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11/30/04 via DHL Express

JERRY CAPECI'S LIBEL AND THE ROAD TO 9/11

Dear Mr. Lipsky

In Jerry Capeci's column of November 18th I was the victim of a "Gangland slaying." In his weekly column, published in The New York Sun and on his website, Capeci wrote that I had "wrongly identified" one Armand "Chips" DeConstanzo, a Colombo crime family associate as "an informant" in my new book from Harper Collins: **COVER UP: What The Government Is Still Hiding About The War on Terror.**

Not only was Capeci wrong in this assertion, but he acted with reckless disregard for the truth, or what libel lawyers like refer to as "malice."

The column, apparently inspired by DeConstanzo's lawyer James DiPietro, referred to a chapter in COVER UP entitled "An NYPD Cop Takes The Fall."

In that chapter, documented with 18 end-notes including four citations from Capeci's Gangland column and transcripts of federal wiretaps, I described how Federal prosecutors in the Eastern District of New York had falsely arrested and indicted Det. Joseph Simone, a decorated veteran of the elite Organized Crime Investigative Division (OCID) a joint NYPD-FBI task force.

In repeated columns for the New York Daily News, Capeci had ID'd Det. Simone as "a mole" inside the OCID and a "rogue cop."

Det. Simone was later acquitted of all charges after being tried in October of 1995 for allegedly accepting a bribe from one "Big Sal" Miciotta, a Colombo family wiseguy who had committed five murders and engaged in loan sharking, fraud and narcotics trafficking.

Miciotta, who broke the arm of a young Roman Catholic seminarian and conspired in a series of homicides, had been identified in a sealed letter to a federal judge, just weeks before Det. Simone's trial, as a consummate "liar" who had perjured himself under oath in earlier proceedings.

Nonetheless, without informing Det. Simone's defense counsel, the Feds proceeded to anoint Miciotta as the lead witness against this veteran cop whom they hoped would take the fall for a damaging series of leaks. The leaks had actually resulted from an alleged corrupt relationship between an FBI Supervisory Special Agent and his Top Echelon (TE) informant, a notorious Colombo family killer.

The agent, R. Lindley DeVecchio, known in OCID as "Mr. Organized Crime," for his national reputation as a mob buster, was later the subject of a two year FBI OPR or internal affairs investigation for allegedly leaking key OCID intel to his TE informant, Gregory Scarpa Sr.

One of the central charges in the OPR was that DeVecchio also regularly leaked key intelligence to Jerry Capeci for his Gangland column. DeVecchio's chief accuser was his own number two, Special Agent Christopher Favo.

All of this is documented in a three-inch thick file of DeVecchio' OPR probe. But the Feds decided to close the DeVecchio OPR to avoid a public scandal, and the evidence shows that Det. Simone was set up to account for the leaks.

But even after being cleared, Det. Simone continued to be smeared by Capeci who blamed his acquittal on a "bad jury."

During his seven years as a lead investigator for the OCID, one of Det. Simone's sources had been Armando DeConstanzo, whom Simone met on visits to "Chips'" nephew Phil Ciadella.

The day before Capeci's November 18th column in the New York Sun I sent him an e-mail and spoke to him by phone offering to substantiate Det. Simone's quote in COVER UP that DeConstanzo "used to inform" for him.

In a letter to "Chips" attorney, Mr. DiPietro, which I'm attaching, I cite three separate intelligence leads that the OCID acted upon directly relating to information Det. Simone obtained from DeConstanzo via Phi Ciadella.

Yet Jerry Capeci recklessly ignored this information. He refused to contact Det. Simone prior to publication of his column in The Sun and failed to use any qualifying language in attacking my findings. He simply said that I had "wrongly identified" Chips as a snitch.

Worse, he never let his readers know that he clearly had it in for me after I cited his sloppy reporting in COVER UP.

As a five-time Emmy Winning investigative reporter and veteran of ABC News with a J.D. from Fordham Law School and a masters from Columbia J. School, I pride myself on accuracy. Jerry Capeci's description of my reporting in COVER UP amounted to libel per se and I'm writing to you now to ask for an apology and retraction.

Further, as I said to your assignment editor Marilyn Matlick, whom I spoke to on November 19th, the story of how the Feds tried to frame Det. Joe Simone has continuing news value beyond what I wrote in my book.

In fact, it relates directly to the story of how the Feds dropped the ball on the road to 9/11

The New York Sun should assign a reporter to determine why SSA DeVecchio was allowed to retire with a full pension after he took the 5th Amendment, refused a polygraph and answered "I don't recall" more than 40 times under oath after being granted immunity.

The cover up of the corrupt Scarpa Sr. - DeVecchio relationship led the New York office of the FBI to bury a key lead regarding al Qaeda activity in New York City that, if pursued, may well have aborted the Sept. 11th attacks.

Two of the former federal prosecutors who participated in the cover up are high-ranking officials in the Bush Justice Department: Valeri Caproni, the General Counsel to the FBI and Patrick Fitzgerald, the U.S. Attorney for Chicago who is running the Ambassador Joseph Wilson leak probe.

This information couldn't be more timely, since the House continues to sabotage any meaningful intelligence reform.

I applaud you for running a newspaper that provides New Yorkers with an alternative to the New York Times, The Daily News, Newsday and the New York Post.

I only ask that when one of your lead columnists takes a shot at another reporter, he lets his readers know that he's firing for personal reasons.

Please contact me if you have any further questions and let me know when you will be printing an apology or retraction.

Respectfully,

Peter Lance

P.S. in this package I'm enclosing the following:

- a copy of Capeci's 11/18/04 column;
- A letter to me from James DiPietro, dated 11/2/04, which I received by fax only the day after Capeci's charges ran;
- A copy of the 13 page FBI #302 on Det. Simone's 12/8/93 interrogation written by FBI SA Patrick McDonnell;
- A copy of SA McDonnell's original handwritten notes that formed the basis of the #302;
- The 10/5/95 letter from ASUA Andrew Weissman to federal Judge Eugene H. Nickerson, citing Det. Simone's chief accuser Big Sal Miciotta as a "liar" who had given false testimony under oath. The 7 page letter was sealed by the Feds just weeks before Det. Simone's trial and never revealed to his attorney until after his acquittal.