CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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November 6, 2017

TO: The New York Times

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

RE: Notice of "Fake News"/"Journalistic Fraud"
Your October 31, 2017/November 1, 2017 news article:
"*Andrew Weissmann, Mueller's Legal Pit Bull*"
"*Legal Pit Bull Who Fought Mob is Unleashed in Mueller Inquiry*"

This is to put you on notice that The New York Times article "*Legal Pit Bull Who Fought Mob is Unleashed in Mueller Inquiry*", appearing on the front-page of your November 1, 2017 New York edition and, on your www.nytimes.com website, on October 31, 2017, under the title "*Andrew Weissmann, Mueller's Legal Pit Bull*", is not just superficial, but rigged to mislead the public that Andrew Weissmann is ethical and honest.

Whether this rigging is best described as "fake news", the phrase popularized, if not coined, by President Donald Trump, or "journalistic fraud", the phrase The New York Times itself coined in its 2003 front-page confessional about Jayson Blair, it requires prompt and public explanation and corrective steps.

The subject article bears the by-line of Matt Flegenheimer, reporting from Washington, with a tagline, at the end "Adam Goldman contributed reporting. Kitty Bennett contributed research".

Were these three Washington-based reporters – and their editors – ALL unaware that less than ten days earlier, on October 22, 2017, The Washington Times had featured a trilogy of articles by its reporter, Rowan Scarborough, with devastating particulars as to Mr. Weissmann's unethical, dishonest conduct in the Enron-related prosecutions: "*Mueller's top gun in Russia probe known for hardball tactics, overturned rulings*"; "*Enron case brought powerful legal clash of natural born fighters*"; and "*Complaints against Weissmann go nowhere*".

What about the October 30, 2017 Polizette article "*Manafort Prosecutor Has A History of Bullying, Withholding Information, Critics Say*" by Brendan Kirby, likewise furnishing particulars as to Mr. Weissmann's unethical, dishonest conduct in the Enron-related prosecutions.

The New York Times article makes no mention of these prior articles. Nor does it mention the opinion column that preceded them, "*Judging by Mueller's staffing choices, he may not be very interested in justice*", on October 19, 2017 in The Hill – or the credentials of its author, Sidney Powell, Esq., appended at its end:

> *"Sidney Powell (@SidneyPowell1) was a federal prosecutor in three districts under nine U.S. attorneys from both political parties, then in private practice for more than 20 years. She is a past president of the Bar Association of the 5th Federal Circuit and of the American Academy of Appellate Lawyers. A veteran of 500 federal appeals, she published 'Licensed to Lie: Exposing Corruption in the Department of Justice.' She consulted with Arthur Andersen on appeal and represented one of the Merrill Executives".*

The Washington Times and Polizette articles each quote Ms. Powell extensively, based on interviews with her – and furnish her pertinent credentials.

By contrast, The New York Times article does not quote or interview Ms. Powell – and then covers up the egregiousness of failing to do so by giving the false impression that Ms. Powell has no personal knowledge of relevant facts and no exemplary professional credentials. The sole mention of her is near the end of The New York Times article as follows:

> "It's pretty clear that Weissmann created a culture in which they presumed that the people they were investigating were guilty,' said Tom Kirkendall, a Houston defense lawyer who represented clients on Enron-related cases.
>
> This reputation has trailed Mr. Weissmann among some defense lawyers in the years since, propagated most vocally by a lawyer and author, Sidney Powell, whose work has been taken up by Trump allies like Newt Gingrich. (In 2015, Ms. Powell criticized Mr. Weissmann in an article for The New York Observer – which was owned by Jared Kushner, Mr. Trump's son-in-law – after Mr. Weissmann was named to lead the Justice Department's criminal fraud section.)"

