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BY HAND

October 13, 2003

Bill Keller, Executive Editor
The New York Times
229 West 43rd Street
New York, New York 10036

RE: (1) Misconduct complaint against Jonathan Landman for his leading role as metro editor in the "journalistic fraud" summarized by CJA's June 19, 2003 letter, disentitling him to elevation to the newly-created position of assistant managing editor for enterprise and warranting his discharge;

(2) Immediate investigation of the politically-explosive metro-based corruption stories long-suppressed by Mr. Landman – beginning with the corruption of "merit selection" to the New York Court of Appeals, as documented by CJA's October 16, 2000 and November 13, 2000 reports and the record then and thereafter in *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*

Dear Mr. Keller,

On September 26th – the day after your appointment of metro editor Jonathan Landman to the newly-created position of assistant managing editor for enterprise – I sent an e-mail that such appointment reinforced the necessity of your "IMMEDIATE AND PERSONAL REVIEW" of CJA's past complaints and correspondence with The Times, as requested by our September 25, 2003 letter to you. Specifically, I directed your attention to the "October-December 2000 correspondence posted on our website, www.judgewatch.org 'Press Suppression-NYT'". I also stated that a separate letter would be forthcoming. This is that letter.

If you have since examined CJA's complaints and correspondence, particularly from October-December 2000, you know that Mr. Landman is altogether unfit for the important position to which he has been appointed. This, because Mr. Landman is among the seasoned Times editors whose sustained and collusive "journalistic fraud" -- more serious, by far, than the random acts of rookie reporter Jayson Blair -- was the subject of CJA's June 19, 2003 letter to

assistant managing editor Allan Siegal in his capacity as chair of the Times' "Committee to Safeguard the Integrity of our Journalism".

Mr. Siegal's refusal to respond to that June 19th letter – even to the minimal extent of responding to our request for the names of the Committee members – bespeaks his guilty knowledge that much as our June 19th letter surmised, they included

> "members of The Times whose misconduct has been chronicled in CJA's past complaints – or who, unbeknownst to us – were involved in what we were complaining about." (at p. 5).

Indeed, aside from Committee member Jill Abramson, who, as Washington bureau chief, bears ultimate supervisory responsibility for the suppression of the major national story about the corruption of federal judicial selection described by our June 19th letter, no Committee member is more directly responsible for the suppression of the New York underpinnings to that national story than Mr. Landman.

As Mr. Siegal's office would not confirm whether our June 19th letter had been distributed to the Committee members – or even the identities of the members of the "subcommittee looking at complaints" to which the June 19th letter was allegedly forwarded[1] -- we do not know whether Mr. Landman, as a Committee member, was provided with a copy. Certainly, Mr. Landman should have been among the first of the Committee's members to have received it.. As metro editor from September 1999, he could be presumed to know of CJA's many, many complaints of Times suppression of fully-documented stories of the "New York-centered corruption of public agencies, processes and public officers" to which the letter referred. These complaints plainly involved metro reporters and editors, whose ultimate destination would have been the metro editor's desk.

Mr. Landman's handling of our New York/metro-based complaints should have been of particular interest to the Committee. Then, as now, Mr. Landman was garnering praise for his e-mail warning that rookie Jayson Blair had to be stopped "Right now". Yet, as our June 19th letter stated, Jayson Blair's "journalistic fraud" was "peanuts" by comparison to what, over and again, we were complaining of.

By copy of this letter to Mr. Landman, CJA calls upon him to identify whether, as a Committee member, he was apprised of our June 19th letter – and, if so, whether it was his view that the Committee, as a whole or by its "subcommittee looking at complaints", did not have to examine CJA's complaints and correspondence to which the letter referred. To the extent Mr. Landman

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[1] *See* fn. 1 of CJA's August 26th letter to Ms. Abramson, enclosed with our September 25th letter to you.

expressed such view, he should state whether he disclosed his conflicts of interest. These conflicts were born of his ACTUAL KNOWLEDGE that the complaints and correspondence would reveal his role – and that of his influential colleagues and Times publisher Arthur Sulzberger, Jr. -- in suppressing coverage of the underlying New York corruption stories which the letter identified, *to wit*,

> "the corruption of the New York State Commission on Judicial Conduct and 'merit selection' to the New York Court of Appeals, involving -- and criminally implicating – a panoply of New York's highest public officers: Governor George Pataki, Attorney General Eliot Spitzer, Chief Judge Judith Kaye, and the leadership of the New York State Senate". (at p. 4).

Among these influential colleagues is Joyce Purnick, wife of former executive editor Max Frankel[2]. As you know, CJA's September 25th letter to you was occasioned by the appalling prospect of your appointment of Ms. Purnick to the position of public editor/ombudsman. Ms. Purnick was Mr. Landman's immediate predecessor as metro editor.

By September 1999, when Mr. Landman assumed the reins of power directly from Ms. Purnick, CJA had already meticulously documented Times suppression of important, time-sensitive, electorally-significant stories, its protectionism of specific public officers and interests, and its black-balling of our non-partisan, non-profit citizens' organization in two comprehensive complaints, both received by Mr. Sulzberger. These were our October 21, 1996 comprehensive complaint – a substantial portion of which related to metro and Ms. Purnick[3] – and our February 12, 1998 comprehensive complaint -- virtually all relating to metro and Ms. Purnick. Also largely involving metro and Ms. Purnick was our subsequent correspondence through the end of 1998. Particularly noteworthy is our October 20, 1998 letter to Mr. Sulzberger, to which Ms. Purnick and metro political affairs editor Jerry Gray were indicated recipients, as well as a series of four memos, dated December 11, 1998, December 14, 1998, December 17, 1998, and December 28, 1998, each addressed to Ms. Purnick and Mr. Gray – with copies to Mr. Sulzberger and Howell Raines, then editorial page editor. These four memos contemporaneously chronicled metro's suppression of the documentary proof we had provided it, *at that time*, of the corruption of "merit selection" to the New York Court of Appeals, focally involving the Commission on Judicial Conduct. This, in connection with Appellate Division, Second Department Justice Albert Rosenblatt's nomination by the Commission on Judicial Nomination, his bar ratings, his appointment by Governor Pataki, and his Senate confirmation. Additionally, revealed by these

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[2] Mr. Frankel's suppression of our May 1, 1992 "Law Day" critique documenting the corruption of federal judicial selection, based on the case study of the nomination of Westchester County Executive Andrew O'Rourke to the district court for the Southern District of New York, was the subject of our June 30, 1992 complaint to Mr. Sulzberger.

[3] Our December 2, 1996 supplement virtually all related to metro.

memos was the editorial board's precipitous and uninformed editorial endorsing Justice Rosenblatt's nomination as "*Governor Pataki's Wise Choice*"(12/12/98), which, in face of our document-substantiated memos, it was duty-bound to retract, but did not.

Presumably, upon taking over from Ms. Purnick in September 1999, Mr. Landman was made aware of these voluminous past complaints and correspondence – if for no other reason than that the suppressed politically-explosive stories underlay new stories for which we were seeking coverage. In fact, these suppressed stories had become more powerful as the corruption continued and as CJA's dedicated activism brought the stories to higher and more sophisticated levels. A new metro editor had to understand that unless these later stories were suppressed, the earlier ones would be exposed – and with it the long history of Times suppression, protectionism, and blackballing, including by Ms. Purnick.

CJA's renewed efforts at Times coverage began in late August 1999 -- after a hiatus essentially reaching back to the December 28, 1998 memo, whose enclosed copy of our Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", published in that day's New York Post, had announced our strategy. In light of the Senate Judiciary Committee's unprecedented no-notice, by-invitation-only "hearing" on Justice Rosenblatt's confirmation – at which we had been precluded from offering testimony that would have torpedoed his confirmation -- we were going to turn to newly-elected Attorney General Eliot Spitzer to launch an official investigation. Our renewed contact with *The Times* in August was seven months after doing just that – and was the result of two metro articles and a metro column. The first of these articles, on the August 19, 1999 Times front page, was entitled "*Widening Inquiry on Pataki Donors and Parole Board*". Written by Clifford Levy and Kevin Flynn, it reported that the U.S. Attorney for the Eastern District of New York had found "no evidence" of involvement by Governor Pataki himself. This was followed shortly thereafter by two metro section front pages, two days apart. The first, on August 26, 1999, carried a news article by John Sullivan, "*Spitzer Sets Up Unit to Investigate Both State and Local Corruption*", which made it appear as if such unit was newly-established and was going to investigate governmental corruption. The second, on August 28, 1999, carried a column by David Rohde, "*If a Judge Gets Out of Line: Seeking a Cure*", quoting a court spokesman – without rebuttal – that the Commission on Judicial Conduct is "viable and efficient".

