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October 8, 2007

Justice Stephen G. Breyer
Supreme Court of the United States
Washington D.C. 20543

Dear Justice Breyer;

This letter and accompanying judicial misconduct complaints are being sent to you because you have oversight of the Tenth Circuit Court of Appeals. The actions of Judge Paul G. Cassell, District of Utah (who has recently resigned and we believe it was related to this complaint) and later a panel of the Tenth Circuit Court of Appeals, require that you exercise your supervisory authority and address this matter. We have contacted members of Congress, including all members of the Senate Judiciary Committee, numerous members of the House Judiciary Committee as well as others. The judges named in our complaints show a shocking disdain for the United States judicial system. This case demonstrates why many middle and working class Americans are so cynical about the courts in this country.

The actions of the judges involved are detailed in the complaints and the merits of the case are detailed in a petition for writ of certiorari submitted to the Supreme Court and denied this past May. The case number was 06-1050. We request that you review it.

As blue collar workers we filed this case naively believing that the Utah district court and/or the Tenth Circuit Court of Appeals would follow and uphold the law. We did not expect that the individual judges would be biased by their ideology, ambition to advance in the judiciary or their desire to cover-up the misconduct of their colleagues. This case and its aftermath has certainly disabused us of this view.

In retrospect, it was probably predictable that Judge Cassell, who was transparently lobbying for a higher judicial post and was known to be politically and ideologically close to Senator Orrin Hatch of Utah, would not cut off federal funding for a transportation project supported by Senator Hatch by ruling in favor of the plaintiffs in this case.

Of course, on appeal we did not expect to have a panel that included a circuit court judge, Judge Timothy Tymkovich, who is a fellow member of the Federalist Society with Judge Cassell (and had employed Judge Cassell's former court clerk, likely with that same clerk sitting for both the trial and appeal.) Nor did we expect a ninety year old, Senior Judge Robert McWilliams, who did not even seem to be engaged. We never expected District Court Judge Claire Eagan, who was invited to be on the panel, to yell at our attorney because he had documented the violations of our due process rights by Judge Cassell. (Along with Judge Cassell, Judge Eagan has been a frequent visiting judge at the Tenth Circuit.) We certainly did not expect Judge Tymkovich to ignore the

lower court record and create facts that directly contradicted the real facts so that he could sustain the legally flawed decision he was reviewing. We believed that a remand would occur since everyone agreed that the motion to amend was timely filed. Thus, the fact that Judge Cassell made no ruling on the motion to amend before he closed the case, as well as his failure to dismiss the state claim defendants, should certainly have led to a remand. Finally, when complaining about the behavior of these judges, we did not expect a star chamber where evidence, such as the tape of the hearing, was ignored and the same judges implicated in misconduct were on the judicial council that decided the propriety of the complaints.

The complaints against Judge Cassell and the panel were filed with the Tenth Circuit on July 18, 2007. Chief Judge Deanell Tacha was authorized to review them. On August 8, 2007, we filed an additional complaint against Chief Judge Tacha for her failure to supervise the judges involved in this case. That complaint was assigned to Tenth Circuit Judge Paul Kelly Jr. who dismissed it. We knew the complaint against Chief Judge Tacha would not stand up to the rules. It was filed merely as a tactic to find out whether she would act ethically and recuse herself from judging the first two complaints which she did not do. Chief Judge Tacha, knowing full well we had filed an additional complaint against her, then issued an order dismissing the complaints against Judge Cassell and the panel. The obvious conflict of interest apparently did not bother Chief Judge Tacha. We appealed the dismissal of the complaints against Judge Cassell and the panel. The Judicial Council, charged with reviewing the decisions by Chief Judge Tacha, was made up of nine judges, among them Chief Judge Tacha, Judge Tymkovich and Judge Eagan. So the Judicial Council was made up of three of the five judges we complained about. A call to the Tenth Circuit Executive's office revealed that while Judges Tymkovich and Eagan probably recused themselves, Chief Judge Tacha did not.

The corruption we encountered from judges within the Tenth Circuit seems to be institutionalized. Not one judge acted with integrity which suggests to us that this is not an isolated incident. Apparently, average Americans should expect no justice when challenging the powerful and politically well connected.

Justice Breyer, you have the responsibility to oversee the Tenth Circuit Court of Appeals. If you allow such behavior from the judges under your authority then there is effectively no functioning judiciary in this country anymore. To allow this behavior and then complain about low pay for the judiciary is an outrage to every law abiding American who believes in the judicial system. If the actions of these judges are typical, and we now believe they are, then we submit that their present pay is excessive.

The workers in this case merely wanted to assert their right to choose their own bargaining representative both to protect their own economic interest but, more importantly, to address serious safety concerns. Because UTA's light rail operations are not regulated by the Federal Railroad Administration and Utah has no enforcement agency with railroad expertise, there is no safety oversight. In return for the ability to represent the rail workers the existing union has ignored serious safety concerns. Since the existing union is principally a bus employees' organization and has no expertise in the area of railroad safety, dangerous conditions are allowed to persist and any attempt by individuals to challenge the situation is ignored by the union.

Justice Breyer, the issue of judicial pay has become a topic much discussed in the media. We intend to continue to make the argument that unless the judiciary starts to police itself and enact reforms to prevent working class people from being harmed as we have been then there should be no pay increase. Please respond to this letter.

Very sincerely,

SIGNATURE ON FILE

Lisa Burke

cc.

United States Supreme Court Chief Justice John Roberts
Senate Judiciary Committee
Selected members-House Judiciary Committee
Members of media to be determined
Tenth Circuit Chief Judge Deanell Tacha
Tenth Circuit Judge Timothy Tymkovich
Tenth Circuit Senior Judge Robert McWilliams
District Court Judge Claire Eagan
District Court Judge Paul Cassell
Representative Jim Matheson
Senator Robert Bennett