

January 26, 2007

*Extremism in the defense of liberty is no vice;
moderation in the pursuit of justice is no virtue.*
-- Sen. Barry Goldwater

Mr. Michael Morrissey, District Attorney
Second Judicial District
201 W. Colfax Avenue
Denver, Colorado 80202

Complaint under C.R.S. 18-8-404

Dear Mr. Morrissey:

As there appear to be no formal protocols listed on your agency's website for filing a request for criminal prosecution with your office, please accept this letter as a formal request for same.

I am the victim of a federal felony and more specifically, have been denied my constitutional right of access to the courts. It is established as a matter of law that I have a right to have claims based on federal civil rights law heard in a state court, *Clafin v. Houseman*, 93 U.S. 130 (1876); *see also, e.g., Boulder Valley Sch. Dist. R-02 v. Price*, 805 P.2d 1085 (Colo. 1991) (adjudicating federal rights claim), to be heard by judges who do not have a material personal financial interest in the case. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). I was wrongfully (18 U.S.C. §§ 241-42) denied this right by a group of state judges acting clearly outside the bounds of law, and have a right to expect that the federal government would come to my aid, initiating criminal prosecution against the perpetrators. *See, e.g., Ex parte Virginia*, 100 U.S. 339 (1880) (criminal prosecution of state judge for flagrant civil rights violation).

This is also a criminal offense under Colorado law. C.R.S. § 18-8-404(1) states: "A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:

- (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or
- (b) Refrains from performing a duty imposed upon him by law; or
- (c) Violates any statute or lawfully adopted rule or regulation relating to his office."

First, the Justices of the Colorado Supreme Court are "public servants," as defined by C.R.S. § 18-8-901(3)(o). Second, they admitted in the public record that they were proper party defendants in their individual capacity in a civil lawsuit seeking damages in tort. *Smith v. Mullarkey*, 121 P.3d 890, 891 and n. 1 (Colo. 2005) (per curiam). Third, it is a matter of public record that they were being sued under a "negligent supervision" theory, *Woodward v. City of Worland*, 977 F.2d 1392 (10th Cir. 1992) -- a legally critical fact, as common-law judicial immunity would be unavailable. *Forrester v. White*, 484 U.S. 219 (1988) (for purposes of immunity law, supervision is an administrative activity). As the extinguishment of potentially ruinous liability in tort (total

compensatory and punitive damages could easily exceed \$10,000,000) constitutes a self-evident personal benefit to them, the first element of the crime is therefore established. Criminal “intent” is, of course, inferred from the facts and circumstances of a case. *People v. Braly*, 187 Colo. 324, 532 P.2d 325 (1975); *Johnson v. People*, 174 Colo. 413, 484 P.2d 110 (1971).

The only remaining question is whether the (alleged) perpetrators knowingly committed an act outside the scope of their legal authority, refrained from performing an affirmative legal duty, or violated any rules relating to their office. And here, you quite frankly have your pick of the litter. I will present these out of order, as the concepts build upon one another.

A. C.R.S. §18-4-404(1)(b): Refraining from performing a duty imposed by law

It “certainly violates the Fourteenth Amendment ... to subject [a man’s] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.” *Tumey*, 273 U.S. at 523. The test the United States Supreme Court has consistently used in determining whether a judge has an interest in a case sufficient to constitutionally require recusal is “whether the ‘situation is one ‘which would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear, and true.’” *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986) (citations omitted). Colorado law goes even further, placing an affirmative statutory obligation upon judges to recuse: “Any judge who knows of circumstances which shall disqualify him in a case shall, on his own motion, disqualify himself.” *C.R.S. § 16-6-201(2)* (emphasis supplied).

The only exception to this iron-clad rule is the “Rule of Necessity,” empowering a judge to hear a case when the “failure to do so would result in a denial of a litigant’s constitutional right to have a question, properly presented to such court, adjudicated.” *United States v. Will*, 449 U.S. 200, 214 (1980) (internal quotation omitted). While not explicitly addressing application of the Rule, the *Will* Court outlined its well-known contours:

The true rule unquestionably is that wherever it becomes necessary for a judge to sit even where he has an interest -- where no provision is made for calling another in, or where no one else can take his place -- it is his duty to hear and decide, however disagreeable it may be.¹

The “Rule of Necessity” cannot apply here by definition, as there is a statutory provision for calling other judges in. Specifically, judges of the Colorado Court of Appeals may “serve in any state court with full authority as provided by law, when called upon to do so by the chief justice of the supreme court,” *C.R.S. § 13-4-101*. And in Colorado, “any state court” apparently means “any state court.”² As all of the sixteen (or nineteen) Court of Appeals judges were independent

¹ *Will*, 449 U.S. at 214 (quotation omitted).

