

# CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

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October 6, 2006

Gannett News Service Editor Derek Osenenko  
Gannett Co. Inc. Headquarters  
7950 Jones Branch Drive  
McLean, Virginia 22107

RE: **ELECTIONS 2006: Informing the Voters as to Matters of Legitimate Public Concern:**

- (1) CJA's June 20, 2006 memo-letter to attorney general candidates Andrew Cuomo and Jeanine Pirro;
- (2) CJA's June 26, 2006 letter to gubernatorial candidate John Faso;
- (3) CJA's February 3, 2006 letter to senatorial candidate John Spencer

Dear Mr. Osenenko:

Enclosed is a copy of CJA's complaint of today's date against Gannett's Albany Bureau, etc., which you directed be handled by Gannett's Journal News Editor and Vice President for News, Henry Freeman.

I take this opportunity to refer you to the final paragraphs of the complaint pertaining to the three above-enumerated letters and a fourth September 1, 2006 memo-letter to the attorney general candidates – copies of which will be sent you by mail:

“CJA respectfully requests that these FOUR LETTERS be presented to the highest echelons of Gannett's news operations so that, consistent with their journalistic responsibilities and First Amendment obligations to the public, they may direct that their content be reported on and investigated by Gannett reporters unconflicted by a past history of cover-up or personal and professional relationships with those

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\* The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization, based in New York, working, since 1989, to ensure that the processes of judicial selection and discipline are effective and meaningful.

responsible for the cover-up.<sup>fn7</sup> As Attorney General Spitzer and Senator Clinton both enjoy national reputations – indeed, as Senator Clinton is a front-runner for the Democratic nomination for president in 2008 – we request that the letters be furnished to the news desk of Gannett's national circulation daily, USA TODAY, so that it can lead the way in "breaking" the far-reaching and politically-explosive corruption stories the letters describe.

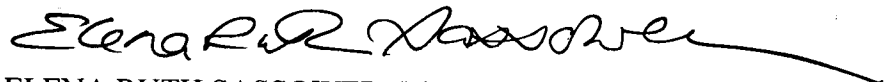
Should you wish hard copies of any of CJA's massive underlying or subsequent correspondence – or the substantiating documentary proof – virtually all posted on CJA's website – it will be promptly supplied. Needless to say, we would be pleased to meet with you and other top news editors and management to answer your questions.

Gannett has a powerful opportunity to demonstrate what journalism is supposed to be about and to fulfill its stated mission of providing "must-have news and information...ever mindful of our journalistic responsibilities".<sup>fn8</sup> Nothing less than the fate of our democracy rests on whether Gannett and other media will be true to what is your essential role of informing the citizenry on matters of legitimate public concern.

As the elections are fast approaching, we trust your response will be expeditious and thank you, in advance." (at pp. 7-8, underlining and capitalization in the original)

Thank you, in advance.

Yours for a quality judiciary, meaningful elections,  
& responsible journalism,



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

Enclosure: CJA's October 6, 2006 letter to Henry Freeman & its four letter-enclosures

cc: Journal News Editor & Vice President for News Henry Freeman  
Gannett Albany Bureau (Bureau Chief Jay Gallagher, Yancey Roy, Cara Matthews)  
Journal News Editorial Page Editor Herb Pinder & Metro Editor Dan Greenfield  
Glenn Blain

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<sup>fn7</sup> If you and these highest echelons suffer from any such conflicts, we expect you would disqualify yourselves, as mandated by rules of professional and journalistic responsibility."

<sup>fn8</sup> See Gannett website: [www.gannett.com/about/visionmission.htm](http://www.gannett.com/about/visionmission.htm)."

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BY HAND

October 6, 2006

Henry Freeman, Editor and Vice President of News

The Journal News/Gannett

One Gannett Drive

White Plains, New York 10604

RE: **ELECTIONS 2006: Informing the Voters as to Matters of Legitimate Public Concern:**

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Dear Mr. Freeman:

This follows up my phone conversation with your administrative assistant, Paula Listi, two days ago.

