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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 CHAIRMAN SAMPSON: I'd like to just
2 get this hearing started. And I apologize
3 for my tardiness.

4 First of all, I want to welcome all
5 those who are attending this hearing dealing
6 with the disciplinary process as it refers
7 to lawyers and also to judges in the State
8 of New York. My name is Senator John
9 Sampson, I'm from the 19th Senatorial
10 District, along with my colleague Senator
11 John DeFrancisco, who is from the Syracuse
12 region.

13 Am I correct, Senator?

14 SENATOR DeFRANCISCO: That's correct.

15 CHAIRMAN SAMPSON: And we want to
16 welcome you all here this morning.

17 This is the first in a series of
18 hearings that will examine the disciplinary
19 process for lawyers and judges in the State
20 of New York. When a complaint comes to a
21 disciplinary body, we want to know how is it
22 being handled, how many people examine the
23 complaint to decide what the process is,
24 what review mechanisms are in place to

1 ensure that once the decision is reached it
2 is fair and according to the rules of law.

3 These are just a few questions that
4 we'll be examining during the course of this
5 hearing. I know many of you have traveled
6 great distances to be here today to observe
7 and to participate in today's hearing. I
8 would like to take this opportunity to thank
9 you all. Your participation and input on
10 the disciplinary process will help the
11 committee determine what if any measures are
12 needed to improve or repair the system so
13 that the members of the public as well as
14 the lawyers and judges are all treated
15 fairly and equitably by the disciplinary
16 system.

17 This hearing has generated a great deal
18 of interest from the public. A lot of
19 people want to speak today, but
20 unfortunately the committee was not able to
21 accommodate them all due to the limited
22 time. We have about 30 witnesses, close to
23 30 witnesses. I'm going to try to ask
24 everybody to keep their comments within five

1 minutes. We want to get to the point so we
2 can have, you know, the interchange between
3 questions and answers.

4 And due to the number of responses we
5 received, the committee will conduct
6 additional hearings in New York City as well
7 as in Western New York so that we can get a
8 better understanding of the total picture
9 across the state and accommodate those who
10 couldn't testify today.

11 As I indicated, we have about 30
12 individuals who are going to testify, and I
13 do apologize for that. But we're going to
14 try to be as swift as possible.

15 As I said, this hearing will examine
16 the disciplinary process for the judges and
17 attorneys in the State of New York. Judges
18 in our state are disciplined by the
19 Commission on Judicial Conduct. The
20 commission acts pursuant to Article 6,
21 Section 22 of the New York State
22 Constitution. This law was put in place in
23 1978, after the people of New York spoke
24 with one voice that there needed to be a

1 better system for judicial discipline.

2 The Legislature acted through the
3 Judiciary Law to codify what the people
4 asked for. Article 2 of the Judiciary Law
5 sets out the powers and duties of the
6 commission. The commission consists of 11
7 individuals, four appointed by the Governor,
8 one by the Temporary President of the
9 Senate, one by the Minority Leader of the
10 Senate, one by the Speaker of the Assembly,
11 one by the Minority Leader of the Assembly,
12 and three by the Chief Judge of the Court of
13 Appeals.

14 This commission is empowered to
15 censure, admonish or remove judges from
16 office if necessary. They can subpoena
17 witnesses, compel courts to release records
18 to them, offer immunity to witnesses,
19 investigate written complaints about judges
20 or, on their initiative, conduct
21 investigations concerning judges of the
22 United Court System.

23 There are approximately 3500 judges and
24 justices in the New York State Unified Court

1 System. Last year alone, there were 1900
2 complaints of judicial misconduct, and of
3 these the commission conducted 262
4 full-fledged investigations, along with 174
5 investigations that were pending from 2007.

6 Dealing with attorney discipline in
7 New York is governed by the Appellate
8 Division of the State of New York Supreme
9 Court. The rules that govern attorney
10 conduct and discipline are found in rules of
11 professional conduct. Lawyers who violate
12 those rules are subject to discipline. This
13 discipline can take the form of a letter of
14 caution, an order of public censure,
15 suspension or disbarment of the attorneys.
16 Only complaints that do result in formal
17 disciplinary action, censure, suspension or
18 disbarment are available to the public.

19 Once again, ladies and gentlemen, I
20 want to thank you very much for being here
21 today. We're going to try to conduct this
22 hearing as quickly as possible in an orderly
23 fashion.

24 And I would like to introduce one of my

1 colleagues who just came, Senator Perkins,
2 from New York City, from Harlem.

3 But at this point in time I would like
4 my colleague Senator DeFrancisco to say a
5 few words.

6 SENATOR DeFRANCISCO: My words are
7 very few.

8 Everybody is handing in a written
9 presentation. Do me a favor, because I've
10 gone through many, many hearings in the last
11 17 years. Assume, just for the sake of
12 argument, that we can read. You know, maybe
13 that's a bad assumption on behalf of
14 officials in state government, but let's
15 assume that we can read. And get to the
16 main points of your presentation.
17 Otherwise, we'll never get you to say what's
18 really on your mind and we get into a
19 reading contest, which doesn't do anybody
20 any good, and those who are here towards the
21 end of the list will be here about 4 o'clock
22 this afternoon waiting for their turn.

23 So please do that, and it will really
24 be helpful for all of us. Thank you.

1 CHAIRMAN SAMPSON: Senator Bill
2 Perkins.

3 SENATOR PERKINS: I'm going to be
4 even briefer.

5 I of course echo the sentiments of my
6 colleague in terms of the fact that the
7 testimony has been written, and a brief
8 summarization that allows us to sort of
9 explore your questions and concerns more
10 would be helpful.

11 And I just also want to compliment the
12 chairman for his vision with respect to this
13 committee, and particularly on this issue
14 which is of such great importance to many of
15 us. And I just want to urge him to keep up
16 the good work.

17 CHAIRMAN SAMPSON: Thank you very
18 much, Senator Perkins.

19 Without further ado, we're going to get
20 started. The first witness is Martin Gold,
21 a member of the First Department
22 Departmental Disciplinary Committee, and
23 also Alan Friedberg, chief counsel, First
24 Department Departmental Disciplinary

1 Committee.

2 Welcome, gentlemen. Good morning.

3 MR. GOLD: Good morning. Thank you.

4 Mr. Chairman, distinguished members of
5 the committee, my name is Martin R. Gold. I
6 am a lawyer in New York City and a partner
7 in Sonnenschein, Nath & Rosenthal, a large
8 national law firm. I'm a volunteer member
9 of the Departmental Disciplinary Committee
10 for the First Judicial Department appointed
11 by the Appellate Division. I am also a
12 senior member of the policy committee of the
13 Disciplinary Committee.

14 The chairman of the committee, Mr. Roy
15 Reardon, very much wanted to be here today
16 and to attend this hearing and participate,
17 but another commitment made that impossible.
18 And he asked me to attend in his place, and
19 it's my pleasure to do so.

20 With me is our chief counsel, Alan
21 Friedberg. Together we will provide you
22 with a description of the operation of the
23 attorney disciplinary system in the First
24 Department and answer any questions you may

1 have concerning our operation.

2 The Departmental Disciplinary Committee
3 was established by the Appellate Division,
4 First Department, to assist in the court's
5 role in disciplining attorneys in the First
6 Department, which consists of New York and
7 Bronx Counties. Members of the committee
8 are all appointed by the Appellate Division.
9 They are all volunteers.

10 There are approximately 80,000
11 attorneys in the First Department. As I
12 have indicated, Mr. Reardon is chairman of
13 the committee. The committee also receives
14 hands-on guidance from the Policy Committee
15 appointed by the Appellate Division from the
16 members of the committee. The Policy
17 Committee oversees the general functioning
18 of the committee and the staff and also
19 provides direction on pending issues.

20 Now, the Appellate Division has adopted
21 public rules and procedures governing the
22 Departmental Disciplinary Committee and
23 rules governing the conduct of attorneys.
24 These rules are available to the public,

1 together with the rules of professional
2 conduct which govern attorney conduct, on
3 the Departmental Disciplinary Committee
4 website, which is part of the Appellate
5 Division website.

6 Also available on the website is
7 information about the committee, including
8 information concerning how a complaint can
9 be filed. Information about filing a
10 complaint is also available to members of
11 the public who call or visit the committee's
12 offices. Complaint forms are available in
13 English, Spanish, and Chinese.

14 It is important to note that the
15 purpose of attorney discipline is not to
16 mediate disputes between attorneys and
17 clients or to vindicate the rights of
18 complainants. Such matters can best be
19 handled by the court system. Generally fee
20 disputes, issues of legal strategy, and
21 single incidents of malpractice that might
22 be addressed in a civil matter do not
23 constitute misconduct. The Appellate
24 Division and the committee must devote its

1 limited resources to the limited remedial
2 options within its jurisdiction.

3 Pursuant to Section 90, Subdivision 10,
4 as Senator Sampson mentioned, of the
5 Judiciary Law, all materials concerning an
6 investigation or proceeding concerning an
7 attorney's conduct are sealed until the
8 Appellate Division issues a decision
9 sustaining charges of misconduct concerning
10 an attorney. When the Appellate Division
11 issues such a decision, the record of all of
12 the proceedings becomes public.

13 The Office of the Chief Counsel of the
14 Disciplinary Committee is staffed by 23
15 attorneys. The staff attorneys screen
16 complaints, investigate allegations of
17 misconduct, and prosecute cases at hearings.
18 As I have indicated, Mr. Alan Friedberg is
19 the chief counsel.

20 Here is the process by which a
21 complaint is handled. When a complaint is
22 received at the committee, it is immediately
23 assigned to a staff attorney to be screened.
24 Investigations may also be commenced by the

1 chief counsel on his own initiative, even in
2 the absence of a complaint from a third
3 party.

4 Since numerous attorneys have offices
5 in more than one location in the state, the
6 address that an attorney lists in
7 registering with the Office of Court
8 Administration determines which disciplinary
9 body exercises jurisdiction over that
10 attorney. Complaints against an attorney
11 who is registered at an address in another
12 judicial department are referred to the
13 appropriate disciplinary body. Accordingly,
14 each regional disciplinary agency is able to
15 keep a record of all complaints filed
16 against that attorney.

17 Complaints against judges are referred
18 to the Commission on Judicial Conduct; we
19 have no jurisdiction over them.

20 The staff attorney who screens the
21 complaint reviews the entire complaint,
22 including attachments, and may choose to
23 interview the complainant, obtain court
24 documents, or obtain documents or

1 information from the attorney who is the
2 subject of the complaint. If the staff
3 attorney believes the allegations are likely
4 to warrant formal charges, he or she refers
5 the matter to the chief counsel for
6 immediate assignment.

7 If the chief counsel concurs that the
8 allegations are likely to warrant formal
9 charges, the complaint is immediately
10 assigned to a staff attorney for
11 investigation, which may include obtaining a
12 written response from the respondent
13 attorney, scheduling testimony of the
14 respondent attorney or others, and obtaining
15 records, including court records and bank
16 records. All of them, we have subpoena
17 power to do that.

18 In cases where there's conclusive
19 evidence of serious misconduct or failure to
20 cooperate with the committee, the committee
21 is authorized to make an immediate motion to
22 seek an attorney's interim suspension during
23 the proceedings.

24 If the allegations appear less serious,

1 the screening attorney may determine to seek
2 the written response of the respondent
3 attorney. When that is obtained, it is sent
4 to the complainant, who is requested to
5 reply to the attorney's response. After
6 obtaining this information, the screening
7 staff attorney may recommend, in writing,
8 dismissal or assignment of the matter to a
9 staff attorney for further investigation.

10 Each recommendation is reviewed by the
11 chief counsel, who may determine to assign
12 the matter to a staff attorney for
13 investigation or recommend dismissal of the
14 complaint.

15 If the recommendation of the chief
16 counsel is to dismiss the complaint, the
17 chief counsel signs the recommendation
18 memorandum and the entire file, including
19 the memorandum, is sent to one of the 55
20 members of the Departmental Disciplinary
21 Committee who must approve the dismissal.

22 If the complainant seeks
23 reconsideration, the matter is sent to
24 another attorney committee member who must

1 also approve dismissal. And if there's
2 disagreement, we have procedures to deal
3 with that.

4 The committee members are appointed by
5 the Appellate Division and include
6 experienced practicing attorneys, former
7 prosecutors, and approximately one-third are
8 lay members.

9 CHAIRMAN SAMPSON: So this committee
10 that reviews it, they are appointed by
11 members of the disciplinary --

12 MR. GOLD: These are the members of
13 the committee, the disciplinary committee,
14 all of whom were appointed by the court.

15 CHAIRMAN SAMPSON: Okay.

16 MR. GOLD: The types of complaints
17 that are dismissed include those complaints
18 expressing general dissatisfaction with the
19 outcome of a case without an allegation of
20 specific misconduct by an attorney, a very
21 common kind of complaint. There's a losing
22 side in every litigation.

23 CHAIRMAN SAMPSON: We know that.
24 And, Mr. Gold, we're just trying to keep

1 everything within five minutes, because we
2 have quite a few --

3 MR. GOLD: Well, I'm going to the
4 heart of what you're asking about --

5 CHAIRMAN SAMPSON: Okay. If you can,
6 that would be great.

7 MR. GOLD: -- is how these things are
8 reviewed internally and what are our
9 procedures.

10 The committee has discretion to refer
11 action concerning possible misconduct by an
12 attorney until litigation in the court
13 system is concluded. The exercise of that
14 discretion is done on a case-by-case basis.

15 If the staff attorney determines that
16 the allegations do not constitute
17 misconduct, the screening attorney may
18 recommend that the complaint be rejected
19 without seeking a response from the
20 respondent attorney. In such a case the
21 screening attorney's written memorandum is
22 reviewed again by the chief counsel, who, if
23 he agrees with the recommendation, signs the
24 memorandum, and again the entire file is

1 sent to a committee member who must approve
2 the rejection.

3 Following an investigation, which may
4 include depositions, subpoenaed documents,
5 interviews, the attorney writes a memorandum
6 recommending action on the complaint. The
7 memorandum again must be approved by chief
8 counsel. If the recommendation is for
9 dismissal, the entire file again goes to a
10 committee member for approval. And again,
11 there's a procedure for reconsideration if
12 the complainant seeks such reconsideration.

13 If the recommendation is for a letter
14 of admonition or the filing of formal
15 charges, it must be approved by two separate
16 attorney members of the Policy Committee of
17 the committee, which is composed of nine
18 attorneys and three laypersons. The members
19 review a file; if two members approve an
20 admonition, a confidential admonition is
21 sent to the respondent attorney and the
22 complainant is notified.

23 An admonition, although private, is
24 considered discipline and may be used as

1 aggravation if further charges are filed
2 against the attorney. If two attorney
3 members of the Policy Committee, after
4 reviewing the file, approve charges, the
5 Appellate Division appoints a referee who
6 conducts a hearing, which is essentially a
7 trial. The rules of evidence apply.

8 The referee's recommendation is then
9 reviewed by a panel, usually of four members
10 of the Disciplinary Committee, who make a
11 recommendation to the Appellate Division as
12 to misconduct or possible action.

13 SENATOR PERKINS: Excuse me. Maybe
14 we can get to the balance of what you're
15 going to share with some questions that I
16 think are coming up.

17 MR. GOLD: Fine.

18 SENATOR PERKINS: For instance -- if
19 you don't mind, Mr. Chair -- I'm looking
20 sort of like for some statistical
21 information in terms of how many
22 complaints --

23 MR. GOLD: I'm coming to that, but
24 I'll --

1 SENATOR PERKINS: So I might as well
2 ask the question so you can get to it, and
3 that way we can try and have a conversation.

4 Because, you know, one of the wonderful
5 things, Mr. Chairman, is that this is such a
6 great turnout, there's a lot of folks here.
7 And it's going to take a lot of time, so --

8 MR. GOLD: Well, let me just jump to
9 the statistics that we have.

10 SENATOR PERKINS: Okay.

11 MR. GOLD: In 2008 the committee
12 received approximately 3300 complaints,
13 concerning attorneys. Five hundred
14 twenty-five of these were dismissed without
15 seeking responses from the respondent
16 attorney because these complaints did not
17 describe conduct that violated the rules
18 which the committee enforces. An additional
19 367 complaints were referred to other
20 disciplinary agencies, such as when a
21 complaint is made against an attorney in a
22 different department.

23 And also included in that number are
24 complaints against nonattorneys, such as the

1 unauthorized practice of law. Those things
2 we refer to the district attorney's office.

3 Of the remaining cases, responses are
4 sought and other forms of investigation are
5 commenced.

6 In 2008, 21 attorneys were disbarred
7 after hearings, that's after full hearings.
8 Eight attorneys submitted disciplinary
9 resignations, 22 attorneys were suspended,
10 and two were publicly censured. In
11 addition, approximately 1900 complaints were
12 dismissed by the committee and 58 attorneys
13 received private admonitions.

14 Now, I can say -- these are the 2008
15 statistics -- I've been a member of the
16 committee for quite some time, and I would
17 say that this was a representative year.

18 CHAIRMAN SAMPSON: That's usually
19 the -- that's the norm, or are there more
20 complaints, less complaints?

21 MR. GOLD: I think this is typical.

22 CHAIRMAN SAMPSON: Typical?

23 MR. GOLD: Mm-hmm. A typical kind of
24 a year.

1 CHAIRMAN SAMPSON: And when you were
2 talking about the issue, if there is a
3 question where, say, the staff attorney is
4 uncertain whether this rises to the level of
5 an attorney being disciplined, does he then
6 go speak to the chief counsel?

7 MR. GOLD: Absolutely. Each staff
8 attorney -- now, let me turn this one over
9 to Alan Friedberg, because he handles the
10 staff.

11 MR. FRIEDBERG: If there's any
12 question that there might be misconduct, we
13 would proceed with it.

14 But we get many complaints that are
15 just somebody who might have lost a criminal
16 or civil case and just said "I lost, and I'm
17 blaming it on my lawyer." If there's no
18 grounds for misconduct, then those are
19 rejected without seeking a response.

20 But in most cases we do seek the
21 response of the attorney, and then that
22 response, which we call an answer, is sent
23 to the complainant for what we call a reply.
24 And then when that comes in, we make a

1 determination in every case.

2 And that's 3300 to 3500 complaints a
3 year, I review them. And for any dismissal,
4 a committee member must review it, an
5 attorney committee member. And if
6 reconsideration is sought, a second attorney
7 committee member must review it.

8 For anything that may go to charges or
9 an admonition, two attorney Policy Committee
10 members must review it and approve.

11 CHAIRMAN SAMPSON: And dealing with
12 the -- and usually there's one staff
13 attorney who works on these complaints? Or,
14 I mean --

15 MR. FRIEDBERG: Well, almost all the
16 attorneys screen cases except for several of
17 the supervisors. So it's just randomly
18 given out to the next attorney. Our intake
19 people just give it out --

20 CHAIRMAN SAMPSON: How many cases do
21 they normally handle?

22 MR. FRIEDBERG: Well, they normally
23 have about 50 cases for -- not for
24 screening, for investigation. And they

1 probably would screen 3300 complaints
2 divided by 21 or 20 attorneys who are
3 screening, 150 a year, three a week, I'm
4 assuming.

5 Most of our staff is very experienced.
6 Many are former prosecutors.

7 MR. GOLD: Senator, let me just add
8 one thing. In cases where there's internal
9 disagreement or, say, the chief counsel in
10 his own mind looks at a case and says "This
11 one is kind of close, I don't know what we
12 ought to do," he'll take it to the chairman,
13 to Mr. Reardon.

14 Sometimes when Mr. Reardon looks at a
15 case, he says, "Let's bring this to the
16 whole Policy Committee."

17 CHAIRMAN SAMPSON: I gotcha. So if
18 there's a question such as that, it then
19 goes to the entire Policy Committee?

20 MR. GOLD: It could, yes.

21 CHAIRMAN SAMPSON: How many members
22 of the Policy Committee?

23 MR. FRIEDBERG: There's 12. All
24 appointed by the Appellate Division.

1 CHAIRMAN SAMPSON: And out of those
2 12 members, suppose you have a split? You
3 know, six say it doesn't rise to that level,
4 and the other six say it rises to a certain
5 level. What do we do in those instances?

6 MR. FRIEDBERG: That's theoretical.
7 It never really happens.

8 CHAIRMAN SAMPSON: Never really
9 happens.

10 MR. FRIEDBERG: If six people thought
11 it was misconduct, I'd have to say, well,
12 potentially it could be misconduct, and I'd
13 proceed. But generally it's fairly obvious.

14 CHAIRMAN SAMPSON: And most of the
15 cases that you see are usually mishandling
16 escrow or --

17 MR. FRIEDBERG: Well, most of the
18 complaints we get are neglect from the
19 clients.

20 Most of the serious cases that result
21 in serious charges involve financial
22 matters, particularly escrow. Although
23 escrow is not the biggest type of complaint,
24 it's the biggest type of complaint that

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perhaps results in serious penalty.

MR. GOLD: I should say that in the First Department, because of the nature of what goes on in the Island of Manhattan, we get an awful lot of very major complaints involving complicated financial issues. Sometimes -- we don't get too many of them, but we do get some of these cases which are very complex and involved. Sometimes they involve allegations of mishandling of funds in connection with estates or trusts or securities matters or things of that sort.

And we deal with all of those kinds of matters, and we have members of the Policy Committee who are skilled and experienced in mostly all of these areas.

Now, by the way, at the present time one of the issues that's facing us, which is very important to us, is immigration cases. We are very concerned that people who are coming into the United States and are here and are subject to the immigration litigation system, too many of them are being inadequately represented by counsel.

