CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-750-7608 (18 pages)
BY CERTIFIED MAIL/RRR: 7005-0390-0001-9888-4219

January 18, 2006

Kenneth G. Langone, Chairman, President & CEO
Invemed Associates, L.L.P.
375 Park Avenue, Suite 2205
New York, New York 10152

RE: Informing the Voters: Attorney General Eliot Spitzer's *readily-verifiable* corruption in office, long covered up by the press

Dear Mr. Langone:

The Center for Judicial Accountability, Inc. (CJA) is a national, non-profit, non-partisan citizens' organization, based in New York, working to ensure that the processes of judicial selection and discipline are effective and meaningful. We have direct, first-hand experience with Attorney General Spitzer – and can attest to the correctness of your view that he "isn't fit to be governor of New York State or [to hold] any other office"[1]. Indeed, based on our direct, first-hand experience with the press, we can further attest to the correctness of your view that the press has functioned as his "stenographers"[2].

The purpose of this letter is to offer you the same *readily-verifiable* documentary evidence of Attorney General Spitzer's corruption in office which, to no avail, we repeatedly provided and proffered to the press from the fall of 1999 onward so that it could perform its journalistic duty to examine and report on misconduct so serious as to have long ago warranted Mr. Spitzer's removal and disbarment. This evidence is summed up in a four-page story proposal entitled "The REAL Attorney General Spitzer – *Not* the P.R. Version", which we widely circulated to the press in 2002 for election coverage and in connection with its editorial endorsements. So as not to be duplicative, I enclose a copy[3] -- highlighting herein the proposal's introduction and first two paragraphs by direct quotation:

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[1] "*Target: Spitzer*", New York Magazine, December 19, 2005, article by Charles Gasparino.

[2] "*A Spitzer Target Gets Even by Supporting an Opponent*", New York Times, December 10, 2005, article by Michael Cooper.

[3] Also enclosed, for your convenience, are items to which the proposal refers – as itemized at the end of this letter.

> *"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.*
>
> * * *
>
> Repeatedly, the public is told that Eliot Spitzer is a "shoe-in" for re-election as Attorney General [fn] and a rising star in the Democratic Party with a future as Governor and possibly President [fn]. 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 Regional offices.'[fn] 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?" (italics in the original).

The specific lawsuit defended by Mr. Spitzer, particularized by the proposal as "ideal for press scrutiny", is just as fatal to Mr. Spitzer now as then for all the reasons the proposal summarizes. This includes exposing the hoax of Mr. Spitzer's "public integrity unit" – a hoax continuing to this day.

We believe it fair to say that among the reasons Mr. Spitzer decided to go after Wall Street and the insurance industry is because he realized that carrying through with his 1998 campaign promises to go after government corruption would antagonize political connections whose support he needed for his political advance to the Governor's office, if not beyond. He, therefore, did a cynical "bait and switch" following his 1998 election as Attorney General – substituting investigations and prosecutions of the business community for investigations and prosecutions of government corruption. The press then made sure that no one would notice and, indeed, would laud Mr. Spitzer as a fearless crusader for ethical conduct and the public interest.

CJA's website, www.judgewatch.org, posts a great deal of our correspondence pertaining to our many years of unsuccessful efforts to secure press examination and reporting of Mr. Spitzer's *readily-verifiable* corruption in office. These postings are accessible *via* the sidebar panel "Press Suppression", which brings up a page containing "Special Topics". The first of these is "Skewing & Subverting the Electoral Process". Clicking on the subheading: "Press Protectionism of New York State Attorney General Eliot Spitzer" will not only immediately bring up our enclosed 2002 story proposal for election coverage, but the tailored coverletters which transmitted the proposal to the press. Among these, CJA's October 8, 2002 memo to The New York Times Editorial Board, a copy of which is enclosed. As highlighted therein, we had years earlier filed ethics and criminal complaints against Mr. Spitzer with the New York State Ethics Commission and U.S. Attorney for

the Eastern District of New York, which had never been dismissed and remained pending. They remain pending today – more than six years after they were originally filed in 1999.

