

Judicial Council of the District of Columbia Circuit
COMPLAINT OF JUDICIAL MISCONDUCT

presented by

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a party in cases 05-678, 07-1327, 08-731, 09-5280, 12-1092, and 12-1113

against

Chief Judge Richard W. Roberts
of the
United States District Court for the District of Columbia

and

Acting Chief Judge Karen LeCraft Henderson
of the
United States Court of Appeals for the District of Columbia Circuit

I allege that Chief Judge Roberts and Acting Chief Judge Henderson among others violated the *Judicial Conduct and Disability Act*, 28 U.S.C. §§ 351–364, by treating truckers like myself in a demonstrably egregious and hostile manner. No lawsuit has been filed because the statute of limitations for such litigation has already been exceeded.

Brief Statement of Facts

On April 26th 2006, four students of Taylor University, a small evangelical Christian college, were tragically killed in a truck crash. Due to a mix up by the coroner, a victim so horrifically crushed she was unrecognizable was buried in the wrong grave while another who survived the crash was nursed back to health by the dead girl's parents. To satisfy the demands of a revengeful media circus, President Bush decided an alumnus of Taylor University ought to be made the Federal Motor Carrier Safety Administrator.

John Hill had never driven a truck for a living, much less met the minimum standard for employment in the motor carrier safety profession—an above average safety record driving 18 wheelers. Nor did he have experience designing trucks or testing safety devices as any reasonable person would expect of someone who had professional experience in motor carrier safety. Hill was a police officer, not a motor carrier safety professional. The *Motor Carrier Safety Improvement Act* requires that the Federal Motor Carrier Safety Administrator shall be “an individual with professional experience in motor carrier safety.” 49 U.S.C. § 113(c).

On May 30th 2006, one month after appointing Hill, President Bush appointed his Assistant, a member of the White House staff responsible for ensuring that Hill possessed the statutorily required qualifications, to sit on the United States Court of Appeals for the District of Columbia Circuit. After leaving office Hill blew the whistle, explaining his failure to obey three orders of that Court¹ requiring him to protect the occupational health of truckers claiming, “I thought I would have a lot of say in truck safety in this country [but] political people tell the appointed people what they’re going to do.”²

First Case of Misconduct

On April 22nd 2008, Acting Chief Judge Henderson collaborated with President Bush’s former assistant to transfer a case to legalize modern safety features on trucks (07-1327) to district court in violation of the *Hobbs Act* which requires courts of appeals to decide cases pursuant to 49 U.S.C. 31136 (“all rules, regulations, or final orders of... the Secretary of Transportation issued pursuant to...Sub-chapter III of Chapter 311,” 28 U.S.C. § 2342(3)(a)).

District Court did not reach the merits of the complaint (08-731), that Secretary of Transportation Mary Peters failed to respond within 120 days to a petition to promulgate a safety regulation for balancing truckers’ safety interests against the government interest in protecting the roads from heavy trucks filed under 49 U.S.C. 30162.³ Justice Powell wrote for a unanimous court, “this balancing cannot be left to the unguided discretion of a judge...the Constitution only requires that the courts make certain that professional judgment in fact was exercised.” *Youngberg v. Romeo*, 457 U.S. 307 at 321 (1982) (quoting 644 F.2d at 178)(emphasis added, internal quotes omitted). “[D]ue process of law requires an evaluation based on a disinterested inquiry pursued in the spirit of science...” *Rochin v. California*, 342 U.S. 165 at 172 (1952). One may reasonably infer that Acting Chief Judge Henderson collaborated in the resulting deaths of several hundred truckers because there is no evidence she inquired into the qualifications of the decision maker—a mandatory standard of judicial conduct under Rule 3(h)(1)(G).

¹ *Public Citizen v. FMCSA*, 374 F.3d 1209, 1218, (D.C. Cir. 2004); *Advocates for Highway and Auto Safety v. FMCSA*, 429 F.3d 1136 (D.C. Cir. 2005); *Owner-Operator Indep. Drivers’ Ass’n v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007)

² www.truckinginfo.com/news/news-detail.asp?news_id=73580

³ Neither court considered my claim that the Federal Highway Administration violated the *Regulatory Flexibility Act*, 5 U.S.C. §§ 603(c)(3) & 604(a)(2), by including intermodal vehicles in its revised definition of commercial motor vehicle (“a vehicle designed or regularly used to carry freight”) in contradiction of the statutory definition in 49 U.S.C. § 31101(1) (“[a] vehicle used on the highways in commerce”). Congress expressly prohibited the Secretary from regulating intermodal vehicles because, except in emergencies, they are not used on the highways or in interstate commerce. See 49 U.S.C. §§ 13503(b)(1) & 13506(a)(11). The exemption of snow plows from federal size and weight limits and not intermodal vehicles made the agency’s reasoning arbitrary and capricious.

