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COURT OF APPEALS

STATE OF NEW YORK

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DAGAN LACORTE,

Petitioner,

-against-

No. 240

HOWARD L. CYTRYN ET AL.,

Appellants.  
-----

20 Eagle Street  
Albany, New York 12207  
August 21, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Sharona Shapiro  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 240, Lacorte.

2 Counsel, one second. Let them clear, and  
3 then we'll get started.

4 So you're going to have ten, five, and  
5 five, right?

6 MR. GOLDFEDER: Yes. May I have seven and  
7 three?

8 CHIEF JUDGE LIPPMAN: Seven and three,  
9 you've got it. Go ahead, counselor, you can start.

10 MR. GOLDFEDER: May it please the court.  
11 My name is Jerry Goldfeder, and I represent Dagan  
12 Lacorte.

13 The issue before you is not as meaty,  
14 perhaps, as the one you've just heard, but it relates  
15 to procedural due process of a candidate who's been  
16 thrown off the ballot and is seeking to - - -

17 CHIEF JUDGE LIPPMAN: Whose burden is it to  
18 particularize here, counselor?

19 MR. GOLDFEDER: I think it's - - - it's a  
20 shifting burden. In the first instance, it's the  
21 Board, the Board of Elections - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. GOLDFEDER: - - - to demonstrate why  
24 signatures are allegedly erroneous. And if they make  
25 that determination and they kick a candidate off the

1 ballot, then it becomes our burden to validate his  
2 candidacy.

3 CHIEF JUDGE LIPPMAN: And what is that  
4 burden, precisely? That's what this case is all  
5 about, what that burden is exactly?

6 MR. GOLDFEDER: The burden is to prove that  
7 there were erroneous rulings by the Board.

8 CHIEF JUDGE LIPPMAN: And how does one do  
9 that?

10 MR. GOLDFEDER: One does that in trial by  
11 demonstrating that, as a legal matter, there are  
12 certain signatures that were declared erroneous that  
13 shouldn't have been. We had a number of those where  
14 a subscribing witness - - - witness ID town was  
15 incorrect, and the law - - -

16 CHIEF JUDGE LIPPMAN: So what do you have  
17 to say? Do you have to go and say this particular  
18 signature for this particular reason? How do you do  
19 that? How do you prove that - - - that they should  
20 be - - - they're good signatures rather than bad  
21 signatures?

22 MR. GOLDFEDER: Well, I'll tell you exactly  
23 how we did it in this case.

24 CHIEF JUDGE LIPPMAN: Go ahead, counselor.

25 MR. GOLDFEDER: There were a number of

1 categories that were included in our verified  
2 petition, a category relating to erroneous rulings by  
3 the Board where they said that a signature of a  
4 person was - - - that that person was not enrolled.  
5 We demonstrated through, actually, the testimony of  
6 the Board of Elections Commissioner that they made a  
7 mistake. So X-number of signatures that were  
8 invalidated because the person was not enrolled, we  
9 resuscitated those signatures.

10 They also ruled that there were a number of  
11 signatures where - - - underneath a subscribing  
12 witness statement one needs to put in the town or  
13 city and the county, and the law is clear that if you  
14 make a mistake and you put in the wrong town or city,  
15 that that doesn't count, so that should not have been  
16 invalidated.

17 JUDGE ABDUS-SALAAM: Okay. Are you - - -

18 MR. GOLDFEDER: And the Supreme Court - - -

19 JUDGE ABDUS-SALAAM: Counsel, are you - - -

20 MR. GOLDFEDER: - - - found that - - -

21 JUDGE ABDUS-SALAAM: - - - are you required  
22 to give notice to the Board, or the other side, which  
23 signatures you think should be resuscitated out of,  
24 you know, in this case a couple thousand that were -  
25 - - nearly a couple thousand that were invalidated?

1 MR. GOLDFEDER: That's the nub of this case

2 - - -

3 JUDGE ABDUS-SALAAM: Right.

4 MR. GOLDFEDER: - - - if I'm required to do  
5 it. The Jennings rule is a harsh, per se, strict  
6 liability rule.

7 CHIEF JUDGE LIPPMAN: Do we have to - - -

8 MR. GOLDFEDER: It - - -

9 CHIEF JUDGE LIPPMAN: - - - overturn  
10 Jennings to find for you?

11 MR. GOLDFEDER: No.

12 CHIEF JUDGE LIPPMAN: Why not?

13 MR. GOLDFEDER: Because we acted  
14 consistently with Jennings. Jennings is about  
15 notice. I think that Jennings - - - I think Jennings  
16 ought to be overturned because it is - - - it divests  
17 the Supreme Court of any discretion as to whether or  
18 not notice was provided. This Supreme Court found  
19 that notice - - - sufficient notice was provided.  
20 It's different than an invalidating petition, where  
21 somebody is trying to knock somebody off the ballot,  
22 in anticipating what the Board of Elections will  
23 rule; no notice is required, no bill of particulars  
24 is required. In an anticipatory, validating  
25 proceeding brought before the Board of Elections'

1 rules, no notice is required. They can't suggest  
2 what erroneous rulings the Board is going to make,  
3 because the Board hasn't ruled yet. And they are not  
4 required - - - a candidate is not required to,  
5 thereafter, serve or file a bill of particulars.  
6 Only in this case - - -

7 JUDGE GRAFFEO: Let me ask you, though, at  
8 a practical level - - -

9 MR. GOLDFEDER: Yes.

10 JUDGE GRAFFEO: - - - say you've got 5,000  
11 signatures - - -

12 MR. GOLDFEDER: Yes.

13 JUDGE GRAFFEO: - - - that are in  
14 contention.

15 MR. GOLDFEDER: Yes.

16 JUDGE GRAFFEO: At some point, isn't the  
17 trial judge going to say, how many of these 5,000  
18 signatures are you going to claim - - -

19 MR. GOLDFEDER: Absolutely.

20 JUDGE GRAFFEO: - - - should have been  
21 validated, because - - -

22 MR. GOLDFEDER: Absolutely.

23 JUDGE GRAFFEO: - - - the trial judge has  
24 got to decide is this a three-day or a three-week?

25 MR. GOLDFEDER: Absolutely.

1 JUDGE GRAFFEO: Am I going to appoint a  
2 special referee?

3 MR. GOLDFEDER: And the candidate has to  
4 dec - - -

5 JUDGE GRAFFEO: I mean, at some point  
6 you've got to give notice.

7 MR. GOLDFEDER: Absolutely, and the  
8 candidate has to decide - - -

9 JUDGE GRAFFEO: So - - -

10 MR. GOLDFEDER: - - - whether - - -

11 JUDGE GRAFFEO: So isn't that - - -

12 MR. GOLDFEDER: - - - it's worth it.

13 JUDGE GRAFFEO: - - - isn't that part of  
14 the burden shifting then?

15 MR. GOLDFEDER: So I agree with that.  
16 Jennings says you must give notice if you're - - - if  
17 you're commencing a validating proceeding. Within  
18 three short days after the Board knocks you off, you  
19 must specify, in detail, in your pleadings, which  
20 signatures and which - - -

21 JUDGE SMITH: Would it be adequate to say  
22 each and every one?

23 MR. GOLDFEDER: Frankly, if I said each and  
24 every one, what kind of notice is that? It - - -

25 JUDGE SMITH: I understand; under Jennings,

1 does that work?