1 Now, we just handle one little aspect
2 of that. We're concerned when lawyers take
3 advantage of some of the vulnerable
4 population.

5 CHAIRMAN SAMPSON: No, I have seen
6 that. And you're correct about that, I have
7 seen that, especially with respect to my
8 constituencies; these individuals have paid
9 a considerable amount of money and it hasn't
10 gone anywhere.

11 MR. FRIEDBERG: Judge Katzman of the
12 Second Circuit has established a panel of
13 people from various fields who work in this,
14 and we're working very closely with that
15 panel. And we are very concerned about
16 people who take advantage of perhaps the
17 most vulnerable people around.

18 CHAIRMAN SAMPSON: Thank you very
19 much.

20 Senator DeFrancisco?

21 SENATOR DeFRANCISCO: No, thank you.

22 CHAIRMAN SAMPSON: Senator Perkins,
23 you had a question?

24 SENATOR PERKINS: Can you just give

1 us -- you just mentioned two major sources,
2 I guess, of complaints. One has to do with
3 the escrow accounts and the other one sort
4 of neglect.

5 MR. GOLD: Yes.

6 SENATOR PERKINS: Now, what falls
7 into sort of the neglect category?

8 MR. GOLD: Well, a typical kind of
9 neglect case, someone will write a letter
10 and say, "I hired a lawyer, I paid him
11 X thousand dollars as a retainer, and then I
12 couldn't get him on the telephone and he
13 didn't do anything for me." That's a
14 serious matter. That X thousands of dollars
15 is important to the client. Lawyers are not
16 supposed to neglect matters for clients.

17 And generally what we do with those is,
18 depending upon whether or not the client has
19 been adversely affected already by what's
20 happened -- I mean, if the statute of
21 limitations has run or something like
22 that -- we treat those as serious matters.

23 In the absence of something serious
24 having already happened, and certainly if

1 this is a first offense against that lawyer,
2 it would normally result in a letter of
3 admonition. So even though neglect is the
4 largest single category of matters that we
5 have, it's not often the most serious in
6 terms of the discipline.

7 The mishandling of client funds, a
8 client escrow account or maybe estate funds
9 or something like that, is probably the most
10 serious and comes with the way the court
11 deals with that --

12 SENATOR PERKINS: Would you say most
13 of your cases are in that area of the escrow
14 accounts?

15 MR. GOLD: No.

16 MR. FRIEDBERG: Not most, but many.

17 SENATOR PERKINS: But many.

18 MR. GOLD: Yes.

19 SENATOR PERKINS: Most would be in
20 the neglect categories?

21 MR. GOLD: Right.

22 SENATOR PERKINS: Let me ask two
23 quick other questions, just for the sake of
24 discussion.

1 Are these processes open, do they have
2 any transparencies? Or are these behind
3 closed doors, totally confidential?

4 MR. GOLD: They're absolutely closed.
5 Because of Section 90, Subdivision 10 of the
6 Judiciary Law, everything is confidential,
7 sealed, not subject to -- it's not available
8 to anybody in the public at all.

9 SENATOR PERKINS: The good news or
10 the bad news is it's sealed; right?

11 MR. GOLD: That's right. Unless and
12 until the Appellate Division orders public
13 discipline against the lawyer. That would
14 be either a censure, suspension or
15 disbarment. Until one of those happens, the
16 whole file is closed.

17 So for example -- and by the way, I'm
18 glad you asked that, Senator, because that's
19 important in terms of what's before you. We
20 get these complaints from complainants who
21 think that they've been injured, and we deal
22 with them fairly.

23 A complainant has a limited role in
24 terms of our proceedings. He's not like a

1 plaintiff in a civil litigation who's able
2 to prosecute a case by himself. He's more
3 like a complainant in a criminal matter who
4 refers things to a district attorney and
5 then watches to see what the district
6 attorney is going to do.

7 And if we decide to dismiss a matter,
8 we'll advise the complainant, our procedure
9 is to advise the complainant that we've done
10 that. But we don't tell them why, or we
11 don't tell them what we've discovered in our
12 investigation. We don't disclose anything
13 in our file to the complaint because we're
14 not permitted to.

15 CHAIRMAN SAMPSON: I think that's
16 understandable. A lot of people need to
17 understand that you're not permitted to
18 provide that information unless the
19 Appellate Division, if they choose to
20 suspend or admonish an individual, at that
21 point in time.

22 I think that this is a misunderstanding
23 that some people have, and I'm glad we were
24 able to clear it up to a certain extent at

1 this point in time.

2 MR. GOLD: Now, by the way, the
3 Appellate Division, I should add, with
4 respect to that point, has the legal
5 authority under Subdivision 10 to open the
6 file at any point with respect to any
7 particular matter.

8 CHAIRMAN SAMPSON: I think Senator
9 DeFrancisco has a question.

10 SENATOR DeFRANCISCO: Just very
11 quickly to follow up on that. I think that
12 was a great analogy, because I've heard some
13 complaints about these things are not open
14 to the public. But you're not a plaintiff,
15 you are someone referring to an agency, just
16 like a DA doesn't have to prosecute every
17 case if they don't think the evidence is
18 there or that the testimony is not
19 supportable by other facts that they learn.
20 And I think that's a big confusion in the
21 general public.

22 But one other question. What happens
23 if there's a complaint by somebody against
24 an attorney that's found to be unfounded?

1 Will that attorney at least get notice that
2 somebody's complaining about something under
3 those circumstances? Because no doubt that
4 person is unhappy. And wouldn't the
5 attorney at some point, after it's
6 dismissed, be entitled to know what the
7 complaint was?

8 MR. GOLD: Well, it depends upon the
9 time within the matter and the stage of the
10 matter and also the nature of what's
11 occurred.

12 As I indicated before, if a complaint
13 is filed and on its very face it doesn't set
14 forth any disciplinary matter, then the
15 respondent may not even be notified of this.
16 The complaint is simply dismissed on its
17 face, administratively, internally at the
18 commission, and the attorney, as far as
19 we're concerned, doesn't need to know that
20 anybody complained about them because as far
21 as we're concerned, they didn't complain
22 about them. You know? They didn't complain
23 about them with anything even close to
24 something.

1 It doesn't have to get to a very high
2 level before we'll send it to the respondent
3 and ask him for a response. That happens in
4 a substantial majority of cases.

5 MR. FRIEDBERG: Once the attorney
6 learns about it, obviously at the end of the
7 case we will notify them as to what
8 happened.

9 CHAIRMAN SAMPSON: Mr. Gold and
10 Mr. Friedberg, I want to thank you very much
11 for taking the time.

12 And the reason I let it extend over the
13 five minutes is because I really wanted them
14 to explain the procedures and the process
15 with respect to dealing with these
16 complaints.

17 Thank you very much.

18 MR. FRIEDBERG: We stand ready to
19 cooperate with you and answer any questions
20 today or any other day.

21 MR. GOLD: And we plan to stay here
22 for the day and be available to you in case
23 you have anything further you'd like to ask
24 us about.

1 CHAIRMAN SAMPSON: Thank you very
2 much, gentlemen.

3 MR. FRIEDBERG: Thank you for your
4 time.

5 CHAIRMAN SAMPSON: The next witness
6 is Christine C. Anderson, who used to be a
7 former employee with the First Department
8 Disciplinary Committee.

9 (Applause.)

10 CHAIRMAN SAMPSON: I think we should
11 try to keep our -- no need for applause,
12 ladies and gentlemen. We're just trying to
13 keep an orderly process and just keep it
14 moving.

15 Ms. Anderson, thank you very much.
16 We're going to try to keep it under five
17 minutes. We allowed them to go over just to
18 explain the process, to lay the groundwork.
19 Okay?

20 MS. ANDERSON: So you can just do
21 five?

22 CHAIRMAN SAMPSON: No problem,
23 Ms. Anderson. Thank you very much. We just
24 want to get to the -- we have your

1 statement, we've read it, we just want to
2 get to the heart. So we're going to be
3 jumping in and asking you questions.

4 MS. ANDERSON: Okay. I should also
5 start by saying that this statement is drawn
6 solely from allegations set forth in my
7 federal court complaint. It is therefore
8 comprised solely of publicly available
9 information, and it is fully in compliance
10 with the stipulation and order of
11 confidentiality entered on February 20,
12 2008, in my case and based on Judiciary Law
13 90.10.

14 CHAIRMAN SAMPSON: So basically we
15 want to make sure, presently you have a
16 case?

17 MS. ANDERSON: Yes, sir. Yes,
18 Senator.

19 I would be happy to take questions when
20 I have counsel present.

21 CHAIRMAN SAMPSON: No problem. But
22 just go ahead.

23 MS. ANDERSON: Okay. It has been
24 said that men can write perfect ethical

1 systems, but nevertheless they cannot stand
2 being watched when they go out at night.

3 And I think that to a large extent
4 that's the situation with the DDC. The DDC
5 is the Departmental Disciplinary Committee,
6 for which I used to work. I was a former
7 principal attorney there for six and a half
8 years.

9 I alleged that upon learning of the
10 DDC's pattern and practice of whitewashing
11 and routinely dismissing complaints leveled
12 against certain select attorneys -- to the
13 detriment of the public that the DDC is
14 duty-bound to serve -- I reported this
15 wrongdoing pursuant to my rights under the
16 First Amendment to the United States
17 Constitution and, importantly, my own
18 ethical obligations under the New York State
19 Code of Professional Responsibility.

20 In response, however, rather than
21 attempting to address and rectify the
22 problem, my supervisors embarked upon a
23 campaign of abuse and harassment of myself,
24 including a physical assault on myself by

1 the first deputy, Sherry Cohen.

2 CHAIRMAN SAMPSON: Ms. Anderson, we
3 understand that; I can read from your
4 factual statement. But I want to get down
5 to the factual background and issues with
6 respect to --

7 MS. ANDERSON: Well, I can give you
8 one example, sir.

9 CHAIRMAN SAMPSON: That's what I want
10 to get to, some examples.

11 MS. ANDERSON: Yes. I conducted an
12 intensive investigation of a case. My
13 caseload supervisor, Judith Stein, approved
14 it, and so did Thomas Cahill, who was then
15 the chief counsel. It was recommended for
16 charges, and then suddenly it was dismissed.

17 The complainant called me -- he
18 happened to be an attorney -- and asked me
19 how could something like this happen. I
20 requisitioned the file and found that it had
21 been completely gutted. What had been a
22 file which was almost 3 inches thick was
23 suddenly an inch, perhaps. All of my work
24 product was taken out, Verizon phone records

1 that I had subpoenaed were not there --

2 CHAIRMAN SAMPSON: This was an actual
3 case you worked on?

4 MS. ANDERSON: Yes, sir. Yes,
5 Senator.

6 CHAIRMAN SAMPSON: And the documents
7 were missing?

8 MS. ANDERSON: Yes, the documents
9 were missing.

10 Another such case which I refer to as
11 whitewashing was a case which was
12 intensively, again, investigated --

13 CHAIRMAN SAMPSON: When you say
14 "intensively investigated," what do you mean
15 by that?

16 MS. ANDERSON: Okay, I will bring in
17 the complainant -- maybe once, twice -- I'll
18 bring in witnesses, I will have a
19 deposition, I will subpoena documents. I
20 left no stone unturned. I had a reputation
21 as being thorough and conscientious.

22 In that case, it was recommended for an
23 admonition because we could not really prove
24 conversion. In fact, this was a case that

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many of my colleagues, at least four of my colleagues and I agreed that there probably had been conversion but we couldn't prove it. And so we had to just settle for an admonition.

Instead, Sherry Cohen came into my office holding the admonition in my hand and saying, "This is too harsh. I can't let it go to the Policy Committee because they may send it back for charges, and I can't tie up an attorney on a trial for six months."

And I replied, "That happens all the time." And she said: "No, I am going to rewrite this." And I said, "You cannot ethically and legally rewrite something to achieve a desired outcome. You cannot skew something to achieve that outcome."

Nevertheless, she said six months --

CHAIRMAN SAMPSON: Was this just in this one incident, or you discovered a pattern?

MS. ANDERSON: I discovered a pattern, and this is the second example I'm giving you.

1 CHAIRMAN SAMPSON: Okay.

2 MS. ANDERSON: Okay?

3 In any event, she took nine months to
4 rewrite it, and it went by under the radar.
5 And that is what I mean when I say cases are
6 whitewashed.

7 For example, another case that I had,
8 it was agreed by my caseload supervisor and
9 by Cahill that there were three elements.
10 And one of the elements was
11 misrepresentation to us, which is very
12 serious. Sherry Cohen looked at me very
13 earnestly and said: "Christine, you know
14 what happens if they lie to us. They can go
15 for charges. I don't see misrepresentation
16 here, I only see failure to pay a lien."

17 So she took the case from me and took
18 out the misrepresentation, and he got an
19 admonition purely for failing to pay a
20 medical lien. That is another example.

21 In any event, I think that you have a
22 good idea of how they -- from the prior
23 gentlemen. However, I have a recommendation
24 and --

1 SENATOR DeFRANCISCO: Excuse me one
2 moment, before you give the recommendation.
3 You've given us several instances in your
4 written remarks; you mention two here.

5 Over the six years that you were with
6 the organization, how many files did you
7 investigate?

8 MS. ANDERSON: That would be
9 difficult to tell you.

10 SENATOR DeFRANCISCO: Hundreds?
11 Tens?

12 MS. ANDERSON: Certainly hundreds,
13 yeah.

14 SENATOR DeFRANCISCO: And these
15 instances that you state in your written
16 remarks and here, are those the only
17 instances where you and your supervisor
18 differed?

19 MS. ANDERSON: No, there were others.
20 But those were some -- you wanted me to be
21 quick, so I just chose those. But there
22 were others, for example --

23 SENATOR DeFRANCISCO: What I'm trying
24 to determine here is obviously I think

1 anybody disagrees with their supervisor from
2 time to time. There's a substantial
3 difference between disagreement over a very
4 small percentage of the cases and
5 whitewashing and activities that are
6 improper that would justify recovery on a
7 lawsuit. And that's what I'm trying to
8 determine.

9 MS. ANDERSON: Well, I think you make
10 a very good point that you're not always
11 going to be in agreement on a case or how it
12 should be handled. I think you're perfectly
13 right about that.

14 And on certain occasions, rare
15 occasions, I would say yes, you know, that
16 part of it is not maybe strong enough. For
17 example, there was one where lack of
18 competence -- there is a disciplinary rule
19 about that. And I said, okay, then, let's
20 let that go. So that was -- in other words,
21 I understand being a professional and I
22 understand your question.

23 My one recommendation that I would like
24 to make, however, is on the last page, which

1 is I think that the Policy Committee should
2 be disbanded, for the simple reason that it
3 is rife with conflict.

4 As the gentleman before said, he is
5 with a large law firm and that they serve
6 without pay. It is not coincidental that on
7 one occasion at least, when one of their
8 partners' brother got into trouble, that it
9 was handled -- it was taken away from me and
10 handled very quickly and expedited to their
11 satisfaction.

12 I think that the Policy Committee is
13 actually in violation of Judiciary Law 90.10
14 because they are not --

15 (Scattered applause.)

16 CHAIRMAN SAMPSON: Ladies and
17 gentlemen, we can't -- please. Please hold
18 the applause.

19 SENATOR PERKINS: Can I ask a
20 question? Just so I'm clear, because (a)
21 you're saying that there's preferential
22 treatment in this decision-making, in this
23 process, that there are those who, because
24 of their stature or their connections, are

1 not prosecuted or investigated or whatever
2 the appropriate terminology is?

3 MS. ANDERSON: Or handled lightly.

4 SENATOR PERKINS: Or handled lightly.
5 I just want to be clear that that's what
6 you're saying.

7 MS. ANDERSON: Yes.

8 SENATOR PERKINS: Number two, if I
9 may, you also say that you were employed at
10 the DDC and you were subjected to various
11 acts of discrimination and harassment as a
12 result of your race.

13 So now are you saying that there's a
14 racial view in some of these cases as well,
15 or are you just saying that as it relates to
16 just your own particular relationship at the
17 agency?

18 MS. ANDERSON: My allegation is that
19 there was a pattern and remains a pattern of
20 discrimination against minorities at the
21 DDC.

22 (Scattered applause.)

23 CHAIRMAN SAMPSON: Ladies and
24 gentlemen, please. We don't need any

1 . applause.

2 MS. ANDERSON: For many years, for
3 example, there was not one minority
4 supervisor, although several of them were
5 competent.

6 Let me just finish the point, however,
7 if you don't mind.

8 If you are not an employee of the
9 court, you have no right under 90.10 to know
10 confidential information, which was just
11 testified to. And these members of the
12 Policy Committee are not employees of the
13 court. They're not employed by the court,
14 they're outsiders. And they have no part to
15 play, because it's a direct violation of
16 90.10.

17 SENATOR PERKINS: So again, you're
18 just saying that they should be employees of
19 the court in order to be a part of that
20 Policy Committee? Or are you suggesting
21 there should be no committee? I'm just
22 trying to --

23 MS. ANDERSON: The latter. The
24 latter. We don't need a Policy Committee.

1 The DA's office doesn't have a policy
2 committee; it relies on its staff and the
3 DA. You look at the U.S. Attorney's office,
4 they don't have a policy committee.

5 We -- I am no longer "we" -- the DDC
6 has its staff and the court. There is no
7 need for Big Brother.

8 Thank you.

9 CHAIRMAN SAMPSON: Hold the applause.
10 Senator DeFrancisco has a question to
11 ask you.

12 SENATOR DeFRANCISCO: Who appoints
13 the members of the Policy Committee?

14 MS. ANDERSON: They're appointed by
15 the court.

16 SENATOR DeFRANCISCO: Thank you.

17 CHAIRMAN SAMPSON: The majority of --
18 when you say there's 12 members, I think
19 there's 12 members on the Policy
20 Committee --

21 MS. ANDERSON: Twelve, yes.

22 CHAIRMAN SAMPSON: And the majority
23 of these 12 members come from big firms,
24 small firms?

1 MS. ANDERSON: Mostly large law
2 firms.

3 CHAIRMAN SAMPSON: Large law firms.
4 What are they, partners in large law firms?
5 When you say large --

6 MS. ANDERSON: Large law firms.

7 CHAIRMAN SAMPSON: Senator Perkins.

8 SENATOR PERKINS: So why were you
9 terminated?

10 MS. ANDERSON: I was terminated for
11 internal whistleblowing and harassed. I was
12 physically assaulted. When I reported that
13 to the court, I then asked to be removed
14 from contact with Sherry Cohen, who was the
15 assailant. I was refused to be removed from
16 her. I asked for an ethical wall --

17 CHAIRMAN SAMPSON: But that is an
18 issue that's being taken in a separate
19 litigation; am I correct? You have your own
20 litigation going against --

21 MS. ANDERSON: Oh, yes. Yes.

22 CHAIRMAN SAMPSON: Senator Perkins.

23 SENATOR PERKINS: Just one final --
24 what is the racial makeup of the committee?

1 MS. ANDERSON: Of the committee?

2 SENATOR PERKINS: Yeah, of the Policy
3 Committee.

4 MS. ANDERSON: I really don't know.
5 And very frankly, I don't want to know.

6 CHAIRMAN SAMPSON: Okay. Thank you
7 very much, Ms. Anderson.

8 MS. ANDERSON: Thank you, sir. Thank
9 you, gentlemen.

10 CHAIRMAN SAMPSON: The next witness
11 is Kevin McKeown, on behalf of the Fred
12 Goetz Trust.

13 Mr. Goetz, five minutes, thank you very
14 much. Go right ahead.

15 MR. McKEOWN: First of all, Senator,
16 my name is --

17 CHAIRMAN SAMPSON: Mr. McKeown, I'm
18 sorry. Mr. McKeown.

19 MR. McKEOWN: -- Kevin McKeown, and
20 I'm not reading a statement on behalf of the
21 Fred Goetz Trust. That is going to be
22 submitted at the subsequent hearing when
23 those 13 people will fly in from around the
24 country to testify before your great

1 committee.

2 I am here to read a 30-second statement
3 of my own and then --

4 CHAIRMAN SAMPSON: Perfect. I like
5 30 seconds.

6 MR. McKEOWN: -- and then I will
7 torture you, and then I will read a short
8 letter from a former judge of this state.

9 CHAIRMAN SAMPSON: You didn't submit
10 any testimony to us, did you?

11 MR. McKEOWN: Yes, I did.

12 CHAIRMAN SAMPSON: Okay. I guess we
13 do have it somewhere here. Okay.

14 MR. McKEOWN: Again, my name is Kevin
15 McKeown. I'm the proud member of various
16 organizations focusing on the restoration of
17 the trust the public should have in the
18 judicial branch of our government. The
19 organizations include Integrity in the
20 Courts, Expose Corrupt Courts, and the Frank
21 Brady Organization.

22 I believe the statewide attorney and
23 judicial ethics oversight structure is
24 corrupt, and I applaud this committee for

1 what can only be described as a heroic and
2 beginning step in returning a lost faith by
3 the public in this state court system.

4 I will say one thing today as I defer
5 my own personal experience to the next
6 hearing to be held in New York City. The
7 idea of having attorneys regulating
8 attorneys and attorney judges is laughable,
9 and today marks --

10 (Applause.)

11 CHAIRMAN SAMPSON: This is the last
12 time I'm going to ask. We're trying to
13 conduct an orderly, an orderly hearing here,
14 trying to get everybody's testimony in. If
15 this continues, I will definitely cut it
16 short and just end it. Okay? Thank you.

