

# CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Coordinator*

## BY FEDERAL EXPRESS

6 pages

January 14, 1999

Ms. Stephanie Lambidakis  
CBS NEWS  
2020 M Street, N.W.  
Washington, D.C. 20036

RE: Impeachment complaint against Chief Justice Rehnquist and the media-*unreported* story about how the House Judiciary Committee handles the hundreds of impeachment complaints it receives against federal judges

Dear Ms. Lambidakis:

Enclosed are substantiating materials for stories that will do more than put you on the "Heroes: Honor Roll" of *Brill's Content*. They will win top journalistic prizes for you and CBS NEWS -- and, most importantly, the gratitude of those whose interest is the public interest.

Once you review the materials, I believe you will agree that they have the potential to blow apart the Senate impeachment trial of the President -- because they expose the *official* misconduct of the key players, the Presiding Chief Justice and the House Judiciary Committee, when required to uphold the "rule of law" and the integrity of the judicial process -- the very issues involved in the President's impeachment.

To assist your review, an annotated inventory follows:

(1) **CJA's press release.** The 1972 case from which Chief Justice Rehnquist refused to recuse himself -- described in the press release as forming part of the legislative background to the federal law on judicial disqualification/disclosure [28 U.S.C. §455]<sup>1</sup> -- is identified and discussed at page 7 of the petition for

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<sup>1</sup> You're absolutely right in the statement attributed to you in the "Honor Roll", when you said that the Justices "are exempt from a lot of laws". However, 28 U.S.C. §455 is NOT one of them.

rehearing, which is part of CJA's impeachment complaint against the Chief Justice<sup>2</sup> [See Green Folder].

**(2) CJA's informational brochure, with enclosures:** (a) CJA's published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View, Vol 4. No. 1, summer 1997) -- referred to in the press release. The article provides a synopsis-overview of the reality of the House Judiciary Committee's handling of judicial impeachment complaints, concealed by the methodologically-flawed and dishonest 1993 Report of the National Commission on Judicial Discipline and Removal, including a summary of our direct, first-hand experience with the House Judiciary Committee in filing our first judicial impeachment complaint in 1993 and in filing a judicial misconduct complaint with the federal judiciary under 28 U.S.C. §372(c), "the 1980 Act". (b) 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). 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. (c) 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). The concluding paragraphs of that ad describe the *Sassower v. Mangano* federal action, the State Attorney General's fraudulent dismissal motion, and the district judge's fraudulent decision, dismissing the case.

#### **IN THE MANILA FOLDER:**

**(1) Pages 32-39 from the Report of the National Commission on Judicial Discipline and Removal** about the House Judiciary Committee. Page 35 is particularly important in that it identifies that the House Judiciary Committee tabulates the number of judicial impeachment complaints it receives in its "Summary of Activities" and that these are "available upon request". CJA's July 10, 1995 letter, which formally made that request, is part of the documentary compendium [R-95] to CJA's June 1998 statement to the House Judiciary Committee [See Orange Folder]. The Committee's July 20, 1995 response to that request is also in that compendium [R-98], as is CJA's follow-up on the subject [R-99, R-103, 105].

**(2) Pertinent pages from the House Judiciary Committee's "Summary of Activities" for the 101st and 102nd Congresses**, reflecting that the Committee received 141 and 120 complaints, respectively, against federal judges. These pages were Exhibits "D" and "E" to CJA's aforesaid July 10, 1995 letter

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<sup>2</sup> For your convenience, I have enclosed the extensive discussion from John MacKenzie's book, referred to in the press release, about Justice Rehnquist's failure to recuse himself from that 1972 case and the disingenuousness/dishonesty of the memorandum he issued in connection therewith [See Manila Folder].

[R-95]. That letter also annexed, as Exhibit "C", the table of contents for the "Summary of Activities" for the 103rd Congress, reflecting NO section with statistical information on judicial impeachment complaints. This was pointed out by our July 10, 1995 letter [R-95]. Nonetheless, the House Judiciary Committee continued to omit such information from its "Summary of Activities" for the 104th Congress. Our enclosed June 1998 statement to the House Judiciary Committee noted such fact [at p.5, fn. 5; See Orange Folder].

