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October 2, 2002

Ken Lovett, New York Post
Albany Bureau

RE: ELECTION COVERAGE:
The REAL Attorney General Spitzer -- Not the P.R. Version

Dear Mr. Lovett:

Following up our phone conversation, the enclosed story proposal is *readily and swiftly verifiable*. Within the space of a few hours you can independently verify its most important aspects. The resulting story would not only *rightfully* end Mr. Spitzer's re-election prospects and political career, but his legal career as well. The repercussions on Governor Pataki would be similarly devastating.

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STORY PROPOSAL

Repeatedly, the public is told that Eliot Spitzer is a "shoe-in" for re-election as Attorney General¹ and a rising star in the Democratic Party with a future as Governor and possibly President². The reason for such favorable view is

¹ "Court of Claims Judge to Face Spitzer", (New York Law Journal, May 15, 2002, John Caher, Daniel Wise), quoting Maurice Carroll, director of Quinnipiac College Polling Institute, "Spitzer has turned out to be a very good politician, and he is just not vulnerable"; "[Gov. Pataki] could pick the Father, Son and Holy Ghost and he wouldn't beat Spitzer"; "The Attorney General Goes to War", (New York Times Magazine, June 16, 2002, James Traub), "Spitzer's position is considered so impregnable that the Republicans have put up a virtually unknown judge to oppose him this fall - an indubitable proof of political success"; "The Enforcer" (Fortune Magazine, September 16, 2002 coverstory, Mark Gimein), "he's almost certain to win a second term as attorney general this fall".

² "Spitzer Pursuing a Political Path" (Albany Times Union, May 19, 2002, James Odatto);

simple. The press has *not* balanced its coverage of lawsuits and other actions *initiated* by Mr. Spitzer, promoted by his press releases and press conferences, with any coverage of lawsuits *defended* by Mr. Spitzer. This, despite the fact that defensive litigation is the "lion's share" of what the Attorney General does.

The Attorney General's *own* website identifies that the office "defends thousands of suits each year in every area of state government" -- involving "nearly two-thirds of the Department's Attorneys in bureaus based in Albany and New York City and in the Department's 12 Regional offices."³ It is therefore appropriate that the press critically examine at least one lawsuit *defended* by Mr. Spitzer. Only by so doing will the voting public be able to gauge his on-the-job performance in this vital area.

Our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), proposes a specific lawsuit as ideal for press scrutiny. The lawsuit -- against a single high-profile respondent, the New York State Commission on Judicial Conduct -- was not only expressly brought in the public interest, but has spanned Mr. Spitzer's tenure as Attorney General and is now before the New York Court of Appeals. Most importantly, it is a lawsuit with which Mr. Spitzer is *directly familiar and knowledgeable*. Indeed, it was generated and perpetuated by his official misconduct -- and seeks monetary sanctions and disciplinary and criminal relief against Mr. Spitzer *personally*.

Documented by the lawsuit is Mr. Spitzer's complete disregard for conflict of interest rules, using his position as Attorney General to cover-up systemic governmental corruption involving, *inter alia*, the Commission's long-time Chairman, Election Law lawyer, Henry T. Berger, who helped secure Mr. Spitzer's razor-close 1998 victory. The lawsuit shows that Mr. Spitzer wilfully failed to investigate the evidentiary proof of the Commission's corruption. This

"A New York Official Who Harnessed Public Anger" (New York Times, May 22, 2002, James McKinley); "Spitzer Expected to Cruise to 2nd Term" (Gannett, May 27, 2002, Yancey Roy); "Attorney General Rejects Future Role as Legislature" (Associated Press, June 4, 2002, Marc Humbert); "Democrats Wait on Eliot Spitzer, Imminent 'It Boy'" (New York Observer, August 19, 2002, Andrea Bernstein), "many insiders already are beginning to talk -- albeit very quietly -- about the chances of a Democrat winning back the Governor's office in 2006. At the top of their wish list is Mr. Spitzer, whose name recognition has shot through the roof in the last year, private pollsters say, and who appears -- for now, at least -- to have no negatives."

³ See www/oag.state.ny.us/: "Tour the Attorney General's Office" -- Division of State Counsel.

necessitated the lawsuit, which Mr. Spitzer then defended with litigation misconduct so utterly fraudulent as to be grounds for disbarment if committed by a private attorney.

Annexed to the litigation papers is a paper trail of correspondence with Mr. Spitzer, over the past 3-1/2 years, establishing his *direct knowledge and personal liability* for his Law Department's fraudulent defense conduct by his wilful refusal to meet his mandatory supervisory duties under DR-1-104 of New York's Code of Professional Responsibility (22 NYCRR §1200.5).

Added to this, the lawsuit provides an "inside view" of the hoax of Mr. Spitzer's "public integrity unit" – which, according to a September 1999 Gannett article, "*Spitzer's Anti-Corruption Unit Gets Off to a Busy Start*", had "already logged more than 100 reports of improper actions by state and local officials across New York".

