

THE ALTERNATIVE NEWSWEEKLY OF NEW YORK'S CAPITAL REGION

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Who's to Judge?

By Erin Sullivan

Photos by Leif Zurmuhlen

Critics wonder if the state Commission on Judicial Conduct is fulfilling its mandate to make judges accountable for their actions

Ron Loeber likes to talk about history. Loeber, a small-businessman living in Knox, peppers his conversations with examples from American and European history. He can quote parts of the Gettysburg Address, pretty much verbatim, and he refers to voluminous texts on legal matters, case law, historical incidents and dead politicians when making a point.

Especially when he's making a point about what he likes to call the "divine right of kings."



"Eight hundred years ago, in a place in England called Runnymede," he says, "a bunch of guys got together and they had their swords poised, and they were about to sever the head from the body of a man named John who called himself king. Unless he abided by and signed a document they presented to him: the first oath of office, called the Magna Carta."

In 17th-century Europe, the expression "divine right" was used to argue the notion that kings ruled because they were anointed by God, making them the indisputable supreme rulers of the land. Accountable to no one, many kings let power go to their heads and—like King John—forced their despotic wills on their subjects. Loeber likes to explain how, in 1215, a group of barons and landowners, fed up with the abuses of the monarchy, finally put an end to the absolute power of the king. They dragged King John into a field at swordpoint and threatened to murder him on the spot if he refused to sign the Magna Carta, which stripped him and his successors of their claim to "divine right." The Magna Carta forced the king to uphold an oath of office when he came into power, and just as importantly, it laid out the rules for a new judicial system under which a man's life, liberty and property could not be forcibly taken from him without a trial of his peers—due process of

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the law—in a court of the land. The document laid the groundwork for the modern British, and eventually American, forms of government.

Centuries later in modern-day Knox, Albany County, there are no kings. But Loeber says that doesn't stop some government leaders from exercising their divine rights, as he says he found out in the late 1990s, when he was involved in a property dispute with a local developer.

"My father had sold his farm," he explains. "When he sold it, he exempted from the sale the house that he lived in and the plot of land it was on. He created in the deed an easement with the right to use, and the right to maintain, a water-supply system over near the pump house."

Originally, the purchaser of the property, Charles Rao, said he would maintain the property as a horse farm. But when the town of Guilderland raised the taxes on the 105-acre parcel, Rao sold it to Robert Marini Builders. Marini, in turn, developed the property into a subdivision consisting of 63 individual building lots. Loeber says that his father's easement on the deed restricted Marini's ability to realize his vision for the property, so the builder attempted to purchase the easement rights from the family. The Loebers declined, according to Loeber, and "[Marini] said, 'Screw you, then we're going to take it away from you in court.' And he accused me of attempted extortion!"

According to court records, Marini had his lawyer draw up a new deed for the property, and named Loeber as a third party in a suit against Rao. Loeber planned to represent himself, but when he arrived in court in November 1997, state Supreme Court Judge Joseph Teresi made a default judgment against him. Loeber was ordered by the judge to sign the deed—and property rights—over to Marini. "I told him I wouldn't do it," Loeber says. "That I wouldn't give up my rights."

Loeber appeared before Teresi two more times on the matter, and on each occasion, he tried to no avail to defend the merits of his case. On Dec. 30, 1997, Teresi found Loeber in contempt of court for refusing to sign the deed as ordered by the court, and sentenced him to six months in jail.

"They took me to the basement of the courthouse and they strip-searched me, and they shackled me with leg irons and chains," Loeber recalls. "Then they came back two hours later and said, 'Are you ready to sign the deed now?'"

Loeber still refused to sign the deed and was brought to Albany County Jail, where he was held for 45 days without ever having a hearing. He was held until another court acted on a petition for his release brought by his attorney.

"Two hours before I was released, Joe Teresi signed an order naming the [county] sheriff receiver of my property," Loeber says bitterly. "And he directed the sheriff to sign for

it."