Our website posts these still pending complaints, as likewise the criminal complaints against Mr. Spitzer which we filed with the Manhattan District Attorney and the U.S. Attorney for the Southern District of New York. Perhaps our most important posting, however, is our mountain of correspondence directly with Mr. Spitzer, stretching back to 1994 and his FIRST run for Attorney General and chronicling the background facts that culminated in our ethics and criminal complaints, as well as the sanctions motions we made against Mr. Spitzer for his fraudulent litigation conduct in Manhattan Supreme Court, in the Appellate Division, First Department, and in the New York Court of Appeals. Such correspondence is accessible *via* the sidebar panel, "Correspondence-NYS Officials", which will bring up a page for Mr. Spitzer, with direct links to pages containing substantiating documents -- most importantly, the record of the lawsuit featured by the story proposal. That lawsuit is itself directly accessible *via* the sidebar panel "Test Cases-State (*Commission*)".

We would be pleased to provide you with hard copies of all these documents, most of which are part of the record of the lawsuit – and request to meet with you for purposes of making a personal presentation as to their dispositive, election-altering significance. With such irrefutable hard-evidence in-hand, you will require NOTHING MORE to bring Mr. Spitzer's political and legal career to an explosive and scandalous end for the benefit of ALL New Yorkers.

Please advise as soon as possible so that we may know how and whether to proceed in approaching the candidates for Governor and Attorney General and, of course, the press.

Yours for a quality judiciary,
governmental integrity, and responsible journalism,

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

Enclosures:

(1) CJA's "Story Proposal for Election Coverage: The REAL Attorney General Spitzer – *Not* the P.R. Version"
(2) CJA's October 8, 2002 transmittal memo to The New York Times Editorial Board
(3) Transcript pages 1, 13-14 of my public exchange with Attorney General Spitzer on January 27, 1999, after he publicly announced the establishment of his "public integrity unit"
(4) CJA's $3,077 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97);
(5) CJA's letter to the editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, 12/28/98)
(6) Pages 1-3 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*"

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Elena Ruth Sassower, Coordinator

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.

* * *

Repeatedly, the public is told that Eliot Spitzer is a "shoe-in" for re-election as Attorney General[1] and a rising star in the Democratic Party with a future as Governor and possibly President[2]. 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.

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[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."

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. 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).

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[3] *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 webite [*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: 212-556-3815 (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 office[1] – 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.

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[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 Ruth Sassower

NYLJ.com

New York Law Journal

January 29, 1999 Friday edition

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Breakfast with Eliot Spitzer

Hosted by the New York Law Journal and the Association of the Bar of the City of New York

January 27, 1999

MR. COOPER: Good morning. My name is Mike Cooper. I'm the president of the Association of the Bar, and it's my great pleasure to welcome you to meet and hear the Attorney General, the chief legal officer of the State of New York, Eliot Spitzer.

Eliot was here a little over four months ago with three other candidates in the Democratic primary, and took that occasion to tell you something about his vision for the office of Attorney General and the changes that he would make in its operation. And I guess that message got through, because he bested three other candidates in the primary and then defeated the incumbent.

We are very pleased this morning at the Association to co-host this event with the New York Law Journal, who were our co-hosts back at the candidates debates in early September. And without further ado, I would like to present the president and chief executive officer of the American Lawyer Media, Bill Pollak.

MR. POLLAK: Thank you, Michael. And thank you all for coming to the second of what we hope will be a continuing series of programs in which the Law Journal and the City Bar join to shed light on issues in this state and city's legal and judicial arenas.

The Attorney General is the state's chief legal officer. It's a position that the bar has a unique interest in and concern about. Administrator of a vast legal bureaucracy of about 500 attorneys and more than 1,800 employees, the Attorney General is the lawyer chiefly

So, yes we will examine those cases and we have already moved to expand the range of cases that will be handled by the Civil Rights Bureau. Without looking backward, I think there is nothing to be gained any more by retrospective analysis of what happened in the past four years. I can merely say there will be a much more aggressive civil rights agenda over the next four years.

We have already begun a significant number of cases, which I am not at liberty to talk about. We have already begun looking at some very tough issues and we will move quickly on them.

MS. HOCHBERGER: Thank you. Go ahead.

