

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
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BY FAX: 212-930-8190 (10 pages) & E-MAIL: friedman@nypost.com

TO: Robert McManus, Editorial Page Editor
New York Post

FROM: Elena Ruth Sassower, Coordinator

RE: Editorial Endorsements for Attorney General and Governor

DATE: October 10, 2002

As the New York Post's editorial board prepares its endorsements for Attorney General and Governor, its recommendations to voters must be based on information that is relevant, balanced, and accurate. It is for this reason I write.

On December 28, 1998, you published, unexpurgated, my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", whose closing line -- referring to then newly-elected Attorney General Spitzer -- stated:

"This is why we will be calling upon our new state attorney general, as the 'People's lawyer,' to launch an official investigation."

True to that published Letter, our non-partisan, non-profit citizens' organization called upon Mr. Spitzer "to launch an official investigation" of the corruption of "merit selection" to our State's highest court -- covered up by the State Senate's "ramming through" of Albert Rosenblatt's confirmation by an unprecedented no-notice, by-invitation-only "hearing" at which no opposition testimony was permitted and our request to testify specifically denied -- testimony which would have not only exposed Judge Rosenblatt's unfitness, but the corrupt role of the New York State Commission on Judicial Conduct, the New York State Commission on Judicial Nomination, and Governor Pataki. We did this by a written request, publicly presented to Mr. Spitzer, *in hand*, on January 27, 1999, immediately following his public announcement of his establishment of a "public integrity unit".

Did Mr. Spitzer investigate? He did not even respond to our repeated inquiries as to the status of his review of the documentary evidence we provided him. Likewise, no response from his "public integrity unit". The result has been an extraordinary lawsuit against the Commission on Judicial Conduct, spanning the past 3-1/2 years, which Mr. Spitzer has sought to defeat

by litigation tactics so unremittingly violative and fraudulent as to be grounds for disbarment if committed by a private attorney. This is recounted in the enclosed story proposal, "The REAL Attorney General Spitzer – Not the P.R. Version", presented to your Albany correspondent Ken Lovett for election coverage.

The proposal outlines fully-documented facts that would "rightfully end Mr. Spitzer's re-election prospects, political future, and legal career" – with "repercussions on Governor Pataki...similarly devastating". Consequently, we request that a copy of this six-page transmittal be provided to each and every member of the editorial board so that they may evaluate the board's proper course of action.

Should the board determine that its duty is to examine the substantiating documents – an offer made to the board almost three years ago in my unpublished Letter to the Editor¹ responding to the Post's December 30, 1999 editorial, "Eliot Spitzer's Rocky Start" – I will transmit those documents forthwith². Needless to say, I would be pleased to meet with the board, either collectively or individually, to assist it in *independently* verifying, within the space of a few hours, the most salient aspects of this extraordinary story, dramatically impacting upon the fundamental rights and welfare of the People of this State.



¹ This unpublished Letter to the Editor, faxed and e-mailed to you on December 31, 1999, set forth much of what is now presented for election coverage. Therein identified, in no uncertain terms, was that Mr. Spitzer was "engaging in a level of litigation misconduct which, if committed by a private attorney, would be ground for disbarment"; that the lawsuit file would "rightfully end not only Mr. Spitzer's political career, but his legal one as well", and that "His 'public integrity unit' was nowhere to be seen."

Because of this, I thereafter sent a January 4, 2000 fax to the board, requesting that it refer my Letter to the Editor "to the 'news side' of The Post for investigative coverage of this *readily-verifiable* story". I do not know if this was ever done. My own attempts to secure coverage by the "news" side were unsuccessful.

² A pertinent portion of this documentation, *in duplicate*, is already in the Post's possession, having been provided months ago to reporters Al Guart and Maggie Haberman. This, in connection with my proposal that the Post do an investigative expose of the *readily-verifiable* evidence of the corruption of the Commission on Judicial Conduct, presented by the lawsuit file – the appropriateness of which was long ago made clear from such Post editorials as "Who Judges the Judges?" (3/7/95) and "The Duckman Tragedy" (4/24/96).

I have been unable to ascertain the status of this proposal because Michelle Gotthelf, Associate Metro Editor, has not returned the several phone messages I have left for her. Nor have Mr. Guart and Ms. Haberman returned my many phone messages, asking that they confirm whether, as I requested, they transmitted to Ms. Gotthelf the substantiating documentation I had provided them so that she could review it.