² As the Colorado Supreme Court recently explained:

The court has a fundamental responsibility to interpret statutes in a way that gives effect to the General Assembly's intent in enacting that particular statute. Such is best achieved by looking at the language of the statute and giving the words their plain and ordinary meaning. If the statutory language unambiguously sets forth the legislative intent, other rules of statutory interpretation need not be employed. It is essential that courts refrain from rendering opinions that are inconsistent with the legislative intent. Therefore, courts

with respect to this case, the Justices had a clear duty under the United States and Colorado constitutions and applicable statutory law to recuse themselves. Furthermore, they had a compelling moral reason to do so, as their predecessors cogently explained a century ago:

The first ideal in the administration of justice is that the judge must be free from bias and partiality. **Men are so agreed on this principle that any departure therefrom shocks their sense of justice.** ... We are equally certain that when ... a judge is prejudiced or otherwise incompetent to hear or try a cause, but nevertheless, proceeds in that regard, the issues are not likely to be determined and the rights of the parties properly protected and enforced in a court over which he presides.³

B. C.R.S. §18-4-404(1)(a): Committing an unauthorized exercise of official authority

Under Colorado law, once a judge is obligated by law to recuse him/herself, s/he immediately loses all jurisdiction in the matter except to transfer the case. *Erbaugh v. People*, 140 P. 188, 190 (Colo. 1914)). Furthermore, a judgment rendered in the face of a jurisdictional defect is void as a matter of law. *Davidson Chevrolet v. City and County of Denver*, 330 P.2d 1116 (Colo. 1958). As such, the ‘judgment’ issued by the Colorado Supreme Court in this case is by definition void, and as a consequence, an unauthorized exercise of official authority. But there are additional and independent reasons why the Court’s actions were indisputably outside the scope of their lawful authority.

1. The Colorado Constitution: A Legacy of Thomas Jefferson

If James Madison was the father of our Constitution, Thomas Jefferson was undoubtedly its paternal grandfather. He didn’t see it as the divinely-inspired work of perfection we are taught to revere it as today. He saw it as an experiment: a vast improvement upon the Articles of Confederation but certainly, not the end of the process. To him, revolution was a good thing, as people continued to struggle to secure the blessings of liberty as against the legions who would oppress them. In his own words, "[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is it's natural manure."⁴

In his later years, reflecting upon his authorship of the Declaration of Independence, Jefferson observed that the sentiments expressed therein were neither original nor radical, anchored firmly in the writings of Aristotle, Cicero, and Locke, among others.⁵ In turn, they were found by these august gentlemen to be natural rights -- inherent rights and liberties, which “are not the creatures of constitutional provisions either at the national or state level. The inherent human freedoms with which mankind is endowed are [as John Adams eloquently put it] ‘antecedent to all earthly

must construe the statute as a whole in order to give "consistent, harmonious and sensible effect to all its parts."

Carlson v. Ferris, 85 P.3d 504, 508 (Colo. 2003) (citations omitted).

³ *People ex rel. Burke v. District Court*, 60 Colo. 1, 4, 152 P. 149 (1915) (internal citation omitted; emphasis added).

⁴ Thomas Jefferson, *Letter* (to William S. Smith), Nov. 13, 1787. [[link](#)]

⁵ Thomas Jefferson, *Letter* (to Henry Lee), May 8, 1825. A fairly complete compendium of his writings can be found at <http://odur.let.rug.nl/~usa/P/tj3/writings/brf/jeflxx.htm> and <http://etext.lib.virginia.edu/jefferson/>.

governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe.”⁶

Prominent among these rights is that to commit tyrannicide: the right of the individual (either alone or in groups) to resort to lethal force to liberate himself from the depredations of an oppressive government. It was, as every schoolchild knows, the foundational premise of the American Revolution. And surely, no one in America would have faulted anyone who could have assassinated Hitler, Stalin, Mao, or Saddam Hussein, had he been able to while these notorious despots were still in power. But when you apply this principle to our own home-grown petty tyrants -- as Jefferson did⁷ -- a complacent and largely unaffected populace tends to get uncomfortable. Few would follow the sterling example of Martin Luther King, who answered the Macedonian call of his brothers because he understood that “injustice anywhere is a threat to justice everywhere.”⁸ Most are like Pastor Martin Niemöller, who learned the hard way in a Nazi concentration camp that when you fail to come to the aid of your brother in need, you may find to your chagrin that no one might be left to come to yours.⁹ As Judge Alex Kozinski of the Ninth Circuit Court of Appeals observes wryly, it is “a mistake a free people gets to make only once.”¹⁰

The system of government Jefferson bequeathed to us is predicated on a sensible presumption, borne out by millenia of experience, that no one can be trusted with power. Those who have it become intoxicated by it, invariably craving more of it. Those who don’t have it yearn to be free from others’ domination and where necessary, will kill to secure freedom. As violent revolution is inherently destructive to society, the Framers of our Constitution devised a system of limited government, wherein one person (or a small cadre of people) would find it difficult to obtain despotic power. As Jefferson observed in his *Notes on the State of Virginia*:

An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.¹¹

Having had the benefit of experience, Jefferson perceived that the Constitution suffered from a fatal flaw: the federal judiciary was not only independent, but completely unaccountable to the people they served. He wrote, “The original error [was in] establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they were meant

⁶ *Colorado Anti-Discrimination Commission v. J. L. Case*, 151 Colo. 235, 244, 380 P.2d 34 (Colo. 1962) (quotation unattributed in the opinion itself; the apparent source is John Adams, *A Dissertation on the Canon and Feudal Law* (1765), reprinted at <http://www.ashbrook.org/library/18/adams/canonlaw.html>.)

⁷ See, e.g., Thomas Jefferson, *Notes on the State of Virginia* (1781-82), Query 13, reprinted at <http://etext.virginia.edu/toc/modeng/public/JefVirg.html>. (“An elective despotism was not the government we fought for.”)

⁸ Martin Luther King, Jr., *Letter* (to Bishop C. C. J. Carpenter, et al.), Apr. 16, 1963. [[link](#)]

⁹ Pastor Niemöller’s famous quote (“In Germany, they first came for the Communists....”) is allegedly sourced in a speech given at Columbia Theological Seminary; while there is considerable debate as to what he actually said, the gravamen of what he said is not in substantive dispute. See, <http://www.serendipity.li/cda/niemoll.html>.

¹⁰ *Silveira v. Lockyer*, 328 F.3d 567, 2003.C09.0000276, ¶ 22 (9th Cir. 2003) (Kozinski, J., dissenting from denial of reh. en banc).

¹¹ Jefferson, *Notes on the State of Virginia*, [supra n. 7](#).

to defend, and control and fashion their proceedings to its own will."¹² Shortly before he died, he observed that "One single object... [will merit] the endless gratitude of society: that of restraining the judges from usurping legislation."¹³

Presumably armed with Jefferson's sage counsel, the framers of the state constitution went to great pains to limit the power of its supreme court. Article III was intended to prohibit the Court from writing laws under the guise of interpreting them.¹⁴ Article VI, sec. 2 severely and strictly limited the Court's jurisdiction, which it could not expand on its own.¹⁵ What's more, even the General Assembly was prohibited from expanding its jurisdiction via legislation.¹⁶

2. The Supreme Court's action wrongfully expanded its jurisdiction

"[A] court must have jurisdiction over the parties and the subject matter of the issue to be decided if its judgment is to be valid." *In re Marriage of Stroud*, 631 P.2d 168, 170 (Colo. 1981). And the only Colorado court which could possibly have had subject matter jurisdiction over my lawsuit was a district court.

a. Colorado District Courts Have Plenary Jurisdiction Over Federal Civil Rights Claims

I raised three discrete classes of claim in my case: (1) Section 1983 claims, alleging violations of federal rights committed by persons acting under color of state law, (2) an array of facial challenges to the constitutionality of Colo.R.Civ.P. (hereinafter, "Rule") 201, and (3) a separate claim for relief pursuant to article II, section 6 of the Colorado Constitution. I brought said claims pursuant to article VI, section 9 of the Colorado Constitution, which states:

The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided herein, and shall have such appellate jurisdiction as may be prescribed by law.

