

## Appendix IV

### Judge Silberman's response to David Brock's book

*Barone Blog*  
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Judge Laurence Silberman, whom I admired long before I met him, has told me that he was perturbed to find, as a latecomer to Google, that charges against him made in certain passages of David Brock's book *Blinded by the Right: The Conscience of an Ex-Conservative* had wide circulation in the search engine, while Robert Novak's column rebutting Brock has vanished. He provided me with his own account, as follows:

*David Brock's book, Blinded by the Right, published in 2002, made a number of statements about me (and my wife) that were quite false. I was first asked by journalists about his descriptions of my alleged views and conversations with him in 2004 when I was named to the President's Intelligence Commission, I responded that those accounts were fictional. When his book first appeared, no reviewer ever approached me. Although the mainstream press has largely ignored Brock's charges, I see that references to Brock's book appear at various blogs on the Internet, so I thought it appropriate to respond more fully in the same medium for a permanent record.*

*At the outset I would make two general points. Brock claimed that this book initially stood largely unrebutted- and therefore his credibility was enhanced. I have noted that reviewers did not call me or a number of other persons quoted in the book for their response. Moreover, the first edition of the book rather cleverly and deceptively did not include an index so that Brock's targets would have had to buy the book and read all through it to find references to them. Very few were willing to buy the book. As far as I know, everyone who has been asked about passages that relate to them, including Ted Olson and my wife, have described them as false.*

*The second general point I wish to make is that Brock, who was a journalist, purports to describe the private views of a number of persons without disclosing his source. If those views had been conveyed to Brock, they obviously would have been confidential and off the record. But since most are fictional, I suppose one can't complain concerning those accounts about the lesser journalistic ethical violation of betraying confidential sources. The book does, however, contain one truthful account of information I gave Brock in which I remember specifically telling him it was off the record. In my forty years in Washington, this was the first occasion in which a journalist betrayed such a confidence. In explaining his break with his conservative friends, Brock makes much of being disinvited from an Olson party after his Hillary Clinton book was published, and attributed that treatment to his relatively favorable description of Hillary Clinton. This is false. Barbara Olson was furious at Brock because she asserted that he had burned confidential sources in the book. When evaluating Brock's credibility, one should keep his lack of journalistic ethics in mind.*

*Now to the book. He consistently overstates his relationship with me. He described our relationship as "surrogate parents," which is an exaggeration, although my wife was close to him. She did spend a good deal of time helping to edit his book The Real Anita Hill. But I did not meet him until he came to interview me - a good way into his work on the book- as to why I believed Clarence Thomas. Neither my wife nor I had ever met Anita Hill. I never suggested, as Brock claims (see Page 104) - that she might be a lesbian "acting out." (Indeed, I do not even understand what that phrase means.) Nor, since I never met her, could I possibly determine that she had bad breath.*

*He also asked me whether Judge Wald was friendly with Senator Simon. I told him that I had no idea, but that Judge Mikva was from Illinois and had served with Senator Simon in both the House and the Illinois legislature. I never suggested any hostility to Senator Simon, who, contrary to Brock's intimation, did not vote against me for confirmation to the Court of Appeals. Nor did I ever suggest to Brock any negative views about Judge Wald (see Page 123). He obviously mixed up Judge Wald and Judge Mikva. (My relationship with Judge Mikva was known to be tenuous.)*

*That was the only occasion that I met with Brock concerning his work on the Anita Hill book. I never read any chapters of the book until it was finished, including the chapter he describes as stuffed through our mail slot (see Page 123).*

*Brock describes "frequent dinnertime brainstorming sessions" with my wife and me (see Page 185). This is pure fiction. I don't recall his ever coming to dinner. He did come to me at least four times for advice. I treated him much as I would have treated one of my ex-clerks or scores of other people, both Democrats and Republicans, including journalists, who have sought career advice. On one occasion he sought advice concerning his purchase of property in Rehoboth. At another time he discussed with me his proposed book on Hillary Clinton. His publisher wished him to get the book out before the presidential election. I urged him not to do that- first of all, it would not give him enough time and secondly, it would appear too much like a political hit job. He did not take my advice because of financial considerations; the publishers were willing to pay more if he made that deadline. Perhaps most sensitive, another time he disclosed to my wife and me that he was gay and sought advice as to how he should deal with certain journalists' veiled suggestions- particularly Frank Rich of the New York Times. Contrary to his implication, I urged him (as I have done with other gay friends) to publicly disclose that as soon as possible so that he could not be blackmailed and assured him that his friends would be understanding. As he admits, my wife and I stood by him.*

*But by far the most dramatic occasion related in his book was when he sought advice concerned the Troopergate story -which he relates at Page 159. His account is, to say the least, distorted. He came to our house to see my wife and me about the story he had investigated and was starting to write. He initiated his conversation by saying the story he was to tell us was dynamite, and that his editors at the Spectator were very enthused about it, but he wanted to seek our advice because we would be concerned more about him than the story.*

