

February 20, 2009

Jeffery D. Kyle, Clerk Third Court of Appeals Price Daniel Sr. Bldg, P.O. Box 12547 209 W. 14 th Str., Room 101 Austin, Texas 78711-2547 PH: (512) 463-1733; FX: (512) 463-1685	Blake A. Hawthorne, Clerk THE TEXAS SUPREME COURT Supreme Court Building PO Box 12248 201 W. 14th Street, Room 104 Austin, Texas 78711-2547 PH: (512) 463-1312 Fax: (512) 463-1365
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Dear Honorable Clerks,

Please add this to the Public Record maintained by you under file **No. 03-05-00827-CV**, and in the Supreme Court under files No. 08-0716 and No. 08-0911.

Only two (2) copies, each with original signatures, are being submitted to each court as this letter brief is directed to the Chief Justice of each court for performance of an administrative duty. One for filing and one for the Chief Justice of each court. Copies of this page are provided to each to be file stamped and returned in the enclosed self addressed envelop.

RE: No. 03-05-00827-CV, State of Texas, Defendant-Appellant (Cross-Appellee) v. Edmund Bryan Heimlich, Plaintiff-Appellee (Cross-Appellant at Court of Appeals for the Third District of Texas, in Supreme Court as **No. 08-0716** and **No. 08-0911**

LETTER BRIEF / MOTION FOR REHEARING

REQUESTING PERFORMANCE OF ADMINISTRATIVE DUTY

TO: Chief Justice **Woofin Jones**, Court of Appeals, Third District of Texas and Chief Justice **Wallace Jefferson**, Supreme Court of Texas.

FROM: A Citizen of the United States and of this State, **Edmund Bryan Heimlich**.

Request is hereby made for performance of an Administrative Duty. As Chief Justice you have assumed the duty of regulating and enforcing the laws that govern the conduct of Judicial Officials in your Court, and in the Courts below. The attached documents may be authenticated by the public records in the possession of your Clerks. These documents reveal a willful disregard for the truth and a willful disregard for the Law by the Judicial Official, Robert Harrison Pemberton.

For the record the following has been taken (is hereby cited) from the Law that governs the conduct of a Judicial Official functioning in any Court of Texas.

The Definition of “law” enjoining the conduct of Judicial Officials, as well as other Officers of every Court on our Land of Texas, in Code of Judicial Conduct, Cannon 8(B)8:

(8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

The same Cannon, in B(1), defines the word “shall” and what is meant by “shall not”:

(1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.

Texas Supreme Court in Cannon 2(A) mandates:

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In addition to the Law of our Texas Supreme Court, binding on Judges serving in our Court of Appeals is the LAW of the Supreme Court titled Standards for Appellate Conduct under the section titled “the Courts Relationship with Counsel”:

- 2. The court will take special care not to reward departures from the record.**
- 5. The court will endeavor to avoid the injustice that can result from delay after submission of a case.**
- 6. The court will abide by the same standards of professionalism that it expects of counsel in its treatment of the facts, the law, and the arguments.**
- 7. Members of the court will demonstrate respect for other judges and courts.**

The memorandum opinion written and filed by Robert Harrison Pemberton reveals a departure from the record and lack of respect for other judges and courts. The

evidence clearly shows an intention to impose injustice with an extraordinary delay not justifiable by the question subject to review and a lack of professionalism with a clear lack of impartiality or independence from the Attorney representing the opposing party.

Pursuant to your duty to ‘due process of law’ and ‘due course of law’, and by statutory law found in chapter 81 of our Texas Government Code, and other law, you have assumed administrative duties as a Chief Justice, without any discretion, as well as judicial functions that allow for discretion. This brief is titled ‘Request’ out of respect for the position of service you have been entrusted with by the people of Texas.

As an administrative function you have a duty to order the memorandum opinion authored by Robert Harrison Pemberton of record in cause No. 03-05-00827-CV. It appears obvious the vehicle of ‘memorandum opinion’ was utilized by Robert Harrison Pemberton as a means to exclude review by the other two Justices, Law and Patterson, assigned to the panel. Justice Law signed the mandate in 2003 finding subject matter jurisdiction for the trial court and Justice Patterson’s opinions in other causes reveal the ruling in cause No. 03-05-00827-CV to be totally out of character for this Justice.

