

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON JUDICIARY

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4 Public Hearing on the
5 Appellate Division First Department
6 Departmental Disciplinary Committee,
7 the Grievance Committees of the
8 Various Judicial Districts, and the
9 New York State Commission on Judicial Conduct

8 Hearing Room 6
9 Empire State Plaza
Albany, NY

10 June 8, 2009
11 10:35 a.m.

12 PRESIDING:

13 Senator John Sampson
14 Chair
Senate Standing Committee on Judiciary

15 PRESENT:

16 Senator John A. DeFrancisco (R)
17 Senator Bill Perkins
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1 recording saying the courts may dispense
2 with the rules, with their own rules.

3 That is not true. The senators can't
4 dispense with their own rules, the citizens
5 cannot dispense with their own rules, the
6 president cannot dispense with his own
7 rules.

8 Thank you, sir.

9 CHAIRMAN SAMPSON: Thank you very
10 much.

11 The next witness is Eleanor Capogrosso.
12 How are you doing? Please don't follow
13 Mr. Galison and take longer than five
14 minutes.

15 MS. CAPOGROSSO: I gave you a great
16 deal of material, Senator, so I'll try to
17 just hit right to the points.

18 CHAIRMAN SAMPSON: When you say hit
19 the points, that's what I want the witnesses
20 to do. Let's hit the points, the issues
21 that you have, and maybe any recommendations
22 that you may want to see.

23 MS. CAPOGROSSO: Certainly.

24 Perhaps I could answer a question that

1 you raised earlier that what can we do with
2 the SCJC. And it's a very --

3 CHAIRMAN SAMPSON: Does everybody
4 know what the SCJC is?

5 MS. CAPOGROSSO: State Commission on
6 Judicial Conduct.

7 The answer is very simple. You just
8 have to make it public. And you're mandated
9 to do so, and I'll explain why. Article 6,
10 Section 22 of the Constitution of the State
11 of New York states: "The State Commission
12 on Judicial Conduct is the disciplinary
13 agency constitutionally designated to review
14 complaints of judicial misconduct in New
15 York State."

16 The Legislature presently has abrogated
17 its constitutional responsibility by giving
18 the constitutional obligation to an
19 organization that is not subject to review
20 or oversight. As a result, Section 44 of
21 the Judiciary Law violates the equal
22 protection and due process clauses of the
23 United States Constitution.

24 That was the basis of my federal case

1 that I filed in the Southern District. Both
2 attempts of trying to file that case were
3 dismissed, first by the Honorable Griesa,
4 where I couldn't even file a complaint
5 because he coached the Attorney General what
6 to do in order to get that case dismissed.
7 The second was Honorable Scheindlin, when my
8 case was consolidated with hers. That also
9 was because it was sua sponte dismissed,
10 where I couldn't file the complaint.

11 This is the issue, this is the answer.
12 And the federal court does not want to
13 address it. Based upon those dismissals
14 where I couldn't file a federal complaint --
15 and if you look at the transcript, which is
16 next to the materials I sent to you, of
17 which these are in Judge Griesa's words
18 where he coaches the Attorney General on
19 what to do to get this thing dismissed, and
20 the unusual ruling by federal Judge
21 Scheindlin to sua sponte dismiss a
22 complaint, which is against prevailing
23 Second Circuit case law because it doesn't
24 even give an adversary the capability of

1 here is hidden under a veil of
2 confidentiality by the OCA. The Board of
3 Elections controls the election process with
4 any of the politicians in this state, but
5 not with the judges. They keep it secret,
6 they keep it under a veil of secrecy. And
7 by doing so, you're not giving the
8 capability of the public to look carefully
9 at these responses, to look at the resumes
10 of these judges, to see whether or not
11 they're making false statements.

