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BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON JUDICIARY

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

Hearing Room 6
Empire State Plaza
Albany, NY

June 8, 2009
10:35 a.m.

PRESIDING:

Senator John Sampson
Chair
Senate Standing Committee on Judiciary

PRESENT:

Senator John A. DeFrancisco (R)
Senator Bill Perkins

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1 dealing with with Mr. Tembeckjian.

2 Four or five years ago I was undergoing
3 treatment for cancer; in fact, I was in
4 Sloan Kettering being operated on for
5 cancer. Instead of giving me an adjournment
6 for it, Bob Tembeckjian wanted to see my
7 chart to make sure that I was being treated
8 for cancer and not just ducking his
9 committee.

10 I've been charged probably more than
11 most. I've been censured twice by the
12 Commission on Judicial Conduct. Of the
13 three attorneys who offered testimony
14 against me or filed complaints against me,
15 all three -- well, the first one was a Max
16 Goldweber, who was found to be a liar and a
17 thief by a federal judge.

18 The second was one was a Ms. Naidoo,
19 who one of my colleagues, Justice Cullen,
20 found she lied to him and to the Appellate
21 Division.

22 And the third one was being sued at the
23 time for running what appears to be a Ponzi
24 scheme to finance his cases. And one of the

1 reasons why he wouldn't try the case before
2 me was that had the case been disposed of,
3 he would have been responsible for paying
4 the people who financed this case anywhere
5 from \$1 million to \$3 million.

6 Those complaints are in the package
7 before you. I'm not making them up; they're
8 recorded cases.

9 Of the first case against me, which was
10 I think litigated in 2004, I am still
11 waiting for the first bit of discovery.

12 Of the second one, Mr. Tembeckjian got
13 a little cuter. What he did, or what he and
14 Mr. Friedberg did, they got my witnesses,
15 some of them -- because as you found out, I
16 believe, if they offered testimony to help
17 me, the tape recorder was turned off, which
18 is a habit they also like to do, turn off
19 the tape recorder when there is positive
20 evidence against the judge that doesn't help
21 their case. And --

22 CHAIRMAN SAMPSON: I know when you're
23 saying a tape recording, these proceedings,
24 there's not a stenographer or it's just a

1 tape recorder?

2 JUSTICE HART: Well, in the second
3 trial against me there was a stenographer.
4 In the discovery and the trial before that,
5 there were tape recorders that Mr. Friedberg
6 or one of his employees controlled.

7 In fact, during the first proceeding,
8 which was an EBT, my brother, who was
9 representing me, put a statement on the
10 record. The statement and the things he
11 said are nowhere in the transcript. My
12 brother refused to sign the transcript.

13 At the first trial, wherein it was a
14 tape recorder and the tape recording was
15 being controlled by an employee of the
16 commission, I saw Mr. Friedberg making hand
17 gestures and I heard click-click,
18 click-click. Again. And I believe there
19 are other witnesses who the committee might
20 have gotten in touch with who will verify
21 that that's their conduct.

22 I also went down during the first
23 proceeding, since the Senate and the
24 Assembly give them money to investigate

1 these cases, I went down with my clerk, my
2 law secretary, and my court officer, who
3 verified my story that the attorney who was
4 testifying against me wasn't telling the
5 truth. They were not allowed -- or they
6 were not asked any questions. So their
7 investigation only stops at, gee, what's
8 harmful to the judge. And if you want, I
9 will produce those people if you have
10 hearings in New York City.

11 Also, one of my other court officers
12 was asked by an attorney for the Commission
13 on Judicial Conduct to change his story
14 because, after all, judges are scum and why
15 would you testify to help a judge. Again,
16 don't take my word; I could produce
17 witnesses.

18 Let me see. What's interesting about
19 some of the commission rulings -- well, the
20 first one, on the full record, even though
21 the commission found that I was wrong, I was
22 actually affirmed by the Second Department
23 both on the substantive law and the contempt
24 that I held the person who accosted me in

1 parking lot was -- I mean did. I was
2 censured on the doctored records submitted
3 to the Court of Appeals by Mr. Tembeckjian.

4 I think the best way to describe the
5 way Mr. Tembeckjian and Mr. Friedberg, who's
6 now at the First Department, ran their
7 little shop was they marked the deck, they
8 shaved the cards, then they started to
9 cheat.

10 (Laughter.)

11 CHAIRMAN SAMPSON: You know, I mean,
12 these allegations -- I'm just trying to get
13 an understanding. What do you mean by
14 marking the deck?