By then, CJA had a "mountain of evidence" as to Governor Pataki's involvement in: (1) disabling and corrupting the New York State Ethics Commission – the state agency with disciplinary jurisdiction over him, other state officers, and state agencies; (2) the corruption of the judicial appointments process to the lower state courts and of "merit selection" to the Court of Appeals; and (3) the corruption of the Commission on Judicial Conduct. Indeed, this "mountain of evidence" – much of which had been presented and proffered to metro and Ms. Purnick over so many past years, but suppressed by them from coverage – had been particularized in a March 26, 1999 verified ethics complaint against the Governor, which we had filed with the Ethics

Commission[4].

This March 26, 1999 ethics complaint, however, was not solely against Governor Pataki. It was also against the Ethics Commissioners, especially its Chairman Paul Shechtman who was simultaneously Chair of Governor Pataki's State Judicial Screening Committee, and against the Ethics Commission's former Executive Director, Richard Rifkin, who Attorney General Spitzer had appointed to be Deputy Attorney General for State Counsel, responsible for defending lawsuits against public officers and agencies, such as judges and the Commission on Judicial Conduct. Additionally, it was against Mr. Spitzer, who, notwithstanding his public announcement on January 27, 1999 that, "as of today I am creating a public integrity unit", had NOT done so in face of the two documented complaints which I thereupon immediately publicly presented him, *in-hand*. As to these two January 27, 1999 complaints[5], the first sought investigation of the file evidence substantiating the 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)[6], that predecessor Attorneys General had employed fraudulent litigation tactics to defeat lawsuits against state judges and the Commission on Judicial Conduct, sued for corruption – and had been rewarded with fraudulent judicial decisions. The second of these January 27, 1999 complaints was our follow-through to "*An Appeal to Fairness: Revisit the Court of Appeals*" and was our request for investigation of the corruption of "merit selection" involving Justice Rosenblatt's elevation. Finally, and based on the role the Commission on Judicial Nomination and Commission on Judicial Conduct in the corruption of "merit selection" involving Justice Rosenblatt, the March 26, 1999 ethics complaint was also against those two state agencies.

What was the Ethics Commission's response to this comprehensive March 26, 1999 ethics complaint, substantiated by meticulous documentation? In violation of law (Executive Law §94.12(a)), the Ethics Commission simply ignored it – not acknowledging it, not referring it to independent authorities for investigation, not dismissing it.

Likewise, Attorney General Spitzer also ignored this March 26, 1999 ethics complaint, which we sent him for separate investigation by his public integrity unit, if not referral to a more independent entity. Even after he had belatedly appointed Peter Pope to head the unit in June 1999, no action was taken. Nor was any action taken on the two January 27, 1999 complaints which Mr. Spitzer had received from me, *in hand*, on that date, upon publicly announcing his public integrity unit. These were simply ignored, also without acknowledgment.

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[4] CJA's March 26, 1999 ethics complaint is posted at "*Correspondence-NYS:"Ethics Commission*".

[5] CJA's two January 27, 1999 complaints were embodied in a single letter to Mr. Spitzer of that date, which is posted at "*Correspondence-NYS: Attorney General Spitzer*".

[6] "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" is posted at "*Published Pieces*", as is "*An Appeal to Fairness: Revisit the Court of Appeals*"

Because of Mr. Spitzer's inaction on the second January 27, 1999 complaint involving Justice Rosenblatt's elevation to the Court of Appeals, it fell to us to vindicate the public's rights. This I did by a 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.*

Commenced on April 22, 1999, the allegations of the verified petition[7] and annexed exhibits criminally implicated the Commission on Judicial Nomination, the bar associations, the Governor, and the Senate in the corruption of "merit selection". There being NO legitimate defense to the verified petition, I was entitled to the benefit of the Attorney General's advocacy, pursuant to Executive Law §63.1. Nonetheless, Mr. Spitzer represented the Commission, defending it the only way he could: with fraudulent litigation tactics. In so doing, he replicated the very misconduct of predecessor Attorneys General detailed by our ad, "*Restraining Liars*" – the subject of our first January 27, 1999 complaint to him. Consequently, by August 1999, the record of my lawsuit included my omnibus motion, *inter alia*, to disqualify Mr. Spitzer, to sanction him *personally* for his fraudulent defense tactics, and to refer him for disciplinary and criminal investigation. Such fully-documented July 28, 1999 motion set forth, in meticulous detail, my *direct, first-hand* experience with Mr. Spitzer's public integrity unit, resoundingly proving it to be an utter hoax (¶¶48-49, 58-103).

Spurred by The Times August 19, 1999 article – and annexing and directly quoting from it -- CJA filed a criminal complaint with the U.S. Attorney for the Eastern District of New York against Governor Pataki and those complicitous with him in the systemic governmental corruption[8] documentarily established by the March 26, 1996 verified ethics complaint and the record of my lawsuit against the Commission. Messrs Levy and Flynn, Sullivan, and Rohde – seasoned reporters all -- were provided with the pertinent documents. In addition to the September 7, 1999 criminal complaint, this included the March 26, 1999 ethics complaint and the April 22, 1999 verified petition and July 28, 1999 omnibus motion in my lawsuit. Such is reflected by CJA's correspondence with them, beginning in September 1999. Most significant of this correspondence is my long chain of letters to Mr. Rohde, which, from January 5, 2000 through October 20, 2000, beseeched him, over and again, to bring to his editors' attention the fully-documented corruption stories he was "sitting" on, to provide the substantiating documents to these editors for their review, and to arrange for me to meet with them so that I could understand why, instead of their assigning him to write stories about the corruption of essential government agencies and

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[7] A substantial portion of the record of my lawsuit against the Commission is posted at: "*Test Cases- State (Commission)*" -- beginning with the verified petition and including my July 28, 1999 omnibus motion, *infra.*.

[8] CJA's September 7, 1999 criminal complaint is posted at "*Correspondence- NYS: U.S. Attorney for the Eastern District of NY*".

governmental processes, involving our highest public officers – and for which dispositive, *independently-verifiable* documentation was being provided to him "on a silver platter" —he was being assigned to write about the rap musician "Puff Daddy" and other stories without lasting impact.

Finally, in September and October 2000, in the wake of Governor Pataki's impending "merit selection" appointment to the Court of Appeals -- about which I had given Mr. Rohde notice again and again over the preceding many months -- and his failure to move ahead with a story, even after being provided with CJA's October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection", specifically addressed to the current vacancy[9], I directly contacted Mr. Rohde's editor, Tony Marcano[10], leaving him voice mail messages on September 25th, October 10th, and October 18th – *each unreturned*. This is reflected by my October 26, 2000 letter to Mr. Marcano, which stated:

> "In the event David has NOT shared CJA's October 16th Report with you – as I requested him to do – please ask that he immediately do so – and that he also give you the many, many letters I sent him over the year, imploring him to arrange a meeting with Times editors so that an expose of the 'merit selection' process to the Court of Appeals could be authorized and undertaken."

On October 27, 2000, after finally succeeding in speaking with Mr. Marcano, I wrote an extensive letter to him, which began:

> "This is to reiterate my request that the Times BALANCE the many articles in its national section focusing on the failings of judicial elections to highest state courts elsewhere in the country[fn.1] and the article this week on Florida's possible switch from judicial elections to 'merit selection' for its lower trial courts[fn.2] with coverage

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[9] CJA's October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection" is posted at "*Judicial Selection-'Merit' Selection*".

[10] Notwithstanding Mr. Marcano's misconduct, as hereinafter recounted, he has gone on to become ombudsman at The Sacramento Bee, which he joined in June 2003. Mr. Landman should identify whether he furnished a recommendation to Mr. Marcano for such position.

> [fn.1] "*See, inter alia, 'Fierce Campaigns Signal a New Era for State Courts'*, 6/5/00; *'A Spirited Campaign for Ohio Court Puts Judges on New Terrain'*, 7/6/00; *'States Rein In Truth-Bending In Court Races'*, 8/23/00; *'Court Rulings Curb Efforts to Rein In Judicial Races'*, 10/7/00; *'U.S. Chamber Will Promote Business Views in Court Races'*."

> [fn.2] "'*Florida Voters Decide Judicial Selection*', 10/25/00"

> of the situation here in NEW YORK. Isn't it at least reasonable for New York readers – presumably the bulk of the paper's readership – to expect such coverage in the Times' metro section?
>
> To my knowledge, there has been NO Times coverage of 'merit selection' to *our* state's highest courts..." (emphases in the original).

I pointed out that not only could the accuracy of CJA's October 16, 2000 report be independently verified by The Times, but that this could be "readily and easily accomplished". Moreover, because we had provided copies of the report to Governor Pataki, Chief Judge Kaye, the Commission on Judicial Nomination, the Commission on Judicial Conduct, as well as four bar associations, I further suggested that The Times ask for their comment – beginning with

> "Point I detailing that the Commission on Judicial Nomination's October 4, 2000 report – the only public manifestation of the Commission's adherence to 'merit selection' – is NON-CONFORMING with Judiciary Law 63.3. This, because it contains NO 'findings' as to the qualifications of 'each' of the recommendees. As a consequence, NONE of the recommendees can be lawfully appointed by the Governor and confirmed by the Senate." (emphases in the original)

My letter additionally suggested that should The Times be unable to get such specific comment

> "which should be a major story in and of itself – the Times should avail itself of the many law professors and academics on whom it routinely relies for stories – and who are happy to see their names in print, except of course, when the stories, like this one, are politically-explosive."

