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The Hon. Lamar Smith, Chairman  
Judiciary Committee, U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

Chairman Smith:

I am an attorney admitted to practice in the U.S. District Court for the District of Columbia, and I wish to report gross misconduct by Judge Ellen S. Huvelle of that district. As set forth below, Judge Huvelle knowingly assigned herself to a case that implicated her in a crime, then refused to step aside when I objected to her conflict of interest. Shortly thereafter, she summarily dismissed the case with prejudice and sanctioned me more than \$123,802.17 in retaliation.

On November 22, 2010, I filed *Wade Robertson v. William C. Cartinhour, Jr., et al.* (Case No. 10-cv-8442) in the U.S. District Court for the Southern District of New York, and the case was assigned to Judge Laura Swain. The lawsuit alleged a racketeering enterprise that encompassed a fraudulent Serbian charity as well as various attorneys in suburban Washington, D.C.

Among other things, the lawsuit alleged that attorney Patrick Kearney and his associate, Michael Bramnick, had fabricated evidence, forged a signature, suborned perjury, and otherwise obstructed justice in a related lawsuit that had been pending in Washington before Judge Huvelle (although Judge Huvelle was not mentioned by name). These were more than mere allegations, as the *Robertson* complaint cited transcripts and documentary evidence from the D.C. litigation. (I can provide you copies of all relevant documents and transcripts, if you wish). In fact, Mr. Kearney's and Mr. Bramnick's own client implicated them in the fabrication of a document while testifying before Judge Huvelle in a March 26, 2010 hearing. Judge Huvelle was fully aware of the crimes committed in her court, yet she steadfastly refused to take action against the perpetrators, *i.e.*, Mr. Kearney and Mr. Bramnick. All of this was reflected in the *Robertson* complaint filed in New York.

On October 28, 2011, at the request of Mr. Kearney and his co-defendants, Judge Swain transferred *Robertson* to the District of Columbia, and Judge John Bates was assigned to the case. Mr. Kearney and his co-defendants immediately asked Judge Bates

to transfer the case to Judge Huvelle. As it happens, Judge Huvelle is the chair of the assignments committee for the D.C. District. According to the D.C. local rules, I had 14 days to respond to the motion to transfer on behalf of my client. However, before I had an opportunity to respond, Judge Huvelle used her position to assign the case to herself.

I immediately objected and asked Judge Huvelle to recuse herself, noting on the record that *Robertson* implicates Judge Huvelle in a crime, *i.e.*, misprision of a felony. At the very least, the lawsuit would necessarily delve into evidence that Judge Huvelle had systematically turned a blind eye to the crimes committed by officers of her court, *i.e.*, Mr. Kearney and Mr. Bramnick. It seems rather obvious that a federal judge has a serious conflict of interest when presiding over a case that implicates her in misconduct, much less a crime.

Undeterred, Judge Huvelle casually dismissed the entire lawsuit, even though three of the defendants had already defaulted and, obviously, did not dispute any of the allegations against them. Emboldened by this, Mr. Kearney and Mr. Bramnick purported to enter appearances as attorneys for one of their co-defendants, William Cartinhour, and they filed a motion for sanctions against me, purportedly on Mr. Cartinhour's behalf. Judge Huvelle granted the order on August 10, 2012.

Judge Huvelle's escalating misconduct has been brought before the Court of Appeals at least three times over the last three years, but thus far the Court of Appeals has taken no action against her. As far back as 2009, Judge Huvelle made it clear that she was going to railroad my client in the D.C. litigation. At the December 15, 2009 initial scheduling conference, with *nothing more than the pleadings in front of her*, Judge Huvelle suggested that my client was a "rat," stating as follows: "I mean, I have not sat on the bench for all these years and not got a sixth sense of a rat." She then declared – without having heard any evidence – that she was going to award the disputed funds to Mr. Cartinhour ("We're going back to go get it back to him"). She also froze everything that my client owned without notice or an opportunity to respond, and without any pretense of following the laws regarding injunctions or asset seizures. At the end of the hearing, she told my predecessor, "I hope your client knows that they have reported him to the Bar."