"He held no trial and summarily gave my water easement to others without just compensation," Loeber wrote in a complaint to the state Commission on Judicial Conduct on Dec. 15, 1998. "In effect, he denied me my fundamental, inherent and constitutionally secured rights to due process, liberty and prosperity. . . . He has violated my rights to a fair trial. He has held me to a procedural standard which he would not meet, and one to which he did not hold my adversaries. His decisions and conduct were not fair. They were biased, and he was prejudicial."

Loeber sought relief for his losses in federal court, but found that unlike King John, Judge Teresi was not going to be skewered for lording his power over the little people.

"I sued everybody," Loeber says. "I sued the judge, the two lawyers, Rao and Marini, the sheriff and the county. The judge was dismissed from the lawsuit. They called it 'judicial immunity.' I call it the 'divine right of kings.' If the judge cannot be held liable for his willful actions against us, what reason does he have to do things right?"

Justice Teresi was not available for comment on this story. He was presiding over a murder trial and was not able to return calls.

In 1998, Loeber joined the ranks of some 22,000 New Yorkers who have filed formal complaints against a judge with the state Commission on Judicial Conduct since 1975. The commission, an 11-member body mandated by state law to examine complaints against the state's jurists, was permanently established in 1976 by a special amendment to the state Constitution to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice in the unified court system." Four of the commission members are appointed by the governor, one by the temporary president of the Senate, one by the Assembly speaker, one by the minority leader of the Assembly and three by the chief judge of the Court of Appeals.

Though the commission is intended to be the watchdog of the judiciary, the organization has lately become the subject of media criticism. The *Times Union* recently completed a five-part editorial series on the commission called "Unequal Justice," and the New York *Daily News* has critiqued it in its six-month "Judging the Judges" editorial series, which complained that "incompetent or unethical" judges are rarely sanctioned.

In 1981 and 1987, when the commission was still quite young, it was the subject of public hearings in the state Legislature to determine whether it was living up to its duties. In the 1981 hearing before the Senate and Assembly judiciary committees, Sen. Douglas Barclay,

chair of the Senate committee, noted that "the work of the commission . . . requires periodic legislative review of its charter." In the 1987 hearing, commission administrator Gerald Stern acknowledged that the commission may be dealing with some "minor charges or allegations [that]. . . the commission has not followed its legislative mandate." Again, it was indicated that the best way to evaluate how well the commission was performing was through periodic legislative hearings.

Since that time, there has not been another public legislative hearing to evaluate the commission.

In 1989, then-state Comptroller Edward Regan attempted to look into whether the commission was properly investigating complaints brought to it, but he was thwarted by the confidentiality rules that cloak the commission's operations in secrecy. Regan said that without access to the transcripts, hearings, complaints and evidence submitted to the commission, it would be virtually impossible to determine whether the panel was functioning properly. But judiciary law only allows limited access to the commission's records by the governor, the state Senate and the Commission on Judicial Nomination.

"Without an effective system of checks and balances, the potential exists that the commission may be abusing its authority by wrongfully dismissing complaints against judges without cause and justification," Regan told reporters at the time.

Since then, the commission has been scrutinized from time to time in the media, and Chief Judge Judith Kaye appointed a special inspector general to investigate fiduciary appointments by the courts, but the Legislature has pretty much let the commission go about its business without public examination of its activities.

According to Gerald Stern, the commission's administrator, "not much happened" as a result of either the 1981 or 1987 legislative hearings, and he's not sure whether there would be much result should the Legislature hold one now.

"I suppose they would look at our statute, and how it could be amended," he comments. But the thing that would have a significant impact on the organization's function is money. Right now the commission is operating on a scant budget of \$2.12 million per year. Ten years ago, its budget was \$2.26 million. The commission used to employ nearly 40 people. Today its staff consists of 27, only six of whom are investigators.