17 MR. McKEOWN: Senators, today marks
18 the beginning of a process in which the
19 public, attorneys, court employees and in
20 fact judges can have faith that the respect
21 that they should have in the integrity of
22 their courts will once again return to this
23 great state.

24 I'm going to now read a short letter

1 that was prepared -- Judge Philip Rogers
2 could not be here today; he had broken ribs.
3 However, Judge Rogers was one of three
4 judges of New York State that accompanied me
5 before a U.S. House Subcommittee on the
6 Judiciary a few months ago as it pertains to
7 the federal crimes we allege that are
8 ongoing within the New York State court
9 system.

10 CHAIRMAN SAMPSON: Could you
11 paraphrase it? I mean not read it, but
12 paraphrase it.

13 MR. MCKEOWN: It's very short. And
14 it's done to be read, Senator, if I may.

15 CHAIRMAN SAMPSON: Okay.

16 MR. MCKEOWN: "Dear Senator Sampson,
17 I am a 70-year-old former attorney and
18 village justice who practiced law in the
19 State of New York from October 16, 1968,
20 until being unjustly disbarred on May 31,
21 1999.

22 "I was the victim of a secret and
23 corrupt grievance process that lacks the
24 most elementary due-process constraints and

1 safeguards and was used as part of a
2 conspiracy by former business partners to
3 ruin me after our venture went bankrupt.

4 "I respectfully ask that this committee
5 propose legislation that will protect
6 victims such as myself from suffering the
7 loss of their law license and, as in my
8 case, all of their life choices as a result
9 of the totally corrupt attorney disciplinary
10 process managed and controlled by money,
11 favoritism, and cronyism.

12 "By way of background, I practiced law
13 in my home village of Patchogue, in Suffolk
14 County, for 30 years of my professional
15 life. From 1970 to 1994, I also served as
16 the Patchogue village justice. I was
17 elected to six consecutive four-year terms
18 by substantial majorities in each election,
19 by the people who knew me best from my days
20 as a Patchogue student. I served as the
21 chairman of the Patchogue-Medford School
22 Board Ethics Committee, president of the
23 Suffolk County Magistrates Association, and
24 as a director of the Suffolk County

1 Magistrates Association.

2 "In the end, however, my professional
3 standing was left in ruins and my status as
4 a member of the bar was taken from me by a
5 corrupt, secret, nontransparent disciplinary
6 system that places power in attorneys to
7 supervise their fellow lawyers. Are we to
8 believe that attorney supervision is too
9 complex, complicated or problematical to be
10 left to nonattorneys? Only lawyers drafting
11 the laws and regulations could foster such a
12 ridiculous concept.

13 "What we have had for years now is a
14 fatally flawed system where no one truly
15 watches the watchers who, according to
16 testimony of former and current staff,
17 regularly abuse the process they are paid to
18 administer. Clearly the lawyer-controlled
19 disciplinary committees must be replaced by
20 a new system, where nonattorneys who are
21 fully familiar with ethical problem-solving
22 review and adjudicate complaints concerning
23 lawyer conduct.

24 "No lawyer can or should be permitted

1 to sit in judgment of a fellow attorney. In
2 my case, people seeking to bring pressure on
3 me as a result of a failed business venture
4 sought to use the grievance process to
5 coerce a settlement payment from me and in
6 the end, as they themselves said on more
7 than one occasion, ruin me.

8 "My former partners and their allies
9 achieved their goal by using political and
10 other connections to move my disarmament
11 proceedings from Patchogue to Brooklyn.
12 Once removed to this location, exculpatory
13 evidence was ignored, perjured testimony was
14 accepted as true, basic due-process
15 protections were denied me, and false and
16 fraudulent accusations became the foundation
17 of the ruling against me.

18 "When my investigation was moved to
19 Brooklyn, I was warned that the fix was in,
20 and later events proved this to be true. I
21 believe I would still be serving the legal
22 community as an attorney had the ethics
23 process that was used against me simply been
24 more transparent. Instead, a secretive and

1 corrupted process intent on only ruining me
2 ended my life of public service.

3 "Transparency would have provided me
4 the opportunity to reveal the perjurious
5 testimony allowed against me. It was also
6 improper that my most basic right of due
7 process was denied, thus preventing the
8 vital testimony of various witnesses.

9 "Senator Sampson, I commend you and
10 your committee for holding these important
11 hearings on the attorney grievance process.
12 Based on my personal knowledge of other
13 cases similar to mine, I know that the most
14 elementary inquiry by this committee will
15 find that many others, both attorneys and
16 clients, have been wronged like me.

17 "I trust that these injustices will see
18 the light of day and permit the immediate
19 reinstatement of attorneys wrongly
20 disbarred. I am also hopeful that needed
21 changes will include systemwide transparency
22 and the providing of due process to those
23 accused."

24 CHAIRMAN SAMPSON: Mr. McKeown, we

1 have the letter here, and definitely there's
2 only one paragraph left. But as you heard
3 earlier from Mr. Gold and also
4 Mr. Friedberg, these processes under law
5 have to be done in those certain
6 circumstances, you know. So, I mean --

7 MR. McKEOWN: If I may address that,
8 Senator Sampson, I have the pleasure of
9 actually having personal interaction, so I'm
10 waiving confidentiality. I have personal
11 interaction with Mr. Friedberg and with
12 Mr. Gold. I presented evidence that I was
13 threatened by Mr. Friedberg.

14 And although I was called in by the
15 U.S. Attorney's Office and the FBI and the
16 referral in Washington, D.C., to the United
17 States Justice Department, although they all
18 found it very interesting and are currently
19 looking at it, Mr. Friedberg and Mr. Reardon
20 and Mr. Gold have done what they have
21 summarily done, and that is get rid of it.

22 Senator Sampson, the documentation, I
23 assert, is there. And I will tell you that
24 at your next hearing, as a member of the

1 various organizations, we will present to
2 you at your New York City hearing over 100
3 documented cases of the most ludicrous and
4 slipshod investigations resulting in what we
5 believe is a gross pattern of misconduct by
6 the ethics committees themselves.

7 CHAIRMAN SAMPSON: I mean, that's
8 something we're interested in.

9 Senator DeFrancisco has a couple of
10 questions for you.

11 SENATOR DeFRANCISCO: Who do you
12 represent?

13 MR. McKEOWN: Myself. And the three
14 organizations that I mentioned.

15 SENATOR DeFRANCISCO: When you're
16 talking about the FBI and the U.S. Attorney
17 and all that, was that about a personal file
18 pertaining to you or is it for this judge
19 that you read the letter for? I'm trying to
20 figure out --

21 MR. McKEOWN: Well, actually, that
22 judge had nothing to do with the FBI.

23 However, I will tell you when I was
24 called into the FBI at 26 Federal Plaza,

1 that we had become a lightning rod for
2 literally the worldwide collection of people
3 that have been harmed by these so-called
4 ethics committees. And they asked me to
5 bring in my four outrageous cases, and I
6 went in there.

7 Now, before, a group of us, which
8 includes former federal prosecutors,
9 attorneys, et cetera, we would go through
10 the evidence before we presented it to the
11 FBI. We went out, pulled case studies --
12 whether it was a judge, a lawyer, a
13 disbarred lawyer, or a litigant, we would
14 pull the case files and see for ourselves
15 what the documentation said.

16 Based on that, the FBI asked for four
17 specific -- the four worst cases. And then
18 in other circumstances where the U.S.
19 Attorney's office, where certain information
20 has come to light where they have then said
21 we want to interview those people.

22 SENATOR DeFRANCISCO: I am totally
23 confused. I just asked you the cases that
24 you went to the FBI about, were those

1 personal cases that you were called in on or
2 were they people that you were representing
3 that somehow got in the federal criminal
4 system.

5 MR. McKEOWN: They were -- the
6 organizations that I'm a member of, to
7 answer your question, as a member of that
8 organization, we brought those cases when
9 asked to these federal entities.

10 SENATOR DeFRANCISCO: All right, so
11 you weren't brought into the FBI, you were
12 seeking the FBI to look into these. Is that
13 what you're saying?

14 MR. McKEOWN: Well, the U.S.
15 Attorney's office told us. The FBI, in one
16 instance we called them; in another instance
17 they called us. And actually there's a new
18 inquiry in another --

19 SENATOR DeFRANCISCO: So this wasn't
20 something that -- this is something you
21 wanted to have done to explain all this to
22 the federal investigators, the U.S. Attorney
23 and the like; correct?

24 MR. McKEOWN: Absolutely.

1 SENATOR DeFRANCISCO: Okay. In
2 addition, last point -- I think -- you had
3 indicated that it should not be attorneys
4 who are reviewing these particular cases, it
5 should be laypeople. And the laypeople
6 would then make determinations concerning
7 fraud, concerning due process, concerning
8 whatever it may be.

9 How would they gain the expertise in
10 those areas as to what the disciplinary
11 rules are and the like? Would they have to
12 have any qualifications that you would
13 presume that attorneys would have?

14 MR. McKEOWN: Senator, that's a very
15 good question. And --

16 SENATOR DeFRANCISCO: That's why I
17 asked it.

18 MR. McKEOWN: -- of course they would
19 have to be guided by what the laws are, what
20 the procedures are.

21 I ask you, do we want bankers
22 self-regulating? That doesn't work. Do we
23 want Wall Street self-regulating? We know
24 that doesn't work.

1 CHAIRMAN SAMPSON: What you're saying
2 is basically, you know, lawyers can't
3 regulate attorneys.

4 I mean, you have very reputable and
5 ethical attorneys who we put in these
6 positions to make that decision. You know,
7 there might be an aberration here or there,
8 but I don't see it as a problem having a
9 panel of -- having a panel of attorneys,
10 based upon their background and everything
11 else, making decisions such as that.

12 But if there is, as you're saying, when
13 you present cases to me where I see
14 discrepancies and issues, that's why we're
15 having this hearing, so we can get to the
16 bottom line of these things, all these
17 allegations and these conspiracy issues. We
18 want to get to the bottom line, and that's
19 why we're asking for specific instances, so
20 we can look for ourselves and, based upon
21 those recommendations, make a determination.

22 MR. McKEOWN: Absolutely, Senator.
23 And again, that is a very good point. And
24 obviously you need attorney input because

1 attorneys are versed on the law. But it
2 brings up the bigger issue of people
3 self-regulating.

4 CHAIRMAN SAMPSON: Understood.

5 MR. McKEOWN: If an attorney is named
6 John Doe and he has been convicted of a
7 federal crime and goes to federal prison and
8 does time, will he get his law license back?
9 That's a question.

10 Of course we all know that there was a
11 chief judge of this state who was convicted
12 of a federal crime who went to federal
13 prison and got his law license back.

14 What this comes down to, Senator, is
15 equality.

16 CHAIRMAN SAMPSON: Understood.

17 MR. McKEOWN: And I would much rather
18 handle a complaint that said the person's
19 name was John Doe rather than a certain
20 person who that name triggers favoritism and
21 unequal treatment. That's what it all comes
22 down to.

23 CHAIRMAN SAMPSON: Senator Perkins.

24 SENATOR PERKINS: So do you believe

1 that there is favoritism in the process, as
2 was pointed out by the speaker before you?
3 Do you think that those who are big shots or
4 who have connections or some other such
5 credentials are getting treated with kid
6 gloves and favoritism?

7 MR. McKEOWN: Yes, Senator. In fact,
8 I'll go so far as to say that it is embedded
9 in the four statewide grievance committees,
10 and I say under the four departments.

11 We have heard from state attorneys,
12 judges, attorneys, retired judges from all
13 over the state. If you're a prisoner and
14 you file a complaint with an ethics
15 committee, don't you dare think that it's
16 going to be handled properly. Just because
17 you're a prisoner automatically puts you to
18 the bottom of the list at every one of the
19 four ethics departments in this state.
20 There's the presumption that if you're in
21 jail, you could not have been wronged by an
22 attorney.

23 And, Senators, that's wrong. That is
24 totally wrong. And that's -- we can't wait

1 to get a stack of the 100 complaints that we
2 have from the beautiful people of Brooklyn,
3 Queens, Staten Island and Harlem alone who
4 couldn't make it up here today.

5 CHAIRMAN SAMPSON: So, Mr. McKeown,
6 we're looking forward to that. Thank you
7 very much for your testimony. And we look
8 forward to getting those documentations in
9 at our next hearing.

10 MR. MCKEOWN: Thank you, Senators.

11 CHAIRMAN SAMPSON: Thank you very
12 much.

13 The next witness is Robert Tembeckjian,
14 counsel for the New York State Commission on
15 Judicial Conduct, and the Honorable Judge
16 Thomas Klonick, chair of the Commission on
17 Judicial Conduct.

18 Just to make a note of it, we also have
19 representatives -- who are not going to
20 speak -- from the Second, Third and Fourth
21 Department Disciplinary Committees.

22 Thank you very much. Your Honor, good
23 morning.

24 JUDGE KLONICK: Good morning,

1 Mr. Chairman, members of the Judiciary
2 Committee. Thank you for this opportunity.

3 I am Thomas Klonick. I'm an attorney
4 and a part-time town justice from Monroe
5 County. I'm chair of the Commission on
6 Judicial Conduct. I was appointed to the
7 Commission on Judicial Conduct to a
8 four-year term by Judge Judith Kaye in 2005,
9 reappointed by Judge Jonathan Lippman just
10 earlier this year.

11 I am here today with the commission's
12 administrator, Robert Tembeckjian, whom I
13 believe you already know.

14 The commission is pleased to
15 participate in this hearing, which should
16 shed further light on our constitutional
17 mission and how we operate.

18 As you stated earlier, Senator, but I
19 will just briefly review, the commission is
20 comprised of four judges, five lawyers, two
21 law people appointed by the Governor, the
22 Chief Judge, and the four leaders of the
23 Legislature.

24 The commission operates under a very

1 rigorous system of internal checks and
2 balances that has been emulated by other
3 states to assure that all complaints are
4 treated seriously and fairly. For example,
5 the commission members, the 11 commission
6 members view and act upon every complaint
7 that comes into the agency. Last year that
8 was a record number, 1,923, or more than 275
9 complaints every seven weeks.

10 While the administrative staff conducts
11 the investigation, the administrator reports
12 to us regularly on the progress of each
13 investigation. At the conclusion of the
14 investigation, it requires a quorum of eight
15 members of the 11 and the concurrence of six
16 commission members to serve a judge with
17 formal disciplinary charges.

18 The administrative staff prosecutes a
19 case; an impartial referee presides over the
20 hearing and files a report with the
21 commission. The commission then, aided by
22 its own law clerk, adjudicates the matter,
23 subject to review ultimately by the Court of
24 Appeals if requested by the disciplined

1 judge.

2 I believe you have the statement
3 submitted by the commission today outlining
4 the processes and procedures. And after a
5 few remarks by Mr. Tembeckjian, we will be
6 happy to answer any questions. Thank you.

7 CHAIRMAN SAMPSON: Thank you very
8 much, Your Honor.

9 Mr. Tembeckjian, I'm sorry I butchered
10 your name earlier. I apologize.

11 MR. TEMBECKJIAN: Thank you. Thank
12 you, Senator.

13 You have a rather extensive description
14 of our process and procedures. I'd like to
15 just highlight three points in these brief
16 remarks before we take your questions, three
17 very important features of the commission
18 system.

19 The first is the independence of the
20 commission itself. It's created by the
21 State Constitution, various appointing
22 authorities, no one of whom controls a
23 majority of appointments. And the
24 commission elects its own chair and it hires

1 its own administrator to manage, as the
2 chief executive officer, the day-to-day
3 operations of the agency.

4 The balance of judges, lawyers, and
5 laypeople is something that assures that all
6 relevant representatives or features of our
7 pluralistic society are represented in the
8 commission process. We are, after all,
9 talking about disciplining members of an
10 independent branch of government.

11 I happen to be only the second chief
12 executive officer that the commission has
13 had in over 30 years, which has provided an
14 extraordinary stability. And the commission
15 model is one that has not only been emulated
16 by other states but I think is one that is
17 worthy of emulation by other state ethics
18 entities throughout New York.

19 Secondly, the commission really plays
20 two roles apart from its own structural
21 independence. It's responsible, obviously,
22 for disciplining those judges who commit
23 ethical misconduct, but it's also
24 responsible for protecting the independence

1 of the judiciary so that judges can decide
2 cases fairly, impartially, as they see and
3 hear them, without undue outside influences.
4 And that's a very important dual role.

5 CHAIRMAN SAMPSON: Let me ask you a
6 question, Mr. Tembeckjian. These
7 proceedings are private or open to the
8 public?

9 MR. TEMBECKJIAN: All commission
10 proceedings, under law, are confidential.
11 It wasn't always that way. In 1978 the law
12 changed. Prior to that, once the -- all
13 investigations, as with a grand jury, were
14 always confidential. But prior to 1978,
15 once the commission authorized formal
16 disciplinary charges against a judge, the
17 process then became open. The charges, the
18 answer, the hearings and so forth were
19 open --

20 CHAIRMAN SAMPSON: Once they were
21 formally charges, you said?

22 MR. TEMBECKJIAN: Yes. Once
23 reasonable cause has been found to go
24 forward with a formal disciplinary process,

1 so after the investigation is over, the
2 commission concludes a reasonable basis that
3 discipline may be justified here, a quorum
4 of eight members, the concurrence of six is
5 required, they vote formal charges. Up
6 until 1978, that process then became public.

7 And the commission's position
8 consistently since then has been that it
9 should be made public at that stage. We
10 were opposed in '78 to the change in the
11 law. And since then, on occasion, the
12 Legislature has taken up the issue, but it
13 has never adopted, in both houses in the
14 same session, the open hearings provision.

15 CHAIRMAN SAMPSON: What would be your
16 position today?

17 MR. TEMBECKJIAN: Oh, the
18 commission's position has consistently been
19 that the law up till 1978 was appropriate
20 and that these hearings should be public
21 once probable or reasonable cause has been
22 found.

23 And opening up that disciplinary
24 process to the public I think would go a

1 long way to dispelling a lot of the
2 misconceptions about how the commission
3 operates and how it makes its decisions.

4 CHAIRMAN SAMPSON: That's a good
5 idea.

6 MR. TEMBECKJIAN: Senator Perkins
7 looks like he's about to ask me a question.

8 SENATOR PERKINS: So you think the
9 law should be changed?

10 MR. TEMBECKJIAN: Yes. The
11 commission has advocated that any number of
12 times, and consistently over the last 30
13 years.

14 SENATOR PERKINS: So you've heard
15 some of the concerns of prior witnesses. I
16 believe that I saw you here. And though I
17 know you're really dealing with judges for
18 the most part, I just also want to get a
19 sense of how you might, if at all, relate to
20 some of the criticisms that have been shared
21 already.

22 MR. TEMBECKJIAN: Well, I haven't
23 yet, although I believe I will later this
24 afternoon, hear some criticisms of the

1 commission's operation. That's really the
2 only agency that I'm comfortable speaking
3 for and about at these proceedings, and
4 really the only one that I'm authorized to.

5 SENATOR PERKINS: Okay. Thank you.
6 Just wanted to check.

7 MR. TEMBECKJIAN: So that dual role
8 of disciplining those judges where it's
9 appropriate and protecting the independence
10 of the judiciary by absorbing a lot of the
11 unfounded criticism that may be reflected in
12 some of what you hear today and that I know
13 has been submitted to you on other
14 occasions -- and at other hearings that this
15 committee has held over the years -- is
16 really part of what we do.

17 But the suggestion that may, I think,
18 mistakenly be left that the commission is
19 inactive by some of its critics is really
20 not borne out by the facts. We've handled
21 approximately 40,000 complaints in the last
22 30 years, which is by far more than any
23 other state, even those that have equivalent
24 numbers of judges as New York. The

1 commission has publicly disciplined
2 approximately 700 judges and confidentially
3 cautioned about 1200.

4 The vast majority of our complaints are
5 dismissed. But every single one of them
6 gets treated individually and gets seen by
7 the full commission. We conduct preliminary
8 reviews and inquiries, about 350 or more a
9 year. Full-fledged investigations, last
10 year a near record number, 262.

11 CHAIRMAN SAMPSON: Mr. Tembeckjian,
12 when you talk about these investigations,
13 these are mostly complaint-driven? Or at
14 times does the commission themselves, which
15 I know they have the authority to, look into
16 certain situations?

17 MR. TEMBECKJIAN: The commission
18 itself has the authority, and it does quite
19 actively initiate inquiries on its own.

20 CHAIRMAN SAMPSON: How would you do
21 that -- you know, like on your own, make a
22 determination, well, you know, I don't like
23 what this judge is doing? Or how do you
24 come about getting to that point?

1 MR. TEMBECKJIAN: It's never "I don't
2 like what this judge is doing," certainly
3 not on the bench.

4 But, for example, if we read in the
5 newspaper about a judge who has been
6 intemperate or whose conflict of interest
7 has been reported, the staff will bring that
8 article to the commission's attention and it
9 will ask the commission for an authorization
10 to investigate. The full commission has to
11 do that.

12 That was literally what happened on a
13 case involving a judge in Niagara County
14 that you might recall who had incarcerated
15 over 40 people because a cellphone went off
16 in the courtroom and the judge couldn't
17 identify whose cellphone it was. So 46
18 defendants were called up one by one, and as
19 each one denied that it was his phone, they
20 were remanded. That was something we read
21 about in the newspaper. It was not the
22 result of an individual complaint.

