

Subj: **ATT: Campbell Robertson: Revised Story Proposal for Marianne Giordano**
Date: 10/4/02 3:31:09 PM Eastern Daylight Time
From: Judgewatchers
To: metro@nytimes.com
CC: mckinley@nytimes.com
File: **10-4-02-emailproposal.doc** (36864 bytes) DL Time (115200 bps): < 1 minute

TO: Campbell Robertson, Clerk
The New York Times

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

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

DATE: October 4, 2002

Following up my phone call and the message I asked that you pass on to Ms. Giordano, I am attaching the story proposal, revised for clarity and to eliminate the simultaneously faxed enclosures.

Please READ it yourself so that you can understand that this is NOT a story that Ms. Giordano can simply ignore -- and that it would be grossly irresponsible if I did not take the proposal -- and the documentation that substantiates it -- to the highest levels at The Times, if necessary, so that the newspaper can discharge its fundamental duty of BALANCED reporting.

Since Ms. Giordano has not seen fit to phone me to discuss the various aspects of the proposal, please forward this clarified version to her so that she can better understand how it all fits together.

I am planning to be in midtown on Monday, reviewing files at the Commission on Judicial Conduct. Please tell Ms. Giordano that I would be pleased to meet with her at The Times, at her convenience, for even as little as 15 minutes, so that she can make a properly-informed assessment of this major story. As she has not notified me that she has obtained from Mr. McKinley the two cartons of substantiating documents, I would bring with me a duplicate set so that no time is wasted in Ms. Giordano's seeing, *with her own eyes*, the political dynamite -- relating both to Mr. Spitzer and Governor Pataki -- that Mr. McKinley has had for more than three months.

Thank you.

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October 4, 2002

STORY PROPOSAL

The REAL Attorney General Spitzer -- Not the P.R. Version

The most salient aspects of this story proposal can be independently verified within a few hours. The result would rightfully end Mr. Spitzer's re-election prospects, political future, and legal career. Its repercussions on Governor Pataki would be similarly devastating.

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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 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,

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 Odato); "A New York Official Who Harnassed 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."

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 *expressly* brought in the public interest. It 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*.

Having secured his razor-close 1998 electoral victory as Attorney General with the help of Election Law lawyer, Henry T. Berger, the Commission's long-standing Chairman, Mr. Spitzer then wilfully failed to investigate the evidentiary proof of the Commission's corruption. This necessitated the lawsuit, which Mr. Spitzer has defended with litigation tactics so fraudulent as would be grounds for disbarment if committed by a private attorney.

The lawsuit file includes a breathtaking paper trail of correspondence with Mr. Spitzer, spanning 3-1/2 years, establishing his *direct knowledge* of his Law Department's fraudulent conduct in defending the Commission and his *personal liability* 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), repeatedly requested.

Added to this, the lawsuit provides an "inside view" of the hoax of Mr. Spitzer's "public integrity unit" -- which by September 1999 had purportedly "already

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

logged more than 100 reports of improper actions by state and local officials across New York" ("*Spitzer's Anti-Corruption Unit Gets Off to a Busy Start*", Gannett, 9/8/99).

Exposing the hoax of Mr. Spitzer's "public integrity unit" properly begins with examining how it handled the first two "reports" it received. These were from CJA and involved the very issues subsequently embodied in the lawsuit. Indeed, I publicly handed these two "reports" to Mr. Spitzer on January 27, 1999 immediately upon his public announcement of the establishment of his "public integrity unit". This is reflected by the transcript of my public exchange with Mr. Spitzer at that time, transcribed by the New York Law Journal

The first "report" involved the allegations of 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). At issue was the pattern and practice of fraudulent defense tactics employed by predecessor Attorneys General to defeat meritorious lawsuits, including a 1995 lawsuit against the Commission, sued for corruption. This first "report", whose truth was *readily-verifiable* from the Law Department's own litigation files, thus required Mr. Spitzer to "clean up" his own "house" before tackling corruption elsewhere in the state.

The second "report" involved the allegations of my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, December 28, 1998), whose closing paragraph read: "This is why we will be calling upon our new state attorney general as the 'People's lawyer,' to launch an official investigation." At issue was the corruption of "merit selection" to the Court of Appeals, a component of which was the Commission's corruption. In support, I provided Mr. Spitzer with substantiating documents, including as to the involvement and complicity of Governor Pataki.

Nevertheless, after publicly giving these two "reports" to Mr. Spitzer, *in hand*, not a peep was heard from his "public integrity unit". Endless attempts to obtain information as to the status of any investigations were all unanswered. Indeed, in all these years, Mr. Spitzer's only response has been to replicate the fraudulent defense tactics of his predecessor Attorneys General, complained of in the first "report". This, to defeat the lawsuit which I was obliged to bring to vindicate the public's rights in the face of Mr. Spitzer's inaction.

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These two reports” are a powerful sampling of the presumably many hundred of “reports” since 1999, ignored by Mr. Spitzer and his “public integrity unit”. Indeed, a “search” of his Attorney General’s website [www.oag.state.ny.us/] produces only *seven* entries for the “unit”, with virtually *no* substantive information about its operations and accomplishments. These few entries are even more incongruous in the context of Mr. Spitzer’s 1998 campaign promise that his “Public Integrity Office” would:

- (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”.

The foregoing excerpt from Mr. Spitzer’s 1998 campaign policy paper, “*Making New York State the Nation’s Leader in Public Integrity: Eliot Spitzer’s Plan for Restoring Trust in Government*” provides a standard against which to measure Mr. Spitzer’s “public integrity unit” – the very mention of which is absent from his 2002 re-election website [www.spitzer2002.com], as are public integrity and government corruption as campaign issues.

I would be pleased to fax you any of the above-indicated documents or other items, such as the article about the lawsuit, “*Appeal for Justice*” (Metroland,

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April 25-May 1, 2002). Needless to say, I am eager to answer your questions and would be most pleased by your request to see the lawsuit file from which this prize-winning 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)