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Interim Committee On Judicial Discipline
Of The Colorado General Assembly

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GOOD MORNING. MY NAME IS DENNIS MAES AND I APPRECIATE THE OPPORTUNITY TO SHARE A FEW OBSERVATIONS SURROUNDING THE INTERIM COMMITTEE'S HEARINGS ON JUDICIAL REFORM.

I RETIRED MAY 31, 2012, AFTER 24 YEARS AS A DISTRICT JUDGE IN PUEBLO. I SERVED AS THE CHIEF DISTRICT JUDGE THE LAST 17 YEARS OF THAT TERM.

BEFORE I BEGIN PLEASE ALLOW ME THE OPPORTUNITY TO ACKNOWLEDGE THE OUTSTANDING PULITZER LEVEL REPORTING BY DAVID MIGOYA FROM THE DENVER GAZETTE CONCERNING THIS DARK MOMENT IN THE HISTORY OF THE COLORADO SUPREME COURT. HE RELENTLESSLY PURSUED THE TRUTH DESPITE THE FORMIDABLE ROADBLOCKS PLACED IN HIS WAY BY SEVERAL STATE AGENCIES INCLUDING THE COLORADO SUPREME COURT. HIS WORK IS A STARK REMINDER OF THE IMPORTANCE OF THE PRESS IN A FREE DEMOCRATIC SOCIETY.

FOR ABOUT A YEAR BEFORE I WAS APPOINTED TO THE DISTRICT BENCH BY GOVERNOR ROY ROMER, I HAD THE PRIVILEGE OF SERVING ON THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE. THE CEO AT THE TIME WAS RICK WEHMHOEFER. I WAS IMPRESSED WITH THE WORK AND THE EFFICIENCY OF THE COMMISSION. IT SATISFIED ITS RESPONSIBILITIES PURSUANT TO THE COLORADO CONSTITUTION. THE COMMISSION ON SEVERAL OCCASIONS DURING THE ANNUAL JUDICIAL CONFERENCE, PROVIDED TRAINING SESSIONS TO THE SPOUSES OF THE JUDGES TO EDUCATE THEM WITH THE WORKINGS OF THE COMMISSION IN THE INTEREST OF TRANSPARENCY. I WOULD SUGGEST THAT THE COMMISSION ARRANGE SIMILAR EDUCATIONAL OPPORTUNITIES FOR THE PUBLIC TO INFORM THEM OF THE IMPORTANT WORK THE COMMISSION UNDERTAKES TO ENSURE JUDICIAL ACCOUNTABILITY.

I WILL SAY THERE HAS ALWAYS BEEN SOMEWHAT OF A TENSION BETWEEN THE JUDGES AND THE COMMISSION BECAUSE OF THE VERY NATURE OF THE COMMISSION'S CHARGE. HOWEVER, I NEVER OBSERVED ANYTHING OUT OF THE ORDINARY THAT OFFERED CONCERN ABOUT THE PROCESS. I AND MY COLLEAGUES RECOGNIZED THE IMPORTANCE OF THE WORK OF THE COMMISSION AND ITS CREDIBLE OVERSIGHT OF US IN THE MERIT SELECTION SYSTEM OF COLORADO JUDGES. IT HAS WORKED WELL IN THE PAST AND DESERVES TO CONTINUE ITS WORK IN THE FUTURE WITHOUT UNDUE INFLUENCE FROM OTHERS, INCLUDING THE COLORADO SUPREME COURT.

WHILE I AGREE THAT SYSTEMS SHOULD CONTINUALLY BE REVIEWED, AND REFORMED, WHEN NECESSARY, I WOULD STRONGLY SUBMIT THAT IT IS JUST AS IMPORTANT TO RELY ON THOSE PROCESSES THAT HAVE SERVED US WELL IN THE PAST.

IN PARTICULAR, I WOULD POINT TO THE SINGLE MOST IMPORTANT PRINCIPLE THAT HAS PROVIDED THE GUIDING LIGHT FOR THE UNITED STATES JUDICIAL SYSTEM SINCE ITS INCEPTION...A DEEP AND ABIDING COMMITMENT TO AND BELIEF IN THE RULE OF LAW WHICH HOLDS THAT NO PERSON OR ENTITY IS ABOVE THE LAW. IT IS THAT PRINCIPLE THAT GUIDES EVERY JUDGE EVERY SINGLE DAY IN THE EXERCISE OF THEIR JUDICIAL RESPONSIBILITIES.