2 MR. GOLDFEDER: I would like to say that -

3 - -

4 JUDGE GRAFFEO: At least the other side

5 would know to get ready to address - - -

6 MR. GOLDFEDER: But what kind of notice is

7 that?

8 JUDGE GRAFFEO: - - - to address 5,000 - -

9 - I mean - - -

10 MR. GOLDFEDER: In all honesty - - -

11 JUDGE GRAFFEO: You could - - -

12 MR. GOLDFEDER: - - - what kind of notice

13 is that?

14 JUDGE GRAFFEO: You could have some pages

15 where all the signatures look the same, so the

16 candidate doesn't want to count those pages, so that

17 they don't have to get involved in - - - in

18 allegations of fraud. They want to eliminate that.

19 Shouldn't they give notice so people know - - - the

20 other side knows not to waste time on those - - -

21 MR. GOLDFEDER: There - - -

22 JUDGE GRAFFEO: - - - pages - - -

23 MR. GOLDFEDER: There should be notice, and

24 that's why - - -

25 JUDGE GRAFFEO: - - - of the petition?

1 MR. GOLDFEDER: - - - Judge Smith, I think,  
2 that kind of - - - the Board made errors in every  
3 signature; I don't think that's really notice.

4 JUDGE SMITH: What did your pleading here,  
5 in fact, say?

6 MR. GOLDFEDER: Well, what - - - our  
7 pleading said that there were cert - - -

8 JUDGE SMITH: Do we have it? Is it in one  
9 of these appendices?

10 MR. GOLDFEDER: I hope so.

11 JUDGE SMITH: You don't happen to know the  
12 page number?

13 MR. GOLDFEDER: I don't - - - I don't know.

14 JUDGE SMITH: All right.

15 MR. GOLDFEDER: It's part of the file and  
16 in our pleading. And this goes to the Chief Judge's  
17 question of whether or not you have to overturn  
18 Jennings. I'm arguing that you should overturn  
19 Jennings, but you do not have to overturn it.

20 JUDGE READ: That's a Second - - -

21 JUDGE SMITH: What did it say - - -

22 JUDGE READ: That's a Second Department  
23 decision, right?

24 MR. GOLDFEDER: That's correct.

25 JUDGE READ: Yeah, so we've never ruled on

1 this issue, correct?

2 MR. GOLDFEDER: You have not.

3 JUDGE READ: So we don't have to overrule  
4 anything; we would just have to reach a different  
5 conclusion, I guess.

6 CHIEF JUDGE LIPPMAN: We don't have to pay  
7 attention - - -

8 MR. GOLDFEDER: That's correct.

9 CHIEF JUDGE LIPPMAN: - - - to Jennings.

10 JUDGE READ: Yeah, we don't - - -

11 MR. GOLDFEDER: That's - - -

12 JUDGE READ: - - - have to pay attention -  
13 - -

14 MR. GOLDFEDER: That's actually correct.  
15 And I think that we have acted consistently with  
16 Jennings, to answer your direct question - - -

17 CHIEF JUDGE LIPPMAN: Yes.

18 MR. GOLDFEDER: - - - because in our  
19 verified petition, we said - - - we stated certain  
20 categories of erroneous rulings: not enrolled, the  
21 witnesses where the town was erroneous, where a  
22 witness didn't live in the same place he was  
23 registered. It was clear what we were alleging, in  
24 general terms, and - - -

25 JUDGE SMITH: But you didn't link them to

1 signature number 28, 30, or 742.

2 MR. GOLDFEDER: No - - - the answer is no,  
3 because when we commenced our - - - our petition, our  
4 proceeding, we didn't have the rulings. We didn't  
5 get that until the following ni - - - until that  
6 night.

7 CHIEF JUDGE LIPPMAN: So was there a bill  
8 of particulars here?

9 MR. GOLDFEDER: Yes. That's the  
10 difference.

11 CHIEF JUDGE LIPPMAN: Is there always a  
12 bill of particulars required?

13 MR. GOLDFEDER: No, it's never required.  
14 But we did - - -

15 CHIEF JUDGE LIPPMAN: Does it often come  
16 in? Does it often - - -

17 MR. GOLDFEDER: When I practice, it does.  
18 What I did was I served and filed a verified bill of  
19 particulars on the call of the calendar. The case  
20 was called at 10:30; I served it at that time. It  
21 was a detailed rendition. That's different than  
22 Jennings.

23 JUDGE READ: Let me ask one other question.  
24 Is this - - - now, you were notified by telephone on  
25 Thursday. Didn't you have access to the Board's

1 notations on all the signatures by that Friday?

2 MR. GOLDFEDER: Friday night.

3 JUDGE READ: Yeah, okay, so it was the next  
4 day. So at that point you did know what they - - -  
5 the different - - - and they gave multiple  
6 categories, I think, for some of the line items.

7 MR. GOLDFEDER: Yes, they did.

8 JUDGE READ: Okay.

9 MR. GOLDFEDER: Which meant I didn't really  
10 know what the rulings were.

11 JUDGE PIGOTT: Could you define those? You  
12 know, I'm looking at the record, it's got the NT, the  
13 NE, the - - - do you know what these mean, because  
14 the key isn't in here.