23 We brought it to the commission's
24 attention, they authorized investigation, we

1 reviewed the matter, charges were
2 authorized, the judge was removed by the
3 commission, took it up to the Court of
4 Appeals, which unanimously upheld that
5 decision.

6 So the process is quite sophisticated,
7 but where we get that information, we move
8 forward.

9 CHAIRMAN SAMPSON: So once you get
10 that information, it then goes to the
11 commission?

12 MR. TEMBECKJIAN: Yes. Under the
13 law, it's the commission that has the
14 authority to investigate or to discipline.
15 The staff can recommend, but the commission
16 actually makes the disposition.

17 And so we are not screening out
18 material or information that complainants
19 send to us because we might have a
20 predisposition or we might dislike or we
21 might not credit the complainant. We will
22 analyze, review, conduct some preliminary
23 inquiries, forward it to the entire
24 commission, which will then decide whether

1 or not we should go forward.

2 CHAIRMAN SAMPSON: And I know Senator
3 DeFrancisco just noted that you were able to
4 get additional monies to help you clear up
5 some of the backlog that existed maybe a few
6 years ago.

7 MR. TEMBECKJIAN: Yes, thanks in huge
8 part to this committee and to Senator
9 DeFrancisco's leadership.

10 For about 20 years we were grossly
11 underfunded. As our complaints and workload
12 were expanding, our staff was reduced to as
13 few as 20 statewide, and in real dollars, we
14 had lost substantial resources. But this
15 committee two years ago held hearings on the
16 subject, of the commission, of the town and
17 village court system, and one of the
18 beneficial results was that the Legislature
19 made a substantial increase that this
20 committee championed for the commission's
21 resources to meet the growing needs.

22 CHAIRMAN SAMPSON: When you say
23 investigators, who does the investigating?
24 Do you have attorneys or do you have private

1 people, investigators?

2 MR. TEMBECKJIAN: We have attorneys
3 and investigators on staff. And every
4 complaint that is going to be investigated
5 is actually assigned to an attorney, and
6 that attorney works with an investigator to
7 interview witnesses, to make field visits,
8 to analyze court records, to try to get to
9 the bottom of whether the allegation of
10 misconduct is actually established.

11 And then we will present progress
12 reports along the way, and then a final
13 report to the full commission, as Judge
14 Klonick indicated, and then that full
15 commission will decide whether to
16 confidentially caution the judge or
17 authorize formal charges or, if the
18 complaint is unfounded, to dismiss.

19 And that's really where our role in
20 protecting the independence of the judiciary
21 comes in. Because we absorb a lot of the
22 complaints and criticisms that judges might
23 otherwise get from complainants who are
24 essentially unhappy with the results of a

1 case. And rather than inhibit the judiciary
2 with having to answer to all of those, we
3 preliminarily inquire, we deal directly with
4 the complainant, and if it's determined not
5 to be founded, we don't go forward.

6 And we take a lot of the heat, but that
7 goes with the territory of what it is that
8 we do.

9 CHAIRMAN SAMPSON: And if in fact if
10 a judge is being elevated to, say, the
11 Appellate Division, Court of Appeals,
12 whatever it is, does the commission -- do
13 those committees request from the commission
14 if there are any complaints, anything lodged
15 against these judges? Or do you come forth
16 with it? How does that work?

17 MR. TEMBECKJIAN: Yes. If any judge
18 who is subject to Senate confirmation or
19 appointment by the Governor without Senate
20 confirmation or is running for election and
21 is going before a screening committee, they
22 are required to submit a waiver of
23 confidentiality so that the commission, when
24 presented with that waiver, will give to the

1 screening entity not only the record of
2 public action that's been taken but any
3 confidential cautions, any adverse
4 confidential dispositions against that
5 judge.

6 So those committees have it, without
7 mentioning names, when the Commission on
8 Judicial Nomination provides us with those
9 waivers, when the Governor's screening
10 committee for Court of Claims or Appellate
11 Divisions provides us with those waivers, we
12 provide not only the public record but also
13 any confidential adverse dispositions that
14 were made against the judge to that body.

15 CHAIRMAN SAMPSON: And does the
16 commission keep records in instances where,
17 you know, against judges where it has been
18 dismissed but, you know, you see a pattern
19 of increased complaints with respect to
20 judges? Do you have an opportunity to refer
21 back? Or do you just -- once it's
22 dismissed, are they sealed or do you have an
23 opportunity to go back to look to see if
24 there's a pattern being created?

1 MR. TEMBECKJIAN: We have an
2 opportunity to go back and look at a
3 pattern, subject to the State Administrative
4 Procedures Act regarding the disposition of
5 records.

6 But for example, if a subsequent
7 complaint comes in alleging new information
8 or a new perspective on a previously
9 dismissed complaint that was not disposed of
10 on the merits after a hearing but was deemed
11 not to have shown sufficient merit on its
12 face to be investigated, we can go back and
13 reexamine whether or not the appropriate
14 disposition was made in the first instance.

15 But I must say that that's very rare.
16 Because if a type of misconduct is part of a
17 pattern or practice, it's usually alleged
18 up-front, and we have the opportunity then
19 to go in, for example, sit in on the court
20 to observe whether the judge is intemperate
21 on a frequent or an infrequent basis, if
22 that's the complaint that's been made.

23 It's very rare for someone to say the
24 judge is intemperate and not allege, if it

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

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 MS. CARVEL: But I think it's a
2 significant effort at preserving our
3 aspiring democracy, because what's going on
4 Surrogate's Court, which is where my
5 connection to the Office of Court
6 Administration and the DDC and the other
7 disciplinary committees comes from, is
8 nothing less than a criminal enterprise.

9 You don't have to take my word for it,
10 because one of the lawyers that I hired
11 actually wrote an article in the New York
12 Law Journal, and I've attached that for you.
13 Eve Markewich, who I hired to help me
14 recover money stolen by the controlling
15 shareholders of Hudson Valley Bank, wrote an
16 article in the *New York Law Journal*
17 detailing all of the gross violations of
18 ethics that went into railroading my aunt so
19 that in her whole lifetime she received
20 nothing of benefit after my uncle died.

21 In 1990 my uncle, the week before he
22 died, said there was \$250 million in the
23 family. He called me and asked me to come
24 back from China, where I was acting as a

1 fraud investigator, to be able to help him
2 discover where \$100 million had gone
3 missing.

4 On the Saturday before his death, he
5 had told people that he was going fire the
6 two employees, a lawyer and his secretary,
7 that he felt were responsible. He was found
8 dead on Sunday. And on Monday morning the
9 culprits, who were agents of Hudson Valley
10 Bank that held the money and that has been
11 the recipient of all of the money since
12 1990, they were in control of everything.

13 Just recently I've discovered that my
14 uncle's death certificate was forged, that
15 the information on it was falsified to avoid
16 an autopsy. And I will be trying to exhume
17 his body to see if he was murdered in order
18 to set in motion this criminal enterprise
19 that is a pattern in Surrogate's Court.

20 No efforts to bring these things before
21 the Office of Court Administration have
22 worked in any of the cases that I've
23 investigated other than our own.

24 Hudson Valley Bank paid Surrogate

1 Scarpino \$100,000 during his election. Just
2 prior to the trials in my uncle's estate,
3 they paid Surrogate Scarpino \$200,000 as an
4 alleged loan. And just prior to the trials
5 in my aunt's estate, they paid Surrogate
6 Scarpino another \$100,000.

7 CHAIRMAN SAMPSON: These issues, did
8 you raise them with the --

9 MS. CARVEL: Raised them with the
10 Office of Court Administration --

11 CHAIRMAN SAMPSON: When you say the
12 Office of Court Administration, you mean the
13 Commission --

14 MS. CARVEL: I'm sorry, the
15 Commission on Judicial Conduct.

16 CHAIRMAN SAMPSON: When did you do
17 this? When was this?

18 MS. CARVEL: It was probably -- I
19 discovered it in 2007, so it was probably
20 2007, 2008.

21 CHAIRMAN SAMPSON: So what has
22 happened since then?

23 MS. CARVEL: They said they didn't
24 find a problem with Scarpino not only

1 receiving money from Hudson Valley Bank but
2 allowing Hudson Valley Bank's controlling
3 shareholder to receive all of the assets
4 from my uncle's estate, and to allow him to
5 appear before Scarpino as a witness without
6 ever disclosing that there were financial
7 arrangements between Hudson Valley Bank and
8 Judge Scarpino.

9 CHAIRMAN SAMPSON: And you raised
10 this to the Commission on Judicial Conduct?

11 MS. CARVEL: Raised it to the
12 Commission on Judicial Conduct. They asked
13 for documentation. I gave them full
14 documentation. They found absolutely
15 nothing wrong with that.

16 CHAIRMAN SAMPSON: Since
17 Mr. Tembeckjian is here, before this is
18 over, we'll -- I will raise that issue.

19 MS. CARVEL: All right. I also, in
20 the course of investigating, found out that
21 the controlling shareholder of Hudson Valley
22 Bank, William Griffin, was given control of
23 all of my aunt's real estate, which
24 consisted -- part of it was 19 acres in

1 Ardsley, New York, which is a very expensive
2 area.

3 Griffin was allowed to flip that
4 property to himself through Hudson Valley
5 Bank, through one of his former law
6 partners' brothers. In other words, Griffin
7 signed the property over and then the
8 property came back to Griffin as Hudson
9 Valley Bank. And the whole proceeding took
10 place for \$2 million on paper that never
11 changed hands, and the property is worth
12 \$10 million or more.

13 I brought that to the attention of
14 Surrogate Scarpino, and Surrogate Scarpino
15 again found there was no problem because of
16 the dealing being done by William Griffin,
17 who was responsible for paying Surrogate
18 Scarpino at least \$400,000.

19 Part of the problem with the whole
20 system of -- by the way, I also filed a
21 complaint against Eve Markewich for knowing
22 about all of these violations. Eve
23 Markewich, who I hired on behalf of my
24 aunt's estate, betrayed any representation

1 for us on the promise that William Griffin
2 would pay her \$4 million, allow her to be
3 paid \$4 million in legal fees -- which she
4 has been paid, I understand. And when I
5 filed the complaint with the Commission on
6 Judicial Conduct on her lack of
7 representation, her betrayal of the purposes
8 for which she was hired, and also her
9 complete knowledge of ethical violations by
10 other attorneys, that she refused -- not
11 only did she refuse to tell me about them,
12 but she refused to take any action herself,
13 which was her duty as a lawyer.

14 It came back, the decision came back
15 that her problems would be sorted out in the
16 legal lawsuit. Well, there was no legal
17 lawsuit pending between me and Eve
18 Markewich, and there was no venue for that
19 to be handled at all. So whether they
20 investigated or not, I don't know. She put
21 in a response, and her response was this is
22 going to be handled in litigation. But
23 there was no litigation.

24 There is --

1 CHAIRMAN SAMPSON: That complaint
2 that you put, was that in the First
3 Department?

4 MS. CARVEL: That was the -- for
5 Manhattan. It was the First Department.

6 I put in a similar complaint with one
7 of Eve Markewich's fellow attorneys, Frank
8 Streng, who didn't tell me that he was
9 employed by the judge. He was also an
10 attorney of mine, was supposed to represent
11 me. He converted approximately a million
12 dollars that I paid him and then took
13 another million from the estate.

14 Complaints were filed against him, and
15 I was informed that he has a law partner --
16 one of his law partners is on the commission
17 in Westchester, and that nothing would be
18 done. And the same answer came back on that
19 thing, that it would be handled in
20 litigation. But again, there was no
21 litigation in which Frank Streng's ethics
22 were part of the litigation. There was
23 no -- actually, at that time there was no
24 litigation involving Frank Streng at all.

1 The whole system -- and I call it a
2 criminal enterprise, because the exact
3 tactics being used are in the New York State
4 Penal Code: coercion, larceny, conspiracy.
5 These are all being operated out of the
6 court, out of the Surrogate's Court, and in
7 particular Westchester. But I know it's
8 happening in Manhattan, it's happening in
9 Dutchess. And they're using a one-sided
10 system of favoritism.

11 My aunt and I, as fiduciaries, should
12 have had equal access to indemnification as
13 all the other fiduciaries. We were the only
14 two fiduciaries denied indemnification
15 because we were the only two working with
16 law enforcement. All the others were paid
17 completely.

18 As long as my aunt lived, she never
19 received a penny from my uncle's estate.
20 But Hudson Valley Bank controls \$150 million
21 of Carvel money that my aunt was the sole
22 beneficiary of.

23 CHAIRMAN SAMPSON: They still control
24 it?

1 MS. CARVEL: It's all been given to
2 them. Over the last 10 years, by Surrogate
3 Scarpino, all of the money in my uncle's
4 estate and in my aunt's estate has been
5 passed over to Hudson Valley Bank. Without
6 notice to the named beneficiaries, without
7 notice to the creditors. Without court
8 approval, assets have been disposed of that
9 were supposed to be in constructive trust.
10 None of these things have fazed the judicial
11 commission.

12 CHAIRMAN SAMPSON: I think, since we
13 still have Mr. Tembeckjian here, this is
14 something, I'll ask staff, maybe I may want
15 to look a little further into something like
16 this.

17 So if you have time maybe before the
18 end of today, maybe we can just -- my staff
19 just have a meeting with the members of the
20 commission to see what some of these issues
21 are.

22 MS. CARVEL: I'd be glad to.

23 I just wanted to point out one other
24 problem with the system. Most times, when

1 you complain about a decision or a judge's
2 actions, they'll tell you: Well, you have
3 the avenue of appeal. In Surrogate's Court,
4 the judges either don't render decisions --
5 even though there's a 60-day rule, they may
6 not render decisions for two years or more.
7 They do not hold trials. If they do hold
8 trials -- Surrogate Emanuelli didn't hold a
9 trial for 10 years. My aunt's issues were
10 not litigated at trial until five years
11 after she was dead.

12 You're denied trial by jury or
13 decisions are rendered by transcript, which
14 cannot be appealed, or they're rendered in
15 such a way that it's too late -- the issue,
16 the money, everything has already been gone
17 by the time the decision has been rendered.

18 This is a pattern, and it's more than
19 one estate. And I congratulate you for
20 recognizing there's a problem. I think part
21 of the solution, if not the whole solution,
22 is complete transparency and complete
23 anonymity. No judge should be given one
24 case for 20 years. No one court should have

1 one case for 20 years.

2 If you have -- in our case, I'm dealing
3 with Surrogate's Court. If you have
4 numerous proceedings, let everything go into
5 Supreme Court; dispose of the Surrogate's
6 Court.

7 Let everything be assigned by a blind
8 rotating calendar of judges. Let the
9 proceedings be separated so that each
10 proceeding is going to get a different judge
11 and a different hearing.

12 And there has to be something to ensure
13 that money is not passed from one side to
14 the other or that one side alone is funded.
15 There has to be an enforcement of the
16 Constitution that all people have equal
17 rights before the law.

18 Thank you.

19 CHAIRMAN SAMPSON: Ms. Carvel, thank
20 you very much.

21 The next witness -- and I'm going to
22 adhere to the five-minute rule -- is Paul
23 Altman. Mr. Altman, are you here?

24 MR. ALTMAN: Yes, Senator.

1 CHAIRMAN SAMPSON: How are you doing,
2 Mr. Altman? That's a very extensive -- I'm
3 quite sure you can adhere to the five-minute
4 rule.

5 MR. ALTMAN: Well, what I'm going to
6 do is totally let you off the hook with all
7 those exhibits, now that I see how this
8 works.

9 CHAIRMAN SAMPSON: Thank you.

10 MR. ALTMAN: I didn't come in to
11 trash any personalities. I've never met
12 anybody in the room before. I'm not part of
13 any group. I am a 54-year-old guy who lives
14 in Florida. I was a jazz musician in New
15 York. And I have run afoul of the system.

16 And my life has been turned into a
17 nightmare, which I'm going to tell you in
18 the hundred-second version. And the DDC has
19 stood down and allowed an unethical attorney
20 to torment me. And I will leave it to you
21 to decide whether I'm just a disgruntled
22 litigant or whether I have something valid
23 to say. Okay?

24 Here's my story in a nutshell. This

1 has been going on for eight years. I'm
2 going to try to give you the 120-second
3 version, Senator. What happened to me is
4 that I have a child who's now 15. In 2001,
5 there was Family Court issues; I hired an
6 attorney, Richard L. Gold, of Morelli &
7 Gold. You can imagine that I'm not in love
8 with him, or I wouldn't be here talking
9 about this. But I'll spare you a character
10 assassination and try to stick to the facts.

11 In 2006, after four years of Family
12 Court, my relationship with him soured, and
13 I owed him \$20,000. A fee dispute ensued,
14 and I took advantage of the Part 137 law --
15 in New York State, 22 NYCRR 137 -- which
16 allows for mandatory arbitration if the
17 client demands it. And I demanded it. I
18 did not want to go to trial. I live in
19 Florida, I'm not an attorney.

20 The arbitrators hated Mr. Gold, and
21 they told him not only to waive the \$20,000
22 that I allegedly owed him, but they told him
23 to refund an additional \$5,000. And Mr.
24 Gold did not do so. I called the

1 Disciplinary Committee, and I said, "This
2 man has my money." And the Disciplinary
3 Committee said, "This is a concern for us,
4 please make a complaint." And I did.

5 And at that time what happened is
6 that -- well, I don't want to get into all
7 the details because it will be an hour, so
8 I'm going to try to keep it to five minutes.
9 What happened in a nutshell is that
10 Mr. Gold's retainer said that should there
11 ever be a fee dispute and should Altman
12 choose arbitration as is his right pursuant
13 to New York law, that arbitration will be
14 binding upon Altman and the firm.

15 Well, Gold sued me in Supreme Court of
16 New York. And I will quickly get to the
17 DDC's role in this, but give me a little
18 leeway to tell the story, okay? Gold sued
19 me and asked the Supreme Court to award him
20 \$35,000. I, who am not a lawyer, made a
21 motion to dismiss pre-answer and said, "Your
22 Honor, this is an illegal and unethical
23 misuse of the Supreme Court. There's
24 already been an arbitration, and here is

1 Gold's retainer agreement, and it clearly
2 says the arbitration is binding."

3 Well, Gold made opposition to this, and
4 he said, yeah, the word "binding" was in the
5 retainer agreement, but it was a special use
6 of the word that meant "nonbinding."

7 (Laughter.)

8 MR. ALTMAN: now, the judge did not
9 buy this, but on June 30, 2008, in a
10 landmark decision which is featured on the
11 front of the *New York Law Journal*, with the
12 judge's photograph, Justice Carol Robinson
13 Edmead ruled that although the word
14 "binding" is suggestive of binding, that
15 Gold was free to vacate the \$25,000 award
16 and start an entirely new trial and drag me
17 to New York.

18 I would never have hired him if I had
19 known that the retainer was a trick.

20 And she ruled that the reason for this
21 is because Gold himself had not used a
22 super-secret Boy Scout-password-encoded form
23 from the Office of Court Administration that
24 I, as an unrepresented consumer, could have

1 known nothing about.

2 Well, the DDC stood down on this. I
3 laid it all out to the DDC. I've given you
4 the exhibits, which I cannot drag you
5 through in five minutes, and I will
6 mercifully not --

7 CHAIRMAN SAMPSON: But this was a --
8 I guess was a judge's determination with
9 respect to --

10 MR. ALTMAN: It was a judge's
11 determination after the DDC -- I'm telling
12 the five-minute version, so I'm a little out
13 of sequence -- after the DDC stood down and
14 said there appears to be pending litigation
15 on this matter.

16 Well, I wrote back to the DDC and said:
17 Look, I know there's pending litigation.
18 That's part of my complaint. This is an
19 unethical litigation. And you guys have all
20 the jurisdiction in the world to deal with
21 this here and now, before the litigation
22 goes on.

23 I cannot quote you chapter and verse,
24 Senator, but the DDC's rules say that they

1 can pursue issues even if there's pending
2 litigation, that they are not hamstrung by
3 the fact that there's pending litigation.

4 CHAIRMAN SAMPSON: So the DDC did not
5 investigate because there was a pending
6 litigation?

7 MR. ALTMAN: Correct. They closed
8 down. They closed the investigation. And I
9 wrote to them and I said, With all due
10 respect, if you close every ethics
11 investigation that has pending litigation
12 corresponding -- at the same time, what
13 you're doing is creating a rule so that
14 attorneys who are accused of an ethics
15 violation must bring lawsuit against the
16 client who accused them. Because that's the
17 automatic the DDC will stand down.

18 And if the attorney is unethical enough
19 to keep playing this game in a law of
20 attrition and finally wear the client down,
21 as Richard Gold is trying to do to me, well,
22 then he wins. The DDC does not find this to
23 be unethical.

24 Now, the DDC's own rules forbid what

1 Gold did. Gold, as a matrimonial attorney,
2 is not allowed to have trick wording in a
3 retainer agreement regarding fee
4 arrangements. Now, I'm not going to quote
5 chapter and verse that attorneys cannot lie
6 to clients and they have a fiduciary
7 relationship. Let's put all that aside.
8 The specific rules of the DDC say -- or the
9 ethics rules say that a matrimonial attorney
10 must set forth the fee arrangements in the
11 retainer agreement in plain language.

12 Now, how on earth is "binding" meaning
13 "nonbinding" in plain language?

14 CHAIRMAN SAMPSON: So the DDC never
15 took any action?

16 MR. ALTMAN: The DDC never took any
17 action.

18 So now I will try to give you the punch
19 line. Only did it later turn out that the
20 form was never even available, the website
21 that the form was supposedly on wasn't
22 available, but I made a reply to Gold's DDC
23 opposition which was substantially the same
24 as what he made in court. He said, Yeah,

1 binding, but it meant nonbinding.