IT IS MY BELIEF THAT THE BOATRIGHT COURT LOST ITS WAY CONCERNING THIS SAD AND EMBARRASSING MOMENT IN THE HISTORY OF THE COLORADO SUPREME COURT WHEN IT DISREGARDED AND DISRESPECTED LONG ESTABLISHED PRINCIPLES, RULES, PROCESSES AND ETHICAL CONSIDERATIONS THAT JUDGES TAKE AN OATH TO OBEY.

AS THE INTERIM COMMITTEE IS WELL AWARE, THE JUDICIAL COMMISSION HAS JURISDICTION OVER ALL COLORADO STATE JUDGES, INCLUDING THE COLORADO SUPREME COURT. GROUNDS FOR JUDICIAL DISCIPLINE ARE FOUND IN RULE 5 OF THE COLORADO RULES OF JUDICIAL DISCIPLINE.

IT IS NECESSARY TO IDENTIFY SPECIFIC INSTANCES WHEN THE SUPREME COURT CHOSE TO CIRCLE THE WAGONS TO PROTECT THE FEW RATHER THAN TO COMPLY WITH ESTABLISHED PROTOCOL TO ILLUSTRATE THE CONTEMPT IT HAD FOR ITS OWN PROCESSES.

FUNDAMENTAL TO THE AMERICAN COMMITMENT TO THE RULE OF LAW IS THAT CASES BE DECIDED BY NEUTRAL DECISION-MAKERS, THE JUDGE AND JURY. ALL CONFIDENCE IN THE SYSTEM IS LOST IF THE PUBLIC BELIEVES AN OUTCOME HAS BEEN DETERMINED PRIOR TO THE COMMENCEMENT OF THE CASE. SIMILARLY, ALL CONFIDENCE WOULD BE LOST IF THE PUBLIC BELIEVES THE GUILT OR INNOCENCE OF AN INDIVIDUAL IS DETERMINED BEFORE THE PRESENTATION OF EVIDENCE. THE SAME RESULT OCCURS IF THE COURT DETERMINES THE CREDIBILITY OF WITNESSES PRIOR TO TRIAL. THAT IS WHAT THE BOATRIGHT COURT DID HERE.

AS EARLY AS FEBRUARY 4, 2021, CHIEF JUSTICE BOATRIGHT ISSUED A STATEMENT CONCERNING AN ARTICLE THAT APPEARED IN THE DENVER POST ON FEBRUARY 3, 2021, DENYING THE CENTRAL FACTUAL ALLEGATION THAT CHIEF JUSTICE COATS AND HIS COUNSEL, ANDREW ROTTMAN, WHOM HE DESCRIBED AS “BOTH DEDICATED PUBLIC SERVANTS” WOULD EVER AUTHORIZE COURT RESOURCES TO SILENCE A BLACKMAILER. CHIEF JUSTICE BOATRIGHT WENT ON TO BACK COATS AND ROTTMAN WITH THE WEIGHT OF THE CREDIBILITY OF THE ENTIRE SUPREME COURT BY DECLARING THAT ANY STATEMENT TO THE CONTRARY WAS “SIMPLY FALSE.” ALL OF THIS BEFORE ANY INVESTIGATION OR TRIAL.

AT THE OUTSET, THE COLORADO CONSTITUTION DIRECTS THAT ANY ALLEGATION OF JUDICIAL MISCONDUCT SHOULD HAVE BEEN REFERRED TO THE JUDICIAL DISCIPLINE COMMISSION BUT BOATRIGHT FAILED TO DO SO AND, INSTEAD, DECLARED THE OUTCOME PRIOR TO THE ONSET OF AN INVESTIGATION.

SECONDLY, BOATRIGHT IGNORED RULE 2.10 OF THE COLORADO CODE OF JUDICIAL CONDUCT WHICH PROHIBITS ISSUING JUDICIAL STATEMENTS ON PENDING OR IMPENDING CASES OR ISSUES THAT MIGHT COME BEFORE THE COURT. MIND YOU, THESE COMMENTS WERE MADE PRIOR TO THE AWARDING OF THE TROYER CONTRACT. BOATRIGHT VIOLATED RULE 2.11(A)(4) BY REACHING A CONCLUSION ON THE ISSUE BEFORE THE RECEIPT OF ANY EVIDENCE.

