

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY HAND

September 7, 1999

Andrew Weissmann, Deputy Chief, Criminal Division
U.S. Attorney's Office, Eastern District of New York
One Pierrepont Plaza
Room 1558
Brooklyn, New York 11201

RE: The U.S. Attorney's Corruption Investigation of Governor George Pataki et al.

Dear Mr. Weissmann:

This letter follows up our telephone conversation on Thursday, August 19th, the day of The New York Times' front-page story, "*Widening Inquiry on Pataki Donors and Parole Board*", by Clifford Levy and Kevin Flynn (Exhibit "A").

According to the Times' story, "there is no evidence that [Governor Pataki] had any involvement in the parole decisions" which are reported to be the subject of your investigation. However, as discussed, our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), has a mountain of evidence as to the Governor's involvement in: (1) disabling and corrupting the New York State Ethics Commission – the state agency with disciplinary jurisdiction over him, other state officers, and state agencies; (2) the corruption of the judicial appointments process to the lower state courts and of the "merit selection" process to the New York Court of Appeals; and (3) the corruption of the New York State Commission on Judicial Conduct.

This is particularized in CJA's March 26, 1999 ethics complaint, filed with the State Ethics Commission – a copy of which was sent to the Governor, certified mail/return receipt (Z-509-073-631)¹. The complaint is the culmination of years of *direct, first-hand experience* with the Governor and his office and is transmitted to you with the same massive substantiating

¹ That certified mail receipt, as well as the receipt for the other recipients of the complaint, are annexed to the complaint immediately preceding the exhibits.

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U.S. ATTORNEY
EDH/Y

documentation that accompanied its filing with the Ethics Commission [See (blue) file folders marked "I-V"]².

Although an inventory of that original transmittal is appended to the March 26th complaint, a further copy is annexed hereto as Exhibit "B-1", together with an inventory of additional substantiating materials, subsequent to the complaint, which either have already been transmitted to the Ethics Commission or will shortly be transmitted in further support of the complaint (Exhibits "B-2" and "B-3"). These additional materials consist of:

(1) The file of the current Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against the Commission on Judicial Conduct of the State of New York* (N.Y. Co. #99-108551), which is based on events particularized in the March 26th complaint (at pp. 25-27). The inventory of the Article 78 file is annexed as Exhibit "B-2"; and

(2) CJA's March 30, 1999 letter to the Governor's Records Access Officer and his response thereto to our invocation of F.O.I.L. to obtain, *inter alia*, copies of the written reports of the Governor's judicial screening committees pertaining to the qualifications of all his judicial appointments – such reports being publicly accessible by the *express* language of the Governor's own Executive Orders #10 and #11³. The inventory of this correspondence is annexed as Exhibit "B-3".

Before delving into the weighty complaint and documentation, you might find it useful to read some of CJA's published Letters to the Editor and public interest ads, reflecting our experience with the Governor and his office. They are: "*In Choosing Judges, Pataki Creates Problems*" (ltr, NYT, 11/16/96 [Exhibit "C-1"]); "*A Call for Concerted Action*" (\$1,600 ad, NYLJ, 11/20/96, p. 3 [Exhibit "C-2"]); "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (\$3,000 ad, NYLJ, 8/27/97, pp. 3-4 [Exhibit "C-3"]); "*An Appeal to Fairness: Revisit the Court of Appeals*", (ltr, NY Post, 12/28/98 [Exhibit "C-4"]). These are annexed hereto, together with two other relevant published pieces: "*Commission Abandons Investigative Mandate*" (ltr, NYLJ, 8/14/95 [Exhibit "C-5"]) and "*Where Do You Go When Judges Break the Law?*" (\$20,000 ad, NYT, 10/26/94, Op-Ed page; NYLJ, 11/1/94, p. 9 [Exhibit "C-6"]).

² Folder "VI" is not transmitted since the documents it contained are exhibits to the Verified Petition in the current Article 78 proceeding against the Commission on Judicial Conduct, which is transmitted, *infra*.

³ These Executive Orders are annexed to CJA's June 2, 1997 letter to the Governor as Exhibits "B" and "C" (See (blue) Folder "III").

Joined with CJA's March 26th ethics complaint against the Governor are ethics complaints against the Ethics Commissioners, foremost among them, Ethics Commission Chairman Paul Shechtman; Richard Rifkin, the Ethics Commission's former Executive Director, who is now Attorney General Spitzer's Deputy Attorney General for State Counsel; the New York State Commission on Judicial Nomination; the New York State Commission on Judicial Conduct; and New York State Attorney General Eliot Spitzer *personally*. The complaint includes a Table of Contents (p. 3) and its recitation of the Governor's misconduct appears together with Mr. Shechtman's at pages 14-22.