I closed by stating,

> "After you have PERSONALLY reviewed CJA's October 16, 2000 Report, I trust you will invite me to come in and sit down so that we may finally explore this and other readily-verifiable, fully-documented stories of systemic governmental corruption. At such meeting, you may be assured I will bring the underlying documentation to which the Report refers – excepting those documents that have been in David Rohde's possession – and which he told me he still has.
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> Finally, it is absolutely imperative that CJA's Report be promptly transmitted to the Editorial Board so that this year – unlike two years ago – it does not rush out with an editorial endorsement for a nominee who is the end-product of a behind-closed-doors process about which it knows nothing." (emphases in the original)

I received no response from Mr. Marcano to this October 27th fax[11]. Likewise, I received no response from him to any of my follow-up phone calls and faxes, including to Jane Gross, another editor in metro, giving notice that Governor Pataki was expected to make his Court of Appeals appointment on November 2nd. Similarly, I received no response from the Albany bureau – which works under metro's direction -- and to which I left urgent phone messages and faxes on November 1st and 2nd as to the significance of CJA's October 16, 2000 report, whose Introduction, Point I, and Conclusion, I faxed it, as likewise to Ms. Gross.

On November 3, 2000, and contrasting with its December 10, 1998 front-page metro treatment of Governor Pataki's appointment of Justice Rosenblatt to the Court of Appeals, which had purported:

> "The Governor's selections to the Court of Appeals are closely watched, both because of the court's historic stature as one of the nation's most influential and once liberal benches, and because of Mr. Pataki's obvious dissatisfaction with some of its views",

The Times buried the Governor's November 2nd appointment of Appellate Division, Third Department Justice Victoria Graffeo to the Court of Appeals deep inside the metro section [B-11]. The article, "*Pataki Selects Judge for Appeals Court He Sees as Lenient*", was by then Albany reporter Raymond Hernandez -- whose familiarity with CJA's document-based work on issues of judicial selection and discipline is reflected by his inclusion as an indicated recipient of our February 12, 1998 comprehensive complaint and subsequent correspondence based thereon.

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[11] During this period in which Mr. Marcano was not responding to entreaties for coverage of CJA's fully-documented and *independently-verifiable* October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection", metro was, by contrast, deeming worthy of coverage the results of a Fund for Modern Courts' survey of candidates for the New York State Assembly and Senate, whose 31 percent response rate was embodied in a draft – the final report of which would not be distributed to legislators until the new session in January. Metro's October 31, 2000 article, *State Legislative Candidates Strongly Support Reform of Court System, Survey Finds*", was written by Laura Mansnerus, who, as to this draft, had solicited comment from, *inter alia*, Senate Judiciary Committee Chairman Lack. Among his quoted comments, that it was "easy to say on a survey..." Indeed, the Fund's survey did not appear to be anything more than the easily-made and presumably self-serving responses of anonymous respondents, whose genuineness had not been compared to any record of their action or advocacy consistent with their responses.

Plainly, it was the candidates' records – including that of Chairman Lack himself – which would furnish a truer measure of the prospects for realizing fundamental reforms in the legislative session more than two months distant. Yet, Chairman Lack was given free reign to portray himself as having been on the side of reformers during the six years of his tenure at the head of the Senate Judiciary Committee.

Mr. Hernandez' article made NO mention of CJA's October 16, 2000 report, or any aspect of what it had detailed as to the Commission on Judicial Nomination's abandonment of "merit selection" principles, including as to the facial insufficiency of its "short list" of recommendees.

Mr. Hernandez' guilty knowledge of his article's inadequacy – and that metro was not going to permit him to follow-through with meaningful coverage on the "merit selection" issue, including the bar associations' ignominious role in its corruption, as documented by CJA's companion November 13, 2000 report – may be inferred from his failure to return my phone messages for him on November 3rd, November 16th, November 21st, November 28th, and December 1st, as likewise from Mr. Marcano's failure to return my phone messages for him: two on November 3rd and one each on November 16th and November 17th. Meanwhile, in Florida, that state's highest court was ruling on the recount of electoral ballots that would ultimately give the United States presidency to George W. Bush – a fact to which my phone messages referred.

Finally, in trying to reach Mr. Marcano on November 17th , my phone call was shunted to Mr. Landman. This is reflected by the fax I sent Mr. Landman on that date, herein quoted in full:

> "This follows up the voice mail message left on your answering machine this morning after my call for Tony Marcano was transferred to your line.
>
> Events in Florida underscore the significance of a state's highest court – and the value of a series of stories examining 'merit selection' appointment/confirmation to New York's Court of Appeals, for which, 23 years ago, New Yorkers gave up their right to elect their highest state judges.
>
> Your Metro Section reporters and editors have been refusing to develop even a single story on this important subject in the face of *readily-verifiable* proof, in their possession, as to the corruption of the "merit selection" process. In the event you have NOT seen CJA's October 16, 2000 report on the NYS Commission on Judicial Nomination's abandonment of 'merit selection' principles – hand-delivered to the Times a full month ago – please immediately obtain it from David Rhode or from Tony Marcano, or whoever else has been sitting on it while Governor Pataki moved forward to appoint Justice Graffeo to the Court of Appeals on November 2nd – the same day as the New York Law Journal published a front-page, above-the-fold, 'Behind the News' story, '*Semi-Secret Court of Appeals Nominations Draws Criticism*', based on Point I of CJA's October 16, 2000 report.
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> The Metro Section, including its Albany Bureau, was aware of CJA's October 16, 2000 report – and the Law Journal story – when Ray Hernandez wrote his story on

Justice Graffeo's appointment, which appeared at the back of the November 3rd Metro Section.

Reflecting this is CJA's November 2nd fax – sent to NY and Albany shortly before and after 9 a.m. – a copy of which is enclosed. Also enclosed is CJA's unpublished November 6th Letter to the Editor about the placement of Mr. Hernandez's story and the Times' suppression of coverage about the corrupted processes of appointment and confirmation that 'have replaced our right to elect our highest state judges'.

As to the Senate Judiciary Committee upcoming hearing on Justice Graffeo's confirmation, is the Metro Section planning to omit all coverage? This is what it did two years ago when the Senate Judiciary Committee held a no-notice, by invitation-only-confirmation hearing on Justice Rosenblatt's appointment, at which no opposition testimony was permitted. In the event you are unaware of that travesty, enclosed is a copy of CJA's Letter to the Editor, '*An Appeal to Fairness: Revisit the Court of Appeals*', published by the New York Post on December 28, 1998.

In the expectation that the Metro Section will meet its duty to Times readers and the public at large by covering Justice Graffeo's confirmation hearing and the serious citizen opposition that has ALREADY been presented, enclosed is CJA's November 13th letter to Justice Graffeo and Senate Judiciary Committee Chairman Lack – as well as the Introduction and Conclusion of CJA's November 13, 2000 report, referred to therein.

I look forward to speaking with you personally after you have reviewed CJA's October 16, 2000 report. I will withhold delivering to you CJA's November 13, 2000 report until I hear from you – or someone on your behalf. Needless to say, time is of the essence." (emphases in the original).

Did Mr. Landman review the October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection" – including its Exhibit "A-2", consisting of CJA's March 26, 1999 verified ethics complaint? Did he review the Introduction and Conclusion to the November 13, 2000 report on the complicity of the bar associations, which were faxed to him[12]? How about the two-page November 13, 2000 letter to Justice Graffeo and Chairman Lack, also faxed[13]? As metro editor, receiving fact-specific information as to the corruption of the "merit

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[12] CJA's November 13, 2000 report on the bar association's complicity in the corruption of "merit selection" to the New York Court of Appeals is posted at "*Judicial Selection- 'Merit' Selection*".

[13] CJA's November 13, 2000 letter to Justice Graffeo and Chairman Lack is posted at ""*Judicial Selection- 'Merit' Selection*".

selection" process by which a judge was then being seated on New York's highest state court, it was his absolute and immediate duty to examine the October 16, 2000 report and the substantiating documentation – or to have some other editor or reporter do so, on his behalf, including by obtaining the proffered November 13, 2000 report.

