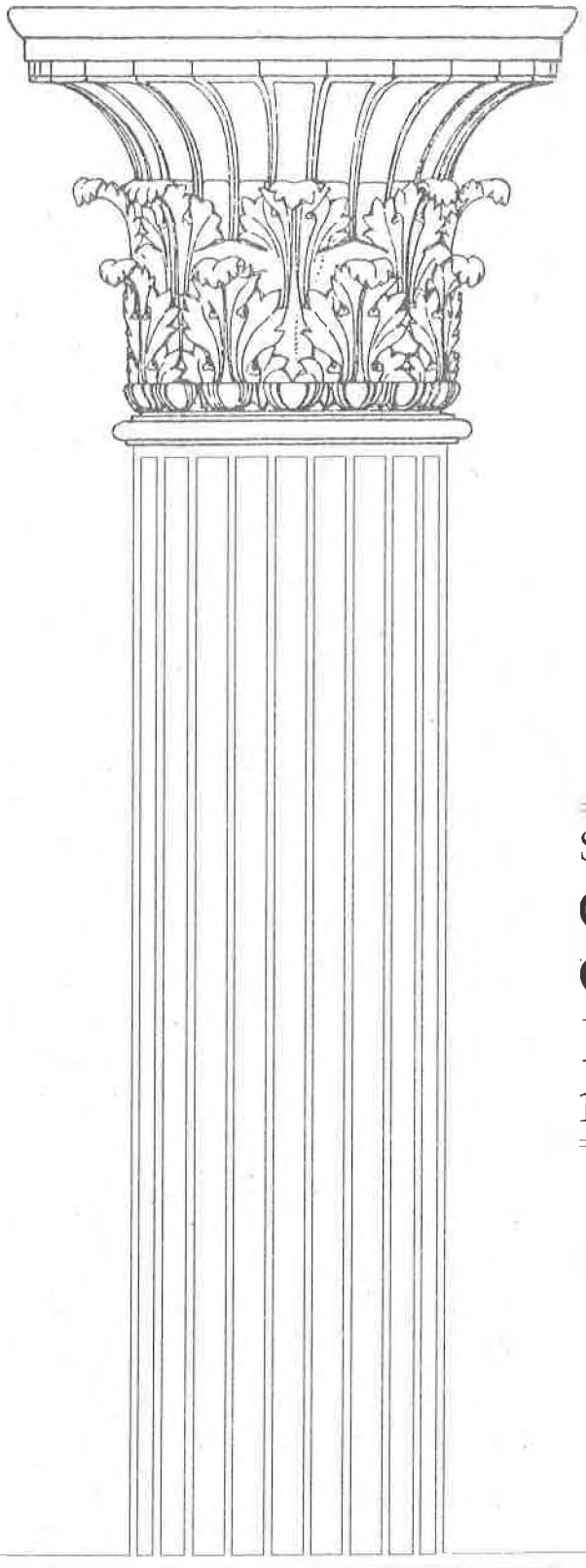

STATE OF CALIFORNIA

# COMMISSION ON JUDICIAL PERFORMANCE

## 1989 ANNUAL REPORT

# COMMISSION ON JUDICIAL PERFORMANCE
# 1989 ANNUAL REPORT

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# INTRODUCTION

This year we note with great sorrow the death of Ben Noble, who served as a public member of the commission since 1984. Mr. Noble was unswervingly dedicated to the highest standards of judicial performance. He brought a fresh perspective to our deliberations and served with dedication, humor, honesty, and warmth. We will miss him greatly.

January 1990

Arleigh Woods
Chairperson
Commission on Judicial Performance

# COMMISSION MEMBERS

**HONORABLE ARLEIGH WOODS**
Chairperson
Presiding Justice, Court of Appeal
Second Appellate District, Division Four
Los Angeles
Appointed May 1986
Present term expires March 1993

**ANDY GUY**
Vice Chairperson
Public Member
Lodi
Appointed November 1985
Present term expires
October 1993

**HONORABLE**
**INA LEVIN GYEMANT**
Judge of the Superior Court
San Francisco
Appointed September 1988
Present term expires
November 1992

**HONORABLE**
**FRANCISCO F. FIRMAT**
Judge of the Municipal Court
North Orange County
Appointed February 1989
Present term expires
January 1992

**P. TERRY ANDERLINI**
Attorney Member
San Mateo
Appointed January 1989
Present term expires
December 1990

## COMMISSION MEMBERS continued

**DENNIS A. CORNELL**
Attorney Member
Merced
Appointed January 1989
Present term expires
December 1992

**HONORABLE**
**EUGENE M. PREMO**
Associate Justice
Court of Appeal
Sixth Appellate District
San Jose
Appointed February 1989
Present term expires
November 1990

**HONORABLE**
**WILLIAM A. MASTERSON**
Judge of the Superior Court
Los Angeles
Appointed February 1989
Present term expires
March 1991

Vacant: One Public Member

## COMMISSION STAFF

**JACK E. FRANKEL**
Director-Chief Counsel

**PETER GUBBINS**
Investigating Attorney

**CYNTHIA DORFMAN**
Associate Counsel

**NANCY GILMORE**
Senior Administrative Assistant

**BERNADETTE M. KEEVAMA**
Supervising Judicial Secretary

**KHOI NGOC BUI**
Data Processing Analyst

**HILARY WINSLOW**
Investigating Attorney

**JOHN PLOTZ**
Staff Counsel

**JENNIFER L. MACHLIN**
Staff Counsel/Office Administrator

**ELAINE D. SWEET**
Judicial Secretary/Administrative Assistant

**PAT HATTORI**
Judicial Secretary

**BARBARA JO WHITEOAK**
Judicial Secretary

# I. THE COMMISSION IN 1989: AN OVERVIEW

The Commission on Judicial Performance is an independent state agency that handles complaints and problems involving judicial misconduct and disability of state judges. The commission was created in 1960 by additions to the state constitution (Article VI, sections 8 and 18).

