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BY PRIORITY MAIL

5 pages

January 15, 1999

Professor David O'Brien
University of Virginia
Department of Government & Foreign Affairs
232 Cabell Hall
Charlottesville, Virginia 22903

RE: Adding to "Ironies Abound as Rehnquist Oversees Trial of the Century":
CJA's impeachment complaint against Chief Justice Rehnquist

Dear Professor O'Brien:

Thank you for your prompt return call. I appreciate your giving me the opportunity to describe to you CJA's impeachment complaint against Chief Justice Rehnquist -- and your willingness to examine it for yourself, including the submissions on which it is based.

Surely it is an extraordinary irony -- adding to those identified by your perspective column, "*Ironies Abound as Rehnquist Oversees Trial of the Century*" -- that as the Chief Justice presides over the President's Senate impeachment trial, an impeachment complaint is pending against him in the Senate, that it sets forth grounds for impeachment more serious, by far, than the impeachment articles against the President, and that it involves common issues: "the rule of law", the "integrity of the judicial process", and "obstruction of justice".

But for the fact that you are about to leave for six-months abroad, teaching in Bologna, Italy, you could write a powerful follow-up to your perspective column about the impeachment complaint, which we hope will be receiving press coverage in the coming weeks. Enclosed is a copy of the press release we have been circulating about the complaint -- and about the media-*unreported* story about how the House Judiciary Committee simply ignores -- without investigation, acknowledgment, or referral -- the hundreds of citizen-filed impeachment complaints it receives against federal judges.

After you have examined our impeachment complaint against the Chief Justice and satisfied yourself as to how serious and substantive it is, perhaps you would be good enough to recommend journalists for us to contact -- beyond your suggestion of John MacKenzie, who has retired from the New York

Times. Actually, I had planned to send Jack a copy of the press release not only because it quotes his book, Appearance of Justice, but because he already has a copy of the impeachment complaint, which I sent him precisely because the incorporated petition for rehearing quotes his book (at p. 7). For your convenience, a copy of Chapter 9 from that book is enclosed, together with its reprinting of Justice Rehnquist's memorandum in *Laird v. Tatum*.

Hopefully, your own respect for the rule of law and the integrity of the judicial process -- as well as your own obligations under ethical codes of responsibility -- will impel you to do whatever you can to expose the frightening specter of systemic and unredressed judicial corruption, presented by the enclosed materials. Since you stated that you had worked for Chief Justice Warren Burger, I would note that his role in advancing the very issues of professional responsibility involved herein is cited at page 2 of the supplemental brief.

Again, I thank you for your interest in reviewing the complaint and court submissions. Needless to say, such submissions, and particularly the bound volumes of the cert petition and rehearing petition, are extremely expensive for our unfunded, non-profit citizens organization to provide. I am hopeful, however, that you will make good use of them -- and that they will be prominently discussed and analyzed in your future writings about the Supreme Court and its role in American politics. Needless to say, if you are not so inclined, please be good enough to return them to us so that we may make them available to other scholars.

At your request, enclosed is CJA's informational brochure. Also enclosed are three pertinent published pieces -- EACH of which were part of the record before the Supreme Court. They are:

(a) CJA's \$20,000 public interest ad, "Where Do You Go When Judges Break the Law?" (The New York Times, 10/26/94, Op-Ed page; and New York Law Journal, 11/1/94, p. 9)¹. The ad presents, in summary form, the allegations of the verified complaint in the federal civil rights action, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, in which high-ranking New York State judges and the New York State Attorney General were sued for corruption. This is the case which came before the Supreme Court on a petition for a writ of certiorari in September 1998 -- and from which the impeachment complaint against the Chief Justice emerges.

(b) CJA's \$3,000 public interest ad, "Restraining 'Liars in the Courtroom' and on the Public Payroll", (New York Law Journal, 8/27/97, pp. 3-4)². The concluding paragraphs describe the

¹ See appendix to cert petition: A-269; documentary compendium to CJA's June 1998 statement: R-54; CJA's July 27, 1998 criminal complaint to the U.S. Justice Department: Exhibit "I-2".