15 MR. GOLDFEDER: I know most of them,  
16 because in the original objections they served it.  
17 But there are - - - there are abbreviations there  
18 that I didn't know - - - NOP, IND, Valid, Invalid,  
19 Correct, Multiple listings - - - not all of them; I  
20 could think about it and try to infer what they  
21 meant. But the point here is I commenced the  
22 proceeding Friday morning. Three short days I have  
23 to do that, and I'm supposed to, at the same time I  
24 have to worry about serving and filing my - - - my  
25 verified petition, and making sure I name every

1 necessary party, every objector - - - and by the way,  
2 there could be dozens and dozens of objectors. In  
3 this case there are only three, but there could be  
4 dozens. I have to name them, I have to make certain  
5 that that case is - - - is commenced properly within  
6 - - -

7 CHIEF JUDGE LIPPMAN: Okay.

8 MR. GOLDFEDER: - - - three days. At the  
9 same time, I have to list all that. I didn't have it  
10 yet - - -

11 CHIEF JUDGE LIPPMAN: Okay, counselor.

12 MR. GOLDFEDER: - - - but I didn't - - -  
13 okay, thank you.

14 CHIEF JUDGE LIPPMAN: You'll have your  
15 rebuttal. Thanks, counselor.

16 Counselor?

17 MR. GOLDSTON: Thank you, Your Honor. Alan  
18 Goldston for the objectors and candidate David Klein.

19 Let me first emphasize that this is not  
20 just about Jennings - - -

21 CHIEF JUDGE LIPPMAN: Do we - - - as Judge  
22 Read - - -

23 MR. GOLDSTON: - - - and interpreting  
24 Jennings.

25 CHIEF JUDGE LIPPMAN: As Judge Read

1 indicated, we're not bound by Jennings.

2 MR. GOLDSTON: I understand that.

3 CHIEF JUDGE LIPPMAN: But where does this  
4 case fit in relation to that Jennings decision, or is  
5 it about Jennings altogether?

6 MR. GOLDSTON: Let me say - - - let me say  
7 two things about that. First is, if the dismissal on  
8 the pleadings is reversed, then we've got at least  
9 four substantive questions as to whether there's  
10 enough numbers to make a valid petition. So that  
11 shouldn't be forgotten.

12 As to Jennings, I want to point out that  
13 the court of first instance specifically recited that  
14 he was not relying on the Second Department's rule in  
15 Jennings, because he was under the impression, which  
16 we now all agree was a misimpression, that it wasn't  
17 until the 31st of July that counsel obtained the  
18 specific rulings - - -

19 JUDGE PIGOTT: What do these mean?

20 MR. GOLDSTON: - - - of the Board.

21 JUDGE PIGOTT: What do these mean, the NTs,  
22 the NEs, the - - -

23 MR. GOLDSTON: NT, no town; WT, wrong town;  
24 NE, not enrolled - - -

25 JUDGE PIGOTT: All right. So if I'm a can

1 - - -

2 MR. GOLDSTON: - - - NR, not registered.

3 JUDGE PIGOTT: So if I'm a candidate and I  
4 get - - - and it says signature 1, NT, NR, NE, NB,  
5 WA, and they're all circled, what does that mean?

6 MR. GOLDSTON: What it means is, in this  
7 case, that the Board - - - the sheet you're looking  
8 at, but for the handwriting, was prepared by the  
9 objector. Those are the objections, sheet by sheet,  
10 line by line, and the specifications of objections  
11 with the accepted codes.

12 JUDGE PIGOTT: So - - - so just so - - -

13 MR. GOLDSTON: And what the Board - - -

14 JUDGE PIGOTT: - - - just so I'm clear, so  
15 - - - and you want to say you needed - - - you needed  
16 specifications from them as to what they were now  
17 going to try to put back on?

18 MR. GOLDSTON: Correct.

19 JUDGE PIGOTT: So if we took signature 1  
20 here, and it says NT, NR, NE, NB, WA, you would want  
21 somebody to say to you, I want you to explain that  
22 you're calling this witness and explain that they're  
23 in the right town, that they are properly registered.  
24 I don't know what N - - - what's NE?

25 JUDGE GRAFFEO: Enrolled.

1 JUDGE PIGOTT: That I am enrolled. What's  
2 ND? Anyway, my point is, how do you do that?

3 MR. GOLDSTON: First, Your Honor, that's  
4 not quite our contention. Our contention is that the  
5 Board made clear, given the abbreviations which were  
6 shared with all of the parties and counsel, what it  
7 was ruling on. It knocked out, more or less, 2,500  
8 signatures, and it gave page-by-page specification of  
9 what signatures and on what grounds.

10 JUDGE PIGOTT: At the time that we  
11 discussed this earlier, before the leave grant - - -

12 MR. GOLDSTON: Yes.

13 JUDGE PIGOTT: - - - we were talking about  
14 the fact that they had about a week or ten or eleven  
15 days to do that. And your opponent makes the  
16 argument that he had two or three days to get  
17 together the petition filing, and what you would hope  
18 would be the appropriate specifications, which seems  
19 like kind of a Herculean effort on a candidate after  
20 the Board, with all of their - - - all the king's  
21 horses and all the king's men, spent their time doing  
22 this in an expertise that only they have. So why  
23 shouldn't they simply say - - - Judge Smith  
24 suggested, and your opponent says this too - - - why  
25 couldn't he say, I think every one of the signatures

1 I submitted was fine, and I'm prepared to prove it?

2 MR. GOLDSTON: In the case of the Board,  
3 it's not so much expertise as access to records. The  
4 Board looks up. If we didn't find a signer in the  
5 database we had available to us, we said you're not  
6 registered. The Board then goes to the records, and  
7 if it finds that person registered, it overrules that  
8 objection. If, despite its best efforts, even  
9 looking at other addresses, it finds that person, or  
10 someone like that person, it overrules the objection  
11 and leaves the signature valid.

12 JUDGE SMITH: But the question is now once  
13 it's done that, what's to stop the candidate from  
14 saying I disagree with everything the Board - - -

15 MR. GOLDSTON: Okay.

16 JUDGE SMITH: - - - has validated?

17 MR. GOLDSTON: Okay. Let's remember that  
18 we are not talking about errors by the Board that are  
19 being overturned at trial. We're talking about  
20 correct actions by the Board, which can be forgiven  
21 by offering explanatory proof at trial. And that's a  
22 very different animal that crept into the law after  
23 the 1992 changes. As a result, what we now have is a  
24 situation in which - - - forget the bad signatures -  
25 - - in which we have hundreds and hundreds and

1 hundreds of signatures with alterations, with  
2 unexplained date changes, where the necessary  
3 initials - - -

4 JUDGE SMITH: So you're saying - - -

5 MR. GOLDSTON: - - - are missing.

6 JUDGE SMITH: - - - in effect, you're  
7 saying tell me which of these things you have  
8 evidence that I'm wrong about.

9 MR. GOLDSTON: Right. It's not a question  
10 of whether - - -

11 JUDGE SMITH: I have another - - -

12 MR. GOLDSTON: - - - the Board was wrong -  
13 - -

14 JUDGE SMITH: - - - another - - -

15 MR. GOLDSTON: - - - but whether the  
16 Board's going to get - - -

17 JUDGE SMITH: I have another - - - another  
18 question, if I could, a rather basic one. Does  
19 anybody have a copy of the pleading we're being asked  
20 to decide is either sufficient or insufficient?

