

**IN THE FEDERAL DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Civil Case Number: **CIV-06-0350-ACT/LAM**

STEVE DOUGLAS GARTIN,
Plaintiff

v.

THOMAS CECIL MILLER
DENNIS HALL,
GARY CLYMAN,
DONALD L. ESTEP,
MARGIE ENQUIST,
JUDY ARCHULETA,
TINA OLSEN,
CRISSY SCHAUDT, and
COUNTY OF JEFFERSON,
STATE OF COLORADO,
FIRST JUDICIAL DISTRICT,
Defendants

Reply to Defendant Miller's Motion to Dismiss

Plaintiff, Steve Douglas Gartin, *pro se by Necessity*, hereby provides reply to Defendant Miller's Motion as follows:

- 01.) In Defendant Miller's "Introduction" on page two Miller alludes to dissatisfaction with a guilty verdict. However, he does not identify the case, there were two and in both cases STATE Defendants committed crimes and torts upon Plaintiff that are subject to First Amendment redress of grievance. The first case was 97M811 and the second case is the genesis of this complaint, 04-CR-0451. Much of Defendant STATE Actors' efforts to persecute Plaintiff results from a conspiracy to cover-up and conceal criminal acts and constitutional violations by STATE/FEDERAL Defendants in connected 10th District Federal cases.

- 02.) Defendant Miller then quotes the wrong case number to which he was assigned. This is of particular interest due to the fact that Defendant Miller's unprecedented Motion for Forgiveness that gave rise to case #04-CR-2541 also contained false information for which this Plaintiff was charged. Defendant Miller has an exceptionally

well-documented history of professional misfeasance and malfeasance as well as non-feasance as a registered B.A.R. attorney in Colorado. Defendant Miller's sub-standard professional performance and penchant for misstating facts extends far past the simple misspellings, misquoting of cases, authorities and facts to dangerously deep into professional malfeasance, fraud and perjury.

03.) Defendant Miller then claims that during his representation of Plaintiff in case #02CR3371 there was an "underlying matter" for which a "document" was "provided." That statement is false. Defendant Miller ostensibly refers to 97M811 & 97M812 which were in no way connected with either case #02CR3371, as Defendant Miller claims, or the actual case #00-CR-3371 to which Defendant Miller was assigned. The only connection between those cases is that the Defendants in this case committed fraud and criminal acts and constitutional violations in both cases that they have been actively conspiring to cover-up and conceal since the initial criminal acts committed by STATE Actors named as Defendants in connected 10th District Civil Rights and R.I.C.O. actions based upon their involvement in 96DR2718 and the subsequent retaliatory, vindictive, selective and malicious prosecutions spawned from that case forming a long train of abuses and usurpations pursuing invariably the same Object and has evinced a design to reduce Plaintiff under absolute Despotism in the STATE OF COLORADO.

04.) Defendant Miller describes a document as being proven "false" but the official court record in cases 97M811 & 97M812 contains no such document. Even in the deliberately shoddy and ineffective representation of Plaintiff in the actual case #00-CR-3371 Defendant Miller never provided a Certificate of Authenticity to the court claiming that document to be a certified part of the court's record. Nor was that purported "document" ever referred to, ruled upon or even considered by any public servant, ever.

05.) Defendant Miller's First Argument is irrelevant. Plaintiff resides in New Mexico, resided in New Mexico at the commencement of the retaliatory prosecution giving rise to this controversy, was lured into the STATE of COLORADO by Defendants intent upon his continued retaliatory persecution and seeks **Political Asylum** in the State of New Mexico as the major and most significant relief in this Constitutional Controversy.