² See appendix to cert petition: A-262; and documentary compendium to CJA's June 1998 statement: R-56; CJA's July 27, 1998 criminal complaint to the U.S. Justice Department: Exhibit "I-1".

Sassower v. Mangano federal action, the State Attorney General's litigation fraud, and the district judge's fraudulent decision, dismissing the case.

(c) CJA's published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View, Vol 4. No. 1, summer 1997)³, which provides a synopsis-overview of the federal judiciary's subversion of 28 U.S.C. §372(c) and the reality of the House Judiciary Committee's handling of judicial impeachment complaints, each concealed by the methodologically-flawed and dishonest 1993 Report of the National Commission on Judicial Discipline and Removal.

For your convenience, an annotated inventory of the enclosed four colored folders follow. The folders contain the record before the Supreme Court in *Sassower v. Mangano, et al.* -- with the materials contained in the Orange and Purple Folders having been "lodged" with the Clerk. [See supplemental brief, p. 9, fn. 2]. A copy of this record is also in the possession of the House Judiciary Committee which, additionally, has a copy of the lower court record.

IN THE GREEN FOLDER:

CJA's November 6, 1998 impeachment complaint against Chief Justice Rehnquist, with its incorporated October 30, 1998 petition for rehearing in *Sassower v. Mangano, et al.* The certified mail/return receipts show that the impeachment complaint arrived at the House Judiciary Committee -- both the Republican and Democratic sides -- on November 10th and November 12th, respectively. This was in the day(s) following Professor Lawrence Tribe's November 9th testimony before the House Judiciary Committee that "letting partisan considerations affect one's decision... is *always* an impeachable abuse of power in a judge." Nine copies of the impeachment complaint were also sent to the Supreme Court, for distribution to the Justices, as reflected by our November 6, 1998 letter to Francis Lorson, Supreme Court Chief Deputy Clerk, to which the certified mail/return receipts are attached. Mr. Lorson confirmed the distribution of the complaints to the Justices, who, thereafter, denied the *Sassower v. Mangano* rehearing petition. The November 30, 1998 letter of notification is enclosed.

IN THE BLUE FOLDER:

Cert petition and supplemental brief in *Sassower v. Mangano, et al.* The cert petition's FIRST "Question Presented" is the supervisory and ethical duty of the Supreme Court and its justices. This is discussed at pp. 21-23, "*Reasons for Granting the Writ*" and pp. 23-26, Point I: "*This Court's Power of Supervision is Mandated*" and "*This Court has a Duty to Make Disciplinary and Criminal*

³ See appendix to cert petition: A-207; and documentary compendium to CJA's June 1998 statement: R-5].

Referrals". Such pages detail that, absent Supreme Court review, there is NO remedy, within the Judicial Branch, for the corrupt conduct of the lower federal judiciary, demonstrated by the cert petition.

The supplemental brief (pp. 1-3, 7-10) further emphasizes the exigency of Supreme Court review -- demonstrating the breakdown of all checks on judicial misconduct, in the Legislative and Executive Branches, such that:

"the constitutional protection restricting federal judges' tenure in office to 'good behavior' does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article II, §4 and Article III, §1 [SA-1] are corrupted by political and personal self-interest. The consequence: federal judges who pervert, with impunity, the constitutional pledge to 'establish Justice', (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes." [supplemental brief, at p. 2]

In substantiation of the breakdown of checks on judicial misconduct in the Legislative and Executive Branches, the following were "lodged" with the Clerk's office:

IN THE ORANGE FOLDER:

CJA's statement to the House Judiciary Committee for inclusion in the record of its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary"⁴. The documentary compendium to that statement contains CJA's FIVE-YEAR correspondence with the House Judiciary Committee. This correspondence [R-35, R-74, R-75*⁵, R-79, R-80*, R-84*, R-87*, R-90, R-92, R-95, R-98, R-99, R-103, R-105, R-108, R-110, R-1, R-15, R-40, R-66] commenced with our filing, in June 1993, of our *first* document-supported impeachment complaint [R-35] and continued after our filing of a *second* document-supported impeachment complaint, this

⁴ CJA's June 1998 statement and its significance are referred to at pp. 1-3 and 8 of the *Sassower v. Mangano* supplemental brief. The statement is reprinted therein at SA-17.

