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April 24, 1996

Richard Rifkin, Executive Director
New York State Ethics Commission
39 Columbia Street
Albany, New York 12207-2717

RE: Our right to review by the Ethics Commissioners

Dear Mr. Rifkin:

This letter replies to your February 29, 1996 purported response (Exhibit "A") to our January 24, 1996 letter.

Tellingly, you have not sent copies of your so-called response to the recipients indicated by our January 24th letter, to wit, the New York State Assembly Judiciary Committee, the New York State Committee on Open Government, the New York State Commission on Judicial Conduct, and the New York State Attorney General. Such omission by you bespeaks your awareness that your February 29th letter is utterly insupportable.

The thrust of your half-page letter is that there is no necessity to address the specifics of our January 24th letter because, according to you, they simply "restate the arguments...set forth in...[our] September 14, 1995 letter"--which you pretend were disposed of by your October 3, 1995 dismissal.

However, as we documented in our eight-page January 24th letter, your October 3, 1995 dismissal "dodged, misrepresented, and omitted the issues presented by our September 14, 1995 letter". Indeed, so dispositively did our January 24th letter demonstrate that fact--and the deliberateness of your misconduct--that it concluded as follows:

"We request that this letter be directed to the Ethics Commissioners for response--since the dishonesty of your October 3, 1995 letter shows that your involvement is not only tainted by the 'appearance of impropriety', but manifests the actuality of your bias..." (at p. 8).

It is plain from your February 29th letter that you have not only withheld from the Ethics Commissioners our January 24th letter, but that your misconduct continues unabated.

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Thus, it is not, as you claim, because our January 24th letter "raises no new substantive issues" that "there is little [you] can say that [you] have not already said". Rather, the reason there is little you can say--aside from boiler-plate untruths--is because you have no defense to the damning specifics we have set forth as to: (a) your own disqualification, particularized at page 4 of our January 24th letter--which you have not addressed; (b) our entitlement to investigation of our complaints against the Commission on Judicial Conduct, particularized at page 5 of our January 24th letter--which you have not addressed; (c) our entitlement to investigation of our complaints against the State Attorney General, particularized at pages 5-7 of our January 24th letter--which you have not addressed; and (d) our right to intervention by the Ethics Commission in our Article 78 proceeding against the Commission on Judicial Conduct, particularized throughout the letter--which you have not addressed.

As to your claim that the "only new issue...is whether the Commission's Executive Director has the authority to make certain decisions"--which you do not identify as including decisions on intervention requests--you baldly assert that "this issue is not relevant to the matters [we] have presented".

What an obscene untruth. Plainly, it is highly relevant whether you have authority to simply IGNORE, without presentment to the Ethics Commissioners, our repeated requests that the Ethics Commission intervene in legal proceedings affecting the public interest¹--a fact we detailed at pages 1-3 of our January 24th letter. Yet, as to that pivotal intervention issue, your February 29th letter--like your October 5th letter before it--conspicuously says nothing.

Likewise, it is highly relevant whether you have authority to single-handedly dismiss ethics complaints without presentment to the Ethics Commissioners--which is what you did in dismissing our ethics complaints against the Commission on Judicial Conduct and the Attorney General. Your attempt to denigrate those complaints

¹ So that the record of our communications to the Ethics Commission is complete, annexed hereto as Exhibit "B" is a copy of our May 9, 1995 fax coversheet enclosing our letter of that date to the Administrative Judge of the Supreme Court, New York County relative to the Attorney General's litigation misconduct and his conflict of interest in our Article 78 proceeding against the Commission on Judicial Conduct. We received no response to the prescient question posed by our fax coversheet, "What steps with the Ethics Commission be taking to ensure that Sassower v. Commission will be adjudicated ON THE MERITS?" Cf., our 9/14/95 ltr, pp. 5-6; our 1/24/96 ltr, pp. 1-2.

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as not presenting "a decision to be made within the discretion of the Commission" is not only palpably untrue--as highlighted by pages 4-8 of our January 24th letter, which you do not address--but, additionally, is irrelevant to the question as to whether there has been a delegation of authority to you.

Indeed, although our January 24th letter expressly requested (at p. 3) proof as to your authority, your February 29th purported response does not even assert that you have such authority as we have challenged.

Finally, as to your concluding sentence "Again, there is nothing for the Commission to pursue", the record shows that the Ethics Commission should not delay in undertaking an investigation of your "gross misconduct in office" (Cf. Executive Law §94.7). Such official misconduct is established prima facie by your deliberately dishonest handling of our fully documented ethics complaints against the State Commission on Judicial Conduct and State Attorney General, as well as by your similarly dishonest handling of our fully documented ethics complaint against the State Board of Elections².

We, therefore, reiterate our previous demand that the Ethics Commissioners be furnished with copies of our March 22, 1995 and September 14, 1995 ethics complaints and the correspondence relative thereto. Indeed, although you have not seen fit, either now (Exhibit "A") or in the past (Exhibit "C"), to inform us of our right to review of your decisions directly to the Ethics Commissioners, we have learned from Walter Ayers, the Ethics Commission's Director of Communications, that it is the "policy" of the Ethics Commission to provide for such review.

² Your April 19, 1994 response to our April 8, 1994 letter regarding our complaint against the New York State Board of Elections is annexed hereto as Exhibit "C". Our May 17, 1994 follow-up letter, exposing the disingenuousness of your response is annexed as Exhibit "D".

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Mr. Ayers was unable to answer our inquiry as to the statutory or rule authority for this appeals procedure. However, it would seem obvious that to the extent there has been any delegation of authority to you, the Ethics Commissioners have protected the right of citizens by providing appeal of your adverse decisions to them.

Yours for a quality judiciary,

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

Enclosures

cc: New York State Assembly Judiciary Committee
New York State Committee on Open Government
New York State Commission on Judicial Conduct
New York State Attorney General