MS. SASSOWER: My name is Elena Sassower, I'm the coordinator of the Center for Judicial Accountability. I want to congratulate you and thank you for making as your first priority here the announcement of a public integrity unit. Indeed, that was the first question that I submitted by E-mail and by fax, what had become of that pre-election proposal. So, I am really delighted and overjoyed.

Let me just though skip to my third question that I had proposed today, and that is, that I would hope that a public integrity section would also examine the practices of the Attorney General's office in defending state judges and state agencies sued in litigation.

As you know, we ran a $3,000 public interest ad about the fraudulent defense tactics of the Attorney General's office.

MS. HOCHBERGER: Is there a question?

MS. SASSOWER: Yeah.

MS. HOCHBERGER: Could we get to the question.

MS. SASSOWER: What steps are you going to take in view of those allegations that the Attorney General's office uses fraud to defend states judges and the State Commission on Judicial Conduct sued in litigation.

MR. SPITZER: Anything that is submitted to us we will look at it.

MS. SASSOWER: I have it. I have it right here.

MR. SPITZER: Okay. Why did I suspect that? Thank you.

MS. HOCHBERGER: This one also came in over E-mail.

What are your views on the unauthorized practice of law generally, and specifically with respect to the unauthorized practice of immigration law in New York? How will your office deal with it?

MR. SPITZER: It is an area where the Attorney General's office has enforcement authority, as I was reminded this morning by my very good friend Ed Meyer. We have co-authority to enforce those rules with the Board of Regents, and we will do so aggressively.

I think it does raise interesting issues in areas of the law where there is, frankly, not sufficient representation. And immigration law in particular is one such area. So I know there have been some grave proposals over the years to permit some non-licensed lawyers to give advice up to a certain threshold in those areas, but it's obviously an area where we will be aggressive in our enforcement where it's appropriate.

MS. HOCHBERGER: Yes.

A SPEAKER: Good morning. It sounds like we're ready for an E-ride for those of you that remember Disney.

What role do you see or foresee for the judicial system, meaning the courts, the bar, your office and other offices with respect to the YK issues that may or may not manifest themselves.

MR. SPITZER: Well, the first thing I have done is to try to see where the Attorney General's office is in terms of being prepared for this problem. And I don't yet have a clear answer in terms of where we are in terms of getting our computer systems ready for the -- for that moment. And obviously people are more worried about hospitals and getting paychecks and the banking system crashing. But, I think we will be prepared.

What role generally there is for lawyers, I really haven't thought about that in particular.

New York Law Journal

AUGUST 27, 1997 [at page 3]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid $3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

-- a $3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. --
(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "*Liars Go Free in the Courtroom*" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has *no* legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed our $1,650 ad, "*A Call for Concerted Action*".

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA $16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of $2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her *any* post-suspension hearing and *any* appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

CENTER for JUDICIAL ACCOUNTABILITY, Inc.

Box 69, Gedney Station, White Plains, NY 10605
Tel: 914-421-1200 *Fax*: 914-428-4994
E-Mail: judgewatch@aol.com
On the Web: www.judgewatch.org

Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.

NEW YORK POST
America's oldest continuously published daily newspaper

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An Appeal to Fairness: Revisit the Court of Appeals

•Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation. **Elena Ruth Sassower**
Center for Judicial Accountability
White Plains

SPITZER '98

611 BROADWAY • SUITE 202 • NEW YORK, NEW YORK 10012

MAKING NEW YORK STATE THE NATION'S LEADER IN PUBLIC INTEGRITY: ELIOT SPITZER'S PLAN FOR RESTORING TRUST IN GOVERNMENT

Too often the Empire State is perceived as the Special Interest State. Newspapers routinely refer to New York's "twisted democracy,"[1] and Albany's "bribery mill"[2]. Voters have become accustomed to a cycle of campaign finance scandals, ballot access chicanery, incumbent protection schemes and special interest legislation. Nationally, New York State is notorious for its weak public corruption laws, and its lackluster enforcement of laws on the books.

While other states in the nation – including neighboring states – have moved decisively to clean up government, New York remains mired in a system where an open wallet means an open door to public officials, and where the working families of New York are left without a public voice.

Citizens want a greater voice in our democracy, but have nearly given up hope that their elected officials will give it to them. This creates a deepening spiral of voter apathy that further reduces citizen involvement in government, and in turn increases the influence of moneyed special interests.

