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

presented by

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a party in cases 07-1327, 09-5280, 12-1092, and 12-1113

against

Judges Brett M. Kavanaugh and Janice R. Brown

of the
Court of Appeals for the District of Columbia Circuit

I allege that Judges Kavanaugh, Brown, and possibly 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 lawsuits have yet been filed because it is not clear they are the only persons responsible. As the Supreme Court ruled in *Caperton v. Massey,* "the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral."

Brief Statement of Facts

Background

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, Brett M. Kavanaugh, 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 this Court[1] 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, Judge Kavanaugh transferred 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… Subchapter III of Chapter 311," 28 U.S.C. § 2342(3)(a)). Lacking jurisdiction, District Court did not reach the merits of the complaint, 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. Instead, District Court limited its opinion to the only issue over which it had jurisdiction, claiming the Federal Highway Administration had authority to ban safety features on trucks regardless whether the unqualified Motor Carrier Safety Administrator promulgated a safety regulation or not (DDC #08-00731).

On December 9th 2009, Judge Kavanaugh joined by Judge Brown 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." 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). Though failure to recuse normally touches on the merits and is not cognizable as misconduct, failure to satisfy a mandatory standard of judicial conduct such as the statutory prohibition against deciding an appeal of one's own decision or the constitutional requirement that "courts make certain that professional judgment in fact was exercised" touches neither the merits or court procedure, therefore the significant loss of life that resulted from the abuse of the Judges' offices to cover up Hill's lack of professional qualifications must be considered misconduct regardless whether political people were telling them what to do.

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[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

Second Case of Misconduct

On June 13th 2012, Judge Kavanaugh ordered pleadings in a case to prevent truckers from being overworked (12-1113) to be edited to half the length allowed by the court's rules. The truckers, represented by interest groups because we could not afford lawyers, were to be limited to 17,062 words while our employers, represented by trade associations employing a dozen lawyers, would be allowed 26,250 words in a combined case (12-1092). The government was to be allowed only 14,000 words to defend itself from both cases. Though his decision to combine conflicting claims into a complex three-way litigation wherein each party was obliged to argue against two opposing parties was procedural and thus not cognizable as misconduct, arbitrarily limiting the lengths of our briefs to prevent us from pleading our case abridged our First Amendment right to petition the government for a redress of grievances and therefore must be considered misconduct.

After I filed a response accusing the court of bias (document #1381410), Judge Brown, a former assistant of a governor, replaced the President's former assistant—ruling that we truckers lacked standing, overturning two of the three court orders Hill failed to obey[3] and upholding a twice vacated rule contrary to the principle of res judicata. She explained, "Trescott offers nary an argument in his briefs as to why his lobbying activities would establish standing. For this reason, we need not reach the merits of his arguments." Opinion at 11 (note 7).

I am not and have never been employed as a lobbyist. I am a trucker with a half million miles without a preventable crash awarded five patents for safer transportation technology that the Department of Transportation chose to make illegal. The Supreme Court ruled that a litigant has standing "if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant." *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 at 572(1992). Yet, even with arguments of standing Judge Kavanaugh ordered removed supported by driver's logs documenting the dangerously long hours, missed meals, and other harms I've suffered, my Petition for Rehearing was denied. The abuse of the Judges' offices to cover up Hill's failure to obey the Court's previous orders by denying standing to litigants with obvious standing failed to satisfy the constitutional requirement and mandatory standard of judicial conduct that "courts make certain that professional judgment in fact was exercised" and therefore must be considered misconduct.

Because only one judge had an apparent conflict of interest and the odds of this judge being assigned to three consecutive panels were less than one percent, it is 99% certain that someone in the courthouse intentionally assigned Judge Kavanaugh to decide these cases knowing he was unlikely to be neutral. 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 alleged by the former safety administrator.

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[3] *Public Citizen v. FMCSA,* 374 F.3d 1209, 1218, (D.C. Cir. 2004); *Owner-Operator Indep. Drivers' Ass'n v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007)

Evidence of Corruption

Of the two Commerce Committee chairmen who confirmed Hill without a hearing, one was convicted of failing to report gifts from an oil company[4] presumably intended to delay the development of fuel efficient intermodal technology requiring safety features, while the other co-Chairman owned a trucking company that likely benefited from Hill's failure to obey the Court's orders. The Government's reporting that trucks drove exactly one third more miles in 2007[5] than published previously[6] in support of its claim that crash rates had improved is a statistical cry for help suggesting that someone in the Highway Administration was ordered to falsify data. The University of Michigan's allegation that the State of Maryland under-reported its truck crashes[7] after its former Motor Vehicle Administrator replaced Hill supports Hill's allegation that his successor, who also lacks professional qualifications, was "getting marching orders"[8] and that professional judgment was not exercised. On July 28th 2014, three days after Hill's successor announced her resignation, my employer, the nation's largest truckload carrier, removed me off my load on grounds I had eighteen speeding and hours of service violations none of which were reported to law enforcement. It would be naïve for the Judicial Council of the District of Columbia Circuit to expect that tentacles of corruption extending from my employer to a Chairman of the Senate Commerce Committee would not also touch this Court.

Conclusion

A special committee should be appointed to investigate whether other members of the court collaborated in the misconduct and whether the petitions for rehearing should be granted under Rule 11(d)(2).

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)_____

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[4] *USA v. STEVENS,* DDC #08-0231, 10/27/2008

[5] http://www-nrd.nhtsa.dot.gov/Pubs/811628.pdf

[6] http://www-nrd.nhtsa.dot.gov/Pubs/811158.pdf

[7] Paul E. Green, Daniel Blower, *Evaluation of the CSA 2010 Operational Model Test,* http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf p.36

[8] www.truckinginfo.com/news/news-print.asp?news_id=73560