

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-556-3815 (10 pages) & E-MAIL: editorial@nytimes.com

TO: Gail Collins, Editorial Page Editor
The New York Times

FROM: Elena Ruth Sassower, Coordinator

RE: Editorial Endorsements for Attorney General and Governor

DATE: October 8, 2002

As The New York Times' editorial board prepares its endorsements for Attorney General and Governor, it depends on accurate and balanced information upon which to make its recommendations to voters.

Please be advised that the news side of The Times – upon which the editorial board may be presumed to rely for pertinent news stories about Governor Pataki and Attorney General Spitzer – has suppressed coverage of fully-documented stories of their official misconduct. This official misconduct was long ago particularized and documented in ethics and criminal complaints against them, filed with the New York State Ethics Commission and the U.S. Attorney for the Eastern District of New York, *which have never been dismissed and remain pending*. Copies were provided years ago to a variety of Times reporters and, most recently, to Albany correspondent James McKinley, Jr. in connection with his election coverage of these two public officers.

As to Governor Pataki, these filed ethics and criminal complaints rest on his corruption of the process by which he has now made hundreds of judicial appointments during his nearly eight years in office¹ – including his corruption of “merit selection” to the New York Court of Appeals; his complicity in the corruption of the New York State Commission on Judicial Conduct; and his disabling and corrupting of the New York State Ethics Commission -- the state agency having disciplinary jurisdiction over him and such other public officers as the state Attorney General and over state agencies such as the Commission on Judicial Conduct and the Commission on Judicial Nomination.

¹ On November 16, 1996, the editorial side featured, albeit significantly expurgated, my Letter to the Editor which it entitled, “*On Choosing Judges, Pataki Creates Problems*”. This had no effect on the news side, which continued unabated its prior suppression of documented stories pertaining to Governor Pataki’s ongoing corruption of the judicial appointments process, including to the Court of Appeals, covered up and compounded by a complicitous Senate Judiciary Committee.

As to Attorney General Spitzer, these filed ethics and criminal complaints rest on his wilful failure to investigate the documentary evidence of the aforesaid corruption, as well as of the fraudulent defense tactics of predecessor Attorneys General in thwarting meritorious lawsuits and procuring fraudulent judicial decisions. This failure to investigate is notwithstanding Mr. Spitzer purports to have a "public integrity unit." The complaints against Mr. Spitzer also rest on his *own* fraudulent litigation tactics throughout the past 3-1/2 years in defending against a meritorious lawsuit challenging the corruption he failed to investigate and in procuring a series of judicial decisions which, in addition to being fraudulent, insulate a corrupt Commission on Judicial Conduct from future litigation challenge. Both his failure to investigate and his *own* fraudulent defense tactics stem from the same source: his myriad of personal, professional, and political relationships with those involved in the corruption or implicated thereby – as to which Mr. Spitzer wilfully refuses to respect the most fundamental conflict of interest rules.

All the foregoing is encompassed by the story proposal "The REAL Attorney General Spitzer – *not* the P.R. Version" – for which Mr. McKinley has refused to provide news coverage. A copy is enclosed, revised for clarity. Also enclosed is my September 26th, October 1st, and October 4th correspondence with Politics Editor Marianne Giordano, to whom I turned for oversight, as Mr. McKinley's superior. As reflected by this correspondence, *all unresponded-to*, Ms. Giordano refuses to discuss the story proposal with me, let alone why, and refuses to identify who at the Times will discuss it.

So that you may know for a certainty that the substantiating documentation provided to Mr. McKinley would "*rightfully* end Mr. Spitzer's re-election prospects, political future, and legal career" and have "repercussions on Governor Pataki...similarly devastating", I request that you obtain it from him – or from Ms. Giordano. As indicated by my correspondence, this documentation, which Ms. Giordano was asked to herself review, was provided to Mr. McKinley more than three months ago, meticulously organized in labeled folders contained in two cartons.

