

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

January 22, 1999

Professor Jeffrey Rosen
George Washington University Law School
2000 H Street, N.W.
Washington, D.C. 20052

RE: Impeachment Complaint against Chief Justice Rehnquist & the House Judiciary Committee

Dear Professor Rosen:

Thank you for your return call -- and for graciously permitting me to "squeeze in" a thumbnail description of CJA's November 6, 1998 impeachment complaint against Chief Justice Rehnquist. More importantly, thank you for your willingness to examine the complaint, including the Supreme Court submissions on which it is based.

It takes courage to examine such a complaint -- and even greater courage to expose the systemic and high-level corruption it presents. As a respected legal scholar, journalist, and commentator, you are uniquely qualified to meet the challenge, imposed upon you by professional and ethical codes. Certainly, you are well positioned to champion the public interest in the rule of law and an honest judiciary.

Although you undoubtedly have personal and professional relationships with judges, former judges, attorneys, and academicians, whose serious misconduct is reflected by the enclosed submissions, I was heartened by your *sua sponte* and seemingly genuine response, last March, when I introduced myself to you as the coordinator of the Center for Judicial Accountability, Inc. (CJA), a non-partisan citizens' organization focusing on issues of judicial selection and discipline. You responded by stating that these issues were very important and readily accepted from me a copy of CJA's published article, "*Without Merit: The Empty Promise of Judicial Discipline*"¹, in addition to CJA's informational brochure. I may

¹ The article is part of the Supreme Court submissions [See cert petition appendix: A-207; documentary compendium to CJA's June 1998 statement: R-5]. An additional copy is enclosed for your convenience, as is CJA's updated informational brochure.

have mentioned that the article was a critique of 1993 Report of the National Commission on Judicial Discipline and Removal, exposing it as methodologically-flawed and dishonest. The enclosed Supreme Court submissions documentarily bear out that critique -- in its entirety.

Inasmuch as you clerked for District of Columbia Chief Judge Abner Mikva², who was previously a member of the House Judiciary Committee, I would point out that he testified before the National Commission on Judicial Discipline and Removal on May 15, 1992 -- a pertinent portion of which is quoted in CJA's March 23, 1998 memorandum to the House Judiciary Committee, contained in the Supreme Court submissions³. The memorandum highlights that the National Commission's Report misrepresented the critical recommendation Judge Mikva put forward as having been advanced by the Twentieth Century Task Force on Judicial Responsibility for an oversight committee to ensure the efficacy of the federal judicial complaint mechanism under 28 U.S.C. §372(c).

To assist you in examining CJA's November 6, 1998 impeachment complaint against the Chief Justice, an annotated inventory of the transmittal follows. Let me just note that on December 1, 1998, when you appeared before the House Judiciary Committee, in connection with its deliberations on the President's impeachments, Judge Gerald Tjoflat, who was on the panel with you, began by describing the rule of law as a "three-legged stool", which collapses if one of the legs is broken. He stated that the first leg is "an impartial judiciary", the second, "a bar of lawyers who are committed to adhering to the code of ethics at all times and in all matters" and the third, "the oath taken by witnesses". Chairman Hyde thereafter adopted that analogy, including in opening debate in the House of Representatives on the articles of impeachment against the President. The transmittal before you demonstrates the destruction of ALL three legs, with the finishing blows delivered by our nation's Chief Justice.

ANNOTATED INVENTORY OF TRANSMITTAL

- (1) CJA's press release about the November 6, 1998 impeachment complaint against the Chief Justice and CJA's companion press release about the interrelated story of how the House Judiciary Committee ignores the hundreds of impeachment complaints it receives against federal judges.
- (2) The Appearance of Justice, Chapter 9: "A Judge and His Cause", by John MacKenzie, with Justice Rehnquist's memorandum denying recusal in *Laird v. Tatum*. John MacKenzie's scathing assessment

² Some months earlier when former Judge Mikva spoke at the Association of the Bar of the City of New York, I gave him, in hand, a copy of "*Without Merit: The Empty Promise of Judicial Discipline*".