21 JUDGE READ: It's in the record.

22 JUDGE SMITH: Where is it?

23 JUDGE PIGOTT: The original record?

24 JUDGE READ: The original record.

25 JUDGE SMITH: Okay. But it's not in the

1 appendices, okay.

2 JUDGE READ: No.

3 MR. GOLDSTON: It is in the record, Your  
4 Honor.

5 JUDGE PIGOTT: I know - - -

6 JUDGE GRAFFEO: Where - - -

7 MR. GOLDSTON: The court below specifically  
8 decided - - -

9 JUDGE PIGOTT: Where - - -

10 MR. GOLDSTON: - - - to rely on the Bodkin  
11 case - - -

12 JUDGE PIGOTT: Do you know where it is in  
13 the record?

14 JUDGE ABDUS-SALAAM: Where is it?

15 JUDGE READ: It's in the original record.

16 JUDGE ABDUS-SALAAM: Which we don't have?

17 JUDGE READ: Which I have.

18 JUDGE ABDUS-SALAAM: Okay.

19 JUDGE READ: If you want a copy. We have  
20 it. We have it.

21 CHIEF JUDGE LIPPMAN: It is available for  
22 inspection.

23 JUDGE PIGOTT: This is part of your brief.

24 JUDGE READ: It's available for inspection.

25 JUDGE PIGOTT: This is part of your brief;

1 take a look at page 10 of your brief.

2 MR. GOLDSTON: Of my brief? Page 10.

3 JUDGE PIGOTT: Yeah, I think it's your  
4 brief. Yeah.

5 MR. GOLDSTON: The first or reply?

6 JUDGE PIGOTT: Brief of appellant.

7 MR. GOLDSTON: Brief of appellant. I have

8 - - -

9 JUDGE PIGOTT: I'm only making the point  
10 that you have something there that doesn't exist. I  
11 mean, you can't read it. And I only say that to  
12 point out that this is such a hustle. I mean, this  
13 whole thing started in - - -

14 MR. GOLDSTON: Okay.

15 JUDGE PIGOTT: - - - essentially, in  
16 August. We're still in August. You've been to three  
17 courts, because that's the way - - - that's the  
18 nature of this beast.

19 MR. GOLDSTON: Um-hum.

20 JUDGE PIGOTT: And my understanding, after  
21 the petition is brought, and now you're going in for  
22 a hearing, if your legal challenges are not  
23 sustained, that the judge says how long is this going  
24 to take, and the petitioner says, well, Judge, I  
25 think I've got a dozen witnesses, but I'm still - - -

1 still working at it. And he says, I'm going to give  
2 you four days; I don't care how many witnesses you  
3 got. And that's what you do. It's just the nature  
4 of this very difficult process, right?

5 MR. GOLDSTON: This was Thursday, Friday,  
6 immediately before the I got to get it to the  
7 Appellate Division by Monday ruling.

8 JUDGE PIGOTT: Exactly. Exactly, yeah.

9 MR. GOLDSTON: Right, and this was part of  
10 Thursday and part of Friday, with another case kind  
11 of interpolated over lunch - - -

12 CHIEF JUDGE LIPPMAN: Okay, counselor.

13 JUDGE GRAFFEO: So - - -

14 CHIEF JUDGE LIPPMAN: That's the point that  
15 the - - -

16 MR. GOLDSTON: But - - -

17 CHIEF JUDGE LIPPMAN: - - - judge - - -

18 MR. GOLDSTON: - - - what we're dealing  
19 with here is a situation - - -

20 JUDGE GRAFFEO: If you could - - -

21 JUDGE ABDUS-SALAAM: Why is what they did  
22 not enough to give you notice about what they were  
23 planning to ask the court to resuscitate?

24 MR. GOLDSTON: Okay. When we say  
25 resuscitate, we're not talking about the Board was in

1 error; we're talking about a doctrine of forgiveness,  
2 a doctrine of - - -

3 JUDGE PIGOTT: Yeah, but you're the one - -  
4 -

5 MR. GOLDSTON: - - - finding de minimis.

6 JUDGE PIGOTT: - - - but you're the one  
7 that made the accusation, so you know which ones you  
8 objected to.

9 MR. GOLDSTON: Yes.

10 JUDGE PIGOTT: And now you're saying to  
11 them, well, you lose because we objected to so many  
12 that you now have to tell us which ones we objected  
13 to that you now want to say we improperly objected  
14 to, and because you can't do that, we win.

15 MR. GOLDSTON: With respect, Your Honor - -  
16 -

17 JUDGE PIGOTT: In other words, you can bury  
18 them.

19 MR. GOLDSTON: - - - I think you have that  
20 exactly backwards. It's you lose because so many of  
21 the signatures you submitted were so bad that there  
22 is this enormous volume - - -

23 JUDGE PIGOTT: But they aren't.

24 MR. GOLDSTON: - - - of bad signatures - -  
25 -

1 JUDGE PIGOTT: They're saying they - - -

2 MR. GOLDSTON: - - - that somehow - - -

3 JUDGE PIGOTT: Wait, wait, wait - - -

4 MR. GOLDSTON: - - - we've got to try to  
5 resuscitate ninety-six of them - - -

6 JUDGE PIGOTT: - - - wait, wait, wait,  
7 wait, wait, wait - - - please wait. They're not  
8 saying - - - they're saying we gave valid signatures  
9 to the Board of Elections. You said they've got  
10 2,000 signatures that are invalid; you, Board of  
11 Elections, go to work, which they did. Right? Now  
12 you say the Board of Elections says these aren't  
13 valid, you've got to tell us, of the 2,000 that we  
14 told the Board of Elections, which ones you think are  
15 still valid, when they're the ones that filed them  
16 and thought they were valid in the first place.

17 MR. GOLDSTON: The Board of Elections  
18 didn't make them bad; they did.

19 JUDGE PIGOTT: I'm not saying that they  
20 don't have the - - - that they don't have to come  
21 forward, but I'm saying this notice thing gets - - -  
22 when you talk about the compressed time, gets a  
23 little difficult, doesn't it?

24 MR. GOLDSTON: Let me suggest, Your Honor,  
25 that in the circumstance where one goes out and

1 collects supermarket petitions, as opposed to door-  
2 to-door petitions, one will, predictably, turn in a  
3 dirty petition.

4 JUDGE GRAFFEO: Well - - -

5 MR. GOLDSTON: One - - -

6 JUDGE GRAFFEO: - - - just to deal with  
7 this case specifically, what are you looking for that  
8 they didn't supply?