15 JUSTICE HART: You try cases before
16 them, they pick the judge -- and I have
17 nothing against the retired judges who they
18 pick. They pick the judge. I've been a
19 lawyer pushing 30 years --

20 CHAIRMAN SAMPSON: You mean the
21 commission picks the judge.

22 JUSTICE HART: The commission picks
23 the judge. You go in against them, they
24 don't give you discovery or they give you

1 doctored discovery. You -- credibility --
2 the first dealing I had with the commission,
3 my brother Leon Paul was screaming with
4 Vicky Ma, who was one of their attorneys,
5 and he was questioning the credibility of
6 this Max Goldweber. And Ms. Ma was
7 screaming back to him that credibility is
8 not an issue. And, I mean, that's the type
9 of people they have.

10 You don't have to take my word for it.
11 I gave you recorded documents or case law
12 that shows Max Goldweber, the first person
13 who accused me, was called a liar and a
14 thief for running a scam to bilk his clients
15 by Judge Wexler.

16 I gave you a document that showed that
17 in a case that was originally started in
18 Eastern District of Pennsylvania, Michael
19 Flomenhaft, who was the second person to
20 accuse me, was being sued for running what
21 appears to be a Ponzi scheme to finance the
22 case before me. And when he refused to try
23 the case -- oh, and he also tried to export
24 me by saying he would complain to the

1 commission if I made him try the case.

2 And I produced a document wherein the
3 attorneys who employed the third attorney
4 who complained about me, Ms. Naidoo, they
5 fired her for lying and stealing in that
6 case.

7 These are the people who offered
8 complaints against me and that were found to
9 be legitimate by Robert Tembeckjian.

10 CHAIRMAN SAMPSON: Senator Perkins.

11 SENATOR PERKINS: Yeah, thank you so
12 much. I have to run, but I just want to ask
13 one quick question. So what's the solution?

14 JUSTICE HART: Well, firstly, you
15 have to fire Tembeckjian and Friedberg.

16 I mean, I've got to tell you, I've been
17 a trial attorney or a judge, again, pushing
18 30 years. The only reason that Robert
19 Tembeckjian, in my opinion -- so I don't get
20 sued -- isn't the sleaziest attorney I've
21 ever met is because I've met Alan Friedberg.

22 (Laughter.)

23 SENATOR PERKINS: So now you've taken
24 care of the personalities. What about the

1 system --

2 JUSTICE HART: No, no, it's not just
3 the personalities.

4 SENATOR PERKINS: I want to get a
5 systemic opinion as well.

6 JUSTICE HART: It's -- it's --

7 SENATOR PERKINS: I heard that the
8 individuals --

9 JUSTICE HART: They don't do it
10 right.

11 SENATOR PERKINS: Well, let me ask a
12 question. I hear you talking about the
13 individuals. Are there any systemic process
14 issues or concerns that you might want to
15 add to that?

16 JUSTICE HART: Well, firstly, you've
17 got to have some situation where they don't
18 pick the judges, where judges aren't
19 beholden to them to be named again.

20 There has to be a limit on how long
21 people like Mr. Tembeckjian can serve in
22 office so that he doesn't have some sort
23 of --

24 SENATOR PERKINS: Term limits. Term

1 limits.

2 JUSTICE HART: Yeah, term limits.

3 You have to have some -- and, I mean, I
4 complained to everybody; no one has
5 jurisdiction over these people. When I was
6 an ADA in Queens, I actually worked for Joe
7 Fisch. Judge Fisch said he didn't have
8 jurisdiction. I complained to the clerk of
9 the Court of Appeals. They said they didn't
10 have jurisdiction. Only when I complained
11 to Senator Sampson, Senator Smith, and
12 Governor Paterson did anything actually get
13 done.

14 I complained to the Attorney General.
15 I complained, I had a long conversation with
16 one of the senior attorney generals.
17 Nothing was investigated.

18 SENATOR PERKINS: Let me ask you
19 this, then. Term limits, how long a term?

20 JUSTICE HART: Three years, four
21 years.

22 SENATOR PERKINS: And when you made
23 complaints to other governments or other
24 officials, you said that nothing happened.

1 JUSTICE HART: Nothing happened. In
2 fact --

3 SENATOR PERKINS: What would be a
4 better process?

5 JUSTICE HART: There's got to be
6 some -- well, firstly, you should appoint a
7 special prosecutor to do some sort of
8 accounting of what they've done. These
9 people had no -- you know, who was it that
10 said absolute power corrupts absolutely?
11 Well, in the situation you have right now,
12 Mr. Tembeckjian has absolute power. He can
13 do anything he wants.

14 And, I mean, he's investigated me -- he
15 has come before you saying that he only
16 investigates matters that are serious.
17 There has got to be something more serious
18 in the State of New York than me going
19 through a court scanner with my 81-year-old
20 mother to take care of my dying father's
21 business.

22 I was actually investigated for that.
23 He got the rule wrong. I produced Jewel
24 Williams to say they got the rule wrong.