There are nine members of the commission: two judges of the courts of appeal, two judges of the superior courts, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the State Bar; and two lay citizens appointed by the Governor and approved by a majority of the Senate. Each member serves a term of four years; the terms are staggered. The commission meets approximately eight times a year, usually for a two-day meeting. It employs a staff of twelve.

The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. The commission considers a wide variety of judicial misconduct. Rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt power, delay of decision, ex parte communications, ticket-fixing, drunkenness, systematic denial of litigants' rights, improper off-bench activities and many other forms of misconduct have claimed the commission's attention. The commission is also concerned with disabilities which seriously interfere with performance of the judge's duties.

A commission case usually begins with a written complaint from a member of the public, most often a litigant or an attorney, but sometimes a concerned citizen. Sometimes another judge or a court employee brings a matter to the commission's attention. All complaints are presented to the commission. The majority of complaints do not on their face state a case of judicial misconduct. These complaints are closed by the commission after staff recommendation. When a complaint does state a case, or even might state a case, the commission orders its staff to make an inquiry into the matter and report at the next meeting. Usually the staff inquiry includes contact with the judge. These letters of inquiry are not intended as

accusations, but only as requests for information.

After an inquiry, the commission has a range of options. Sometimes the allegations are found to be untrue, exaggerated, or unprovable, in which case the commission closes the case without any action against the judge. If ethically questionable conduct did occur, but it was relatively minor or the judge has recognized the problem, the commission may close the case with an advisory letter under the Rules of Court, rule 904.1. If serious issues remain after inquiry, the commission will order a "preliminary investigation" under rule 904.2. A preliminary investigation may also be ordered without a staff inquiry.

After a preliminary investigation, the commission may close the case without action, defer closing the case in order to observe and review the judge's conduct, issue an advisory letter, or issue a notice of intended private admonishment. With the judge's consent, the commission may issue a public reproval. In the most serious cases, however, the commission will issue a notice of formal proceedings under rule 905. The notice is a formal statement of charges and leads to a hearing, usually before a panel of special masters appointed by the Supreme Court. According to the Constitution, the commission may open hearings to the public if the charges involve moral turpitude, or if the judge requests an open hearing. After the hearing the special masters report their findings to the commission.

After reviewing the report of the special masters, the commission may close the case, impose relatively minor discipline such as an advisory letter or private admonishment, or it may recommend to the Supreme Court that the judge be removed or publicly censured, or involuntarily retired because of a disability. A public reproval is also possible at that juncture.

Two flow charts showing the progress of complaints through the commission are appended at pages 69 and 70. While not a complete overview of the various courses of commission proceedings, they illustrate some of the typical patterns.

* * *

In 1989 the commission received 860 complaints. There was investigation of some sort in 147 cases. There were 81 official staff inquiries and 38 preliminary investigations. The commission instituted formal proceedings in five matters and there was one formal hearing. The commission issued 13 private admonishments and 36 advisory letters. A summary of these private communications may be found in Section V of this report. For the first time, the commission issued public reprovals under Article VI, section 18(f)(2), of the Constitution. These went to four judges. The cases are described in Section IV.

## I.
## AN OVERVIEW

The Supreme Court ordered the removal of Judge Bernard McCullough. The Court ordered the commission to dismiss proceedings against Judge David Press as moot. Acting on the commission's recommendation, the Court suspended Judge Charles D. Boags without pay while his conviction for ticket-fixing is on appeal. These actions are described in Section IV of this report.

Since its beginning, the commission has recommended the removal or involuntary retirement of 14 judges. The Supreme Court has accepted the recommendation in 10 cases and rejected it in two. Two cases are pending at the end of the year. During the 29 years of the commission's existence, many judges have retired or resigned with commission proceedings pending.

The commission also rules on applications for disability retirement by judges. This aspect of the commission's work is discussed in Section VII of this report.

The commission is established and governed by Article VI, sections 8 and 18, of the California Constitution. It is also subject to Government Code sections 68701 through 68755 and Rules of Court 901 through 922. The commission issues its own declarations of existing policy which reflect internal procedures. These statutes, court rules and policy declarations are reprinted in the appendix.

## II. RECENT CHANGES IN THE LAW

In 1989 there were no significant changes in the statutes and rules governing the commission, except in the area of confidentiality.

In November 1988, California voters approved constitutional provisions allowing certain formal hearings to be opened to the public (Article VI, § 18(f)(1) and (3)). The Judicial Council then adopted new Rules of Court 907.1 and 907.2 to implement those constitutional sections, effective January 1, 1990.

Rule 907.1 sets out the procedure for a judge who is the subject of formal proceedings to request an open hearing. Rule 907.2 sets out the procedure for the commission to open a hearing when the charges involve moral turpitude, dishonesty, or corruption.

The Judicial Council also adopted changes in the Rules of Court which are merely technical (see amended Rules of Court 904.4, 912, 913, and 918).

* * *

The California Judges Association, a non-governmental organization, amended Canons 3C and 3D of the Code of Judicial Conduct in various ways. Canon 3C concerns disqualification of judges for bias, conflict of interest, and other causes. Canon 3D concerns waiver of disqualification by the parties after a judge has disclosed the basis of disqualification.

These canons — both old and new versions — differ in some respects from the Code of Civil Procedure, sections 170.1 *et seq.*

# III. SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1989

At the close of 1989, there were 1555 judicial positions within the commission's jurisdiction:

Justices of the Supreme Court .....7
Justices of the Court of Appeal .....88
Judges of Superior Courts .....789
Judges of Municipal Courts .....605
Judges of Justice Courts .....66

## NEW COMPLAINTS

The commission considered 860 new complaints about judges within its jurisdiction (i.e., active California judges) in 1989. These complaints named a total of 565 judges. (For court distribution, see Table III-1.)