2 So what I did is I said okay, let him
3 have that. What about the fact that he lied
4 in court? He took me into the wrong court,
5 he perjured himself. Here are the
6 transcripts. What about the fact that he
7 puffed up the bill and then knocked it down
8 with courtesy discounts and then went after
9 those courtesy discounts when he found out I
10 wasn't happy with his services? I could go
11 on with two or three more examples. The DDC
12 never submitted these allegations to Gold.

13 So here's -- here are the four ways
14 that the DDC specifically stonewalled me and
15 whitewashed the case, which is supposedly
16 still pending. My litigation in New York is
17 still pending in front of Justice Edmead.
18 It has turned my life upside down.

19 But to be precise, the DDC, the first
20 thing they did is they wrote me a letter
21 saying there's pending litigation so we're
22 closing the case. And as I said earlier,
23 that does not follow their rules.

24 Second, they did not tell me the case

1 could be reconsidered. Their rules require
2 that they notify me of this.

3 Third, they said that there was pending
4 litigation in related matters. That was not
5 true. Okay?

6 And fourth, to this day I have been in
7 touch with Sherry Cohen, who has told me
8 that the reconsideration is still pending,
9 and to this day they have never submitted
10 the additional allegations to Attorney Gold.

11 AUDIENCE MEMBER: Where are the other
12 two senators?

13 CHAIRMAN SAMPSON: Basically, the
14 other two senators had commitments. This
15 is -- my colleagues come in and out because,
16 you know, this is during the day we have
17 other committee meetings and everything else
18 going on.

19 So you have the chairperson here
20 who's -- I'm in charge of the committee. So
21 as long as I don't leave, you're all right.

22 MR. ALTMAN: Well, I want to take
23 second to apologize to the audience. I am a
24 little heated, and I am trying as best as

1 possible to knock an eight-year story down
2 to a few seconds.

3 CHAIRMAN SAMPSON: Mr. Altman, no,
4 no, no, I understand it. And this is
5 something, since your litigation is still
6 pending and something like this can be
7 reconsidered, so I will make sure that we
8 follow up with you in the near future with
9 respect to the complaint that you have filed
10 with the DDC.

11 MR. ALTMAN: Senator, again, I won't
12 drag you through the exhibits, but in the
13 exhibits you will see that the DDC has
14 written to me and said that there was
15 nothing legitimate -- nothing worthwhile to
16 send to Gold.

17 CHAIRMAN SAMPSON: Well, that's
18 something that maybe since we have the
19 members of the DDC here, the First
20 Department, that's something that maybe we
21 can -- you know, maybe I can ask them in a
22 subsequent environment.

23 Just for complete disclosure, I used to
24 work for Justice Edmead about 20 years ago.

1 MR. ALTMAN: Well, I don't agree with
2 her decision. She knows that. I'm quoted
3 as saying so in the *New York Law Journal*. I
4 think this was a mistake, and I am dealing
5 with her, respectfully, in the court, with
6 motions and what have you. And I hope that
7 she ends up agreeing with me, and I hope my
8 ex-wife ends up agreeing with me about a few
9 things too.

10 But I would like to just make one more
11 comment, if I may, and then I will take any
12 comments you have or stand down. I did not
13 come here with an ax to grind. I don't know
14 anybody here. But I was deeply offended,
15 personally offended by Mr. Gold and
16 Mr. Friedberg. I walked in listening to
17 them.

18 And I find it outrageous that these
19 people, who know the system better than
20 anybody else, and deserve every benefit of
21 the doubt and should not be the victims of
22 character assassination, that these people
23 do not come forward and say to you:
24 Senator, obviously, with the amount of power

1 we have and the amount of opaqueness that
2 our agency has, this is a perception
3 problem, even though we personally behave in
4 a saintlike way.

5 These should be the people who are
6 advising you on how to fix the problem. And
7 the fact that they are not I find deeply
8 offensive, and I personally feel very
9 suspicious of them.

10 CHAIRMAN SAMPSON: Well, I don't
11 think, Mr. Altman -- this is why we are
12 having these proceedings. They did come
13 forward. They expressed -- now you
14 expressed your belief. And this is why we
15 have these hearings, so we can get do the
16 bottom of this.

17 MR. ALTMAN: Thank you.

18 CHAIRMAN SAMPSON: Thank you very
19 much, Mr. Altman.

20 The next witness is Luisa Esposito, of
21 West Hempstead, New York.

22 MS. ESPOSITO: Good afternoon.

23 CHAIRMAN SAMPSON: Good afternoon.

24 MS. ESPOSITO: My name is Luisa

1 Esposito, and I believe these serious
2 matters that are being brought forth by the
3 public are of urgent importance and it begs
4 for your immediate attention and involvement
5 in your honorable pursuit to defend and
6 promote justice.

7 On or about July 8, 2005, and
8 September 16, 2005, Attorney Allen H. Isaac,
9 while representing me on an auto accident
10 case, sexually assaulted me by putting his
11 hand inside my bra and grabbing my nipple
12 and all. On September 16th, Isaac locked me
13 in his office and wanted me to try clothing
14 on in front of him. He used extortion and
15 coercion to try to get me to fellate him.
16 And after hanging up on a phone call, Isaac
17 came from behind and grabbed both of my
18 breasts. While leaving his office, he
19 grabbed my buttocks. This was witnessed by
20 two people.

21 On October 7, 2005, I was wired by a
22 private investigator, and hence an
23 approximate 1 hour, 49 minute audio-video
24 DVD tape was produced with Isaac admitting

1 to his crimes.

2 I reported these crimes, along with
3 irrefutable evidence and witnesses, to the
4 New York County District Attorney's Office
5 Sex Crimes Unit, Manhattan Special Victims
6 Unit, the New York State Attorney General's
7 Office, and other various investigatory
8 agencies, including the First Departmental
9 Disciplinary Committee, in hopes of a
10 resolution towards justice. But instead, I
11 was further victimized and treated as if I
12 were the criminal. All of my pleas were
13 either dismissed or ignored.

14 As a result of these flagrant abuses, I
15 presently have a case pending in front of
16 the Second Circuit Court of Appeals, *Luisa*
17 *C. Esposito v. The State of New York, et*
18 *al.*, 08-4879-CV, as well as several others
19 which had been marked related to *Christine*
20 *Anderson v. The State of New York, et al.*,
21 07 Civ. 9599 (SAS). These cases involve
22 shocking allegations regarding systemic
23 corruption within the New York State Ethics
24 Committee.

1 I believe my complaints to the ethics
2 panel against my former attorney, Allen
3 Isaac, Docket No. 2005-3074, are being
4 whitewashed, ignored, and mishandled, the
5 very same practices that are very similar to
6 several others.

7 The First Department Departmental
8 Disciplinary committee, DDC. The level of
9 malice and corruption at the First
10 Department Departmental Disciplinary
11 Committee cannot be overstated.

12 On or about October 2005, I filed a
13 grievance complaint at the DDC pertaining to
14 serious allegations against my former
15 attorney, Allen Isaac. The complaint
16 regarded sexual abuse, extortion, coercion,
17 and corrupt influence on judges. When my
18 complaint was forwarded for prosecution
19 approximately two years later, Ms. Naomi
20 Goldstein was the attorney selected by the
21 DDC to prosecute this, Docket No. 2005-3074.

22 On or about April 2007, the hearings
23 began against Mr. Isaac, who was represented
24 by Michael Ross and Richard Godosky. I

1 asked the court and Ms. Goldstein if I could
2 have my attorney present during the
3 proceedings, and Ms. Goldstein and the court
4 told me I wasn't allowed to have my attorney
5 present during the hearings. This was
6 clearly an abuse and violation of my rights.

7 It soon became obvious that
8 Ms. Goldstein was not representing my
9 interests but rather protecting my
10 assailant, Mr. Isaac, by the most fraudulent
11 and despicable means. For example,
12 Ms. Goldstein presented altered and redacted
13 evidence to the court instead of the
14 original transcript of the A/V DVD tape and
15 evidence that I had given her. This
16 evidence is an approximate 1 hour, 49 minute
17 videotape that records Mr. Isaac explicitly
18 demanding oral sex from me in return for his
19 legal services, admitting to his sexually
20 assaulting me, and boasting that he could
21 command favors from various judges.

22 The committee and Ms. Goldstein used a
23 transcription of a copy of the videotape
24 that Herbert Waichman of Parker & Waichman

1 submitted to the committee. The court would
2 not allow my original certified copy, tape
3 and transcript, into evidence. The version
4 of the DVD transcript Ms. Goldstein
5 presented was heavily altered and redacted,
6 and omitted the critical sections most
7 damning to Mr. Isaac. Ms. Goldstein
8 cherry-picked what she wanted to submit into
9 evidence.

10 Another example. When Ms. Goldstein
11 asked me to testify under oath to my
12 certified copy of the A/V tape's accuracy,
13 she then handed it back to me and did not
14 submit it into evidence. Instead, Ms.
15 Goldstein submitted the copy of the tape
16 that Mr. Waichman submitted to the committee
17 back in 2006. Ms. Goldstein did not allow
18 me to listen to Mr. Waichman's copy of the
19 tape with the court, as promised, but
20 instead the court listened to it in front of
21 the attorneys without my presence.

22 When I tried to address these serious
23 and unethical and flawed matters to various
24 individuals within the committee and outside

1 of the committee, my pleas were immediately
2 dismissed and ignored. Therefore, as a
3 result of their unethical practices, I
4 became very ill and could no longer continue
5 to attend the hearings as a witness and
6 complainant.

7 I will quote a part of the audio-video
8 DVD tape where Isaac is heard boasting about
9 a case that was in front of the First
10 Department Appellate Division and how he had
11 influence on that appeal regarding the
12 \$200 million fen-phen case: "Yesterday I
13 was in the Appellate Court First
14 Department -- not the Second Department.
15 The Second Department is tougher than the
16 First Department. I was in the First
17 Department. There were 16 cases, and my
18 case was the last. I wasn't arguing it, but
19 the client wanted me there because some of
20 the judges on the panel are very close to
21 me. So I wanted them, the appellate judges,
22 to know that I'm really interested in that
23 case. This is all bullshit politics. And
24 they saw me, so I wanted them to know that

1 I'm really interested in that case. That
2 case, you know, is worth \$200 million. Not
3 this."

4 To whom and where do you report this
5 kind of outrage on the citizens of New York?

6 Wherefore, I bring this before the
7 Senate Judiciary Committee and pray that you
8 have the courage to bring these people to
9 justice before they do irreparable harm to
10 our society's perception of the courts.

11 CHAIRMAN SAMPSON: Ms. Esposito, the
12 question I have is do you still have a
13 pending case before the --

14 MS. ESPOSITO: My case is still open
15 and pending four years later.

16 I'd also like to mention that when I
17 reported the New York County District
18 Attorney, Lisa Friel, to the First
19 Department Disciplinary Committee, within 10
20 days that complaint was dismissed.

21 CHAIRMAN SAMPSON: What complaint was
22 dismissed?

23 MS. ESPOSITO: The ADA Lisa Friel. I
24 had filed a complaint --

1 CHAIRMAN SAMPSON: A criminal
2 complaint?

3 MS. ESPOSITO: No, a complaint
4 against her regarding -- well, I mean, if
5 it's criminal I really don't know.

6 CHAIRMAN SAMPSON: I'm just trying to
7 understand. You filed a complaint against
8 who?

9 MS. ESPOSITO: I filed a complaint
10 against the ADA at the New York County
11 District Attorney's Office.

12 CHAIRMAN SAMPSON: Oh, the ADA in
13 the --

14 MS. ESPOSITO: The New York County
15 District Attorney's Office. I filed a
16 complaint against ADA Lisa Friel. And that
17 complaint, when I filed it at the First
18 Department Disciplinary Committee, was
19 immediately dismissed within 10 days. And
20 then I refiled again; I haven't heard back
21 from anybody.

22 I've written letters to Alan Friedberg,
23 I've written letters to Thomas Cahill, I've
24 written letters and --

1 CHAIRMAN SAMPSON: Since the parties
2 are still here, we'll follow up with that,
3 Ms. Esposito.

4 MS. ESPOSITO: All right. Thank you
5 so much.

6 CHAIRMAN SAMPSON: Thank you very
7 much for your testimony.

8 Ladies and gentlemen, I have to take
9 about a five-minute break and resume in --
10 we'll resume in about 10 minutes, because I
11 just have to run somewhere. Ten minutes,
12 and we'll resume the session again. So just
13 take a 10-minute break, walk around, get rid
14 of all your anxieties. We're going to try
15 to get through this today.

16 Thank you very much.

17 (Brief recess taken.).

18 CHAIRMAN SAMPSON: The next witness
19 is Mr. Galison, William Galison.

20 Mr. Galison, where are you?

21 MR. GALISON: Here.

22 CHAIRMAN SAMPSON: Mr. Galison, you
23 know the routine, you've been with me a
24 couple of hearings. Let's get to the point,

1 let's move on. Go ahead, Mr. Galison.

2 MR. GALISON: Okay. I'd like to
3 start by just touching on a point that
4 Senator DeFrancisco made, and I'm sorry he's
5 not here to respond or to hear this. It's
6 not a criticism, just a clarification.

7 He asked Ms. Anderson what the
8 percentage of cases were in which she felt
9 there was some impropriety or favoritism,
10 and he suggested that possibly the small
11 number, the small percentage, was indicative
12 that maybe something was -- if I understood
13 correctly, was that things were not so bad
14 and there might be an acceptable sort of
15 random level of impropriety or malfeasance.

16 The fact is that the vast majority of
17 cases provide no motivation for corruption.
18 By definition, corruption occurs when there
19 is a vested interest in the outcome. If a
20 policeman arrests 100 drug dealers and then
21 fails to arrest his younger brother, his
22 corruption rate is not 1 percent, it's a
23 hundred percent, because that's where he had
24 a motivation to be corrupt.

1 And nobody is accusing Mr. Tembeckjian
2 or Mr. Friedberg of doing this for sport;
3 they do it because they have a vested
4 interest. What exactly those vested
5 interests are is not known to us, but we can
6 only assume that they don't do it for sport.

7 Having said that --

8 CHAIRMAN SAMPSON: Now you have four
9 minutes. Go ahead.

10 MR. GALISON: Sir, thank you --
11 Senator. Give me a break.

12 Mr. Gold sets the rules of the
13 grievance committees -- I'm sorry, Mr. Gold
14 claims that the grievance committees are
15 governed by rules. The problem is not that
16 there are no rules, the problem is that the
17 rules are ignored, twisted and perverted.

18 The New York State judiciary is so
19 dysfunctional and corrupt that their
20 so-called ethics committees routinely break
21 existing laws and capriciously create false
22 laws, without due process and with utter
23 impunity. By doing so, they undermine the
24 credibility of the courts, which is clear to

1 everyone here.

2 Their corruption is so absolute and
3 flagrant that they don't even make an effort
4 at the appearance of propriety. Instead,
5 they spit in the face of citizens, the
6 Constitution, and the universal tenets of
7 justice. These committees use corruption
8 both as a sword against their enemies and a
9 shield to protect their friends. Complaints
10 against lawyers with connections are
11 brazenly whitewashed or ignored. I didn't
12 learn this from anybody else; this is from
13 my experience.

14 Decent lawyers are sanctioned or
15 disbarred with no legitimate reason, simply
16 because they dared to oppose the corrupt
17 power structure. Likewise, the Commission
18 on Judicial Conduct routinely whitewashes
19 and dismisses complaints against judges
20 without any investigation or explanation,
21 and judges who dare to challenge the system
22 are punished.

23 To compound the problem, no attorney
24 will touch cases of corruption against

1 crooked attorneys or judges because they
2 know this means professional suicide.

3 The corruption is not only deep and
4 wide, it extends to the highest office of
5 the judiciary. The Chief Judge of New York
6 State, Jonathan Lippman, who I respectfully
7 submit was shoehorned into office by a
8 faulty confirmation process, is personally
9 implicated in at least a dozen lawsuits and
10 dozens more complaints regarding corruption,
11 and those are only the ones that I know
12 about. This is the head of the snake. We
13 can talk about the tail or the middle, but
14 this is the head of the snake. And before
15 him, it was Judith Kaye.

16 In his prior role as presiding justice
17 of the First Appellate Division, Lippman
18 appointed Alan Friedberg to head the
19 Disciplinary Committee. Alan Friedberg, who
20 already earned his reputation as corrupt in
21 his former position as chief counsel to the
22 CJC.

23 When Friedberg continued to run the DDC
24 as corruptly as his disgraced predecessor,

1 Thomas Cahill, Lippman received scores of
2 complaints about Friedberg's corruption and
3 incompetence. Lippman did nothing.

4 And that is no surprise. In his
5 previous position as administrative judge of
6 the OCA, Jonathan Lippman had personally
7 fired DDC Investigating Attorney Christine
8 Anderson for reporting systemic felonious
9 corruption at the DDC. He fired her for
10 insubordination, but that's obviously a
11 mischaracterization.

12 No one can deny that DDC protects
13 guilty lawyers and attacks innocent ones.
14 But what I'd like to address is how they do
15 that, what are the methods that they use.
16 And I think people will relate to many of
17 these. I will be as brief as possible.

18 All problems with the DDC arise from
19 underlying conflicts. Mine had to do with
20 a -- I'm a musician, it had to do with a
21 record that I made and a lawyer tried to
22 steal the rights from the record by writing
23 and claiming that I was not the copyright
24 owner. Six months later, he changed his

1 mind and said that I was the copyright
2 owner, admitted that in a sworn document.
3 Now, in the interceding six months, I could
4 not get a record deal, and I was basically
5 being threatened with the federal crime of
6 copyright infringement. Turned my life
7 upside down.

8 Two streams of systemic and coordinated
9 official misconduct arose from my underlying
10 dispute. One, my efforts to file
11 disciplinary complaints against certain
12 lawyers have been illegally obstructed by
13 multiple government agencies, including the
14 DDC, the DA's office, the Attorney General,
15 and others --

16 CHAIRMAN SAMPSON: Stop. We have had
17 this dialog, and you talked about these
18 instances.

19 MR. GALISON: What would you like to
20 know?

21 CHAIRMAN SAMPSON: Exactly. I want
22 to get to -- you talk about whitewashing.
23 What specifically was done that you consider
24 to be whitewashing, those specific

1 incidents? And what recommendations would
2 you have to improve the system?

3 MR. GALISON: I appreciate your
4 editing, as always, Senator.

5 Well, I'll make it very clear, two
6 cases which are -- which I see as absolutely
7 crystal-clear. I mean, I'm not going to
8 talk about stuff that's debatable with
9 debatable facts.

10 For example, this lawyer, who wrote in
11 a letter to my record company that I was not
12 the owner of the record and that he was
13 going to sue me for copyright infringement,
14 six months later admitted in a sworn
15 affidavit that I was the copyright owner.
16 By any definition of the word, the man was
17 lying.

18 And lying is against the rules. It's
19 not against the law; I cannot sue him in
20 court for lying. Maybe for fraud, possibly,
21 but not for lying. Lying is an ethical
22 infraction that is in the LCPR. It has a
23 particular number, it's DR 1.102. A lawyer
24 or law firm shall not engage in conduct

1 involving dishonesty, fraud, deceit, or
2 misrepresentation.

3 Now, if you tell a record company that
4 I'm not the owner of the record and you know
5 perfectly well and six months later you say,
6 yes, I knew that he was the owner --

7 CHAIRMAN SAMPSON: We got that point.

8 MR. GALISON: Okay, I want to make
9 sure everybody understands there was no
10 question.

11 What did the DDC, what did Mr. Fried --

12 CHAIRMAN SAMPSON: What did the DDC
13 do that was so --

14 MR. GALISON: Okay, what Mr. Cahill
15 did was he asked for a response from the
16 lawyer. The response came from the lawyer's
17 employer and counsel at the time, Myron
18 Beldock. It should be noted that the --

19 CHAIRMAN SAMPSON: What did he do
20 that was questionable to you?

21 MR. GALISON: Okay, I'm sorry, yeah.
22 I was just going to note that Hal Lieberman,
23 who preceded Mr. Cahill, was working at
24 Beldock's office at that time. He went

1 directly from the DDC, which I think gives
2 some insight as to how the revolving door
3 works here.

4 CHAIRMAN SAMPSON: Your issue is that
5 that's a conflict issue that's --

6 MR. GALISON: That's a conflict
7 issue. But that's an aside, just to shed
8 some light on what's going on behind the
9 scene.

10 What happened, what Cahill did is he
11 got the response from the lawyer, but the
12 lawyer said: "Here's my response, it's 27
13 pages long, but Mr. Galison can't see it
14 because he's considering suing me, and it
15 may contain some information." By the way,
16 this is after months of delay --

17 CHAIRMAN SAMPSON: But don't they
18 send you a copy of his response --

19 MR. GALISON: Yeah, they were
20 supposed to. But instead, they sent me the
21 letter, which said the response is redacted
22 and sealed.

23 He said, We are attaching two versions
24 of the answer from Mr. Greenberg. One is

1 entirely deleted -- redacted. That is, page
2 3 to page 28 is redacted. The other is in a
3 sealed envelope which neither you, the DDC,
4 or Mr. Galison is allowed to view.

5 Now, the DDC booklet and the rules say
6 that when and after a case is opened -- and
7 by sending the thing, they've opened the
8 investigation -- the complainant is required
9 or encouraged to respond to the answer. And
10 I wrote to Mr. Cahill, and I said, Well, how
11 can I respond to something that's in a
12 sealed envelope that I can't even see?