**(3) Pages 38-39 of the Draft Report of the National Commission on Judicial Discipline**, containing the following pertinent statement, thereafter omitted from the Commission's Final Report:

"The Commission's analysis showed that well over 90 percent of the complaints do not raise genuine issues pertinent to judicial discipline or impeachment. A small number of complaints, however, raise troubling issues..." (at p. 39)

This statement, appearing in the draft report, was made the subject of express inquiry by CJA -- at the outset of our five-year correspondence with the House Judiciary Committee -- as we endeavored to ascertain what the Committee had done with this less than 10 percent that raised "genuine issues pertinent to judicial discipline or impeachment". See R-76. As reflected by our correspondence, the Committee did NOT respond to that inquiry. [See discussion in "*Without Merit: The Empty Promise of Judicial Discipline*", at p. 94]

**(4) Pertinent pages of the federal judiciary's 1996 and 1997 annual reports**, showing a 100% dismissal rate for judicial misconduct complaints filed with it, pursuant to 28 U.S.C. §372(c). As pointed out in CJA's June 1998 written statement to the House Judiciary Committee (at p. 3), not a single federal judge was disciplined, publicly or privately, and not a single investigative committee was appointed [See Orange Folder].

**(5) The Appearance of Justice, Chapter 9: "A Judge and His Cause"**, by John MacKenzie, with Justice Rehnquist's memorandum denying recusal in the 1972 case, *Laird v. Tatum*. See press release and page 7 of the petition for rehearing.

**NOTE AS TO THE COLORED FOLDERS:** *ALL the materials enclosed therein constitute 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]. The House Judiciary Committee -- both Republican and Democratic sides -- has copies of all these materials (sent certified mail or hand-delivered) and, additionally, 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 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:**

**The cert petition and supplemental brief in the federal civil rights action, *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.

The supplemental brief (pp. 1-3, 6-10) 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 THE ORANGE FOLDER:**

**CJA's FIVE-YEAR correspondence with the House Judiciary Committee** is contained in the documentary compendium to our written statement "for inclusion in the record of the House Judiciary Committee's June 11, 1998 'oversight hearing of the administration and operation of the federal judiciary'"<sup>3</sup>. The correspondence [R-35, R-74, R-75\*<sup>4</sup>, 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 against the *Sassower v. Mangano* lower federal judges on March 23, 1998 [R-15, at R-25]**<sup>5</sup>. 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's<sup>6</sup>.

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> Also printed in the appendix to the cert petition: See A-316.

<sup>6</sup> As to those judicial impeachments, see fn. 2 of press release.

January 14, 1999

**IN THE PURPLE FOLDER:**

**CJA's July 27, 1998 criminal complaint to the U.S. Justice Department, Public Integrity Section, Criminal Division.**<sup>7</sup> The last paragraph of that letter 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. You may be assured of our complete cooperation and assistance as you develop the powerful and significant stories, which these materials fully substantiate.

Yours for a quality judiciary,



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

**Enclosures**

In the unlikely event that CBS NEWS does not to "run" with the stories presented by our transmitted materials, we ask that you return them to us. Please understand that both the bound volumes and photocopies are extremely costly and time-consuming for our non-profit citizens' organization to reproduce and assemble -- and we would appreciate being able to "recycle them" for use by other journalists.

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<sup>7</sup> 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.

# HONOR ROLL

REYNOLDS HOLDING AND WILLIAM CARLSEN, *SAN FRANCISCO CHRONICLE*.

Last April, *Chronicle* writers Reynolds Holding and William Carlsen began a series on a deadly but preventable epidemic. Despite the availability of safe blood-drawing devices, they reported, nurses must often handle dangerous needles, leading to 1 million accidental pricks a year and the transmission of tens of thousands of illnesses nationwide in the last decade.

Holding started looking into the story in late 1997, when a local nurse who contracted HIV from a needle prick sued the needle

manufacturer. Soon Holding discovered that "a product was available that could save certainly tens of thousands of lives... and yet this clearly more dangerous, older device was still on the market," he says, noting that while each safety device cost just pennies more to make, the dominant manu-

facturer charged up to 35 cents more apiece. "[The manufacturer] didn't want to sell it at a reasonable price, the hospitals didn't want to buy it, and the government didn't want to do anything about it." By January, both he and Carlsen were on the story full time.

