

1983 REPORT OF THE
COMMISSION ON JUDICIAL PERFORMANCE
TO THE GOVERNOR

LETTER OF TRANSMITTAL

To: His Excellency, George Deukmejian
Governor of the State of California

The 1983 Report of the Commission on Judicial
Performance is presented herewith.

January, 1984

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In 1983 the Supreme Court decided three noteworthy cases placed before it by the Commission. The Court adopted the disciplinary recommendations of the Commission in all three cases, censuring Santa Ana Municipal Court Judge Bobby D. Youngblood and Mono County Superior Court Judge Harry R. Roberts, and removing East Los Angeles Municipal Court Judge Mario P. Gonzalez.

In Youngblood v. Commission on Judicial Performance 33 Cal.3d 788 [191 Cal.Rptr. 171, 662 P.2d 108], the Supreme Court adopted the Commission's recommendation that Judge Youngblood "be severely publicly censured." This marked the second occasion in which, after the Commission recommended a judge be severely censured, the Court agreed that the "conclusion of the Commission is fully warranted" and "the discipline recommended should be adopted."^{1/} The Court explained the factual basis underlying the disciplinary action:

"Judge Youngblood on one occasion ordered persons to appear before him under false pretenses and brought about the incarceration of one of them without legal cause or compliance with applicable procedure. On another occasion Judge Youngblood presided in a case involving Pacific Telephone at a time when he himself was involved in litigation with Pacific Telephone. Judge Youngblood thereafter altered the previously rendered judgment in that case, after an

^{1/} See In re Leopoldo Sanchez (1973) 9 Cal.3d 844 [109 Cal.Rptr. 78, 512 P.2d 302].

ex parte communication with the plaintiff and without notice to the defendant Pacific Telephone. Judge Youngblood then contacted employees of Pacific Telephone and threatened incarceration if the plaintiff's service was interrupted because of the case." (At pp. 788-789.)

Roberts v. Commission on Judicial Performance 33 Cal.3d 739 [190 Cal.Rptr. 910, 661 P.2d 1064] resolved a challenge, the first, to the Commission's recommendation of a censure. The Supreme Court decided that the sanction of censure, based upon eight counts of misconduct, "was fully warranted." Regarding one count, which was derived from Judge Robert's criminal conviction for obstructing police officers, the court accepted the Commission's examination of the facts underlying the misdemeanor conviction. In another count, the Court agreed with the Commission that Judge Roberts "expressed his legitimate concern [in a child neglect hearing] in an unacceptable, nonobjective and nonneutral manner, demonstrating unwarranted impatience, disbelief and hostility toward counsel, litigant and witnesses." (At p. 748.) In a third count, the Court concluded that Judge Roberts' "attempt to exert pressure upon prosecutor, defense counsel and appellate court alike discloses an unhealthy and wholly improper concern with the protection of his own rulings from appellate reversal." (At p. 747.)

In Gonzalez v. Commission on Judicial Performance 33 Cal.3d 359 [188 Cal.Rptr. 880, 657 P.2d 372],^{2/} the Supreme Court sustained all eighteen of the Commission's

^{2/} Appeal docketed, No. 83-694, U.S. Supreme Court, August 18, 1983, jurisdictional statement filed, October term, 1983, 52 U.S.L.W. 3371.

findings of wilful misconduct and two of three findings of conduct prejudicial to the administration of justice. The Court followed the Commission's recommendation and ordered Judge Gonzalez removed from office.

The acts of wilful misconduct included intercession in criminal matters on behalf of friends and benefactors, improprieties in bail-setting and own-recognizance release, abuse of judicial authority and the conduct of court business in violation of proper procedures.

The Court in its opinion in Gonzalez made the following important observations relating to the law of judicial conduct:

Arbitrary Prejudice to Rights of Criminal Defendants

"[P]etitioner refused to hear the [defendant's bail] motion because it was the public defender who had 'opened his mouth' during the judge's questioning of the defendant. Such hostile, arbitrary, and unreasonable conduct jeopardizes the liberty of an indigent defendant for reasons not related to the merits of the case and therefore constitutes wilful misconduct." (At p. 371.)

Impugning Judicial Colleagues

"Judge Gonzalez has made insulting and derogatory comments from the bench and in chambers impugning the character and competence of his judicial colleagues."

"Petitioner's brash criticisms and colorful insults were manifestly uttered in bad faith while petitioner was acting in his judicial capacity." (At p. 371.)

Abuse of Judicial Authority

"Judge Gonzalez has engaged in a continuous course of overreaching and abuse of judicial authority." (At p. 371.)

"Judge Gonzalez has conducted court business in violation of proper judicial procedures, to the detriment of the fair, orderly, and decorous administration of justice." (At p. 373.)

