitude" in the stat-

126. United States v. Shackney, 333 F.2d 475, 482 (2d Cir. 1964). Adding to the confusion over the relevance it ascribed to the statute's history, the court nevertheless read section 1584 as "covering the same type of compulsory holding as was proscribed by its parent statutes." *Id.* The Sixth Circuit nonetheless concluded that "Judge . . . Friendly did *not* draw on the old statute in framing a standard under § 1584." United States v. Kozminski, 821 F.2d 1186, 1191 (6th Cir. 1987).

127. *Kozminski*, 821 F.2d at 1191.

128. United States v. Kozminski, 108 S. Ct. 2751, 2761 (1988).

129. *Id.* at 2767 (Brennan, J., concurring).

130. It would certainly not have been the first time the Court expressed wariness about the validity of legislative history and reviser's notes in construing federal statutes. In *Price*, noting that the 1874 revision of section 242 was in actuality a marked departure from its predecessor, the Court said: "The substantial change thus effected was made with the customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance." United States v. Price, 383 U.S. 787, 803 (1966).

131. *Kozminski*, 108 S. Ct. at 2761.

132. *Id.* Justice O'Connor noted that in 1948, at the time of section 1584's enactment, "all of the Court's decisions identifying conditions of involuntary servitude had involved" actual or threatened physical or legal coercion. *Id.* This is not surprising since these were the only types of cases that had come before the Court. This lends little support to a conclusion that Congress intended the statute's reach to be so limited.

133. *See* Brodie, *supra* note 7, at 390.

ute should have been read as a mirror of, and equivalent to, the amendment.

B. *A Proposal for a Constitutional Definition of Involuntary Servitude.*

An analysis of the scope of involuntary servitude should be limited to the prohibitions found in the thirteenth amendment itself. This was clearly the approach taken by the Ninth Circuit in *Mussry*,[134] and implicitly that of Judge Dimock in *Shackney*[135] and Justice Stevens in *Kozminski*.[136]

Freed of "the narrow window"[137] of statutory construction, involuntary servitude should properly be viewed as one of those "[g]reat concepts . . . purposely left to gather meaning from experience."[138] What experience has shown here is that involuntary servitudes have come about by means other than physical and legal coercion.[139] The Court itself has recognized that what it denounces is "a status or condition, irrespective of the manner . . . by which it was created."[140]

The term should be given an expansive scope, bounded only by the constitutional consideration of notice. This concern can be overcome

134. United States v. Mussry, 726 F.2d 1448, 1451 (9th Cir.), *cert. denied*, 469 U.S. 855 (1948).

135. United States v. Shackney, 333 F.2d 475, 487 (2d Cir. 1964) (Dimock, J., concurring). *See* Shapiro, *supra* note 30, at 84 (noting that Judge Dimock's definition "is couched in terms of the plain meaning accorded the word 'involuntary' ").

136. United States v. Kozminski, 108 S. Ct. 2751, 2773 (1988) (Stevens, J., concurring). A primary focus on the language alone clearly indicates a coextensive reading of the amendment and statute.

137. *Kozminski*, 108 S. Ct. at 2761.

138. National Mut. Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting). One author has made the following comment regarding the language chosen for the thirteenth amendment:

> Perhaps due to their misunderstanding of the institution, the framers did not write their oratory concerning natural rights into the Constitution. Neither, however, did they specify that henceforth one man could not own another. The language they did choose may at least be seen as lying in a middle range between "specific" and "great" concepts. Although seemingly narrow, it appears to have been designed as a full response to the evil perceived. As modern perceptions of that evil grow, the response may take on increasingly broader scope.

Note, *supra* note 1, at 1302.

