

By Hand Delivery  
October 18, 2006

Senator Richard J. Durbin  
332 Dirkson Senate Building  
Washington, D.C. 20510

Re: Medical Testing for U.S. Capitol Tunnel Shop Employees

Dear Senator Durbin:

As you will recall from your meeting with the Tunnel Shop employees on September 29, 2006, my law firm and the Government Accountability Project represent the U.S. Capitol Tunnel Shop workers in connection with their complaints about unsafe working conditions, and in their efforts to obtain medical treatment and fair compensation for the serious injuries they have suffered as a result of working under those conditions.<sup>1</sup> I am writing to follow up on our meeting with you, and specifically to request your assistance in ensuring that the workers receive the medical testing that we discussed in the meeting.

The Tunnel Shop employees very much appreciate the strong support that you have expressed for them and their families. They know that you stand resolutely behind them in their fight to correct the health and safety-related injustices that they have encountered while working as employees of the Architect of the Capitol ("the Architect") in the utility tunnels running beneath the U.S. Capitol. They also know that you strongly oppose the harassment and retaliation they have suffered on the job since making these conditions known to Congress and the public.

Over the past several months, it has become clear that the Architect has knowingly exposed the Tunnel Workers to unacceptably hazardous working conditions for years. The Architect has demonstrated deliberate indifference to the health and safety of its employees. The Tunnel Shop employees have faced life-threatening conditions every day on the job, including falling concrete, extreme temperatures, and sustained exposure to deadly agents such as asbestos, which permeates the atmosphere in the tunnels, and arsenic, which is contained in the welding fumes that the workers breathe in the absence of proper ventilation. As you and Senator Wayne Allard pointed out during a hearing on these issues before the Senate Appropriations Committee

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<sup>1</sup>The Tunnel Shop employees are John Thayer (Supervisor), Tom Baker, Frank Binns, Martin Blanchet, Edward Hill, Rick Leonard, Charles Morris, Christian Raley, Scott Smith and Tim Taylor.

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in March 2006, the Architect should have addressed these hazards long ago.

The Architect's inaction is especially outrageous in light of the fact that the Architect refused to act even in the face of repeated complaints by the workers and the clear findings contained the Architect's own surveys. Even worse, the Architect completely neglected its responsibility for monitoring the workers' exposure to known hazards, and instead knowingly sent them for routine yearly physicals to an occupational health clinic that did not perform adequate tests for the specific exposures they faced in the tunnels.

This repeated and deliberate indifference to the health and safety of the Tunnel Shop employees led the Office of Compliance to issue its first-ever citations against an agency under its jurisdiction for violations of the Occupational Safety and Health Act, as applied by the Congressional Accountability Act. The Office of Compliance has issued three citations against the Architect – one in December 2000 and two in January 2006 – for numerous serious violations of these laws. In addition, in February 2006 the Office of Compliance initiated an enforcement action against the Architect for its failure to correct the violations that were cited in 2000. This enforcement action prompted the Tunnel Shop employees to write their letter to you and other legislators in March 2006, and to step up their fight for safe working conditions and proper medical diagnosis and treatment.<sup>2</sup>

Based on their own research into the availability of appropriate testing, the Tunnel Shop employees asked the Architect to pay for medical examinations by Dr. Michael Harbut, Chief of the Center for Occupational and Environmental Medicine in Detroit and one of the nation's foremost experts in the diagnosis and treatment of asbestosis, mesothelioma and other asbestos-induced diseases. When the Architect refused, three of the workers drove to Detroit on their own time and visited Dr. Harbut at their own expense. The sophisticated tests he conducted, albeit limited by the fact that the workers had to visit on a weekend and thus did not receive the full range of testing services available during the week at the Karmanos Cancer Institute, revealed

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<sup>2</sup>As we explained to you in our meeting of September 29, 2006, the Architect of the Capitol has retaliated unlawfully against the Tunnel Shop workers for communicating their concerns to Congress, and for otherwise speaking out about the unsafe conditions in their workplace. Since the workers began raising their concerns in March 2006, Architect of the Capitol management have repeatedly harassed them, falsely accused them of insubordination and other rules infractions, and threatened to fire them without justification. Earlier today, the ten workers filed a complaint against the Architect with the Office of Compliance. In that complaint, a copy of which is enclosed with this letter, the Tunnel Shop workers detail the Architect's retaliatory actions against them, which constitute clear violations of the employee-protection provisions of Section 207 of the Congressional Accountability Act.

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symptoms consistent with asbestos disease.