Abandonment of Judicial Role

"By leaving the bench during judicial proceedings Judge Gonzalez has demonstrated a flagrant lack of respect for his judicial office . . . If only for a few moments at any one time, on these occasions he abandoned his role in the adjudicative process in utter disregard for his obligation diligently to perform the duties of his office." (At p. 373.)

Political Exploitation of Office

"Though his 'press release opinion' [in which Judge Gonzalez declared the dog leash license ordinance unconstitutional] may indeed have earned him a certain political notoriety, such a blatant exploitation of the judicial office for political ends seriously and impermissibly undermines public esteem for the impartiality and integrity of the judiciary." (At p. 374.)

Misuse of Lawful Power

"By his wholesale plea bargaining scheme Judge Gonzalez has deliberately misused his otherwise lawful power to reduce sentences and fines in individual cases. . . . Judge Gonzalez' further declared aims of filling the county coffer and scoring convictions for the state are of course completely extraneous to the administration of justice. Judge Gonzalez certainly should have known that

his 'bargain day' sentencing offer -- even if limited to vehicular offenses -- contravened the principle of individualized sentencing embodied in our Penal Code." (At p. 375.)

Indifference to Settled Practices

"The evidence in this case clearly establishes Judge Gonzalez' patent indifference and disrespect for settled judicial practices. He certainly should have known his jury room visits were beyond his lawful powers." (At p. 375.)

Offensive Comments in Court

"Judge Gonzalez should have known that his admittedly 'salty' courtroom comments were unbecoming and inappropriate." (At p. 376.)

Derogatory Remarks Off The Bench

"Derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer's esteem for the judiciary -- again regardless of the speaker's subjective intent or motivation. The reputation in the community of an individual judge necessarily reflects on that community's regard for the judicial system." (At. p. 377.)

Reaction to Allegations of Misconduct

"In a tone that rapidly grows tiresome, he reiterates a conspiracy theory typically raised as a defense in judicial misconduct investigations, and contends that the three attorneys simply fabricated their stories. As he does with virtually every allegation, Judge Gonzalez fundamentally misperceives the nature and gravity of the charge and instead views the entire matter as one of political disagreement or personality difference." (At p. 372.)

II

Corrective action short of public discipline has always been an important aspect of the Commission's task. Annually since 1961, the first year of its existence, the Commission has reported that it confidentially and informally cautions and disapproves of misbehavior when appropriate. This advisory function has heightened the awareness on the part of the judges of the need for and means of meeting reasonable standards of competence and behavior. The first Chairman of the Commission, Honorable A. F. Bray, described this function in 1964:

While in this so-called corrective purview there are relatively few infractions overall, reliable studies emphasize the importance of this kind of an authority. Although infrequently needed, there is a salutary effect to an official confidential communication of alleged derelictions made to the judge.^{3/}

A breakdown by percentages of the dispositions of complaints over the past six years illustrates the importance of the Commission's private, cautionary role. From 1978 through 1983, 1803 complaints were filed with the Commission. Seventy-eight percent were closed as groundless after initial review. In the remaining twenty-two percent, the Commission made some inquiry. Somewhat less than fourteen percent of the total complaints were closed after the inquiry without criticism. And, while public

^{3/} Bray, The Problems of Sanctions, University of Chicago Conference on Judicial Ethics, series 19 at 42, 47 (1964).

discipline or resignation or retirement resulted in a little over one percent of the cases in this six-year period, private discipline or remedial action consisting of caution and disapproval was undertaken in approximately seven percent of the complaints.

Some additional explanation of what is meant by remedial action is in order. When credible allegations warrant, the Commission solicits the judge's explanation. After scrutiny and review, the Commission often determines that the transgression does not merit official discipline but instead chooses to privately caution or disapprove when the complaint is closed. This process accounted for five percent of the dispositions in the past six years. Occasionally, authorized Commission members or staff have spoken with judges at this stage in an effort to moderate behavior or to solve a problem.

Former Chief Justice Roger J. Traynor alluded to the process in a Bar address:

[When the Commission] encounters a problem of judicial incapacity or misbehavior, it seeks voluntary solution, holding all proceedings to that end in confidence. Such an approach is particularly appropriate to the painful case where a judge must be given to understand that he has become physically or mentally incapacitated for the job. Confidential preliminary proceedings are also appropriate in cases of errant behavior not warranting removal.^{4/} [Emphasis supplied.]

^{4/} Traynor, Who Can Best Judge the Judges, 42 California State Bar Journal 225, 238 (1967).

These "confidential preliminary proceedings" have become techniques for addressing unacceptable judicial behavior not serious enough for public discipline.

Some complaints do not require Commission investigation, but justify informing the judge of the complaint to remedy an apparent oversight or unawareness of controlling standards of conduct. The Commission notifies the judge of its view, often with a reference to the relevant canon or standard. The Commission dispatched these "educational close" communications in about one percent of the complaints received between 1978 and 1983.

