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FYI: Proposed Letter to the Editor to the NY TIMES: 8/29/99

Dear Editor:

Your Metro front page ran two separate, seemingly unrelated stories, which are actually closely related.

In "*If A Judge Gets Out of Line: Seeking A Cure*" (Aug. 28), an Office of Court Administration spokesman is quoted as saying that the New York State Commission on Judicial Conduct is "viable and efficient". Is it really?

Last year, the Commission received more than 1400 judicial misconduct complaints and dismissed over 1200 without investigation. Of the 22 judges it publicly disciplined, primarily with a slap on the wrist, most were non-lawyer, part-time judges from upstate counties. These 22 amount to 1.5% of the 1400 – a percentage that has remained fairly constant over the last many years.

Beyond these disproportionate statistics are the complaints themselves. Our non-partisan citizens' organization has documented that the Commission unlawfully dismisses, without investigation, complaints of serious judicial misconduct, and particularly when committed by high-ranking, politically-connected judges.

In "*Spitzer Sets Up Unit to Investigate Both State and Local Corruption*" (Aug. 26), you report that the Attorney General has created a "public integrity unit", as if such newsworthy event had just occurred. In fact, back on January 27th, Mr. Spitzer publicly announced "as of today I am creating a public integrity unit" to an assembled audience at the Association of the Bar of the City of New York. I was there and in the question and answer session called upon the Attorney General to investigate the Commission, publicly presenting him with four serious judicial misconduct complaints against high-level judges, which it had unlawfully dismissed without investigation. Our citizens' organization requested that these be directed to his "public integrity unit", along with additional materials we provided establishing systemic governmental corruption involving the Commission and our highest public officials.

That was seven months ago. Since then we have chronicled in a fully-documented ethics complaint against Attorney General Spitzer, as well as in court submissions in a lawsuit against the Commission in which he is defending it against corruption charges, that the "public integrity unit" is as much a hoax upon the public as the Commission.

Without press scrutiny of Mr. Spitzer's so-called "public integrity unit", "seeking a cure" for judicial misconduct will be an exercise in futility.

DAVID ROHDE

About New York

If a Judge Gets Out of Line: Seeking a Cure

OVER the decades, the spartan courtrooms of the sprawling Manhattan Criminal Courts Building have played host to a number of judges infamous for their eccentricity, despotism or breathtaking arrogance. Their reputations, whether deserved or not, became legendary among the prosecutors and defense lawyers who had to tiptoe in court to avoid the reverberations of the gavel.

Today, Judge Donna G. Recant is on her way to joining that group, according to critics who include defense lawyers, court employees, another judge and members of the Manhattan District Attorney's office.

There are the major things Judge Recant has done that intermittently draw public attention, they say, such as handcuffing a defense lawyer to a courtroom bench for being disrespectful and rude and sentencing a defendant to seven months in prison for cursing her. And there are the minor things, such as eating a bagel, a sandwich or popcorn while hearing cases.

Judge Recant, who is 42 and worked as an assistant district attorney for six years and as a criminal and civil lawyer for seven years, is one of the 36 Criminal Court appointments made by Mayor Rudolph W. Giuliani in his five years in office. All in all, those judges, appointed for up to 10 years, are recognized by courthouse veterans as a high-caliber and hard-working bunch.

But her critics say Judge Recant's demeanor on the bench belittles the judicial process. They also say Judge Recant, who was appointed to the bench in 1996, lacks the perspective her job demands.

A State Supreme Court Justice overruled Judge Recant's decision to sentence a defendant to one month in prison for each time he cursed her (it was seven), an embarrassment for a new judge. And her decision to handcuff a Legal Aid lawyer, Arnold Levine, to a bench this April and sentence him to 10 days in jail after she said he was

rude and disrespectful has been appealed to another State Supreme Court Justice.

In a more serious incident, she was accused by defense lawyers in a July 1998 trial of privately coaching prosecutors on how they could better handle a case she was presiding over. In a less serious one, she ordered everyone out of a courtroom because someone was popping gum.

Stephen P. Pokart, a Legal Aid lawyer who said he was speaking on his own behalf, said that in 25 years he has never seen a judge with "such a manifest lack of judicial temperament, disregard for fairness and impartiality, and shown such little respect for poor people."

Judge Recant said she could not comment while the appeal of the handcuffing incident is still pending. But four lawyers called a reporter on her behalf and said she is being attacked because she is tough on lawyers. "She holds lawyers to very high standards and is therefore often openly critical of them," said one of them, Richard D. Emery. "And as a consequence, this pattern of attacking her is to be expected."

Dennis Quirk, president of the court officers union, concurred. "They don't like her because she is a tough judge," he said.

