

# United States Senate

WASHINGTON, DC 20510

April 12, 2004

Leonidas Ralph Mecham  
Director, Administrative Office of the US Courts  
Office of Public Affairs  
Administrative Office of the U.S. Courts  
Washington, D.C. 20544

Dear Mr. Mecham:

We write to ask the Administrative Office of the U.S. Courts to establish guidelines for federal judges, including Justices of the Supreme Court, making public remarks either on or off-the-record.

As you know, last week federal marshals seized and destroyed recordings that two invited newspaper reporters were making of a public speech given by Justice Antonin Scalia. According to all reports, neither Justice Scalia nor the marshals nor anyone else told those in attendance that recording devices were prohibited. Nonetheless, apparently at Justice Scalia's direction, the reporters' recording devices were seized and their recordings destroyed.

Justice Scalia reportedly said in his speech that the Constitution is a "brilliant piece of work.... People just don't revere it like they used to." We could not agree more, but actions speak louder than words. If the seizure of the reporters' recording devices did not violate the letter of the Constitution - and it may well have - it certainly violates the spirit of that "brilliant piece of work."

While we believe it is generally better for federal judges to speak on-the-record rather than off-the-record because their remarks shed more light on the least-understood branch of the federal government, we support judges' rights to speak off-the-record and to ban recordings of their remarks. However, when that right is exercised, it ought to be appropriately communicated to those in attendance - especially the press. The default assumption is - as it should be - that public remarks are open and on-the-record.

To ensure such incidents do not occur again, we encourage you to establish clear guidelines for judges setting the public or private nature of their remarks and the appropriate remedial steps that may be taken when the judges' requests are not honored.

Sincerely,



Charles E. Schumer  
United States Senator



Patrick J. Leahy  
United States Senator