STATEMENT OF FACTS
United States district court Judge Roy Bean
Submitted by Dr. Eduardo M. Rivera

This judicial misconduct complaint made against the United States district court judge named above is filed, in accordance with the Ninth Circuit Rules of the Judicial Council. Complainant charges that this territorial district judge, who claims to be an Article III judge, has committed an impeachable offense for failing to reside within the district to which he was appointed in violation of Section 134 Title 28 U.S.C. and for violation of Section 2384 Title 18 U.S.C. by conspiring with others "to prevent, hinder, or delay the execution of any law of the United States," specifically, the laws requiring United States district court judges and United States Attorneys to reside within their respective judicial districts.

Section 106 of Title 28 U.S.C. identifies the judicial district in one sentence: "Montana , exclusive of Yellowstone National Park, constitutes one judicial district. The District of Montana, however, does not include any part of Montana that is not federally owned. The second entry in the Historical and Revision Notes to Section 106 states: "All of Yellowstone National Park is included in the judicial district of Wyoming by section 131 of this title. Those parts of the park lying in Montana are accordingly excluded from the judicial district of Montana."

Tracking the district courts back to the Judiciary Act of 1789 confirms these courts to be consistently and exclusively federal territorial courts. The United States Congress governs federal territorial Montana using the Constitution's Article I and Article IV legislative power.

The United States district court for the District of Montana is a legislative court that Congress must pass off as an Article III judicial court to extend its territorial jurisdiction beyond federal territory. Montana district judges claim to be Article III judges despite taking a territorial oath. To pull off the deception, the United States Congress, the United States Department of Justice and district judges of the District of Montana have conspired to remove the high misdemeanor penalty from Section 134 Title 28 U.S.C., so that the public will not be aware that failure to reside in the judicial district is still an impeachable crime for a district judge. This complaint seeks to remedy that situation.

Section 106 lacks a critical factor—a date to mark it as a Sixth Amendment district "previously ascertained by law." The first and the most important sentence in Chapter 5 of Title 28 U.S.C. supplies that date and is an announcement that the sections that follow are to be descriptive rather than prescriptive: "Sections 81-131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945." The 52 sections consist of 48 States, the District, the two territories of Alaska and Hawaii and Puerto Rico. The date: January 1, 1945 does not conform the judicial district to the Sixth

Amendment, as the district is made up exclusively of federal territory, only Congress can do that.

The territorial composition of the districts and divisions is determined by finding the kind of territory that can be common to States, the District, territory and the Commonwealth of Puerto Rico as of a certain date. By random substitution we can determine that the only territory common to all is federal territory subject to the exclusive legislative power of Congress. State territory, it will be seen, must be excluded as any part of a federal judicial district or division because Puerto Rico and the two territories had no State territory on January 1, 1945. The District of Columbia was created from State territory, but Puerto Rico and the territories can contain no such territory. The federal judicial districts and divisions are not comprised of state territory.

Judge Roy Bean had no right to assume that his residence outside federal territory satisfied federal residency law once he took his territorial oath of office. Upon entering his office, he began an active conspiracy with the other judges and magistrates of the district, the United States Attorney and Assistant United States Attorneys for the District of Montana to conceal his residence outside the judicial district to which he had been appointed. Knowing that he had not taken an oath for an Article VI "Office or public Trust under the United States," he proceeded to act as if he was an Article III judicial officer and he falsely claimed he resided within the District of Montana. He knew or should have known that he was a territorial officer and did not reside within federal territory in Montana. He could only carry out this deception as an active conspiracy with the United States Attorney and other conspirators.

The first act of the First Congress was to create an oath that conformed to the requirements of Article VI of the Constitution, 1 Stat. 23, 24. Congress enacted a different oath containing a religious test for the Chief Justice, Associate Justices and district judges, 1 Stat. 76 that did not conform to the requirements of Article VI. The oath and religious test enacted and imposed on the federal judiciary by Congress clearly set the Justices and judges apart from any Office or public Trust under the United States. The federal judicial oath precludes the holding an Office or public Trust under Article III of the Constitution. Federal judges must find authority in Article I or Article IV and only Article IV can provide the territory for a Chapter 5 Title 28 U.S.C. judicial district or division.

Section 134 of Title 28 U.S.C., which is based on Section 1 of the 1940 edition of the United States Code requires all the district judges of Montana to reside within the district to which they have been appointed and provides that it is a high misdemeanor for not doing so. As the Sixth Amendment requires a district previously ascertained by law and one subject to the Constitution and Bill of Rights, Judge Roy Bean had an additional duty to determine the territorial composition of the district before he accepted the appointment of United States district court judge.