12 Now, the reason why I bring this up and
13 it's a big issue is because Judge Sotomayor
14 right now is being judged. And if you look
15 on the judicial webpage of the Senate
16 Judiciary Committee in Washington, you'll
17 see her answers to judicial questionnaires.
18 You will also see her transcripts that when
19 she was nominated in the past, of what her
20 responses were. So that the public can go
21 ahead and view it. Why should this state
22 deserve anything less?

23 Now, the reason I mention all of this
24 is it's also very important to do it because

1 Section 17-128 of the Election Law says that
2 a public officer who willfully omits,
3 refuses or neglects to perform any of its
4 duties by hindering or delaying or
5 attempting to hinder or delay the
6 performance is guilty of a felony.

7 So when you have administrative judges
8 who are not being truthful to the screening
9 committees when they're asked are any
10 complaints being filed against these judges
11 who are seeking an elected post, they run
12 afoul of this. Because that questioning is
13 done by an informal process where a screener
14 calls the judge up over the phone, on which
15 they can say anything or conceal anything.
16 It's not under oath, under the penalty of
17 perjury, with a court reporter in the room.

18 Because I have boxes of letters that I
19 had sent to the administrative judges
20 concerning missing court files, clear
21 violations and contempts of executive orders
22 by the Governor after September 11th that
23 were summarily dismissed by the State
24 Commission on Judicial Conduct.

1 Now, dealing with the First Department
2 Disciplinary Committee, I have to tell you a
3 little story, if you wouldn't mind just a
4 minute, and the perhaps you can understand
5 what the gist of this is.

6 Many years ago I hired an attorney to
7 represent me in a dispute, and I believe he
8 charged me an excessive fee. He files a
9 lawsuit to recover his fee, and I hire
10 another attorney to represent me. His name
11 was Howard Benjamin. Mr. Benjamin doesn't
12 go to court, and Mr. Calabro obtains a
13 default judgment against me. When I
14 requested Benjamin to vacate the default, he
15 claimed he could not because he made a false
16 statement to the court about having been on
17 jury duty at the time of the court
18 appearance but he instead was in his office.
19 Benjamin informed me he was going to pay the
20 judgement to avoid the ramifications of
21 explaining it to the court.

22 Years later, my credit was seriously
23 affected, since Calabro's judgment had not
24 been paid, unknowingly to me. Neither

1 Calabro nor Benjamin was helpful in giving
2 me copies of the alleged checks that
3 Benjamin had paid Calabro which was damaging
4 my credit score. Without recourse, I filed
5 a complaint with the First Department DDC,
6 since by law if Benjamin had paid Calabro,
7 then Calabro and Benjamin were required to
8 hold onto these checks for a period of seven
9 years.

10 The First Department DDC transferred
11 the case to the Fourth Department DDC, since
12 Howard Benjamin was an attorney who formerly
13 worked there at the First Department DDC,
14 and his partner, Mike Gentile, was the
15 former chief counsel at the First Department
16 DDC.

17 At the Fourth Department DDC, my case
18 was closed without an investigation as to
19 the whereabouts of those checks and the
20 investigation of Benjamin's false statements
21 to the court. I brought the complaint to
22 the former presiding justice of the Fourth
23 Department DDC, the Honorable Piggott, who
24 now sits on the Court of Appeals. He did

1 nothing. He concealed it, he covered it up,
2 he let it go.

3 I filed again in the First Department
4 DDC, to have Sherry Cohen and Sarah Jo
5 Hamilton tell me for years that they were
6 retrieving these checks from the bank, of
7 which I've given you correspondence,
8 documents and all of that.

9 Then I received a letter dated
10 November 8, 2004, three years after I
11 requested those copies of checks, in which
12 Thomas Cahill, chief counsel to the DDC,
13 states: "In fact, after you filed your
14 complaint, Mr. Benjamin provided the
15 committee with copies of the fronts of two
16 checks and a copy of the front and back of
17 another, as well as the corresponding
18 transmittal letter to Mr. Calabro." You
19 have those letters.