*He then told us the general nature of what he had learned through his investigative efforts. As his book concedes but implies my lack of sincerity, I told him that I would not express any views as to the political significance of the story. He explained that two reporters for the Los Angeles Times were working the same story and that he was cooperating with them. He had two concerns about publishing. The first was the risk of physical harm; the second was his apprehension that if he published, he would be typecast as a conservative, thereby reducing his journalistic opportunities in the future. He never revealed the slightest doubt as to the story's journalistic merit.*

*My wife was quite concerned about the risk of physical harm and urged him not to publish. I discounted that risk completely. I told him he should not credit rumors to the effect that Arkansas allies of President Clinton would use force against him. Such actions against a journalist on the national stage were inconceivable in the US.*

*As to his journalistic reputation, I emphasized at the outset that the story had to be absolutely true, with which he readily agreed. I then referred to Sy Hersh's book, *The Dark Side of Camelot*, and Hersh's criticism of the press, which had allegedly covered up President Kennedy's similar activities, even though it risked national security and misused government assets. Insofar as his story focused on Governor Clinton's misuse of government's assets and extreme recklessness, I suggested it would meet Hersh's test and some fair-minded journalists would think it was a legitimate story. Contrary to his claim that I encouraged him to go ahead, my strong advice was not to publish his article until the Los Angeles Times ran with the story. I told him that would give him a good deal of journalistic protection because the Times was seen as closely aligned with the Democratic Party.*

*However, I cautioned him that he should have no illusions as to his ability to be seen as a nonpartisan. His book *The Real Anita Hill* had already placed him firmly in the conservative camp. I told him that the Clarence Thomas -Anita Hill credibility clash reminded me of Whitaker Chambers versus Alger Hiss. Conservatives tended to believe Thomas and liberals, Hill.*

*Brock suggests (see Page 338) that because I gave him personal advice on the Troopergate story (which I never read until it was in galleys), I should have recused myself as a judge on a subsequent Clinton case involving the independent counsel's subpoena of Secret Service agents involving the Lewinsky imbroglio. That is an absurd stretch that no ethics expert nor counsel for President Clinton ever suggested.*

*Finally, in Brock's book he attributes to me unflattering views of certain of my colleagues that I not only never uttered, I have never thought them (see Pages 123, 205). At a dinner Arianna Huffington threw for David Brock after publication of the Hillary Clinton book, Brock asked me about my view of Ken Starr. In hindsight, as I remember the manner in which he asked the question, I wonder if he was even then cooperating with persons in the president's camp. I told him that Starr was hardly a hard-nosed partisan and I did not think he had an instinct for the jugular. His reputation was as a fair-minded person and had been passed over as a potential Supreme Court nominee because he was thought too moderate. His description of my appraisal of Judge Starr is false (see Page 205) and the implication that I had anything to do with his*

*appointment by the special three-judge court is absolutely untrue (see Page 209). Similarly, it is not only false - it is obviously false - that I had manipulated Judge Sentelle (for whom I have the greatest respect and affection) into a per curiam decision in the North case in order to disguise my role. Anyone reading the opinions would see that I dissented separately, urging the reversal of North's conviction on three separate grounds that Judge Sentelle did not join, so my position was hardly disguised. Paradoxically, Brock made this very point in his devastatingly effective review of Lawrence Walsh's book Firewall in the September 1997 issue of The American Spectator.*

*Brock's book is such a tissue of lies, and so nasty, that it virtually took my breath away. When I am asked to explain why someone would have so viciously and untruthfully turned against those who only had his interests at heart- and treated him as a friend- I recall his constant concern with ensuring his earning power and his fear that his opportunities would be limited as a conservative. After his Hillary Clinton book bombed he obviously thought the only way he could gain another substantial advance was to propose a "tell all" book attacking his conservative friends. And to justify his behavior he would have to paint them in darkest hues.*

*Perhaps Brock's dramatic volte-face also had something to do with the fourth matter on which he consulted me. He was writing the Hillary Clinton book in Washington when I received a panicked phone call from him. He explained that his publisher in New York had sent a very complete outline of the book and list of questions to Brock in Washington and somehow that letter was delivered or fell into the hands of a Clinton presidential appointee. I don't know exactly what was in the letter but whatever it was, it caused Brock great anxiety. I advised him to retain counsel and he did so. Shortly thereafter he moved to New York for unexplained reasons to finish his book. My wife, who was once again editing his chapters, was no longer consulted and we did not see him until the book was published. The book apparently took a more moderate tone in the New York period.*