In view of the serious and substantial nature of this politically-explosive story, deliberately suppressed by the news side, I request that copies of this 10-page transmittal be provided to each and every member of the editorial board so that they may responsibly evaluate the board's proper course of action. Needless to say, I am ready to meet with the board, either collectively or individually, to assist it in *independently* verifying, within the space of a few hours, its most salient aspects. I trust they would agree that New York voters are entitled to know how Attorney General Spitzer – our state's highest legal officer and "the People's Lawyer" -- and Governor Pataki -- our state's highest officer -- have collusively undermined the very foundations of the "rule of law" for their own political and personal ends, including corrupting the very safeguards that would hold them accountable.

Elena R. R.
SASSONE

STORY PROPOSAL FOR ELECTION COVERAGE**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 General² and a rising star in the Democratic Party with a future as Governor and possibly President³. 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, 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

² "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".

³ "Spitzer Pursuing a Political Path" (Albany Times Union, May 19, 2002, James Odatto); "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."

Regional offices.”⁴ It is therefore appropriate that the press critically examine at least one lawsuit *defended* by Mr. Spitzer. How else 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 is against a single high-profile respondent, the New York State Commission on Judicial Conduct, sued for corruption – and is *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, Mr. Spitzer is *directly familiar* with the lawsuit. Indeed, it was generated and perpetuated by his official misconduct – and seeks monetary sanctions against, and disciplinary and criminal referral of, Mr. Spitzer *personally*.

As you know, Mr. Spitzer’s 1998 electoral victory as Attorney General was **so razor-close** that it could not be determined without an unprecedented ballot-counting. Aiding him was Election Law lawyer, Henry T. Berger, the Commission’s long-standing Chairman. What followed from this and other even more formidable conflicts of interest was predictable: Attorney General Spitzer would NOT investigate the documentary proof of the Commission’s corruption – proof leading to Mr. Berger. This necessitated the lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* – 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 contains 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).

Added to this, the lawsuit presents an astonishing “inside view” of the hoax of Mr. Spitzer’s “public integrity unit” – which, by September 1999, was cited by Gannett as having “already 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*”, 9/8/99).

⁴ See www/oag.state.ny.us/: “Tour the Attorney General’s Office” – Division of State Counsel.

Exposing the hoax of Mr. Spitzer's "public integrity unit" properly begins with examining its handling of 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", whose truth was and is *readily-verifiable* from the litigation files of Mr. Spitzer's Law Department, required Mr. Spitzer to "clean his own house" before tackling corruption elsewhere in the state. At issue were the fact-specific allegations of CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4), as to a *modus operandi* of fraudulent defense tactics used by predecessor Attorneys General to defeat meritorious lawsuits, including a 1995 lawsuit against the Commission, sued for corruption. This in addition to fraudulent judicial decisions, protecting judges and the Commission.

The second "report" was of no less transcendent importance to the People of this State. It, too, was substantiated by documents. These were provided to Mr. Spitzer, including documents as to the involvement and complicity of Governor Pataki. At issue was not only the Commission's corruption, but the corruption of "merit selection" to the Court of Appeals. Reflecting this was my published Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, 12/28/98) – 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."

As detailed by the lawsuit file, not a peep was thereafter heard from Mr. Spitzer or his "public integrity unit" about these two "reports". Endless attempts to obtain information regarding the status of any investigations were all unanswered. Indeed, Mr. Spitzer's only response was to replicate the fraudulent defense tactics of his predecessor Attorneys General, complained of in the first "report". This, to defeat the lawsuit which I, acting as a private attorney general, brought to vindicate the public's rights in the face of Mr. Spitzer's inaction born of his conflicts of interest.

What has become of the "more than 100 reports of improper actions by state and local officials across New York" cited by Gannett as having been "already logged" by September 1999. And what has become of the hundreds more "reports" presumably "logged" in the three years since? A "search" of Mr. Spitzer's Attorney General website [www.oag.state.ny.us/] produces only *seven* entries for the "public integrity unit", with virtually *no* substantive information about its operations and accomplishments.