The news side of the Post has long resisted proposals, based on "Who Judges the Judges?" and "The Duckman Tragedy", for an investigative expose of the Commission. This includes Jack Newfield, to whom former Editorial Page Editor Eric Breindel himself forwarded our March 10, 1995 proposal, based on "Who Judges the Judges?" – and to whom I myself faxed a copy of my December 31, 1999 Letter to the Editor, with a further January 12, 2000 proposal for an investigative expose of the Commission.

Parenthetically, the postscript to my December 31, 1999 Letter, citing "Who Judges the Judges?" and "The Duckman Tragedy", had asked the editorial board to refer the Letter "to one of the Post's investigative reporters for follow-up" about the lawsuit against the Commission therein summarized.

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 General³ and a rising star in the Democratic Party with a future as Governor and possibly President⁴. 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

³ "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".

⁴ "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.”⁵ 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).

⁵ 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)

NEW YORK POST

America's oldest continuously published daily newspaper

letters@nypost.com

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

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CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY E-MAIL: letters@nypost.com
BY FAX: 212-930-8546

December 31, 1999

New York Post
Letters to the Editor
1211 Avenue of the Americas
New York, New York 10036

RE: "Eliot Spitzer's Rocky Start", Editorial, December 30, 1999

Dear Editor:

You are far too generous in your editorial, "*Eliot Spitzer's Rocky Start*" (Dec 30). The "real record" of Mr. Spitzer's first year as Attorney General disqualifies him from *any* future office of public trust. Indeed, it requires that he be promptly removed from his present office for official misconduct.

These are the facts: Mr. Spitzer became Attorney General proclaiming he would restore public confidence by rooting out government corruption. Taking him at his word, our non-partisan citizens' organization presented him with proof of systemic corruption involving top public officials and essential oversight agencies. This included copies of judicial misconduct complaints against high-ranking, politically-connected judges, each dismissed without investigation by the State Commission on Judicial Conduct -- in violation of its statutory investigative duty. These were provided, *in hand*, to Mr. Spitzer, who *publicly* promised to "look at" them. That was last January, moments after he announced the creation of his "public integrity unit".

The importance to the public of a meaningful mechanism to discipline miscreant and corrupt judges is obvious. Yet, Mr. Spitzer not only completely failed to respond to our many follow-up phone calls and letters as to the status of his review, but did so knowing it would leave us no choice but to bring a citizen lawsuit against the Commission to hold it accountable. He then completely failed to respond to our many requests that he vindicate the public's rights by helping to prosecute the case.

Instead, Mr. Spitzer came to the Commission's defense, engaging in a level of litigation misconduct which, if committed by a private attorney, would be ground for disbarment. His "public integrity unit" was nowhere to be seen.

The lawsuit, in which Mr. Spitzer is defense counsel, is pending in New York Supreme Court (#99-108551). It includes a fully-documented motion for the Court to sanction Mr. Spitzer *personally* and to refer him to disciplinary and criminal authorities. This is the "real record" which should rightfully end not only Mr. Spitzer's political career, but his legal one as well.


ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

NOTE: The foregoing recitation of official misconduct by Mr. Spitzer is fully documented by the litigation file of the referred-to pending lawsuit against the State Commission on Judicial Conduct (NY Co. #99-108551)-- a copy of which I would be pleased to provide, upon request. Likewise fully documented is my referred-to *in-hand* presentation of evidence to Mr. Spitzer, as well as his *public* response to me -- which took place at a January 27, 1999 event at the City Bar, co-sponsored by the New York Law Journal.

Among the materials presented to Mr. Spitzer on that date was a copy of my previous Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", published by the Post on December 28, 1998. The final paragraph of that Letter read: "That is why we will be calling upon our new state attorney general as the 'People's lawyer' to launch an official investigation." Needless to say, the new state attorney general to whom I was then referring was Mr. Spitzer.

