

January 25, 2006

Mr. David Westin  
President  
ABC News  
7 West 66<sup>th</sup> Street  
New York, NY 10023

Dear Mr. Westin:

I write to express my deep disappointment and concern about a January 23rd report aired on ABC's *Nightline*. The report grossly misled viewers about a recent trip Supreme Court Justice Antonin Scalia took to teach a 10-hour course on the Constitution and separation of powers. *Nightline* suggested that Justice Scalia's trip was a "judicial junket," and even strained to manufacture a link with disgraced lobbyist Jack Abramoff.

ABC chose to focus on the fact that Justice Scalia's commitment to teach, which he made nearly a year earlier on October 10, 2004, conflicted with the swearing-in of Chief Justice John Roberts. *Nightline*'s report insinuated that Justice Scalia's absence at Chief Justice Roberts' swearing-in was nothing more than Justice Scalia taking the chance to play tennis at a Colorado hotel on the Federalist Society's tab.

Rather than taking a recreational trip with hours of tennis and going fly-fishing, as ABC would have its viewers believe, Justice Scalia was honoring an agreement made nearly a year in advance with the Federalist Society to teach a serious scholarly program to more than 100 lawyers from 38 states that required considerable work and preparation in advance. Prior to the course, Justice Scalia produced a 481-page course book that attendees were expected to review in advance. The course was approved by at least 30 state bars for most of the attending lawyers' continuing education requirements. Justice Scalia was there to share his knowledge and experience and received only reimbursement for travel and lodging.

It was very appropriate and reasonable for the Justice to honor his longstanding commitment to teach. There was virtually no advance notice that the Chief Justice would be sworn in on September 29, and, were Justice Scalia to have cancelled a couple of days before the scheduled course, most attendees would have lost the money spent on plane tickets getting to and from the course. The Federalist Society would have also faced considerable costs for breaking its contract with the hotel where Justice Scalia taught the course.

*Nightline* deliberately misrepresented the nature of the event despite the fact that the Federalist Society took pains to establish the facts with *Nightline*'s senior producer, David Scott, as well as the investigative reporter who worked on the story, Rhonda

Schwartz. The Federalist Society set forth the fact that Justice Scalia arrived at the hotel at 11 p.m. the night before the course and departed for home at 6:30 a.m. the morning after the course ended, thus spending no more days at the hotel than necessary to teach the course. It was made abundantly clear that the Justice taught for ten hours, and played less than two hours of some informal “pick-up” tennis.

I am deeply concerned that, reminiscent of the false National Guard story fabricated by CBS’s Dan Rather and Mary Mapes, ABC has simply chosen to score political points by blatantly disregarding the facts and true nature of the circumstances which surround the Federalist Society’s course on September 30, 2005.

Not only does this deliberately misleading journalism irresponsibly call into question the integrity of a Supreme Court justice and the scholarly mission of the Federalist Society, but it also seeks to advance an extraordinarily troubling argument regarding the range of activities in which judges should engage. ABC seems to be in favor of a world where Supreme Court justices are not allowed to engage in any outside teaching and speaking – before the ABA, the Federalist Society, or any other organization. ABC is content to have the legal community deprived of the benefit of the experiences and expertise of judges, which has for over 200 years been an indispensable feature of the dialogue that leads to the improvement of the law and the administration of justice, as well as the independence of the judiciary.

I am further concerned by the failure of what appeared to be good faith efforts on *Nightline*’s part to provide the Federalist Society with an opportunity to respond to Mr. Ross’s report last night. On two occasions we believed we had an agreement with *Nightline* producers that Federalist Society executive vice president Leonard Leo would be interviewed by Washington anchor Terry Moran and given an opportunity to respond to the false *Nightline* report from the previous night. But the producers reneged on both agreements, first insisting that Mr. Ross conduct the interview and then insisting that he come on after the interview. This turned gestures of good faith into bad faith, given that Mr. Ross smeared Justice Scalia and the Federalist Society the previous night in a story that he produced and edited to his liking.

That a major, respected broadcast network would not only air a grossly lopsided story, but willfully ignore very pertinent facts, is a source of tremendous disappointment, and Americans expect and deserve better. We call on ABC to launch an independent investigation into the circumstances surrounding the development and production of this story.

Sincerely,

Eugene B. Meyer  
President