That the media-savvy Mr. Spitzer should offer such few and insignificant entries is startling, in and of itself. Even more so, when juxtaposed with Mr. Spitzer's specific promises from his 1998 election campaign that his "Public Integrity Office" would be "empowered to":

- (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*", is the standard against which to measure the figment of Mr. Spitzer's "public integrity unit". Likewise, it is the standard for measuring Mr. Spitzer's 2002 re-election website [www.spitzer2002.com], which says nothing about the "public integrity unit" or of public integrity and government corruption, let alone 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, April 25-May 1, 2002). Needless to say, I am eager to answer your questions and to provide you with a copy of the lawsuit file from which this important story of Mr. Spitzer's official misconduct and the hoax of his "public integrity unit" is *readily and swiftly verifiable*.

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

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Elena Ruth Sassower, Coordinator

BY FAX: 212-556-4188 (24 pages)

September 26, 2002

The New York Times

Marianne Giordano, Political Editor/Metro

cc: James C. McKinley, Jr., Albany Bureau
[fax: 518-436-7109]

RE: ELECTION COVERAGE:
Exposing the REAL Attorney General Spitzer --
not the P.R. version

Dear Ms. Giordano:

Transmitted herewith is a politically-explosive story proposal, full documentation for which I provided to James McKinley three months ago. It sits in two cartons in his Albany office.

Today, Mr. McKinley informed me, in a telephone conversation he punctuated and concluded with crude expletives, that there is "no story" about Attorney General Spitzer. He would not explain this in a rational way, including whether Mr. Spitzer had given him specific responses to the few key questions I suggested he pose -- or even whether he posed such questions to Mr. Spitzer. These key questions -- identified as the "linchpin" of the story -- I had provided Mr. McKinley in a September 18, 2002 letter, a copy of which is enclosed.

With all due respect, I believe Mr. McKinley suffers from undisclosed conflicts of interest -- perhaps because he enjoys a professional, if not personal, relationship with the charismatic and very personable Mr. Spitzer. Indeed, from the outset, Mr. McKinley has been resistant to my entreaties that, as part of his election coverage, he critically examine Mr. Spitzer's on-the-job performance in defending lawsuits and the hoax of his "public integrity unit".

I look forward to your more professional and objective response -- including your own inspection of the documentary proof substantiating this story.

Thank you.

Subj: **ATT: Marianne Giordano, Politics Editor/Metro: BALANCING COVERAGE**
Date: 10/1/02 2:33:27 PM Eastern Daylight Time
From: Judgewatchers
To: metro@nytimes.com
CC: mckinley@nytimes.com
File: **9-26-02-nyt-giordano.doc** (37376 bytes) DL Time (115200 bps): < 1 minute

TO: **Marianne Giordano, Politics Editor/Metro**
New York Times

FROM: **Elena Ruth Sassower, Coordinator**
Center for Judicial Accountability, Inc. (CJA)
Tel: (914) 421-1200
Fax: (914) 428-4994
E-Mail: judgewatchers@aol.com

RE: **September 26, 2002 letter:**
"ELECTION COVERAGE: Exposing the REAL Attorney
General Spitzer -- not the P.R. version"

DATE: **October 1, 2002**

This follows up my faxed September 26, 2002 letter -- to which I have received no response.

Yesterday, I left a phone message for you (212-556-1533) with Michael McElroy, requesting to speak with you. Earlier today, I left a similar message with Campbell Robertson. I wanted to leave a voice message, but Mr. Robertson told me you reserve your voice mail for reporters. He stated, however, that if I e-mailed a message for you at metro@nytimes.com, it would be transmitted to you.

Please advise when you will be available to discuss the politically-explosive story proposal outlined by my September 26th letter -- and whether you have obtained from James McKinley the two cartons of documentation substantiating the proposal.