Ms. Listi stated that you have supervisory oversight over Gannett's Albany Bureau and for that reason had been contacted by Gannett's headquarters in Virginia, which I had telephoned a short while earlier. My call to Gannett headquarters had been directed to Gannett News Service Editor Derek Osenenko, for whom I had left a message of complaint about the Albany Bureau, specifically including Bureau Chief Jay Gallagher.

Ms. Listi asked that I orally summarize the complaint for her – and I did so, bringing to her attention that CJA's website, [www.judgewatch.org](http://www.judgewatch.org), posts a "Paper Trail" of my correspondence with Mr. Gallagher and the Albany Bureau, going back to 1993, accessible *via* the sidebar panel "Press Suppression – Gannett". Chronicled by this correspondence is that from 1999 onward, Mr. Gallagher and Albany Bureau reporters have knowingly suppressed report of *readily-verifiable*, fully-documented stories establishing that Attorney General Spitzer's so-called "public integrity

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unit” was “a facade, covering up his complicity in systemic governmental corruption involving this state’s highest officials and important oversight agencies”. The consequence of this suppression, combined with their fostering of Mr. Spitzer as a champion and watchdog of the public interest – which they knew to be false as to governmental corruption, including as to corruption within Mr. Spitzer’s own office – helped to wipe out electoral opposition to Mr. Spitzer. This enabled him to win re-election in 2002 in a race that was essentially non-competitive and to run an essentially non-competitive race for governor this year.

As a result, Mr. Gallagher and the Albany Bureau suffer from monumental conflicts of interest in their current electoral coverage. The story of Mr. Spitzer’s corruption in office as attorney general is still there, but they cannot report on what now, as then, would rightfully end Mr. Spitzer’s political and legal career without exposing their past misfeasance and betrayal of journalistic responsibilities. Reflecting their knowledge of this is Mr. Gallagher’s refusal to return ANY of the five phone messages I left for him over the past five weeks (August 31<sup>st</sup>, September 13<sup>th</sup>, September 15<sup>th</sup>, September 19<sup>th</sup>, September 21<sup>st</sup>) – even to the extent of providing me with the names of his superiors at Gannett, which I asked him to do from at least the third message onward, if he was not intending to return my calls.

These messages followed upon my sending him – as well as Albany Bureau reporters Yancey Roy and Cara Matthews<sup>1</sup> – an August 29, 2006 coversheet entitled “**YOUR ONGOING ELECTION COVERAGE & COMMENTARY: The Races for New York Governor, U.S. Senator from New York, and New York Attorney General**”. It enclosed an August 25, 2006 memo identifying that primary source documents establishing the unfitness of the candidates in these three statewide races were posted on CJA’s website, accessible *via* the sidebar panel “Elections 2006: Informing the Voters”.

Referring to our correspondence directly to the candidates, posted on the “Elections 2006” webpage under the heading, “Searching for Champions”, the August 25<sup>th</sup> memo stated:

“With respect to Attorney General Spitzer, elected in 1998 on a pledge that he was going to clean up government and establish a ‘public integrity unit’, our correspondence summarizes that his ‘public integrity unit’ was a hoax – and that Mr. Spitzer refused to investigate and root out systemic governmental corruption involving a pattern and practice of litigation fraud engaged in by his predecessor Attorneys General in defending state judges and the Commission on Judicial Conduct, sued for corruption – for which they were rewarded with fraudulent judicial decisions. Instead, he engaged in the same litigation fraud to defend the Commission when we sued it for corruption – for which state judges, at every level, rewarded him with fraudulent judicial decisions. In so doing, Attorney General Spitzer not only

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<sup>1</sup> All three are listed under Gannett News Service in the 2006 Press Room Directory of Legislative Correspondents covering the Capitol.

perpetuated a documentably corrupted Commission on Judicial Conduct, leaving the People of the State of New York defenseless against the most flagrant lawlessness by state judges – including those who ‘threw’ the lawsuit – but perpetuated the corruption of the state judicial appointments process, including ‘merit selection’ to the New York Court of Appeals, which the lawsuit encompassed.”

