

TEXAS CIVIL RIGHTS PROJECT

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James C. Harrington
Director

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COMPLAINT OF JUDICIAL MISCONDUCT

Pursuant to the Rules for Judicial-Conduct and Judicial-Disability, I, as complainant on behalf of the Texas Civil Rights Project, as its Director, file this complaint against U.S. District Judge Lynn Hughes, Houston Division.

This complaint relates to Judge Hughes' conduct, specifically, racially intolerant comments, in three separate cases, in none of which were we attorneys or parties.

In one case, his comments were made at a hearing this past November in an employment discrimination case where the plaintiff, who was born in India and is Hindu, is suing the Texas Department of Criminal Justice for employment discrimination based on race, national origin, and/or religion. *Jitendra Shah v. Texas Department of Criminal Justice*. 4:12-CV-02126 (S.D. Texas - Houston).

In an exchange with the State's attorney during a hearing on the record, Judge Hughes repeatedly made outlandish racial comments, at one point stating, "[employment] staffs of one color always work better." He even questioned the role of a diversity director, asking whether it was that person's job to "go around and paint[] students different colors so that they would think they were mixed?" (Please see below for excerpts of the court transcript in the recent *Shah* case.)

There is absolutely no room for that kind of discourse by a federal judge obliged to enforce the nation's anti-discrimination laws. Judge Hughes' comments show that his personal beliefs about race and religion warp his judicial decision-making. His beliefs and words are biased and inconsistent with the nation's legal commitment to non-discrimination in the workplace that he is sworn to uphold, but obviously cannot. Judge Hughes's stated beliefs are incompatible with his duty to be a neutral and objective judge; he should step down or be appropriately disciplined as vigorously as possible. He has brought disrepute upon the judiciary.

Judge Hughes' statements and actions in the *Shah* case are not anomalous, but, rather, consistent with a demonstrated pattern and practice of bias and prejudice against alleged victims of discrimination. He also has shown hostility to the Americans with Disabilities Act.

Just a few weeks ago, this Court chastised Judge Hughes for making inappropriate racially-insensitive remarks regarding the plaintiff in an employment discrimination case. *Autry v. Fort Bend I.S.D.* 2013 U.S. App.LEXIS 382 (5th Cir. Jan.7, 2013).

Before that, Judge Hughes made racially offensive remarks regarding two Vietnamese lawyers, suggesting that, based on their national origin, they should move to North Korea to practice labor law. *Kafi v. Bakers Footwear Group, Inc.*, 4:10-CV-02913 (S.D. Texas - Houston 2010). This is insulting, intolerable, and unworthy of a federal judge.

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) February 5, 2013

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MR. COOK [Counsel for The State of Texas]: And there was testimony that [Shah] certainly knew that reductions—significant financial changes were in the works, as every employee of the State of Texas knew at that time.

THE COURT: All except deputy directors for public relations, people like that who are essential to the operations. The diversity director at Purdue makes \$435,000 a year. Why don't they just hire people on ability and let diversity take care of itself? *And what does the diversity director do? Go around and painting students different colors so that they would think they were mixed?*

MR. COOK: Builds a record for the eventual lawsuit that will challenge the diversity on the one side and then on the other side.

THE COURT: You can't do that.

MR. COOK: It's an industry.

THE COURT: If you assiduously set about to be diverse instead of get the best people, aren't you violating the law?

MR. COOK: One could certainly argue that.

THE COURT: Anyway, would it be accurate to say from this chronology of his personnel file that he had bouts of being a difficult employee?

MR. COOK: He was never disciplined, I will say that. I don't think he was ever disciplined.

THE COURT: No. But *there's a level of obnoxiousness* like the law clerks that wouldn't make me fire them.

MR. COOK: I think based on his personnel file and certainly the testimony we heard, he was never satisfied with his salary. As an ongoing--

THE COURT: That puts him in common with every state employee.

MR. COOK: Well, that may very well be true.

THE COURT: Not true--I mean it's true that they're not happy, it's not true they're underpaid.¹⁴

¹⁴ Ex. 3, Transcript of Proceedings 7:4-8:12 (Nov. 26, 2012).

MR. COOK: Yes, that's right Your Honor. So, our position would be that really this is all about money. It's not at all about race, religion, national origin, or anything else. It's about the money. And in fact, he admitted that in his deposition but for--

THE COURT: Well, what race is he to the extent those are meaningful at all?

MR. STONE [Counsel for State of Texas]: He's -- he's Asian, I think he said.

THE COURT: That doesn't --

MR. COOK: I thought he said he was Hindu.

MR. STONE: No. Yeah. When we asked him what race he was, he said his race was Hindu.

MR. COOK: Right. And his religion was also Hindu. So --

THE COURT: All right. So, *he's Caucasian?*

MR. COOK: No. He's Indian.

THE COURT: *They're Caucasian.*

MR. COOK: Okay.

THE COURT: All right.

MR. COOK: Okay.

THE COURT: That's where we came from.

MR. COOK: All right.

THE COURT: That's why *Adolph Hitler used the swastika.*

MR. COOK: And your Honor, nobody says he's not a good person. C. F. Hazelwood will testify that he's a perfectly nice fellow. He didn't want to let him go, had to do it.

THE COURT: *The fact that he's the only Indian there is a fact in the department's favor. It would be real easy not to hire the first Indian.*

MR. COOK: It would be hard not to hire an Indian engineer, though.

THE COURT: *No.*

MR. COOK: A lot of engineers out there are Indian. And they actually offered a job to *one*¹⁶ recently who turned it down.

THE COURT: Oh. But that's when you're hiring on merit. But sometimes people decide — *Eleanor Roosevelt said staffs of one color always work better.* They don't put that on the postage stamp. But when you hire somebody who applies and there's nobody else like them, isn't that what you're supposed to do?

MR. COOK: Sure.

THE COURT: And then you kept him a long time.

MR. COOK: Kept him a long time.

THE COURT: All right. Well, I think it's time for you to move for summary judgment.¹⁷

* All excerpts were pulled from the website www.abovethelaw.com.