⁵ Correspondence demarked with an * contains the quoted statement of House Judiciary Committee counsel Ed O'Connell, "there has never been an investigation of an individual complaint in the history of the House Judiciary Committee". For the response of Tom Mooney, now House Judiciary Committee General Counsel and Mr. Hyde's Chief of Staff, as to the fact that the House Judiciary Committee does not undertake impeachment investigations, see CJA's June 30, 1995 letter to him [R-92; See, also "*Without Merit: The Empty Promise of Judicial Discipline*", p. 96]. Mr. Mooney's picture appeared in last Friday's *New York Times*, in the foreground next to Mr. Hyde, leading the House Managers into the Senate to commence the proceedings on President Clinton's impeachment.

against the *Sassower v. Mangano* lower federal judges on March 23, 1998 [R-15, at R-25]⁶. Such correspondence chronicles our "voyage of discovery" of the true facts about the House Judiciary Committee, concealed and falsified by the methodologically flawed and dishonest 1993 Report of the National Commission on Judicial Discipline and Removal -- a commission created by (a panicked) Congress in response to the succession of impeachments of three federal judges in the 1980's⁷.

IN THE PURPLE FOLDER:

CJA's July 27, 1998 criminal complaint to the U.S. Justice Department, Public Integrity Section, Criminal Division.⁸ The last paragraph of that complaint notes that notwithstanding that the Attorney General is required to annually "report to Congress on the activities and operations of the Public Integrity Section" [28 U.S.C. §529], the most recent annual report is for 1995.

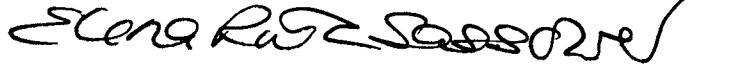
In the nearly six months that have elapsed since we filed that criminal complaint, we have received NO response whatever from the Justice Department.

* * *

Should you have any questions about any of the foregoing -- or wish further information -- don't hesitate to call.

Thank you, again.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures: As indicated

⁶ Also printed in the appendix to the cert petition: See A-316.

⁷ As to those judicial impeachments, see fn. 2 of press release.

⁸ The July 27, 1998 complaint to the Justice Department is referred to at pp. 1-3 and 9-10 of the *Sassower v. Mangano* supplemental brief. The complaint is reprinted therein at SA-47.

To: ERS
From: RPS

(Bergen County, New Jersey)
THE RECORD L-9

TUESDAY, JANUARY 12, 1999

OTHER VIEWS

Ironies abound as Rehnquist oversees trial of the century

By DAVID M. O'BRIEN

AMONG THE IRONIES surrounding the Senate's impeachment trial of President Bill Clinton is that this political trial of the century is presided over by one of the most partisan of Supreme Court chief justices, William H. Rehnquist. Because justices are supposed to be removed from politics, the fact that Rehnquist has hovered on the sidelines of this controversy all along is often overlooked.

Yet, Rehnquist had a hand in numerous decisions now culminating in the Senate's trial. In 1988, he wrote the Supreme Court's opinion upholding the constitutionality of the appointment of independent counsels. Subsequently, he named the three-judge panel that appointed independent counsel Kenneth W. Starr and expanded his investigation from Whitewater to former White House intern Monica S. Lewinsky. He headed down the court's decision on *Clinton vs. Jones* in 1997, rendering the president vulnerable while in office to civil lawsuits for alleged offenses committed before entering the White House.

It is easy to forget, as well, the twists and turns of Rehnquist's embattled career that now place him in the vortex of the political controversy engulfing the White House. Republican President Richard M. Nixon, the only president to resign in the face of impeachment, initially named him to the court. Subsequently, he was elevated to the chief justiceship by Republican President Ronald Reagan.

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Both of his confirmation hearings turned into bitter Senate battles, not unlike that now over impeachment. Along with being a longtime GOP loyalist and amateur historian, Rehnquist wrote a book, "Grand Inquests," about the 1868 impeachment of President Andrew Johnson, the only other president to be impeached by the House of Representatives and confront a Senate trial.