20 During this period of time where I
21 could not obtain copies of these checks, I
22 wrote boxes of letters, I mean boxes, to the
23 Honorable John Buckley, who was the
24 presiding justice at the time, to the

1 Honorable Judith Kaye, who was the Chief
2 Judge. They were the administrators. They
3 were supposed to deal with something; they
4 did nothing. They concealed it, they
5 covered up, they did absolutely nothing.
6 There is no administration of this court
7 system. That is what the problem is.

8 And I can tell you, I called up Chief
9 Judge Kaye's office many a time and spoke to
10 Mary Mone, her counsel, and her response
11 was: "The judge is a sitting judge, she's
12 not an administrative judge." I said,
13 "Well, what do you want me to do? She's the
14 one that has this duty." But she refuses to
15 live up to her responsibilities. That is
16 the problem.

17 But to go back to the court, during the
18 time when I could not get these checks, I
19 filed a complaint against Mr. Calabro under
20 the Fair Credit Reporting Act, in an attempt
21 to obtain copies from him.

22 Honorable Joan Kenney publishes a
23 decision on the front page of the Law
24 Journal in which she says I have 35 lawsuits

1 as a pro se litigant. Then she says, in
2 another transcript, "When I rendered the
3 decision in the other case a year ago, I did
4 my own research, and she at that point
5 commenced in excess of 75 actions."

6 First of all, a judge cannot do their
7 own research. They cannot go outside the
8 record. Number two, she makes things up and
9 was lying.

10 Now, how did this judge get on this
11 bench? It's very interesting that how could
12 she freely do it and be allowed to do it,
13 because I filed a complaint with the State
14 Commission on Judicial Conduct, and they
15 summarily dismissed it.

16 My federal complaint was seen by
17 someone who is in this room who happened to
18 be a certified court examiner and was also
19 at the brunt end of the misconduct and
20 allegations by Joan Kenney. And she went
21 ahead and obtained the curriculum vitae of
22 Joan Kenney when she ran for election.

23 She found material misrepresentation in
24 her campaign website. The official site

1 provided inaccurate and false information
2 about the candidate's participation in law
3 school activities such as Law Review, the
4 candidate's licensure date, legal employment
5 and professional experience.

6 I have no personal knowledge of the
7 investigation, but I brought her here so
8 that if you want to question her concerning
9 this, she's sitting in this audience right
10 now.

11 But this would not have been allowed to
12 happen if that unified judicial
13 questionnaire would be able to be made
14 public. That judge would not be sitting on
15 the bench freely going ahead and saying I
16 have 35 lawsuits, 75 lawsuits, and whatever
17 she can come up with, and going outside the
18 record.

19 But this leads to an important point,
20 because based upon that decision, the
21 Honorable Debra James, in a case I brought
22 because of some legal malpractice where I
23 hired an attorney to represent me, says that
24 I have -- has put protective order

1 preventing me from initiating any further
2 litigation as a party plaintiff without
3 prior approval of the administrative judge
4 of the court. This also gets published on
5 the front page of the *Law Journal*, claiming
6 that my frivolous or repetitive actions or
7 vexatious conduct -- which is based on Judge
8 Kenney's decision, which she makes up.

9 CHAIRMAN SAMPSON: Ms. Capogrosso,
10 could you sum it up?

11 MS. CAPOGROSSO: Yes. We've got
12 more, though. If you want crimes, I'll give
13 you crimes right now, what's in that paper,
14 to get a special prosecutor not only at the
15 DDC but at the State Commission on Judicial
16 Conduct.