"Article VI, Section 9 of the Colorado Constitution confers general jurisdiction upon district courts, with original jurisdiction in all civil, probate, and criminal cases. This jurisdiction extends to cases involving federal rights, even when there is no governing Colorado authority." *Telluride*

¹² Thomas Jefferson, Letter (to John Wayles Eppes), 1807, available at <http://etext.virginia.edu/jefferson/quotations-jeff1270.htm>. A more extensive exposition is offered in an 1823 letter to Admantios Coray, id.:

"At the establishment of our constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping, by little and little, the foundations of the constitution, and working its change by construction, before any one has perceived that that invisible and helpless worm has been busily employed in consuming its substance. In truth, man is not made to be trusted for life if secured against all liability to account."

¹³ Thomas Jefferson, *Letter* (to Edward Livingston), 1825, id.

¹⁴ E.g., *McCroskey v. Gustafson*, 638 P.2d 51 (Colo. 1981).

¹⁵ *People ex rel. City of Aurora v. Smith*, 424 P.2d 772 (Colo. 1967); *Bill Dreiling Motor Co. v. Court of Appeals*, 468 P.2d 37 (Colo. 1970).

¹⁶ *People v. Carter*, 527 P.2d 875 (Colo. 1974).

Co. v. Varley, 934 P.2d 888 (Colo. App. 1997) (citing *United States v. District Court*, 169 Colo. 555, 458 P.2d 760 (1969), *aff'd*, 401 U.S. 520 (1971)). Specifically, the Court stated that

these provisions of the Colorado Constitution confer on the district courts "unrestricted and sweeping jurisdictional powers in the absence of limiting legislation." *Matter of A.W.*, 637 P.2d 366, 373 (Colo. 1981). We have also noted that the broad jurisdiction of the district courts may be restricted by legislation, but have cautioned that "[w]hile jurisdiction may be limited by the legislature, no statute will be held to so limit court power unless the limitation is explicit. In the absence of legislative action, it is clear that courts are free to exercise their inherent powers." *Id.* at 374 (citation omitted). See also *People ex rel. Cruz v. Morley*, 77 Colo. 25, 29, 234 P. 178, 179 (1925).¹⁷

Nor is this jurisdiction lightly disclaimed. When a civil claim is first raised in a Colorado trial court, it has both the right and the duty to adjudicate and determine it -- and any attempt to take that right and duty away is null and void. *People v. Western Union Tel. Co.*, 70 Colo. 90, 198 P. 146, 149 (1921).¹⁸ Furthermore, under the Supremacy Clause, *U.S. Const. art. VI, § 2*, state courts have a duty to enforce federal law. As the Supreme Court explains, it is a nonrefundable ticket to state court:

Section 1 of the Civil Rights Act of 1871 ... now codified as 42 U.S.C. § 1983, creates a remedy for violations of federal rights committed by persons acting under color of state law. **State courts as well as federal courts have jurisdiction over 1983 cases.** ...

A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of "valid excuse." "The existence of the jurisdiction creates an implication of duty to exercise it." ...

An excuse that is inconsistent with or violates federal law is not a valid excuse.¹⁹ ...

b. The Colorado Supreme Court Cannot Arrogate Jurisdiction Unto Itself

By stark contrast, "[t]he supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only." *Colo. Const. art. VI, § 2(1)*. It has no other judicial powers, and cannot expand its own jurisdiction by rule of court. *People ex rel. City of Aurora v. Smith*, 162 Colo. 72, 424 P.2d 772 (1967) (emphasis added). In addition, "[i]t is likewise clear from

¹⁷ *Colorado v. Borquez*, 751 P.2d 639, 642 (Colo. 1988).

¹⁸ Although jurisdiction may be limited by the legislature, no statute will be held to so limit court power unless the limitation is explicit. *People ex rel. Cruz v. Morley*, *supra*. However, since no such statute is alleged to exist, this Court has no need to determine whether or to what extent the legislature could divest the district courts of jurisdiction. Compare, e.g., *Garcia v. District Court*, 157 Colo. 432, 403 P.2d 215 (1965) (finding a statute unconstitutional under article VI, section 9 of the Colorado Constitution because it purported to grant the Denver juvenile court exclusive jurisdiction over certain criminal cases involving minors) with *Department of Revenue v. Borquez*, 751 P.2d 639, 642 (Colo. 1988) (holding that "the broad jurisdiction of the district courts may be restricted by legislation"). *Denver Water Dept. Credit Union v. Estate of Ongaro*, 998 P.2d 1097, 1103-04 (Colo. 2000).