13 CHAIRMAN SAMPSON: I mean, that's a
14 very valid point which you make. Let's go
15 to the second incident.

16 MR. GALISON: Let me just say that he
17 said "Do the best you can."

18 So in response, I wrote a 40-page
19 report, fully documented -- 40 pages of
20 text, hundreds of pages of exhibits --

21 CHAIRMAN SAMPSON: What actually
22 happened to the case? Was it dismissed?

23 MR. GALISON: It was dismissed. And
24 I wrote and I said when you dismissed this,

1 did you take into account the information
2 that was in the sealed envelope, or did you
3 just decide that I was lying?

4 And they said, Oh, well, maybe we made
5 a mistake, we'll have it reconsidered. It's
6 one of the things they do. They spend six
7 months reviewing a case, then they say, oh,
8 maybe we goofed, we'll reconsider it. Then
9 there's another six months or a year.

10 CHAIRMAN SAMPSON: I want you to kind
11 of get -- because I've got another minute
12 left, I want you to --

13 MR. GALISON: Please, just ask me the
14 questions, I will tell you. This is one
15 case.

16 The other case, there are five lawyers
17 and two judges. I haven't gone to the CJC
18 yet. The other case involved a judge -- I
19 mean a lawyer, a guy named -- which you've
20 heard this story before, a guy named
21 Friedman, Leon Friedman, who I complained to
22 Cahill, and Cahill said -- the very words he
23 wrote were "This attorney does not practice
24 in Manhattan or the Bronx and is therefore

1 not under our jurisdiction."

2 I wrote him, I said he does, he just
3 does. I'm not making that up. Here's his
4 letterhead, here's the picture of the plaque
5 over his door, here's a recording of his
6 secretary saying that's his sole law office.
7 But he was fraudulently registered in the
8 10th District. I said the fact that he's
9 fraudulently registered in the 10th District
10 doesn't have any bearing.

11 Three years -- actually, 3 1/2 years
12 now I have been contesting with Mr.
13 Friedberg and his committee that 148 East
14 78th Street is in Manhattan and not in
15 Suffolk County somewhere. They maintain
16 that it's in Suffolk County. And they --
17 because by no account does Mr. Friedman have
18 a law office in Suffolk County. He just
19 doesn't.

20 So that is just nonsense. I mean, you
21 know, that's the stuff that I'm -- but what
22 happened was they sent my complaint to the
23 10th District, where it was dismissed one
24 week after it was sent in April of 2006. It

1 was never sent to Mr. Friedman.

2 And what was the rationale behind not
3 investigating? They said this is not a
4 complaint about ethics, this is a civil
5 complaint. Well, hold on a second. The
6 entire complaint was enumerated in the
7 precise language of the LCPR, the Lawyer's
8 Code of Professional Responsibility. Every
9 complaint was followed by a numerically -- a
10 numbered description of the exact law and
11 why my cases corresponded to those
12 particular ethical rules. To say that it's
13 not an ethical complaint is just ludicrous.

14 But worse than that, they did not send
15 me any confirmation. I did not know for
16 three years. During the time of that three
17 years, I was communicating with Mr.
18 Friedberg, and he denied, he would refuse to
19 answer the simple question of whether Mr.
20 Friedman was practicing in the First
21 Department or the 10th District, the Second
22 Department. He -- I sent him 15 letters,
23 and I have a tape recording which I put on
24 YouTube of him saying that he will not tell

1 me, he refuses to tell me whether the lawyer
2 is in his jurisdiction. That is the level
3 of utter disregard for fairness and rules.

4 CHAIRMAN SAMPSON: And I need you to
5 -- we need to end it. And I think I
6 understand your point with the whole issue
7 of the transparency issue and just basically
8 the common decency and courtesy of just
9 following up --

10 MR. GALISON: No, no, no, not --
11 decency and courtesy is way more than I
12 would demand. I'm talking about legal
13 behavior. I don't care if he's decent or
14 courteous to me. He has to respond to my --
15 finally --

16 CHAIRMAN SAMPSON: The transparency
17 issue is what you --

18 MR. GALISON: Yes. Well, not just
19 transparency, following the laws. I've got
20 a list of the laws that Mr. Friedberg broke.

21 And I just want to say -- end with one
22 thing. I was recently speaking to the chief
23 clerk of the Second Appellate Division,
24 Mr. Pelzer. And I have him on a tape

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.

1 CHAIRMAN SAMPSON: Right. The
2 proceeding is being videotaped, and this is
3 open to the public. So, you know . . .

4 MR. OSTERTAG: Well, I've been
5 videotaped by Mr. Galison, I think it is. I
6 don't know where he is now.

7 CHAIRMAN SAMPSON: Well, you and me
8 both.

9 MR. OSTERTAG: He was sitting over
10 there, then he was over there, and then he
11 was up against the wall, and he was sitting
12 over here, and then he was up front, and now
13 he's up against the wall again.

14 CHAIRMAN SAMPSON: At least you were
15 videotaped. He tape-records it too, you
16 know. Watch what you say around him.

17 (Laughter.)

18 MR. OSTERTAG: I don't know
19 Mr. Galison. He was videotaping the faces
20 of Mr. Friedberg and Mr. Gold, who I also
21 don't know.

22 CHAIRMAN SAMPSON: No, I would
23 understand that, Mr. Ostertag. But the
24 proceedings are open to the --

1 Mr. Galison, could you cease the
2 videotaping to allow -- I want our witnesses
3 to feel comfortable to testify. Thank you
4 very much.

5 MR. OSTERTAG: Well, I was going to
6 give him the finger, but I didn't think
7 quickly enough.

8 CHAIRMAN SAMPSON: I'm glad.

9 MR. OSTERTAG: My name is Robert
10 Ostertag, and I am here on behalf of the
11 76,000-member New York State Bar
12 Association. We are a voluntary association
13 devoted to the concept of lawyers serving
14 their clients consistent with the highest
15 standards of professional integrity.

16 I would like to get back to what I am
17 here for. I have no complaints about
18 anybody, I have no inquested accusations to
19 make against anybody. What I want to
20 address is the question of when disciplinary
21 proceedings should be made known to the
22 public. And in considering this question,
23 we need to take note of the legitimate
24 competing interests that are involved.

1 For lawyers, their competence and
2 reputation is what they offer to the public.
3 It affects how they are viewed by individual
4 clients, judges, and the community at large.
5 The arguments and viewpoints of a lawyer
6 with a good reputation will be heard and
7 carefully considered, whether by his or her
8 clients, the court in which the lawyer
9 appears, or in the general community.

10 Lawyers spend years, a career, trying
11 to earn a stellar reputation. A good
12 reputation cannot be bought or easily
13 gained. It can be achieved only by a
14 lawyer's demonstrated actions and efforts on
15 behalf of clients over a period of time.
16 Gaining the type of reputation for which all
17 of us strive requires demonstrated skill and
18 expertise on a continuing basis.
19 Unfortunately, however, an earned reputation
20 can be lost, and it can be lost in a mere
21 moment.

22 I've practiced law for 50 years. My
23 reputation I think is beyond repute. I
24 recognize that it can be lost in a mere

1 moment.

2 For clients, they are entitled to know
3 that any lawyer they retain has integrity
4 and meets the standards of our profession.
5 When serious questions are raised about the
6 ethics, competence, trustworthiness of a
7 lawyer, the client is entitled to know. The
8 Bar Association understands that we should
9 not have a disciplinary mechanism whereby
10 clients are unknowingly represented by
11 lawyers who may not meet those professional
12 standards.

13 The problem, of course, is that when a
14 complaint is filed against a lawyer with a
15 disciplinary committee, the complaint may or
16 may not have merit. If the fact of the
17 complaint is disclosed and it is later found
18 to have lacked merit, the lawyer's
19 reputation will have been affected,
20 obviously so.

21 Anyone who is in any way in public
22 life, including lawyers -- and including
23 also legislators, as you know -- knows that
24 any initial story in the media about a

1 complaint that has been filed overwhelms any
2 follow-up story reporting that the initial
3 complaint was of no merit and that the
4 individual did not engage in any wrongdoing.

5 In such a situation, disclosure of the
6 complaint will have caused reputational
7 damage that cannot be erased. Thus, early
8 disclosure of complaints against lawyers is
9 unfair to those who, in the end, are found
10 to have done absolutely nothing that
11 supports discipline.

12 We recognize, however, that there are
13 situations where the public should be made
14 aware of the questionable conduct of a
15 lawyer without waiting for a final
16 determination of the disciplinary body.
17 Clients who retain a lawyer during the
18 pendency of a disciplinary proceeding or
19 continue to be represented by a lawyer
20 during this proceeding may be harmed in some
21 situations if they are unaware of serious
22 charges that have been brought but have not
23 yet been finally determined.

24 The State Bar Association has

1 considered these issues on several
2 occasions, with at least different
3 committees having examined the matter within
4 the last 15 years. While, as an association
5 of attorneys, we want to protect our
6 members, we recognize that we also have an
7 obligation to make certain that those
8 represented by attorneys are not harmed.

9 In light of all these considerations,
10 and the recognized competing interests, the
11 State Bar Association has concluded that
12 where there is a need to safeguard the
13 public, the Appellate Divisions, which are
14 in charge of lawyer disciplinary matters,
15 should exercise the authority they already
16 have in any appropriate disciplinary case
17 and consider interim suspension of the
18 subject lawyer pending the outcome of the
19 disciplinary process. With suspension comes
20 public disclosure.

21 This proposal achieves several
22 objectives. First, in those cases where
23 allegations have been made against an
24 attorney which are not serious or for which

1 there is not significant supportive
2 evidence, the attorney is protected. His or
3 her name will not be revealed unless and
4 until there is public discipline, meaning
5 that disciplinary action beyond a private
6 letter has been addressed to the attorney.

7 Where public discipline is not
8 warranted, the fact of allegations having
9 been made and the results of the
10 disciplinary proceeding would not be
11 revealed. The attorney's reputation would
12 remain intact.

13 However, to protect clients and the
14 public in those cases where serious charges
15 are brought and the initial evidence is
16 supportive of those charges, the courts
17 would step in and make a judgment as to
18 whether suspension and public disclosure is
19 warranted. This would be a determination
20 made by the judges of the Appellate
21 Divisions on a case-by-case basis. This
22 would place the decision as to whether to
23 suspend and disclose exactly where it should
24 be, with judges, whose fundamental role in

1 our society is to examine individual cases
2 and make decisions based upon the facts
3 placed before them.

4 I am aware that there have been general
5 calls for increased disclosure of
6 disciplinary proceedings. However, I do not
7 believe that those who have called for such
8 disclosures have done the careful analysis
9 that has been done by three Bar Association
10 committees, nor have they acknowledged the
11 competing interests that need to be
12 reconciled as I have outlined them.

13 The law recognizes that certain
14 proceedings need to be confidential to
15 protect innocent parties from being tainted.
16 Grand jury proceedings are the best example.
17 They have been secret for centuries, in
18 recognition of the need to protect innocent
19 parties.

20 Similarly, while the courts are open to
21 the public, certain cases, such as many
22 Family Court cases, are not public. The
23 Legislature has recognized that there are
24 situations in which the need for

1 confidentiality is superior to the desire to
2 have public disclosure in a democratic
3 society.

4 In conclusion, the State Bar
5 Association recognizes that disclosure is
6 necessary in certain circumstances. Where
7 clients and the public need to be protected,
8 we want the courts to use their power to
9 step in, suspend an offending lawyer, and
10 disclose to the public.

11 However, absent a finding by an
12 Appellate Division that there is a need for
13 immediate suspension and disclosure, your
14 association urges that disciplinary
15 proceedings not be open and that disclosure
16 be made only where there is a finding that
17 public discipline is warranted and that an
18 attorney has in fact done something wrong.
19 Innocent lawyers need protection as much as
20 other innocent parties, and our proposal
21 offers both lawyers and the clients they
22 serve the protections to which they are
23 entitled.

24 Thank you, sir.

1 CHAIRMAN SAMPSON: Mr. Ostertag,
2 thank you very much. And I'm very
3 interested that you at least and the
4 association recognizes there is some need I
5 guess to deal with the perception but most
6 of all having the public have faith in a
7 system like this.

8 MR. OSTERTAG: I understand public
9 concern about the issue.

10 CHAIRMAN SAMPSON: But at the same
11 time, we have to -- those counsels who have
12 done good jobs, just to be labeled for
13 complaints that should be dismissed or are
14 frivolous in its nature, at the same time
15 we're trying to do two competing concerns.

16 MR. OSTERTAG: I do understand that.
17 And I also recognize the fact that there are
18 complaints that are filed with -- I've been
19 involved in the grievance process for a
20 number of years. I've been involved in the
21 disciplinary process for about 19, 20 years,
22 off and on.

23 And I recognize that complaints are
24 filed and it's easy to make a complaint

1 about a political person or an attorney or a
2 political person who is an attorney,
3 particularly at election time or during the
4 proceedings that predate Election Day -- in
5 other words, a campaign time. And that's a
6 very difficult time for an attorney who is
7 running for political office.

8 You need only look at the television
9 channels in the last few days, last few
10 weeks, about this man in New Jersey who was
11 a former United States Attorney who has
12 become the subject of a complaint of
13 pay-to-play. And I don't know whether he's
14 done that or he hasn't done that. But if he
15 hasn't done it, his reputation has been
16 badly besmirched. And it happens over and
17 over and over and over again. .

18 I recognize the need to protect the
19 public. I certainly would want to protect
20 the public. I must tell you that neither my
21 association nor I suffer wrongdoers lightly.
22 But I think there is a two-way street here.

23 CHAIRMAN SAMPSON: So thank you very
24 much for your comments.

1 MR. OSTERTAG: Thank you.

2 CHAIRMAN SAMPSON: The next person is
3 John Aretakis.

4 MR. ARETAKIS: Good afternoon,
5 Senator. My name is John Aretakis. I'd
6 like to thank you, and I'd like to thank you
7 for your overwhelming patience in this
8 hearing. And I thank you also, Mr. Spotts.

9 My focus is on the treatment and the
10 failure to follow procedure, the failure to
11 follow the law, and acting in excess of the
12 jurisdiction by the Third Department
13 Committee on Professional Standards,
14 otherwise known as COPS. In the First
15 Department we've heard it's called the
16 Departmental Disciplinary Committee, the
17 DDC. In the Third Department, in Albany,
18 it's called COPS.

19 I was born and raised in Brooklyn, and
20 for well over the last decade my only
21 practice for the practice of law has been in
22 Manhattan, in New York City. And for the
23 past 20 years, 80 to 90 percent of my cases
24 have been in New York City. But starting in

1 the year 2002, when I became one of only a
2 handful of lawyers handling a very, very
3 controversial area of law involving
4 representation of children who were abused
5 by pedophiles -- that started in 2002. The
6 Third Department Committee on Professional
7 Standards has come down to New York City and
8 investigated me over 50 times, 5-0. And on
9 a multiple of occasions, the cases that they
10 investigate in New York City involve New
11 York City litigants, New York City judges,
12 New York City decisions, and of course me, a
13 New York City attorney.

14 Why is the Committee on Professional
15 Standards up here in Albany going down the
16 Thruway 150 miles and investigating me?
17 Their only answer: I graduated from Albany
18 Law School in 1985. That supposedly gives
19 them jurisdiction over me.

20 After law school, Senator Sampson, I
21 went on to get a master's in law at
22 Georgetown University Law Center. And
23 because I graduated from Albany Law 23 years
24 ago, Mr. Ochs, who's been sitting in the

1 back of this room all day, who I will not
2 attack, says that they have jurisdiction to
3 investigate me. Using vague and arbitrary
4 ethical statutes like conduct unbecoming of
5 an attorney and actions that are prejudicial
6 to the administration of justice.

7 I am hopeful that a review of my case
8 in a nutshell will help this honorable
9 committee more appropriately see that this
10 system is rife with abuse and it needs to be
11 remedied.

12 I heard the first speaker, Mr. Gold.
13 And as I sat over there quietly, I almost
14 fell out of my chair. He said "Using the
15 address listed on the Department of OCA,
16 that determines which disciplinary committee
17 will investigate." I agree with that
18 wholeheartedly.

19 CHAIRMAN SAMPSON: So where are you
20 listed?

21 MR. ARETAKIS: I'm listed in New York
22 City, where I've been for 15 or 20 years. I
23 am only listed there.

24 CHAIRMAN SAMPSON: Have you ever been

1 listed in the Third Department?

2 MR. ARETAKIS: Excuse me?

3 CHAIRMAN SAMPSON: Have you ever been
4 listed in the Third Department?

5 MR. ARETAKIS: I graduated from
6 Albany Law in '85, and I briefly worked in
7 Albany in 1987 for less than one year. And
8 then in 1988, I moved my entire practice to
9 Manhattan, where I've been.

10 CHAIRMAN SAMPSON: On your
11 registration, do you register your Manhattan
12 address?

13 MR. ARETAKIS: Only my Manhattan
14 address. I pay taxes in Manhattan, I vote
15 in Manhattan, I've done a month of grand
16 jury service a few years ago in Manhattan.
17 I did civil jury service in Manhattan.

18 CHAIRMAN SAMPSON: I'd like to cut to
19 the chase. Then what is your basis for
20 them -- what is your basis for the Third
21 Department having jurisdiction --

22 MR. ARETAKIS: They don't have any
23 basis. They've broken the law. They've
24 violated their own brochure that they hand

1 out at the Court of Appeals. They say, We
2 will investigate lawyers who have an office
3 for the practice of law in the jurisdiction
4 of the Third Department in Albany.

5 And I think Mr. Gold and Mr. Friedberg
6 might be excellent witnesses on my behalf,
7 because they were talking about lawyers who
8 are outside of their jurisdiction who they
9 will not investigate.

10 I will also tell you this, Your Honor.
11 Of those 50 complaints -- and I need to say
12 this very, very carefully, because we
13 lawyers know that the ones we owe our
14 ethical duties to are our clients. None of
15 those 50 complaints are from clients. None.
16 It's overwhelming.

17 Mr. Ochs wakes up and reads the
18 newspaper at various parts of the state, and
19 he likes to track my career and he likes to
20 follow me because I've been engaged in a
21 very controversial area, and he'll start an
22 investigation against me. He's started over
23 20 sua sponte investigations and then,
24 sometimes because I am involved in removing

1 pedophiles from their job, these pedophiles
2 file complaints against me, and Mr. Ochs
3 takes it upon himself to investigate them.

4 One time I was on a nationally
5 syndicated radio show criticizing an
6 employer for employing a pedophile, and a
7 woman who I'd never even heard of filed a
8 complaint against me, and I was forced to
9 defend myself from the Third Department for
10 about a year.

11 CHAIRMAN SAMPSON: So out of those 50
12 complaints, what happened to those
13 complaints?

14 MR. ARETAKIS: Well, 49 of them, the
15 first 49 were dismissed, as they should have
16 been.

17 On December 11 of '08, six months ago,
18 Mr. Ochs merged some decisions on New York
19 City cases from 2005, 2006, and 2007 and
20 asked the Appellate Division up here in
21 Albany to suspend me. And I was suspended
22 for one year. And as God is my witness --

23 CHAIRMAN SAMPSON: Wait, wait. Hold
24 on. You were suspended for one year.

1 MR. ARETAKIS: Yes. By the Third
2 Department up here in Albany.

3 CHAIRMAN SAMPSON: And why were you
4 suspended?

5 MR. ARETAKIS: They suspended me for
6 conduct that is prejudicial to the
7 administration of justice -- I don't know
8 what that means -- they suspended me for
9 conduct unbecoming of an attorney -- I don't
10 know what that means -- and they suspended
11 me primarily for making what they termed
12 rather aggressive motions for recusals of
13 various judges.

14 I have been forced to be very critical
15 of some judges because the work I've been
16 employed to do on behalf of 250 victims is
17 -- I sue the Catholic Church because they
18 employ some bad priests. I've been very
19 critical, I've been very public with my
20 work. It's been a very controversial area
21 of law. And some judges have sanctioned me
22 for filing a frivolous lawsuit because a
23 client might have been molested 30 years
24 ago.

1 CHAIRMAN SAMPSON: How many times
2 have, I guess, judges admonished you for
3 filing a frivolous lawsuit?

4 MR. ARETAKIS: Four times. They
5 merged the four decisions; two cases were
6 exclusively New York City cases, and two
7 cases were from elsewhere.

8 However, Ethical Consideration 7.4 says
9 a lawyer may file a frivolous lawsuit if you
10 believe the law should be modified, changed
11 or extended, or the law is wrong. I happen
12 to believe that if in 1975 a priest abused a
13 10-year-old altar boy that they should be
14 able to sue right now. I believe there are
15 laws that are pending right now before
16 various committees that may modify the law.

17 And I'm not here to speak on that issue
18 at this time, I'm just saying that because I
19 have taken some controversial stances and my
20 matters have been extraordinarily made
21 public all over the entire country, I've
22 been the subject of front-page articles in
23 the *New York Times*, the *New York Post*, in
24 *Vanity Fair*, in the *Village Voice*, all kinds

1 of publications. Mr. Ochs wakes up and he
2 sees a complaint made by the church about my
3 aggressive tactics, and he files a sua
4 sponte complaint.

5 And he sits back there, and I cherish
6 the thought that he can come up here and
7 answer some of your questions or privately
8 find some answers to these questions.