Mr. Landman MUST be required to answer as to what he *personally* reviewed or had his subordinates review on his behalf – as I do not know. He did not see fit to respond to this November 17th fax or to take my phone calls, reflective of the fact that he knew he could not begin to justify non-coverage of what was then before him, as they established a MAJOR, far-reaching story. Thus, my November 21, 2000 fax to him and Mr. Marcano began:

> "This follows up my phone message earlier this afternoon with Julie, who, after putting me on hold, told me that IF you were interested in doing a story you would be calling me.
>
> IF the Metro Section does not believe it has a duty to report on the *readily-verifiable* corruption of 'merit selection' to our State's highest court – in the context of a judicial appointment that has just been made and will be confirmed next week – please *immediately* provide me with the names of your superiors so that I can contact them.
>
> As may be seen from the enclosed front-page item from today's New York Law Journal, there is NO time to lose. The Senate Judiciary Committee's confirmation hearing on Justice Graffeo's appointment to the New York Court of Appeals has been tentatively scheduled for 9:30 a.m. on Wednesday, November 29th and is "by invitation only".
>
> 'By invitation only' is a euphemism for 'ONLY FAVORABLE TESTIMONY ALLOWED'... (emphases in the original).

This second fax then segwayed to "the different -- yet related – subject" – one with which Mr. Landman would have been fully familiar with from the October 16, 2000 report, not to mention the other documents in Mr. Rohde's possession, which, by then, should have been obtained and reviewed, namely, the "*readily-verifiable* corruption of the NYS Commission on Judicial Conduct, as evidenced from the case files of lawsuits against the Commission". After noting my herculean attempts to get Mr. Rohde to write a story about the lawsuit against the Commission brought by New York attorney Michael Mantell -- because of its special relevance to his August 28, 1999 column "*If a Judge Gets Out of Line: Seeking a Cure*" -- I identified that the previous

day's New York Law Journal had reported on the "unsigned, two-paragraph" appellate ruling in that lawsuit. As to this ruling, a copy of which I enclosed, I asserted that it was "even more of an outrage and fraud" than the lower court decision it affirmed because it purported,

> "in a single sentence and without any legal authority, that a complainant whose complaint is dismissed by the Commission has 'NO STANDING' to seek judicial review". (emphasis in the original).

I then concluded:

> "Let there be no doubt on the subject, the public is being raped of its most fundamental rights in matters involving judicial selection and discipline – and the Times doesn't see 'news... fit to print' – even in the face of a mountain of *readily-verifiable* evidentiary proof that I long ago provided.
>
> Please ADVISE as to the current whereabouts of that mountain of proof, which should go DIRECTLY to your superiors." (emphases in the original)

In face of this unequivocal declaration as to the annihilation of the public's rights in matters of judicial selection and discipline – established by the referred-to "mountain of proof" already in *The Times'* possession – Mr. Landman neither directed coverage nor even contacted me even to the limited extent of providing me with the names of his "superiors" and confirming that the "mountain of proof" had been transmitted to them for review. Instead, it appears that Mr. Landman directed a continuation of the very suppression my November 17th fax to him had complained about, giving rise to an inference that he had been responsible for the earlier suppression. Specifically, it appears that Laura Mansnerus, the metro reporter assigned to cover Justice Graffeo's November 29, 2000 Senate confirmation, was instructed NOT to report anything about CJA's citizen opposition, including the fact of its very existence. Such is the ONLY explanation for her unusual conduct in the minutes after the Senate Judiciary Committee's confirmation "hearing", where – by contrast to other newspaper reporters -- she made NO attempt to introduce herself to me or to ask me ANY questions as to the basis upon which, at its conclusion, I had publicly requested to present "citizen opposition". Indeed, although Ms. Mansnerus heard me describe to other reporters that my intended opposition testimony arose from the documentary evidence of the corruption of "merit selection", as particularized by CJA's October 16, 2000 and November 13, 2000 reports, and Justice Graffeo's failure to address these reports and to ensure the public's rights to testify in opposition at her Senate confirmation hearing, as expressly requested by CJA's November 13, 2000 letter to her, such was altogether absent from Ms. Mansnerus' article, "*A New Judge Is Welcomed For Top Court in Albany*", appearing the next day.

Ms. Mansnerus' November 30, 2000 article opened by an analogy to events in Florida. This was then followed by two unconnected strands. The first strand concerned the State Senate's praise for Justice Graffeo, who it confirmed unanimously. The second was a strand containing critical comment about "merit selection" by Albany Law School Professor Vincent Bonventre[14], not tied to Justice Graffeo in any way, excepting by Ms. Mansnerus' *own* reference to Judge Graffeo's "very Republican resume". This was then counterbalanced by a wholly conclusory quote, "Few would deny that it is by far a superior system that we've had for the last 23 years" from the executive director of the Fund for Modern Courts, which Ms. Mansnerus identified as "a research and court-reform group". As to our non-partisan, non-profit citizens' organization, all mention was omitted, including the fact that, unlike the Fund, we had actively opposed Justice Graffeo's confirmation on "merit selection" grounds, embodying our "research" in two fully-documented reports, which we had provided to ALL the direct players in the "merit selection" process: Governor Pataki, Senate Judiciary Committee Chairman Lack, the Commission on Judicial Nomination, the Commission on Judicial Conduct, the bar associations, as well as Chief Judge Kaye – all of whom could have been approached for relevant comment.

The serious and substantial questions as to what Mr. Landman, or those operating under his direction, did and did not tell Ms. Mansnerus in assigning her to cover Justice Graffeo's Senate confirmation and write her materially misleading article are reflected by my December 6, 2000 letter to Ms. Mansnerus, which I hand-delivered to The Times, with separate copies for the indicated recipients: Mr. Rohde, Mr. Marcano, the Albany Bureau, AND Mr. Landman. Such letter recounted my many unreturned phone calls and faxes over the previous six weeks, "pitching" a story about "merit selection" to the Court of Appeals. This, because Ms. Mansnerus claimed to be "unfamiliar" with my efforts to "pitch" such story when I spoke with her by phone after her article appeared. My December 6th letter to her then continued:

> "You should know that the unprofessional conduct of Times editors and reporters, reflected by their wilful failure to respond to my phone calls and faxes, is nothing new. Rather, it is part of a pattern of misconduct wherein the Times has either written CJA out of major stories in which we are integral players or scrapped those stories entirely. These stories are about the processes of judicial selection and discipline, for which CJA both provided and proffered *readily-verifiable* documentary evidence of corruption." (p. 3, emphasis added).

The only response to this letter was from Mr. Marcano, an e-mail so immediate that it was already waiting for me upon my direct return to White Plains following my hand-delivery of the letter to The Times' headquarters in Manhattan. This e-mail – presumably reflecting Mr. Landman's

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[14] CJA's subsequent – and revealing -- correspondence with Professor Bonventre is posted at "*Correspondence-Academia: Professor Vincent Bonventre*".

sentiments by its pronoun "we" -- stated, *in toto*:

> "This is to confirm receipt of a copy of your letter of Dec. 6, 2000 to Laura Mansnerus. We have reviewed your faxes urging The Times to undertake an investigative examination of the merit selection process for judicial nominees. We believe our coverage of the issue has reflected the skepticism expressed by legal scholars on the selection process. While we have no current plans for a larger examination of the issue, we will continue to monitor the process."

Such was a deceit. There had been NO Times coverage of "merit selection" to the New York Court of Appeals – excepting Ms. Mansnerus complained-of article, which failed to meet standards of honest journalism. Indeed, The Times' stunningly minimal and simplistic reportage, going back to 1998 and Justice Rosenblatt's appointment had been highlighted by both my October 27, 2000 fax to Mr. Marcano, as likewise my October 20, 2000 fax to Mr. Rohde – copies of which were enclosed with my letter to Ms. Mansnerus. These faxes had even transmitted copies of the various news articles and items – from which it could be seen that The Times had NOT put forward any "skepticism" as to the adequacy of "merit selection". Rather, as recently as September 9, 2000, it had purported:

> "*A change enacted in 1977 took the court of appeals out of politics.* It mandates that the governor choose judges from a short list submitted by a selection panel, with the Senate voting on confirmation (emphasis added).

As Mr. Marcano's e-mail addressed NONE of the serious issues raised by my December 6th letter, including Ms. Mansnerus' bizarre statement in her November 30th article that "merit selection" to the Court of Appeals was "still viewed as something of an experiment" – 23 years after its introduction – his apparent purpose was to shut the door to my request for a meeting to "provide... an overview of the empirical evidence CJA has to offer about the 'experiment' of 'merit selection' to New York's Court of Appeals". This, with ACTUAL KNOWLEDGE that the empirical evidence already in The Times' possession sufficed to established not only the corruption of the Commission on Judicial Nomination – the "starting point" of "merit selection" -- but the corruption of the Commission on Judicial Conduct – and, as to both, "the knowledge and complicity of a whole host of others, including Governor George Pataki, Senate Judiciary Committee Chairman Lack, [Chief Judge Kaye] and Attorney General Spitzer."

So appalling was this latest demonstration of metro's "protectionism" and cover-up – and so busy was I perfecting the appeal of my public interest lawsuit against the Commission and in endeavoring to ensure the integrity of the appellate process by attempts to secure the *amicus*

participation of, *inter alia*, the Fund for Modern Courts[15] -- that I had no further contact with The Times until nearly five months later. This contact, however, was then directly with Mr. Landman, face-to-face.