I note that today's Times continues the typically one-sided coverage of Attorney General Spitzer -- reporting on the latest lawsuit he has initiated, which Mr. Spitzer has accompanied with the usual panoply of press releases, press conferences, and television appearances. While I do not deny or dispute the importance of a lawsuit addressing issues of conflict of interest, integrity and accountability in the financial world, the public is entitled to know how Mr. Spitzer handles these very issues as they arise in the thousands of lawsuits defended by his Law Department.

The documentation I provided Mr. McKinley over three months ago establishes that Mr. Spitzer completely disregards issues of conflicts of interest, integrity, and accountability as *they relate to him and his staff*. This documentation not only includes a mountain of letters to Mr. Spitzer throughout his tenure in office, but THREE fully-documented sanctions

motions against Mr. Spitzer *personally*, filed in Supreme Court, the Appellate Division, and the Court of Appeals, fully detailing his fraudulent defense tactics, as well as formal ethics and criminal complaints against Mr. Spitzer, *personally*, which are part thereof. These ethics and criminal complaints were long ago filed with the NYS Ethics Commission, the U.S. Attorney for the Eastern District of New York, the U.S. Attorney for the Southern District of New York, and the Manhattan District Attorney and are joined with formal ethics and criminal complaints against Governor Pataki.

As therein demonstrated, because Mr. Spitzer and Governor Pataki enjoy a multitude of relationships with judges, as well as with ethics and criminal authorities, all of whom refuse to respect the most fundamental conflict of interest rules, these wrongdoing public officers have been wholly "above the law" – escaping the ethics and criminal consequences for their serious and substantial official misconduct, particularized with painstaking detail and substantiating proof. I specifically reviewed this with Mr. McKinley last June, leaving him the two cartons of meticulously-organized documentation (in labelled file folders) for his *independent* verification.

To enable you to more conveniently and immediately share my September 26th letter with others at The Times – especially the Editorial Board which, presumably, will be otherwise endorsing Mr. Spitzer for re-election in the coming weeks – I am attaching it herewith.

Election Day is only five weeks away. Please let me hear from you by Thursday, October 3rd as to whether you will be directing/suggesting that The Times balance its political coverage of Mr. Spitzer by pursuing the September 26th proposal for election coverage – and whether, as here requested, you have provided such proposal to the Editorial Board so that its evaluation of Mr. Spitzer's "record" may be informed by the readily-verifiable, fully-documented facts, which Mr. McKinley has heretofore been suppressing from coverage.

Otherwise, please advise as to the names of supervisory personnel at The Times with whom I may discuss this matter directly and to whom the two cartons of documentation should be forwarded.

Thank you.

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.

TRANSMISSION VERIFICATION REPORT

*NYT editorial
board
Gail Collins*

TIME : 10/08/2002 10:22
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	10/08 10:16
FAX NO./NAME	12125553815
DURATION	00:06:22
PAGE(S)	10
RESULT	OK
MODE	STANDARD ECM

Subj: Attachment to ATT: Gail Collins; Marianne Giordano; James McKinley
Date: 10/8/02 10:48:09 AM Eastern Daylight Time
From: Judgewatchers
To: editorial@nytimes.com
CC: metro@nytimes.com, mckinley@nytimes.com
File: 10-8-02-nyt-gailcollins.doc (45056 bytes) DL Time (115200 bps): < 1 minute

ATTACHED are the first six pages of my ten-page faxed transmittal of today's date to EDITORIAL PAGE EDITOR GAIL COLLINS. The remaining four pages are the first page covernote to my September 26th letter to Ms. Giordano and my follow-up two e-mail messages of October 1st and 4th.

[NOTE TO MS. GIORDANO and MR. McKINLEY: the story proposal, appearing at pages 3-6 herein, has been further revised for clarity.]

I await your response before taking this matter, profoundly affecting the public's ability to intelligently cast their vote, yet higher at The Times.

Elena Ruth Sassower, Coordinator
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