



THE FEDERALIST SOCIETY

FOR LAW & PUBLIC POLICY STUDIES

MEMORANDUM

January 26, 2006

To: Mr. David Scott, Senior Producer, ABC News, Nightline

From: Leonard Leo, Executive Vice President, The Federalist Society

Yesterday afternoon we received a letter from Ms. Kerry Smith, Senior Vice President of Editorial Quality at ABC News, responding to a letter sent by Federalist Society President Eugene Meyer. A copy of the letter is attached. The ABC letter was unsatisfactory insofar as it fails to acknowledge the untruthful and misleading reporting of ABC Investigative reporters Brian Ross and Rhonda Schwartz.

The Nightline segment, as you well know, merely combed over the fact that Justice Scalia was teaching a course (which the story reports more as an allegation or opinion of the Federalist Society rather than as a statement of fact). The story then proceeded to disregard every other fact we made clear by leaving the viewer with the impression that the Justice principally engaged in recreational activity and somehow "snubbed" the Chief Justice by failing to attend his swearing-in.

These are the facts we provided in advance of the program---that the Justice prepared a 481-page coursebook, that he arrived at 11 pm the night before the course started and departed at around 6:15 am the morning after the course ended, and that he accepted the invitation to teach almost a year in advance on October 10, 2004 (well before anyone would have anticipated a Court vacancy and confirmation process).

It is quite obvious why Mr. Ross and Ms. Schwartz would not want to include these facts---doing so would have made it quite absurd to load the story with images of Justice Scalia stopping at a hotel gift shop, taking in a little daily exercise by playing pick-up tennis, and sharing a drink with the co-teacher of the course one night.

And this is precisely why we have no interest in pursuing Ms. Smith's suggestion--that we continue to have an invitation "to appear on the program for an interview with Brian Ross." We had an agreement with ABC News last night for me to appear on a live broadcast interview conducted by Nightline anchor Terry Moran. When invited to appear, we asked for those conditions which ABC agreed to because of Mr. Ross's apparent political agenda and concomitant lack of interest in all the facts. We have seen nothing to suggest a change of heart.

It is quite unfortunate that we have arrived at a point where it appears to us ABC's Nightline not only has no desire to correct obvious lapses in trustworthy journalism, but also sees no reason to honor the agreements it makes about the nature of a scheduled interview.

There might well be value to having a serious judicial ethics discussion about how best to balance the risk of undue influence against the longstanding tradition of fostering dialogue between judges and lawyers, which has proven to be indispensable to achieving improvements in our administration of justice and the courts. But ABC's distorted reporting leaves the impression that judges simply should never speak or teach to legal organizations in the public square, and that is a reckless way of dealing with such a serious and complex matter.