Mr. Gallagher and Yancey Roy did not have to do more than read this paragraph to know that the story was *readily-verifiable*, fully-documented, and that they had EACH been sitting on it for years. Indeed, if they needed a reminder, they had only to scroll down to the section of CJA’s “Elections 2006” webpage entitled “The Candidates”, click on the link to “Press Protectionism of A.G. Spitzer”, where, under the heading “**BEHOLD – New York’s ‘Election-Rigging’ Press**”, they could see the following:

**“CJA’s September 24, 2002 letter to Gannett News Service  
CJA’s October 2, 2002 letter to Gannett News Service  
see CJA’s ‘Paper Trail’ of correspondence with Gannett  
(especially CJA’s 9/8/99, 9/9/99, 1/3/00, 5/19/00 correspondence)”**

Such specified correspondence, directly accessible and accessible via a link to our “Press Suppression-Gannett” webpage, establishes the magnitude of their past misconduct here at issue. It is a MUST-READ for you, in discharge of your supervisory function on behalf of Gannett. Indeed, it chronicles Mr. Gallagher’s arrogant and abusive conduct at that time, when, following my mailing to him of the substantiating documentary proof, he was NOT returning my phone messages, would NOT explain to me, when I finally managed to speak with him, why the Albany Bureau would not be writing a story, would NOT provide me with requested information as to his superiors at Gannett – and would NOT return to me the documentary proof I had sent him (*see details set forth by my January 3, 2000 letter (at p. 3) and May 19, 2000 letter (at p. 1 (fn. 1), 2-3).*)

A central portion of the documentary proof I had sent to the Albany Bureau at that time concerned the corruption of “merit selection” to the New York Court of Appeals, which Mr. Spitzer was wilfully failing to investigate – and, indeed, actively covering up. I had publicly given Mr. Spitzer this documentary proof on January 27, 1999 at the Association of the Bar of the City of New York, immediately upon his public announcement that he was, as of that day, establishing his “public integrity unit”. Three weeks ago, on September 14, 2006, I sent Mr. Gallagher and Mr. Roy an e-mail enclosing CJA’s written testimony opposing confirmation of the latest “merit selection” appointment to the New York Court of Appeals: Justice Eugene F. Pigott, Jr. The day before, on September 13<sup>th</sup>, I had left a voice mail message for Mr. Gallagher, which was not returned.

Hours after I had sent the September 14<sup>th</sup> e-mail, Mr. Roy was at the Senate Judiciary Committee’s confirmation “hearing” for Justice Pigott. However, he did not approach me to speak with me about CJA’s written testimony either before the “hearing”, when I was giving out copies to reporters who I recognized, or after the “hearing”, when he should have wanted to get my comment about the

extraordinary events at the “hearing” he had witnessed<sup>2</sup>: Chairman DeFrancisco had cut me off, after less than two minutes, from orally presenting my testimony – the only opposition testimony being offered – on the false pretense that it was about “process”, when it was about Justice Pigott’s lack of character and fitness, as established by evidence. In vain, I protested to Chairman DeFrancisco in an exchange which was high drama and of absolute importance to the People of New York. I asserted that “process” was a legitimate ground of opposition for what was constitutionally-required to be, but was not in fact, “merit selection”. I stated that the reason Chairman DeFrancisco was running unopposed, or virtually so, for re-election to his Senate seat was because the press has not examined his conduct as Committee Chairman with respect to judicial selection and discipline issues. I pointed out that the Committee had not even questioned Justice Pigott and held up a January 27, 2003 editorial, “*A Flawed Process: Judicial nominees should be subject to more public scrutiny*” from Chairman DeFrancisco’s own hometown paper, the Syracuse Post-Standard, which had decried what had happened at the first judicial confirmation hearing of Senator DeFrancisco’s chairmanship – where the Committee had not asked the Court of Appeals nominee a single question and I – the only speaker in opposition – had been similarly halted from testifying, with Senator DeFrancisco’s memorable words “pack your bags”. I also lifted up a file of evidence relating to Justice Pigott’s character and fitness, *to wit*, the record of a lawsuit against the Commission on Judicial Conduct, and expressly requested that Chairman DeFrancisco question Justice Pigott about it. In a departure from past “hearings”, where questioning of the nominee has been at the outset, Senator DeFrancisco called Justice Pigott back so that he could field the usual, superficial questions from posturing and speechifying Senators – with not a single question identifying or questioning him about any decisions he had rendered as a judge.