"We have made the point that we need more funding," Stern says. "We are lacking investigators, we could do a more comprehensive job in the field-investigation cases if we had those investigators. We are lacking also in the nonpersonnel services part of our budget. We have to curtail travel and equipment because we come very close

each year to running out of money. This year we were told not to because the budget would not permit it. Could we be function better with more money? Yes. But how is it working? It's working reasonably well. The system is working well."

Elena Ruth Sassower disagrees. Vehemently.

Sassower is cofounder and coordinator of the Center for Judicial Accountability, a White Plains, N.Y., organization dedicated to fighting political manipulation and dishonesty in the judiciary. Sassower is an unrelenting campaigner for reform of the judicial-oversight process, and she's something of a court-reform zealot. She becomes very emotional when she discusses her work to expose what she believes is a corrupt judiciary-oversight process. She has a tendency to bang on the table for emphasis, and she punctuates her speeches on the commission's work with what she calls "readily verifiable evidence of corruption."

She practically shakes with outrage when she describes how her work with the center, which was formally incorporated in 1994, has been overlooked and/or dismissed by the commission, the state's Chief Judge Judith Kaye, Attorney General Eliot Spitzer, Gov. George Pataki, practically every state agency involved with the judiciary, and the state's Appellate Court.

Through Sassower and her mother, Doris Sassower, the Center for Judicial Accountability has filed numerous complaints with the commission. (Donna Sassower is a nationally renowned equal-rights lawyer whose license was unceremoniously withdrawn in 1991, which the center believes was a result of her "whistleblowing" activities.) Between 1989 and 1994, alone, the center filed eight conduct complaints, all of which were dismissed.

Frustrated that none of the petitions was being investigated—though they made such serious charges as perjury, collusion and complicity—the Sassowers sued. Doris Sassower sued the Commission on Judicial Conduct, and her case was dismissed. After several attempts to keep the case against the commission alive, Sassower eventually was barred from initiating any further proceedings relating to the charges brought in the case.

After her mother was barred from bringing suit, Elena Sassower followed in her footsteps. In 1999, Sassower brought a suit against the commission in Supreme Court, New York County, in which she called for the governor to appoint a special prosecutor to investigate the commission's role in judicial corruption and pattern of dismissing "facially meritorious" complaints. In 2000, Manhattan Supreme Court Justice William Wetzel dismissed the case and enjoined Sassower and the Center for Judicial Accountability from "related" actions before the court.

Sassower appealed the decision, and on Dec. 18, 2001, the Supreme Court of the State of New York, Appellate Division, First Department, dismissed Sassower's petition without relief. The court said that Sassower "lacks standing" to sue the commission and upheld Wetzel's dismissal.

On Jan. 17, 2002, Sassower made a motion for reargument of her suit before the Appellate Court. In her affidavit for reargument, she states that the court "overlooked or misapprehended EVERY point presented by my appellate submissions and ALL the uncontroverted, documented facts and controlling law on which they are based."

Her suit, which is pending another hearing before the New York State Supreme Court Appellate Division, requests six claims for relief. She asks the court to determine:

1. Whether the commission's operating rules and procedures are consistent with the commission's mandate set forth in the state Judiciary Law. According to Judiciary Law 44.1, the commission "shall receive, initiate, investigate and hear complaints with respect to" judicial conduct. However, in the commission's operating rules, whether the commission is obligated to examine such cases becomes optional: "When a complaint is received or when the administrator's complaint is filed, an initial review and inquiry may be undertaken. Upon receipt of a complaint, or after an initial review and inquiry, the complaint may be dismissed by the commission or, when authorized by the commission, an investigation may be undertaken," according to 22 NYCRR 7000.3.
2. Whether Sassower's Oct. 6, 1998, judicial-misconduct complaint against Appellate Justice Albert Rosenblatt is "facially meritorious." Sassower alleged in her complaint that Rosenblatt perjured himself before the Commission on Judicial Nominations by failing to acknowledge that he had been the subject of previous commission investigation.
3. Whether the commission has wrongfully deprived complainants of their rights to basic information as to why the commission may have dismissed their complaints. As it stands, many complainants—including Sassower—simply receive form letters stating that their cases have been dismissed without investigation.
4. Whether the commission is behaving unconstitutionally when it dismisses cases using only three members of the 11-member judicial-conduct panel.
5. Whether the 10-year chairmanship of Henry Berger, who is still serving as chair of the commission today, violates the commission's own rules. Commission chairmen are supposed to be limited to a member's "term in office or for a period of two years, which ever is shorter."

