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SUPREME COURT OF THE STATE OF NEW YORK
Ist JUDICIAL DISTRICT

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HEARING RE:

COMMISSION ON STATEWIDE ATTORNEY DISCIPLINE

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New York County Lawyers Association
14 Vesey Street
New York, New York 10007

August 11, 2015

BEFORE:

COMMISSION MEMBERS:
HONORABLE BARRY A. COZIER, Chair
HONORABLE PETER SKELOS
MARK C. ZAUDERER, ESQ.
ROBERT P. GUIDO, ESQ.
DEVIKA KEWALRAMANI, ESQ.
SEAN MORTON, ESQ.

Claudette Gumbs, official Court Reporter
Monica Horvath, Official Court Reporter
60 Centre Street
New York, New York 10007
646.386.3693

Claudette Gumbs

10 anywhere else and so when these bogus charges were
11 brought against me, I said I won't do anything but the
12 only thing I will demand is to let the public know.
13 That is how you educate the public, by letting them
14 know. I don't have anything to hide. I never had
15 anything to hide on any issue all right? And so
16 therefore, I will be treated like any other person. I
17 don't want to have the privilege of being a lawyer
18 elevating me above the common people. That is not my
19 thing, that is not my interest and I will continue to
20 fight until the very end for the injustices that are
21 putting millions of blacks and Latinos behind bars.

22 (Applause.)

23 JUDGE COZIER: The next speaker is Elena
24 Sassower.

25 MS. SASSOWER: If I may --

26 JUDGE COZIER: We are not accepting submissions

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1 here, Ms. Sassower. You made a submission to us.

2 MS. SASSOWER: -- I am presenting you with
3 statistics and other information that will make the
4 testimony --
5

6 JUDGE COZIER: The information you submitted
7 before will be made part of the record.

8 MS. SASSOWER: My name is Elena Sassower. I
9 am Director and Co-founder of the Center for Judicial

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10 Accountable Inc, a non partisan nonprofit citizens
11 organization that for more than a quarter of a century
12 has documented the corruption of judicial selection,
13 judicial discipline and the judicial process itself.

14 This includes the judiciary's corruption of
15 the system of attorney discipline, all aspects of which
16 it controls and which it uses to protect and insulate
17 from accountability ~~the~~ politically connected attorneys
18 and to retaliate against judicial whistleblowing ones.

19 I am also privileged to be the daughter of
20 two such judicial whistleblowing attorneys. My
21 father, George Sassower, was disbarred by a
22 February 23, 1987, order of the Appellate Division,
23 Second Department, for violating court orders requiring
24 him to acquiesce to the court's cover up of lawyer
25 larceny of assets of an involuntarily dissolved
26 corporation, assets which have yet to be accounted for

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1 Proceedings
2 by the Court nearly 30 years later.

3 My mother, Doris L. sassower, was indefinitely
4 suspended by a June 14, 1991 so-called interim order of
5 the Appellate Division Second Department, without
6 reasons, without findings, unsupported by a petition or
7 by any hearing, as to which to date, nearly 25 years
8 later, there have been no findings, no hearing, no
9 appellate review.

10 New York's court controlled system of

11 attorney discipline, as it currently exists, is 35 years
12 old. And it has survived because no one in a position
13 of power or influence has confronted the proof of its
14 dysfunction, corruption and politicization. It is
15 because I knew and understand that the attorney
16 disciplinary system cannot survive an evidentiary
17 presentation that I contacted the Office of Court
18 Administration to find out whether hearings would be
19 held -- public hearings, because this Commission, the
20 Commission on Statewide Attorney Discipline, was, until
21 the third week of June, inaccessible. It had no phone
22 number, no website, no way for the public to contact it
23 with the information born of direct personal experience
24 and to furnish it with the documentation that it would
25 need if it was going to conduct a legitimate, honest
26 review.

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1 Proceedings
2 *And* It is to the credit of ^{*now*} Chair Cozier and prior
3 thereto, Chair Prudenti, that in response to my
4 inquiries on the subject, that they threw up a website
5 and announced these public hearings.
6 I have handed up and I ask you to open the
7 file folders so that we can examine together what I
8 think Mr. Zauderer identified as something of concern
9 to him and that was the statistics. So the very first
10 page are statistics. Now, I will tell you that the

11 Office of Court Administration does not make these *statistics*
12 readily available. They are not on its website, they
13 are not really anywhere, and to the extent that you can
14 find anything, you can get from the Fourth Department
15 its statistics which are part of its annual report and
16 the First Department has its statistics in its annual
17 report at the back.

18 I have given you the page from the New York
19 State Bar Association's annual report, ~~that is~~ put out
20 by its Committee on Professional Discipline and this is
21 the most recent ^{from} ~~for~~ 2012.

