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Summary

It has been widely reported that Chief Justice Rehnquist has appointed a committee, to be chaired by Justice Breyer, to review aspects of federal judicial ethics. An editorial appearing in the New York Times on May 27, 2004, stated that the committee "will look broadly at federal judicial ethics." Professor Stephen Burbank, Chair of the AJS Judicial Independence and Accountability Task Force, has responded to that editorial in the following letter to the Editor of the New York Times pointing out the limited scope of the committee's inquiry.



To the Editor,

"Judicial Ethics Under Review" (NYT, May 27, 2004) appears to proceed from an erroneous premise. Although the editorial states that Chief Justice Rehnquist appointed the committee "to look broadly at federal judicial ethics," my understanding is that the committee's inquiry will concern chiefly, if it is not confined to, experience under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. That statute does not apply to Justices of the Supreme Court of the United States; moreover, its intended reach (conduct harmful to the administration of justice) only partially overlaps with "judicial ethics" as commonly understood.

The Chief Justice's remarks upon appointing the committee specifically refer to the 1980 Act and to recent criticism of its implementation by members of Congress. In any event, it is inconceivable (at least to me) that the Chief Justice would appoint a committee composed primarily of members of lower courts to look into the practices of the Supreme Court or the Justices thereof.

There may be good reason to inquire about the recusal practices of the Justices, but I do not believe that your readers should expect any recommendations on that subject from this committee.

Stephen B. Burbank
Philadelphia, Pa.
May 27, 2004

The writer is David Berger Professor for the Administration of Justice, University of Pennsylvania Law School, was a member of the National Commission on Judicial Discipline and Removal, whose report was made in 1993, and serves as chair of the Judicial Independence and Accountability Task Force of the American Judicature Society.

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