1 They still argued the wrong rule.

2 They have no control. They argue
3 whatever they want when they want to argue
4 it. There is absolutely no control over
5 this -- again, you don't have to take my
6 word for it. This is all documented.

7 CHAIRMAN SAMPSON: Senator
8 DeFrancisco has a question.

9 SENATOR DeFRANCISCO: How many
10 complaints were investigated against you?

11 JUSTICE HART: I'll give you -- I
12 think -- well, there are two that they don't
13 know that I know about. They investigated
14 me --

15 SENATOR DeFRANCISCO: How many?

16 JUSTICE HART: I think five or six.

17 SENATOR DeFRANCISCO: Okay. And can
18 you give me just the general flavor of what
19 these investigations were about?

20 JUSTICE HART: Okay, going through a
21 court scanner with my mother, showing my
22 judge's ID with a blue strip -- the
23 judges -- there are three IDs in the court
24 system, red, yellow and blue. A judge has a

1 blue ID. The lieutenant, the newly minted
2 lieutenant, didn't know my ID said that I
3 could pass without being stopped and anybody
4 can pass with me. I was there with my
5 80-plus-year-old mother. She's going to be
6 85 in about three weeks.

7 SENATOR DeFRANCISCO: What is that,
8 going through a security area or what?

9 JUSTICE HART: Yeah, going through a
10 security area.

11 SENATOR DeFRANCISCO: Okay. That's
12 one.

13 JUSTICE HART: That's one.

14 Keeping a child in her home -- the
15 child reported to me that she had the flu.
16 Actually, it was a 12-year-old child who
17 evidently was going through her first period
18 and didn't want to tell. When the sheriff
19 came to throw her out of the house, I
20 stopped it. Chase complained I stopped it.
21 The rule is that people give basically six
22 months to be evicted from a home. I gave
23 two months. They got me on that.

24 They censured me on -- when I was

1 accosted in the parking lot in the gated,
2 secured parking lot of the court in Jamaica,
3 somebody came up to me, he didn't like the
4 fact that I was going to go visit my sick
5 father. My father eventually died of
6 Alzheimer's and cancer. I told the jury --
7 not the jury, I told the attorneys that I
8 was going to get a tire fixed, but actually
9 my father had the flu and I was going to
10 go --

11 SENATOR DeFRANCISCO: Wait, wait.
12 This is bizarre --

13 JUSTICE HART: This is bizarre.
14 That's the point.

15 SENATOR DeFRANCISCO: No, no, wait a
16 minute. But your explanation is bizarre.

17 You were stopped in a parking lot and
18 accosted?

19 JUSTICE HART: Yes.

20 SENATOR DeFRANCISCO: What you were
21 asked to do?

22 JUSTICE HART: I was -- he wanted me
23 to --

24 SENATOR DeFRANCISCO: Who is "he"?

1 JUSTICE HART: The person who
2 accosted me.

3 SENATOR DeFRANCISCO: So somebody in
4 the general public accosted you --

5 JUSTICE HART: Mm-hmm. So what --
6 no, no, excuse me, the litigant accosted me.
7 The next day --

8 SENATOR DeFRANCISCO: And what was he
9 accosting you for?

10 JUSTICE HART: He wanted a longer
11 adjournment.

12 SENATOR DeFRANCISCO: Okay.

13 JUSTICE HART: The next day I said
14 forget about it. His attorney, Max
15 Goldweber, said no, no, no, I don't want to
16 forget about it.

17 In the record that Mr. Tembeckjian
18 didn't know was a brief that was filed with
19 the Second Department that talked about the
20 meeting that we had. It said I didn't want
21 to hold the guy in contempt, all he'd have
22 to do is apologize. Mr. Tembeckjian said
23 that meeting never took place even though
24 the complaining lawyer said it took place.

1 SENATOR DeFRANCISCO: But what court
2 proceeding was there that was being
3 complained of --

4 JUSTICE HART: It was a contempt
5 proceeding. I was doing the trial, and I
6 held him in contempt for accosting me.

7 SENATOR DeFRANCISCO: So you held
8 somebody in contempt.

9 JUSTICE HART: For accosting me.

10 SENATOR DeFRANCISCO: For accosting
11 you outside of the courtroom.

12 JUSTICE HART: That's right.

13 SENATOR DeFRANCISCO: I didn't -- I
14 wasn't familiar with that rule. I thought
15 contempt proceedings dealt with what happens
16 in the courtroom.