The occasion was the April 18, 2001 Fair Trial-Free Press conference, funded by the New York State Unified Court System, and held at Columbia School of Journalism, with which it has a substantial money contract. Mr. Landman was among the featured panel participants. He was seated next to Chief Judge Kaye, who, as he knew from CJA's October 16, 2000 and November 13, 2000 reports, had not only been provided with copies of each so that she could discharge her duty to protect the public from the corruption they documented, but, prior thereto, had been the recipient of voluminous correspondence from CJA – culminating in our filing of an August 3, 2000 judicial misconduct complaint against her with the Commission[16]. On Chief Judge Kaye's other side was her Court of Appeals colleague, Judge Rosenblatt, whose odyssey to that Court would have been familiar to Mr. Landman from CJA's March 26, 1999 verified ethics complaint, annexed as Exhibit "A-2" to our October 16, 2000 report, as well as from the April 22, 1999 verified petition in my lawsuit against the Commission, which he could reasonably have been expected to have obtained from Mr. Rohde. Next to Judge Rosenblatt was Attorney General Spitzer, whose fraudulent defense of my lawsuit was summarized by the October 16, 2000 report and, in particular, by its Exhibit "B" consisting of CJA's September 15, 1999 supplement to the March 26, 1999 ethics complaint. This, in addition to my July 28, 1999 omnibus motion for sanctions against Mr. Spitzer, which Mr. Landman could also have reasonably been expected to have obtained from Mr. Rohde. These four: Mr. Landman, Chief Judge Kaye, Judge Rosenblatt, and Attorney General Spitzer, were sitting side-by-side at tables joined with many others to form a very large square, accommodating most of the conference attendees. Additional attendees were accommodated in two or three rows in the back, for whom at least one standing microphones was provided.

The program was participatory – and at its conclusion, Chief Judge Kaye went around the square for final comments and questions. She did not, however, include the additional rows of seating, containing only a handful of people, myself included. Presumably, this was because the Chief

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[15] The Fund, which is a perennial favorite of The Times, is a "front" for the bar associations. Like them, the Fund's endorsements of "merit selection" and of the Commission on Judicial Conduct, ignore the *readily-verifiable* documentary evidence of their corruption, which the Fund refuses to confront. ["*Correspondence-Organizations: Fund for Modern Courts*]; ["*Correspondence-Bar Associations*"].

As my December 6th letter to Ms. Mansnerus identified, when the Fund's executive director made his favorable comment about "merit selection" for her November 30, 2000 article, he was *already* in possession of CJA's October 16, 2000 and November 13, 2000 reports, which I had sent him. My reasonable suggestion to Ms. Mansnerus was that she obtain his comment as to these reports.

[16] This August 3, 2000 judicial misconduct complaint – and the correspondence on which it is based – are posted at: "*Correspondence-NYS: Chief Judge Kaye*".

Judge, who knows who I am from our many years of face-to-face contact, did not wish to recognize me, despite my raised hand. Rather, she began to close the program after calling upon the last attendee seated around the square. It was then that I rose to inquire as to whether the Chief Judge was not going to give attendees in the "outer tier" a chance to comment. Having been publicly embarrassed, the Chief Judge allowed me to proceed.

Stating that a "fair trial" depends on a "fair judge", I identified that the state agency charged with ensuring the fairness of our judges was the Commission on Judicial Conduct, whose corruption was readily-verifiable and the subject of lawsuits. I stated that Mr. Spitzer had not only refused to investigate this corruption, but had defended the Commission in the lawsuits by fraudulent litigation tactics, for which he had been rewarded by fraudulent judicial decisions without which the Commission would not have survived. I do not believe I asked Mr. Spitzer to comment. Rather, I believe Mr. Spitzer interrupted that he could not comment as I had "many lawsuits" pending in his office. My response was immediate: I had but one lawsuit. To this, Mr. Spitzer answered that he would speak to me privately after the program. My recollection is that either then or before Mr. Spitzer's interruption, I stated that the "free press" had been unwilling to report on the evidence of the Commission's corruption, including these lawsuits. This, while being threatened that I had better sit down by Tom Goldstein, dean of the Columbia School of Journalism, who came up beside me from his seat in the "outer tier"[17].

Based on my contacts with Mr. Landman the previous November-December, he is charged with knowledge as to the truth of my public comments. Indeed, the October 16, 2000 report had itself identified (pp. 12-13) that the Commission had been the beneficiary of three fraudulent lower court decisions in three separate lawsuits – and that my lawsuit physically incorporated the other two: *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission.* My November 21, 2000 fax to him had then given notice of the just handed-down fraudulent appellate decision in *Mantell* – a copy of which it enclosed. This would explain why, when I approached Mr. Landman at the conclusion of the Fair Trial-Free Press program, he did not treat me with the politeness due a stranger whose story proposal needs explication. Rather, he immediately manifested his hostility as I implored him to arrange for an investigative expose of the readily-verifiable evidence of the

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[17] The Fair Trial-Free Press Conference was taped – and should include my precise remarks. However, after making considerable efforts, including two requests to Chief Judge Kaye, for permission to hear the tapes, the Unified Court System sent me two audio cassettes, each strangely incomplete. After further considerable effort on my part, I was sent three digital audiotapes – for which I do not have an appropriate player. Presumably, The Times has such a player – and I would be pleased to provide these digital tapes so that it may verify precisely what Mr. Landman heard me publicly say.

As for Mr. Goldstein, his naive or disingenuous view of things is reflected by his contention that, "No breach of faith in modern journalism measures up in size, scope and audacity to the misdeeds committed by Jayson Blair of the New York Times.", "*Lies, damn lies and Jayson Blair's lies*", San Francisco Chronicle, May 25, 2003.

Commission's corruption. In vain, I pointed out that all that was necessary was examination of the files of the three lawsuit files, requiring minimal expenditure of time. I contrasted this with the investigative examination The Times had just published in a three-part series on the legal system and the poor, running on the front-page[18] – whose first part had identified "a seven-month analysis of thousands of city records and court cases in 2000". Mr. Landman's response was a flat rejection, which he altogether refused to discuss. Indeed, he turned his back and walked away from me as I pleaded with him to explain why The Times would not examine the files of these three lawsuits, full copies of which I stated I would provide.

This ended my direct contact with Mr. Landman – but not his continuing responsibilities as metro editor. Based on CJA's October 16, 2000 and November 13, 2000 reports and the substantiating documents then in The Times' possession, plus the conversations he presumably had with Mr. Marcano and such metro reporters as David Rohde -- he is charged with knowing that my public interest lawsuit against the Commission was a political power keg, whose criminal ramifications directly reached the Governor Pataki and Attorney General Spitzer – each of whom would be running for re-election the following year, if not pursuing other powerful public offices. He surely understood that without timely news reportage critically examining the records of these public officers, the electoral races would be fatally skewed well before the party conventions. These incumbents would seem invincible, deterring challengers from within their own parties, deterring strong challengers from the opposing major party, and altogether discouraging challenge from the minor parties, who would confer their valuable party lines to the powerful incumbents. Especially would this be the case in the 2002 race for Attorney General.

I do not know what role Mr. Landman played in rendering futile ALL my subsequent efforts to obtain coverage of my public interest lawsuit against the Commission and its politically-explosive ramifications on the Governor and Attorney General from Albany reporter James McKinley, Jr. However, as metro editor, there is every reason to believe that his pernicious influence was at work. This is only reinforced by my direct contact with the metro bureau six weeks before the November 2002 election.

As my voluminous correspondence with Mr. McKinley reflects, I first turned to him in June 2001, and with increasing frequency through 2002, providing him with documents that would enable him to understand and verify the serious official misconduct of the Governor and Attorney General. Such documents, including CJA's March 26, 1999 ethics complaint and September 7, 1999 criminal complaint, were part of the record of my lawsuit against the Commission, which, by May 1, 2002, "Law Day", had reached the Court of Appeals[19]. Yet, over the ensuing months of his

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[18] The series, written by Jane Fritsch and David Rohde, appeared on April 8, 9, and 10, 2001.

[19] The record before the Court of Appeals included a FULL COPY of CJA's October 16, 2000 and November 13, 2000 reports, as well as CJA's November 13, 2000 letter to Justice Graffeo. This in substantiation of my May 1, 2002 disqualification/disclosure motion, whose ¶¶89-98 were captioned, "*The Disqualifying Interest*

electoral reporting, he failed to write anything about these still pending ethics and criminal complaints or the explosive lawsuit file, a copy of which I left with him on June 28, 2002, in two cartons, meticulously organized and labeled for his convenience. This included my THREE fully-documented sanctions motions against Mr. Spitzer *personally* for litigation misconduct so serious as to be grounds for his disbarment[20].