Judge Roy Bean cannot be permitted to claim that he merely assumed that the

District of Montana was all of Montana. He must identify a district that conforms to law in all respects. He, especially, had to conform the district to the requirements of the Constitution and the Bill of Rights. Judge Roy Bean did none of this. Section 2(b) of the Act of 1948, 62 Stat 985 provided that the Judiciary Act of 1948 would be a continuation of existing law in order to conform that act to statute law. Since the Judiciary Act of 1789, the judicial districts have consistently been composed of federal territory. The burden of unraveling the exact territorial composition of the districts and divisions fell to Judge Roy Bean, who instead, conspired with others to conceal the district's federal territorial composition.

There can be no other conclusion: Judge Roy Bean is a criminal every time he acts in the capacity of a United States district court judge. He continues to be a criminal every moment that he fails or refuses to reside within the judicial district to which he was appointed. He remains a member of a criminal conspiracy "to prevent, hinder, or delay the execution of any law of the United States," as long as he fails or refuses to disclose the true character of the Montana Judicial District. Judge Roy Bean had a duty to make his own determination of what parts of the counties comprised the district and he chose to enter into a criminal conspiracy to conceal the true character of the judicial district. He must not be allowed to excuse his complicity in a criminal conspiracy by claiming that he merely relied on the common assumptions made by others trained and untrained in law.

In 1789, when the U.S. Supreme Court and district courts were first organized, the concept of "the Territory and other Property belonging to the United States was an important one. Congress was responsible for vast tracts of land not part of any state and for maritime and admiralty laws in the coastal states. The requirement that district judges reside within the federal territory that comprised the district to which they had been appointed is found in Section 3 of the Judiciary Act of 1789 and appears in Section 1 Title 28 U.S.C. of the 1940 Code. Congress made the violation of the residency requirement a high misdemeanor, when it enacted Chapter V. *An Act concerning the District and Territorial Judges of the United States* on December 18, 1812, 2 Stat 788. It is certain that no district court judge anywhere complies with the residence requirement that district judges reside on federal territory located within his or her district. No federal judges of the District of Montana can comply with the federal residency laws. Congress has not repealed the residency requirement, but the House of Representatives and the law revisers have conspired with the federal judiciary and the United States Department of Justice to remove the high misdemeanor penalty editorially. The past success of the law revisers and other conspirators suggests an established and elaborate congressional policy to concoct legislative protections for district court judges, however, the federal residency requirements must be an absolute necessity for a territorial law system. Removing the penalty from the Code did not repeal the law that established the penalty; judges will still be subject to impeachment.

The §134 Historical and Revision Note in the 2000 ed. of Title 28 U.S.C. claims

Congress did not intend that the high misdemeanor penalty apply to the residence requirement. No support for the alleged Congressional intention is provided, but the assertion is made in the note that the penalty attached to residency at the time of the 1878 compilation of the Revised Statutes. Section 551 of the Revised Statutes requires residence within the district and makes a high misdemeanor the crime for failure to so reside. References to the Judiciary Act of 1789 and the December 18, 1812 act in Sec. 551 in Title XIII. should completely dispense with the reviser's claim that the high misdemeanor penalty was only meant to attach to the unauthorized practice of law in 1878. This totally inaccurate claim is continuing evidence of the conspiracy to "to prevent, hinder, or delay the execution of any law of the United States."

Section 713 of the Revised Statues prohibits the unauthorized practice of law and imposes the high misdemeanor penalty. The December 18, 1812 act is the only reference to Section 713, where it is found in the margin.

The United States district court judge named above has engaged in and is now engaging in conduct that has been a crime since 1812. What can be more prejudicial to the effective and expeditious administration of the business of the courts than the totally inaccurate determination of the territorial jurisdiction of the court? Once aware of his criminal violation of federal law, the district judge must act positively to stop violating the law.

The fact that there is no statutory evidence that any United States district court in Montana has been ordained and established pursuant to Article III of the Constitution is consistent with all that is known about the district courts and judges that predate Montana's federal courts. That additional fact makes it conclusive that Judge Roy Bean is a territorial officer. His duties and, therefore, his authority come from his territorial office.

Appointment during good behavior requires continual good behavior. The failure or refusal to reside within the district to which he was appointed continues as long as he refuses to reside on federal territory. The business of the federal district courts is limited by their territorial jurisdiction and the judge named above is criminally liable because he was aware of his court's territorial jurisdiction and he conspired with the United States Attorney to conceal it. Section 2384 Title 18 makes him criminally liable for withholding the knowledge that his court and jurisdiction is limited to the federal territory within the counties that comprise the district and its divisions.

