

Elena Ruth Sassower

From: Elena Ruth Sassower [elena@judgewatch.org]
Sent: Wednesday, November 21, 2007 9:37 AM
To: 'cohen@cbsnews.com'
Cc: 'mjobbie@syr.edu'; 'kjbybee@maxwell.syr.edu'; 'Dahlia Lithwick'; 'tmauro@alm.com'; 'bwittes@brookings.edu'
Subject: Defending Your Column "Hey Justices: Stop Talking, Start Working" vs Mark Obbie's Lawbeat Blog
Attachments: 9-21-07-lawbeat-&-cohen-column.pdf; 11-19-07-press-release.pdf

THE FOLLOWING CORRECTS TYPOS & MAKES CLARIFYING CHANGES TO THE E-MAIL SENT TO ANDREW COHEN YESTERDAY, NOVEMBER 20, 2007 AT 5:37 PM. This includes correcting the omission of the letter j from the e-mail address of its only indicated recipient, Professor Obbie, & now including, as recipients of this e-mail, Keith Bybee, Director of Syracuse University's Institute for the Study of the Judiciary, Politics and the Media, and the panel participants of its September 18, 2007 discussion "*Supreme Makeover: How the news media and the Supreme Court justices they cover are inventing a new model of judicial openness*" – "Slate.com Supreme Court correspondent Dahlia Lithwick; veteran Supreme Court reporter Tony Mauro and Benjamin Wittes of the Brookings Institution and *The Atlantic Monthly*".

For the convenience of all, I have also attached your Bench Conference Column and Professor Obbie's blog entry about it, "*Praying for Supreme silence?*"

* * *

Dear Mr. Cohen.

My contact with you is prompted by the sharp criticism of your Washingtonpost.com Bench Conference column "*Hey, Justices: Stop Talking, Start Working*", on September 21, 2007 by Mark Obbie's Lawbeat blog.

In pertinent part, former journalist-turned professor Obbie, who directs Syracuse University's Carnegie Legal Reporting Program, of which the blog is part, stated:

"If you ask me, Cohen is all wet (and no kidding). Where's the proof that the justices are denying review to critical, unresolved issues that come before them? More careful analysts with, like, some facts at their disposal, have argued that worthy cases go untouched. Cohen doesn't even cite them, much less try to prove it himself. Where's the proof that the justices' limited time at public events or in interviews makes one little bitty dent in their weekly or monthly schedules? It's a rather big stretch to connect the two issues. But so stretching, Cohen merely proves he was hard up for a column today. So why take it seriously? Because it's difficult enough getting the justices to peek out of their cave, just a little, to make themselves at least a little less opaque, a little more accountable to the public. Why bash them for that?"

The attached press release describes a far-reaching "disruption of Congress" case, whose petition for rehearing (#07-228) was on today's conference calendar. Examination of the referred-to rehearing petition will provide you with powerful proof to refute Professor Obbie and expose that the Justices' purported "openness", manifested by their speeches and interviews, which Professor Obbie lauds, is sheer hypocrisy, as compared to the Justices' actions and inactions which, as Professor Obbie well knows, the press will not report where doing so would expose the Justices' utter lack of accountability, not only to the public, but to the rule of law.

I will happily review with you – and Professor Obbie – the pertinent documentary substantiation pertaining to the rehearing petition and the performance of the press. You can then either report it yourself, in discharge of your obligations as a journalist – or watch whether Professor Obbie will.

Finally, below is the e-mail I sent to CBS Radio earlier today to be forwarded to you, because, unlike Washingtonpost.com, CBS Radio would not furnish me with your direct e-mail address.

11/21/2007

Thank you.

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

From: Elena Ruth Sassower [mailto:elena@judgewatch.org]
Sent: Tuesday, November 20, 2007 12:57 PM
To: 'cbsnewsradio@gmail.com'
Subject: Press Release: Bringing Accountability to the U.S. Supreme Court

ATT: Lauren Seifert, Desk Assistant -- CBS News Radio
As discussed, kindly forward to ANDREW COHEN --

How does the U.S. Supreme Court handle misconduct complaints against its staff? Attached is a press release summarizing two such misconduct complaints presently before Chief Justice Roberts – also encompassed by a petition for rehearing in case #07-228, calendared for today's Court conference.