Rehnquist served for 18 months as a law clerk to Justice Robert H. Jackson. At that time, the Supreme Court was considering what would become its landmark 1954 school desegregation ruling, *Brown vs. Board of Education*. In a memo to Jackson, Rehnquist tried to persuade his justice to uphold the doctrine of "separate but equal." He also lamented that "liberal" law clerks "excoriated" him for his "unpopular and unhumanitarian position," but he refused to yield. Jackson was unpersuaded and supported the court's unanimous decision in *Brown*.

After moving into private practice in Phoenix, Ariz., in the ugly aftermath of widespread opposition to *Brown*, he sharply criticized the court, complaining, in a 1967 U.S. News & World Report article, that law clerks exercise too much influence over the justices.

WITH NIXON'S 1968 election, Rehnquist had the opportunity to return to the heady mix of law and politics in the nation's capital. He immediately joined Nixon's administration, as an assistant attorney general overseeing the appointment of federal judges. Within three years, Nixon had nominated him to the Supreme Court.

At his Senate confirmation hearings in 1971, Rehnquist's strident conservatism ensnared him in

controversy. His memo on *Brown* resurfaced.

Yet, he denied it reflected his views, insisting instead that it registered Jackson's position. The historical evidence, however, points incontrovertibly to the contrary. Even Jackson's secretary denounced Rehnquist for defaming a great justice. Nonetheless, the Senate confirmed him 68 to 26.

On Jan. 7, 1972, at age 47, Rehnquist was sworn in as associate justice. On the bench, he quickly staked out far-right positions on states rights and civil liberties. Indeed, he wrote so many solo dissenting opinions that he was nicknamed the "Lone Ranger."

He was outspoken off the bench as well. Next to Chief Justice Warren E. Burger, he gave more speeches than any other justice. He vigorously defended his judicial conservatism and the power of presidents to pack the court with their ideological kin. His former law clerks went on to work in the Reagan administration, and he became a kind of idol for those waging the "Reagan revolution."

The Senate Judiciary Committee's hearings on Rehnquist's nomination as chief justice were as hotly partisan as those 15 years earlier. Once again, he disavowed his *Brown* memo. The lingering cloud of implausible denials, though, further darkened amid new allegations that, in the 1960s, Rehnquist participated in Republican efforts to intimidate black voters at polling places in Phoenix. Still, the Senate confirmed him, though by a narrower margin — 66 to 33 — than the first time around.

As chief justice, Rehnquist wins praise from his colleagues. This is largely because he is more intellectually well-equipped and self-confident than his predecessor. He is charming and witty, but also, at times, cagey, shrewd, and blunt. He

has written three history books, paints, and is an ardent fan of Gilbert and Sullivan operettas — such a fan that he has appeared in productions and also had four gold stripes added to each arm of his black robes, like the English lord chancellor in "Iolanthe."

Rehnquist plays in a regular poker game with a small circle of conservative friends, including one of Clinton's most vicious attackers, former Secretary of Education William J. Bennett.

IN THE 1990s, Rehnquist has achieved as chief justice much of what he campaigned for as a rogue dissenting justice in the 1970s and early 1980s.

Although *Roe vs. Wade* has not been overturned, he commands a bare majority for halting integration efforts, overturning affirmative-action programs, curbing the rights of the accused, expediting the executions of death-row inmates, and limiting congressional powers to expend federal law.

For the 74-year-old chief justice, presiding over Clinton's impeachment trial caps a half-century legal career and a lifetime of political partisanship.

The ironies of history abound: a presiding chief justice originally appointed by a president who resigned in the face of impeachment; a chief justice marked by his own Senate battles, who doggedly pursues his agenda on the bench; and a fierce partisan overseeing the political trial of the century.

Most remarkable, though, remains the spectacle of Rehnquist, who twice faced allegations of lying before the Senate, presiding over the trial of a popular president confronting allegations of lying about private matters of self-indulgence and personal disgrace.