- 06.) Defendant Miller's Second Argument is moot. Plaintiff's claims result from Defendants luring Plaintiff into the STATE OF COLORADO from his residence in New Mexico for the purpose of vindictive persecution and a litany of criminal acts and tortuous actions calculated to deprive Plaintiff of inalienable rights secured by the United States Constitution. For purposes of R.S. §1979, criminal acts are enumerated. Criminal acts, persecution, unlawful imprisonment, menacing with deadly weapons, witness intimidation, official misconduct and abuse of public office form the foundation for Plaintiff's appeal for **Political Asylum**, not as "standing" to prosecute criminal statutes. Plaintiff's personal stake in the outcome of this controversy is his very life, his constitutionally secured right to be free from government persecution and his right to personal freedom as a native-born American, protected by the United States Constitution. Defendants seek carte blanc to deprive United States Citizens of their God-given and Constitutionally secured Rights with impunity under Color of Law and under the cover of darkness unlawfully provided by COLORADO courts.
- 07.) Defendant Miller's reference to a "laundry list of criminal violations" of COLORADO State law establishes the Plaintiff's position that STATE Defendants routinely commit STATE as well as FEDERAL crimes with impunity. Unlike New Mexico, COLORADO STATE agents are rarely, if ever, indicted for criminal conduct and are actively shielded from tort liability by the very judicial officers sworn to protect and defend the laws of COLORADO and the United States of America.
- 08.) Defendant Miller's paragraph "C" deliberately misstates both law and fact. First, Plaintiff bases this complaint upon Diversity of Citizenship and the deprivation of inalienable rights secured by the United States Constitution. Defendant Miller, an "*officer of the court*" in the STATE of COLORADO, paid by an agency of the STATE OF COLORADO, wrote a letter to Marleen M. Langfield, Special Prosecutor for the COLORADO STATE ATTORNEY GENERAL openly violating Rule 1.9 of the Rules of Professional Conduct and provided false information concerning Plaintiff in order to instigate a deprivation of Plaintiff's Constitutionally secured Right to be free from unfounded, selective, malicious, retaliatory and vindictive persecution and prosecution. Miller acted in concert, *by agreement*, in conspiracy and full-knowledge that STATE actors would initiate a vindictive prosecution against Plaintiff. Defendant Clyman's

Affidavit, *within the official court record in case #00CR2541*, affirms that Defendant Miller deliberately operated in conspiracy with STATE Actors, Marleen Langfield, Dennis Hall, Donald Estep and Gary Clyman to fraudulently charge Plaintiff with acts STATE Actors, *included as Defendants herein*, knew were committed by Defendant Miller. Plaintiff was subsequently arrested and fraudulently charged with Defendant Miller's crimes thus depriving Plaintiff of his Constitutionally secured freedom, required to post excessive bond, and unlawfully prosecuted by the very Named Defendants in connected Federal Civil Rights actions, in an on-going conspiracy to prevent Plaintiff from seeking First Amendment redress of grievance, as-well-as the continuing conspiratorial deprivation of other Constitutionally secured Rights.

Conspiracy with state official and use of state official's office provides state action element of cause of action under this section. [Goldschmidt v. Patchett, C.A.7 \(Ill.\) 1982, 686 F.2d 582.](#)

When a nonstate actor conspires with state officials to deprive an individual of his constitutional rights, action under § 1983 will lie against that nonstate actor. [Smith v. U.S., C.D.Ill.1989, 723 F.Supp. 1300](#), affirmed [964 F.2d 630](#), rehearing denied, certiorari denied [113 S.Ct. 1015, 506 U.S. 1067, 122 L.Ed.2d 162.](#)

Where state officers conspire with private individuals to defeat or prejudice litigant's rights in state court, litigant is thereby denied equal protection of laws by persons acting under color of state law, and cause of action is created cognizable by federal courts under this section. [Dinwiddie v. Brown, C.A.5 \(Tex.\) 1956, 230 F.2d 465](#), certiorari denied [76 S.Ct. 1041, 351 U.S. 971, 100 L.Ed. 1490](#), rehearing denied [77 S.Ct. 29, 352 U.S. 861, 1 L.Ed.2d 72.](#)

Private parties are liable under § 1983 if they have reached agreement with state actor to violate individual's constitutional rights. [Copus v. City of Edgerton, W.D.Wis.1997, 959 F.Supp. 1047](#), affirmed in part, reversed in part [151 F.3d 646.](#)

Although appointed counsel in state criminal prosecution does not act "under color of" state law in normal course of conducting defense, otherwise private person acts "under color of" state law when engaged in conspiracy with state officials to deprive another of federal rights. [Tower v. Glover, U.S.Or.1984, 104 S.Ct. 2820, 467 U.S. 914, 81 L.Ed.2d 758.](#)

Where defendant's lawyer, investigator, and prosecutor allegedly conspired to deprive criminal defendant of his civil rights, private conduct was converted to "state action" for purposes of bringing action under this section. [Black v. Bayer, C.A.3 \(Pa.\) 1982, 672 F.2d 309](#), certiorari denied [103 S.Ct. 230, 459 U.S. 916, 74 L.Ed.2d 182.](#)

Plaintiff made sufficient allegations of deprivation of rights and of state action to maintain § 1983 action against private attorneys, where plaintiff alleged that his defense attorney participated with assistant district attorney in plan to obtain unsupported felony conviction on sexual misconduct charges by depriving plaintiff of his right to effective assistance of counsel, and that private attorneys were willful participants in plan by then filing collateral civil suit on behalf of alleged victim; fact that overt acts attributed to private attorneys did not directly involve them with assistant district attorney did not deprive overall conspiracy of necessary element of state action. [Jackson v. Faber, D.Me.1993, 834 F.Supp. 471.](#)