AGAIN, PLEASE KEEP IN MIND THAT IT WAS DISTINCTLY POSSIBLE THE SUPREME COURT MIGHT BE CALLED UPON TO REVIEW THE MATTERS WHETHER IN A CIVIL SETTING, THROUGH A REFERRAL TO THE JUDICIAL COMMISSION OR A CRIMINAL PROCEEDING AGAINST CERTAIN OF THE PRINCIPALS INVOLVED IN THE INVESTIGATION.

YET, IT APPEARS THE COURT HAD LITTLE OR NO CONCERN COMMENTING ON INFORMATION THAT WAS BEING PROVIDED TO IT IN AN EX PARTE FASHION CONTRARY TO RULE 2.9 OF THE CODE. BOATRIGHT REAFFIRMED THIS STANDARD OF BEHAVIOR ON FEBRUARY 16, 2021, WHEN HE ANNOUNCED HE WOULD BE BRIEFED ON A WEEKLY BASIS ON ALL “MISCONDUCT COMPLAINTS ACROSS THE DEPARTMENT TO ENSURE EACH INCIDENT IS FULLY INVESTIGATED AND ACTED ON AS APPROPRIATE WITHOUT DELAY.” PRESUMABLY, HE WAS ALSO REFERRING TO COMPLAINTS OF JUDICIAL MISCONDUCT THAT SHOULD RIGHTFULLY BE

REFERRED DIRECTLY TO THE JUDICIAL COMMISSION, AND, UNDER THE PRESENT SYSTEM, MIGHT BE SUBJECT TO REVIEW BY THE SUPREME COURT. DOES THIS PROCESS SEEM FAIR TO THE PERSON OR PERSONS BEING INVESTIGATED? I TRUST THE ANSWER IS NO.

SUCH A PROCESS WOULD LIKELY REQUIRE JUSTICE BOATRIGHT AND ANY OTHER JUSTICE WHO MIGHT BE PRIVY TO THE INFORMATION TO DISQUALIFY HIMSELF OR HERSELF PURSUANT TO RULE 2.11(A) BECAUSE THE JUDGE WOULD HAVE PERSONAL KNOWLEDGE OF FACTS IN DISPUTE IN THE PROCEEDING. YET, ANOTHER SOLID REASON WHY ANY JUDICIAL MISCONDUCT CONCERNS SHOULD BE REFERRED TO THE JUDICIAL COMMISSION AS REQUIRED.

BOATRIGHT'S DECISION TO COMMENT ON THE VERACITY OF CERTAIN WITNESSES AND/OR PARTICIPANTS COMPROMISED ANY INVESTIGATION AND/OR PROCEEDING THAT MIGHT ENSUE. HE DESCRIBED CERTAIN INDIVIDUALS AS "DEDICATED PUBLIC SERVANTS" AND THAT THE JUSTICES HAD "FULL CONFIDENCE" IN A NAMED JUDGE ALLEGED TO HAVE COMMITTED ACTS OF JUDICIAL MISCONDUCT.

ON WHAT DID THE CHIEF JUSTICE AND OTHER JUSTICES BASE THEIR CONCLUSIONS? HAD THEY CONDUCTED THEIR OWN INVESTIGATION CONTRARY TO COMMISSION RULES? DID THEY BASE THEIR CONCLUSIONS ON EX PARTE COMMUNICATIONS? WERE THEY SENDING A SUBTLE MESSAGE TO THOSE WHO MIGHT DISAGREE WITH THE COURT THAT THEIR OBSERVATIONS WOULD NOT RECEIVE THE SAME CONSIDERATION AS THOSE WHO APPEARED TO BE IN LOCK STEP WITH THE SUPREME COURT? WHATEVER THE PERCEPTION, IT WAS CLEAR THAT CERTAIN DECISIONS HAD ALREADY BEEN MADE BY THE COURT IN DETERMINING TO HIRE PRIVATE COUNSEL TO CONDUCT AN "INDEPENDENT" INVESTIGATION TO "CLEAR THOSE WRONGLY ACCUSED."