Having thus discredited Ms. Powell as a political partisan, the intended inference is that her criticisms of Mr. Weissmann are unreliable and unworthy of examination and discussion. Indeed, The New York Times article discloses none of her specific criticism: not from her October 19th column in The Hill to which it makes no reference, not from her 2015 New York Observer article, which it disparages, but not based on its content, and not from her 2014 book Licensed to Lie: Exposing Corruption in the Department of Justice, to which it does not refer, notwithstanding the book is the unidentified "work...taken up by Newt Gingrich", so-revealed by clicking on the hyperlink that the web article provides – which brings up the former House Speaker's twitter feed.

Nor does The New York Times article give specifics as to the criticisms of "some defense lawyers", of which it identifies only two, offering up a single minimal quote from each. In addition to Mr. Kirkendall, there is Dan Cogdell. The article's reference to him, near its outset, is as follows:

> "'I'm no fan of Donald Trump,' said Dan Cogdell, a Houston defense lawyer who tangled with Mr. Weissmann when Mr. Weissmann helped lead the federal task force investigating Enron in the early 2000s. 'Frankly, I can't think of two people who deserve each other more than Andrew Weissmann and Donald Trump.'"

By contrast to this short, innocuous quote of Mr. Cogdell – whose second sentence The New York Times then exported for its "Quotation of the Day" – and the comparably short, innocuous quote of Mr. Kirkendall, The Washington Times meaningfully quotes each of them and Ms. Powell. Polizette meaningfully quotes Mr. Kirkendall and Ms. Powell. Unmistakable from their quoted remarks is that their criticisms of Mr. Weissmann's tenure on the Enron Task Force transcends his "overzealousness", his "scorched earth approach", "shock-and-awe", "intimidating" tactics. This, however, is essentially the sum total of what The New York Times portrays as the negative criticisms about Mr. Weissmann – and these it defuses by its other characterizations, mostly from colleagues from the U.S. Attorney's office and in contexts other than Enron:

> "Friends describe Mr. Weissman as relentless and boundary-grazing, but fundamentally fair…
>
> 'If there's something to find, he'll find it,' said Katya Jestin, a former colleague in the United States attorney's office for the Eastern District of New York, who called Mr. Weissmann's ethics unimpeachable. 'If there's nothing there, he's not going to cook something up.'
>
> …
>
> Prosecuting Mob Bosses
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> …
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> 'They respected him,' George A. Stamboulidis, Mr. Weissmann's trial partner, said of his colleague and their mob witnesses. 'He's very bright and to the point but also has a pretty good read of his audience. It was definitely a relationship of mutual respect.'
>
> Geoffrey S. Mearns, a former prosecutor in the Eastern District who is now the president of Ball State University in Indiana, said Mr. Weissmann's personality mirrored that of the office – with its collection of scrappy, ambitious obsessives out to prove their relative mettle in a city where another office, the Southern District in Manhattan, was often viewed as more prestigious.
>
> That their targets were some of the city's most fearsome murderers tended to focus the mind, as well.

> 'He was trained in this environment that we were essentially going after these entrenched mob bosses,' Mr. Mearns said. He's trained as a prosecutor to be aggressive.'
>
> 'I Don't Drink Evian'
>
> ...
>
> "But those close to Mr. Weissmann – and some others less inclined to appreciate the work of prosecutors generally – have zealously defended his ethical compass.
>
> Peter Neufeld, a civil rights lawyer and a founder of the Innocence Project, praised Mr. Weissmann's nerve during his time at the F.B.I., as the agency grappled with the fallout of exonerations based on erroneous testimony from forensic hair examiners.
>
> 'He realized that what had gone on in the past was wrong,' Mr. Neufeld said, recalling Mr. Weissmann's decision to order an audit of hundreds of convictions that may have relied on faulty testimony. 'He did it. That was transformative."

Indeed, although the criticisms of Messrs. Cogdell and Kirkendall and Ms. Powell pertain to Mr. Weissmann's handling of the Enron-related cases, The New York Times article offers up not a single friend, colleague, or anyone else to refute their criticisms – and Mr. Weissmann himself "declined to be interviewed". Presumably, it is to obscure the absence of ANY refutation that The New York Times article – unlike The Washington Times and Polizette articles – meshes together other aspects of Mr. Weissmann's career, having no bearing on his record as deputy director and then director of the Enron Task Force.