17 JUSTICE HART: No, no. Well, they
18 changed the law for me, thank you.

19 SENATOR DeFRANCISCO: Oh, okay --

20 JUSTICE HART: He came up to me --

21 SENATOR DeFRANCISCO: So that's
22 three. What are the other ones?

23 JUSTICE HART: Let me see. Going
24 with my mom through the scanner.

1 SENATOR DeFRANCISCO: Well, we
2 already heard that.

3 JUSTICE HART: Making somebody try a
4 case after two and a half years.

5 They also investigated me. An attorney
6 named Darren Kerns was found by two federal
7 courts to have brought a poorly thought out
8 cause of action. They mentioned that to
9 him. I did the same thing. Mr. Tembeckjian
10 called the other attorneys to see what I did
11 wrong on that. But he was told that I
12 agreed with -- two federal courts agreed
13 with me. He stopped that.

14 And most recently they investigated me
15 for -- the attorney who represented me in
16 the last cause of action, they had an action
17 before me that I recused myself from about a
18 year and a half or two years earlier, but
19 they still wanted proof that I had recused
20 myself.

21 SENATOR DeFRANCISCO: Okay. And just
22 along those same lines, how many of those
23 are still pending?

24 JUSTICE HART: None.

1 SENATOR DeFRANCISCO: Okay, so
2 they're all over at this point.

3 JUSTICE HART: But I was censured
4 twice.

5 SENATOR DeFRANCISCO: Okay. Thank
6 you.

7 JUSTICE HART: Like I said, I don't
8 know -- I know Tembeckjian and --
9 Mr. Tembeckjian and Mr. Friedberg have to be
10 removed.

11 CHAIRMAN SAMPSON: We don't -- as
12 Senator Perkins said, I think, we're not
13 interested in character assassination, we're
14 just interested in recommendations, if any,
15 that we can make the system, as we've seen,
16 seem more equitable and fair not only in the
17 eyes of the public but also those who are
18 coming before that commission.

19 JUSTICE HART: Well, the system -- if
20 the system works properly, it's fair. But
21 anyone, any system that doesn't have the
22 goodwill of the people who are running it
23 behind it is going to fail no matter what
24 you do.

1 So while I agree with my friend Senator
2 Perkins that this isn't about character
3 assassination, it's about getting a fair,
4 equitable system -- and frankly, in the
5 hands of people like Mr. Tembeckjian and
6 Mr. Friedberg, you'll never have it. You
7 could put whatever -- you could change the
8 system however you want, you've got to have
9 people in there who are fair, who are
10 ethical.

11 I mean, again, my -- Mr. Tembeckjian --
12 and again, I believe I submitted it to you
13 on an earlier day, when my brother told
14 Mr. Tembeckjian that he had to follow
15 certain a rule of ethics, Mr. Tembeckjian
16 actually wrote back to my brother saying
17 that there are no ethics that he has to
18 follow. And -- am I correct?

19 CHAIRMAN SAMPSON: I hear your point,
20 Your Honor.

21 Your Honor, thank you very much for --

22 JUSTICE HART: Always a pleasure.

23 CHAIRMAN SAMPSON: -- taking your
24 time out and speaking with us today.

1 JUSTICE HART: Thank you.

2 CHAIRMAN SAMPSON: Thank you very
3 much.

4 I'm going to try to move it a little
5 faster. The next person is Pamela Carvel.
6 Ms. Carvel.

7 You can do all this in five minutes,
8 Ms. Carvel?

9 MS. CARVEL: I will rush, I certainly
10 will.

11 CHAIRMAN SAMPSON: Thank you very
12 much.

13 MS. CARVEL: You have the written
14 thing?

15 CHAIRMAN SAMPSON: Yes, I do.

16 MS. CARVEL: And the flow chart that
17 I've given you is the same as the one I
18 enlarged for you to see.

19 I flew in from London because I wanted
20 to be part of this hearing that I think is a
21 very significant effort --

22 CHAIRMAN SAMPSON: I can give you a
23 little bit longer than five minutes, since
24 you flew in from London.

1 is in fact part of the pattern, that any
2 number of attorneys or litigants might be
3 able to verify that. And we will reach out
4 to litigants and lawyers to determine
5 whether or not these complaints are part of
6 a pattern or practice.

7 CHAIRMAN SAMPSON: Questions?

8 Mr. Tembeckjian, thank you very much
9 and, Your Honor, thank you very much for
10 giving us that outlay. We truly appreciate
11 it.

12 MR. TEMBECKJIAN: Thank you.

13 JUDGE KLONICK: Thank you very much.

14 CHAIRMAN SAMPSON: At this point in
15 time we're going to have Judge Hart present
16 testimony.

17 Good morning, Your Honor.

18 JUSTICE HART: Good morning. It's
19 good that Mr. Tembeckjian is staying here.

20 My name is Duane Hart. I'm a sitting
21 Supreme Court justice in Queens, New York.
22 While I gave the members of the committee a
23 long package, I'm just going to give you a
24 few anecdotes of the type of attorney we're