ONE ASPECT OF THE TROYER REPORT THAT RINGS TRUE IS THE DISCONNECT BETWEEN THE SUPREME COURT AND THE ACTUAL OPERATION OF THE COURT SYSTEM AND THE MANY DEDICATED EMPLOYEES THAT ASSURE THAT THE COURTS RUN SMOOTHLY. THE NOW INFAMOUS MEMO CLEARLY ILLUSTRATES THAT THE RANK AND FILE BELIEVED THERE WERE TWO SEPARATE TRACKS FOR DISCIPLINE...THOSE FOR HIGHER LEVEL ADMINISTRATORS, THEIR CRONIES AND THE JUDGES AND ANOTHER FOR THOSE LESS SITUATED.

ANY REFORM MUST ALSO ADDRESS THE BEHAVIOR OF THOSE AGENCIES WHICH MIGHT BE BEHOLDING TO THE SUPREME COURT. FOR EXAMPLE, THE OFFICE OF ATTORNEY REGULATION AT ONE TIME HELD CERTAIN AUTHORITY OVER THE JUDICIAL COMMISSION. THE OARC HAD AUTHORITY TO DETERMINE THE OFFICE SPACE OF THE COMMISSION AND FUNDING FOR CERTAIN PROJECTS. IN BOTH INSTANCES, THE OARC MADE IT DIFFICULT FOR THE COMMISSION PRESUMABLY SIDING ON BEHALF OF AN EMBATTLED SUPREME COURT. IT IS ALLEGED THAT THE OARC VACILLATED BETWEEN RECUSING ITSELF FROM THE FRAY ONLY TO DECIDE AT A LATER TIME TO REASSERT ITSELF USUALLY TO THE DETRIMENT OF THE JUDICIAL COMMISSION.

IT APPEARS IT MIGHT BE APPROPRIATE TO CODIFY THAT ONCE A RECUSAL IS DECLARED THAT THE RECUSING PARTY MUST WITHDRAW FROM ANY FURTHER INVOLVEMENT IN THE PROCEEDINGS.

ALTHOUGH IT APPEARS THE FUNDING OF THE JUDICIAL COMMISSION HAS BEEN RESOLVED THROUGH RECENT LEGISLATION, IT WOULD BE APPROPRIATE TO PROHIBIT AN ARM OF THE SUPREME COURT FROM ANY SUPERVISORY AUTHORITY OVER THE COMMISSION AS WAS THE CASE WITH THE OARC.

I AM AWARE OF THE RECOMMENDATIONS SUBMITTED BY THE COLORADO COMMISSION TO THE INTERIM COMMITTEE AS WELL AS THE RECOMMENDATIONS IN THE TROYER REPORT.

I AM ACUTELY AWARE THAT REFORM MIGHT REQUIRE AMENDMENTS TO THE COLORADO CONSTITUTION AND THE COMPLEXITY, COST AND PERILS INHERENT IN OFFERING CONNSTITUTIONAL AMENDMENTS BUT BELIEVE CERTAIN RECOMMENDATIONS ARE ABSOLUTELY NECESSARY.

FIRST AND FOREMOST, THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE MUST BE COMPLETELY FREE FROM INTERFERENCE FROM OUTSIDE SOURCES, INCLUDING THE COLORADO SUPREME COURT.

THE COMMISSION SHOULD BE INDEPENDENTLY FUNDED AND REQUIRED TO FOLLOW ESTABLISHED STANDARDS OF FINANCIAL ACCOUNTABILITY.

THE COMMISSION SHOULD HAVE FULL SUBPOENA POWER WHICH IS GOVERNED BY EXISTING LAW. ANY DISPUTES INVOLVING THE SUBPOENA POWER AND DISCOVERY MATTERS INCLUDED THEREIN SHOULD BE RESOLVED BY AN ENTITY

OTHER THAN THE COLORADO SUPREME COURT. IT HAS BEEN SUGGESTED THAT A BODY CONSISTING OF ATTORNEYS, JUDGES, CITIZENS AND OTHER DISCIPLINES MIGHT BE CONSIDERED.