139. *See, e.g., Kozminski*, 108 S. Ct. at 2767 (Brennan, J., concurring); *see also Shackney*, 333 F.2d at 487 (Dimock, J., concurring). "It is impossible to generalize the means by which the will of man may be subjugated. . . . To a drug addict the threat of deprivation of his supply is certainly more overbearing than the threat of almost any kind of force." *Id.*

140. Clyatt v. United States, 197 U.S. 207 (1904).

without resort to the strict limitations prescribed by *Kozminski*. The primary thrust of notice is that ordinary people should be able to understand what conduct is prohibited.[141] Surely the concept of compelling another to work against his will is something the ordinary person is capable of understanding. Though differentiating between persuasion and coercion may be difficult in the hard case,[142] hard facts do not alone render a law vague.[143]

The second reason for requiring that criminal statutes be defined with sufficient definiteness is to discourage arbitrary or discriminatory enforcement.[144] This is, in essence, the other side of the coin. The defendant must have notice that his conduct is unlawful, and the jury must have proper criteria for judging that conduct. The basis for such criteria can be found in the Ninth Circuit's three-pronged approach in *Mussry*: the defendant (1) must have specifically intended to coerce the victim into service; (2) must have committed specific wrongful acts to further that goal; and (3) must have succeeded in holding the vicitim against his will.[145] These elements would provide a structure for the type of case by case analysis suggested by Justice Stevens.[146] In addition, the requirement of *overtly* wrongful conduct would help eliminate the pitfalls of the "no tolerable alternative" test advocated by the government in *Kozminski*.[147]

The Court has recognized that a requirement of specific intent "goes a long way toward alleviating any vagueness problems."[148] In order to provide an objective indicator of this intent, the prosecution should be required to show a specific wrongful act or acts by the defendant, such as the taking of the Indonesian servants' passports and return tickets in *Mussry*,[149] or perhaps an extortionate demand. The

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141. "[N]o individual may be forced to speculate, at peril of indictment, whether his conduct is prohibited." Dunn v. United States, 442 U.S. 100, 112 (1979) (quoted in United States v. Mussry, 726 F.2d 1148, 1454 (9th Cir. 1948)).

142. As Judge Dimock said, "What to one man is a paralyzing threat is to another merely a harsh alternative." *Shackney*, 333 F.2d at 487.

143. "Statutes are not, however, void for vagueness because they raise difficult questions of fact. They are void for vagueness only where they fail to articulate a definite standard [citations omitted]. I should not have thought that a statute fixing involuntariness as a standard would fall within that class." *Id.* at 488 (Dimock, J., concurring).

144. *Mussry*, 726 F.2d at 1454 (citing Kolender v. Lawson, 461 U.S. 352 (1983)); *see also Kozminski*, 108 S. Ct. at 2763.

145. *Mussry*, 726 F.2d at 1453.

146. *Kozminski*, 108 S. Ct. at 2772 (Stevens, J., concurring).

147. *Id.* at 2763. The Court felt the government's test appeared "to criminalize a broad range of day-to-day activity," citing as examples a parent's withdrawal of affection to coerce an adult child's behavior and a political or religious leader's use of charisma "to induce others to work without pay." *Id.* The added requirement of wrongful acts, if understood not to include something the person has a legal right to do, would remove such cases from the statute's reach.

148. *Mussry*, 726 F.2d at 1455.

149. *See supra* notes 52-72 and accompanying text.

act must be something the defendant had no legal right to do. Thus, enforcement of the promissory notes in *Shackney* would not have been such an act, as correctly noted by Judge Friendly.[150]

Finally, this act (or acts) must have led to an actual state of involuntary servitude. The government must show that the defendants *actually* and *reasonably* believed that they had no tolerable alternative but continued service. This element alone is clearly of equal importance to the other two; no matter how reprehensible the intent or actions of the defendant, if *these* acts did not *actually cause* the victim to serve against his will, the defendant has committed no crime. The focus on the victim's state of mind is tempered by the requirement that the belief be a reasonable one. Evidence of other choices the defendant might have had is not only highly relevant but would often provide the best defense. If the defendant can show the alleged victim had a *tolerable* alternative, such as mere deportation to his homeland as in *Shackney*,[151] then an essential element will remain unproven.