17 CHAIRMAN SAMPSON: And I will -- it's
18 in here, I will definitely follow it up.
19 But if you can wrap it up.

20 MS. CAPOGROSSO: Okay, I'll wrap it
21 up in two -- about five more sentences.

22 I appealed the decision in the *Kansas*
23 case into the Appellate Division. Who sits
24 on the panel? Judge Buckley. What does

1 Judge Buckley do? He doesn't recuse
2 himself. I make a motion for his recusal.
3 It's -- he refuses. Then I make a motion to
4 reargue, get a whole other five judges that
5 are sitting on the panel there. Judge David
6 Friedman, Tom, Acosta, and Helen Freedman,
7 and they agree that he doesn't have to
8 recuse himself.

9 So there is certainly a basis for his
10 recusal, because he has a vested interest in
11 the dismissal of that case because it has to
12 deal with the federal complaint which I put
13 in.

14 Further, I have a judgment against me
15 for over a quarter of a million dollars that
16 was put on a landlord-tenant dispute. In
17 terms of me trying to perfect the appeal, of
18 which the case law was in my favor and the
19 judgment should not have occurred, the file
20 in the county clerk was completely
21 destroyed. I sent a secretary down there to
22 copy it for the purpose of getting the
23 record. She was given initially five files,
24 six files closed. The next two days, she

1 was given five files. Then it turned out to
2 be four files. To the point where I
3 couldn't even perfect the appeal concerning
4 that. I asked the Appellate Division to
5 help me reconstruct the file; they refused.

6 You want retaliation? This is what
7 happens when an attorney opens their mouth
8 and complains about violations of executive
9 orders, missing court files in a courthouse.
10 If you want every attorney sitting in this
11 room and out the door, I can have you
12 thousands if you give them protection. What
13 you need to do is give them a registration
14 with an anonymous number, and any time they
15 see misconduct, corruption by a judge, to
16 anonymously report it and to be taken
17 seriously.

18 Believe me, the attorneys in this --
19 I'm probably one of the few attorneys here.
20 There would be many more if you would give
21 them that level of protection, and this
22 would stop. And the people of this state
23 would be well-served by finally get some
24 justice into this state.

1 (Scattered applause.)

2 CHAIRMAN SAMPSON: Ms. Capogrosso --

3 MS. CAPOGROSSO: Oh, can I make one
4 more point?

5 CHAIRMAN SAMPSON: Ms. Capogrosso, we
6 have to --

7 MS. CAPOGROSSO: One more point.

8 CHAIRMAN SAMPSON: We have to --

9 MS. CAPOGROSSO: No. I'll be
10 30 seconds, I promise you. Because this one
11 you can't let go of.

12 On November 22, 2008, I write a letter
13 to the DDC. Alan Friedberg charges me
14 because -- he chose to start an action
15 against me because a locksmith who repaired
16 some locks in my office, I disputed the bill
17 and he filed a complaint against me. A
18 bill. Not even attorney services. While on
19 other cases I know of, where lawyers are
20 practicing law, unauthorized to practice law
21 in New Jersey, he doesn't even the
22 complaints.

23 I also have in there --

24 CHAIRMAN SAMPSON: Your 30 seconds

1 are up.

2 MS. CAPOGROSSO: All right. There's
3 more --

4 CHAIRMAN SAMPSON: Ms. Capogrosso,
5 thank you. Thank you very much, but we'll
6 follow up. Thank you very much.

7 (Scattered applause.)

8 CHAIRMAN SAMPSON: The next witness
9 is Mr. Ostertag, former president of the New
10 York State Bar Association.

11 Mr. Ostertag, how are you, sir?

12 MR. OSTERTAG: Good afternoon,
13 Mr. Chairman.

14 CHAIRMAN SAMPSON: How are you doing?

15 MR. OSTERTAG: I have a question, if
16 I may, before you run the clock. Is there a
17 rule, does this committee have a rule about
18 the surreptitious videotaping of witnesses
19 who come voluntarily before this committee
20 to testify?

21 CHAIRMAN SAMPSON: We don't have a
22 rule because, if you notice, the proceeding
23 is being videotaped.

24 MR. OSTERTAG: I don't mean that one.