As men learned in the Law and well versed in the Law that governs the process, or course, or procedure, it is unnecessary for me to re-cite what has already been cited as Law and Fact in the records maintained by the Clerks serving under your supervision. No Judicial Official, or group of Judicial Officials, have jurisdiction to act with willful disregard for the truth. The truth, also known as material facts, are well established in the public record and have been repeatedly adjudicated to conclusive determination in Judgments no longer subject to any review or reversal.

The Law that governs the conduct of a Judicial Official operating on our Land of Texas, in this State, a territory of the United States, leaves no room for reasonable dispute. The truth of this matter is that Robert Harrison Pemberton, under the cover of Justice pretending to serve the people of Texas in the Court of Appeals, Third District of Texas, (1) did **not** have subject matter jurisdiction for the entry of his memorandum opinion in Cause No. 03-05-00827-CV, and (2) did **not** have subject matter jurisdiction to reverse the judgment of the Court of Appeals, no pet. (the same in which he now sits) dated January 30, 2003 of public record as Cause No. 03-02-00151-CV finding subject matter jurisdiction for the trial court. The truth of this matter is the Attorney General did

not have jurisdiction to raise the issue for another review. The only question subject to review was the amount of damages. All other questions were final and no further appeal was available.

The question of subject matter jurisdiction had, in addition, thereafter been addressed by the Court of Appeals, Third, in the DECISIONAL LAW from the case of Oakley v. State in 2005 and in the same case by the Supreme Court of Texas in 2007.

In support of this complaint of judicial misconduct and malfeasance, for which you as Chief Justice have a duty to address, the following six (6) documents are attached.

1. The FINAL Judgment on the obligation of the State, by Court of Appeals in 2003.
2. The MANDATE that followed expiration of time for review by Supreme Court.
3. Written STIPULATION / confession of judgment, by the Attorney General.
4. Oral STIPUATION, recorded at the Trial to determine amount of damages due from the State.
5. FACT evidence proving willful disregard for TRUTH by Justice Pemberton in 2008.
6. The Final Judgment of October 3, 2005.

SUBSTANTIVE RIGHTS

As men learned with the law with many years of experience you know that a human person, a Citizen of this State and of the United States, has substantive Rights. These are rights often referred to as **god-given, inherent, unalienable, human, civil, fundamental, 'common law' rights** that our Constitutions for our United States and for the Land of Texas were intended to secure. Procedural Rules (process or course of law) cannot, lawfully, be utilized as an excuse to deprive a human person or Citizen of substantive rights. Rule 815, Texas Rules of Civil Procedure, and 28 USC 2071.

The Rules of Procedure do, however, apply to the professional practitioner known as an Attorney, as a licensed Officer of the Court, and to other Court Officials including Judicial Officials. As a Chief Justice you have an administrative duty to supervise, regulate, and enforce the law that governs the conduct of Court Officials to protect the people of Texas, the Individual, from abuse of process.

LEGAL NOTICE

I respectfully give notice of the supreme Law of the Land by which you are bound. Please see Article VI of our United States Constitution. Please also see the Fourteenth Amendment and pay particular attention to Section 3. In addition to your fiduciary duty, by Oath or Affirmation that binds you, there is the LEGAL duty imposed upon you by Acts of Congress (part of the supreme Law of the Land) codified in Title 42 of the USC as Section 1986, with reference to Section 1985:

42 USC 1986, titled Action for Neglect to Prevent

***Every person** who, **having knowledge** that any of the wrongs conspired to be done, and mentioned in **section 1985** of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, **for all damages** caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action*

Sec. 1985. Conspiracy to interfere with civil rights

-STATUTE-

(2) Obstructing justice;

or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, for the purpose of depriving, **either directly or indirectly**, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;

or cause to be done, **any act in furtherance of the object of such conspiracy**, whereby another is injured in his person or property, or deprived of having and exercising any

right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, **against any one or more of the conspirators.** [double spaced for emphasis]

CITING THE UNITED STATES DEPARTMENT OF JUSTICE

<http://www.usdoj.gov/crt/crim/242fin.php>

Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, **as well as judges**, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.

Certificate of Service

A copy of the foregoing has been served on the Attorney of Record representing the Appellate by fax to Phillip Lionberger, Office of the Solicitor General; PH: 512-936-1700 / FX 512-474-2697

Respectfully submitted this, the 20th day of February, 2009

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CC: United States Department of Justice