I do not know how many of Gannett’s seven newspapers in New York State ran the article that Mr. Roy thereafter wrote, but The Journal News was not one of them. Indeed, I had to download the September 15, 2006 article from the website of The Democrat & Chronicle. Entitled “*Heat put on judicial diversity*”, the article’s sole description of the previous day’s confirmation “hearing” was the following:

“...a Senate panel reviewed the qualifications of Pataki’s latest nominee to the Court of Appeals...”

Pigott sailed through the hearing without taking many questions. Republicans – who had been angered by recent rulings curbing the Legislature’s power either in fights with the governor or in funding schools – quizzed him about overruling legislative statutes.

Pigott said he’s not prone to so-called ‘judicial activism’ and if a law is clear, little interpretation is needed.”

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<sup>2</sup> What Mr. Roy witnessed is evidenced by the stenographic transcript of the Senate Judiciary Committee’s September 14, 2006 “hearing”. The transcript has been ordered and, when received, will be posted on CJA’s webpage “Judicial Selection-State-NY: The Corruption of ‘Merit Selection’ to New York’s Highest State Court - Pigott”.

Upon reading the article, I telephoned Mr. Roy, who confirmed that he was at the “hearing”. I asked him why he had not included any mention of my opposition testimony and he answered that he had decided to write on “diversity” and “demographics” – issues put forward by Democrats for their own self-serving and diversionary purposes. As Mr. Roy is presumed to know, the Democrats had plenty of opportunity throughout the 12 years of Governor Pataki’s administration to meaningfully raise “diversity”, hold hearings, and take action, which they did not do, acquiescing, instead, to each and every one of the Governor’s hundreds of judicial appointments.<sup>3</sup>

I tried to help Mr. Roy understand the violative and unconstitutional nature of what he had witnessed at the “hearing” and expressly asked him what I could do “to facilitate [his] reporting” on the serious and substantial issues embodied by CJA’s written opposition testimony, both as to the evidence of Justice Pigott’s unfitness and the corruption of “merit selection” to the Court of Appeals. To this, he responded “Nothing. I don’t really want to talk to you” and hung up on me.

It must be noted that Mr. Roy’s September 15, 2006 article did not alert readers that there was anything amiss in the conduct of the “hearing” – including with respect to the not “many questions” asked of Justice Pigott by Committee members. This sharply contrasts to his January 15, 2004 column “*Smith’s approval exposes flaws in the review process*”, describing the Committee’s January 14, 2004 “hearing” to confirm the previous Court of Appeals nominee, Robert S. Smith, as “Rubber-stamping”, “Soapboxing”, and “Turning a blind eye to money and politics”. Indeed, the ONLY common thread between that important 2004 column and his instant superficial and materially misleading article is that both obliterate any mention of CJA’s opposition testimony and its decisive significance.<sup>4</sup> This, to cover up what Mr. Roy and Mr. Gallagher were duty-bound to have reported years earlier, but had not: the documentary evidence of the corruption of “merit selection” to New York’s highest state court, which CJA had provided them, again and again, as so-reflected by my correspondence with them, posted on CJA’s “Press Suppression-Gannett” webpage.

Following Mr. Roy’s September 15<sup>th</sup> declaration that he didn’t “want to talk to [me]” and his disconnecting our phone conversation, I called back to speak with Mr. Gallagher. My call was picked up by Cara Matthews, who told me Mr. Gallagher was not in and that I could leave a message on his voice mail. This I did after briefly describing to her Mr. Roy’s misconduct – and after telling

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<sup>3</sup> The deceitful hypocrisy of the Democrats – also credulously reported by The New York Times – is discussed more fully in my September 26, 2006 memo to Times Editorial Page Editor Gail Collins and The Times Editorial Board (at pp. 3-4), posted on CJA’s webpage, “Judicial Selection-State-NY: The Corruption of ‘Merit Selection’ to New York’s Highest State Court - Pigott”