9 They have a rule that says you need
10 seven members of the committee to vote for a
11 punishment, that's a quorum. And they acted
12 and suspended me and punished me and
13 admonished me with four members. And one of
14 the four members was an attorney that I had
15 a pending aggressively hostile, adversarial
16 case with. It's a clear conflict of
17 interest.

18 But what you have is you have the
19 Appellate Division that employs the
20 Committee on Professional Standards, and
21 they rubber-stamp all their decisions. And
22 I've looked at hundreds -- I don't want to
23 say thousands. All the decisions regarding
24 disciplinary matters are five-nothing. So

1 the attorney who's been disciplined has no
2 right to automatically to the Court of
3 Appeals. You have nothing to hang your hat
4 on.

5 I also would like to say this. As far
6 as procedural due process, they violated
7 their rules in a plethora of ways. However,
8 not once on any of these 50 complaints have
9 I been allowed to give testimony. Matter of
10 fact, they have started six new --

11 CHAIRMAN SAMPSON: But you won -- out
12 of the 50, you won 49.

13 MR. ARETAKIS: Well, that's right.
14 But I've asked to be allowed my opportunity
15 to give testimony, especially when they were
16 disbarring me, when they were suspending me.

17 Because I filed a lawsuit against them
18 two months before they suspended me because
19 I was so positive that I knew the lay of the
20 land, they were going to suspend me. It was
21 only a matter of course. I've been
22 complaining to them and to the chief judges
23 for a number of years that they pursue me
24 willy-nilly, aggressively for no other

1 reason other than they do not like the
2 political position I've taken adverse to the
3 Catholic Church.

4 And I may say this publicly, I love the
5 Catholic Church. However, there are some
6 bad people that have gotten into the
7 Catholic Church --

8 CHAIRMAN SAMPSON: No, no, no --

9 MR. ARETAKIS: -- and it's not a
10 problem or a vendetta I have.

11 However, being Greek Orthodox and being
12 from Brooklyn and Manhattan, I think they've
13 taken upon themselves to say you don't come
14 to Albany like that, Mr. Aretakis, and act
15 like that: The law is determined in our
16 courtroom, with our standards.

17 And because a judge sanctions me or
18 admonishes me, then Mr. Ochs thinks he has
19 unfettered authority to punish me. And I've
20 spend hundreds of thousands of dollars of my
21 own time and my own attorneys in helping
22 defend myself from all of these frivolous
23 ethical complaints that have come against
24 me. These committees are prosecutors --

1 CHAIRMAN SAMPSON: So, Mr. Aretakis,
2 so to sum it up, what's your
3 recommendations?

4 MR. ARETAKIS: Well, I would love
5 nothing more than either this committee take
6 it upon themselves or hand it off to the
7 State Commission on Investigations or to the
8 Inspector General's Office to take this
9 matter, my matter and investigate it. If
10 they do investigate it, you'll find it's
11 rotten from the core.

12 However, I would also ask in the
13 meantime, since they have taken away my
14 ability to earn any type of living for my
15 family, that everything that Mr. Ochs up
16 here in the Third Department has pending be
17 transferred to the First Department. If I
18 committed such egregious actions so as to be
19 an unethical lawyer who's not trustworthy,
20 what's wrong with these fine attorneys from
21 the First Department investigating me?

22 The reason is they've gotten a few
23 dozen complaints against me as well, and
24 what they've done is they wrinkle them up

1 and they throw them in the wastebasket,
2 because these are not clients of mine. So
3 they've sent me one letter in 20 years -- in
4 seven years that I've been engaged in clergy
5 abuse saying "Please respond to this
6 complaint." And that was dismissed as well.

7 So there's no problems that I have --
8 and I also would like to just finish with
9 this. It's my understanding that 99.9
10 percent of all attorneys are suspended or
11 disbarred for stealing money, commingling
12 funds, neglecting a case, getting arrested,
13 or being charged in another jurisdiction
14 with a crime of moral turpitude and
15 therefore being given comity and being
16 suspended in this jurisdiction.

17 My crime is without precedent, making
18 accusations and allegations in court papers
19 against various judges and having frivolous
20 lawsuits -- if you look at this, there's an
21 awful record, and I've again only touched
22 the tip of the iceberg.

23 I appreciate the time you've given me.
24 Thank you very much.

1 CHAIRMAN SAMPSON: Mr. Aretakis,
2 thank you very much, and we will definitely
3 look into it.

4 MR. ARETAKIS: Thank you.

5 (Recording ends and resumes during
6 testimony of Michael Kelly.)

7 MR. KELLY: -- judge assigned to my
8 case. And for the last three years, because
9 I am trying to uncover forgeries outside of
10 Rockland County that I believe are coming
11 out of the Surrogate Court using deceased
12 people's names, I am being targeted by the
13 judges and district attorney's office in
14 Rockland County.

15 The gentleman, Gary Casella, says that
16 my complaint of my former defense attorney
17 being promoted to the district attorney's
18 office in the middle of my case now being a
19 district attorney, a senior district
20 attorney in the Rockland County District
21 Attorney's Office -- for four months after
22 he swore the oath of office, he acted as my
23 defense attorney on my criminal matter in
24 the same court he is sworn to be a

1 prosecutor with.

2 I have a sworn oath of office in that
3 package, I have forgeries with naming a
4 person, named forgeries out of Rockland
5 County with a handwriting analysis expert's
6 opinion on there on who forged those
7 documents. There's more in that.

8 My daughter, they kept me away from my
9 daughter with illegal court orders saying I
10 can't see my 17-year-old daughter where she
11 wrote letters to the court asking the judge
12 for unrestricted visitation with her father.
13 The judge ignored those.

14 I am being retaliated against in
15 Rockland County. They recently incarcerated
16 me, as a first-time offender, for
17 harassment, as a retired New York City
18 policeman, for 14 days in jail with a \$250
19 fine. No docket of that decision and order.
20 The only thing on the docket is that I paid
21 a fine and I paid restitution.

22 Everything in Rockland County, when it
23 comes my case in that package, sir, is
24 fraudulent in nature, to cover up for the

1 crimes that the lawyers and judges in that
2 county have committed. And I'm being
3 retaliated against. And if somebody would
4 look at that package and hear what I'm
5 saying, you will find that it's undisputable
6 evidence. Like I told you, a three-year
7 litigation in Rockland County Court with no
8 docket.

9 I'm in a court right now for criminal
10 charges going back three years ago. No
11 grand jury, no indictment, no anything. And
12 for three years later they reduced the
13 charge to harassment and want to send me to
14 jail -- right on the brink of me coming to
15 this hearing because they want to stop me
16 from coming here.

17 CHAIRMAN SAMPSON: Well, I mean, I'm
18 glad you made it here, and I will make sure
19 that we go through this and get a response
20 back to you very quickly.

21 MR. KELLY: I appreciate it. And all
22 the committee letters where I'm -- they're
23 all rubber-stamps: We see nothing, we see
24 no problems. They always have like a catch

1 phrase: Your complaint doesn't fall in our
2 jurisdiction, et cetera, et cetera.

3 But based on -- following those
4 complaints is fact, sir, that you can
5 verify. And there is corruption, and it's
6 happening now. And you can catch these
7 people.

8 CHAIRMAN SAMPSON: Thank you very
9 much, Mr. Kelly. I'll make sure we
10 definitely follow it up. Thank you.

11 The next witness is Kathryn Grace
12 Jordan, of New York.

13 MS. JORDAN: Good afternoon, Your
14 Honor. I'm here to talk about the
15 Commission on Judicial Conduct.

16 By way of background, though, I do want
17 to identify myself as the president of END,
18 End Discrimination Now, an organization that
19 I started in 2008 after it became apparent
20 to me that our nation's and state's
21 antidiscrimination laws are not being
22 enforced by the judiciary and that many
23 activist judges are actually rewriting the
24 laws on a regular basis.

1 I myself endured a 13-year litigation
2 on a disability discrimination case. Ten
3 years of that litigation resulted in a jury
4 verdict in my favor which was reversed by
5 the First Department under Jonathan Lippman.

6 I believe I have stepped back --
7 because my training is as a management
8 consultant and Fortune 100 executive, and I
9 have done a thorough analysis of all the
10 information that's available, including Mr.
11 Tembeckjian's 2009 annual report and all the
12 data that's in it.

13 CHAIRMAN SAMPSON: What's your
14 analysis?

15 MS. JORDAN: Well, I will tell you
16 this. I don't think there's anything to be
17 proud of.

18 First of all, judicial misconduct is
19 up. And he talks about managing -- just one
20 second here, one second. I've got to flip
21 the page. He talks about you know that
22 things are very bad when you have to refer
23 to 30 years worth of work and 69,000
24 complaints over 30 years. What he didn't

1 focus on was the 1,923 new complaints that
2 are up 12 percent from last year, which is
3 part of the evidence that shows that the
4 rules of judicial conduct are not being
5 enforced, either in district court or at the
6 appellate level, despite the increase in
7 complaints, because judges, as I just said,
8 are not enforcing the laws. And the
9 judicial misconduct commission is not doing
10 their job in terms of reviewing the conduct
11 of these judges.

12 And they talked about the fact that
13 they have 22 commission attorneys and 12
14 commission members and the fact that you
15 gave them extra money -- I don't know what
16 they've been doing with it, but obviously
17 they haven't been doing it to thoroughly
18 review complaints and to make sure that
19 these judges are held accountable.

20 One of the most astounding statistics
21 is that there were 40 complaints against
22 appellate judges, and zero were
23 investigated.

24 If you take Mr. Tembeckjian at his

1 word, at its face value, they're doing a
2 bang-up job and we have a bunch of
3 delusional litigants who are just populating
4 the system with meritless complaints. I
5 don't believe that's the case. I think
6 what's going on is that we have a crisis of
7 leadership in the judiciary and a culture of
8 corruption and cover-ups. And I believe
9 that the Commission on Judicial Conduct is
10 part of that.

11 Mr. Tembeckjian, I wanted to ask a
12 couple of questions to him when he was in
13 the room before, one of which is does he
14 still have his cable television show where
15 he interviews judges and lawyers -- because
16 that's kind of a conflict of interest with
17 your current position -- and how he goes
18 about conducting investigations. Because I
19 myself have filed several complaints with
20 the judicial conduct commission, very, very
21 meritorious complaints where judges
22 expressly violated, either through *ex parte*
23 conduct, acting -- making -- attacking --

24 CHAIRMAN SAMPSON: Those complaints

1 were dismissed and never followed up with?

2 MS. JORDAN: They were dismissed
3 almost like within a month, a couple of
4 months, no explanation.

5 The process is not transparent. It's
6 all secretive. And as far as appeals, the
7 appeals, as he's just admitted, are for the
8 benefit of the judges. It is -- in my
9 opinion, the judicial commission on
10 misconduct has numerous problems. I'm going
11 to list them very quickly. Lack of
12 transparency, conflicts of interest, the
13 composition of the actual commission itself.

14 The investigators, who actually, on
15 paper, many of which have -- seem to have
16 good qualifications, which kind of creates
17 an interesting question, which is why can't
18 they resolve these investigations positively
19 and in a timely manner.

20 There's actually no interaction with
21 the complainant, so you have no idea what's
22 going on.

23 The priorities seem to be on routing
24 the town and village errant judges while

1 letting the big fish swim away.

2 I don't know how they handle evidence;
3 I know there's a huge issue about evidence
4 handling that has been spoken about by a
5 number of people in this room, and it's very
6 serious. If you go to 60 Centre Street, you
7 will know the lack of integrity that exists
8 in terms of files. Anybody could walk in,
9 take a file out, and there's nothing that
10 can be done about it. I mean, there's no
11 proof, nothing. What has to happen is the
12 files need to be digitized.

13 CHAIRMAN SAMPSON: So basically
14 summing it up, Ms. Jordan, I just want to --

15 MS. JORDAN: Yes. I've talked faster
16 than anybody up here.

17 CHAIRMAN SAMPSON: That's correct.
18 And that's why -- because you seem to be
19 very specific in what you want.

20 MS. JORDAN: Right.

21 CHAIRMAN SAMPSON: That's what I'm
22 looking for, the recommendations, the
23 changes that you --

24 MS. JORDAN: Yes. I think that a

1 task force should be formed to review
2 whether or not the Commission on Judicial
3 Conduct is an effective body and --

4 CHAIRMAN SAMPSON: When you say task
5 force, who do you think should be comprised
6 of this task force?

7 MS. JORDAN: I am not going to make
8 specific recommendations here, Your Honor,
9 because I don't have enough time to do that.
10 But I will get back to you with that.

11 I do believe, though, that we need a
12 multi-stakeholder task force to investigate
13 whether or not the Commission on Judicial
14 Conduct is doing its job. And, if it's not,
15 what kind of entity might replace it.
16 Because we definitely need to monitor the
17 judges and make sure that they are enforcing
18 the laws, because it appears that they're
19 not doing it at the moment.

20 CHAIRMAN SAMPSON: Ms. Jordan, thank
21 you very much.

22 MS. JORDAN: Thank you.

23 CHAIRMAN SAMPSON: The next witness
24 is James -- how do you pronounce your last

1 name, James?

2 MR. MONTAGNINO: Montag-neeno,
3 Senator.

4 CHAIRMAN SAMPSON: Montagnino.

5 AUDIENCE MEMBER: I object -- I
6 object, because I have personal knowledge of
7 his personal activities.

8 CHAIRMAN SAMPSON: There's no
9 objection right here. We're going to let
10 Mr. Montagnino make his comments.

11 And if you have comments to make, if
12 you're on the list, then we can listen to
13 your comments. Or you can talk to me after
14 this is over and then we can follow up.
15 Okay?

16 AUDIENCE MEMBER: Thank you. Thank
17 you very much.

18 CHAIRMAN SAMPSON: Thank you very
19 much. Go ahead.

20 MR. MONTAGNINO: Thank you, Senator.

21 I just want to begin by saying that I
22 don't have an ax to grind, I'm not here with
23 a specific gripe about anything in
24 particular with regard to myself.

1 On a personal level, I've been an
2 employee of the Unified Court System since
3 1995. I've been a court attorney/referee
4 for the last 10 years. I started out in my
5 legal career in the Bronx District
6 Attorney's Office. I was a prosecutor in
7 the Westchester DA's office. I was a Legal
8 Aid lawyer in Westchester. I was principal
9 law clerk to a county judge for five years
10 in Westchester.

11 The last three years, I've been a court
12 attorney/referee here in the Capital
13 District. And I love my job.

14 And one thing I've learned in years in
15 the judiciary is that with every decision a
16 judge makes, that judge makes one temporary
17 friend and one permanent enemy. And this is
18 something that really has to be considered
19 when weighing the probative value of
20 complaints that are made against judges over
21 the course of the years.

22 I can say with pride that my experience
23 in the Capital District, the Third Judicial
24 District, has been wonderful over the last

1 three years. As a court attorney/referee
2 I'm assigned to the chambers of various
3 judges on a rotating basis. I've worked
4 with Supreme Court justices, Court of Claims
5 judges, county judges, a Family Court judge,
6 some City Court judges. I've been all
7 around the Third District.

8 And I can say categorically that the
9 judges of this district do their jobs to the
10 best of their ability, they are hardworking,
11 they are ethical people. And one of the
12 reasons, one of the big reasons for that is
13 that the administrative judge for this
14 district, George Ceresia, is a man of the
15 highest moral and ethical caliber. And he
16 sets the tone for the way business is
17 conducted in this district.

18 Having said that, I'm here because in
19 the seven years that I worked as a court
20 attorney/referee assigned to the matrimonial
21 part in Westchester County, that same
22 condition did not apply to Westchester.
23 That for years in Westchester I, having been
24 assigned to matrimonial cases, saw on a

1 regular basis that the district
2 administrative judge entertained *ex parte*
3 communications from well-connected attorneys
4 and well-connected litigants, and those *ex*
5 *parte* communications often resulted in
6 transfers of cases from one judge to
7 another -- in one case, the change of a
8 decision that a judge had already signed and
9 sent out to the parties, based upon *ex parte*
10 communications.

11 I saw this for years and finally
12 decided that I had to take action, and I
13 brought an internal complaint to the various
14 chief administrative judges of the Office of
15 Court Administration, and the result of that
16 was retaliation against me. Not by OCA, but
17 by the target -- by the administrative
18 judge.

19 I'm going to cut through some of the
20 details and get to the point, what brings me
21 here today, Senator. I can certainly
22 understand the Commission on Judicial
23 Conduct taking a jaundiced eye looking at a
24 complaint brought by a litigant who lost a

1 case in court. In Westchester County, I
2 filed a complaint ultimately with the
3 Commission on Judicial Conduct that was
4 detailed. It named names, it gave cases, it
5 gave dates. Attached to it were photographs
6 of dumpsters, dumpsters of court records
7 that were ordered destroyed. Matrimonial
8 files by law must be retained permanently.
9 They were destroyed.

10 It would have been one thing if I had
11 been the only complainant, Senator. But a
12 retired acting justice of the Supreme Court,
13 Fred L. Shapiro, sent his own complaint to
14 the Commission on Judicial Conduct against
15 the same administrative judge, Judge Francis
16 Nicolai, alleging the same kinds of abuses
17 -- naming names, giving dates, giving
18 information that he had personally obtained.

19 And it wasn't just the two of us,
20 Senator. There was a third individual, the
21 principal law clerk to a Supreme Court
22 justice in the Ninth Judicial District,
23 Barry Skwiersky, sent his own complaint to
24 the Commission on Judicial Conduct, with his

1 information on routine, regular, consistent
2 patterns of misconduct whereby Judge Nicolai
3 would steer cases.

4 When a lawyer who had the right
5 connections didn't like the way his
6 matrimonial case was being handled, he could
7 go to Judge Nicolai -- without, of course,
8 opposing counsel having any idea of it --
9 explain the fact that he had a problem with
10 the judge who was assigned to the case, and
11 lo and behold, the case would be reassigned
12 to a more sympathetic judge.

13 There were written complaints. A law
14 guardian who was involved in a child custody
15 proceeding where the judicial hearing
16 officer who was presiding over that case
17 ordered that the father have the right to
18 see his children, and made it so under
19 supervised conditions to protect everybody's
20 safety. That litigant went *ex parte* to
21 Judge Nicolai, and Judge Nicolai told that
22 judicial hearing officer to change his
23 decision. He did that, and then complained
24 about it.

1 The law guardian, the attorney for the
2 children in that case, wrote a letter
3 herself to Judge Nicolai and said to him:
4 You can't do this, this is improper, this is
5 the worst of *ex parte* communications. And
6 what did that law guardian get for her
7 troubles? That letter that was sent to
8 Judge Nicolai he forwarded on to the woman
9 who was in charge of the law guardian panel
10 with a cover letter saying "For whatever
11 action you deem appropriate."

12 The bottom line, Senator, is that
13 without a hearing, without an investigation,
14 without any contact with any of the three
15 members of the court system and retired
16 member of the court system who brought the
17 complaints -- no contact with us, no
18 documents subpoenaed, no documents
19 requested, no information requested, no
20 testimony taken, no witnesses put under oath
21 -- the Commission on Judicial Conduct in one
22 sentence dismissed all three complaints
23 against Judge Nicolai, and that was the end
24 of the matter. With no accountability, no

1 explanation, no transparency.

2 And so I think, Senator, that at the
3 very least Mr. Tembeckjian himself mentioned
4 it this morning, and the commission has year
5 after year in their annual report themselves
6 asked for it, open up the proceedings to the
7 public. Why should this be secret? Judges
8 are public officials. They have a public
9 trust. Many of our judges are elected
10 officials. The public has a right to know
11 how complaints against judges are handled.

12 I'm sensitive to the concerns that many
13 judges have, because of the fact that they
14 are either appointed or elected officials,
15 that abuses can occur, that frivolous
16 complaints can be lodged for purposes of
17 political gain or, as happens very, very
18 often, most of the complaints -- I'm sure
19 Mr. Tembeckjian will confirm -- most of the
20 complaints come from litigants who simply
21 lost.

22 I know from personal experience, having
23 presided over contested matrimonial cases
24 for seven years, every day of the week,

1 Monday to Friday, you know, you can imagine,
2 Senator, it's human nature. If I make a
3 ruling that says this parent will have
4 custody of the child and the other parent
5 will not, how often do you think the parent
6 who loses goes home and says, well, I'm just
7 an unfit parent and that's why I lost?
8 That's not the way it works; we know that.

9 So it's so common, particularly in
10 family cases, custody cases and matrimonial
11 cases, the litigant who loses frequently
12 will try to blame someone: It's my lawyer's
13 fault, my lawyer did something wrong; it's
14 the judge's fault, the judge did something
15 wrong. Most of the time we know that's not
16 so.

17 The problem is, though, when you have
18 in with those thousands of complaints that
19 get dismissed without investigation where
20 you have a complaint that wasn't brought by
21 a disgruntled litigant or a disgruntled
22 former employee, but brought by three people
23 on the inside of the court system who give
24 information with dates and names and places

1 and photographs and copies of documents and
2 it's just tossed aside.

3 CHAIRMAN SAMPSON: But my question to
4 you is I'm assuming there was some sort of
5 retaliation because of these allegations
6 that you made; correct?

7 MR. MONTAGNINO: Yes.

8 CHAIRMAN SAMPSON: And that resulted
9 into negative evaluations; is that correct?

10 MR. MONTAGNINO: No, Senator. I've
11 never had a negative evaluation. In fact,
12 what happened, since you asked the
13 question -- I didn't want to get into
14 personal things, but I'm glad to do that --
15 Judge Nicolai essentially opened his file of
16 every complaint that any litigant who wasn't
17 happy with the result of their matrimonial
18 cases had with me. And he gave that over
19 the Inspector General for the Unified Court
20 System.

