

Elena Ruth Sassower

From: Elena Ruth Sassower [elena@judgewatch.org]
Sent: Thursday, November 15, 2007 10:46 AM
To: 'Dahlia.Lithwick@slate.com'; 'tmauro@alm.com'
Cc: 'tschoenberg@alm.com'
Subject: UPDATE: Laying Bare the "Internal Operations and Culture" of the Supreme Court & Its Clerk's Office -- & Its Legal Office
Attachments: draft-11-16-07-press-release.doc

Dear Dahlia & Tony,

Please let me hear from you as soon as possible. There have been IMPORTANT DEVELOPMENTS IN THIS STORY. On Tuesday, a couple of hours after sending you my below e-mail, I received a letter from Counsel Scott S. Harris of the Supreme Court's Legal Office. This has now generated a further complaint to the Chief Justice, express-mailed to him yesterday.

Attached is a draft of the press release I will begin circulating tomorrow. PLEASE ADVISE AS TO YOUR INTEREST – and, if you are not interested, the reasons.

As you know, I have patiently tried to give you the lead on this important story. However, if you will not investigate and report on it yourselves, I would appreciate your advice as to which Supreme Court beat reporters would. I obtained from the Supreme Court's Public Information Office a list of 26 reporters with "Permanent press passes for the October 2007 term" – but it contains no e-mail addresses and/or phone numbers for them. The Public Information Office would not supply that to me. I would, therefore, appreciate the benefit of the e-mail addresses and phone numbers for your colleagues that you assuredly have.

It is my hope to reach as many of your colleagues as possible on the Supreme Court beat so that we can empirically test David Margolick's assertions about Supreme Court reporters – about which Dahlia and Emily Bazelon wrote in their "*Nine Ways to Read the Nine*", posted on Slate's website on September 21st. But, will you then report it?

Awaiting your response,

Elena
 914-421-1200
 elena@judgewatch.org

From: Elena Ruth Sassower [mailto:elena@judgewatch.org]
Sent: Tuesday, November 13, 2007 10:58 AM
To: 'Dahlia.Lithwick@slate.com'; 'tmauro@alm.com'
Cc: 'tschoenberg@alm.com'
Subject: Laying Bare the "Internal Operations and Culture" of the Supreme Court & Its Clerk's Office

Dear Dahlia & Tony,

This belatedly follows up my October 12th e-mail to both of you, which stated:

"Are you familiar with Chief Justice Robert's extraordinary April 26, 2007 opinion – as Circuit Justice – in the *Boumediene* case, 127 S.Ct. 1725? I've made an October 9th motion to the Chief Justice requesting that he clarify it – and challenging the (invidious) use to which it is being put, in my 'disruption of

11/15/2007

Congress' case, by the Clerk's Office.

The motion additionally seeks recall/vacatur of the Court's October 1, 2007 order denying my petition for a writ of certiorari, based on the misconduct of the Clerk's Office in connection with my prior motion to compel the Solicitor General's response to the cert petition.

Please read this latest motion – whose footnote 5 cites your coverage of the Chief Justice's September 19th speech in Syracuse on judicial independence and the First Amendment. It is posted on CJA's website, www.judgewatch.org, most conveniently accessible via the top panel 'Latest News'.

I'll be in touch next week.

Thanks”

In the month since that e-mail, my EXPLOSIVE October 9th motion has fallen into “a black hole” at the Supreme Court Clerk's Office. It has NOT been docketed, NOT been returned, and my repeated attempts to ascertain its status have been unsuccessful. This situation is recounted in my October 26th Petition for Rehearing, as well as in a simultaneously-made & incorporated misconduct complaint against Clerk William Suter and his staff, sent to Chief Justice Roberts in his administrative capacity.

Please read the Petition for Rehearing – which additionally recites and rests on Chief Justice Robert's September 19th Syracuse speech. It is calendared for the Court's November 20th conference and is posted on CJA's website, accessible with all the substantiating appendix documents via the sidebar panel “Disruption of Congress-The Appeals”.

What more do I need to provide you so that you can investigate and report on the lawlessness that my Rehearing Petition and misconduct complaint chronicle at the Supreme Court Clerk's Office? Dahlia, you acknowledged when we spoke on September 21st, that you have never done any stories on the Supreme Court Clerk's Office. Tony, have you done any? How about the other reporters covering the Supreme Court?