Their three-part series spurred California's Occupational Safety and Health Administration to draft regulations requiring state hospitals to use safety needles and, on September 29, the governor signed a bill requiring full compliance with the new rules by August 1999. "The investigative work that the *Chronicle* did provided us with data that we needed to make this legislation law," says Alan LoFaso, an aide to assemblywoman Carole Migden, who introduced the bill.

—D.M. Osborne

LAURA PALMER, *NIGHTLINE*.

*Nightline's* September 18 broadcast opened with a clip of Jay Leno: "Northwest Airlines has rehired that pilot who got convicted of flying the plane drunk.... So if you're flying

Northwest sometime and you can't find the beverage cart, check the cockpit."

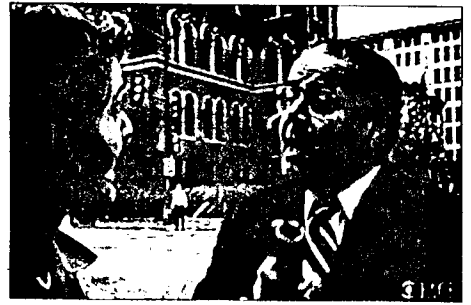
But just when the viewer was primed for a show blasting Northwest Airlines Inc.'s decision, anchor Ted Koppel turned it around: "[This is] a story of recovery, the story of a man who made no excuses but who set out methodically to redeem himself." What followed was a 21-minute segment that traced Lyle Prouse's journey from convicted felon to wounded hero. In 1990, he was fired by Northwest and sentenced to 16 months in prison for drinking more than 14 rum-and-cokes and flying a passenger jet the next morning. In 1993, Northwest took him back into its pilot-training program.

Most news media simply announced these events. But Laura Palmer, the producer of *Nightline's* segment, painted a fuller picture, including details of Prouse's flawless 22-year flying record, his months of treatment, and his determination to win back his four pilot's licenses. "Here I am, the guy who flew an airplane full of people, 58 passengers, while I was impaired," Prouse said in the segment, "[I] disgraced my company, my profession, myself, my family, went to prison, lost it all. I've been given all of this back."

Palmer first contacted Prouse about doing a show on his recovery in 1994. At first neither Northwest nor Prouse would cooperate. But over the next four years, Prouse read three of Palmer's books—including the 1988 *Shrapnel in the Heart: Letters and Remembrance from the Vietnam Veterans Memorial*—and came to admire her work.

With Prouse's retirement approaching this fall, Palmer again contacted Northwest and this time, together with Prouse, they agreed to participate in a story. He says his respect for both Palmer and Koppel gave him confidence: "I had an implicit trust...[that] allowed me to become naked and open."

Palmer and *Nightline's* executive producer, Tom Bettag, declined to comment on the the piece, saying through a spokeswoman, "We feel like our work speaks for itself and we'd like it to stand on its own." Prouse is open with his approval: "What a wonderful way to close the door quietly and be able to walk away," he says, "to leave in the hearts and



CBS News's Stephanie Lambidakis takes on Justice Scalia.

minds of Northwest pilots...something they feel positive about." —Kimberly Conniff

STEPHANIE LAMBIDAKIS, CBS NEWS.

Viewers of *The CBS Evening News* on October 5 caught a rare glimpse of Supreme Court Justice Antonin Scalia losing his cool. After *USA Today* published a report on the abysmal minority hiring practices by the U.S. Supreme Court, CBS News reporter and producer Lambidakis waited on a street corner to get a reaction to the report from any of the nine justices.

She went into action when she saw Scalia—who, according to *USA Today*, has never hired an African-American clerk. With the camera rolling, she asked, "The NAACP would like to know why you have never had an African-American clerk." First Scalia continued to walk down the street with his security detail, attempting to ignore the reporter. But Lambidakis and her camera crew scurried to keep up with him.

Then he stopped, turned back to Lambidakis, and repeated four times that her questions had "no basis." Still, she hammered away. "What should people know about the hiring practices of the court?" she asked. "They should know that it is rigorously fair," he thundered back. When called for comment, Scalia's assistant said, "He almost without exception doesn't talk to reporters." (CBS News rebroadcast the taped confrontation the next day on *CBS This Morning* and the following Sunday on *Face the Nation*.)