Since the 1976 constitutional amendment providing for Private Admonishments, the Commission has imposed forty-four Admonishments for improper actions or derelictions of duty. The thirty-six Private Admonishments imposed from 1978 to 1983 represent two percent of the complaints in that period. An Admonishment has particular significance because it may be received in evidence as an enhancement in a subsequent disciplinary proceeding. (California Rules of Court, Rule 909(b).)

The following illustrate judicial behavior which has resulted in the imposition of private discipline:

In two cases in which a relative was a defendant, a judge failed to recuse himself, and gave the defendant what might have appeared to be preferential treatment;

A judge abused the contempt power when he ordered an attorney placed in custody after the attorney raised his hand in an attempt to speak;

A judge was insufficiently available for judicial duties because he kept unreasonably short working hours;

A judge failed to disclose an attorney-client relationship when his personal attorney tried a case before him;

A judge abused his judicial power by ordering a judicial hearing and incarcerating a person when there was no case pending;

A judge improperly intruded into a proceeding in another judge's court by volunteering advice to an attorney.

In describing its confidential methods for handling the judicial department problems which comprise the bulk of its disciplinary activity, the Commission is affirming its commitment to maintain public confidence in the judiciary by making appropriate dispositions in those cases which do not warrant greater discipline.

III

As of December 1, 1983 there were 1341 California state court judges within the Commission's jurisdiction, classified as follows:

7	Supreme Court Justices
77	Justices of Courts of Appeal
655	Superior Court Judges
515	Municipal Court Judges
87	Justice Court Judges

The Commission held eight meetings in 1983, consisting of 6 one-day and 2 two-day sessions.

During 1983, the Commission received 351 complaints. Of these, 288 were closed following initial evaluation, because they failed to merit further investigation or fell outside the Commission's jurisdiction. Most of these complaints concerned dissatisfaction with rulings, claimed judicial error or other personal, legal problems, and the complainants were so informed.

Sixty-three of the complaints warranted further scrutiny; in fifty-six, a written communication advised the judge of the allegations and asked for comment or explanation. The Commission closed many of these matters after determining that the judges' responses provided satisfactory explanation; others were closed with cautionary or disapproving language.

Six Private Admonishments were issued and became final. Two others were set aside following demand pursuant to Rule 904.5; one of these had been issued in 1982. While Commission investigations were being carried out, three judges resigned or retired from office. Under the authority provided by Rule 904, California Rules of Court, the Commission initiated twenty-one Preliminary Investigations.

Thirteen matters were pending at the close of the Commission's last meeting on November 18 and were carried forward into 1984.

At the behest of the Commission, the Judicial Council

adopted Rule 78, California Rules of Court:^{5/} This requires the Chief Justice, presiding justice or administrative presiding justice of a reviewing court to notify the Commission on Judicial Performance of a reviewing court judge's substantial failure to perform judicial duties. The new rule, effective July 1, 1983, brings the reviewing courts into conformity with the trial courts in this regard. Rules 244.5 (a)(19) (superior courts) and 532.5 (a)(19) (municipal courts) were also sponsored by the Commission and have been in effect since 1979.

The principal purpose of the notification requirement is to alert the Commission about extended absences, especially those due to a health condition, since there is no other dependable avenue for such information to reach the Commission.

Notification under these rules does not constitute a complaint to the Commission. Any correspondence pursuant to these rules is taken up under the Commission's Oversight category at its regularly scheduled meetings.

^{5/} Rule 78. Notification of failure to perform judicial duties. The Chief Justice or presiding justice of a reviewing court, or the administrative presiding justice with regard to a presiding justice, shall notify the Commission on Judicial Performance of a reviewing court judge's substantial failure to perform judicial duties, including habitual neglect of duty, or absences due to disability totaling more than 90 court days in a 12-month period, excluding absences for authorized vacations and attendance at schools, conferences, and workshops for judges. The Chief Justice or presiding justice or administrative presiding justice shall give the judge a copy of any notification to the Commission.

CASES COMING BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Six Year Summary - 1978-1983

<u>Year</u>	<u>Complaints Filed</u>	<u>Inquiries (some kind of investigation)</u>	<u>Judge Contacted</u>	<u>Preliminary Investigation</u>	<u>Admonishments</u>	<u>Resignations or Retirements</u>	<u>Public Discipline</u>
1978	274	72	59	20	7	3	1 censure 1 retirement (involuntary)
1979	291	76	62	18	3	2	
1980	260	65	54	12	8	1	
1981	267	52	48	18	7	3	1 censure 1 removal
1982	360	68	61	14	5	1	2 censures
1983	351	63	56	21	6	3	2 censures 1 removal

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