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December 28, 1998

Mr. Jonathan Broder
6109 29th Street, N.W.
Washington, D.C. 20015

RE: THE HOUSE JUDICIARY COMMITTEE's *OTHER* IMPEACHMENT DUTIES, INCLUDING IMPEACHMENT COMPLAINT AGAINST SUPREME COURT CHIEF JUSTICE REHNQUIST

Dear Mr. Broder:

Following up my brief message, left on your voice mail a short while ago, enclosed is the column, "*Stakes are High for Chief Justice*", by Joe Conason, appearing in this week's New York Observer.

The 1972 case referred to in Mr. Conason's column, from which Justice Rehnquist failed to recuse himself, is described at p. 7 of the *Sassower v. Mangano* petition for rehearing as part of the legislative history of 28 U.S.C. Section 455 -- the principal disqualification statute. That statute, applicable to the Justices, was subverted by them in *Sassower v. Mangano*, by their wilful failure to adjudicate petitioner's application, made pursuant thereto, for the Justices' disqualification and for disclosure [RA-6-19]. This is highlighted by CJA's November 6, 1998 impeachment complaint (at p. 2).

Please advise as to your interest and intentions in covering this story -- so that I can know how vigorously to pursue other journalists.

Yours for a quality judiciary,

Elena

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

Enclosures

P.S. On another subject, enclosed, FYI, is a copy of CJA's Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" -- published in today's New York Post.

JOE CONASON

Stakes Are High For Chief Justice

For the aging Chief Justice of the Supreme Court, a Presidential impeachment trial is hardly a happy New Year's prospect. As he approaches the end of his judicial career, reportedly burdened by ill health, William Rehnquist must know that every ruling he makes will be evaluated in light of his own longtime political allegiances, not only by the public and the bar, but by historians as well. He cannot anticipate with much joy a courtroom where his judgments may be overruled by squabbling senators. And he may well be concerned that, like everyone else drawn into this mad spectacle, all his past and present missteps will be chewed over incessantly by the omnivorous media.

Unless his partisan proclivities have overcome his considerable intelligence, Chief Justice Rehnquist surely hopes that the Republican leaders of the Senate will spare him those indignities. Fortunately for him, they have at least two compellingly selfish reasons to do so: They like being senators a lot, and they like being in the majority even more.

If the Senate insists on a full trial, the Chief Justice will encounter intense and unflattering scrutiny. Since his appointment to the high court, he has benefited greatly from our national tradition of respect for people of his station, whether they have earned it or not. Few Americans recall how troubled his ascension was, and fewer still have any notion of his questionable role in the early stages of this constitutional crisis. Were the impeachment a normal court proceeding, there would be ample reason to suggest that the Chief Justice should recuse himself from presiding over this particular trial, although no one will. But neither the impeachment nor the investigation leading up to it have been "normal" legally, or in any other sense.

HAI KNAFO

WILLIAM REHNQUIST

Among the questions that could be raised, however, is Mr. Rehnquist's responsibility for the Independent Counsel Act and the partisan perversion of that law by Judge David Sentelle of North Carolina's appellate court. Chief Justice Rehnquist wrote the 1988 majority decision upholding the constitutionality of the independent counsel statute in its present form, an opinion that may not hold up well against the prescient dissent by his colleague Antonin Scalia, who foresaw all too well the possibility of the abuses committed by Kenneth Starr.

More immediately, Chief Justice Rehnquist selected the relatively junior and inexperienced Judge Sentelle to preside over the three-judge panel that appoints independent counsels, despite a clear legal requirement that he give preference to senior and retired members of the judiciary. Then Judge Sentelle removed the first Whitewater special prosecutor and replaced him with Mr. Starr only weeks after Mr. Starr had a controversial lunch with the two ultra-right senators from North Carolina: Jesse Helms and Lauch Faircloth, Judge Sentelle's patrons from his home state. That deplorable breach of impartiality, and all that has followed from it, may thus be laid directly at the feet of the Chief Justice, who not only failed to discipline or remove Judge Sentelle, but renamed him to the panel.

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Unfortunately, there was nothing startling about Chief Justice Rehnquist's partisan misuse of his authority in that instance. Dating back to his days as a Supreme Court clerk, when he wrote a nauseating memo on Brown v. Board of Education citing his own opinion that whites simply don't like blacks, he has aligned himself with the far right. His personal ideology lay somewhere between the John Birch Society and the Goldwater platform of 1964, and doesn't seem to have changed much since. That was why Richard Nixon admired him enough to place Chief Justice Rehnquist in a sensitive position at the Justice Department and then on the Supreme Court, and it is also why Ronald Reagan elevated him to Chief Justice.

Nor is Chief Justice Rehnquist in the best position to examine the President's alleged lies under oath. On both occasions when he gave sworn testimony at his confirmation hearings, he left a distinct odor of dishonesty in his wake. The late Senator Birch Bayh of Indiana, among others, called Chief Justice Rehnquist's 1971 testimony "self-serving" and publicly questioned his veracity.

When he was nominated for Chief Justice in 1986, he testified that he had known little about Army spying on antiwar protesters during his years at Justice, although documents were found proving that he had helped to plan the illegal surveillance program. He later cast the deciding vote in a 1972 lawsuit concerning those military abuses when he clearly should have recused himself. Ultimately, he was confirmed, but not without severe damage to his ethical standing.

What may save Chief Justice Rehnquist from extensive rehashing of these unpleasant memories is a simple political fact. Nineteen Republican Senate seats will be contested in November 2000, more than enough for voters to turn control of that august body over to the Democrats. Of those 19, a dozen or so are from states that preferred Mr. Clinton in 1996—Florida, Maine, Michigan, Minnesota, Missouri and Vermont, to name a few—which could leave their Republican incumbents especially vulnerable to an electorate infuriated by impeachment.

Of course, those senators may decide to rely upon the American propensity for amnesia and press forward without restraint. The stakes of that unwise gamble will include the future reputation of the Chief Justice.