Second Case of Misconduct

On December 9th 2009, President Bush's former assistant in collaboration with the former assistant of a governor denied the appeal (09-5280) in violation of 28 U.S.C. 47 which states: "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." In dismissing the complaint against them alleging they were assigned to the case in a non random manner (DC-14-90026, DC-14-90027),⁴ Acting Chief Judge Henderson and Chief Judge Richard W. Roberts violated Rule 25(b), which states: "A subject judge is disqualified from considering the complaint ...". They may well argue that only the politically connected judges were accused in that complaint and that the phrase "and possibly others" did not apply to them, but the Supreme Court ruled in *Caperton v. Massey* that "the information acquired from the prior proceeding,⁵ was critical" and "[r]ecusal was also required where [a judge was involved in] a nearly identical suit."⁶ 556 U.S. 868(per curiam). The *Civil Rights Act* provides:

Every person who, having knowledge that any of the wrongs conspired to be done ...are about to be committed, and having power to prevent or aid in preventing the commission of the same...shall be liable...for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented...

42 U.S.C. 1986

⁴ Because only one judge had an apparent conflict of interest and the odds of this judge being assigned to three consecutive cases (07-1327, 09-5280, 12-1113) were less than one percent, it is 99% certain that someone in the courthouse intentionally assigned President Bush's former assistant to the cases non randomly. The odds of this judge being randomly assigned to all three panels with a second judge being assigned to two panels and both judges having been assistants of politicians are equally remote unless political people were telling them what to do as the former administrator alleged.

⁵ Chief Judge Richard W. Roberts ruled in 05-678 (Mar. 2, 2007), op. at 8, "even where Congress has not expressly stated that statutory jurisdiction is 'exclusive,'...a statute which vests jurisdiction in a particular court cuts off original jurisdiction in other courts in all cases covered by the statute," quoting *Telecomms. Research & Action Ctr. v. Fed. Communications Comm'n*, 750 F.2d 70, 77 (D.C. Cir. 1984). "Congress has provided for exclusive review of agency decision making under [The Motor Carrier Safety Act] by the court of appeals." *City of Rochester v. Bond*, 603 F.2d 927, 931 (D.C. Cir. 1979).

Acting Chief Judge Henderson overruled Chief Judge Roberts in 07-1327 (Apr. 22, 2008), citing *Aulenback, Inc. v. FHWA*, 103 F.3d 156 (D.C. Cir. 1997) (holding that the Hobbs Act only grants the courts of appeals exclusive jurisdiction to review actions of Department of Transportation agencies if the action is taken pursuant to authority that was transferred from the Interstate Commerce Commission); *Owner-Operator Independent Drivers Ass'n v. Pena*, 996 F.2d 338 (D.C. Cir. 1993) (same). "Therefore, the petitioner must seek review in district court pursuant to the Administrative Procedure Act, 5 U.S.C. § 704, under federal question jurisdiction, 28 U.S.C. § 1331."

⁶ *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813

Anyone with common sense will recognize that if a Black man killed the students instead of a trucker and hundreds of African Americans lost their lives in retaliation after being denied safety in the workplace, a serious civil rights violation would have occurred. Therefore, a judge who allows an impostor to cause ongoing deaths and injuries by failing to “make certain that professional judgment in fact was exercised” or who dismisses a complaint against such a judge so as to prevent a rehearing under Rule 11(d)(2) has committed a civil rights violation “prejudicial to the effective and expeditious administration of the business of the courts” and has treated a litigant “in a demonstrably egregious and hostile manner” for the purposes of the Judicial Conduct and Disability Act. 28 U.S.C. §§ 351–364 (Rule 3(h)(1)(D)).

Conclusion

Although Chief Judge Roberts and Acting Chief Judge Henderson both denied they had jurisdiction over the issue, each ruling that the other had jurisdiction (*see* note 5 above); both had knowledge of the imminent deaths and injuries of the truckers before they occurred and had the power to prevent them. Both dismissed a complaint against other judges to prevent a special committee from investigating whether they themselves collaborated in the misconduct. When made public, their actions will cause “a substantial and widespread lowering of public confidence in the courts among reasonable people.”⁷

Because the Court denied my petition for rehearing en banc and the subject judges have not taken voluntary corrective action under Rule 11(d)(2), other members if this Council are also suspect. Therefore, to avoid further appearance of impropriety, this Council should ask the Chief Justice to transfer this complaint to another judicial council under Rule 26 consistent with the Breyer Committee’s recommendations.

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)_____ (Date)_____

⁷ See Rule 3(h)(2)