I understand that your investigation of the Governor touches on Mr. Shechtman – particularly when he was the Governor's Director of Criminal Justice. CJA's March 26th ethics complaint identifies that one of Mr. Shechtman's responsibilities as Director of Criminal Justice was to serve as a member of the Governor's Temporary State Judiciary Committee – a sham body whose ratings of judicial candidates were rigged by the Governor's office – and that during his tenure, CJA provided the Governor with evidentiary proof of the corruption of the State Commission on Judicial Conduct – a copy of the file of the Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141)⁴ -- along with the petition signatures of 1,500 New Yorkers calling for an investigation and public hearings. These were presumably passed on to Mr. Shechtman, then involved with issues pertaining to the Commission on Judicial Conduct. Mr. Shechtman left as Director of Criminal Justice in February 1997. The complaint identifies that in April 1997, the Governor appointed Mr. Shechtman to the Ethics Commission and, in May 1998, elevated him to its chairmanship. This was six months after appointing Mr. Shechtman to be chairman of his State Judicial Screening Committee, where his rigging of judicial ratings for the Governor was direct.

Because of the high-level systemic governmental corruption chronicled by CJA's March 26th complaint – not the least being the demonstrated dysfunction and corruption of the Ethics Commission during the period of Mr. Shechtman's membership and chairmanship -- the Ethics Commission has yet to acknowledge it. However, according to Walter Ayres, the Ethics Commission's Public Information Officer, copies of the March 26th ethics complaint were distributed to each of the Ethics Commission's then four members. My April 23, 1999 letter to Mr. Ayres reflects his advice to me that the complaint was on the agenda of the Ethics Commission's April 14th meeting (Exhibit "D").

As highlighted in the "Introduction" of the March 26th complaint (pp. 4-7), and reiterated by its "Conclusion" (p. 29), the Ethics Commissioners' disqualifying conflict of interest in the complaint

⁴ A copy of that file is enclosed herewith as part of the current Article 78 proceeding against the Commission on Judicial Conduct, *infra*.

requires that they refer it to "other investigative bodies". The complaint proposed referral to Attorney General Spitzer's publicly-announced "public integrity unit", accompanied by a request that if the Attorney General's own disqualifying conflict of interest would prevent independent investigation by that actually non-existent unit, he should seek appointment of a special prosecutor and, if unsuccessful, because it would require the Governor's approval, that he refer the March 26th ethics complaint to the Public Integrity Section of the U.S. Justice Department's Criminal Division.

We ourselves provided Attorney General Spitzer with a copy of the March 26th ethics complaint, certified mail/return receipt (Z-471-036-406), together with 11 pounds of substantiating documentation from the file folder transmittal that accompanied it (Exhibit "B-1")⁵. Since then, the subversion of his public office – foreshadowed by the complaint -- has been fully actualized by him. In addition to not responding to that ethics complaint, Mr. Spitzer continued to delay staffing his "public integrity unit"⁶, notwithstanding the necessity for its *immediate* staffing was resoundingly established therein, and has embarked upon a course of outright criminality in the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against the Commission on Judicial Conduct of the State of New York*. In so doing, he has fully replicated the fraudulent conduct of his predecessors, highlighted in CJA's ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-3"), including in the prior Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct*.

⁵ See CJA's April 2, 1999 letter to Joe Palozzola, Assistant to Mr. Spitzer's Chief of Staff, annexed as Exhibit "F" to my affidavit in support of my omnibus motion in the current Article 78 proceeding against the Commission on Judicial Conduct, *infra*.

⁶ As recently as July 26th, I was told by Mr. Spitzer's counsel, David Nocenti, that the "public integrity unit" had not actually been set up in any formal way (See ¶102 of my July 28th affidavit in support of my omnibus motion in the current Article 78 proceeding against the Commission on Judicial Conduct.) Indeed, as of today, the Attorney General Spitzer's website – which posts press releases of the Attorney General's key appointments, as well as of his activities and accomplishments – still has NO press release devoted to the "public integrity unit" or its staffing, including appointment of Peter Pope as its chief. This, notwithstanding an August 15th article by Christopher Mele in the (Middletown) Times Herald Record, "*Corruption Fighter Tackles Double-Dipping Probe*" (Exhibit "E-1"), recites that Peter Pope is its chief, as, likewise, an August 26th article by John Sullivan in The New York Times, "*Spitzer Sets Up Unit to Investigate Both State and Local Corruption*" (Exhibit "E-2"). I spoke to both Mr. Mele and Mr. Sullivan, each of whom confirmed the informal manner in which they received their information about the "public integrity unit" from the Attorney General's office. Neither was aware that Mr. Spitzer had publicly announced its formation back on January 27th to an audience at the Association of the Bar of the City of New York, stating, "...as of today, I am creating a public integrity unit..." and "Today I'm announcing the creation of a public integrity unit with the AG's office..." (See transcript annexed as Exhibit "B" to CJA's March 26th ethics complaint, at p. 7). The Daily News was also unaware of when the "public integrity unit" was created, as evident from its misleading August 29th editorial, "*Mirror, Mirror*" (Exhibit "E-3").