The commission also considered 30 matters which were carried over from 1988.

## INVESTIGATED CASES

When a new complaint is received, there may be some threshold investigation to aid the commission in its review of the matter. In 1989, 147 of the complaints received by the commission warranted at least this minimum level of investigation.

If the commission determines that further investigation should be undertaken, it may authorize a "staff inquiry" pursuant to Rule of Court 904. In 1989, the commission ordered staff inquiries in 81 cases. In 72 of those inquiries, the commission contacted the judge and requested comment on the allegations.

Under Rules of Court 904 and 904.2, a staff inquiry may be followed by a "preliminary investigation" to determine whether formal proceedings should be instituted or any discipline imposed beyond an advisory letter. In 1989, the commission ordered 20 preliminary investigations following staff inquiries. Rules 904 and 904.2 also allow the commission to order a preliminary investigation without first conducting a staff inquiry. In 1989, the commission ordered 18 preliminary investigations without staff inquiries. Altogether, there were 38 preliminary investigations in 1989.

The data given above are summarized in Table III-2.

## III. SUMMARY OF DISCIPLINARY ACTIVITY

### FORMAL PROCEEDINGS

In 1989 the commission issued formal charges in five matters, and one formal hearing was held. (See Table III-2.)

### PUBLIC DISCIPLINE

The Supreme Court, acting upon a recommendation made by the commission in 1988, removed Bernard McCullough from office (*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186). The commission issued four public reprovals. (See Table III-3 and Public Discipline, Section IV of this report.)

### PRIVATE DISCIPLINE

Private disciplinary action was taken in 49 cases. In 13 of these cases, the commission issued a private admonishment. Thirty-six of the investigated matters were closed with an advisory letter expressing disapproval of some aspect of the judge's performance or conduct or providing information intended to educate the judge concerning the ethical obligations of the judiciary. (See Table III-3 and Private Discipline, Section V of this report.)

### COMPLAINTS CLOSED WITHOUT DISCIPLINE

In 1989, the commission closed 782 complaints without discipline.

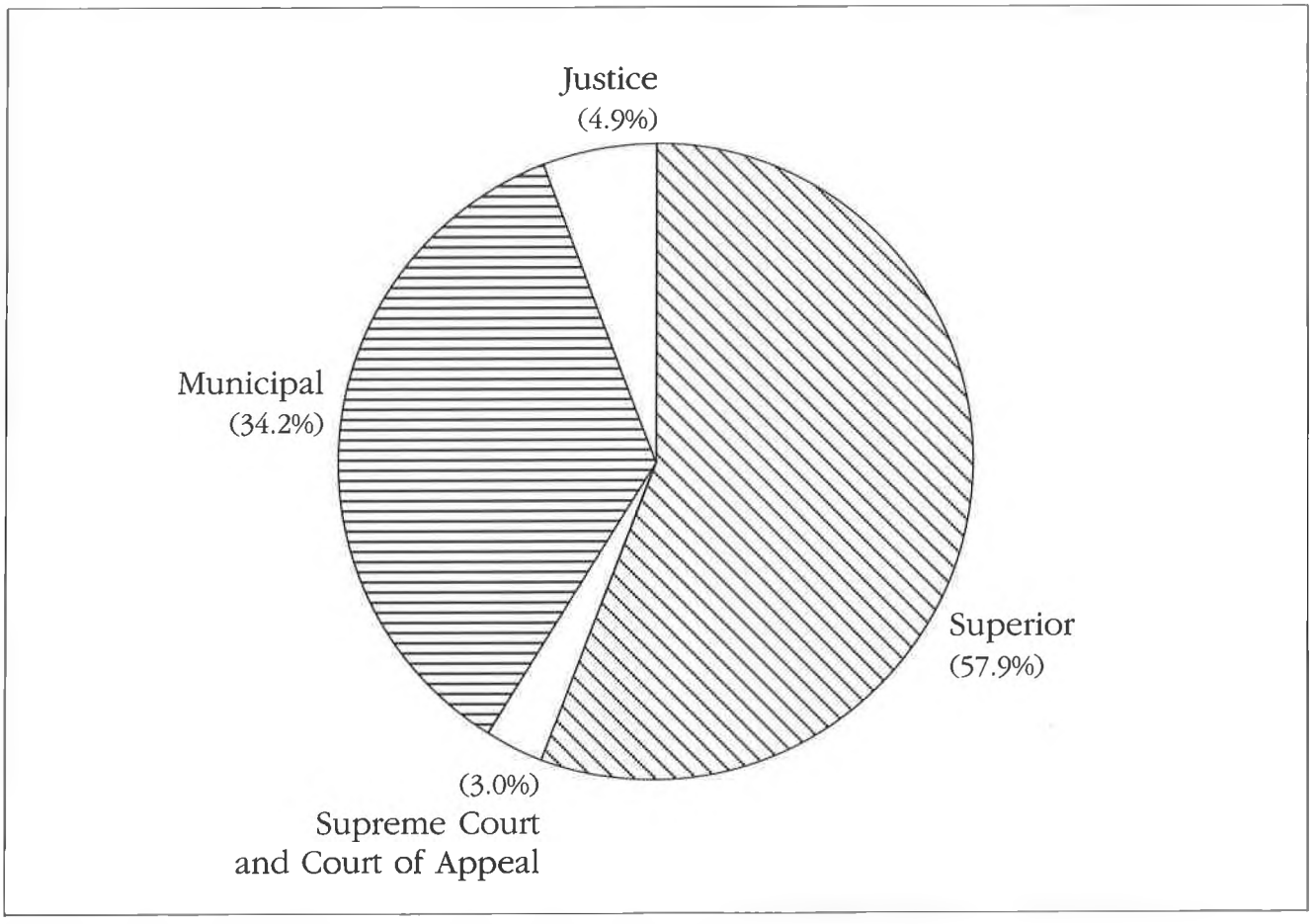
Of these, the commission closed 746 following initial review and consideration. Many of these complaints were filed by individuals dissatisfied with a judge's rulings on the merits of a particular case.