22 Let's just take a look at matters disposed
23 of, okay? For 2012. All right. Now, we talk about
24 the grievance committees but the fact of the matter is,
25 the grievance committees are sham entities, ~~not~~ ^{they are not in}
26 don't really exist, ~~don't~~ operate as committees with

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1 Proceedings
2 all of their membership because most of the complaints
3 that are filed with the committees are going out at a
4 stage where none of the committee members have ever
5 seen those complaints. They are being processed by
6 staff. All right.

7 Now, if you look at the statistics here you
8 ~~will~~ see -- and because of lack of time, I -- I don't
9 want to dwell on it, but if you see that the three,
10 departments, the Second, Third and Fourth departments
11 are dismissing between 45 and 52 percent of complaints

12 they receive -- are rejected by them as failing to
13 state complaint which means of course that they are
14 purporting that the allegations, if true, would not be
15 misconduct. All right.

16 But look at the First Department. It is
17 only 11 percent. That is too great a range. There is
18 something wrong. How do you account for that
19 difference?

20 Now, look at the next category. Dismissed
21 or withdrawn. First of all, that category makes no
22 sense, correct? Because a complaint that is dismissed
23 is very different from a complaint that is withdrawn.
24 They should be in separate categories. But they are
25 bunched together. Okay. But if you add up those two
26 categories and what you see in the First Department is

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2 that it makes up for the statistical difference by
3 dismissing 63 percent of complaints for -- it doesn't
4 identify the reason but -- ^{say} ~~that~~ they are being
5 dismissed, ^{ok} plus the 11. The cumulative statistic is
6 that between 74 percent in the First Department,
7 63 percent in the Second Department, 69 percent in the
8 Third Department, ~~and~~ 75 percent in the Fourth
9 Department are being dismissed at the outset.

10 And the truth of it is that those dismissals
11 are not being made by the committee. You can talk

12 about the presence of non lawyers on the committee, no
13 non-lawyers and actually, it would appear that with the
14 exception of possibly the First Department, all ~~of~~
15 these dismissals at ~~the~~ outset are not seen by a single
16 committee member, lawyer or lay.

17 In the First Department, these dismissals
18 possibly, and it is not clear from a reading of the
19 rules, are with the acquiescence of a single lawyer
20 member. Okay. So the lion's share of complaints --
21 and how many are we talking about? well, we are
22 talking about, matters disposed of -- well, you have
23 thousands and thousands -- matters disposed of here.
24 It is 11,661 ~~complaints~~ ^{complaints} . Okay.

25 (Whereupon, the following was transcribed by
26 Senior Court Reporter Monica Horvath.)

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1 Proceedings

2 Now, what can we tell from statistics?

3 well, ~~the~~ statistics, are very limited because the
4 question is are those dismissals appropriate, are they
5 correct? And to make that evaluation, you need to see the
6 complaints. You need to see the complaints, and you need to
7 compare them with the dismissal letters. ~~And~~ what do the
8 dismissal letters say about the complaints, and is it
9 consistent?

10 JUDGE COZIER: Miss Sassower, you have about one minute
11 remaining.

12 MS. SASSOWER: Oh, dear. ~~OK, alright~~ ^{OK, alright}
13 So let me very quickly tell you.

14 In 1989 the State Comptroller tried to do an audit
15 ^{of} on the Commission of Judicial Conduct which wouldn't allow
16 the Comptroller ^{access} to its files. The Comptroller knew that
17 without access to the ^{complaints, the} record of complaints and dismissals he ^{the}
18 could make no assessment as to the legitimacy of the
19 dismissals of complaints. The Commission wouldn't give
20 access ⁺ so he wrote a report called "Not Accountable to the
21 Public".

22 You have no auditing. In all these years there has
23 never been an independent auditing of the complaints filed
24 with the Grievance Committees. You are not in a position to
25 do an independent audit, but I will, since my time is up, ^{OK} I
26 I want to just leave this with you.

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(Whereupon, the witness approaches the panel
and distributes packet.)

All those who have testified should be providing
you with their complaints.

I have brought here a sample, an illustrative
sample of, let's see five -- here, five.

JUDGE COZIER: Those can all be given to Mr. ^{Caher} ~~Kohler~~.

MS. SASSOWER: And I have additionally -- excuse me, ^{I have} ~~additionally~~

I want to say that the important law review of
Professor Gillers, which really gave rise to this Commission,
as powerful as it is, it is flawed. Why? Because it never
goes beneath the surface of the judicial decisions. And the
judicial decisions over and over again like the dismissals of
complaints ^{that} ~~they~~ are not really by the Grievance Committees