6. Whether the commission has a mandatory duty to receive and determine complaints. Sassower cites one complaint in particular—her 1999 complaint against Appellate Division Judge Daniel Joy, which the commission simply refused to acknowledge. At the time of the complaint, Joy also was the highest-ranking judge on the commission.

On Feb. 7, the Commission on Judicial Conduct submitted a motion to the court asking for dismissal of Sassower's reargument motion. Carol Fisher, an assistant solicitor general for the attorney general, argued that Sassower's case was baseless, relied on "imagined conspiracy involving the governor and the presumed wish possessed by judges to protect the supposed conspiracy from exposure."

It's difficult to find an unbiased, professional opinions on Sassower's lawsuit, because Sassower seems to have made too many enemies within the court system, state government and bar associations of New York state. Very few people would comment about her suit on the record, and some of the correspondence Sassower has had with various agencies and organizations about her case is so blistering that those who might possibly be equipped to examine her claims have refused to have any further contact with her.

Take Stephen Krane, president of the New York State Bar Association, for example. Sassower provided him with a complete set of papers on her appeal, and when he returned them to her, she sent him a letter accusing him of making "false and defamatory" statements. She took him to task for writing to her that the matters her suit addresses "are not matters of statewide significance." She also raked him over the coals for returning the court papers in pristine condition:

"There were NO creases in the card-stock covers of the Appellant's brief and Appendix, nor any in the inside pages, NO creases in the paper covers and contents of the Attorney General's Respondent's Brief and my critique thereof. . . . In short, these 'materials' seemed to be in 'untouched by human hands condition.' I, therefore, call upon you to confirm that you actually 'reviewed' these 'materials'—which is what your [letter] claims in its very first sentence."

After Sassower sent Krane several such letters, he sent her back an e-mail, which read:

"Apparently, I did not sufficiently mutilate the papers you provided me last spring, but rather had the courtesy to return them to you in virtually the same condition in which I received them. Rather than thanking me for doing so, you saw fit to accuse me of lying about having reviewed your papers. I do not take kindly to scurrilous charges against me, and thus have no intention of responding to your correspondence or of wasting any further time even

thinking about what I consider to be a baseless crusade on your part."

The commission's Stern had only this to say about Sassower and the suit filed by the Center for Judicial Accountability:

"I know of Ms. Sassower extremely well," Stern says. "I'm not going to have any comment. I'm not sure which of her many, many lawsuits she's called to your attention. She has been barred from bringing complaints, from suing judges in the court system, and she's got a number of cases or appeals or whatever. But I think you can call any other state agency and they'll be familiar with her, too. I'm not going to make any other comment."

After Loeber filed his complaint against Teresi, he says, his early communications with the Commission on Judicial Conduct were promising. He says he was told that his case was going to be used to "build a case against Teresi," against whom there were other conduct complaints already pending.

"I was told that they examined 26,000 documents and found others who were imprisoned illegally by Teresi," Loeber says. "They led me to believe that they were going to remove him from the bench."

Loeber says he waited patiently for more than a year for the commission to act on the Teresi matter. "And then a guy named Amadou Diallo got shot, causing a real serious problem for New York," Loeber says. "And a policy decision was made to solve that problem."