The enclosed file of that pending Article 78 proceeding should relieve you of *any* illusion that the People of this state can turn to the state's highest law enforcement officer for protection against the systemic governmental corruption documented by CJA's March 26th ethics complaint. For this reason, CJA *expressly* requests that you refer this documented complaint of high-level corruption, involving all three branches of state government, to the U.S. Justice Department's Public Integrity Section for investigation and prosecution. In that connection, I direct your attention to my July 28th motion for omnibus relief, which seeks the Attorney General's disqualification based on his violation of Executive Law §63.1 and his multiple conflicts of interest, as well as severe sanctions against Mr. Spitzer *personally*, including disciplinary and criminal referral, for the litigation fraud and misconduct therein particularized. Indeed, that omnibus motion not only reflects the kind of cover-up that can be expected from Mr. Spitzer's purported designation of Peter Pope to head his "public integrity unit" (See footnote 5, *supra*), but Mr. Pope's ALREADY-COMMITTED COVER-UP with regard to the March 26th ethics complaint and the Attorney General's fraudulent defense tactics in the current Article 78 proceeding [See ¶¶98-103 of my affidavit in support of the omnibus motion].

The Ethics Commission is well aware of Mr. Spitzer's litigation misconduct in that Article 78 proceeding because I have regularly provided lengthy status reports to Mr. Ayres. This, to apprise the Ethics Commissioners of the continuing calamitous consequences of their inaction on CJA's March 26th ethics complaint and to reinforce the necessity of their intervention in the Article 78 proceeding against the Commission on Judicial Conduct – if for no other reason than to ensure the integrity of the judicial process. According to Mr. Ayres, the Verified Petition, with its attached exhibits, Notice of Petition, and Notice of Right to Seek Intervention, which CJA transmitted to the Ethics Commission under the April 23rd coverletter (Exhibit 'D'), were replicated and distributed to each of the Ethics Commissioners in advance of their June 16th meeting. As with CJA's March 26th ethics complaint, distributed to the Ethics Commissioners in advance of their April 14th meeting, there has been no response.

One final addendum as to the Ethics Commission is in order – and that is the identity of its new Executive Director. As particularized by the March 26th ethics complaint (at pp. 1, 9-11), by reason of the Ethics Commissioner's nonfeasance and misfeasance, Mr. Rifkin, its then Executive Director, was enabled to become Attorney General Spitzer's Deputy Attorney General for State Counsel. Effective April 5th, the Commissioners replaced Mr. Rifkin with Donald P. Berens, Jr., Deputy Attorney General for State Counsel under former Attorney General Vacco.

It deserves emphasis that Mr. Berens, coming out of Mr. Vacco's office, and Mr. Rifkin, coming into Mr. Spitzer's office, worked together for many years at the Attorney General's office under Robert Abrams. Now Mr. Berens, in a musical-chairs arrangement, occupies Mr. Rifkin's position at the Ethics Commission, while Mr. Rifkin occupies Mr. Berens' position. The plainly incestuous relationship between them and those responsible for putting them in their respective positions of power goes far in explaining the Ethics Commission's cover-up of CJA's September 14, 1995 and December 16, 1997 ethics complaints against the Attorney General, particularized in the March 26th complaint.

To enable you to verify the seriousness of CJA's two prior ethics complaints against the Attorney General, involving the very bureau in the Attorney General's office which Mr. Berens *then* headed and which Mr. Rifkin *now* heads, a copy of CJA's correspondence with the Ethics Commission relating thereto is enclosed⁷. This correspondence begins with CJA's September 14, 1995 ethics complaint, based on the Attorney General's defense misconduct and conflict of interest in the prior Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct*,⁸ and transmitted to the Ethics Commission a copy of the litigation file, identical to the one thereafter transmitted to the Governor [See p. 3 herein]. The correspondence concludes with CJA's December 16, 1997 supplement to that complaint, based on the Attorney General's litigation fraud and misconduct in federal court, in a §1983 federal action in which it was both counsel and a co-defendant, as recounted in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-3"), a copy of which the complaint annexed.