This approach would allow maximum breadth to the amendment while both ensuring that the defendant has proper notice that his conduct is prohibited and discouraging arbitrary enforcement.[152] Self-executing though it may be, the thirteenth amendment cannot be self-policing. The only real enforcement takes the form of executive action.[153] That branch should be given the authority to *fully* implement "this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this government."[154]

The great majority of cases brought under the enforcement statutes construed in *Kozminski* will not be affected by this holding, as most involve physical or legal compulsion.[155] However, cases involv-

150. *See supra* note 44 and accompanying text.

151. *See supra* notes 44 and 49 and accompanying text.

152. The government's "no tolerable alternatives" test was essentially criteria (1) and (3) proposed herein—that is, specific intent and success in holding another to involuntary servitude. The Court felt that the completely subjective focus on the victim's state of mind "fail[ed] to give any objective content" to the crime; thus, the specific intent requirement amounted "to little more than an assurance that the defendant sought to do 'an unknowable something.' " *Kozminski*, 108 S. Ct. at 2763. The added requirement of an overt wrongful act, however, gives an objective indication of the defendant's intent. Furthermore, as the Court in *Mussry* stated: "It is difficult to argue that a person did not have notice that certain conduct was illegal when the offense requires that the conduct be improper or wrongful and that the actor intend that the conduct have a coercive effect." *Mussry*, 726 F.2d at 1455.

153. *See supra* note 7.

154. Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 69 (1872).

155. The judgment in *Kozminski* itself was to remand. The Court found sufficient

ing some form of involuntary servitude arise with "depressing regularity."[156] In those cases lacking the requisite compulsion, the threshold of involuntary servitude need not and should not be set so high. Since the Court rested its decision on statutory grounds, Congress is free to formulate a broader definition than that adopted by the Court.[157] Nevertheless, the burden of legislative inertia should not be placed on a group which by its very nature is unable to speak for itself and is invisible to those who would be willing to speak for it.

V. CONCLUSION

Kozminski's holding that physical or legal compulsion is required to constitute the law involuntary servitude will remain for the foreseeable future. Although four Justices would have opted for a broader determinative framework, it took twenty-four years for the first borderline "involuntary servitude" case to reach the Court; it is unlikely the Court will accept another one soon. It is also unlikely that Congress will address the issue; redefining involuntary servitude will simply not rank high enough on an over-crowded agenda.

All of this makes *Kozminski* an even more onerous decision. The only real opportunity for relief to those whose service is in any sense involuntary is through executive enforcement action. *Kozminski* makes enforcement of the thirteenth amendment's prohibition more difficult for the government. Its undoubted result will be to cause greater hesitation to act at all in borderline cases where physical or legal coercion is not apparent. Had *Kozminski* been the law when Molitoris and Fulmer were removed from the Kozminski's farm, they might still be there.

Having chosen a strict statutory construction over constitutional analysis, the Court's opinion on the latter is an unknown. Because the desision in *Kozminski* closed the only effective route to reaching a constitutional decision, the self-executing thirteenth amendment will sometimes be left without content to execute.

KENNETH T. KOONCE, JR.

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evidence of physical coercion on which a jury could properly convict the defendants even under its stricter standard. Many modern "involuntary servitude" cases involve blatant physical force, usually against migrant farm workers. *See* United States v. Warren, 772 F.2d 827 (11th Cir. 1985); United States v. Harris, 701 F.2d 1095 (4th Cir. 1983), *cert. denied*, 103 S. Ct. 3554 (1984); United States v. Booker, 655 F.2d 562 (4th Cir. 1981); United States v. Bibbs, 564 F.2d 1165 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007 (1978).

156. *Kozminski*, 108 S. Ct. at 2767 (Brennan, J., concurring).

157. *See* Shapiro, *supra* note 30, at 84 (arguing that the task "is one more ideally suited to the legislature").