³ The memorandum is printed in the appendix to the enclosed cert petition: A-301-317. See A-306-307.

of Justice Rehnquist's failure to recuse himself from that 1972 case is cited in our press release about our impeachment complaint against the Chief Justice and more fully noted at page 7 of the petition for rehearing [*See Green Folder*].

NOTE ON THE COLORED FOLDERS: The materials enclosed therein constitute the record before the Supreme Court in *Sassower v. Mangano, et al.*⁴ -- the civil rights action under 42 U.S.C. §1983 from which the November 6, 1998 impeachment complaint against the Chief Justice emerges. BOTH the Republican and Democratic sides of the House Judiciary Committee have copies of these materials, as well as copies 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 appearance before the House Judiciary Committee wherein he stated 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.

⁴ The defendants in the case are high-ranking New York State judges and the New York State Attorney General, sued for corruption. The allegations of the federal complaint are reflected by 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) -- which is part of the Supreme Court submissions [cert petition appendix [A-269]; Compendium to CJA's June 1998 statement [R-54]; Exhibit "I-2" to July 27, 1998 criminal complaint to the U.S. Justice Department's Public Integrity Section]. For your convenience, a free-standing copy 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 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. This is because the lower federal judges not only corrupted the judicial/appellate processes, but the judicial disciplinary process under 28 U.S.C. §372(c)⁵. 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"⁶. The supporting documentary compendium to the statement contains CJA's FIVE-YEAR correspondence

⁵ The §372(c) misconduct complaints against the district judge and appellate panel judges are printed in the appendix of the cert petition: the §372(c) complaints are at A- 242; A-251; the dismissal order of the Chief Judge: A-28; the petition for review to the Circuit Judicial Council: A-272; the affirmance order of the Circuit Judicial Council: A-31. *NOTE:* The federal judiciary's *own* statistics as to its 100% dismissal rate for §372(c) complaints, set forth in its 1996 and 1997 annual reports, are referred to in CJA's June 1998 statement to the House Judiciary Committee, printed in the appendix to the supplemental brief at SA-19.]

⁶ The statement is also printed in the appendix to the supplemental brief at SA-17.

with the House Judiciary Committee. This correspondence [R-35, R-74, R-75*⁷, 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 judicial impeachment complaint [R-35] and extends through to our filing of our second judicial impeachment complaint in March 1998 -- this against the district and circuit judges in *Sassower v. Mangano* [R-15, at R-25]. The 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's.

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.

* * *

We have no doubt that your objective evaluation of the foregoing materials will convince you of the profound seriousness of CJA's November 6, 1998 impeachment complaint against the Chief Justice and that it meets the standards for impeachment "under the most stringent definition of impeachable offenses".

As highlighted by our impeachment complaint (at p. 4), it was the National Commission's assumption that:

⁷ 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 the January 8th 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.

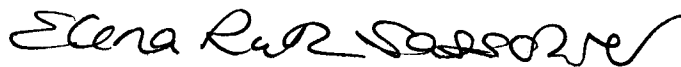
⁸ The July 27, 1998 complaint to the Justice Department is also reprinted in the appendix to the supplemental brief: SA-47.

“any publicly-made (non-frivolous) allegations of serious misconduct...against a Supreme Court Justice would receive intense scrutiny in the press ... [See, also, Exhibit “B” to November 6, 1998 complaint, at p. 122]

Your response, as legal affairs writer for The New Republic, staff writer for The New Yorker, author of Op-Ed pieces in The New York Times, contributor to news telecasts, etc., will test that assumption.

Again, thank you for your willingness to review the impeachment complaint. Needless to say, the enclosed Supreme Court 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. In the event you are unwilling to meet your ethical obligations under Rules 8.3 and 8.4 of the ABA Model Rules of Professional Conduct⁹ [the second leg of the “three-legged stool] by taking steps to protect the public from the systemic and unredressed judicial corruption the submissions document, please be good enough to return them to us so that we may pass them on to other attorney-scholars and journalists.

Yours for a quality judiciary,



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

Enclosures: As indicated