9 MR. GOLDSTON: I am looking - - -

10 JUDGE GRAFFEO: Instead of talking  
11 theoretically.

12 MR. GOLDSTON: I'm looking for - - -

13 JUDGE GRAFFEO: I mean, do you want - - -

14 MR. GOLDSTON: - - - a definition - - -

15 JUDGE GRAFFEO: - - - do you want - - - do  
16 you want - - -

17 MR. GOLDSTON: - - - of the trial I'm asked  
18 to commence.

19 JUDGE GRAFFEO: - - - page - - - are you  
20 looking for page and line number of every signature  
21 that they want to be able to put additional proof in  
22 on?

23 MR. GOLDSTON: Yes.

24 JUDGE GRAFFEO: Is that - - -

25 MR. GOLDSTON: Yes.

1 JUDGE GRAFFEO: Is that what you're - - -

2 MR. GOLDSTON: I'm looking for - - -

3 JUDGE GRAFFEO: Is what you're looking for?

4 MR. GOLDSTON: - - - fair notice of the

5 hearing I'm about to commence.

6 JUDGE SMITH: You're looking for - - -

7 MR. GOLDSTON: I am - - -

8 JUDGE SMITH: You're looking for what they

9 put in their bill of particulars; you just think you

10 were entitled - - -

11 MR. GOLDSTON: But they didn't.

12 JUDGE SMITH: - - - to it sooner.

13 MR. GOLDSTON: Their bill of particulars -

14 - -

15 JUDGE SMITH: You say even that's

16 inadequate?

17 MR. GOLDSTON: - - - purports to be, but it

18 isn't. Their bill of particulars included pages and

19 lines and questions that were never in doubt. Their

20 - - - their bill of particulars include ques - - -

21 pages and lines that were never challenged.

22 JUDGE PIGOTT: Why didn't you move to

23 dismiss those and then get going?

24 MR. GOLDSTON: Move to dismiss, a half an

25 hour after the calendar was called? I was moving to

1 dismiss on the basis of Jennings.

2 JUDGE PIGOTT: That's the time pressure - -  
3 - that's exactly right. My point is the time  
4 pressures are incredible. I don't know how anybody  
5 gets these things done, and you want to put a stone  
6 in the shoe here and say, well, before you come in  
7 and try to justify the petitions that you filed, you  
8 have to tell us, maybe not line and page, but you  
9 have to tell us which ones you're going to challenge.  
10 And even according to your opponent, simply saying we  
11 want to try get them all back is not enough notice.

12 MR. GOLDSTON: All right. I have for the  
13 court three questions. First, where do you say - - -

14 CHIEF JUDGE LIPPMAN: Counselor, we ask the  
15 questions, but go ahead.

16 MR. GOLDSTON: Okay.

17 JUDGE PIGOTT: Well, make them short.

18 JUDGE RIVERA: Make them statements.

19 MR. GOLDSTON: As statements then, first,  
20 the time wasn't so unreasonable. He had his three  
21 days, running from Friday through Monday, and he,  
22 with full access to all the details he needed to give  
23 me a detailed pleading, he chose to file it on the  
24 Friday instead of using the information he was given  
25 on Friday to give me a decent pleading - - -

1 CHIEF JUDGE LIPPMAN: Counselor?

2 MR. GOLDSTON: - - - on Monday. That was  
3 his choice.

4 CHIEF JUDGE LIPPMAN: Okay.

5 MR. GOLDSTON: That's one. Two - - -

6 CHIEF JUDGE LIPPMAN: Go ahead, counselor,  
7 your - - -

8 MR. GOLDSTON: Two - - -

9 CHIEF JUDGE LIPPMAN: - - - your time is  
10 up, so give us quickly what your other two questions  
11 - - -

12 MR. GOLDSTON: Two, the misstatement that  
13 he didn't have it until the 31st was expressly relied  
14 upon by the court below in denying the Jennings  
15 dismissal.

16 Three, we do have a substantial record that  
17 was compiled that demonstrates, on four different  
18 grounds, that there are lots of additional signatures  
19 to be disqualified. If this matter is reinstated  
20 because the dismissal is reversed, you have before  
21 you a sufficient record to then go on to say, but  
22 there were twenty-three signatures - - -

23 CHIEF JUDGE LIPPMAN: Okay.

24 MR. GOLDSTON: - - - - - vouched for by a  
25 guy who hadn't lived at his registered address - - -

1 CHIEF JUDGE LIPPMAN: Okay.

2 MR. GOLDSTON: - - - for five years.

3 CHIEF JUDGE LIPPMAN: Counselor, thank you.  
4 Let's hear from your colleague.

5 Counselor, what's the Board of Elections'  
6 interest in all of this?

7 MR. MASCOLA: Excuse me, Your Honor?

8 CHIEF JUDGE LIPPMAN: What is your interest  
9 in all of this? What's the - - - why are you here?  
10 Tell us what your - - -

11 MR. MASCOLA: Well, I do represent the  
12 Board of Elections.

13 CHIEF JUDGE LIPPMAN: Yes, we know.

14 MR. MASCOLA: Okay. One thing I did want  
15 to make clear, Your Honors - - - and good afternoon;  
16 I didn't even say that - - - on July 22 is when the  
17 specific objections were filed in the - - - with the  
18 invalidation petition. Three days later, on a  
19 Thursday, is when notice was given that there was a  
20 problem with the petition. It wasn't - - -

21 JUDGE PIGOTT: Well, July 22nd was an  
22 anticipatory proceeding, correct?

23 MR. MASCOLA: July 22 is when the specific  
24 objections were filed through the invalid - - -

25 JUDGE PIGOTT: That was antic - - - all

1 right. And the notice that you're talking about, is  
2 that the phone?

3 MR. MASCOLA: That was the telephone three  
4 days later.

5 JUDGE PIGOTT: All right. Now - - - well.

6 MR. MASCOLA: And they had to go through  
7 all of those specific objections. So now we're on  
8 Thursday. Friday, Mr. Goldfeder and the Lacorte  
9 people on their campaign, came into the Board of  
10 Elections, spent all day there, and as I said  
11 earlier, at the end of the day, the Board of  
12 Elections Commissioner said, if you wish to spend the  
13 rest of the weekend, we will keep people here all  
14 weekend, for Friday night, Saturday, Sunday, so you  
15 can do whatever you want. If you need backup - - -  
16 it was mentioned earlier about the key and the  
17 different codes - - - if you need other information,  
18 we're here for you.