Another 36 were closed without discipline after a staff inquiry or preliminary investigation.

An additional three complaints warranting investigation were closed because the judge retired or resigned after the investigation commenced. Nine complaints were closed through consolidation with other cases. (See Table III-3.)

## Table III-1
## COMPLAINT DISTRIBUTION BY LEVEL OF COURT

| | Number of Complaints | Percent of Total | Total Judges in Court |
|---|---|---|---|
| Appeal | 26 | 3.0 % | 95 |
| Superior | 498 | 57.9% | 789 |
| Municipal | 294 | 34.2% | 605 |
| Justice | 42 | 4.9% | 66 |



## Table III-2
## NEW COMPLAINTS

| | |
|---|---|
| **Total number of new complaints on the commission's agenda during 1989** | **860** |
| **Total number of judges complained against** | **565** |

### Investigatory Actions

| | |
|---|---|
| Some Investigation | **147** |
| Staff Inquiries | **81** |
| Preliminary Investigations (Rule 904.2) | **38** |
| Number of judges contacted | **90** |

### Formal Proceedings

| | |
|---|---|
| Issuance of Notice of Formal Proceedings | **5** |
| Hearings Held | **1** |

## Table III-3
## COMPLAINT DISPOSITION

| | |
|---|---|
| **Total Number of Cases Closed in 1989** | **848** |

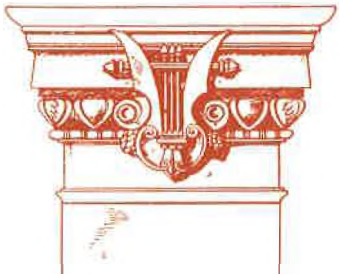
### Closed with Disciplinary Action

| | |
|---|---|
| Removal (*Supreme Court*) | **1** |
| Public Censure (*Supreme Court*) | **0** |
| Public Reproval (*Commission*) | **4** |
| Private Admonishment (*Commission*) | **13** |
| Advisory Letter (*Commission*) | **36** |
| ***Total*** | **54** |

### Closed without Disciplinary Action

| | |
|---|---|
| Closed after initial review | **746** |
| Closed after staff inquiry or preliminary investigation | **36** |
| Resigned/Retired while under investigation | **3** |
| Closed through consolidation with other pending cases | **9** |
| ***Total*** | **794** |

# IV. PUBLIC DISCIPLINE



In February 1989, acting on the recommendation of the commission, the Supreme Court suspended Judge Charles D. Boags (Beverly Hills Municipal Court) without pay after a jury found him guilty of conspiracy to obstruct justice (Cal. Const., Art. VI, § 18(b)). Essentially, the judge was convicted of fixing parking tickets. If the conviction is reversed on appeal, the suspension will end and the judge will be repaid his lost salary. If the conviction is upheld, the Constitution provides for the judge's removal from office.

In March, the Supreme Court ordered the commission to dismiss proceedings against Judge David Press (Crest Forest Justice Court, San Bernardino County) as moot.

In July, the Supreme Court followed the commission's recommendation that Judge Bernard McCullough (San Benito Justice Court) be removed (*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 260 Cal.Rptr. 557, 776 P.2d 259).

Still pending before the Supreme Court at the end of 1989 were removal recommendations made in 1988 against Judges David Kennick (Los Angeles Municipal Court) and Kenneth Kloepfer (San Bernardino Municipal Court).

In 1989, the commission exercised for the first time its power to reprove a judge publicly. This power is contained in an amendment to the Constitution approved by the voters in 1988:

> *The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission. (Art. VI, § 18 (f)(2).)*

The four cases in which the commission issued public reprovals are discussed later in this section.

## IV.
## PUBLIC DISCIPLINE

### THE McCULLOUGH CASE

In ordering the removal of Judge McCullough, the Supreme Court found four instances of wilful misconduct in office.

In one case, the judge directed a jury to find the defendant guilty of a misdemeanor. The Supreme Court held that, "Depriving a criminal defendant of his fundamental right to be tried by a jury manifests disrespect for the constitutional protections of our legal system." (49 Cal.3d at 192.) Addressing the judge's claim that he *believed* he had authority to direct a guilty verdict, the Court quoted an earlier decision: "Petitioner's patent misunderstanding of the nature of his judicial responsibility serves not to mitigate but to aggravate the severity of his misconduct." (*Gonzalez* v. *Commission on Judicial Performance* (1983) 33 Cal.3d 359, 369.)

In a second matter, an old friend came to the judge's home the day before his arraignment on a misdemeanor charge. The friend told Judge McCullough about the case and asked the judge to excuse him from appearing the next day. The next day the judge continued the case, without, however, informing the prosecutor. Over the next two years, the judge continued the case twenty times. Finally, the judge simply dismissed the case, also without informing the prosecutor. The Supreme Court called this "a casebook example of wilful misconduct." (49 Cal.3d at 194.)