¹⁹ *Howlett v. Rose*, 496 U.S. 356, 358, 369-70 (1990) (emphasis added; citations omitted). The only "valid excuses" the United States Supreme Court has found to date are essentially limited to those involving the principle of forum non conveniens, *Id.* at 374-75.

these provisions that the jurisdiction of both courts being created by the Constitution, the jurisdiction of each was necessarily excluded from the other.” *Friesen v. People ex rel. Fletcher*, 118 Colo. 1, 4, 192 P.2d 430 (1948) (*emphasis added*).

The only “original jurisdiction” the Court has is the jurisdiction to issue extraordinary writs, *Colo. Const. Art. VI, § 3*; *Lucas v. District Court*, 140 Colo. 510, 345 P.2d 1064 (1959), and no one has authority to expand that power. *Leppel v. District Court*, 33 Colo. 24, 78 P. 682 (1904). It has an express authority to promulgate rules governing court procedure and administration. *Id.*, art. VI, § 21. It exercises “general superintending control over all inferior courts,” *Id.*, art. VI, § 2(1), and can give advisory opinions to the executive and legislative branches when asked. *Id.*, art. VI, § 3. It has no other powers. Period.

Finally, at the risk of restating the obvious, the Justices’ exercise of its power is limited by the constraints imposed by federal law and the Colorado constitution. By way of example especially pertinent to this complaint, as Justice Moore observed, “[t]his court has not heretofore, does not now, and should never in the future, make an order which would prevent [anyone] from enjoying to the fullest the fundamental freedoms contained in the Bill of Rights.” *Petition of the Colorado Bar Ass’n*, 137 Colo. 357, 365, 325 P.2d 932 (1958).

3. The appeal was assigned by statute to the Court of Appeals

In interpreting the scope of authority of the then newly-created Court of Appeals, the Colorado Supreme Court stated:

Most assuredly, this court has authority to adopt rules for the regulation of the business of the courts and the procedure to be followed by litigants in doing that business. Nonetheless, absent constitutional authority, it is equally clear that this court cannot adopt a rule which changes jurisdiction of a court contrary to a provision of a statute.²⁰

Where the general assembly has enacted statutes prescribing appellate procedure, the courts may not modify the jurisdiction granted them by statute. *People v. Meyers*, 43 Colo.App. 63, 598 P.2d 526 (1979). And in reviving the Court of Appeals in the 1960s, the General Assembly made it crystal clear that intended that it would hear all but seven narrowly specified classes of appeals from the state’s district courts:

Any provision of law to the contrary notwithstanding, **the court of appeals shall have initial jurisdiction over appeals from final judgments of the district courts ...**²¹

My appeal was a simple jurisdictional question! it didn’t involve a declaration that a statute is unconstitutional, an action of the public utilities commission, a writ of habeas corpus, or any of the other classes of cases over which this Court was intended to have the first bite of the appellate apple. And while the Court may have the raw procedural authority to decide whether the Court of Appeals could hear the appeal, it can only act pursuant to some statutory authority, as it cannot expand its jurisdiction on its own motion. *People ex rel. City of Aurora v. Smith*,

²⁰ *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 455-56, 468 P.2d 37 (1970).

²¹ *C.R.S. § 13-4-102(1)* (*emphasis added*).

supra. As such, and for the reasons stated previously, it appears established beyond reasonable dispute that this matter is properly heard in the state's district courts, and both the district court's decision and the Court of Appeals' referral to this Court were made in bad faith. But even if, *arguendo*, the Court of Appeals could have invoked *C.R.S. § 13-4-110* legitimately, the Court had a duty to apply the substantive jurisdictional rule of *C.R.S. § 13-4-102* and thereunder, it had an indisputable obligation to assign jurisdiction to the Court of Appeals.

4. The Justices' action violates Colorado's open courts provision

Colorado is somewhat unique in the sense that it has an "open courts" provision, which states that "courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character." *Colo. Const. art. II, § 6*. If any act of another constitutes an injurious invasion of a right recognized by or founded upon any applicable principle of law, the courts shall provide a remedy, *Goldberg v. Musim*, 162 Colo. 461, 427 P.2d 698 (1967), even if they have to invent one! *Colorado Anti-Discrimination Comm'n v. Case*, 151 Colo. 235, 380 P.2d 34 (1962). And though this provision does not create any new rights, if such a right accrues under law, "the courts will be available to effectuate [it]." *O'Quinn v. Walt Disney Productions, Inc.*, 177 Colo. 190, 195, 493 P.2d 344, 346 (Colo. 1972).