Again, all of this happened without the benefit of hearing evidence, much less any procedural due process protections. Not surprisingly, my client's trial was riddled with hostile and unlawful evidentiary rulings, jury instructions, etc. from Judge Huvelle, and he lost badly. On appeal, I argued that my client was denied a fair trial because Judge Huvelle prejudged the case, but the Court of Appeals did not address any of these issues.<sup>1</sup>

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<sup>1</sup> In Judge Huvelle's August 10, 2012 sanctions order, she cited the appellate court's denial of my prior requests for disqualification as proof that my recusal motion was frivolous. In other words, the appellate court's steadfast refusal to take action against Judge Huvelle has only emboldened her to act worse.

My client has long suspected some sort of inappropriate relationship between Mr. Kearney and Judge Huvelle, particularly in light of her extraordinary efforts to protect Mr. Kearney from the consequences of his perjury, fraud, etc. And I am beginning to wonder if my client is right. There is recent evidence that Mr. Kearney is representing Mr. Cartinhour without Mr. Cartinhour's knowledge or authorization. Specifically, there is evidence that Mr. Cartinhour did not authorize Mr. Kearney to retain the New York firm on his behalf and incur the \$123,802.17 legal bill.<sup>2</sup> Under the controlling law of the D.C. Circuit, I am entitled to conduct discovery to determine whether Mr. Cartinhour authorized the bill, yet Judge Huvelle has blocked all discovery.<sup>3</sup> Why? Mr. Cartinhour is the same man who implicated Mr. Kearney in forgery and discovery fraud, right in front of Judge Huvelle. He could easily spill the beans again, making Judge Huvelle look even worse.

Judge Huvelle's efforts to protect Mr. Kearney and his interests are bizarre, to say the very least. In the D.C. litigation, Judge Huvelle repeatedly coached Mr. Kearney on trial strategy, she repeatedly conducted her own extrajudicial fact-finding, and she initiated a number of strange *ex parte* communications. For example, my client is in possession of two voicemails wherein Judge Huvelle tried to communicate *ex parte* with a witness in New York. Her *ex parte* communications may (or may not) have been legally permissible, but they seem to suggest a very deep level of personal investment in the case.

I am also concerned about her communications with other judges regarding related cases. By her own admission, she has already contacted at least two other judges presiding over related cases, and it appears that she may have lobbied them on behalf of Mr. Kearney. In her August 10, 2012 order, for example, she quoted a statement from Chief Judge Royce Lamberth purporting that I and my client "filed a frivolous bankruptcy case in an attempt to stall litigation in this district in front of Judge Ellen Huvelle." This statement is utterly false, and its falsity can be determined as a matter of public record. That case was an *involuntary* bankruptcy filed by a creditor. In other words, neither I nor Mr. Robertson could have filed it to interfere with Judge Huvelle's

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<sup>2</sup> The bill came from a New York law firm, Ingram, Yuzek, Gainen, Carroll, & Bertolotti, LLP. That firm had repeatedly refused my request for proof of its authority to represent Mr. Cartinhour in New York, even refusing to produce a retainer agreement. After I obtained the billing records, it became clear that the firm was retained by Mr. Kearney, not by Mr. Cartinhour, even though Mr. Kearney was Mr. Cartinhour's co-defendant (and therefore had a conflict of interest). Moreover, the billing records indicate that Mr. Cartinhour has not paid his bill, most likely because he never agreed to be represented by the firm in the first place. Strangely, Mr. Kearney did not seek reimbursement for his own legal bills, but only Mr. Cartinhours. I suspect this is because Mr. Kearney's firm had to pay Mr. Cartinhour's bill, whereas his own bill was paid by his malpractice insurer.

<sup>3</sup> As noted above, Mr. Kearney and the New York firm will not even produce a copy of their retainer agreement with Mr. Cartinhour, and Judge Huvelle will not compel them to produce it, even though I have a legal right to see the agreement. I strongly suspect that there is no retainer agreement with Mr. Cartinhour.

case, *because neither one of us filed it*. I pointed this out to Judge Lamberth, but rather than correct his objectively false statement, he repeated it. A few days later, Judge Huvelle quoted that false statement in support of her sanctions order. I find it difficult to attribute that to coincidence.

Not surprisingly, Judge Huvelle went to considerable lengths to demonize me in her sanctions order.<sup>4</sup> She included other false information, *e.g.*, claiming that the New York judge “recognized” that I filed *Robertson* “for the improper purpose of forestalling litigation” in her court. In reality, the New York judge never said any such thing. Regardless, even if I am the terrible lawyer that Judge Huvelle says I am, that does not justify her misconduct. Even if everything in the *Robertson* complaint turned out to be false, no judge should ever preside over a case (much less *assign* herself to a case) that implicates her in misconduct. Accordingly, I ask that you investigate Judge Huvelle to determine whether she is fit to continue serving as a U.S. district judge.