Please call me at your earliest convenience so that we can discuss your coverage of this extraordinary story – one laying bare an important aspect of the Court's “internal operations and culture”. Indeed, this story reveals David Margolick's misconception in his September 23rd New York Times book review that it is “nearly impossible” for reporters to obtain information about the Court's “internal operations and culture”, except “years after the fact” when the Justices make it “available to the public”, as by their “posthumous papers”. Here, the information is “available” to you in “real time” – thereby presenting a test of David's more formidable charge, summarized and quoted in “*Nine Ways to Read the Nine*” by Dahlia and Emily Bazelon, posted on Slate's website on September 21st, just hours after my phone conversation with Dahlia about my September 17th motion to compel the Solicitor General's response to my cert petition:

“Margolick more or less goes after all the beat reporters as slothful and compromised: Covering the justices critically ‘is dangerous: you risk losing whatever tiny chance you have that one of them will talk to you in a pinch or throw you an occasional crumb. So almost no one even tries. *No other reporters are as passive as Supreme Court reporters.*’ The italics here are ours, because, ouch.”

Before I furnish this story to other Supreme Court beat reporters – and because the two of you (alone among Supreme Court reporters) were at Justice Robert's September 19th Syracuse University speech and were participants, the day before, in the Syracuse University symposium “*Supreme Makeover: How the news media and the Supreme Court justices they cover are inventing a new model of judicial openness*” – I would appreciate your response as to whether you will be writing about this documented, readily-verifiable story of the Court's “internal operations and culture” and, if not, the reasons.

Thank you.

11/15/2007

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

CENTER for JUDICIAL ACCOUNTABILITY, INC. *

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: cja@judgewatch.org
Web site: www.judgewatch.org

Contact: Elena Ruth Sassower, Director

P R E S S R E L E A S E: November 16, 2007

How Does the U.S. Supreme Court Handle Misconduct Complaints against its Staff?

Two complaints now before Chief Justice John Roberts provide a rare window into the Supreme Court's internal operations, showcasing the lawlessness, lack of professionalism, and invidiousness of the Court's Clerk's Office, covered-up by the Court's Legal Office.

The first complaint, against Clerk William K. Suter and his staff, details their "protectionism" of the Government in withholding from the Chief Justice, as Circuit Justice for the District of Columbia, well as from the Court, a motion to reject the U.S. Solicitor General's waiver of the Government's response to a petition for a writ of certiorari in a politically-explosive "disruption of Congress" case, where the "rule of law" was completely trashed (#07-228). Such was done by Mr. Suter and his staff without citing any legal authority, which they refused to provide. Likewise without legal authority, they also withheld a second motion, one seeking recall/vacatur of the Court's denial of the cert petition, based on the misconduct of Mr. Suter and his staff, and also seeking the Chief Justice's clarification of his decision, as D.C. Circuit Justice, in *Boumediene v. George W. Bush*, 127 S.Ct. 1725 (2007), being misused by the Clerk's Office.

This first complaint, which the petitioner in the "disruption of Congress" case sent to the Chief Justice, was responded to by the Court's Legal Office in a three-sentence letter. Without addressing any of the facts, law, or legal argument presented by the complaint, Counsel Scott S. Harris, baldly purported that the actions of the Clerk's Office were "consistent with Court rules and policies" and that there would be "No response...to further correspondence on these issues."

This had led to the second complaint to the Chief Justice – against Mr. Harris for his flagrant cover-up. Noting that counsel's three-sentence letter did not indicate that a copy was being furnished to the Chief Justice, it asks the Chief Justice whether he endorses and approves of Mr. Harris' handling of the complaint against Mr. Suter and his staff and, if not, what steps he is going to take. It also requests that the Chief Justice distribute the the eight enclosed copies of the complaint to the Associate Justices, not only because they "share responsibility for the proper functioning of the Court's Clerk's Office and Legal Office", but because it is germane to their consideration of the petition for rehearing in the "disruption of Congress" case, calendared for the Court's November 20, 2007 conference. The first ground for rehearing is the Clerk's Office's misconduct, therein summarized.

This story is easy to verify – and explosive. The two complaints to the Chief Justice, dated October 26, 2007 and November 14, 2007, and underlying Supreme Court submissions are all posted on CJA's website, www.judgewatch.org, via the sidebar panel "'Disruption of Congress' – The Appeals". Indeed, the website posts the full record of the "disruption of Congress" case – one whose August 17, 2007 cert petition and October 26, 2007 rehearing petition invoke the Court's mandatory supervisory jurisdiction because of the corruption issues presented, encompassing two levels of the District of Columbia judiciary – its Court of Appeals and trial-level Superior Court, as well as the U.S. Attorney's Office for the District of Columbia.

* The **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.