19 JUDGE PIGOTT: Is that your discretion?

20 MR. MASCOLA: With the Board of Elections?

21 JUDGE PIGOTT: Yeah, did you do that  
22 because it was within your discretion to do so?

23 MR. MASCOLA: Yes, yeah.

24 JUDGE PIGOTT: So if - - -

25 MR. MASCOLA: They were - - -

1 JUDGE PIGOTT: - - - if you didn't like - -  
2 -

3 MR. MASCOLA: - - - trying to be - - -

4 JUDGE PIGOTT: So if you didn't like the -  
5 - -

6 MR. MASCOLA: - - - as fair as possible.

7 JUDGE PIGOTT: So if it was a different  
8 candidate you could have said, I'm sorry, we close at  
9 5 o'clock, move out, we'll see you on Monday?

10 MR. MASCOLA: Well, we certainly would hope  
11 that wouldn't happen - - -

12 JUDGE PIGOTT: I know, but that's - - -

13 MR. MASCOLA: - - - Your Honor.

14 JUDGE PIGOTT: - - - that's a possibility.

15 MR. MASCOLA: I guess it is a possibility,  
16 but it also could come into public policy arguments  
17 about money, too.

18 JUDGE PIGOTT: Right.

19 MR. MASCOLA: Which is what we have here.  
20 We had a situation here where there were all kinds of  
21 supermarket signatures that were submitted, which  
22 caused a major problem, which is why there was almost  
23 4,400 signatures, and there was really barely - - -

24 JUDGE SMITH: But apart from the specifics  
25 of this case, I guess what some of us are trying to

1 figure out is which is a better rule. Those of us  
2 who - - - in normal litigation, without the many  
3 problems of election law, people are usually allowed  
4 to file pleadings that say he was negligent and his  
5 car struck me, and that's good enough. Why - - -  
6 what - - - why should there be a much more specific  
7 pleading requirement for this particular kind of  
8 case?

9 MR. MASCOLA: Because, Your Honor, we're  
10 actually getting to the point of trial, and that is  
11 what the hearing was, it was an actual trial. At  
12 that point we need to know exactly what's going on.  
13 If you have a negligence case, you're going to have  
14 to file a bill of particulars way before that trial.  
15 And if there's going to be - - -

16 JUDGE SMITH: Your point is that this is  
17 such a compressed schedule that you should,  
18 effectively, combine your bill of particulars with  
19 your complaint.

20 MR. MASCOLA: Right. And if not - - -

21 JUDGE SMITH: And there's no statute or  
22 regulation that says this; this is case law?

23 MR. MASCOLA: Right. And also, Your Honor,  
24 Monday went by, Tuesday went by, Wednesday went by;  
25 there was no bill of particulars. Bill of

1           particulars - - -

2                   JUDGE SMITH:   Okay, yeah, but I'm trying to  
3           get you away for one minute - - -

4                   MR. MASCOLA:   Oh, I'm sorry.

5                   JUDGE SMITH:   - - - I'm trying to get him  
6           to the facts of the case; I'm trying to get you away  
7           from them.   Why is it a better rule?

8                   MR. MASCOLA:   Why is it a better rule?

9                   JUDGE SMITH:   Yeah.

10                  MR. MASCOLA:   So that when you're actually  
11           at trial, you're not ambushed or you're not  
12           surprised.

13                  JUDGE PIGOTT:   But don't you know from - -  
14           - I mean, you're the ones that say these are the  
15           defective petitions and signatures.   And I know this  
16           one's big, it's 2,000, but there are a lot of them  
17           that are not.   And in my experience, it's always the  
18           judge that says you've got this amount of time to get  
19           it in, and you presume that whoever got kicked off is  
20           going to try to get - - - like in this case, he was  
21           74 down or 76 down; he was probably going to try to  
22           get back to 100 or 120, again, depending on what the  
23           judge was going to rule.   And all everybody else has  
24           got to do is sit back and watch, because this one's  
25           off because it's a bad address.   Well, here comes a

1 good address. This one's off because it's a double  
2 signature. That one's not going to sustain itself.  
3 I mean, there isn't a whole lot of cross-examination  
4 going on.

5 MR. MASCOLA: Well, there was some  
6 significant cross-examination. We didn't even get  
7 notice that the candidate's brother was going to  
8 testify. Now, obviously they had to know that.

9 JUDGE PIGOTT: Well, you're the Board of  
10 Elections; you shouldn't care. I mean, you're in the  
11 middle. I mean, you can - - -

12 MR. MASCOLA: We're in the middle - - -

13 JUDGE PIGOTT: - - - prove 'em all.

14 MR. MASCOLA: All we - - -

15 JUDGE PIGOTT: What difference does it make  
16 to you?

17 MR. MASCOLA: You know, we just - - - if we  
18 make a valid objection, we make a valid objection.  
19 There were some cases - - -

20 JUDGE PIGOTT: You don't care if it's the  
21 brother-in-law or not; you just say - - -

22 MR. MASCOLA: No, I'm talking about from  
23 the surprise viewpoint, and not getting  
24 particularized, specificated - - -

25 JUDGE PIGOTT: But I'm saying, you don't

1 care.

2 MR. MASCOLA: - - - specifications.

3 JUDGE PIGOTT: You don't care if they bring  
4 in somebody's mother that says, you know, he's always  
5 been - - -

6 JUDGE SMITH: You're saying you want to be  
7 prepared.

8 MR. MASCOLA: We want to be prepared for  
9 the trial.

10 JUDGE PIGOTT: But you're the Board. I  
11 mean - - -

12 MR. MASCOLA: Yes.

13 JUDGE PIGOTT: - - - what difference does  
14 it make to you? I mean, they're going to say, you  
15 know, here's John Smith, and this is his address, and  
16 the Board said that he didn't live there and he's  
17 saying he did. What do you need to prepare for?

18 MR. MASCOLA: Well, we would like to know  
19 who the person is who is going to testify, what kind  
20 of a background they have, are they pro - - - like,  
21 it turned out with the brother of the candidate, he  
22 was living in Nassau County, and - - - or he claimed  
23 he was living in Nassau County. He was actually  
24 living in Manhattan. He hadn't voted in Manhattan  
25 ever, except in 1999. And he actually had a

1 residence that he claimed that he lost in a divorce  
2 in 2007 or 2008. He submitted numerous signatures, I  
3 think approximately twenty-three. And those are  
4 still, right now, tainted signatures. That's the  
5 position of the Board of Elections on the - - -

6 JUDGE PIGOTT: You threw them out?

7 MR. MASCOLA: Yes, but they're - - -

8 JUDGE PIGOTT: So you're done. You threw  
9 them out, you're done. He puts in evidence that says  
10 that whatever was necessary to get 'em back in,  
11 they're back in. What difference does it make to  
12 you?