In two other cases, Judge McCullough proceeded to trial in the absence of defense counsel. In both cases the defendant's attorney telephoned one day before trial to inform the court of a scheduling conflict and to request a continuance. Judge McCullough denied the requests as untimely under Penal Code section 1050(b), which requires continuance motions to be made in writing at least two days before the hearing. The judge then held trial without defense counsel. The Supreme Court determined this was wilful misconduct. The judge should have held a hearing to determine whether there was good cause for the attorneys' failure to comply with the procedural requirements of a continuance motion (*id.*, sect. 1050(d)). More important, if the judge believed there was not good cause, he should have considered imposing sanctions on the attorneys (*id.*, sect. 1050(c)), rather than punishing the defendants by making them go to trial unrepresented. "Judge McCullough allowed his impatience with a defendant's attorney to outweigh a defendant's right to a fair trial and representation of her choice." (49 Cal.3d at 196.)

The Supreme Court also found that Judge McCullough had delayed six years in signing a judgment. This constituted "persistent failure to perform the judge's duties." (49 Cal.3d at 197.) The Court was especially concerned about the matter because the judge did not sign the paper even after public censure (see *McCullough* v. *Commission on Judicial Performance* (1987) 43 Cal.3d 534). "His failure to respond to our public censure evidences a lack of regard for the Commission, this court, and his obligations as a judge." (49 Cal.3d at 197.)

## THE PRESS CASE

In April 1988, the commission filed with the California Supreme Court a report containing the commission's findings of fact, conclusions of law, and recommendation of public censure concerning Judge David Press, a judge of the Crest Forest Justice Court District in San Bernardino County.

The commission, after reviewing the transcript of a formal hearing held before three special masters, found that the evidence established four counts of wilful misconduct and five counts of conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

The four counts of wilful misconduct were based on the following incidents:

**1.** After he was served with an alternative writ of mandate signed by a superior court judge, Judge Press, in open court, accused the deputy public defender who had obtained the writ of making false statements in the writ petition and attempting to defraud the superior court.

**2.** Judge Press stated in open court that the Public Defender's Office and the District Attorney's Office may have "perpetrated a fraud upon the court" by failing to voluntarily disclose that a defendant who pled guilty pursuant to a plea bargain to driving on a suspended license had received another citation for driving on a suspended license a few days before entering his plea. Judge Press noted that he had already asked both the Public Defender's Office and the District Attorney's Office whether they knew of the new citation when the plea was entered and that both offices had said they did not; nonetheless, he questioned the deputy public defender and deputy district attorney before him about why he had not been informed of the new citation when the plea was entered.

**3.** Judge Press issued a rule for the Crest Forest Judicial District Court which required members of the clerk's office to contact him for approval before court dockets in cases in which he was involved were shown, copied, given or sent to any interested person. In addition, the rule as interpreted by the clerk's office required that the judge be informed of the date, time and names of the persons requesting to look at court dockets and files, and that such information be memorialized on the official court docket.

**4.** In open court, Judge Press forbade a deputy public defender, who had just served him with an alternative writ of mandate, from entering behind the counter of the clerk's office. The judge stated that he felt there was some question as to the attorney's ethical conduct, and continued: "I'll stand for no more insolence. I'll not permit you to enter the clerk's office at any time. If you have any business with the clerks, you'll deal with them from across the counter."

The five counts of conduct prejudicial to the administration of justice were based on the following incidents:

**1.** Judge Press ordered counsel for a defendant appealing a conviction in his court to strike a ground for appeal, because the judge disagreed with certain statements set out in the Amended Engrossed Statement on Appeal prepared by the attorney. The attorney was forced to seek extraordinary relief in order to have his appellate grounds preserved for consideration by the appellate department of the superior court.

**2.** In a traffic trial, the judge took evidence from the defendant prior to the prosecution's establishment of a prima facie case. After a deputy sheriff testified that he could not remember the traffic citation or the defendant, Judge Press heard testimony from the defendant. The deputy, who stated that the defendant's testimony had refreshed his recollection, then testified, and the defendant was found guilty.

**3.** In another traffic trial, in similar circumstances, Judge Press took testimony from the defendant before the prosecution had established a prima facie case.

**4.** In a criminal case, after imposing a probationary sentence on the defendant, Judge Press continued a hearing on possible reimbursement of attorney's fees under Penal Code section 987.8 at six-month intervals for nearly two years, despite the provisions of that statute limiting the time for such a hearing to six months after sentencing and despite the fact that the financial statement submitted at the time of sentencing reflected that the defendant was totally disabled and that his sole source of income was from social security and veteran's benefits.

**5.** Judge Press ordered a defendant who appeared for a hearing on possible reimbursement of attorney's fees to return with counsel—although he normally did not have defendants appear with counsel at such hearings—for the appararent purpose of bringing counsel before him to answer his inquiries about why he was not made aware of a new citation for driving on a suspended license the defendant had received a few days before pleading guilty on one of the two cases which were the subject of the fee hearing. The defendant failed to appear at the hearing. The judge held a fee hearing in absentia; he ordered the defendant to pay $200 in attorney's fees in one case, and issued a $1,000 bench warrant in the other. The issuance of a warrant for the defendant's failure to appear for a fee hearing was not authorized by law. Issuance of the warrant appeared to be a continuation of the judge's efforts to bring the defendant and counsel before the court to answer the judge's inquiries about a possible "fraud upon the court."

## IV.
## PUBLIC DISCIPLINE

The commission's report concerning Judge Press was filed in the Supreme Court on April 8, 1988. Normally, a judge must file a petition in the Supreme Court to modify or reject the commission's recommendation within 30 days; a recommendation of public censure becomes public when the judge has filed his petition or when the time to do so has expired. (Rule 902(a), California Rules of Court.) Judge Press requested and received an extension of time to file his petition in the Supreme Court, and the commission was prevented from making the censure public until he had done so. Before the judge's petition was filed, in June of 1988, he ran as the incumbent against several candidates seeking his judicial seat. No candidate received a majority of the votes; one other candidate won more votes than the judge. That candidate and the judge were slated for a run-off election in November 1988.