<sup>4</sup> CJA’s written testimony in opposition to Senate confirmation of Mr. Smith is posted on our webpage “Judicial Selection – State-NY: The Corruption of ‘Merit Selection’ to New York’s Highest State Court – Smith”, along with the stenographic transcript showing (at p. 67) that I expressly requested that the Committee call upon Mr. Smith to respond to the issue of his financial contributions – for which I was threatened by Chairman DeFrancisco that if I did not immediately return to my seat I would never again be permitted to testify during his chairmanship.

her that I had left a previous voice message for Mr. Gallagher relating to Gannett's electoral coverage to which I had received no return call. I stated that unless Mr. Gallagher was going to call me back, I would turn to his Gannett superiors.

I received no return call from Mr. Gallagher and, on September 19<sup>th</sup>, telephoned again. Ms. Matthews again answered. She told me that Mr. Gallagher was "on a tight deadline" and would call me back. I replied that I needed to speak with him both with respect to election coverage and the Pigott confirmation and that if he was not going to call me back, he should at least provide me with the names of his superiors at Gannett. Again, I received no return call.

On September 21<sup>st</sup>, I telephoned to speak with Mr. Gallagher for a fifth time. A man, who I believe was Mr. Roy, answered the phone and stated that Mr. Gallagher was not in. When I asked who I was speaking to, he did not answer, but immediately transferred the call to Mr. Gallagher's voice mail. My message for Mr. Gallagher reiterated that if he did not wish to speak with me, he should at least provide me with contact information for his Gannett superiors. I received no return call or contact information.

Yesterday, before telephoning Gannett headquarters in Virginia, I telephoned Journal News political reporter Glenn Blain, who I had met for the first time on September 6, 2006 at the Association of the Bar of the City of New York at the debate between the candidates for the Democratic nomination for attorney general, co-sponsored by the City Bar and the New York Law Journal. Four years earlier, when Mr. Spitzer was running for re-election as attorney general, I had written Mr. Blain an October 10, 2002 e-mail – posted on CJA's "Press Suppression – Gannett" webpage – enclosing a copy of CJA's October 5, 2002 memo to The Journal News' then Editorial Page Editor Ron Patafio.<sup>5</sup> This October 5, 2002 memo identified that CJA had presented, both "locally" to Metro/Politics Editor Dan Greenfield and to "Albany staff" Jay Gallagher and Yancey Roy, a story proposal entitled "**The REAL Attorney General Spitzer – NOT the P.R. Version**" and that coverage "would rightfully end Mr. Spitzer's re-election prospects, political future, and legal career." Indeed, such story proposal was, in essence, what I had repeatedly presented to Mr. Gallagher and the Albany Bureau from 1999 onward.

On September 6, 2006, I gave Mr. Blain, *in hand*, this VERY SAME story proposal "**The REAL Attorney General Spitzer – NOT the P.R. Version**", as it was an enclosure to CJA's June 20, 2006 memo-letter to the candidates for attorney general – a full copy of which I handed him. I also gave him a copy of CJA's September 1, 2006 memo-letter to those same attorney general candidates,

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<sup>5</sup> Such October 5, 2002 memo, which requested that Mr. Patafio provide it to "each and every member of the editorial board so that they may evaluate the board's proper course of action" is directly accessible from CJA's webpage "Press Protectionism of A.G. Spitzer", where it is highlighted and appears as follows:

"CJA's October 5, 2002 memo to Westchester Journal News Editorial Board (Gannett-owned)  
see CJA's 'Paper Trail' of correspondence with Westchester Journal News  
(especially CJA's 9/24/02, 10/10/02 correspondence)"



entitled "**QUESTIONS FOR THE CANDIDATES FOR THE DEMOCRATIC NOMINATION FOR NEW YORK STATE ATTORNEY GENERAL**" setting forth important questions that CJA was requesting them to answer at the debate pertaining to the June 20, 2006 memo-letter, to which they had not responded.