Examining this hoax should begin with the first two "reports" the "public integrity unit" received. These were from CJA and involve the very issues thereafter embodied in the lawsuit. Indeed, these "reports" were publicly handed to Mr. Spitzer upon his public announcement of the establishment of his "public integrity unit" on January 27, 1999. Reflecting this is the transcript excerpt of my public exchange with Mr. Spitzer at that time. A copy is enclosed, along with CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, August 27, 1997, pp. 3-4), to which my transcript exchange refers. Such ad outlined the substance of the first "report" for investigation by the "public integrity unit", *to wit*, that predecessor Attorneys General had employed fraudulent defense tactics to defeat meritorious lawsuits, including a 1995 lawsuit against the Commission, sued for corruption – the evidence for which was *readily-verifiable* from the lawsuit files.

Tellingly, a "search" of the Attorney General's website [www.oag.state.ny.us/] produces only *seven* entries for his "public integrity unit", with virtually *no* substantive information about its operations and accomplishments. This is all the more astounding when juxtaposed with Mr. Spitzer's 1998 campaign promise:

"to take on the task of cleaning up government by taking on *all* of the problems that have led to governmental stagnation and

corruption in New York" (emphasis in the original).

Pledging "a Public Integrity Office to uncover and remedy government abuses throughout the state", Mr. Spitzer outlined its mission:

- (1) "**Vigorously Prosecute Public Corruption...Using the Attorney General's subpoena powers...to conduct independent and exhaustive investigations of corrupt and fraudulent practices by state and local officials**";
- (2) "**Train and Assist Local Law Enforcement...And if a local prosecutor drags his heels on pursuing possible improprieties...to step in to investigate and, if warranted, prosecute the responsible public officials**";
- (3) "**Create a Public Integrity Watchdog Group...made up of representatives of various state agencies, watchdog groups and concerned citizens...[to] recommend areas for investigation, coordinate policy issues pertaining public corruption issues, and advocate for regulations that hold government officials accountable**";
- (4) "**Encourage Citizen Action to Clean Up Government...[by] a toll-free number for citizens to report public corruption or misuse of taxpayer dollars**";
- (5) "**Report to the People...[by] an annual report to the Governor, the legislature and the people of New York on the state of public integrity in New York and incidents of public corruption**".

All this and more, laid out in the enclosed first three pages of Mr. Spitzer's 1998 campaign policy paper, "Making New York State the Nation's Leader in Public Integrity...", are a marker by which to evaluate Mr. Spitzer's 2002 re-election website [www.spitzer2002.com] – wherein public integrity and government corruption are not mentioned as campaign issues. This is not because of the success of Mr. Spitzer's "public integrity unit", whose existence is altogether omitted from the campaign website.

For immediate purposes – and to give you a flavor of the important public interest lawsuit herein proposed as your "case study" example of "The REAL Attorney General Spitzer – *not* the P.R. Version", enclosed is an article about

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it, "*Appeal for Justice*" from Albany's alternative newspaper Metroland (April 25-May 1, 2002). Also enclosed is my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, December 28, 1998). Such provides pertinent underlying facts to the lawsuit – yet it also reflects the subject of the second "report" CJA handed to Mr. Spitzer on January 27, 1999 upon his public statement to me, recorded by the transcript, "Anything that is submitted to us we will look at it".

The evidence submitted to Mr. Spitzer then and thereafter – to which neither Mr. Spitzer nor his "public integrity unit" ever responded – established Governor Pataki's involvement in the corruption of the "merit selection" process to the Court of Appeals and his complicity in the Commission's corruption. This is all chronicled by the lawsuit file.

Finally, so that you can see the caption of the lawsuit – and the fact that it seeks sanctions and disciplinary and criminal referral of Mr. Spitzer *personally*, as well as his disqualification from representing the Commission, including for conflict of interest -- enclosed is my June 17, 2002 motion before the Court of Appeals.

I would be pleased to come up to Albany to meet with you so that you can better understand the lawsuit's significance and see for yourself the lawsuit file, from which the extraordinary story of Mr. Spitzer's official misconduct and the hoax of his "public integrity unit" is *readily and swiftly verifiable*. I await your enthusiastic response.

Yours for a quality judiciary
and electorally-meaningful reporting,



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

Enclosures

Subj: Election Coverage: The REAL A.G. Spitzer – NOT the P.R. Version
Date: 10/2/02 3:15:14 PM Eastern Daylight Time
From: Judgewatchers
To: Klnypost
File: 10-2-02-lovett-nypost.doc (36864 bytes) DL Time (115200 bps): < 1 minute

Dear Mr. Lovett,

As discussed, attached is the story proposal. The faxed copy will transmit the enclosures.

I look forward to your enthusiastic response to this politically-explosive story.

Elena Ruth Sassower, Coordinator
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TRANSMISSION VERIFICATION REPORT

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