After Judge Press filed his petition in the Supreme Court in July 1988, the commission's report and recommendation were made public. Thereafter, in November 1988, Judge Press was defeated in his bid for re-election. In March 1989, the Supreme Court ordered the case dismissed. Since the recommendation was censure and the judge was out of office through the election process, the Court determined not to complete its review of the record and render a decision. In the *Press* matter, the commission performed its function by making public its findings and conclusions, which the voters were then able to consider in making their decision.

### PUBLIC REPROVALS

**1.** The commission publicly reproved Judge Bruce Clark of the Ventura Municipal Court (Art. VI, § 18(f)(2)).

The commission found that Assemblywoman Cathie Wright came to the judge's home and discussed two traffic tickets which her daughter had received. The next day Judge Clark took several unusually lenient actions in connection with the tickets: he struck the requirement that the defendant personally appear in court and he permitted both tickets to be dismissed upon completion of traffic school. He took these actions in chambers and without informing the prosecutor. The commission found that these actions violated Canons 2A and 2B and most especially Canon 3A(4), which forbids consideration of ex parte communications.

The commission imposed a reproval in this case because of Judge Clark's unblemished record, the apparent isolation of the incident, and the judge's recognition that he should have handled the matter differently.

**2.** The commission publicly reproved Judge Calvin Schmidt of the Harbor Municipal Court in Orange County.

The commission found that the judge twice ordered the release from custody of a defendant who was the stepdaughter of the judge's friend. The first release followed another judge's denial of defendant's motion for an O.R. release or bail reduction. Before the second release, defendant failed to appear in court and had been arrested on new charges. Aggregate bail exceeded $50,000. The obvious and sole reason for Judge Schmidt's actions was his friendship with defendant's stepfather. The releases were arbitrary and capricious exercises of judicial discretion and undermined public confidence in the integrity and impartiality of the judiciary.

Judge Schmidt also made political contributions from his own campaign funds to non-judicial candidates in patent violation of Canon 7.

**3.** The commission publicly reproved Judge Glenda Doan of the Corcoran Justice Court in Kings County.

The commission found that the judge continued the private practice of law while she served on the justice court, as the law then permitted. From the time she became a judge in 1983 through 1986, she received numerous sums of money from a client of her law practice. These sums, which exceeded $75,000, were not paid for legal services. The judge variously described the money as gifts, loans, and income. She did not advise the client to obtain independent counsel before paying the money, nor did she make the written disclosures required by the State Bar Rules of Professional Conduct, rule 3-300 (formerly rule 5-101). She did not inform the law firm where she worked that she was receiving these sums. She failed to disclose the payments on public Statements of Economic Interests filed in 1985 and thereafter. The commission found that this conduct was conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In determining that a public reproval would be adequate discipline, the commission considered that the conduct occurred entirely off the bench. There was no evidence that her performance as a judge was in any way compromised. The judge expressed great remorse. The judge also had a long record of civic service.

**4.** The commission publicly reproved Judge John Schatz, Jr., of the Santa Clara County Superior Court.

The commission found that the judge's son had been charged with a crime. On the day his son was to be arraigned in the San Mateo Municipal Court, the judge went to the chambers of the arraigning judge, identified himself as a judge, and proceeded to discuss the case. When a deputy prosecutor entered the room, the judge continued the discussion. The arraignment was continued for a week. At the continued arraignment, which was held before a commissioner, the judge attempted to involve the

commissioner in private discussion at the bench and asked him to enter a not guilty plea for his son, who did not appear.

When the Commission on Judicial Performance asked the judge whether he had ever approached any other judge or prosecutor about his son, the judge falsely answered no. He later said he had misinterpreted the commission's question, thinking it was limited to contacts in San Mateo County.

The judge had also met with the Santa Clara District Attorney to discuss a pending burglary case. He asked for dismissal of the charge based on his son's imminent enlistment in the military. Two days later, the case was calendared before a municipal court judge. The judge met in chambers with the municipal court judge, a deputy prosecutor, and his son's public defender. The court was persuaded to dismiss the charge based on the coming enlistment. The son did take some steps in that direction, but ultimately did not enlist.

In determining that a public reproval would be adequate discipline, the commission considered the judge's recognition that his conduct was inappropriate and his assurance that the conduct would not be repeated.

# V. PRIVATE DISCIPLINE AND DISPOSITION

In 1989 the commission issued 13 private admonishments and 36 advisory letters.

## PRIVATE ADMONISHMENTS

Private admonishments are formally imposed pursuant to California Rules of Court, rule 904.3. The private admonishments imposed in 1989 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This omission of detail has made some summaries less informative than they otherwise would be; but we think it is better to be vague in these descriptions than to omit them altogether.

**A.** A judge held several people in contempt on inadequate grounds and without following the statutory procedures.

**B.** A judge declared a mistrial in the midst of a criminal trial in order to keep an appointment.

**C.** In a juvenile case, a judge made a grossly improper order which was intended to frighten the child into better behavior. The commission imposed a severe admonishment.

**D.** During a jury trial, a judge passed a sympathetic note to the victim/witness.

**E.** In a civil action, the defendant was the judge's close business associate, a fact which was not revealed to the plaintiff. Over plaintiff's vigorous argument, the judge granted a defense motion.

**F.** Judge #1 wrote to Judge #2 to ask for favorable treatment in the sentencing of a relative of Judge #1. Judge #1 thereby violated Canons 1, 2A, 2B and 3A(4).

**G.** A judge drove recklessly, thereby committing a misdemeanor. There was a consumption of alcohol in connection with the offense. It was apparently an isolated incident.

**H.** Angered by an attorney, a judge retaliated by making a judicial ruling adverse to the attorney's client. The same judge improperly jailed a traffic defendant for contempt. The judge frequently berated attorneys in public and before juries, often impugning their integrity. The commission imposed private discipline here because of mitigating circumstances, including the judge's expressed willingness to improve. The admonishment was severe.