Mr. Blain's next day's September 7, 2006 article about the debate, "*Former HUD leader challenged on ethics, alleged misconduct*", made no mention of the explosive unanswered questions we had posited for the candidates. Nor do I believe his subsequent political reporting embodies any aspect of the explosive story proposal enclosed with the June 20, 2006 memo-letter. It is for this reason that I called him on October 4<sup>th</sup>: to clarify whether it was his position that CJA's June 20, 2006 memo-letter to the attorney general candidates, Andrew Cuomo and Jeanine Pirro, among them, did not warrant IMMEDIATE election coverage. My voice mail message for him advised that in the event he no longer had the memo-letter or did not have it readily accessible, it and the September 1, 2006 memo-letter to those candidates were posted on CJA's "Elections 2006: Informing the Voters" webpage. I also inquired whether he had showed these to Mr. Greenfield.<sup>6</sup> I have yet to receive a return call from Mr. Blain.

Most of the politically-explosive issues presented by CJA's past correspondence with the Gannett Albany Bureau and with The Journal News are rooted in the facts and documentary evidence presented by CJA's June 20, 2006 memo-letter to the attorney general candidates. As this is perhaps the most decisive of the many decisive letters posted on CJA's "Elections 2006: Informing the Voters" webpage, a copy of CJA's June 20, 2006 memo-letter and follow-up September 1, 2006 memo-letter will be hand-delivered for you with the original of this letter. Also to be hand-delivered, CJA's June 26, 2006 letter to gubernatorial candidate John Faso, resting on the June 20, 2006 memo-letter. Likewise, because the same facts and evidence outlined by the June 20, 2006 memo-letter underlie and establish the corruption in office of Senator Hillary Rodham Clinton – a fact highlighted by our August 25, 2006 memo – a copy of CJA's February 3, 2006 letter to senatorial candidate John Spencer will also be hand-delivered for you.

CJA respectfully requests that these FOUR LETTERS be presented to the highest echelons of Gannett's news operations so that, consistent with their journalistic responsibilities and First Amendment obligations to the public, they may direct that their content be reported on and investigated by Gannett reporters unconflicted by a past history of cover-up or personal and professional relationships with those responsible for the cover-up.<sup>7</sup> As Attorney General Spitzer

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<sup>6</sup> Mr. Greenfield, as well as Editorial Page Editor Herb Pinder, were alerted to CJA's "Elections 2006: Informing the Voters" webpage by CJA's August 25, 2006 memo – a copy of which was sent to them on that date under a transmittal sheet addressed to them and entitled: "**YOUR UPCOMING EDITORIAL ENDORSEMENTS AND ONGOING ELECTION COVERAGE: The Races for New York Governor, U.S. Senator from New York, and New York Attorney General**".

<sup>7</sup> If you and these highest echelons suffer from any such conflicts, we expect you would disqualify yourselves, as mandated by rules of professional and journalistic responsibility.

and Senator Clinton both enjoy national reputations – indeed, as Senator Clinton is a front-runner for the Democratic nomination for president in 2008 – we request that the letters be furnished to the news desk of Gannett’s national circulation daily, USA TODAY, so that it can lead the way in “breaking” the far-reaching and politically-explosive corruption stories the letters describe.

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As the elections are fast approaching, we trust your response will be expeditious and thank you, in advance.

Yours for a quality judiciary, meaningful elections,  
& responsible journalism,



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

- Enclosures: (1) CJA’s June 20, 2006 memo-letter to the attorney general candidates  
– with certified mail/rrr, e-mail, and fax receipts for Andrew Cuomo & Jeanine Pirro  
(2) CJA’s September 1, 2006 memo-letter to the attorney general candidates  
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(4) CJA’s February 3, 2006 letter to senatorial candidate John Spencer  
– with certified mail/rrr and fax receipts

cc: See next page

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<sup>8</sup> See Gannett website: [www.gannett.com/about/visionmission.htm](http://www.gannett.com/about/visionmission.htm).

cc: Gannett News Service Editor Derek Osenenko  
[certified mail/rrr: 7005-3110-0001-3206-0164]

Gannett Albany Bureau:

Jay Gallagher, Chief of Bureau

Yancey Roy

Cara Matthews

The Journal News

Herb Pinder, Editor Board Editor

Dan Greenfield, Metro Editor

Glenn Blain