16 but by ~~the~~ staff are frauds.
 17 JUDGE COZIER: Your time is up.
 18 MS. SASSOWER: And you can discern them by examining
 19 the case files.
 20 JUDGE COZIER: Thank you, Miss Sassower.
 21 MS. SASSOWER: ^{Here} ~~are~~ ^{is} the case file~~d~~ as to the
 22 unconstitutionality of the New York Attorney Disciplinary
 23 Law.
 24 (whereupon, the witness leaves a cart full of
 25 files in front of the panel.)
 26 MS. SASSOWER: You may be sure --
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1 JUDGE COZIER: Miss Sassower, thank you very much.
 2 VOICE: Do you have any questions?
 3 JUDGE COZIER: Thank you very much.
 4 MS. SASSOWER: I have a few things, because
 5 Mr. Zauderer, asked another ~~very~~ important question at the
 6 Albany hearing.
 7 JUDGE COZIER: Your time is up, *Ms. Sassower*
 8 VOICE: Let her finish.
 9 MS. SASSOWER: Would you repeat the question to me
 10 that you asked the ^{president of the} state bar?
 11 MR. ZAUDERER: Sorry, I don't remember what you are
 12 referring to.
 13 MS. SASSOWER: May I remind you?
 14 MR. ZAUDERER: Go ahead. *SASSOWER: Thank you, sir*
 15 JUDGE COZIER: Miss Sassower?
 16 MS. SASSOWER: He asked me to remind him. He asked
 17 me to remind him. Thank you.

Sassower

well, I just want to say in conclusion

Sassower

And I was not

19 Liked ~~to~~ Professor Gillers --

20 JUDGE COZIER: Miss Sassower, please.

21 MS. SASSOWER: Mr. Zauderer asked the President of
22 the State Bar who spoke up --

23 JUDGE COZIER: Miss Sassower, your time is up.

24 VOICE: Let her talk. Let her talk.

25 MS. SASSOWER: No, no. He asked me, *he asked me, he asked me* to respond to

26 the question that he asked the President of the State Bar in
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1 Proceedings

2 Albany at the first hearing. Because the President of the
3 State Bar had testified about introducing discovery into the
4 attorney disciplinary proceedings. And the State Bar has
5 issued a report and Mr. Zauderer -- because discovery is
6 such a fundamental thing it is a matter of due process,
7 confrontation rights, and -- *And* Mr. Zauderer, asked the
8 intelligent question, "well, what is the opposition; what
9 could be the opposition to discovery?" And, believe it or
10 not, the President of the State Bar fumbled and was not
11 really able to answer that question. And, I said -- I tried
12 at the end -- I said, "I have the answer," and, so, now, I
13 will give you the answer.

14 JUDGE COZIER: Briefly.

15 MS. SASSOWER: The answer is that in all the decades
16 that we have had this attorney disciplinary regime, you may
17 be sure that prosecuted attorneys have made motions and
18 sought appeals and have raised the constitutional issue,
19 among others, of their entitlement to discovery. They have
20 raised it before the Appellate Division. They have raised it

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21 before the Court of Appeals.

22 If you look in the records, the files, case files,
23 and of course the case files, once an attorney is publicly
24 disciplined, disbarred or suspended, those files are all open
25 to you, okay. You have no bar. What you will see is they
26 make the constitutional legal arguments, ^{and} the response
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2 from the court: "Denied".

3 There is no discussion. No elucidation. There is
4 nothing. And that is why there is no case law. And if you
5 look at the report of the State Bar Association, too, on the
6 issue of discovery, it is in a vacuum, just like Professor
7 Giller's article.

8 JUDGE COZIER: Ms. Sassower, I ~~think you have said~~
9 enough.

10 MS. SASSOWER: Don't you think attorneys have raised
11 the equal protection invidiousness that is ^{reflected} affected by your
12 article? of course, they have. And what has been the
13 response? "Denied".

14 VOICE: Yeah. Yeah.

15 VOICE: Here, here.

16 (Applause.)

17 MS. SASSOWER: Oh, oh, one other thing.

18 WOMEN'S VOICE: Let's get the job done.

19 VOICE: Let's get the job done.

20 MS. SASSOWER: The judiciary, ^{the judiciary} has consistently not
21 requested funding for the Attorney Disciplinary System, ^{consistently} with

22 ~~Consistency,~~ in fact, the funding has gone down.

23 The funding has gone down even as they were

Cozier -
I think
I've
answered
the
question,
Ms. Sassower.

thank you very much.

OK

reflected

the judiciary

consistently

24 clamoring for judicial pay raises which they secured. The
25 annual budgeting, for the Attorney Disciplinary System is
26 \$15 million.

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VOICE: What?

MS. SASSOWER: The judicial pay raises paid out since 2012 are at least \$150 million and \$50 million each and every year.

JUDGE COZIER: ^{The} ~~Today's~~ ^{at today's hearing} testimony is concluded.

* * *

THE ABOVE IS CERTIFIED TO BE
A TRUE AND ACCURATE TRANSCRIPT
OF THE PROCEEDING RECORDED BY ME

MONICA HORVATH
SENIOR COURT REPORTER

*And on behalf
of the
Chief Judge,
I want to
thank everyone
who has
joined us
today.*

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