It was determined that the four police officers who shot Diallo, an unarmed black man standing in a New York City doorway in February 1999, could not receive a fair trial in New York City due to the extraordinary amount of publicity surrounding the case. When the case was brought to Albany, Chief Administrative Judge Jonathan Lippman selected Teresi to preside over it. In February 2000, the nation was stunned when the four police officers who gunned down Diallo with 41 bullets were acquitted on all charges.

"Joe Teresi was given a dirty job to do," Loeber said. "Teresi got a not-guilty verdict on every defendant, on every count and every lesser charge. Joe Teresi did a marvelous job in doing the job he was assigned. And they made Joe Teresi a national hero."

One year later, in February 2001, Loeber was at home when his phone rang. It was a reporter calling to ask him what he thought of the commission's verdict on the Teresi judicial-misconduct case. On Feb. 8, 2001, the commission had ruled that, based on his behavior in four separate cases including Loeber's, Teresi "failed to observe high standards of conduct" and violated the due-process rights

of Loeber. He was censured by the commission—essentially, he was officially reprimanded—for his behavior. Loeber was never called by the commission to testify. And no one bothered to notify him about the determination until Feb. 23, weeks after the information had already been distributed to Teresi, all members of the commission and the press.

"They had led me to believe he was going to be removed," Loeber says again. "It's my opinion that Joe Teresi's censure was his reward."

Stern says that he thinks the Loeber case was handled correctly and that the appropriate punishment was meted out to Teresi: "I think he should have been censured, and he was censured," Stern comments. "If I were involved in a particular case and had a grievance against a judge and the commission found there was an infraction, I would be very upset, too. I understand that. But that's why victims of crimes don't sit on a jury. The commission has to look at more than that. And Judge Teresi had a good reputation, and he did some excellent work."

Despite good deeds and excellent work, Teresi and any judge who willfully violates an oath of office should be made to pay, Loeber thinks.

In 2001, after the Teresi decision was made public, Loeber started a New York chapter of J.A.I.L.4Judges (Judicial Accountability and Integrity Legislation), an organization that wants to create special grand juries to investigate complaints against judges when all other avenues—including the filing of complaints with the Commission on Judicial Conduct—have been exhausted.

The special grand juries J.A.I.L. would create would have the power to discipline judges by levying fines, removing them from the bench and, where appropriate, subjecting jurists to criminal proceedings before special trial juries. According to members of J.A.I.L.4Judges, the commission is too closely tied to the judiciary. As a result, too many abuses of judicial discretion, conflicts of interest, denial of due process and violations of individuals' rights are tolerated. J.A.I.L. says that since judges enjoy judicial immunity—or divine right, as Loeber likes to call it—there is no real avenue for relief should the commission refuse to investigate a case. Or when a case is investigated but the complainant doesn't feel that the punishment suits the crime.

"The 'censure' of that man [Teresi] is but the mere hurling of a word against the wind . . . and it wasn't even a four-letter word," Loeber complained in a letter to Chief Judge Judith Kaye in March 2001. "The *Times Union* reported that Joe Teresi said, 'I take full responsibility for all my actions and regret that they occurred. I apologize to my colleagues in the judiciary for any negative impact this might have.' . . . Why is it that with all the people Joe Teresi offended and damaged, he

apologized to his colleagues? . . . If I break the law as Joe Teresi has done, will the district attorney, in the future, accept my apology and offer polite censure to me?"

Probably not. Which is why Loeber is hoping to see a future when judges can be held more directly accountable for their actions.

"I keep telling people I can't wait until the first judge is sent to jail on a three-strikes provision," says Loeber, "and gets a cellmate named Bubba, desperately wanting a girlfriend as a cellmate."

- To contact Ron Loeber and J.A.I.L.4Judges, visit www.jail4judges.org or e-mail him at valortoo@capital.net.
- To find out more about Elena Sassower and the Center for Judicial Accountability, visit www.judgewatch.org.
- To find out more about the Commission on Judicial Conduct, visit www.scjc.state.ny.us.

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