Finally, since the Post has long been critical of the State Commission on Judicial Conduct, including for its protectionism of downstate, politically-powerful judges (i.e. "*Who Judges the Judges*" (3/7/95), "*The Duckman Travesty*" (4/24/96)), I ask that you refer this proposed Letter to one of the Post's investigative reporters for follow-up about the pending lawsuit against the Commission -- now before its SEVENTH judge: five judges having disqualified themselves and one judge having been pulled from the case by the Administrative Judge.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-930-8546

4 pages

January 4, 2000

New York Post

Letters to the Editor

1211 Avenue of the Americas

New York, New York 10036

ATT: Peter Gilmore, Assistant Editor

RE: Proposed Letter to the Editor:
"Eliot Spitzer's Rocky Start is his END"

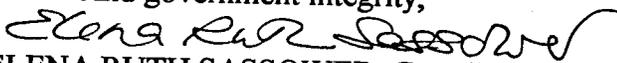
Dear Mr. Gilmore:

Following up our phone conversation a short time ago, enclosed is a fax of our proposed Letter to the Editor. It is identical to the e-mail version, just sent, except for the second sentence, which I've now shortened.

FYI, I have also enclosed our previously-published Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (December 28, 1998). Albeit lengthy, the Post printed it in full as the lead Letter.

Your serious consideration of our proposed Letter is greatly appreciated. The public must be informed that Attorney General Spitzer is not only hypocritical and two-faced, but is engaged in official misconduct so serious as to warrant his removal from office and the bar. Please, therefore, also refer this Letter on to the "news side" of the Post for investigative coverage of this *readily-verifiable* story.

Yours for a quality judiciary
And government integrity,


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

Enclosures

Subj: Editorial Endorsements for Attorney General & Governor
Date: 10/10/02 10:38:57 AM Eastern Daylight Time
From: Judgewatchers
To: friedman@nypost.com
CC: knypost@nypost.com, mgothelf@nypost.com, aguart@nypost.com, mhaberman@nypost.com
File: 10-10-02-nypost.doc (42496 bytes) DL Time (115200 bps): < 1 minute

Dear Mr. Friedman:

Attached are the first six pages of the Center for Judicial Accountability's faxed 10-page transmittal for consideration by Editorial Board Editor Robert McManus and each and every member of the editorial board.

The last four pages of the faxed transmittal, which I am unable to attach, consist of: (1) the Post's December 28, 1998 publication of my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*"; (2) my unpublished December 31, 1999 Letter to the Editor; and (3) my January 4, 2000 fax to the editorial board.

Copies of this 6-page transmittal are being sent to all those mentioned therein -- excepting Mr. Newfield who is no longer at the Post, but to whom I request that you forward a copy as I do not have a forwarding address. Regrettably, much as I would like a copy to also be forwarded to former Editorial Board Editor Eric Breindel, who on March 13, 1995 took the time to write me a note, this is not possible by reason of his tragic, untimely death.

Thank you.

Elena Ruth Sassower, Coordinator
 Center for Judicial Accountability, Inc. (CJA)
 Tel: (914) 421-1200

TRANSMISSION VERIFICATION REPORT

TIME : 10/10/2002 10:09
 NAME : CJA
 FAX : 9144284994
 TEL : 9144211200

DATE, TIME	10/10 10:03
FAX NO./NAME	12129308190
DURATION	00:06:18
PAGE(S)	10
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MODE	STANDARD ECM

Subj: Undeliverable: Editorial Endorsements for Attorney General & Governor
Date: 10/10/02 10:39:25 AM Eastern Daylight Time
From: postmaster@nypost.com (System Administrator)
To: Judgewatchers@aol.com
File: 10-10-02-nypost.doc (42496 bytes) DL Time (115200 bps): < 1 minute

Your message

To: friedman@nypost.com
Cc: klnypost@nypost.com; mgothelf@nypost.com; aguart@nypost.com; mhaberman@nypost.com
Subject: Editorial Endorsements for Attorney General & Governor
Sent: Thu, 10 Oct 2002 10:38:57 -0400

did not reach the following recipient(s):

MHABERMAN@NYPOST.COM on Thu, 10 Oct 2002 10:39:04 -0400
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 post;l=?□??□02101014394KFTWBP3
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 Unknown Recipient

10/11/02
For Maggie Haberman
212
571-
3449
7 pages

Message-ID: <31.2e58a471.2ad6eb01@aol.com>
From: Judgewatchers@aol.com
To: friedman@nypost.com
Cc: klnypost@nypost.com, mgothelf@nypost.com, aguart@nypost.com, mhaberman@nypost.com
Subject: Editorial Endorsements for Attorney General & Governor
Date: Thu, 10 Oct 2002 10:38:57 -0400
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Dear Mr. Friedman:

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TRANSMISSION VERIFICATION REPORT

TIME : 10/11/2002 13:30

NAME : CJA

FAX : 9144284994

TEL : 9144211200

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