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BY HAND & BY E-MAIL: [gdillehay@amlaw.com](mailto:gdillehay@amlaw.com)

October 11, 2002

George Dillehay, Publisher  
The New York Law Journal

RE: RELEVANT ELECTION COVERAGE:  
Attorney General Spitzer's publicly-made promises

Dear Mr. Dillehay:

With the approach of Election Day, the legal community is entitled to expect that the New York Law Journal will provide it with information enabling it to cast an intelligent vote in the race for Attorney General. Such would include providing it with relevant and accurate facts about the on-the-job performance of Attorney General Eliot Spitzer.

Since the Law Journal co-sponsored a breakfast for Mr. Spitzer on January 27, 1999 at the Association of the Bar of the City of New York – providing him with a forum to announce what he was going to do as this state's highest legal officer – the legal community would rightfully expect that the Law Journal would, at very least, follow through by examining whether Mr. Spitzer “made good” on the promises he publicly-made on that day. First and foremost, Mr. Spitzer's announcement that “as of today I am creating a public integrity unit” to “investigate and root out corruption throughout the state”, (NYLJ transcript, p. 7).

Obviously, before Mr. Spitzer could not “investigate and root out corruption throughout the state” he had to “clean his own house”. My public question to him – and I was the first at the microphone at the January 27, 1999 breakfast – was addressed to that. I asked Mr. Spitzer, directly, what he was going to do about the allegations of CJA's \$3,000 public interest ad, “*Restraining 'Liars in the Courtroom' and on the Public Payroll*” (NYLJ, 8/27/97, pp. 3-4) that “the Attorney General's office uses fraud to defend state judges and the State Commission on Judicial Conduct sued in litigation”. His response, “Anything that is submitted to us we will look at it”. I then immediately walked up to Mr. Spitzer and presented him, *in hand*, with a letter calling for his investigation of the documentary evidence already in his possession, as well as the further documentary evidence thereupon transmitted.

Did Mr. Spitzer investigate? He would not even respond to my repeated inquiries as to the status of his review, if any. Likewise, no response from his “public integrity unit”. The result has been an extraordinary public interest lawsuit against the Commission on Judicial Conduct,

spanning the past 3-1/2 years, in which Mr. Spitzer has replicated the fraudulent defense tactics of his predecessor Attorneys General, which were the subject of my January 27, 1999 question to him, based on "Restraining 'Liars'".

Four and a half months ago, on June 25<sup>th</sup>, we discussed this together, when you returned the phone messages I had left for you. You were then going to follow-up with Law Journal Editor-in-Chief Kris Fischer, who, *without reasons*, had refused to authorize Law Journal reporters to examine any aspect of the story, formally presented to her by a November 30, 2001 letter. Indeed, Ms. Fischer had not seen fit to even respond to that story proposal – ignoring my subsequent January 7, 2002 letter and January 17, 2002 note, requesting to know the status of her review of the copy I had provided her of the substantiating record of the lawsuit, then before the Appellate Division, First Department. It was not until April 16<sup>th</sup>, when I called Ms. Fischer that she told me there would be no coverage -- at which point she also stated that the lawsuit papers I had provided her had been destroyed. She did not indicate who, if anyone had reviewed them before they were destroyed, which she claimed to have been inadvertent.

Ms. Fischer adhered to her position that there would be no coverage – even after I sent her a copy of my May 3rd letter to Albany Bureau Chief John Caher, complaining about his "Law Day" coverage of the festivities at the Court of Appeals, including Mr. Spitzer's "Crisis of Accountability speech". I mailed this to Ms. Fischer, along with a copy of my then-filed submissions to the Court of Appeals in the lawsuit. This, because Mr. Caher refused my request that he send Ms. Fischer the copy I had given him, *in hand*, at the Court of Appeals, on "Law Day".

It appeared from our June 25<sup>th</sup> phone conversation that Ms. Fischer had not transmitted any of these materials to you, as I had requested her to do. It appeared you were unaware of this matter until we spoke. I have not heard back from you since – and the voice mail message I left for you two days ago has not been returned. I have also not heard back from your assistant, to whom I spoke yesterday, as reflected by my faxed to her.

Transmitted herewith are copies of the correspondence that Ms. Fischer should have provided you, pursuant to my request, as well as the copy of the Court of Appeals submissions that I had given to Mr. Caher on "Law Day" and which he mailed back on May 15th – in completely untouched-by-human hands condition. Most importantly, I am now transmitting an updated story proposal, "The REAL Attorney General Spitzer – *Not* the P.R. Version".

Please call me by mid-week so that I know whether it will be necessary to take this matter to the Board of Editors. Thank you.

**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 General<sup>1</sup> and a rising star in the Democratic Party with a future as Governor and possibly President<sup>2</sup>. 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

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<sup>1</sup> "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 Gimoin), "he's almost certain to win a second term as attorney general this fall".

<sup>2</sup> "Spitzer Pursuing a Political Path" (Albany Times Union, May 19, 2002, James Odato); "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.”<sup>3</sup> 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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<sup>3</sup> See [www/oag.state.ny.us/](http://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/](http://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](http://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)