For most journalists on the Supreme Court beat—a pool known for polite, non-invasive reporting—"no" means "no." But Lambidakis showed that the court lacks accountability. "They're exempt from a lot of laws," Lambidakis says of the high court. "If they were a private company, I don't think they'd get away with" such hiring practices.

—Katherine Rosman

# [ REPORT FROM THE OMBUDSMAN ]

BY BILL KOVACH

**H**eroic. Really?—"I JUST WANTED TO RAISE A QUESTION with you're...the designation of Stephanie Lambidakis of CBS as a 'hero' for waylaying Justice Scalia as he came out of church to ask him why he had no black law clerks. This is heroic journalism?" Although the reader didn't want to be identified, it's a fair question. The words we choose should mean what they say.

First let me say that the reader's use of the word *waylaying* to describe what Stephanie Lambidakis did casts her actions in a needlessly negative light. The question Ms. Lambidakis was trying to put to Supreme Court Justice Antonin Scalia was a legitimate one—the minority-hiring practices of members of the Supreme Court, an issue originally tackled by *USA Today*. Before taking to the streets, Ms. Lambidakis had repeatedly but unsuccessfully tried to question the justices by phone and otherwise. Failing that, she approached Justice Scalia in a public place and identified herself. She did not block his way or crowd him. She did not ask the question impolitely. He chose not to respond.

Supreme Court justices are, for many good reasons, more insulated from journalistic inquiry than most public officials. That does not mean that they should not be held to account for their behavior in areas of concern as important as the equal treatment of citizens.

Stephanie Lambidakis's attempt to raise the issue with a member of the court was a legitimate effort by a journalist reporting on an important subject. Whether the action was "heroic journalism" is another matter. My dictionary uses such words as *courageous*, *noble*, *gallant*, and *involving risk*, to define heroic.

Walking up to someone on a public sidewalk, even a powerful government official, to ask a legitimate question doesn't seem to me to rise to the kind of "courageous," "noble," or "gallant" activity that justifies the label *hero*.

Point Well Taken—The e-mail from Gary Karr is direct and to the point: "One word in the Disney/ABC piece sticks in my craw: *rumored*. The word appears in a sentence dealing with Brian Ross[s] salary." I agree; the word sticks in mine too, especially anytime I come across it in what holds itself out to be a reporting of facts. Even more so in *Brill's Content*, which announces each month in "What We Stand For" that

*Bill Kovach, curator of Harvard's Nieman Foundation for Journalism, was formerly editor of the Atlanta Journal and Constitution and a New York Times editor.*

"it should be no surprise that our first principle is that anything that purports to be nonfiction should be true. Which means it should be accurate in fact and in context." In anything other than a gossip column it would be hard to make that claim by publishing rumors.

When I asked Steven Brill, he agreed with Mr. Karr: "We made a mistake. That was bad editing. It's a bad word. We should say why we think that is the salary."

A Question of Standards—"What is the relationship between the magazine's web page and the magazine itself? Are the materials published on the website held to the same standards as the magazine?" Those questions were e-mailed by Toby Dorsey. It is a subject more and more frequently of

concern to readers who see their traditional print publications begin to show up with a "paper" on the Web that changes minute by minute.

First, a disclaimer. My ombudsman's writ runs only to material that appears in the printed magazine. I've never seen the web version of the magazine. Because I have no firsthand knowledge, I asked Brill for his answer, and he says there are basically two standards.

"If the materials that appear on-line are identified as having been written by the magazine's staff or

written for the magazine," he says, "the standards are absolutely the same for both print and electronic versions of the magazine."

But he adds that in order to take advantage of the flexibility that the immediacy of the Web provides for new opportunities for reporting and developing more interesting information, there are separate rules for some of the material that appears on-line.

"Some other information," he says, "is of necessity different." As an example he cites a competitive story that might grow stale waiting for the next issue of the magazine. Such a story would be posted on the web version, written to the magazine's standards. But because the story appears in an interactive medium it is likely to attract a discussion among readers who express information and opinions of their own on the subject. This "bulletin board" material is not held to the magazine's standards.

"Although," Brill adds, "I still think we are responsible in the sense that I reserve the right to edit stuff that is in bad taste or grossly unfair to people—within the parameters that the bulletin board is a place for people to discuss all kinds of opinion." ■

## HOW TO REACH HIM

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