Finally, by the end of September, with six weeks left to the election, and after providing Mr. McKinley with a September 18, 2002 letter setting forth specific "linchpin" questions for Mr. Spitzer's response, as well as a September 20, 2002 letter furnishing a written story proposal for election coverage entitled, "Exposing the REAL Attorney General Spitzer, *not* the P.R. version", recapitulating what we had had repeatedly discussed together, he baldly purported that there was no story to report and reacted with crude expletives when I attempted to discuss with him the basis for such conclusion. Only then did I turn to the New York metro bureau – the first time in nearly two full years. My entreaties were to Marianne Giordano, the metro politics editor. The first of these was my September 26, 2002 fax, summarizing Mr. McKinley's inexcusable behavior and enclosing the story proposal, in addition to the September 18th letter with "linchpin" questions. As it would be highly unlikely that Mr. Landman was not made aware of this story proposal, if not prior thereto by Mr. McKinley than by Ms. Giordano at this juncture, it is set forth *verbatim* in its most pertinent parts:

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

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of Chief Judge Kaye Resulting from her Complicity in the Corruption of 'Merit Selection' to this Court – Exposed by this Lawsuit", followed by ¶¶99-106, captioned, "*The Disqualifying Interest and Bias of Associate Judge Victoria Graffeo, Arising from her Complicity in the Corruption of 'Merit Selection' to this Court – Exposed by this Lawsuit*". [posted on website at "*Test Cases-State (Commission)*].

[20] These three motions are my July 28, 1999 omnibus motion in Supreme Court/New York County, my August 17, 2001 motion in the Appellate Division, First Department, and my June 17, 2002 motion in the Court of Appeals – each posted in "*Test Cases-State (Commission)*".

[fn.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'.

Governor and possibly President[fn.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.

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.3] It is, therefore, long past time that the press critically examine at least one lawsuit *defended* by Mr. Spitzer. Only by so doing will the voting public be able to gauge his on-the-job performance in this vital area.

Our non-partisan, non-profit citizens' organization proposes a specific lawsuit as ideal for press scrutiny. The lawsuit was not only expressly brought in the public interest, but has spanned Mr. Spitzer's tenure as Attorney General and is now before the New York Court of Appeals. Most importantly, it is a lawsuit with which Mr. Spitzer is *directly familiar and knowledgeable*. Indeed, it was generated and perpetuated by his official misconduct – and seeks monetary sanctions and disciplinary and criminal relief against Mr. Spitzer *personally*.

Documented by the lawsuit is that Mr. Spitzer has used his position as Attorney General to cover-up systemic governmental corruption involving, *inter alia*, Governor Pataki, high-ranking judges, and the State Commission on Judicial Conduct. He has done this by wilfully failing to investigate the documented allegations of corruption underlying the lawsuit and by employing fraudulent defense tactics to defeat it -- tactics which would be grounds for disbarment if committed by a private attorney.

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fn.2 "'*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.'"

fn.3 "*See www/oag.state.ny.us/*: 'Tour the Attorney General's Office' – Division of State Counsel."

Annexed to the litigation papers is a paper trail of correspondence with Mr. Spitzer, establishing his *direct knowledge and personal liability* for the fraudulent defense tactics of his Law Department 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).

I do not exaggerate in saying that press scrutiny of this one lawsuit will not only *rightfully* end Mr. Spitzer's re-election prospects and political career, but his legal career as well. Indeed, it may prove equally devastating for Governor Pataki.

Added to this, the lawsuit provides an 'inside view' of the hoax of Mr. Spitzer's 'public integrity unit' – which, according to a September 1999 Gannett article, '*Spitzer's Anti-Corruption Unit Gets Off to a Busy Start*', had 'already logged more than 100 reports of improper actions by state and local officials across New York'.

Obviously, verifying the hoax of the 'public integrity unit' should begin with the first two reports it received – which were from CJA and involve the very issues thereafter embodied in the lawsuit. These two reports were publicly handed to Mr. Spitzer on January 27, 1999, immediately upon his announcement of the establishment of his 'public integrity unit'....

Tellingly, a 'search' of the Attorney General's website [*www.oag.state.ny.us/*] produces only *seven* entries for his 'public integrity unit', with virtually *no* substantive information about its operations and accomplishments. This is all the more astounding when viewed against Mr. Spitzer's 1998 campaign promise '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' (emphasis in the original). Specifically, Mr. Spitzer promised to set up 'a Public Integrity Office to uncover and remedy government abuses throughout the state'....

...

This was all laid out in Mr. Spitzer's 1998 campaign policy paper, 'Making New York State the Nation's Leader in Public Integrity...'. Its first three pages are enclosed to enable you to begin to CHECK OUT whether, and to what extent, Mr. Spitzer has implemented his proposed plan of action. Mr. Spitzer's 2002 re-election website [*www.spitzer2002.com*] says NOTHING about any 'Public Integrity Office', let alone its accomplishments. NOR does it mention 'governmental corruption' and 'public integrity as issues. Examination of the lawsuit file reveals why.

..."

To this spectacular story proposal, there was no response from Ms. Giordano. Likewise, no response from her to my two follow-up phone messages. This is reflected by my October 1, 2002 e-mail to Ms. Giordano, which concluded by stating that if she were not going to direct/suggest coverage and, additionally, provide a copy of the proposal to the editorial board so that "its evaluation of Mr. Spitzer's 'record' may be informed by the readily-verifiable, fully-documented facts, which Mr. McKinley has heretofore been suppressing from coverage", she should

> "... advise as to the names of supervisory personnel at The Times with whom I may discuss this matter directly and to whom the two cartons of documentation should be forwarded."

Again, no response from Mr. Giordano – nor to my subsequent phone message for her, nor to my further October 4, 2002 e-mail. All were ignored -- presumably at Mr. Landman's direction. Finally, on October 8, 2002, I alerted the editorial board to the situation. My two-page covermemo is herein replicated verbatim, not only because Mr. Landman is presumed to have seen it, but because it reinforces the multitude of monumental stories, which metro had suppressed during his stewardship:

> "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.
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> 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[fn.1] – including his corruption of

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fn.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

'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.

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

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Judiciary Committee."

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."

It is reasonable to assume that Mr. Landman was made aware of this memo, if not from Ms. Giordano and Mr. McKinley, to whom copies were sent, than from the editorial board. Indeed, unless there was already in place a collusive plan between editorial and metro to automatically suppress these kind of governmental corruption stories from coverage, protect the implicated public officers, and black-ball our citizens' organization, the editorial board would necessarily have had to discuss memo with metro. How else would it verify the truth of what the memo set forth -- beyond what it already knew to be true from, for example, CJA's October 16, 2000 report, whose transmittal to the editorial board had been expressly requested by my October 27, 2000 fax to Mr. Marcano?

Certainly, if the editorial board were going to simply ignore documentary evidence of this serious official misconduct in its endorsements for Governor and Attorney General, it had to be sure that such betrayal of journalistic responsibilities would not thereafter be exposed by metro's belated reporting of that evidence. Likewise, metro could not continue to suppress this evidence from news coverage if the editorial board were going to pursue it in connection with its endorsements or other editorials. Thus, there had to be communication between the editorial board and metro – and it is hard to imagine that this would not have involved metro's top man, Mr. Landman.

The editorial board did not respond to the October 8, 2002 memo, and its endorsement, "*Re-elect Eliot Spitzer*", appeared on October 31, 2002. Nor did Mr. Landman or any of his subordinates, such as Ms. Giordano, respond. Indeed, metro not only completely ignored the story proposal, but, in the most brazen of "journalistic frauds" continued all its uncritical, flattering coverage of Mr. Spitzer and his bright future which it had previously. Such articles as "*While Spitzer Shrugs It Off, Others Talk of His Future*" (10/28/02, Jonathan Hicks) and "*Wall St. War Lifts Profile of Albany*

Attorney General" (11/4/02, Richard Perez-Pena/Patrick McGeehan) appeared in the final days before the election when there was not the slightest reason to devote journalistic resources to favorable coverage of Mr. Spitzer – his re-election having been assured years earlier by press protectionism, resulting in only a nominal opponent, Dora Irizzary, being fielded by the republican party, and minor parties conferring upon Mr. Spitzer their lines. As to Governor Pataki, Mr. McKinley's coverage of him in the wake of CJA's October 8, 2002 memo and the e-mail exchange between us on that date included an October 17, 2002 article, "*In an Election Year, Pataki Ducks and Dodges With the Best of Them*", stating,

> "Mr. Pataki has been the governor for nearly eight years, and to a large degree the election has become a referendum on his record and on his plans for addressing problems. By deflecting questions about that record or his plans, he reduces his opponents' chances to win."