Respectfully,



Ty Cleveland

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<sup>4</sup> With this letter, I have included an addendum that addresses one of the other sanctions orders cited by Judge Huvelle. There is compelling evidence of misconduct in that case as well.

## ADDENDUM

(Letter from Ty Clevenger to Chairman Lamar Smith)

Judge Huvelle referenced various other sanctions orders in her memorandum. I will not address all of them in detail right now, but *Erwin v. Russ* is worth further mention. *Erwin* was assigned to Judge Walter S. Smith, Jr. of the Western District of Waco, and it identified state district judge Robert M. Stem as a participant in a fraudulent real estate scheme being operated by some lawyers who regularly practiced before Judge Stem. After filing the case, Judge Stem's brother informed me that Judge Stem had, at least in years past, been a friend of Judge Smith (at the time, I was representing Judge Stem's own mother against him). I did not, however, believe that a personal friendship between the judges constituted sufficient grounds to seek Judge Smith's recusal. (The standards for recusing a federal judge are extremely difficult to meet, and a recusal motion almost inevitably infuriates the judge, who gets to decide for himself whether or not he has a conflict of interest).

I later served discovery requests on some of the lawyer defendants about their previously undisclosed attorney-client relationship with Judge Stem. The lawyer defendants refused to comply, so I filed a motion to compel the discovery responses. Shortly thereafter, Judge Smith suspended discovery, dismissed the lawsuit on the pleadings (even though he was aware that one of the defendants had already entered settlement negotiations<sup>5</sup>), and *sua sponte* sanctioned me and my clients \$25,000 without notice and without an opportunity to respond.

Meanwhile, a courthouse employee was so troubled by the way Judge Smith treated me, she confided that she had heard rumors that Judge Smith and Judge Stem hunted together. Thus far, I have not been able to corroborate that report. However, the same employee also told me that Chief Judge Edith Jones of the Fifth Circuit had previously interviewed courthouse employees about Judge Smith's alcohol-related misconduct. (Another judge subsequently confirmed to me that Judge Smith has had longstanding and severe alcohol problems). According to the courthouse employee, Judge Jones had secretly demanded that Judge Smith enter rehab, and he agreed, but the whole matter was kept quiet. I was also informed that Elisha Knight, a former deputy clerk many years ago, had once been groped in the courthouse by Judge Smith when he was drunk. One of the witnesses showed me a letter to Judge Smith that was purportedly written by Ms. Knight, but I was not allowed to make a copy of the letter. I have not yet reached Ms. Knight.<sup>6</sup>

In February of this year, I tried a jury case in front of Judge Smith, and my client and a witness informed me that Judge Smith dozed off during the trial. According to the witness, in years past she had observed Judge Smith drink during lunch and then doze off

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<sup>5</sup> After the federal case was dismissed, the settlement negotiations ended (obviously). I then filed an overlapping lawsuit in state court against the same defendant, and he quickly settled.

<sup>6</sup> In Judge Smith's most recent divorce, his ex-wife listed Ms. Knight as a witness. The parties settled shortly thereafter.

during a trial. I do not know for certain whether Judge Smith is drinking again, or whether his sanctions order was influenced by alcohol or a friendship with Judge Stem, but I do not believe I should have to wonder. Accordingly, I ask that you investigate Judge Smith to determine whether he is fit to serve as a judge.

I urge you to read “Secrecy may help protect misbehaving judges,” *Houston Chronicle*, Dec. 14, 2009 (<http://www.chron.com/news/houston-texas/article/Secrecy-may-help-protect-misbehaving-judges-1737681.php>) and “Secrecy of chief federal judges questioned,” *Houston Chronicle*, Dec. 30, 2009 (<http://www.chron.com/news/houston-texas/article/Secrecy-of-chief-federal-judges-questioned-1740181.php>). These articles raised grave doubts about the federal judiciary’s willingness to police itself, but to my knowledge the prior leadership of the Judiciary Committee never pursued the issue. Congress might consider, for example, creating an independent investigative agency akin to the Government Accountability Office or the Office of Congressional Ethics, and assign it the task of reviewing judicial misconduct complaints. I suspect the public would be shocked to know what some federal judges get away with, and I sincerely hope your staff will investigate the issue further.