THE COMMISSION HAS PERFORMED ADMIRABLY DESPITE THE ROADBLOCKS IT HAS ENCOUNTERED. THERE NEEDS TO BE A LEVEL OF STABILITY FOR THE COMMISSION TO CARRY OUT ANY REFORM THAT MIGHT BE ADOPTED. CONSISTENT WITH THE RULES SURROUNDING THE APPOINTMENT OF MEMBERS TO THE COMMISSION ON JUDICIAL DISCIPLINE, ALL ELIGIBLE MEMBERS WHO ARE SUBJECT TO REAPPOINTMENT SHOULD BE REAPPOINTED. I AM DISAPPOINTED TO SAY THAT I AM CONCERNED THAT JUDGES PRESENTLY SERVING ON THE COMMISSION MIGHT NOT BE REAPPOINTED BY THE SUPREME COURT BECAUSE OF THE STRENGTH AND COURAGE THEY HAVE EXHIBITED IN ADDRESSING THIS TURMOIL. SUCH REFUSAL TO REAPPOINT WOULD REFLECT POORLY ON THE SUPREME COURT.

THE COMMISSION SHOULD HAVE RULE MAKING AUTHORITY SIMILAR TO THAT ENJOYED BY THE COMMISSION ON JUDICIAL PERFORMANCE.

I HAVE PREVIOUSLY JOINED IN AN OP-ED EXPRESSING VARIOUS CONCERNS ABOUT THE TROYER REPORT AND WILL NOT REPEAT THEM HERE EXCEPT TO ADDRESS ITS CONCLUSION THAT A MAJOR PORTION OF THE REPORT FAULTED THE COLORADO JUDICIARY FOR NOT PROPERLY PREPARING CHIEF JUSTICE COATS FOR THE JOB.

I WAS ASTOUNDED TO HEAR THIS EXCUSE AS IT HAD BEEN MY EXPERIENCE THAT COLORADO, AT THE TIME COATS WAS APPOINTED, ENJOYED AN OUTSTANDING REPUTATION THROUGHOUT THE COUNTRY FOR THE QUALITY OF TRAINING IT PROVIDED ITS JUDGES. COLORADO WAS ONE OF THE FEW STATES THAT ACTUALLY HAD LEADERSHIP TRAINING FOR CHIEF JUDGES WHICH INCLUDED THE CHIEF JUSTICE. IRONICALLY, THE MASIAS CONTRACT WHICH HAS BEEN AT THE CENTER OF THIS MESS WAS A CONTRACT TO PROVIDE LEADERSHIP TRAINING BECAUSE THE TWO OUTSIDE PROFESSIONALS WHO HAD PREVIOUSLY PROVIDED THE TRAINING WERE RETIRING.

I PERSONALLY HAD THE PRIVILEGE OF BEING APPOINTED AND SERVING AS CHIEF JUDGE OF THE TENTH JUDICIAL DISTRICT UNDER THE LEADERSHIP OF CHIEF JUSTICES ANTHONY VOLLACK, MARY MULLARKEY AND MICHAEL BENDER. EACH

PROVIDED OUTSTANDING ADMINISTRATIVE AND ETHICAL LEADERSHIP AND WERE PROGRESSIVE IN MOVING THE COLORADO JUDICIARY TO DEEP RESPECT THROUGHOUT THE JUDICIAL COMMUNITY IN THE NATION.

I AM UNAWARE OF ANY CONCERNS THE JUDICIAL DEPARTMENT MIGHT HAVE HAD CONCERNING THE LEADERSHIP ABILITIES OF FORMER CHIEF JUSTICES TO SERVE UNTIL THE REVELATIONS CONTAINED IN THE TROYER REPORT AND ONLY AS THEY IMPLICATED COATS. IT IS JUST ONE OF THE MANY QUESTIONS LEFT UNANSWERED IN THE REPORT. MORE SPECIFIC DETAILS CONCERNING THE SPECIFIC KNOWLEDGE OF THE THEN SERVING JUSTICES OF WHAT THEY KNEW AND WHEN THEY LEARNED IT SHOULD HAVE BEEN ADDRESSED INCLUDING THE SPECIFIC KNOWLEDGE OF EACH INDIVIDUAL JUSTICE.

THANK YOU FOR THIS ENORMOUS UNDERTAKING. WHILE MUCH DAMAGE HAS BEEN DONE TO THE INTEGRITY OF A ONCE PROUD STATE JUDICIAL SYSTEM, I AM CONVINCED THAT THE RESOLVE OF THIS COMMITTEE AND THE DEEP RESPECT OUR STATE HAS FOR THE RULE OF LAW WILL RESTORE IT TO THE STATUS IT DESERVES.