The debate about Judge Recant's judicial temperament, or lack thereof, represents a far larger and long-running problem in city and state courts: the relative omnipotence of judges. Several defense lawyers who were critical of her would not agree to be quoted by name. They said they feared retribution in court if they attacked Judge Recant publicly. Officials from the Legal Aid Society said they would not comment until an appeal they have filed of Mr. Levine's jail sentence is completed.

THE situation is far from new. For decades, wise lawyers in New York have never publicly criticized judges or powerful prosecutors for fear it could come back to haunt them in future trials or plea bargain negotiations.

A mechanism to police judges does exist. The State Commission on Judicial Conduct consists of five lawyers, four judges and two lay people who can investigate complaints and censure or remove a judge. David Bookstaver, a spokesman for the Office of Court Administration, called the commission "viable and efficient."

But defense lawyers and some judges said filing a formal complaint to the committee is an enormous gamble for a lawyer. Anonymous complaints about courtroom incidents can be traced back to which lawyers were present. If the complaint fails, the lawyer and his or her clients then face the wrath of a vindicated judge. Until a better system is developed, critics will continue to have to whisper their complaints, instead of shouting them.

**Those likely to gripe
about judges are those
likely to face them.**

Spitzer Sets Up Unit to Investigate Both State and Local Corruption

By JOHN SULLIVAN

Seeking to carve out a new role for his office, State Attorney General Eliot L. Spitzer said yesterday that he had created a team of prosecutors to investigate governmental corruption at the local and state level.

Mr. Spitzer said the move was inspired not by any particular case but by a general sense that the state should do more to combat corruption. "Cynicism with respect to government these days derives from the belief that there is a lack of integrity in government," he said. "Unless we can show the public that government can in fact be run honestly and forthrightly, we cannot overcome that cynicism."

Law enforcement experts noted that attorneys general in New York, whose statutory duties are relatively limited, have often sought to expand their powers into new areas, from consumer protection to environmental issues. But they also said a new focus on investigating official corruption raised the possibility of conflict with other law enforcement agencies.

Several agencies already have the power to investigate wrongdoing by public officials. County district attorneys have juris-

diction over most state crimes, and the state inspector general has the authority to investigate corruption in state agencies.

But Mr. Spitzer said that in some cases, local prosecutors might not have the time or the resources to devote to corruption investigations. In other cases, he said, prosecutors may find it difficult to distance themselves from the agencies under investigation.

"It is important to have a statewide entity that examines these issues," Mr. Spitzer said.

Peter Pope, special counsel to the Attorney General, will head the public integrity unit, and William Casey, a former deputy chief in the New York City Police Department, will be its chief investigator. Mr. Casey is already chief investigator for Mr. Spitzer's office.

Mr. Spitzer said the unit had already begun inquiries into possible problems at two local government agencies.

There is no state law that specifically authorizes the attorney general to operate a public corruption unit, but Mr. Pope said his office would be able to exercise jurisdiction through a variety of existing laws. One

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statute, used to prevent officials from steering contracts to selected companies, allows the attorney general to intervene to prevent the restraint of trade. Another statute, which dates from the mid-19th century, allows the attorney general to recover misappropriated government funds.

Mr. Spitzer said he had not made any rules about the type of cases that the unit would handle, or any monetary thresholds that must be reached to trigger a prosecution. He said the unit would probably concentrate its efforts outside New York City because there was already a greater amount of oversight concerning city government.

The public integrity unit marks a distinct expansion of the attorney general's traditional role, according to government experts.

"That is a pretty bold, innovative step," said Richard P. Nathan, direc-

Spitzer pursues a new role for the New York Attorney General's office.

tor of the Rockefeller Institute of Government at the State University of New York at Albany.

But Mr. Nathan said the new unit also raised a number of questions about jurisdiction and about "how are they going to define the degrees of malfeasance to target in their inquiries."

Gerald Benjamin, dean of the college of arts and sciences at the State University of New York at New Paltz, said that by law, "the attorney general has very few duties," primarily serving as the state's lawyer in civil suits.

Mr. Benjamin, who has written about the role of the attorney general in state government, said New York's State Constitution purposely divided the power of criminal prosecution among many district attorneys.

The drafters of the State Constitution felt that "the power to take someone's liberty — that should not be centralized in the hands of one person," he said.

But he said there were political incentives for an attorney general to seek out a more visible role, and in many cases, those holding the office have chosen specific issues or areas of law to emphasize, like consumer protection.

Mr. Spitzer is already involved in one high-profile case, examining the city Police Department's street crime enforcement methods. That investigation is being conducted by the Attorney General's Civil Rights Division.