13 MR. MASCOLA: Well, your - - -

14 JUDGE PIGOTT: All you've got to do is put  
15 the candidate - - -

16 MR. MASCOLA: It makes a difference - - -

17 JUDGE PIGOTT: - - - on the ballot.

18 MR. MASCOLA: It makes a difference in the  
19 integrity of the election system.

20 JUDGE PIGOTT: Well, that's their job;  
21 that's the objector's job.

22 MR. MASCOLA: Well, Board of Elections,  
23 Your Honor, they serve the people. They serve the  
24 peo - - - they serve all of us. They serve me, they  
25 serve you, they serve everyone.

1                   JUDGE PIGOTT: I know, but if you - - - my  
2                   only point is if you have no dog in the fight, except  
3                   to do your job, which you did, and you said these are  
4                   invalid. They came back and said that's wrong  
5                   because he is able to vote in this election and  
6                   therefore was a good witness. These objectors, for  
7                   some reason, disagreed with that. And they can put  
8                   in all the evidence they want.

9                   MR. MASCOLA: They can put the evidence in,  
10                  Your Honor, but if we're going to actually serve the  
11                  people properly, the way we're supposed to, the way  
12                  the board of electors are sworn in to do, we need to  
13                  have information ahead of time. And according to the  
14                  law, they have to particularize the specifications.

15                 JUDGE GRAFFEO: Do you participate in this  
16                  hearing?

17                 MR. MASCOLA: Excuse me?

18                 JUDGE GRAFFEO: Do you participate in the  
19                  hearing?

20                 MR. MASCOLA: Yes, I was - - - if you look  
21                  at the transcript, I was there for the entire - - -

22                 JUDGE GRAFFEO: You cross-examined - - - I  
23                  - - -

24                 MR. MASCOLA: Yes, I - - -

25                 JUDGE GRAFFEO: I guess my question is do

1           you try to justify the decision of the Board? Is - -  
2           - are you - - - is there, like, three parties here  
3           trying - - -

4                   MR. MASCOLA: There were three parties - -  
5           -

6                   JUDGE GRAFFEO: - - - to address the  
7           signatures?

8                   MR. MASCOLA: There were three parties at  
9           the hearing, Your Honor. For instance, I cross-  
10          examined, but only for about a page. If you look, I  
11          think it was page 207, Mr. Jared - - - Dr. Jared  
12          Lacorte was a brother of the candidate. And I asked  
13          him, I said when's the last time you voted? And he  
14          said he voted in 2012 in Nassau County, even though  
15          he admitted he didn't have a residence there. So I  
16          get involved with that.

17                   But there are certain times where I will  
18          not cross-examine, especially - - - there was one - -  
19          - one candidate who, at the very bottom, they put - -  
20          - he lived in a town called Pomona, and that could  
21          either be in the town of Ramapo or the town of  
22          Haverstraw. When that came out, that it was actually  
23          the wrong town was put in but not by him, we didn't  
24          contest it.

25                   JUDGE RIVERA: Okay.

1 CHIEF JUDGE LIPPMAN: Okay. Judge Rivera?

2 JUDGE RIVERA: May I - - - thank you.

3 MR. MASCOLA: I'm sorry.

4 JUDGE RIVERA: So it's your position that  
5 the bill of particulars was insufficient - - -

6 MR. MASCOLA: Yes.

7 JUDGE RIVERA: - - - correct?

8 MR. MASCOLA: Yes.

9 JUDGE RIVERA: Okay.

10 MR. MASCOLA: Yes, and - - -

11 JUDGE RIVERA: Can you just give one  
12 example of an insufficiency and how that might - - -  
13 what you would have expected him to write that would  
14 have satisfied the notice requirement.

15 MR. MASCOLA: Well, first of all, we would  
16 want to know the name of the candidate - - - excuse  
17 me, the name of the witness ahead of time, especially  
18 - - - if they couldn't give all twelve witnesses,  
19 could they give six? Could they have given the  
20 candidate's brother? They certainly could have.

21 JUDGE PIGOTT: Well, let's go back, though.

22 MR. MASCOLA: Yes.

23 JUDGE PIGOTT: I mean, the - - - somebody's  
24 got to tell you that there's an objection, and that's  
25 the objector, right? So now you're on notice that

1           somebody is objecting to the brother-in-law, all  
2           right? And you go do your due diligence, and you  
3           make whatever determination you make. And if you say  
4           they're off because the objector said he hasn't voted  
5           in this county in five years, he's off. Now, they're  
6           going to bring somebody in that says he has voted.  
7           What - - - I'm missing where the surprise is going to  
8           be.

9                         MR. MASCOLA: We didn't know - - - there's  
10           2,500 signatures that were challenged.

11                        JUDGE PIGOTT: In this case, right.

12                        MR. MASCOLA: This case. Now, you  
13           mentioned earlier, it could have been fifty.

14                        JUDGE PIGOTT: Right.

15                        MR. MASCOLA: And then I don't think our  
16           case would be as strong. But when there's 2,500 and  
17           there's just a short period of time to do it, it's  
18           very difficult - - -

19                        JUDGE PIGOTT: So that's true - - -

20                        MR. MASCOLA: - - - to really - - -

21                        JUDGE PIGOTT: I guess my point is that's  
22           true of everybody.

23                        MR. MASCOLA: Yes.

24                        JUDGE PIGOTT: In other words, you're  
25           saying there's a very short time, so the burden is

1 all on them. You, for example, as the Board of  
2 Elections, could have said, before we go into trial  
3 on Monday or Wednesday or whenever you do, let's sit  
4 down and go through this and figure which ones that  
5 you, the Board of Elections, are going to concede,  
6 like the Town of Ramapo one, and so that one's off  
7 the table. And if they say no, we're going to - - -  
8 we want to put in evidence of that, then let 'em try.  
9 But I mean, it just seems to me that the judge has a  
10 limited amount of time, you all do, and you could  
11 have done that.

12 MR. MASCOLA: Right. But - - - and also  
13 you asked earlier why did they stay open. They  
14 stayed open because they're willing to provide  
15 information.

16 JUDGE PIGOTT: No, I understand that. My  
17 question on that was that it's discretionary, so that  
18 if - - - if you don't like this person, you can tell  
19 them, you know, it's 5 o'clock, you're going home - -  
20 - or you know, we're shutting down, we don't have  
21 overtime for these people, we'll see you on Monday  
22 morning.