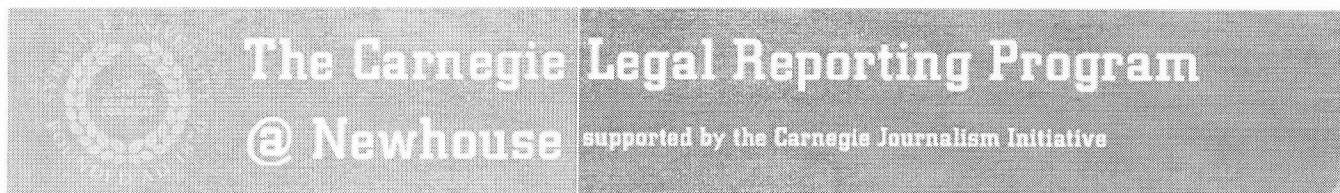
The press release, misconduct complaints, and rehearing petition are all posted on the website of the Center for Judicial Accountability, Inc., www.judgewatch.org, most conveniently accessible *via* the top panel "Latest News".

Feel free to contact me about this readily-verifiable and explosive story about the Supreme Court's internal operations.

Thank you.

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

11/21/2007



Creators vs. Consumers: The Rhetoric, Reality and Reformation of Intellectual Property Law and Policy

October 26, 2007, 9 a.m. to 4:30 p.m.
Maxwell Public Events Room, Maxwell School, Syracuse University

Leading scholars wrestle with digital-age dilemmas with panels from the bench, bar, industry, advocacy groups and the news media.

Freedom Sings!

November 14, 2007, 7:30 p.m.
Goldstein Auditorium, Schine Student Center, Syracuse University

The story of three centuries of banned, censored and inspiring music in the U.S.

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Sat, October 27, 2007

An author's ultimate reward

Widespread coverage of the Army's decision to exonerate soldiers convicted in a World War II court martial provides long-awaited satisfaction for the men -- only two of the 28 convicted are still alive -- and their families. But it also is a rich reward for the journalist whose investigation revived interest in the case and cast new doubt on its validity....

Posted at: 07:03:10AM

Thu, October 25, 2007

Untangling the web

The New York Times

I love how **Barry Meier tells this story** of a whistleblower whose fraud accusations against his employer have now been turned against him. The story has just...

Posted at: 06:05:43AM

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Original Post:

Praying for Supreme silence?

Washington Post Bench Conference

Fri, September 21, 2007

To Andrew Cohen, the increasing public profile of Supreme Court justices -- a notable shift, which we discussed at **this week's panel discussion here** -- is worthy of scorn rather than praise. They're "preening" for the camera and hustling for book royalties, when they should be taking far more cases than they have on their well-documented shrinking docket. Cohen writes:

before I'm comfortable allowing the justices to go around on the speaking circuit, I'd like them to do their job, which is to select and then decide the cases handed to them through the system. They are supposed to clarify ambiguous legal doctrines, offer certainty to businesses and individuals alike, and, most importantly, act as a check upon the excesses of the other two branches. And, on this score, their most fundamental task, the justices aren't up to snuff. They are all hooky and no school, all go and no show, too much sizzle and not enough steak.

If you ask me, Cohen is all wet (and no kidding). Where's the proof that the justices are denying review to critical, unresolved issues that come before them? More careful analysts with, like, some facts at their disposal, have argued that worthy cases go untouched. Cohen doesn't even cite them, much less try to prove it himself. Where's the proof that the justices' limited time at public events or in interviews makes one little bitty dent in their weekly or monthly schedules? It's a rather big stretch to connect the two issues. But so stretching, Cohen merely proves he was hard up for a column today. So why take it seriously? Because it's difficult enough getting the justices to peek out of their cave, just a little, to make themselves at least a little less opaque, a little more accountable to the public. Why bash them for that?

