

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 26, 2004

The Honorable Patrick Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Leahy:

The letter of January 22 signed by you and Senator Lieberman inquires about the Court's practice with respect to the recusal of a Justice from participating in a case before the Court. Each of us strives to abide by the provisions of 28 U. S. C. §455, the law enacted by Congress dealing with that subject. We also strive to comply with the Ethics in Government Act with respect to our off-the-bench conduct. While a member of the Court will often consult with colleagues as to whether to recuse in a case, there is no formal procedure for Court review of the decision of a Justice in an individual case. This is because it has long been settled that each Justice must decide such a question for himself.

Insofar as your letter suggests reasons why Justice Scalia should have disqualified himself in the pending case of *Cheney v. U. S. District Court*, it has, so far as I know, no precedent. A Justice must examine the question of recusal on his own even without a motion, and any party to a case may file a motion to recuse. And anyone at all is free to criticize the action of a Justice — as to recusal or as to the merits — after the case has been decided. But I think that any suggestion by you or Senator Lieberman as to why a Justice should recuse himself in a pending case is ill considered.

Sincerely,



cc: The Conference