Yet, as Mr. McKinley knew, Governor Pataki had not had to "duck", "dodge", or "deflect" any questions as to the record of his corruption of judicial selection to the lower state courts and "merit selection" to the Court of Appeals and of his complicity in the corruption of the Commission on Judicial Conduct – such as was *readily-verifiable* from the copy of the file of my lawsuit against the Commission. This, because Mr. McKinley had not reviewed the file nor confronted the Governor with a single question based thereon. Indeed, when, in December, I retrieved the two cartons containing the file that I had given Mr. McKinley, they were in seemingly "untouched by human hands condition"[21].

Following the re-election of Governor Pataki and Attorney General Spitzer, Mr. McKinley was promoted to Albany bureau chief. In that capacity, he continued to suppress the systemic governmental corruption stories involving the Governor and Attorney General, which presumably earned him the promotion. He had zero interest in pursuing any kind of story about my important public interest lawsuit against the Commission, whose climactic conclusion at the "merit-selected"

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[21] In retrieving the two cartons file from Mr. McKinley in December, I provided him –in replacement – with the two final motions in the lawsuit then pending before the Court of Appeals. These were the two motions to which the second of my October 8, 2002 e-mail to him had referred in its closing:

> "I have a great deal to do – including motions to the Court of Appeals to reargue and for leave to appeal. For the record, the Commission is NOW the beneficiary of SEVEN fraudulent judicial decisions without which it could not survive – the latest two being from the Court of Appeals. Verifying the fraudulence of these takes about a minute – if that long."

Indeed, I wrote the motions with Mr. McKinley in mind – attaching exhibits to each motion that would be sufficient to substitute for the file in permitting verification of the SEVEN fraudulent judicial decisions of which the Commission was the beneficiary in three separate lawsuits.

Court of Appeals was reached on December 17, 2002 – the same day as I stood, just down the street at the State Capitol, attempting to vindicate the public's rights by preventing Senate confirmation of Senate Judiciary Committee Chairman Lack to the Court of Claims.

As to the corruption of the appointments process to the lower state courts, represented by Governor Pataki's appointment of Chairman Lack to the Court of Claims on December 10, 2002, the Senate Judiciary Committee's no-notice "hearing" to confirmation that appointment seven days later -- at which no questions were asked of Chairman Lack, and no one permitted to testify -- afforded Mr. McKinley a golden opportunity to bring together into a single stunning story the documentary evidence of the corruption of judicial selection to the lower state courts and "merit selection" to the Court of Appeals and of the corruption of Commission on Judicial Conduct. Indeed, such evidentiary synthesis was done for him -- embodied in CJA's December 16, 2002 letter to Senate Majority Leader Bruno, Outgoing Senate Minority Leader Connor, and Incoming Senate Minority Leader Patterson[22], summarizing Chairman Lack's pivotal role in that corruption. As for the substantiating documentation to that extraordinary letter, it was meticulously organized and labeled in a carton, which I left with Mr. McKinley. Such included a file of documents pertaining to Chairman Lack's misconduct in connection with Justice Rosenblatt's 1998 "merit selection" to the Court of Appeals. It also included a separate file pertaining to Justice Graffeo's 2000 "merit selection" to the Court of Appeals, containing CJA's November 13, 2000 letter to Chairman Lack and the October 16, 2000 and November 13, 2000 reports it had enclosed. Mr. McKinley's response to this unbelievable chance to make up for a year and a half lost time and showcase Chairman Lack's role in corrupting judicial selection and discipline was a superficial and misleading December 18, 2002 article, "*State Senate Votes to Confirm One of Its Own for a Judgeship*", making no mention whatever of CJA's document-substantiated December 16, 2002 letter to the Senate's leadership[23]. He then compounded this deceit upon the public by a

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[22] CJA's December 16, 2002 letter to the Senate leadership is posted at "*Correspondence-NYS: Senate Judiciary Committee & Senate*".

[23] This omission was notwithstanding Mr. McKinley included me in the article, apparently for purposes of diminishing the nature of my intended testimony at the hearing – and impugning my reputation. Thus, after identifying me as "run[ning] the Center for Judicial Responsibility", Mr. McKinley claimed that I had "said" – but without quoting me -- that the basis for my attempt to testify at the Senate Judiciary Committee's "hearing" was that Chairman Lack "had a tendency to rush confirmation hearings and sometimes ignored complaints about nominees". Examination of CJA's December 16, 2002 letter suffices to establish that this is NOT something I would say. Firstly, as to "tendency", the letter annexed a report of the City Bar containing a chart of the precipitous acceleration of confirmation hearings. Secondly, as to "sometimes", the letter particularized our direct, first-hand experience with Chairman Lack, who had ALWAYS and without exception ignored our serious and substantial complaints against judicial nominees. Mr. McKinley also permitted the Senate Judiciary Committee's acting chairman to claim – but, likewise, without quoting him -- that I was "not allowed to speak because I had disrupted other hearings". This, without giving me an opportunity of rebuttal – and when the documentary evidence in his possession could leave no doubt but that I was not permitted to testify because what I had to say as to the impropriety of the Committee's hearing and Chairman Lack's official misconduct was explosive.

a flattering and exculpatory December 26, 2002 front-page metro article on Senate Majority Leader Bruno, "*The Odd Man Out in Albany's Triumvirate of Power*". As to each of these articles, I was compelled to write letters to the editor in an attempt to restore accuracy. Though unpublished, I contemporaneously sent them to Mr. McKinley and, subsequently, to the editorial board.

The following month, in the context of Governor Pataki's January 6, 2003 "merit selection" appointment of Court of Claims Presiding Judge Susan Read to the Court of Appeals, Mr. McKinley was again favored with a golden opportunity to bring together the documentary evidence of the corruption of "merit selection" and the corruption of the Commission on Judicial Conduct. Once again, the evidentiary synthesis was done for him – CJA's written testimony for the Senate Judiciary Committee's January 22, 2003 "hearing" on Judge Read's confirmation[24]. Such written testimony, which I discussed and provided him in advance of the "hearing", extensively detailed the relevance of CJA's October 16, 2000 report to Judge Read's confirmation. It also highlighted that CJA's March 26, 1999 ethics complaint against the Governor – Exhibit "A-2" to that report – was relevant to Judge Read. This, because she had been the Governor's deputy counsel during the relevant time frames encompassed by the complaint relating to the corruption of the Commission on Judicial Conduct – and, therefore, was chargeable with the official misconduct therein particularized.

Mr. McKinley was an *eye-witness* to the dramatic events at the Senate Judiciary Committee's January 22, 2003 confirmation "hearing", where Judge Read was not asked a single question and I – the only person testifying in opposition – was, after less than three minutes, halted from presenting my written statement, for which I had brought three cartons of substantiating documents, and threatened with physical removal. Nevertheless, the next day's Times carried no story by Mr. McKinley about the frightening perversion he had witnessed. Nor did it run the A.P. wire story, appearing in other newspapers, describing what had occurred at the "hearing". Instead, there was only a "Metro Briefing" item, tagged with an AP attribution, announcing the Senate confirmation of Judge Read – no reference to the "hearing".

To the extent Mr. Landman was unaware of CJA's December 16, 2002 letter to the Senate leadership in opposition to Chairman Lack's confirmation to the Court of Claims and CJA's January 22, 2003 written testimony in opposition to Judge Read's confirmation to the Court of Appeals – contemporaneous with Mr. McKinley's suppression of these powerful documents from the news stories he was writing and not writing – it is reasonable to believe he subsequently became aware of them. On January 29, 2003, in the continued absence of ANY Times coverage of what had taken place at the January 22nd "hearing" on Judge Read's confirmation – I wrote to Mr. McKinley and specifically requested that he confer with his editors about assigning "this

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[24] CJA's January 22, 2003 written testimony is posted at "*Testimony*".

meticulously-documented MAJOR story to an investigative reporter for the coverage it so clearly deserves". I then provided the letter to the editorial board under a memo of that same date bearing an identical "RE" clause as my letter to him, "Essential News & Editorial Coverage: The Corruption of 'Merit Selection' to the New York Court of Appeals – The Senate Judiciary Committee's Role". Like CJA's October 8, 2002 memo, this January 29, 2003 memo also put the editorial board on notice of its independent obligations to inform the public as to "what's been going on with state judicial appointments – including 'merit selection' to our Court of Appeals" – which metro was suppressing. As with the earlier memo, the editorial board may be presumed to have discussed it with Mr. Landman – and such discussion was mandated by its review of CJA's January 22, 2003 written testimony and December 16, 2002 letter to the Senate leadership.

Plainly, Mr. Landman's knowledge should not be one of surmise. In response to this misconduct complaint against him, he must be required to precisely identify "what he knew and when he knew it" so that the extent of his betrayal of professional responsibilities may be assessed beyond what is memorialized by my November – December 2000 fax and letter communications to him and what I have here recited as to our *direct, face-to-face* contact on April 18, 2001. These, however, suffice to establish his wilful and deliberate rejection of documentary evidence, presented and proffered to him, *at that time*, that "merit selection" to New York's highest state court was, at every level, corrupted, that the state Commission on Judicial Conduct was corrupt to such a degree that it was surviving legal challenge only by the corrupting of the judicial process – and that complicitous in both were New York's highest public officers, including those up for re-election the following year.

