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BY FAX AND MAIL

518-432-8255

June 9, 1997

New York State Ethics Commission
39 Columbia Street
Albany, New York 12207-2717

RE: Agenda Item: Your Failure to Respond to CJA's April 11th Letter

Dear Commissioners:

We understand that you are meeting today -- and wish to draw to your attention to the fact that we have received *no* response from you to our April 11th letter, addressed to Commissioner Eggenschiller. Copies of that letter were sent to the Ethics Commission office for distribution to Commissioners Constanza, Odell, and Brewster, in advance of your last meeting on April 29th. Included therewith were copies of our April 15th letter, addressed to Governor Pataki.

By contrast to your *non*-response to our April 11th letter, the Governor's office responded to our April 15th letter. You should be aware of that response -- inasmuch as it bears upon the integrity of the Governor's office and upon Paul Shechtman's appointment as an Ethics Commissioner.

As you know, the purpose of our April 15th letter to Governor Pataki was to inquire as to why, in the ten months since the resignation of Ethics Commission Chairman Joseph Bress, he had failed to appoint a replacement commissioner and to designate a succeeding chairman. This, we pointed out, was a violation of his duties under Executive Law §94.5, which require the Governor to fill vacancies on the Commission within two months.

Our April 15th letter was faxed to the Governor's office on that date. We did not receive a letter response. Rather, at approximately 5:30 p.m. on April 29th, the same date as the Ethics Commission's meeting, Thomas Dougherty, the Governor's appointment secretary, telephoned.

In his phone conversation with me, Mr. Dougherty complained that the tone of our April 15th was not sufficiently deferential and took me to task for not knowing that Governor Pataki had already filled the Ethics commissioner vacancy by appointing Mr. Shechtman. I told Mr. Dougherty that *immediately* prior to writing the April 15th letter I had telephoned the Ethics Commission and had been advised of such vacancy. However, Mr. Dougherty claimed that Mr. Shechtman had been appointed on March 27th. He acknowledged that the Governor had still not designated a chairman from among the commissioners.

EX "A"

Thereafter, I telephoned Walter Ayres, the Ethics Commission's Public Information Officer, with whom I had spoken prior to writing the April 15th letter. Mr. Ayres reiterated that the information he had given me as to the Ethics Commission vacancies was true and correct when we spoke on April 11th -- and that it had remained true and correct until shortly before the April 29th meeting. Indeed, according to Mr. Ayres, the Ethics Commission's *first* notice of Mr. Shechtman's appointment as a commissioner was when it received a faxed press release from the Governor's office.

Mr. Ayres supplied me with a copy of that press release¹ (Exhibit "A-1"). Although it indicates an April 14, 1997 release date -- one-day *before* our April 15th letter -- it was *not* faxed to the Ethics Commission until April 28th. This is reflected by the line of fax information appearing on the Ethics Commission's copy, which reads:

"EXEC CHAMBER Fax: 518-474-8099 Apr 28 '97 14:28"

Thus, if the April 14th release date is to be believed, the Governor's office waited *two full weeks* to send the press release out to the Ethics Commission. This, notwithstanding the release was not embargoed for some future date, but marked "FOR RELEASE: IMMEDIATE".

It appears that the Governor's office also waited until April 28th -- or thereabouts -- to fax the press release to the New York Law Journal since its published notice of Mr. Shechtman's appointment did not appear until May 1st, when it was printed in the section entitled "*Today's News: Update*" (Exhibit "A-2").

Indeed, that the press release was hastily prepared -- because it was *already* two weeks old when the Governor's office issued it -- may be seen from the fact that the release misspells Mr. Shechtman's last name in four different places, including in its title, "GOVERNOR PATAKI APPOINTS SCHECTMAN TO STATE ETHICS COMMISSION" (Exhibit "A-1").

So as to resolve any doubt, we request Mr. Shechtman to set forth the date on which he was notified by Governor Pataki of his appointment to the Ethics Commission. We are *not* asking him for the date that appears on the letter of appointment -- a copy of which we also request -- since, plainly, a Governor who would backdate to April 14th a press release would also backdate to March 27th a letter of appointment.

By copy of this letter to Mr. Dougherty, we also request that letter of appointment and an explanation as to why, if the Governor appointed Mr. Shechtman to the Ethics Commission on March 27th, the Governor's office waited 2-1/2 weeks to issue a press release, purportedly on April 14th, and then waited *another* 2 weeks to notify the Ethics Commission, which it did not do until April 28th.

¹ Mr. Ayres provided me with a copy of the press release after I had been unable to obtain same from the Governor's office. Although the Governor's office promised it would be faxed, it never arrived.

Frankly, it is our belief that *both* the letter and the press release were backdated so as to make it appear that the Governor's appointment of an Ethics commissioner was not a result of our April 15th letter. This would plainly be too, too embarrassing for Governor Pataki -- since it would mark the second time that CJA had exposed his failure to make "fundamental appointments that would safeguard the integrity of government and governmental processes". Indeed, our April 15th letter pointed out the Governor's previous failure to appoint the members of permanent judicial screening committees to evaluate candidates for appointive state court judgeships, pursuant to his Executive Order #10 -- and his reliance, instead, on a Temporary Judicial Screening Committee.