09.) STATE Actors then commenced a fraudulent, groundless and frivolous criminal action against Plaintiff founded solely upon Defendant Miller's unilateral filing of a meaningless, frivolous and mendacious Motion for Forgiveness unprecedented in American jurisprudence. Defendant Miller's letter to Defendant Langfield was dated six days after receiving service of civil suit #04C1779, so Miller's subsequent letter to Defendant Langfield was calculated to achieve an advantage in civil litigation. Defendant Miller subsequently obtained the benefit of dismissal of that compliant and the associated penalty of actually honoring Defendant's commitments as-well-as having lured Plaintiff into the STATE OF COLORADO whereby Defendant Miler also enjoyed Plaintiff's arrest, incarceration, prosecution and persecution as emolument for his anti-ethical and fraudulent acts in conspiracy with STATE Actors. Two credible witnesses will also testify that Defendant Miller was actively seeking employment with the COLORADO STATE ATTORNEY GENERAL'S OFFICE based upon his ability to prevent Plaintiff from prosecuting connected Federal Civil Rights actions against STATE tortfeasors defended by the COLORADO STATE ATTORNEY GENERAL'S OFFICE as-well-as JEFFERSON COUNTY tortfeasors defended by JEFFERSON COUNTY ATTORNEY'S OFFICE.

An incomprehensible immorality and venality is demonstrable from the concepts:

The decision to initiate, maintain, or dismiss criminal charges is at the core of the prosecutorial function. These defendants allegedly used their prosecutorial powers to threaten McGruder into dismissing his damages suit. McGruder therefore argues that their activities were not those of a prosecutor seeking to punish and deter crime, but of an agent of the county seeking to intimidate a citizen in his exercise of constitutional rights. Such a motivation would be reprehensible and such threats abhorrent, but they do not lift the decision to maintain a criminal prosecution from the prosecutorial activities protected by Imbler. See *Boyd v. Adams*, 513 F.2d 83 (7th Cir. 1975) (anticipating Imbler test; dismissal of charges in return for release was within immunity).

Our language in *Henzel v. Gerstein*, [608 F.2d 654](#), 657 n. 4 (5th Cir. 1979), is not to the contrary. The prosecutor in that case allegedly acted with the same motive as Necaise and Henry - to intimidate Henzel into agreeing not to sue state officials. But the Henzel prosecutor's activities - conditioning parole on an agreement not to sue - were not those protected by Imbler. In contrast, Henry and Necaise sought to "persuade" with their prosecutorial power, and therefore remained within the field of their prosecutorial immunity.

10.) Race is only one invidious discriminatory animus addressed in 42 U.S.C. §1985. Religion and Political opinion are the elements Plaintiff claims have resulted in Plaintiff's on-going persecution by COLORADO STATE Actors and so-stated as-well-

as including prima facie evidence of, *to-wit*: Grand Jury Testimony by COLORADO STATE ATTORNEY GENERAL INVESTIGATOR, **Defendant Gary Clyman**, in the Complaint at page 7 describing Plaintiff as an alleged ‘patriot’ and affirming his “official” job description as that of “Patriot Investigations.”

Conspiracies to deprive one of his constitutional rights are actionable under this section, and a showing of class-based discrimination is not a prerequisite to liability. [Pizzolato v. Perez, E.D.La.1981, 524 F.Supp. 914](#)

The existence of a conspiracy to violate federal rights, when coupled with state action, is actionable under this section. [Croy v. Skinner, N.D.Ga.1976, 410 F.Supp. 117.](#)

Conspiracy is not necessary element of § 1983 claim, but proof of civil conspiracy may broaden scope of liability under § 1983 to include individuals who are part of conspiracy and who do not act directly to deprive plaintiff of federal statutory or constitutional rights. [Pryor v. Cajda, N.D.Ill.1987, 662 F.Supp. 1114.](#)

11.) Each of the judicial officers named in this complaint have an affirmative duty to protect and defend the rights of People appearing in their courts. Speedy Trial is only one of the issues in controversy herein, but that alone forms a foundation for action in redress of grievance pursuant to 42 U.S.C. §1986. Each judicial official named as Defendant knew that their actions violated Plaintiff’s Constitutional Right to Speedy Trial and each judicial Defendant failed or neglected to correct the on-going conspiracy to deprive Plaintiff of his Constitutionally secured right to speedy trial and Due Process of Law.