As the Court could not exercise original jurisdiction over matters of bar admission under the text of the Colorado Constitution, the only way that it could obtain jurisdiction is in the role of an administrative agency. Assuming, *arguendo*, that it even has that power, it is unconstitutional in Colorado for a state body to issue a decision affecting a citizen's substantive rights unless he or she is able to obtain an independent judicial review of the decision as a matter of right. *Allison v. Industrial Claim Appeals Office*, 884 P.2d 1113 (Colo. 1994). Moreover, as certiorari review does not provide "access to the courts," as contemplated in article II, section 6, *Id.*, the right to petition for certiorari review in the United States Supreme Court is an inadequate remedy **as a matter of state law**. Thus, by summarily denying me a forum in which to challenge the constitutionality of its own administrative procedures, they have knowingly violated both the letter and spirit of the Colorado Constitution, as they could not credibly claim that they didn't know the effects of their decision.

CONCLUDING REMARKS

In his opening statement during his confirmation hearing, Chief Justice John Roberts likened a lawsuit to a baseball game, with judges serving as umpires.²² By usurping jurisdiction over my case, the Justices of this Court have asserted that they have the right to call balls and strikes from third base ... **even though they are players on the field!** Problem is, the legal 'strike zone' is clearly delineated in the Colorado Constitution. The Colorado Supreme Court cannot make the strike zone wider on its own motion, and the District Court is obliged to catch all balls.

The only open question is whether the Justices "knowingly" committed the acts or omissions complained of. I won't spend any time on this point, as the assertion that they didn't know what

²² "Text of John Roberts' Opening Statement," *Seattle Post-Intelligencer*, Sept. 12, 2005, available at <http://seattlepi.nwsourc.com> (subscription service) (visited Sept. 14, 2005; copy on file).

they were doing is tantamount to a confession that they were manifestly unfit for office. *See, e.g., Mississippi Com'n on Judicial Performance v. Chinn*, 611 So.2d 849 (Miss. 1992). As that court explained in another case, any judge

...who pleads ignorance as a defense to a violation of the Code of Judicial Conduct should do so with great care. Claim of ignorance of the duties of his office or negligence in carrying out those duties as a defense to judicial misconduct is tantamount to an admission by an accused judge that he does not possess the qualifications necessary to hold the office to which he has been elected.²³

Indeed, the mere suggestion that the justices of our highest state court, who boast law degrees from several of our finest educational institutions, would be incapable of competently interpreting painfully simple statutes, blazes new trails in absurdity. Accordingly, the only conclusion a jury could possibly reach is that their actions constitute willful misconduct. Questioning on that point by a half-way competent district attorney would be a spectacle worthy of Court TV.

From an investigational standpoint, this case will be like shooting fish in a barrel, as every fact required to establish every element of the crime is established conclusively in the public record. If you need additional information, I will of course be delighted to supply it, but when all the evidence is sitting in a court file within walking distance from your office, it is difficult to see why you would need it.

Finally, I believe it essential that this complaint be submitted via correspondence, as it is a well-known fact that Colorado agencies routinely use their “discretion” to avoid prosecuting the politically powerful for even the most easily proven crimes. It is a matter of public record that the Colorado Legislature agrees, having passed C.R.S. § 16-5-209. While I cannot compel the state attorney general or the Colorado Commission on Judicial Discipline to do their jobs, I can and most assuredly will insist that this agency attend to this task. As the statute of limitation runs on this crime (as a class 2 misdemeanor, it is 18 months, per *C.R.S. § 16-5-401(1)(a)*) on April 17 of this year, unless I have a firm commitment from this office to prosecute by early March, I shall seek appropriate relief in District Court. *No one should be above the law, and no one should be beyond its protection.*

Thank you for your prompt and diligent attention to this matter.

Kind regards,

_____/s/
Kenneth L. Smith, M.S., J.D.
23636 Genesee Village Rd.
Golden, CO 80401-7044
Contact: 19ranger57@earthlink.net
cc: as appropriate

²³*In re Collins*, 524 So.2d 553, 557 (Miss. 1992)