CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY FAX: 212-416-2658 4 pages

January 8, 1999

Mr. Max Boot
The Wall Street Journal

RE: Impeachment Complaint against Chief Justice Rehnquist and the media-unreported story of the House Judiciary Committee's handling of impeachment complaints against federal judges and "oversight" of federal judicial discipline

Dear Mr. Boot:

Based on your powerful and provocative book, Out of Order, I expect you to be particularly excited by the stories reflected by the enclosed press release. Indeed, I can't think of a journalist who should be more excited.

I look forward to your return call -- two messages having already been left on your voice mail.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosure

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January 7, 1999

PRESS RELEASE

As Chief Justice William Rehnquist presides over the Senate impeachment trial of the President, an impeachment complaint is pending against him in the House Judiciary Committee. It is more serious, by far, than the impeachment articles against the President -- because the Chief Justice's violation of the rule of law, obstruction of justice, and abuse of power arise from his *official* conduct.

The complaint was filed two months ago by the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization which documents judicial corruption. It rests on his *official* misconduct as head of the Supreme Court and the administration of the federal judiciary. In both capacities, his supervisory and ethical duty require him to ensure that corrupt federal judges are disciplined and removed -- and that mechanisms are adequate for the purpose. Like all federal judges, he also has an absolute duty of impartiality -- imposed by his oath of office and ethical rules -- and, by federal law, is required to disqualify himself where his impartiality might reasonably be questioned, unless he discloses the facts bearing upon the appearance of his disqualification. The background to such law includes the Chief Justice's failure to recuse himself from a case when he first came on the bench, described as being "one of the most serious ethical lapses in the Court's history." by former Washington Post/New York Times writer John MacKenzie. [The Appearance of Justice, 1974, p. 209]. That case is referred to in last week's New York Observer, in an column by Joe Conason, highlighting Justice Rehnquist's insensitivity to conflict of interest and disqualification issues. ["*Stakes Are High For Chief Justice*", at p. 5: copy annexed].

Chief Justice Rehnquist has long-standing personal and professional relationships with lower federal judges, particularly with court of appeals judges and chief judges. The impeachment complaint rests on his *official* misconduct when presented with a petition for a writ of certiorari about these judges' corruption in office, accompanied by a formal application that he disqualify himself or disclose the facts bearing upon those relationships and the appearance of his lack of impartiality. The Chief Justice ignored the disqualification/disclosure application, permitted his associate Supreme Court justices, who likewise have personal and professional relationships with those judges, to also ignore it, and then, without dissent, denied the cert petition, which by reason of the corruption issues involved, had sought mandatory review under the Court's "power of supervision" or, at minimum, criminal and impeachment referral against the subject federal judges, as required by ethical rules applicable to the justices. The Chief Justice and associate justices then ignored a judicial misconduct complaint, filed against them, based on their wilful violation of the law of disqualification/disclosure and of their mandatory supervisory and ethical duties.

This is the background to the 4-page impeachment complaint, which identifies four grounds for impeachment, with an additional ground relating to the Chief Justice's *official* misconduct as head of

the administration of the federal judiciary. Accompanying the complaint and expressly part of it is a petition for rehearing filed with the Supreme Court, which summarizes -- in a 10-page narrative and by specific reference to the *simultaneously-occurring* impeachment proceedings against the President -- the basis for the justices' impeachment "under the most stringent definition of impeachable offenses". It recaps the documentary record before the justices, one which established that the subject federal judges, in order to protect state judges, sued for corruption, had annihilated anything resembling judicial and appellate processes, including by judicial decisions which falsified the factual record in *every* material respect and further, that ALL mechanisms to discipline and remove these federal judges, in each of the three governmental branches, had been corrupted or were otherwise dysfunctional or non-functional.

One of those mechanisms -- now in the public spotlight -- is impeachment. The record before the justices, which included CJA's FIVE-YEAR correspondence with the House Judiciary Committee, showed the Committee does NOT investigate, refer, or even acknowledge the hundreds of judicial impeachment complaints it receives from citizens[1]. These complaints, instead, fall into a "black hole" -- with the House Judiciary Committee NOT even statistically recording the numbers of complaints it receives each Congress in its "Summary of Activities"[2], as it is supposed to do, and further concealing the complaints by withholding them from public access, although the complaints are supposed to be available upon request [*Cf.* Report of the National Commission on Judicial Discipline and Removal, 1993, at p. 35]. The record before the justices also included CJA's June 1998 written statement to the House Judiciary Committee[3], detailing the deliberateness with which the Committee, in addition to abandoning its impeachment duties *vis-a-vis* citizen complaints against federal judges, has jettisoned its oversight duties over the federal judiciary's implementation of a judicial disciplinary mechanism -- even in the face of an evidentiary demonstration that the federal judiciary had corrupted that mechanism. This is the media-unreported story behind the House Judiciary Committee, whose Chairman, Henry Hyde, has been repeatedly stressing the importance of "the rule of law" to our constitutional system, likening it to a "three-legged stool", whose first leg is "an honest judge".

The shocking and scandalous story of the House Judiciary Committee's "green light" to judicial corruption -- like the related story of CJA's impeachment complaint against the Chief Justice Rehnquist -- is a *DEUS EX MACHINA* with the potential to blow apart the Senate impeachment trial of the President. It certainly would expose the hypocrisy and official misconduct of the House Judiciary prosecution team and of the justice presiding.

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[1] The three judicial impeachments in the 1980's came out of Justice Department criminal prosecutions, in which two of the judges were convicted and where the third, was the subject of a referral from the federal judiciary, after his acquittal. This seems to have lulled the media into assuming that there is a functioning process at the House Judiciary Committee, rather than doing *any* investigation on the subject.

[2] Last available figures are for the 101st and 102nd Congresses, when the House Judiciary Committee's "Summary of Activities" respectively reported that 141 and 120 complaints against federal judges were received.

[3] The statement is accessible from CJA's website: *www.judgewatch.org* -- as it CJA's published article, referred to therein, "*Without Merit: The Empty Promise of Judicial Discipline*" [The Long Term View (Massachusetts School of Law) Vol. 4, No. 1, summer 1997].

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 KNAPO

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.

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.

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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.