Eliot Spitzer is the only Attorney General candidate who is prepared 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. Eliot Spitzer doesn't just talk about fighting government corruption and special interest power, he has lived it. Spitzer doesn't just hold press conferences and propose warmed over ideas; he has new ideas and he boasts a track record on government ethics.

Spitzer was involved in one of the only major public integrity prosecutions in New York State in the last two decades. As an Assistant Prosecutor in the Manhattan DA's office, he was part of the team that prosecuted several public officials – of both parties – for abuse of the public trust. Spitzer also teamed up with Lawrence Rockefeller, a Republican, as part of a coalition leading a public campaign to force the legislature to make ballot access easier in New York State. This successful campaign helped loosen the archaic ballot access laws of the state.

Eliot Spitzer for Attorney General

PHONE 212-420-1998 • FAX 212-420-0495

Eliot Spitzer will build on his independence, experience and commitment to be an Attorney General who will crack down on public corruption and fight for legislation to restore the voice of the people to state government. Only through attacking each of the ills afflicting the state's political system in comprehensive and wholesale fashion can we restore a responsive government. As Attorney General, he will:

- Create, within the Attorney General's office, a Publi Integrity Office to uncover and remedy government abuses throughout the state.
- Fight to Impose greater restrictions on lobbyists and ban all gift giving to elected officials.
- Fight to replace the current campaign finance scheme with the "Clean Money" option that has been approved by voters in other states.
- Fight to eliminate incumbent protection schemes.
- Fight to ensure greater disclosure and voter access to information.

NEW YORK'S FIRST PUBLIC INTEGRITY OFFICER

The first step in restoring public trust in state and local government is to ensure that all public officials throughout the state are doing the public's work, and not furthering their own self-interest. Eliot Spitzer will stringently enforce the state's laws against corruption, fraud and abuse by state and local officials across the state.

Currently, local district attorneys prosecute public corruption cases. Too often, local DA's are charged with policing their closest associates and political allies; inherent in this system are frequent conflicts of interest and lax prosecution. For example, current New York Election law prohibits corporations from donating more than $5,000 per year to political candidates; there is evidence of widespread abuse of this rule, but no enforcement of it.

Hence, the need for a Public Integrity Officer who will head up a Public Integrity Office within the Office of Attorney General, and will propose and work for passage of legislation to give it broad powers. The Public Integrity Office will vigorously enforce the election and lobbying laws currently on the books, and prosecute those officials found to be in violation of the law, regardless of

party affiliation. (Even if the legislature does not pass such a measure, the Public Integrity Officer will use the broad subpoena powers of the Attorney General's office to assist local prosecutors in rooting out corruption).

This new unit will be empowered to:

Vigorously Prosecute Public Corruption. Investigate and prosecute public corruption cases, including charges of bribery, conflict of interest, election law and campaign finance violations, fraud or abuse relating to government procurement and contracting, and other violations of the public trust committed by governmental officials and by those doing business with the government. Using the Attorney General's subpoena powers, the Public Integrity Office will be equipped to conduct independent and exhaustive investigations of corrupt and fraudulent practices by state and local officials.

Train and Assist Local Law Enforcement. Provide training, expertise and assistance to local law enforcement agencies on government corruption and crime. And if a local prosecutor drags his heels on pursuing possible improprieties, the Public Integrity Office will be authorized to step in to investigate and, if warranted, prosecute the responsible public officials.

Create a Public Integrity Watchdog Group. Create and coordinate an independent, nonpartisan Public Integrity Advisory group, to be made up of representatives of various state agencies, watchdog groups and concerned citizens. This advisory group will recommend areas for investigation, coordinate policy issues pertaining to public corruption issues, and advocate for regulations that hold government officials accountable.

Encourage Citizen Action to Clean Up Government. Establish a toll-free number for citizens to report public corruption or misuse of taxpayer dollars.

Report to the People. Issue 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.

To help the Office do its job, and to protect those honest and strong-minded citizens and public employees who report public corruption, Eliot Spitzer will also seek additional protections for government whistle blowers, including restrictions on disclosure of the identity of a whistle blower unless it is consented to or ordered by a court.