

Thursday, March 18, 2004  
Baton Rouge, Louisiana

### **THE SUPREMES AND JUDICIAL ETHICS – AN OXYMORON?**

If a Louisiana statewide elected official or judge would be flown to a local duck camp at public expense, and be wined and dined by a group they are supposed to be regulating, the press and good government groups around the state would be screaming for blood. But when the same scenario involves a Justice on the U. S. Supreme Court, not a murmur is heard. And it all happened right here in Louisiana.

The U. S. Supreme Court has under consideration at the present time an important case involving the Vice-President. Our second in command, Dick Cheney, has appealed a lower-court decision requiring him to reveal the people who appeared before his secret energy task force back in 2001. Since members of the court are in the process of ruling on the propriety of what the vice-president did, you would assume there would not be a lot of social interaction going on. But for one member of the court, the call of the wild in the Louisiana marshes was just too overwhelming.

Justice Antonin Scalia left his better judgment at home as he grabbed his gun and he and the Vice-President headed for a duck camp in St. Mary Parish. The two had a free ride aboard Air Force Two with all the VIP trimmings. Secret Service and State Police were out in large numbers as the two were entertained by local oil magnate Wallace Carline.

Carline and the Vice-President go back to the days when Cheney ran Haliburton. He runs a large oil field service operation called Diamond Services based in Morgan City, and his net worth far exceeds his neighbor, former Governor Mike Foster.

The trip was apparently “under radar” in Louisiana, because virtually nothing appeared in the local press.

There is obviously an “appearance problem” here. Scalia took things of value and hobnobbed with a party upon whose actions the Justice must pass judgment in the coming weeks. It would seem that Scalia created an appearance of bias in favor of Cheney that one would think would be considered improper.

The law says a federal judge should recuse himself in proceedings where his “impartiality” might be questioned. Isn’t that what’s going on here?

Scalia spoke in New Orleans last week to a conference on “Judicial Accountability.” The focus of the seminar was to point out the supposed advantages of appointing versus electing our judges. Most of those in attendance were advocates of some type of “merit selection” of our judges, with no input from the public. The federal system was ballyhooed as a way of eliminating the politics from the judicial selection process. Interestingly, the seminar was sparsely attended, and the program was heavily weighted

in favor of those who want to change the present system. And there was no discussion of accountability. When an election takes place, the judge in question has to face the voters on regular occasions. They pass judgment on him or her. No so in the case of federal judges.

Federal judges are the only public officials in America who hold their positions for life. No matter how incompetent their actions on the bench or how outrageous their decisions, they are, for all practical purposes, immune from any review of what they do. Their power comes from Article III of the United State Constitution, which gives all federal judges lifetime appointments. Removal only happens through an elaborate impeachment process in which the House of Representatives brings the charges and the Senate conducts the trial of the judge. If two-thirds of the Senate vote for removal, then and only then must the judge step down from the bench.

As Judge Burton Katz wrote in his criticism of lifetime appointments:

*In our 200 plus years as a nation, only a few federal judges have been formally impeached. The impeachment process itself, because it is unwieldy, divisive, and time consuming is rarely invoked.*

*Hence, federal judges are, frankly speaking, judges for life. No one can touch them. They are derisively called Article III Judges because their behavior is frequently autocratic, capricious and grandiose.*

*Horror stories abound from the darkened chambers of the federal courts. When judges become lifetime appointees, it seems that at times they think they are in lockstep with God.*

There are certainly many competent, hardworking judges on the federal bench. But when a defendant is faced with a judge who abuses his authority, there is, frankly, little that can be done. The district court judge in the federal system controls the rules of the game. Although juries are supposed to decide the innocence or guilt of the defendant, they are often constrained from seeing a complete picture of the defendant's case because of the limitations set by the federal judge.

As noted criminal defense attorney Gerry Spence concludes, "In America, trial by jury has become another myth. In the trial itself, the jury is permitted to hear only the evidence the judge will allow."

As I have repeatedly pointed out, the jury in my case was kept from hearing and seeing significant evidence in my favor. The jury received a distorted view of my defense, not because of their own actions, but because of limitations set by the federal judge.

Right now, we have two opposing selection procedures on the state and federal level. Electing our judges doesn't always give us the best-qualified person to fill the job. But a

lifetime appointment is a far cry from being a viable alternative. It all comes down to a question of accountability. And, at least, in the present Louisiana system that requires elections, a judge has to defend his record and his actions. He or she just can't hop on Air Force Two on a whim, let the public pick up the tab, and hang out with someone whose case is under consideration. For if they do, there will be consequences.

Back to the seminar. Justice Scalia was set to speak later on in the afternoon. I had to make a choice. Acid-tongued comedian and bestselling author Al Franken was bringing his pointed satiric views to what turned out to be a large crowd at LSU that night. There was no time to hear both speakers. So I had to decide whether or not to hear Justice Scalia speak on judicial ethics, or listen to Al Franken skewer a number of prominent figures on the national scene, including both the Vice-President and the Justice.

It really wasn't a tough decision. I slipped out of the seminar, got in my car, and headed back to Baton Rouge.

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### **BOOK REVIEW**

Speaking of Al Franken, his book "*LIES AND THE LYING LIARS WHO TELL THEM*" (a fair and balanced look at the right) has been at the top of the New York Times bestselling list for several months. And a large part of the book's success goes to Franken's nemesis Bill O'Reilly. The talk show host was outraged that Franken put O'Reilly's picture on the front of the book right beside the word "Lies". So he sued. Understandably, O'Reilly could show no damages, and the case was promptly thrown out of court. But what O'Reilly did was create huge interest in the book, shooting it to the top of the best seller's list. Franken should share some of his royalties. He owes a great debt of gratitude to O'Reilly.

The book dissects factual inaccuracies of numerous conservatives of whom, Franken says, are playing loose with the facts. He covers a lot of ground in 43 chapters in his wacky manner and doesn't mind settling personal grudges. He shouts and rages just like all those on the right side of the isle do. But at least he does so in a witty manner.

Big Al tries his best to convince us of a right wing conspiracy involving spin half-truths and outright lies that are fed to us everyday. But that's what the gang on the other side, Sean Hannity, Rush Limbaugh and Ann Coulter do in their daily attacks on a more liberal agenda. I suppose you have to read a little of both to make your own "fair and balanced" judgment.

He does have some catchy sub-chapter titles. Like "Ann Coulter: Nut-Case", and "Bill O'Reilly: Lying Splotchy Bully." He is funny, and probably doesn't take himself as seriously as his contemporaries on the right. Both sides have an agenda, and they readily

admit they are “propagandizing” their point of view. I don’t agree with a lot of Al’s conclusions. But at lease, he draws a smile.

If I had listened to Scalia, it would have been a frown.

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*“Mothers all want their sons to grow up to be president, but they don’t want them to become politicians in the process.”*

--John Fitzgerald Kennedy

*“There is no happiness, there is no liberty, there is no enjoyment of life, unless a man can say when he rises in the morning, he shall be subject to the decisions of no unjust judge today.*

--Daniel Webster

Peace and Justice to you and your family.

Jim Brown