Suffice to say, The Washington Times and Polizette articles are each based on *interviews of attorneys with direct knowledge of the facts pertaining to the Enron-related prosecutions: Messrs. Kirkendall and Cogdell – and the legal scholar William Hodes, who, with Ms. Powell, came into the litigation at the appellate stage and filed a misconduct complaint against Mr. Weissmann, jointly with her.* Their interview statements recite specifics as to how Mr. Weissmann "bent or broke the rules" and "crossed ethical boundaries" in his Enron-related prosecutions, with The Washington Times, seemingly, doing some independent examination of the record-based facts. Neither publication identifies anyone disputing the accuracy of what these defense lawyers had to say, with The Washington Times expressly stating: "The special counsel's office declined to comment to The Times about Mr. Weissmann's track record." This, where the immediately preceding paragraph reads:

> "All of the cases Weissmann pushed to trial were reversed in whole or in part due to some form of his overreaching and abuses,' Ms. Powell told The Washington Times. 'The most polite thing the Houston bar said about Weissmann was that he was a

madman.'"

On the subject of reversals, The Washington Times summarized several, at length – starting with the reversal in Arthur Andersen:

> "...Convicted at trial, a fatally damaged Andersen appealed. The Supreme Court eventually took the case.
>
> In 2005, the nation's highest court overturned the conviction in a 9-0 opinion, a devastating judgment that shattered Mr. Weissmann's showcase.
>
> Chief Justice William H. Rehnquist wrote the opinion, solo – a message of how seriously the high court took the breach.
>
> In essence, Rehnquist said the prosecutor sold the presiding judge on jury instructions that assured conviction.
>
> 'Indeed it is striking how little culpability the instructions required,' Mr. Rehnquist wrote. 'For example, the jury was told that, even if [Andersen] honestly and sincerely believed that its conduct was lawful, you may find [Andersen] guilty. The instructions also diluted the meaning of 'corruptly' so that it covered innocent conduct.'
>
> Mr. Rehnquist wrote that the government (Mr. Weissmann) insisted, over defense objections, that the word 'dishonestly' be excluded from the instructions and that the word 'impede' be added.
>
> The chief justice went to the dictionary, read the meaning of 'impede' and concluded it was 'such innocent conduct' for someone to 'impede' the government.
>
> Said Ms. Powell, 'Weissmann indicted them for conduct that was not criminal, and he took criminal intent out of the jury instructions that he then persuaded the judge to give.'"

By contrast, The New York Times devotes only three quick sentences to the appellate reversals in the Enron-related prosecutions, without identifying their number or their bases, other than in Andersen, which it minimizes to insignificance:

> "Opponents accused him of overreach, citing a series of overturned convictions and higher-court losses. Among the setbacks for the task force, the Arthur Andersen victory was unanimously overturned by the Supreme Court over a narrow issue involving jury instructions. Long before that outcome, the case had drawn ferocious

> criticism from members of the business community, who argued that the indictment alone amounted to a death sentence for the firm."

In short, by no stretch can The New York Times article – a news article – be deemed acceptable, objective journalism, furnishing the public with what it most needs to know about a prosecutor who Special Counsel Robert Mueller has put at center-stage in the Trump-Russia investigations. Such would necessarily require examining Mr. Weissmann's record in the Enron-related prosecutions – and Mr. Mueller's knowledge of same, in appointing him. As stated by Ms. Powell in her powerful conclusion to her October 19th column:

> "Mueller knows this history [of Mr. Weissman's record as deputy and deputy director of the Enron Task Force]. Is this why he tapped Weissmann to target Paul Manafort?
> ...
> Mueller's rare, predawn raid of Manafort's home – a fearsome treat usually reserved for mobsters and drug dealers – is textbook Weissmann terrorism. And of course, the details were leaked – another illegal tactic.
>
> Weissman is intent of indicting Manafort. It won't matter that Manafort knows the Trump campaign did not collude with the Russians. Weissmann will pressure Manafort to say whatever satisfies Weissmann's perspective. Perjury is only that which differs from Weissmann's 'view' of the 'evidence' – not the actual truth.
>
> We all lose from Weissmann's involvement. First, the truth plays no role in Weissmann's quest. Second, respect for the rule of law, simple decency and following the facts do not appear in Weissmann's playbook. Third, and most important, all Americans lose whenever our judicial system becomes a weapon to reward political friends and punish political foes.
>
> It is long past the due date for Mueller to clean up his team – or Weissmann to resign – as a sign that the United States is a nation of laws that are far more important than one Weissmann." (underlining added).

Appropriate, unbiased journalism would also require examining the peculiar odyssey of the misconduct complaint against Mr. Weissmann, filed by Mr. Hodes and Ms. Powell, that occupied considerable attention in both The Washington Times and Polizette articles. That the complaint was filed with New York's attorney disciplinary committee in Manhattan – where it remains in limbo, more than five years later – should surely be of further relevance to the Manhattan-headquartered New York Times.

By the way, when, if ever, has The New York Times done any expose reporting of the EVIDENCE of the corruption and politicization of New York's court-controlled attorney disciplinary system – and of the collusion of ALL supervising and prosecutorial authorities, state and federal, with respect

thereto, the New York Commission on Judicial Conduct, among them, itself corrupt and politicized, and protected by a "who's who".

Is The New York Times not aware that in 1999-2001, before being elevated to the Enron Task Force in 2002, Mr. Weissmann, as deputy chief and then chief of the criminal division for the then U.S. Attorney for the Eastern District of New York Loretta Lynch, willfully disregarded conflict-of-interest rules and "sat on" a MOUNTAIN of EVIDENCE of such governmental corruption, involving public officers with whom he and others at the U.S. Attorney's Office had personal and professional relationships. As a result, a fully-documented conflict-of-interest/misconduct complaint against him and U.S. Attorney Lynch was filed in 2001 with the U.S. Justice Department's Office of Professional Responsibility, which then dumped it by a flagrant fraud that it was "unsupported by any evidence and without merit". This is the same office that would similarly cover up for Mr. Weissmann, more than a decade later with respect to the misconduct complaint that Mr. Hodes and Ms. Powell filed against him.

Oddly, The New York Times article fails to mention that Mr. Weissmann's boss, in the U.S. Attorney's Office for the Eastern District of New York, had been Loretta Lynch, who, in 2014, President Obama appointed as U.S. Attorney General. Isn't that a significant fact?

I look forward to your response to the foregoing – and, additionally, your response to the possibility that among the motivations for The New York Times' protectionism of Mr. Weissmann, by its article, is the desire to maintain the favor of "people close to the investigation" so as to be the beneficiary of leaks.[1]

Meantime, so that others may offer up their own evaluation as to whether The New York Times article "*Andrew Weissmann, Mueller's Legal Pit Bull*"/"*Legal Pit Bull Who Fought Mob is Unleashed in Mueller Inquiry*" is "fake news" or "journalistic fraud" and to propel public discussion and in-depth investigation of the verifiable facts concerning Mr. Weissmann's prosecutorial misconduct and the meritorious misconduct complaints filed against him, this critique, with its substantiating proof, has been posted on the Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the top panel "Latest News". The direct link is here: http://www.judgewatch.org/web-pages/press-fake-news/andrew-weissmann.htm. Notice about it will be furnished to other media, to political and media commentators, and to such interested parties as President Trump, the attorneys for the recently-indicted defendants, and to defense attorneys in the Enron-related litigations.

Thank you.

[1] Indeed, Adam Goldman, who the subject article identifies as having "contributed reporting", is a bylined reporter for The New York Times' September 18, 2017 article "*With a Picked Lock and a Threatened Indictment, Mueller's Inquiry Sets a Tone*", with its leak from "people close to the investigation" that Paul Manafort had been told he would be indicted.