It is against this background that I am writing to request that you take whatever action is needed to ensure that the Architect of the Capitol, or Congress itself, make the funds available to send all ten of the Tunnel Shop employees to see Dr. Harbut for testing for the hazardous toxins and materials to which they are exposed in the tunnels. Dr. Harbut has informed us that he can determine the appropriate battery of tests for each worker only after conducting an individualized examination of each worker and his background. However, based on his understanding that all of the workers are symptomatic and have had prolonged and intense exposure to multiple pathogens, he has indicated that each of them would likely require at least the following procedures:

Office Visit	\$275.00
Full Pulmonary Function Testing	1,092.00
High-Resolution CT Scan of Thorax, with and without contrast	2,396.00
EKG	60.00
Comprehensive Metabolic Profile	101.09
CBC with Differential and Platelet	20.85
Urinalysis	20.26
Random Ur Arsenic, Inorganic and Organic	117.00
Nickel, serum	38.28
TOTAL	\$4,120.48

Given that the testing would take place in Detroit, the workers also request that the Architect grant them two days paid leave and also pay for the reasonable travel expenses associated with their trips to Dr. Harbut's facility.

When we met with you on September 29, you suggested that we consider obtaining these or similar medical tests at a facility nearer to Washington, D.C., both for the workers' own convenience and in order to spare unnecessary expense. The Tunnel Shop employees agree that these are valid considerations, but they have concluded that Dr. Harbut's facility is the closest one that offers the services they need at this time. They are not opposed to seeking follow-up treatment closer to home, but believe that Dr. Harbut offers the best solution for their current

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diagnostic needs. This conclusion flows from several considerations:

- Several teaching hospitals meet the minimum standards for the diagnosis and treatment of asbestos-related occupational disease, but only a handful of clinical specialists have the expertise needed to ensure a thorough and accurate diagnosis for individuals who, like all of the Tunnel Shop employees, are symptomatic for the relevant diseases. Only one such physician practices in this region – Dr. Tee Guidotti – but he is currently on sabbatical from George Washington University. Johns Hopkins had a qualified physician, but that doctor recently passed away.
- Dr. Harbut is unquestionably among the leading experts in this area. A past chair of the occupational and environmental health section of the American College of Chest Physicians and the leader of the American Thoracic Society when it developed its guidelines for the diagnosis and treatment of asbestos disease, Dr. Harbut teaches at the Wayne State University medical school, serves on the board of directors of the Mesothelioma Applied Research Foundation, and treats over 2,000 asbestos disease patients yearly. Dr. Harbut was also a principal researcher on the team that developed osteopontin, a breakthrough in the diagnosis of mesothelioma.
- As you pointed out when we met with you on September 29, it is important that the Tunnel Shop employees receive testing by a physician whom they trust. This is especially important, and their request to see Dr. Harbut is especially reasonable, in light of the fact that the Architect of the Capitol has denied them proper testing and monitoring for years, and has done everything it could to suppress information regarding the asbestos and other hazards that have likely caused the Tunnel Shop workers severe and irreparable injuries.

Simply put, the Tunnel Shop workers deserve the medical care available, and Dr. Harbut has the expertise and facilities to properly diagnose their injuries.

Finally, as you will recall, we suggested and you agreed during our meeting of September 29 that the families of the workers might also need testing because they have been exposed to asbestos through daily contact with the workers and their work clothes. We have not yet determined which of the workers' wives and children might be appropriate candidates for such testing, or, alternatively, for medical monitoring. We will continue to explore this issue, and will inform you of our conclusions at the earliest possible time.

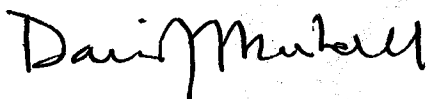
Because the Tunnel Shop workers need to obtain the testing described above without

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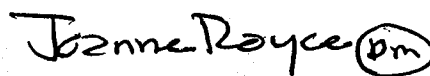
Because the Tunnel Shop workers need to obtain the testing described above without further delay, they will need to begin scheduling appointments with Dr. Harbut within the next two weeks. They intend to schedule appointments with Dr. Harbut even if they have to proceed at their own expense, despite the fact that doing so would impose a significant financial hardship on them and their families. For this reason, they would greatly appreciate your response to this letter within the next five days.

Thank you again for your continued and outspoken support.

Sincerely,



David J. Marshall  
Katz, Marshall & Banks, LLP



Joanne Royce  
Government Accountability Project

Attorneys for the Tunnel Shop employees

Enclosure

cc: John Thayer  
Tom Baker  
Frank Binns  
Martin Blanchet  
Edward Hill  
Rick Leonard  
Charles Morris  
Christian Raley  
Scott Smith  
Tim Taylor