*I am still gratified, however, by Brock's review of Lawrence Walsh's book, which he has never (or at least, not yet) repudiated. In that review, Brock, by interviewing federal judges, demolished Walsh's bizarre and unique claim that I should have recused myself from sitting on the North case because of my supposed hostility to the federal district judge who decided the case. As Brock established, that assertion- which no one ever heard of as a ground for recusal- was untrue. More generally and ironically, Brock's coolly analytical piece demolished Walsh's unsourced and fanciful "right wing" conspiracy theory, even suggesting by the title, "Insanity or Vanity," that Walsh was unhinged. The old David Brock or any other careful reviewer might well have similarly entitled a review of "Blinded by the Right."*

Judge Silberman is now serving in senior status as a judge in the United States Court of Appeals for the District of Columbia Circuit. He served as solicitor of the Labor Department in the Nixon administration and the deputy attorney general in the Ford administration. He was cochairman, with former Gov. and Sen. Charles Robb, of President Bush's Commission on Intelligence Capabilities, which issued a first-rate report. He wrote an extraordinary article last summer for the Wall Street Journal on longtime FBI Director J. Edgar Hoover. As acting attorney general in

1975, he was tasked with reading the secret files Hoover had kept on public figures. As he tells the story:

*The House Judiciary Committee demanded I testify about those files, so I was obliged to read them. Accompanied by only one FBI official, I read virtually all these files in three weekends. It was the single worst experience of my long governmental service. Hoover had indeed tasked his agents with reporting privately to him any bits of dirt on figures such as Martin Luther King, or their families. Hoover sometimes used that information for subtle blackmail to ensure his and the bureau's power.*

*I intend to take to my grave nasty bits of information on various political figures--some still active. As bad as the dirt collection business was, perhaps even worse was the evidence that he had allowed--even offered--the bureau to be used by presidents for nakedly political purposes. I have always thought that the most heinous act in which a democratic government can engage is to use its law enforcement machinery for political ends.*

He goes on to report:

*Other presidents, according to those files, misused the bureau, although never Truman and Eisenhower. But Johnson clearly was the most demanding. This discovery was particularly painful for me. Although I was a life-long Republican, I had not only voted for LBJ, I had signed an ad supporting him, which got me ejected from the Hawaii Young Republicans.*

*In 1968 the FBI, at the president's direction, actually surveilled Spiro Agnew, the Republican vice-presidential candidate. To be sure, as subsequent events revealed, Agnew might well have been under surveillance when, as governor of Maryland, he was taking bribes; but in 1968 it was for the purpose of determining whether he was in contact with South Vietnamese leaders. It was not for law-enforcement purposes. Incidentally, the FBI never determined that he was in contact with the South Vietnamese.*

*It was not only Republicans that Johnson targeted with the FBI. He must have been obsessed with the Kennedy political threat because he used the bureau to determine whether officials in his administration were too close to Robert Kennedy after Kennedy left the administration. Ironically, one of his White House assistants, whom he inherited from JFK and was a particular subject of this sort of surveillance, is now married to LBJ's biographer. I refer to Richard Goodwin, the husband of Doris Kearns Goodwin.*

*Some of Johnson's suspicions of the Kennedys were rather amusing. He became convinced that the Washington Star was secretly owned by the Kennedy family and that is why he received less favorable coverage from the Star than from the Post. He insisted that Hoover unearth those connections. Hoover plaintively tried to explain that the Star was owned by the Kauffmann family and that they were Republicans.*

And he concludes with a call to which Congress and the Bush administration have yet to respond.

*Former Director Louis Freeh initiated the practice of taking new FBI recruits through the Holocaust Museum to show what can happen when the law enforcement apparatus of a country becomes corrupted. I have always thought that sort of extreme example was a bit far-fetched for our country, but there is an episode closer to home. I think it would be appropriate to introduce all new recruits to the nature of the secret and confidential files of J. Edgar Hoover. And in that connection this country--and the bureau--would be well served if his name were removed from the bureau's building. It is as if the Defense Department were named for Aaron Burr. Liberals and conservatives should unite to support legislation to accomplish this repudiation of a very sad chapter in American history.*

I trust Judge Silberman's account of his relations with David Brock. The judge has had a long and honorable career in public service, and I think he has been regarded as a truth teller by Democrats as well as Republicans. David Brock has a different history. I feel sorry for David Brock. He is a self-admitted liar, having claimed he purposely wrote untruths in his earlier work; and if you reject that admission, you have to regard him as a liar for telling the lie that he told lies. He has now taken his considerable talents to a conservative-bashing website. I wish him personal good fortune and hope that his days of peddling untruths are behind him.

Footnote on polling interpretation

Picking up on my suggestion in a posting on the Connecticut Democratic primary result that one of the old rules of polling interpretation--the rule that says that the undecided vote swings against incumbents--is no longer operative, Mystery Pollster (Democratic pollster Mark Blumenthal) presents his own thoughts. As usual, they're thoughtful and fair-minded: He seems to blanch at one of my more partisan thrusts. He agrees that the rule no longer seems to hold and presents several possible explanations, including two of mine. But, in a bit of intellectual honesty not always seen in our professions, he admits he doesn't know the answer. Neither do I.