

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY E-MAIL: slubet@law.northwestern.edu
BY FAX: 312-503-5950 (2 pages)

February 25, 2004

Professor Steven Lubet
Northwestern University School of Law
Chicago, Illinois

RE: The EVIDENTIARY BASIS for assessing the U.S. Supreme Court's practices, policies, and procedures with respect to recusal

Dear Professor Lubet:

This follows up the second phone message I left on your voice mail yesterday (312-503-3100). The first was on Friday, February 6th – the same day you were cited in a New York Times article by Michael Janofsky, "Scalia's Trip With Cheney Raises Questions of Impartiality", in a paragraph about the Supreme Court that began, "Recusals are not uncommon".

According to Mr. Janofsky, you told him that in addition to "14 cases...decided over the last four full terms by fewer than the full complement of nine justices", which is how he described it in his article, you also stated that there were about 300 instances where justices had recused themselves from petitions for writs of certiorari.

How did you arrive at this figure? If it was from the summary orders by which the Court disposes of cert petitions, do these summary orders actually use the word "recuse" or "disqualify" or do they resort to some euphemism, as, for instance, that a particular justice "took no part", from which you have inferred recusal? How much do you actually know about these 300 instances? How many involve a justice's sua sponte action, as opposed to his granting of a party's recusal application? And as to these successful recusal applications, have you been able to access them from the Court so as to examine their content?

Of course, equally significant – if not more so – are instances where justices have NOT recused themselves, particularly in face of a party's recusal application. What research have you done to examine such instances?

February 25, 2004


Until my February 6th phone message, were you aware that the justices do NOT act upon all recusal applications they receive? And were you aware that the Court has a policy of NOT docketing recusal applications unless they are acted upon by the justices, thereby creating a FALSE RECORD to conceal the very existence of these unadjudicated applications? This is particularized by the primary source materials posted on CJA's website, www.judgewatch.org, brought to your attention in my February 6th message. Such message identified the specific primary source documents, accessible under the sidebar heading, "Test Cases-Federal (Mangano)", culminating in CJA's November 6, 1998 impeachment complaint against the justices, filed with the House Judiciary Committee.

In my yesterday's phone message, I updated you as to CJA's February 12, 2004 letter to Chief Justice Rehnquist, conveniently posted on our homepage. Such letter highlights the evidentiary significance of our November 6, 1998 impeachment complaint in exposing the false, misleading, and unsupported nature of the Chief Justice's January 26, 2004 identical letters to Senators Leahy and Lieberman about the Court's practices, policies, and procedures concerning recusals.

Your public comment to The New York Times and other media¹ about recusals at the Court and the reasonable questions raised as to the propriety of Justice Scalia's hunting trip with Vice President Cheney -- as well as your own widely published column(s) with respect thereto² -- are based on your preeminence as a judicial ethics scholar. As a scholar -- whose duty is the "follow the evidence wherever it leads" -- I trust you will embrace the opportunity to review and publicly comment upon the November 6, 1998 impeachment complaint underlying CJA's February 12, 2004 letter to the Chief Justice -- and upon the letter itself.

I look forward to your return call -- and to fruitful collaboration based on our shared concern for safeguarding the public interest in judicial impartiality and integrity.

Yours for a quality judiciary,


ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

cc: Michael Janofsky, New York Times; David Savage, Los Angeles Times;
Gina Holland, Associated Press; Charles Lane, Washington Post

¹ *Inter alia*, "Trip With Cheney Puts Ethics Spotlight on Scalia", Los Angeles Times (David Savage), 1/17/04; "Chief Justice balks at ethical questions on Scalia", AP (Gina Holland), 1/26/04; "Scalia Travel Sparks New Questions About Recusals" Washington Post (Charles Lane), 2/9/04.

² *Inter alia*, "Hunting Buddies: This Supreme Court justice showed poor judgment", Dallas News, 1/28/04; "Friend on the Court", Baltimore Sun, 2/8/04.

Subject: Recusals at the U.S. Supreme Court


Date: 2/25/2004, 12:06 PM

From: Elena Ruth Sassower <judgewatchers@aol.com>

To: slubet@law.northwestern.edu

Organization: Center for Judicial Accountability, Inc.

Dear Professor Lubet,

Attached is my already faxed letter to you.  [2-25-04-lubet.doc \(41KB\)](#)

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)
Tel: (914) 421-1200

TRANSMISSION VERIFICATION REPORT

TIME : 02/25/2004 12:04
NAME : CJA
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FAX COVER SHEET

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DATE: 2/25/04 TIME: 1⁴⁶ PM (NYT) FAX #: 312-503-5950

TO: Professor Steven Lubet
Northwestern University School of Law

RE: CJA's previously-faxed ltr to you of
today's date.

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: Superseding letter to you
correcting typographic, non-substantive
errors.

Apologies for any inconvenience.

Also enclosed CJA's 2/12/04 letter
to Chief Justice Rehnquist.

ACCOUNTABILITY, INC.

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letter to you
re: public, non-substantive
increased
A's 2/12/04 letter
to Chief Justice Rehnquist

TRANSMISSION VERIFICATION REPORT

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