As residence within the judicial district was a condition of his employment, Judge Roy Bean is not entitled to the salary he was paid. Judge Roy Bean may also be liable for the costs of security provided by United States marshals to United States district court judges. United States district court judges who are in violation of federal residence laws are not entitled to such protection and may have to pay for what was provided.

Section 545 of Title 28 U.S.C. requires each United States Attorney to reside in the district for which he or she is appointed, except for certain exceptions in the District

of Columbia and the District of New York. Government attorneys serve relatively short terms at the pleasure of the President of the United States, so if they are to obey federal laws it is the United States district judges who must see that the federal law is obeyed. The conspiracy between United States district court judges and United States Attorneys prevented the proper administration of the law in practically every area of federal law enforcement.

Federal grand and petit jurors must, according to Section 1865 of Title 28 U.S.C., be residents of the judicial district for one full year. How can a federal district judge determine if a grand or petit juror has resided in the district for a year if he or she is in violation of the same residency requirement? How can any United States district court judge in active violation of the federal residency requirement participate in the preparation of a written plan for the selection of grand and petit jurors if that judge has been effectively given immunity from prosecution for violation of those same residency requirements by a United States Attorney who is violating the same kind of law? Such violations of federal law cannot be permitted in any United States district court judge no matter how long his tenure.

It is a fact that Section 2 of the Judiciary Act of 1789 enacted on September 24th of that year, provided "that the United States shall be, and they hereby are divided into thirteen districts," when two States, North Carolina and Rhode Island had not yet ratified the Constitution. Section 1 of the Act, therefore, created a Supreme Court for the unincorporated territory in the federal territory of the eleven states that had ratified the Constitution and the two federal districts, Maine and Kentucky. Section 2. created the first United States district courts for the federal territory within the eleven states that had ratified the Constitution up to that time and for the territories of Maine and Kentucky. Maine was territory until it was admitted as the 23rd State of the Union on March 15, 1820. During the time that the District Court of Maine operated as a territorial district court, Congress declared the violation of the residency requirement to be a high misdemeanor, an impeachable offense. Kentucky didn't become the 15th State of the Union until June 1, 1792, so up to its date of admission into the Union the District of Kentucky was a territory without State sovereignty, incapable of exercising Article III judicial power.

It is a fact, therefore, that prior to their respective dates of admission to the Union, the territorial composition of the two federal courts in Maine and Kentucky were all federal territory within the two federal States' exterior boundaries. The two judicial districts consisted of territory subject to the exclusive legislative power of Congress. It must follow, therefore, that the U.S. Supreme Court and the other district courts created by the Judiciary Act of 1789 were not ordained and established pursuant to Article III of the Constitution, because the territory subject to the exclusive legislative power of Congress constituted the territory that comprised the judicial districts of those district

courts.

Every judiciary act and judicial code since the first has confirmed the composition of the districts and divisions to be the federal territory to be found within the state or counties that comprise the districts and divisions. The Judiciary Act of 1911 uses the date: July 1, 1910 to reckon the territorial composition of the districts and divisions. The Judiciary Act of 1948 uses the date: January 1, 1945 for the same purpose and, of course, to conform the district to the requirements of the Sixth Amendment. That amendment requires the district to be previously ascertained by law. The official residence of the judge, jurors, U.S. Attorney and Marshal must be in federal territory not because of anything in the Bill of Rights, but because law enacted pursuant to the exclusive legislative power of Congress can only be applied on or in United States territory.

Judge Roy Bean is unable to perform a constitutional Article III function because he has sworn a territorial oath and must function as a federal territorial judge. He cannot possibly qualify to be a territorial judge because he cannot reside on any federal territory within the district. Congress in 1804 impeached John Pickering, the first district judge to be charged and removed from office, to support the erroneous belief that district judges were Article III officers serving during good behavior. District judges, however, were first entitled by statute to serve during good behavior by the Judiciary Act of 1948 and are subject to "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," only because of that statutory appointment during good behavior. There is incontrovertible evidence of a conspiracy to commit a high misdemeanor and to "to prevent, hinder, or delay the execution of any law of the United States." It is obvious that the December 18, 1812 residency requirement serves an important purpose evidenced by the still valid high misdemeanor penalty. The penalty has remained in all the judicial codes since that time until 1946, when the law revisers conspired with the federal judiciary to remove the penalty from the written law. The true state of congressional intent is its failure to repeal the penalty for not residing within the district. It is past time to apply the law that still exists. Impeachment of Judge Roy Bean is necessary simply because there may be no other way to terminate the conspiracy to violate the federal residency laws.