23 MR. MASCOLA: Well, that can happen with a  
24 lot of - - -

25 JUDGE PIGOTT: Exactly.

1 MR. MASCOLA: - - - a lot of - - -

2 CHIEF JUDGE LIPPMAN: Okay, counselor.

3 MR. MASCOLA: - - - public offices.

4 CHIEF JUDGE LIPPMAN: Thanks, counselor.

5 MR. MASCOLA: Thank you, Your Honors.

6 CHIEF JUDGE LIPPMAN: We'll do rebuttal

7 then.

8 Counselor?

9 MR. GOLDFEDER: Counsel just said that - - -

10 -

11 CHIEF JUDGE LIPPMAN: What's the rule here,

12 counsel? What do you want us to hold in relation to

13 cases like this? What's your - - -

14 MR. GOLDFEDER: I think it's fair - - -

15 CHIEF JUDGE LIPPMAN: What's your burden

16 here?

17 MR. GOLDFEDER: I think - - - well, my

18 burden is to resuscitate signatures.

19 CHIEF JUDGE LIPPMAN: But how do you do - - -

20 -

21 MR. GOLDFEDER: What you're asking - - -

22 what you're asking is what rule should you enunciate.

23 CHIEF JUDGE LIPPMAN: Yeah.

24 MR. GOLDFEDER: What rule should you

25 articulate? Yes, there should be notice. We

1 provided the notice. We're not like the Jennings and  
2 all those other cases, because we had some  
3 particularity in our verified petition in paragraph  
4 15. And - - -

5 JUDGE SMITH: I'm - - -

6 MR. GOLDFEDER: And we had - - -

7 JUDGE SMITH: I'm getting more and more  
8 confused about whether we're - - - whether this case  
9 is really a question of law or a question of fact. I  
10 mean, I can understand a question as to whether you  
11 should have to serve your bill of particulars at the  
12 same time as your complaint, to put it in laymen's  
13 litigation terms. I can also understand the question  
14 all of this was - - - this was they put an  
15 unreasonable burden on us, we couldn't have done it,  
16 oh yes, you could. It's very hard for us to decide  
17 that second kind of question. We usually leave those  
18 to the - - - we let the Supreme Court and the county  
19 court and the Appellate Division worry about that  
20 sort of thing. I'm more concerned about what the  
21 rule of law is. Is it a good idea to require very  
22 substantial specificity in the pleadings in this kind  
23 of proceeding?

24 MR. GOLDFEDER: I think that is exactly the  
25 issue.

1 JUDGE SMITH: Okay. And why should - - -

2 MR. GOLDFEDER: The truth is you asked the

3 - - -

4 JUDGE SMITH: - - - the answer be no, it

5 isn't?

6 MR. GOLDFEDER: Because it's burdensome and

7 well-nigh impossible to commence a three-day

8 validating petition, put the papers together, serve

9 them on all the necessary parties, make certain that

10 you adhere to the statute of limitations, which is

11 truncated and which needs to be followed to the

12 letter, and put all that information in your

13 pleading, whether you have it or not - - -

14 JUDGE ABDUS-SALAAM: Where would we draw

15 the line?

16 MR. GOLDFEDER: - - - whether the Board

17 gives it to you or not?

18 JUDGE ABDUS-SALAAM: If it's that specific,

19 I agree. Fifty signatures, and you're challenging

20 half of them, that's one thing. But when there are

21 2,000 or 5,000 signatures, where do we draw the line

22 on that?

23 MR. GOLDFEDER: You don't draw the line by

24 say - - - the law now is the Jennings rule, which is

25 what threw my candidate off the ballot, the law now

1 is it's a per se rule. You didn't put it in the  
2 pleadings, you're out.

3 JUDGE ABDUS-SALAAM: But even you're - - -

4 MR. GOLDFEDER: That can't be. That does  
5 divest - - -

6 JUDGE ABDUS-SALAAM: Mr. Goldfeder, even -

7 - -

8 MR. GOLDFEDER: - - - the Supreme Court - -

9 -

10 JUDGE ABDUS-SALAAM: - - - even you agree  
11 that there should be some notice.

12 MR. GOLDFEDER: And I gave it in the  
13 verified bill of particulars. I gave it as soon as  
14 we could review - - -

15 JUDGE READ: But - - -

16 MR. GOLDFEDER: - - - review - - -

17 JUDGE READ: - - - isn't that a ques - - -

18 MR. GOLDFEDER: - - - the materials.

19 JUDGE READ: - - - isn't that a question of  
20 fact, then?

21 MR. GOLDFEDER: And this - - - and the  
22 Supreme Court - - -

23 JUDGE READ: Whether it's - - -

24 MR. GOLDFEDER: Yes. And the Supreme Court  
25 found that notice - - - sufficient notice was given.

1 It shouldn't be - - -

2 JUDGE READ: And the Appellate Division  
3 didn't review that one way or another, didn't opine  
4 on that one way or another?

5 MR. GOLDFEDER: Didn't even mention the - -  
6 - the bill of particulars in its ruling. It said you  
7 didn't have it in the pleadings; period, end of  
8 story. That's what the rule has been. That's what  
9 has been so burdensome and so onerous here. The  
10 Board of Elections needs to give us their rulings  
11 with specificity. By the way, the phone call a  
12 courtesy, no; you need to tell us the rulings, you  
13 need to be specific in an intelligible way so we can  
14 then notify you, what you already know anyway,  
15 because you objected, and we shouldn't have to pay  
16 for it. We had to pay twenty-five cents a sheet.  
17 Now, my client can afford that, but there are many  
18 candidates across the State of New York that would  
19 not be able to bring an anticipatory validating  
20 petition, where the specifics are not required - - -

21 CHIEF JUDGE LIPPMAN: Okay.

22 MR. GOLDFEDER: - - - or pay for these  
23 sheets from the Board of Elections. What we did is  
24 we didn't sit on our hands. I knew what the Jennings  
25 rule was. We didn't sit on our hands. We put it in

1 the verified petition and we served the verified bill  
2 of particulars as soon as was practical, at the very  
3 first day of the trial - - -

4 CHIEF JUDGE LIPPMAN: Okay.

5 MR. GOLDFEDER: - - - and that morning.

6 CHIEF JUDGE LIPPMAN: Thank you, counselor.

7 Thank - - -

8 MR. GOLDFEDER: Thank you very much.

9 CHIEF JUDGE LIPPMAN: - - - all of you.  
10 Appreciate it. Thank you.

11 UNIDENTIFIED SPEAKER: Your Honor, may I  
12 correct two factual statements?

13 CHIEF JUDGE LIPPMAN: No, no, no; no, you  
14 cannot, counsel.

15 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Dagan Lacorte v. Howard L. Cytryn, et al., No. 240 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Sharona Shapiro*

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