Just as The Times took corrective steps to repair the minimal damage done by Jayson Blair, so it must take corrective steps to repair the far-reaching and irrevocable damage to the People of this state done by Mr. Landman. The Times scrutinized Jayson Blair's reportage to determine the extent and seriousness of his "journalistic fraud" – and discharged him from employment. No less is required here. Comparable scrutiny must be given to Mr. Landman's role in suppressing the fully-documented, politically-explosive corruption stories we presented for coverage from the beginning of his tenure in September 1999, as well as in authorizing, or acquiescing to, metro articles and items which, by reason of the suppressed stories, he knew to be materially misleading.

Unlike Jayson Blair, who did not cooperate in The Times investigation of him, Mr. Landman's cooperation must be demanded. For starters, Mr. Landman must explain the evaluative steps he took upon receiving my November 17, 2000 and November 21, 2000 faxes, as well as my December 6, 2001 letter. Certainly, it is incongruous in the extreme for Mr. Landman to be elevated to the newly-created position of assistant managing editor for enterprise,

> "responsible for generating and overseeing cross-desk projects, organizing long-term coverage of running stories, and working with individual desk to ensure that

they are equipped to generate high-powered enterprise journalism",

when, as metro editor, he was unable – or more likely unwilling -- to acknowledge what is obvious from the most cursory review of CJA's October 16, 2000 report: that it is the stuff of which "high-powered enterprise journalism" is made. That he additionally suppressed the October 16, 2000 report from metro's ordinary news coverage – as likewise our November 13, 2000 report and November 13, 2000 letter to Justice Graffeo and Senate Judiciary Committee Chairman Lack, suppressing, as well, the very fact that that the Committee's November 29, 2000 confirmation "hearing" was "by-invitation-only", with only favorable testimony allowed – further underscores the profound dishonesty and disrespect for basic journalistic obligations he brings to his new position.

CJA is ready to assist you in verifying this far-reaching misconduct complaint against Mr. Landman. Once again, we offer you "hard copies" of all our underlying complaints and correspondence – most of which are posted on our website, *www.judgewatch.org*, "*Press Supression-New York Times*"[25]. Likewise, we offer you "hard copies" of all the documentary materials substantiating the stories for which we sought coverage. As to these materials, a substantial portion are also posted on CJA's website – and several of this letter's footnotes indicate their precise location, for your convenience.

Time is of the essence. Within days the Commission on Judicial Nomination is expected to release its "short-list" of nominees for the vacancy created by the resignation of Judge Richard Wesley, Governor Pataki's first "merit-selected" appointee to the New York Court of Appeals[26]. Of course, under Mr. Landman's metro, Times readers have not been informed that a judge on our state's highest court resigned – let alone the reason: his confirmation by the U.S. Senate to the Second Circuit Court of Appeals in June, following his nomination by President Bush in March, both likewise unreported. Indeed, it was only last month, in an article describing oral argument of a case at the New York Court of Appeals, that metro even disclosed (in a parenthesis) the existence of a vacancy[27], leaving it to uninformed Times readers to guess how that vacancy was created and

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[25] Not currently posted are our correspondence and complaints prior to our June 14, 1992 letter to Max Frankel. Such are, however, included in the compendia of exhibits substantiating our October 21, 1996 comprehensive complaint. Compendium I contains our two October 23, 1990 faxes to Mr. Landman, regarding *Castracan v.* Colavita, our ground-breaking legal challenge to the manipulation of judicial elections, annexed thereto as Exhibits "D" and "E". [*Castracan* is posted on our website under "*Judicial Selection-Judicial Elections*"].

[26] *See*, in particular, "*Few Appellate Judges Apply for Wesley's Seat*", New York Law Journal, John Caher, 9/18/03.

[27] "*In Death Penalty Appeal, Judges Focus on Broad Questions of the Law's Enforcement*", New York Times, William Glaberson, 9/9/03.

whose seat it was. This news blackout is despite the fact that Mr. Landman should have been aware of many of the corrupt details of Judge Wesley's ascension to the federal bench *via* CJA's June 19th letter to Mr. Siegal – which, as hereinabove set forth, he should have received as a member of The Times' "Committee on Safeguarding the Integrity of our Journalism". These corrupt details include Senator Schumer's politically-motivated deal-making in federal judgeships, in utter disregard of the public's rights and welfare[28]. It is evident, however, that Senator Schumer – up for re-election next year – occupies a status similar to Attorney General Spitzer at The Times: "protected" from scrutiny, with coverage reinforcing the advantages of incumbency and deterring challenge[29].

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[28] Instead of critically-examining Senator Schumer's deal-making in judgeships, as clearly mandated by the "paper trail" of CJA's correspondence with him and others posted on CJA's homepage, metro instead ran a July 23, 2003 article, "*Schumer Strikes Deal on Way Court Vacancies are Filled*", uncritically accepting Senator Schumer's "spinning" of such deal-making as a good thing – and soliciting comment only from the other deal-making parties: Governor Pataki and the White House. Although I telephoned its author, William Glaberson, on that July 23rd date to interest him in more in-depth coverage based on the documents on our homepage, I have not heard from him since.

Suffice to say, the most immediately-recognizable of Senator Schumer's agreed-upon judicial nominees is Dora Irizarry, the republican party's "sacrificial lamb" against Attorney General Spitzer in 2002. Perhaps because her nomination so obviously exposes the true political nature of Senator Schumer's judge-deals, metro carried only a "Metro Briefing" item (4/28/03) as to her imminent nomination, announced by Senator Schumer. I do not believe there was any Times news story about the nomination or the deal behind it which Senator Schumer had made. Nor do I believe that metro ran any story when the Association of the Bar of the City of New York found Ms. Irizarry "not approved" in June, or when the American Bar Association found her "not qualified" by a majority rating in July – at the very time of Mr. Glaberson's July 23rd article. Only on October 2nd, occasioned by the Senate Judiciary Committee "hearing" on her confirmation, was there any Times coverage: a metro article by Raymond Hernandez, wholly concealing Senator Schumer's role in the nomination. Indeed, not only is Senator Schumer's deal on her nomination not mentioned, but it is only toward the end of the article that Senator Schumer's name even appears. Mr. Hernandez then seeks to absolve him of responsibility by speculating that Mr. Schumer: "may not want to pick a fight with the White House and with Governor Pataki over a relatively minor judicial nominee like Ms. Irizarry, a Hispanic woman from his home turf who is politically moderate". Since when is a nominee to a federal district court a "minor judicial nominee"? Mr. Hernandez then adds, "Mr. Schumer left the hearing before the testimony by members of the American Bar Association". How convenient – and is this also an explanation for why his article includes no comment by Senator Schumer, nor response by him to appropriately pointed questions.

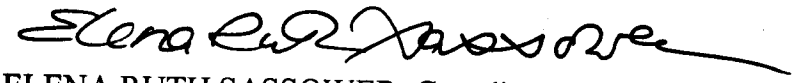
As for Senator Schumer's comments in metro's October 3rd article, "*After Attacks: Pataki Defends His Selection For Judgeship*", by Michael Cooper, they don't belong as a postscript, but in an article of their own that will enable New Yorkers to assess his record on federal judgeships that affect them.

[29] *See, inter alia*, "*Getting the Elephant Into the* Garden" (Raymond Hernandez, 7/13/03): "Most notably, top New York Republicans have abandoned plans to mount a serious challenge next year against Senator Charles Schumer, a popular Democrat..."; "*Schumer Is Leader In Raising Money*" (7/19/03); "*For Schumer, A War Chest That Reflects Wall Street*", (Raymond Hernandez, 9/8/03)": "The money has kept pouring in despite the fact that Mr. Schumer has no Republican challenger and that top New York Republicans have all but abandoned any plans to mount serious opposition next year given his politically-dominant position."; "*In Speech, Spitzer Casts Himself as the Main Democratic Challenger to Pataki in 2006*", (James McKinley, Jr., 9/17/03).

As with CJA's September 25, 2003 letter to you – your duty is to provide a "role model example of how, absent an ombudsman, [a complaint] should be professionally handled, consistent with journalistic responsibilities". Plainly, this complaint has serious consequences for Mr. Landman, described by press articles as your "close friend and ally" ("*Washington, Up Front and Center*", New York Post, Keith Kelly, 7/27/03) and as the person who you have stated you would have made managing editor had you been selected to be executive editor in 2001 (*Times Task: 'Credibility'*", Daily News, Nancy Dillon, 7/31/03). Likewise, its consequences are serious for a plethora of others at The Times with whom you have personal and professional relationships and dependencies. If you are unable to rise above these relationships and interests in discharging your professional duty, you must promptly forward this complaint to whatever public editor/ombudsman as you appoint – and CJA so requests.

Thank you.

Yours for a quality judiciary
and responsible journalism,



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