**I.** A judge did not adequately inform a traffic defendant of the defendant's constitutional rights. The judge found defendant guilty of an alleged failure to appear, supposedly on a plea of guilty, although defendant did not in fact plead guilty or waive any constitutional or statutory right. The commission imposed a severe private admonishment.

**J.** A judge appeared to attempt to influence inappropriately the work of law enforcement officials.

**K.** A judge became involved in a heated colloquy with a defendant in open court, insulting the defendant and using profanity.

**L.** A judge failed to file a decision in a small claims appeal for more than nine months. The judge had twice before been privately admonished for failure to dispose of cases promptly.

**M.** Making inappropriate use of the judge's position of power, a judge engaged in a personal, non-professional relationship with a court employee, for the most part during the business day. This admonishment was severe.

## ADVISORY LETTERS

In some cases, the commission will simply advise caution or express disapproval of the judge's conduct. This milder form of discipline is contained in letters of advice or disapproval called "advisory letters" (Rule 904.1). The commission sometimes issues advisory letters when the misconduct is clear but the judge has demonstrated an understanding of the problem and has taken steps to improve. They are also used when the impropriety is isolated or relatively minor.

Thirty-six complaints were closed with advisory letters in 1989.

### ► Demeanor

As usual, the largest category of advisory letters related to demeanor problems, including unnecessary harshness, sarcasm, impatience, name-calling, and a variety of other inappropriate conduct on the bench.

**1.** A judge believed a lawsuit was frivolous. The judge called the plaintiff's actions "crazy" and made sarcastic remarks to the plaintiff's spouse. The judge believed this was mere "scolding"; but in the commission's view it crossed the line into abuse.

**2.** A judge was curt and impolite toward a litigant in a small claims appeal. Immediately after rendering judgment against the litigant, the judge ordered the bailiff to search the litigant's wallet for funds to pay the judgment.

**3.** A judge made sexist remarks in a family law matter.

**4.** At arraignment, a judge said words to the effect that a defendant was probably guilty. When the defendant insisted on a trial and requested a late court date, the judge said the defendant deserved a harsher

punishment for the defendant's attitude.

**5.** A judge fell asleep during a court trial, which resulted in a mistrial. The judge expressed regret and described steps being taken to prevent a recurrence.

**6.** A judge repeatedly belittled an attorney's legal skills in front of a jury.

**7.** A judge yelled at a small claims litigant for not asking questions properly. When the litigant complained to the judge, the judge replied, "I can yell at you as much as I want to."

**8.** A judge had outbursts of temper. The judge also relieved appointed counsel for trivial reasons and publicly criticized attorneys on inadequate grounds.

**9.** A judge yelled an insult at a defendant and spoke inappropriately about the defendant's guilt.

**10.** A judge shouted at litigants and was otherwise rude to them.

See also, Admonishment H and Advisory Letter 31.

### ► Abuse of Contempt Power

Before sending a person to jail for contempt, or imposing a fine, judges are required to adhere strictly to the procedural requirements contained in the Code of Civil Procedure. Ignorance of those procedures is not a mitigating but an aggravating factor (*Ryan* v. *Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533).

**11.** A judge failed to follow strictly the law of contempt.

**12.** A judge threatened a court employee with contempt over a minor personnel matter.

**13.** A judge failed to follow strictly the law of contempt, and found an attorney in contempt for violating an unreasonable policy concerning practice in the judge's court.

See also Admonishments A and H.

### ► Delay

The commission issued advisory letters for failure to decide cases timely. The delay in these cases was over 90 days. But in some circumstances, a shorter delay would be a failure to "dispose promptly of the business of the court" (Canon 3A(5)).

**14.** A judge delayed 107 days in rendering a decision in a small claims case.

**15.** A judge delayed 133 days in a family law case, causing hardship to the litigant.

**16.** A judge delayed seven months after a one-day trial and failed to respond to an attorney's inquiry about the matter.

**17.** A judge delayed nine months in rendering a decision in a rather simple matter.

See Admonishment L and *McCullough* v. *Commission on Judicial Performance* (1989) 49 Cal.3d 186.

**► Ex Parte Communications**

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. Judges often claim that an ex parte ruling would have been the same if the proper procedures had been followed; but the commission does not accept this as an excuse. When a judicial decision is made after an improper communication, there is an appearance of favoritism.

**18.** The son of a personal friend visited the judge in chambers and requested the judge to vacate a guilty plea which the son had entered before another judge. The judge went into the courtroom and vacated the plea.

**19.** A defendant in a small claims matter requested a continuance by letter to the judge. The judge granted the continuance, informing the plaintiff only when the plaintiff appeared for trial.

**20.** On an ex parte application for an order, the moving party had informed the other party of the time and place of the application (Rules of Court, rule 379). When the other party appeared to oppose the application, the judge had already decided the matter and refused to hear any opposition.

See also Public Reproval No. 1 discussed on page 17, and Advisory Letter 32.

**► Rushing Through Calendars Without Adequate Regard for the Rights of Defendants**

The Supreme Court has written that "No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude." (*Geiler* v. *Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.) While the commission is mindful of the burden imposed by long arraignment and other calendars, it cannot accept constitutional shortcuts.

**21.** A judge had the practice of taking some guilty pleas with no advisement of rights, taking other guilty pleas with no waiver of rights, and giving inadequate advice to defendants on their right to counsel. In response to the commission's investigation, the judge's attitude was extraordinarily cooperative.

**22.** A judge imposed obstacles to defendants' exercise of right to counsel. For instance, although the judge would give a mass advisement of rights informing defendants of their right to counsel or appointed counsel, the judge did not give any information on how to exercise that

right, or an opportunity to do so. After being contacted by the commission, the judge's attitude was exceptionally constructive; and the judge took the necessary steps to correct the problem.