It is ironic, to say the least, that CJA's ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" – which occupies "center-stage" in our March 26th ethics complaint and in our current Article 78 proceeding, was inspired by Mr. Berens' rhetorical excesses as Mr. Vacco's Deputy Attorney General. This is pointed out in CJA's April 23rd letter (Exhibit "D"), transmitting, for presentment to the Ethics Commissioners, the Notice of Right to seek intervention in the current Article 78 proceeding against the Commission on Judicial Conduct.

⁷ This correspondence is part of my omnibus motion to disqualify the Attorney General in the current Article 78 proceeding against the Commission on Judicial Conduct [See therein, Folder I: Rifkin Documents (red folder)].

⁸ CJA's prior ethics complaint against the Commission on Judicial Conduct, dated March 22, 1995, is annexed thereto as Exhibit "A" – although without the voluminous substantiating documentation it had transmitted to the Ethics Commission.

September 7, 1999

Lastly, as to CJA's F.O.I.L. request to the Governor's Public Access Officer for the committee reports of the Governor's judicial appointees and for other information establishing the operations of his Judicial Screening Committees, we received two letters stalling for time, the latter of which stated that the Governor's office would provide a response "no later than May 20, 1999". We have heard nothing since from the Governor's office.

We look forward to your *thorough* review of the complaint and substantiating materials – whose transmittal to you is known to the Ethics Commission, *via* Mr. Ayres. Indeed, my disclosure to Mr. Ayres on Thursday, August 19th that I was intending to follow up on that day's Times article (Exhibit "A") by contacting the Times and your office was, I believe, passed on, through Mr. Shechtman, to the Governor's office. This may have precipitated Mr. Ayres' statement to me on Tuesday, August 24th that he had heard that the Governor's appointment of an Ethics Commissioner to fill a vacancy open for more than two years was "imminent"⁹. This was not the case as recently as my prior conversation with Mr. Ayres five days earlier.

Yours for a quality judiciary
and government integrity,



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

Enclosures

- cc: New York State Ethics Commission
(certified mail/RRR: Z-509-073-638)
Governor George Pataki
(certified mail/RRR: Z-509-073-639)
Att: James McGuire, Counsel; Rosario Vizzie, Records Access Officer
Attorney General Eliot Spitzer
(certified mail/RRR: Z-509-073-640)
Att: David Nocenti, Counsel; Peter Pope, Special Counsel
The New York Times
Att: Kevin Flynn, Clifford Levy, John Sullivan
The Times Herald Record
Att: Christopher Mele
Daily News Att: Michael Goodwin, Editorial Page Editor

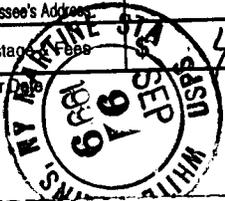
⁹ In fact, by press release dated September 1st, the Governor announced the appointment of Lynn Millane to the Ethics Commission. She is its only woman and its only non-lawyer. This marks the first time in over three years that the Ethics Commission has a full complement of five Commissioners.

Z 509 073 639

US Postal Service
Receipt for Certified Mail

No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	<i>Michael George Pataki Room</i>
Street & Number	<i>Executive Chamber 214</i>
Post Office, State, & ZIP Code	<i>Albany, NY 12224</i>
Postage	\$ <i>2.09</i>
Certified Fee	<i>1.40</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	<i>1-25</i>
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	<i>4.74</i>
Postmark or Date	



PS Form 3800, April 1995

is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Governor George Pataki Executive Chamber Room 214 Albany NY 12224

4a. Article Number
2-509-073-639

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery
4-13-99

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)
S. VAN ABSTYNK

6. Signature (Addressee or Agent)
[Signature]

PS Form 3811, December 1994

102595-99-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

Z 509 073 640

US Postal Service
Receipt for Certified Mail

No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	<i>Attorney General Eliot Spitzer</i>
Street & Number	<i>120 Broadway 25 floor</i>
Post Office, State, & ZIP Code	<i>NY NY 10271</i>
Postage	<i>7.69</i>
Certified Fee	<i>1.40</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	<i>SEP 14 1999</i>
Return Receipt Showing to Whom, Date, & Addressee's Address	<i>St. David's Hospital</i>
TOTAL Postage & Fees	\$ <i>4.74</i>
Postmark or Date	



PS Form 3800, April 1995

is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Attorney General Eliot Spitzer 120 Broadway 25 floor NY, NY 10271

4a. Article Number
2-509-073-640

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery
SEP 14 1999

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)
[Signature]

6. Signature (Addressee or Agent)
[Signature]

PS Form 3811, December 1994

102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.