Posted at 02:01 PM

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Bench Conference

By Andrew Cohen

Hey, Justices: Stop Talking, Start Working

Justice Clarence Thomas is in a full (and heretofore unheard of) publicity mode. The quietest member of the Supreme Court is scheduled to appear on 60 Minutes on Sunday, Sept. 30, to plug his new book and has also agreed to sit for an interview or two with legal reporters.

Meanwhile, Justice John Paul Stevens is the subject of a cover story in this Sunday's New York Times magazine. And Chief Justice John G. Roberts Jr. made appearances at the University of Montana and Syracuse University this month, praising "independent" judges.

At this rate, we'll be seeing Justice Antonin Scalia doing David Letterman's Top Ten, Justice Ruth Bader Ginsburg critiquing the red carpet with Joan Rivers and Justice Anthony Kennedy appearing on "America's Got Talent."

Our justices are loose upon popular culture -- and I'm not crazy about it.

Look, I'll admit that I find it intriguing that Justice Stevens "telecommutes" from his home in Florida, as Jeffrey Rosen notes in the Times magazine piece. And I concede that the many intellectual and historical contradictions of Justice Thomas make for fascinating reading on a cold winter night. And I hope that the chief justice remembers his spiel about judicial independence when he has to decide (in the next few months) whether and to what extent the court should halt the expansive march of presidential power of the Bush era.

But, before I'm comfortable allowing the justices to go around on the speaking circuit, I'd like them to do their job, which is to select and then decide the cases handed to them through the system. They are supposed to clarify ambiguous legal doctrines, offer certainty to businesses and individuals alike, and, most importantly, act as a check upon the excesses of the other two branches. And, on this score, their most fundamental task, the justices aren't up to snuff. They are all hooky and no school, all go and no show, too much sizzle and not enough steak.


Despite promises to the contrary by Chief Justice Roberts during his confirmation hearing, the court is hearing fewer and fewer cases. As the Times' Supreme Court reporter Linda Greenhouse noted last December: "The court has taken about 40 percent fewer cases so far this term than last. It now faces noticeable gaps in its calendar for late winter and early spring. The December shortfall is the result of a pipeline empty of cases granted last term and carried over to this one. The number of cases the court decided with signed opinions last term, 69, was the lowest since 1953 and fewer than half the number the court was deciding as recently as the mid-1980s."

This term isn't starting out much better. There are only 25 or so cases on the docket so far-- and only five cases scheduled for oral argument

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in November. The justices on Monday hold what court insiders call the "long conference", during which they will consider an additional 26 cases for review in the upcoming term. They can also add cases to the docket throughout the term.

But unless the dynamic drastically changes within that conference room, the Supreme Court again will be less involved in refereeing disputes that touch upon the lives of virtually every citizen. This is really a shame. And it certainly makes it harder for me to look at these preening justices with much more than old-fashioned disdain. They already have the cushiest jobs in government; they should at least have the good sense to hear at least 100 cases each term-- before they are allowed go out on their book tours.

By Andrew Cohen | September 21, 2007; 8:25 AM ET
Previous: [Congress Again Takes the Low Road](#) | Next: [Jump-Swinging from Nooses in Jena](#)

Comments

Please [email us](#) to report offensive comments.

Criticize the Supreme Court for not assuming responsibility for the multitude of issues dodged by spineless politicians in Congress? For many years the pols have hidden behind the judicial skirts so the Court has become ever increasingly politicized as a result. The more issues that are kicked back to the legislative process the better. Many commenters to this blog have lamented the unresponsiveness of both political parties to the popular will. The Court is even more remote and unresponsive by design. Elections and legislation are the proper way to make laws. The court is meant to ensure the constitutionality of the process, not rule for the people.

Posted by: [okbyme](#) | September 21, 2007 11:19 AM

Stop Talking, Start Working - Is it October yet?