It must be noted that Mr. Shechtman, as the Governor's Director of Criminal Justice, was a member of his Temporary Judicial Screening Committee, pursuant to Executive Order #11 (¶3). In either capacity, Mr. Shechtman should have received the copy of the file of our Article 78 proceeding against the New York State Commission on Judicial Conduct, which we delivered to the Governor's office in May 1996. Such file supported CJA's opposition to Court of Claims Judge Juanita Bing Newton, whose qualifications the Temporary Judicial Screening Committee was then purporting to review in connection with her bid for reappointment. That opposition was based on the fact that Judge Newton, as a member of the Commission on Judicial Conduct, had used her position to protect high-ranking, politically-connected judges by: (1) participating in the summary dismissal of our facially-meritorious, documented judicial misconduct complaints against them and, thereafter, by (2) disregarding her ethical and professional duty to take corrective steps in the face of notice that the Commission had relied on litigation misconduct to defend itself from our Article 78 challenge and was the beneficiary of a *fraudulent* Supreme Court decision -- without which it could *not* have survived.

Mr. Shechtman could have been expected to be particularly interested in documentation establishing that the Commission on Judicial Conduct was corrupt and had corrupted the judicial process not only by reason of his membership on the Temporary Judicial Screening Committee and because, as Director of Criminal Justice, he was in charge of recommending the appointment of a special prosecutor -- which relief our Article 78 petition expressly sought -- and for which we supplied the signatures of 1,500 New Yorkers, seeking an investigatory "commission" -- but because he purported to have an expertise in assessing judicial misconduct. Indeed, three months earlier, in February 1996, Mr. Shechtman had participated in the preparation of a Report to the Commission on Judicial Conduct, delineating, on behalf of the Governor, a large number of instances of alleged misconduct by Judge Lorin Duckman, allegedly warranting his removal from office.

According to Mr. Dougherty, the reason it took Governor Pataki ten months to fill the vacancy on the Ethics Commission created by Mr. Bress' departure, was because he was looking for someone of Mr. Shechtman's "caliber". To date, however, other than Mr. Shechtman's impressive credentials as they appear on the press release (Exhibit "A-1"), we have seen *no* evidence of any ethical fitness on his part qualifying him to be an Ethics Commissioner. To the contrary, the evidence -- as reflected by the Article 78 file -- shows that Mr. Shechtman turned his back on his ethical and professional duty to protect the public from the corruption of the State Commission on Judicial Conduct, aided and abetted by the State Attorney General's office and a State court judge. This, in addition to his role

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in perpetuating the Governor's sham Temporary Judicial Screening Committee, whose ratings were rigged by the Governor's office.

In the unlikely event that Mr. Shechtman, in his capacity as Director of Criminal Justice and member of the Temporary Judicial Screening Committee, was unaware of the copy of the Article 78 file against the Commission, which we delivered to the Governor's office -- and unaware of our June 11, 1996 letter about the Temporary Committee's "rigged" ratings (Exhibit "B"), which we also delivered to the Governor's office -- we ask that he set forth such facts. However, in his present capacity as an Ethics Commissioner, that Article 78 file is now squarely in front of him. Indeed, in our unresponded-to April 11th letter, we *expressly* requested that the "full files of our ethics complaints" be "on the table for inspection by the Commissioners" at the April 29th meeting. Those full files include that Article 78 file -- a copy of which we transmitted to the Ethics Commission to support our September 14, 1995 complaint against the Commission on Judicial Conduct and the Attorney General's office, as well as our request for the Ethics Commission's intervention in the Article 78 proceeding.

By reason of that Article 78 file and our ethics complaints based thereon, we hand-delivered a May 5, 1997 letter to the Ethics Commission, calling upon it to present testimony to the Association of the Bar of the City of New York at its recent public hearing, largely devoted to the Commission on Judicial Conduct. In the event you have not seen that letter, a copy is annexed as Exhibit "C". Also annexed is a written copy of our testimony, which we presented to the City Bar on May 14th (Exhibit "D").

We invite the Ethics Commission's written response to our May 14th testimony and our May 5th letter which it incorporates. Inasmuch as Mr. Shechtman -- the *only* Commission member appointed by Governor Pataki -- is likely to be designated as the Commission's chairman when the Governor finally decides to meet his responsibility under Executive Law §94.4, we request that such response come from him. This is additional to a response to our April 11th letter, containing, as it does, our serious allegations of official misconduct by the Ethics Commission's Executive Directors, including its current Executive Director, Richard Rifkin.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

cc: Thomas Dougherty, Appointments Secretary/Office of Governor George Pataki
Certified Mail/RRR: P-571-752-159

Association of the Bar of the City of New York, Committee on Judicial Conduct
New York media