12.) Defendant **Judge Enquist** conspired with Defendant Hall, *a former comrade when she worked for the FIRST JUDICIAL DISTRICT ATTORNEY’S OFFICE*, to insure that Plaintiff’s Right to Effective Assistance of Counsel was also violated and failed and neglected to act to correct the deprivation of Plaintiff’s Right to freedom from oppression, persecution and vindictive prosecution when informed in open court, pursuant to C.R.S. 18-8-115 that Defendant Miller had committed the crime for which Plaintiff had been charged. Although Plaintiff offered prima facie evidence and eye-witness testimony from at least a half-dozen credible witnesses who all knew, without doubt, that if a crime had been committed, Defendant Miller was the offender. That evidence and those witnesses were not allowed at trial.

A complaint charging conspiracy, carried into effect, by state's attorney, two deputy sheriffs and sheriff to injure, threaten and intimidate plaintiff because of his plea of not guilty to indictment for murder, need not be treated by court as filed strictly under [§ 1985](#) of this title, authorizing action for conspiracy to interfere with civil rights, but may be treated as stating cause of action for deprivation of such rights in violation of this section, if plaintiff was deprived of any rights, privileges or

immunities secured by Constitution and laws. [Lewis v. Brautigam, C.A.5 \(Fla.\) 1955, 227 F.2d 124.](#)

- 13.) Defendant Miller subsequently admitted under Oath, *during a jury trial*, that he had unilaterally conceived, constructed and filed the unprecedented MOTION FOR FORGIVENESS constituting the graveman of the offenses Defendant Dennis Hall charged against Plaintiff, and although Judge Enquist was presiding over the proceedings and heard Defendant Miller's testimony, she refused or neglected to correct the obvious fraud and deprivations of Constitutionally secured rights of this Plaintiff occurring directly in her presence, thereby clearly establishing Judge Enquist as a co-conspirator in the conspiracy Plaintiff complains of pursuant to 42 U.S.C. §1985 in addition to her liability for having the knowledge of the conspiracy and the power to correct the fraud, abuse of official power and deprivation of Constitutionally secured rights happening in her courtroom pursuant to 42 U.S.C. §1986.

Under this section authorizing civil actions for deprivation of constitutional rights under color of state law, action taken "under color of" state law is not limited only to that action taken by state officials pursuant to state law; rather, it includes misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. [Brown v. Miller, C.A.5 \(Miss.\) 1980, 631 F.2d 408](#)

There are three discrete tests to determine whether there has been "state action" within meaning of § 1983 and Fourteenth Amendment: first test determines whether private entity exercises powers that are traditionally exclusive prerogative of state; the second test addresses whether private entity has acted in concert or with help of state officials; last inquiry involves situations in which state has so far insinuated itself into position of interdependence with acting party that it must be recognized as joint participant in challenged activity. [Johnson v. Cullen, D.Del.1996, 925 F.Supp. 244.](#)

Defendant Judge Enquist knowingly and deliberately worked outside of the law, *in excess of her judicial capacity*, in conspiracy with Defendant Hall and Defendant Miller, to continue case #00-CR-2541 in spite of the fact that she was devoid of jurisdiction, ab initio, and Plaintiff's Constitutionally secured Right to Speedy Trial had been violated. Defendant Enquist refused to sanction Defendant Miller for violating court ordered Discovery. Defendant Enquist refused to sanction Defendant Miller for violating her sequestration order. Defendant Enquist violated Rule 1.9 by refusing to grant Defendant Miller's motion to quash Defendant Miller's testimony based upon his violation of attorney/client privilege, in conspiracy with Defendant Clyman, Defendant Hall and Defendant Langfield. The official court transcript of the jury trial has been ordered and will provide more examples of Judge Enquist's unconcealed advocacy in favor of the Prosecution from the Bench. The Defendants have created and documented an

unconcealed conspiracy of agreement and a meeting of the minds designed to violate Plaintiff's Constitutionally secured Rights, by their own official court record.

- 14.) Defendant Miller also admitted under oath, in testimony in Boulder County case #04C1779, that he had also conspired with Defendant Langfield, **in a meeting of the minds and by agreement**, that during the probation period in case #00CR3371 Defendant Miller, Esquire would prevent Plaintiff from prosecuting any action for redress of grievance against STATE or COUNTY agents until the statute of limitations had expired, thus depriving Plaintiff, **by conspiracy**, of his Constitutionally secured First Amendment Right to seek redress of grievance.

Wherefore, in the interest of substantial Justice and fundamental fairness, unattainable within the STATE OF COLORADO, Plaintiff respectfully requests that this Honorable New Mexico District Court retain jurisdiction of this Constitutional Controversy.

Respectfully Submitted,



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Certificate of Mailing via U.S. Postal Service and Notice of Electronic Filing

This Reply to Defendant's Motion to Dismiss was served upon the following parties via email and deposited in the United States Mail, first-class postage prepaid on this 10th day of June, 2006 addressed as follows:

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