Actually, I agree. It's easy to wonder "Why do we pay thses people?" when you look at what's been happening with the Dwindling Docket.

They are there for "refereeing disputes that touch upon the lives of virtually every citizen." Yet we facilitate them living the lives of the Privileged, and they socialize among those that will just reinforce their basic political leanings.

I don't agree with Judge Thomas very often, but I have to give him credit for being out among the people, spending more time in his community in the suburbs tele-commuting, than those that have their chauffeured rides from home to the Court.

I'm glad to see that Judge Stevens is doing some of that also.

Posted by: [DC](#) | September 21, 2007 12:02 PM

Andrew, always good stuff. And interesting statistics. I've also noticed that although your column is called "Bench Conference" you have few columns about the Supreme Court. I guess they aren't giving you much material due to their lack of working.

BTW what are you thoughts about the Jena 6 situation? Why is the DA so intent on charging the black students with murder charges when he tossed out the cases for white kids that made a similar assault on a black student around the same time? Is there any course of redress that the black families can take against the seemingly unjust legal system that will cost their family tons of money in legal fees, when the white students didn't have to spend nearly as much?

Posted by: [Good work Drew](#) | September 21, 2007 01:14 PM

Actually, I like to see the justices talking and making appearances, writing books, etc. They have incredibly critical jobs, and shining some light on them as people, and on what they think, etc., is a good thing.

Posted by: [Li](#) | September 22, 2007 12:34 AM

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PRESS RELEASE

November 19, 2007

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

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

The first complaint, against the Court's Clerk and his staff, details how they shielded the Government from accountability by improperly withholding from the Chief Justice, as Circuit Justice for the District of Columbia, a motion to compel the Government's response to a petition for a writ of certiorari in a politically-explosive "disruption of Congress" case (#07-228). They did this without citing any legal authority, which they refused to provide. Such misconduct resulted in the Court's denying the cert petition – and was the basis for a second motion, seeking recall/vacatur of the denial order and, additionally, clarification by the Chief Justice of his remarkable 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 second motion disappeared in the Clerk's Office, as if in "a black hole", with the Clerk and his staff refusing to give any information as to its status.

This first complaint was sent to the Chief Justice in his administrative capacity. The response was a three-sentence letter from the Court's Legal Office, by its counsel. Ignoring all the facts, law, and legal argument presented by the complaint, the letter 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 has led to the second complaint – against counsel for his flagrant cover-up. The complaint notes that the letter from the Legal Office did not indicate that a copy was being provided to the Chief Justice and asks the Chief Justice whether he endorses and approves of counsel's handling of the complaint against the Clerk and his staff and, if not, what steps he will take. It also requests the Chief Justice to distribute the eight enclosed copies of the complaint to the Associate Justices because they "share responsibility for the proper functioning of the Court's Clerk's Office and Legal Office" and because it bears upon their consideration of the petition for rehearing in the "disruption of Congress" case, calendared for the Court's November 20, 2007 conference. The Clerk's Office misconduct is the first ground for rehearing in that petition. The second ground is the Chief Justice's September 19, 2007 speech at Syracuse University on judicial independence, the First Amendment, and the rule of law – the very issues presented by the cert petition.

This story is easy to verify – and explosive. The two complaints to the Chief Justice, dated October 26, 2007 and November 14, 2007, and the substantiating underlying Supreme Court submissions are all posted on the Center for Judicial Accountability's website, www.judgewatch.org, via the sidebar panel "'Disruption of Congress' – The Appeals". Indeed, the website posts the full record of the case, establishing that two levels of the District of Columbia judiciary, as well as the U.S. Attorney's Office for the District of Columbia, utterly trashed the rule of law to cover-up the corruption of federal judicial selection involving the Senate's most influential members – Senator Hillary Rodham Clinton, among them. Such record of judicial and prosecutorial lawlessness is the basis upon which both the cert petition and rehearing petition assert that the Court's review of the case is mandatory, compelled by its supervisory and ethical responsibilities.

* 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.