21 I went through about a month and a half
22 of hell having to answer for every decision
23 that anybody had a question about it: Why
24 did you rule this way? Why did you say

1 this? Did you say this? Did you talk to
2 this litigant? Did you not talk to this
3 litigant? I had to answer --

4 CHAIRMAN SAMPSON: That's a form of
5 retaliation.

6 MR. MONTAGNINO: Yeah. And at the
7 end of all that, at the end of all that --

8 CHAIRMAN SAMPSON: At the end, what
9 happened?

10 MR. MONTAGNINO: At the end, the head
11 of human relations said to me orally -- I
12 got nothing in writing -- she said, "I want
13 you to know there have been no negative
14 findings against you. And your personnel
15 file" -- she gave me a full copy of the
16 personnel file, she said, "it will not even
17 reflect the fact that an investigation had
18 ever been taken against you."

19 CHAIRMAN SAMPSON: And I think being
20 that no -- if you have complaints of
21 individuals on the inside, you would
22 probably want to look at that a little bit
23 closer because of the positions that you
24 have.

1 MR. MONTAGNINO: But there was a
2 little bad news attached. I got
3 transferred.

4 CHAIRMAN SAMPSON: You got
5 transferred up to what?

6 MR. MONTAGNINO: Well, I was ordered
7 transferred to Bronx County. And I made an
8 arrangement. I said, "Look, I'd rather be
9 transferred where we have our second home,
10 up in Saratoga Springs, we love upstate New
11 York. If you can do that, it will be
12 voluntary. If I'm forced to go elsewhere,
13 then I'd consider that a retaliatory
14 employment act under the Whistleblower Law."
15 And, you know, where it would go from there
16 would be something else.

17 And they were kind enough, they
18 accommodated the request. And so I
19 voluntarily transferred up here.

20 CHAIRMAN SAMPSON: Okay.

21 Yeah, I got five minutes, I know, I
22 know.

23 AUDIENCE MEMBER: I'd like to know
24 what happened to my transcript where you --

1 CHAIRMAN SAMPSON: All right, we're
2 getting ready to start.

3 Ruth Pollack, Ms. Pollack, go right
4 ahead.

5 MS. POLLACK: Good afternoon,
6 Senator, and thank you very much. My name
7 is Ruth Pollack. I'm an attorney in the
8 east end of Long Island -- Riverhead, New
9 York. Practiced 26, going on 27 years.

10 I love my career, and I have had a
11 wonderful career. I've practiced in just
12 about every court that you can practice in.
13 I've tried cases in Surrogate's Court and
14 took a verdict at 2 o'clock in the morning
15 and won. I have been in the state and
16 federal courts and agencies, and I'm a
17 former prosecutor for the Nassau DA about
18 26, 27 years ago. There's not much I
19 haven't seen and done. And for the most
20 part I love what I do, and I look forward to
21 any new attorney or judge that I meet.

22 I'm here today, however, because of the
23 breakdown of the system and my brief
24 suggestions for what I think, as a member of

1 the brothers and sisters in law in the
2 trenches, we can do to fix it.

3 I got ovarian cancer in June of 2003.
4 I went through the full monty, and I
5 survived that. I'm now considered cured,
6 even though I still suffer from lymphodema
7 in both my legs. That means I carry 60
8 pounds of extra fluid in my legs every day,
9 so I'm partially physically disabled. And
10 of course, as a survivor, we don't seek
11 sympathy, we just want understanding and
12 some accommodation. I'm just happy to be
13 here and happy to be alive.

14 But I tried a case in Eastern District
15 federal court against the US government, and
16 many of my cases, despite my stature, I go
17 up against some big-league people. I go up
18 against the federal government, I've gone up
19 against banking institutions, many school
20 districts and so forth. I have an asbestos
21 case involving a school district on Long
22 Island right now. My cases are
23 controversial, and I'm not afraid to go
24 after anyone, including an attorney, if the

1 attorney is doing something that is
2 improper.

3 When I returned back into active duty,
4 so to speak, as an attorney, the case that I
5 had against the federal government was,
6 partly on account of my disability,
7 dismissed in the middle of my direct
8 examination of -- I must have been through
9 about eight to 10 witnesses at that point.
10 And that was on June 5, 2007.

11 That led to a contempt hearing, and I
12 was held in contempt of court, and I'll move
13 on from there.

14 The very next day I walked into an
15 ongoing Family Court case in Manhattan
16 Family Court, the Jubb case, J-U-B-B,
17 representing a father and his infant son --
18 or actually I represented the father on
19 behalf of him and his son. And I'd been
20 there many times before. I'd objected to
21 what I saw was tampering of witnesses by
22 Child Protective Services, tampering with
23 records, the general poorly run courtroom
24 and poorly run proceedings.

1 And at 9:30 in the morning, in Family
2 Court at 60 Lafayette, and at the beginning
3 of a hearing before Judge Susan Knipps, a
4 male court officer proceeded to come toward
5 me without provocation. He placed me in a
6 forward -- in a front headlock before I was
7 able to sit down. And the ten or so court
8 officers that were already in the courtroom
9 when I walked in, of that group, about five
10 of them came around me from behind and put
11 me in a full bodylock, lifted me from the
12 floor, dragged me out, crashed me against
13 the wall, and then threw me out into the
14 court lobby, physically, bodily.

15 Everyone -- I have lay witnesses and I
16 have my client and other witnesses to this
17 occurrence. Everyone in the courtroom, the
18 judge and everyone, denied that it happened.
19 I had done nothing. The judge said, "Clear
20 the courtroom now," when I had simply said
21 to the court officer: "I have two
22 witnesses, they're not testifying." And
23 that's all I said.

24 As a result, I suffered tremendous

1 posttraumatic stress syndrome. I never
2 walked into a courtroom again feeling the
3 same safety and security that I had for 26
4 years.

5 I filed a case against the State of
6 New York which is pending with the Attorney
7 General's office. I had hoped and I am
8 hoping that the Attorney General will
9 investigate this.

10 But then it continued. Because
11 thereafter, on September 28th of 2007, when
12 I went back to that court to the financial
13 judicial hearing officer for the monetary
14 portion of the case, the record was shut off
15 by the JHO and the court officers slammed my
16 desk against the wall and told me to get up,
17 and my client, and get out. And they
18 surrounded us, but they didn't touch us. I
19 took the badge numbers as well. So it was
20 more internal terrorism, so to speak.

21 I have never before been attacked by
22 anyone in my lifetime. So this was, again,
23 more of a message of some sort; I'm not sure
24 what.

1 Since that time, I've been menaced by
2 court officers on behalf of two judges in
3 district court in Hempstead in a criminal
4 case, because I do a lot of criminal defense
5 work, and that has caused me great
6 consternation. I've had witnesses to that
7 occurrence as well -- I have witnesses.

8 I'm here because while I could go on
9 and on about my long career -- and my
10 curriculum vitae is up there for you and for
11 the panel -- the system is breaking down.
12 We need to fix it. It's worthy of that.
13 You know, my father was a top gun in the
14 Second World War, and I still have him
15 today. And it's because of him and our
16 foremothers and forefathers that we're here
17 today able to speak out about how we feel
18 about this country and our state.

19 And I'm here to be part of the
20 solution, not part of the problem. And I
21 will do everything that I can to be part of
22 the solution, which is a huge, huge -- in
23 need of huge help.

24 I personally am now -- I've been

1 suspended for two years. It started out
2 with 'a 45-day suspension with a threat of
3 six months' incarceration. And I served my
4 45 days of suspension in the Eastern
5 District of New York because I disagreed
6 with a judge and because I missed a day of
7 court due to my legs. I went to two federal
8 courthouses in the Eastern District, neither
9 of which are ADA-compliant. I have
10 complained about it; nothing's been done.
11 So that my disabled clients -- who are also
12 whistleblowers -- and I have difficulty
13 parking to get to those courthouses.

14 I'm moving rather rapidly because I
15 just want to hit on certain points that I
16 think people should know.

17 Since that time, I have had -- since
18 the federal suspension which I served, I was
19 advised rather cryptically that they thought
20 that I had violated my 45-day suspension by
21 using my former law partner to cover my
22 cases for me, one case for me. And so they
23 just sent me a letter saying, You haven't
24 responded in 20 days, so we're going to

1 suspend you for two years now.

2 CHAIRMAN SAMPSON: Who is this?

3 MS. POLLACK: Only in Eastern
4 District. That was Judge Cogan. They claim
5 that there is an Eastern District of New
6 York grievance committee, but I have never
7 seen any such thing.

8 CHAIRMAN SAMPSON: So you were
9 suspended from practicing in the Eastern
10 District?

11 MS. POLLACK: Only. For two more
12 years. That's where almost all of my cases
13 are. One of my clients is here in the
14 audience today, Mr. Kevin Chesney.

15 Again, that was to put me out of
16 business. That was to get rid of me. My
17 own appointed attorney told me to give up
18 all my cases in the Eastern District, submit
19 to urine tests or else I would go to jail.
20 And that would be the best thing, you know,
21 she could do. She accused me of being
22 mentally ill, something I am clearly not.

23 So I was essentially put in a position
24 where they were going to have me suspended

1 to get me out of the Eastern District come
2 hell or high water. And that's where I am
3 today, fighting all the way to come back.
4 And that is a fight for another day.

5 But the point is that now the Eastern
6 District has sent paperwork behind the
7 scenes, without my knowing what it is, to
8 the 10th Judicial District where I reside,
9 and Rita Adler, who is the chief counsel
10 there, has bombarded me with letter after
11 letter after letter, after letter, day after
12 day after day, relating to that case in
13 which I was held in contempt in 2007, saying
14 that she thinks I'm a criminal and I should
15 be treated as a criminal and I shouldn't be
16 allowed to practice and we should do
17 something about this woman --

18 CHAIRMAN SAMPSON: I mean, when you
19 say -- she didn't write you a letter to that
20 extent.

21 MS. POLLACK: She wrote a letter to
22 Mr. Pelzer to that effect.

23 CHAIRMAN SAMPSON: Not calling you a
24 criminal.

1 MS. POLLACK: "What she did was
2 criminal" essentially is what she says in
3 her letter. And that's part of my packet.
4 Basically saying, yeah, her actions are
5 criminal, they're -- you know, quite strong,
6 actually citing to sections of the Penal
7 Law. And as a criminal defense attorney and
8 former prosecutor, I'm very well acquainted
9 with the Penal Law.

10 So part of her approach, if we may look
11 at how rules are to be followed, is she
12 pretended, as did a member of the 10th, that
13 she couldn't reach me or serve me.

14 So an investigator came to my home,
15 left a business card in my door -- which
16 could have floated off into the atmosphere.
17 My 86-year-old father saw that, saw orders
18 slipped under the door.

19 And one day when I walked into my
20 office in 2008, I was met with an order that
21 was taped to my door with red masking tape
22 -- I'm holding it up now -- which I took a
23 picture of and blew up so that you could see
24 the door of my office. Everybody in my

1 office building saw this, my suite with this
2 red masking tape -- I don't know where you
3 get it -- taped to my door.

4 So again, these terror tactics or
5 whatever you want to call them have been
6 used to intimidate me and to make me go
7 away. I may just be a country girl from the
8 east end, but I do not go away. I have
9 always fought for the underdog my whole
10 life. I've seen injustices since I was a
11 kid. And I do discriminate; I represent
12 everybody. I don't care who or what the
13 person is about, I represent them all.

14 Mr. Kelly, in Rockland, is my newest
15 client.

16 I'm an outsider. I'm a new kid on the
17 block. I've seen what he has described. It
18 is a fact. I have never had any problems in
19 my life of any kind, criminal or otherwise,
20 other than one incident with the grievance
21 committee back in the late '90s involving a
22 matrimonial which was clearly a political
23 way of getting a case, a very interesting
24 case involving the Manuses, Morton Manus, a

1 matrimonial, away from me when it was going
2 rather well and given to another attorney.
3 And because I stood up for my retaining lien
4 and I was in the middle of a retaining lien
5 hearing, I had charges brought up against
6 me. But my case was transferred to the
7 9th District that didn't know me at all. So
8 that was my first foray into the 9th.

9 CHAIRMAN SAMPSON: So if you want to
10 sum it up, Ms. Pollack.

11 MS. POLLACK: Yeah. My summary is
12 that the solution to these many things that
13 you've heard today, without my repeating the
14 many things that we've heard as a group
15 here, is that we need transparency, and the
16 transparency must look like this.

17 We need transparency in terms of judges
18 and all public officials that serve in our
19 system and on these committees should
20 disclose what insurance companies insure
21 them, what financial institutions they have
22 their pensions or finances in through the
23 system, what banks are involved, what
24 disability insurance companies are involved

1 -- because when I've sued these various
2 types of companies, I've never known if
3 there was a conflict of interest between
4 those people that I was working in front of
5 as judges or against as litigants, if there
6 was a conflict of interest.

7 So I highly, highly support full
8 disclosure of any and all of those types of
9 things on the docket, including all
10 committee members on all of the committees
11 we've discussed today. Who they are, where
12 they're from, all of their affiliations,
13 what their trainings are. I can't find any
14 of it, and I've looked all over the place.
15 Who are the people on the committee, where
16 did they come from, et cetera.

17 And I don't think I need to go on, I
18 think it's a point that's been taken.

19 CHAIRMAN SAMPSON: Thank you very
20 much.

21 MS. POLLACK: And I just wanted to
22 thank you sincerely for your time.

23 CHAIRMAN SAMPSON: Thank you very
24 much, Ms. Pollack. Thank you very much.

1 The next witness is Lawrence Grey.

2 Mr. Grey, are you here? Mr. Grey is not
3 here.

4 UNIDENTIFIED SPEAKER: He submitted
5 his testimony.

6 CHAIRMAN SAMPSON: Okay, great.

7 Ken Jewell, Esquire. Mr. Jewell, you
8 here? Mr. Jewell is not here.

9 Kevin Patrick Brady?

10 MR. BRADY: Yes.

11 Senator, I want you to remember me as
12 being the one guy who used the least time as
13 possible to tell you my story and will move
14 on.

15 I haven't heard yet today my kind of a
16 case. I am a nonlawyer, I have been
17 prosecuted criminally three times,
18 incarcerated, prosecuted in quasi-criminal
19 prosecutions twice, and not one of these
20 courts had jurisdiction.

21 Now, the assistant attorney general
22 managed to shove through a money judgment
23 against me that's not valid. And I have
24 been petitioning courts for the last six

1 years to recognize that these judgments are
2 void, they must be taken off my record. I
3 showed proof every time that the judgments
4 were void. And no court, to date, has done
5 one thing about it.

6 Now, I'm talking about the Fourth
7 Department, I'm talking about the First
8 Department and the Third Department. The
9 petitions and appellate briefs that I filed
10 enunciated these issues perfectly. It could
11 not be mistaken. I believe they all just
12 dumped them. They didn't read the petition
13 or they read it just far enough to hear me
14 complaining about corruption in the courts,
15 and that's all they needed to know.

16 I have been, like I told you,
17 petitioning courts -- I've got in excess of
18 30 trying to get those two or three issues
19 across. One, the courts never had
20 jurisdiction. Two, the judgments are void.
21 And three, the assistant attorney general
22 has absolutely no authority to be
23 prosecuting me under judiciary law for his
24 own fraud. In all of those actions, not one

1 single issue has been adjudicated.

2 So I have given proof, I've put them on
3 CDs, it's all there, that the system is
4 corrupted far beyond what anyone can really
5 imagine. I really encourage you to take a
6 look at my proof because it's prima facie.
7 Okay?

8 CHAIRMAN SAMPSON: We will definitely
9 do that, Mr. Brady. I give you my word.

10 MR. BRADY: Thank you.

11 CHAIRMAN SAMPSON: Thank you very
12 much, Mr. Brady.

13 The next witness is Carl Lanzisera,
14 Mr. Lanzisera.

15 MR. LANZISERA: How you doing. When
16 you go in the subway, you see a sign that
17 says --

18 CHAIRMAN SAMPSON: I just want to let
19 everybody know, about 2:45 we're going to
20 take a break for another 15 minutes and then
21 I'll be back. I just want to check into
22 session. Okay?

23 Mr. Lanzisera?

24 MR. LANZISERA: Yes. Carl.

1 CHAIRMAN SAMPSON: All right, we've
2 got another eight minutes. Let's go ahead.

3 MR. LANZISERA: If you go in the
4 subway, you see a sign: "If you see
5 something, say something." If you go in the
6 airports, "If you see something, say
7 something." If you go to a marina, they say
8 "If you see something, say something."

9 If you go in the courts and you see
10 something and you say something, that's the
11 worst day of your life. And everybody is
12 here with that same complaint.

13 The first two speakers, Martin and
14 Alan -- or Alan and Martin -- they really
15 should have a Broadway skit, because they're
16 two jokers. Either they don't have --

17 CHAIRMAN SAMPSON: Mr. Lanzisera, you
18 know, Mr. Lanzisera -- no, no, I understand
19 it, but everybody's -- listen to me, please.
20 Everybody here is afforded the courtesy and
21 respect. No character assassinations. This
22 is a public hearing to get to the issues
23 because we want solutions.

24 MR. LANZISERA: Well, I was arrested

1 for telling jokes, so --

2 CHAIRMAN SAMPSON: We don't want to
3 arrest you, all right.

4 MR. LANZISERA: They had a grand jury
5 hearing and I told lawyer jokes.

6 But I'm in the investment business
7 45 years. In the investment business, if
8 you have a complaint, you go to now FINRA or
9 the NASD, it's called, or the SEC. Can you
10 imagine if the SEC or FINRA was run by
11 stockbrokers, what would happen after
12 40 years, 50 years? Bernie Madoff would
13 probably get six months in jail.

14 The legal profession is run by lawyers
15 for a hundred years. The first thing the
16 grievance committee did when they were
17 assigned to uphold the Constitution of the
18 United States, was to give themselves
19 judicial immunity. Even you have -- don't
20 have judicial immunity. You have to answer
21 to us. But they don't have to answer to
22 anyone.

23 In the securities business, if you have
24 a complaint against a stockbroker, you go to

1 the NASD for a few dollars and you have a
2 public hearing before three panelists. The
3 panel, their complete history is listed --
4 where they eat, where they sleep, what cases
5 they have. And you a right to eliminate any
6 of the three panelists if there's the
7 slightest inkling.

8 With the grievance committee, you have
9 no idea who the commission is and what
10 they're doing.

11 The hearings are all public. The
12 findings are more than 60 percent of the
13 cases the public gets an award.

14 CHAIRMAN SAMPSON: Which proceeding
15 is this?

16 MR. LANZISERA: In NASD or FINRA, in
17 mandatory arbitration.

18 And if there's a finding against you,
19 it's made public, not only in the state that
20 you operate in but throughout the world.
21 Thirty-five years ago, there was a finding
22 that I didn't buy a stock at the best price
23 and I had to give someone \$250. Thirty-five
24 years later, if you look up my Social

1 Security number, you will see it on my
2 record. If there's a finding against me and
3 they ever took my license away, it would be
4 throughout the United States.

5 In the legal profession, if there's a
6 finding in New York State, the lawyer can go
7 to New Jersey, get his license over there
8 and practice law in New York. They claim
9 they can't follow the lawyer and his past
10 history. That's a bunch of malarkey.
11 That's why I made the original comments that
12 I made. There's no reason in today's day
13 and age you can't follow someone with a
14 Social Security number throughout the world.

15 The findings are public, the hearings
16 are public, you face your accuser, you
17 defend yourself, you know exactly what they
18 say.

19 As a result of my personal history, I
20 started a group, Americans for Legal Reform.
21 If you look at it, that's our newsletter.
22 I've been doing this for more than 20 years.
23 In there you see a list of lawyers and
24 judges that we have found that do things

1 that we feel are questionable.

2 We can't say what they do, because your
3 Senator friend to your left from Syracuse,
4 one of his lawyer friends in Syracuse sued
5 me for libel by innuendo. There's only
6 maybe three cases in the world of libel by
7 innuendo, and I had to spend \$100,000
8 defending myself because I put his name on
9 that list and he felt he was damaged.

10 They're so afraid of their reputation.
11 Why are they any different than a
12 stockbroker or a plumber? If I go to
13 Consumer Affairs and there are 500
14 complaints against a plumber, I can look at
15 them all and evaluate whether they're
16 frivolous or real. If you want to open an
17 account with a stockbroker, you should check
18 with FINRA and find out his history.

19 But if you're a lawyer, as Jack
20 Solowitz, my divorce attorney, one of my
21 divorce attorneys, stole millions from 49
22 people. The 49th didn't know about the
23 48th; the 48th didn't know about the 47th,
24 and so on. Eventually he did go to jail.

1 And when he comes out of jail, he could have
2 been a lawyer again.

3 It's all secret, it's the only
4 profession it's a secret. It's a bunch of
5 malarkey about their reputation. The
6 lawyers as a group are considered the most
7 criminal group in America. Their position
8 in life is less than a New York City taxicab
9 driver. And they're trying to, by secrecy,
10 protect themselves. It's a good-ole-boy
11 brotherhood that somebody has to stop. And
12 if it's not stopped by people like you, the
13 public is not going to take it forever.

14 CHAIRMAN SAMPSON: Mr. Lanzisera, I
15 thank you very much for that comment.

16 Ladies and gentlemen, I have to take
17 about a 15-minute break; I have to register
18 in session. And I'll be back to conclude
19 these hearings. Thank you very much.

20 (Proceedings adjourned at 2:45
21 p.m.)

22

23

24