See also Admonishment I.

► **Miscellaneous**

And there was a variety of other cases.

**23.** A judge failed to recognize or take steps to correct serious problems in the clerk's office involving the mis-filing and loss of legal documents. The commission recommended that the judge seek help from the Administrative Office of the Courts.

**24.** A judge endorsed a candidate for city council, thereby violating Canon 7A(1)(b).

**25.** A judge used court stationery for a non-judicial purpose: to advertise a person's lecture sponsored by a non-profit organization.

**26.** A judge served on the board of directors of a certain organization. The service was barred by Canon 5.

**27.** A judge failed to dissociate from an apparent attempt to influence inappropriately the work of law enforcement officials.

**28.** A judge violated Canon 7 by the nature of the judge's activity in the local club of a political party.

**29.** A judge made sexist statements at a dinner speech.

**30.** A judge castigated and threatened action against a social worker for filing a dependency petition because the judge disagreed with the social worker's evaluation of the case.

**31.** A judge had a sentencing "policy" that expressly contradicted State policy set forth by statute: the judge refused even to consider sending traffic defendants to traffic school (Veh. Code, § 42500). When a defendant protested, the judge told the defendant to shut up.

**32.** A judge wrote an unsolicited letter to another judge. The letter was a character reference for a defendant who was to be sentenced. The letter was on court stationery. (See also Admonishment F and Advisory Letter 25.)

**33.** A judge exceeded authority by appointing an elected official to the grand jury. When the matter was brought to the judge's attention, the judge was indifferent.

**34.** A judge kept a sexist picture on the bench and appeared to observers to join courtroom staff in offensive, sexist conversations.

**35.** A judge sat on an appellate panel that reviewed a conviction for violation of a court order. The court order, although uncontested below, had been signed by the judge.

**36.** A judge used alcohol inappropriately. The commission monitored the judge for a time (Rules of Court, rule 904.2(d)). The judge took steps to deal with the alcohol problem.

# VI.
# A MISCELLANY OF MISCONDUCT

## THE SUPREME COURT SPEAKS ON JUDICIAL DISCIPLINE

**Since *Geiler* v. *Commission on Judicial Qualifications* (1973) 10 Cal.3d 270; 110 Cal.Rptr. 201; 515 P.2d 1., the Supreme Court has issued more than a dozen opinions about judicial misconduct. What follows is a small selection from the Court's statements on the subject.**

►The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. (*Geiler* v. *Commission on Judicial Qualifications, supra,* 10 Cal.3d at 281.)

►The purpose of these proceedings is not to punish errant judges but to protect the judicial system and those subject to the awesome power that judges wield. (*Furey* v. *Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1320; 240 Cal.Rptr. 859; 743 P.2d 919; see also, *McComb* v. *Commission on Judicial Performance* (1977) 19 Cal.3d Spec. Trib. Supp. 1, 9; 138 Cal.Rptr. 459; 564 P.2d 1.)

►Petitioner has engaged in a course of conduct which has maligned the judicial office and clearly establishes her lack of temperament and ability to perform judicial functions in an even-handed manner. Because it is our duty to preserve the integrity and independence of the judiciary. . . we order Judge Noel Cannon . . . removed from office. (*Cannon* v. *Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 707; 122 Cal.Rptr. 778; 537 P.2d 898.)

► **The Constitution (Art. VI, § 18(c)) speaks of "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The Court defines these terms:**

►Censure or removal from office is appropriate when a judge engages in wilful misconduct or prejudicial conduct. . . . The charge of wilful miscon-

duct refers to "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith." . . . The lesser charge of prejudicial conduct comprises conduct which the judge undertakes in good faith but which would nonetheless appear to an objective observer to be unjudicial and harmful to the public esteem of the judiciary. It also refers to unjudicial conduct committed in bad faith by a judge not acting in an official capacity. . . .

When a judge is acting in an official capacity, the critical distinction between wilful misconduct and prejudicial conduct is the presence of bad faith or malice. . . . In *Wenger* v. *Commission on Judicial Performance*, . . . we enunciated a two-prong test for the determination of bad faith or malice. It must be shown that the judge intentionally "(1) committed acts he knew or should have known to be beyond his power, (2) for a purpose other than faithful discharge of judicial duties." . . . Both prongs of the *Wenger* test apply an objective, rather than subjective, standard. The objective approach is consistent with our holdings in judicial discipline cases prior to the adoption of the *Wenger* two-prong test. . . . The objective approach is also consistent with Canon 2 of the California Code of Judicial Conduct, which provides that a judge should avoid the "appearance" of impropriety. (*Ryan* v. *Commission on Judicial Performance* (1988) 45 Cal.3d 518, 530-531; 247 Cal.Rptr. 378; 754 P.2d 724.)

► Prejudicial conduct must be "conduct prejudicial to the administration of justice *that brings the judicial office into disrepute.*" . . . The italicized words do not require notoriety, but only that the conduct be "damaging to the esteem for the judiciary held by members of the public who observed such conduct." . . . (*Wenger* v. *Commission on Judicial Performance* (1981) 29 Cal.3d 615, 622-623, n.4; 175 Cal.Rptr. 420; 630 P.2d 954.)

► It should be emphasized that our characterization of one ground for imposing discipline as more or less serious than the other does not imply that in a given case we would regard the ultimate sanction of removal as unjustified solely for "conduct prejudicial to the administration of justice which brings the judicial office into disrepute." (*Geiler, supra*, 10 Cal.3d at 284, n.11.)

► **The Court has always been concerned about the appearance of justice. Conduct which *appears* unjust may be wilful misconduct (if it occurs on the bench) or conduct prejudicial (if it occurs off the bench).**

► "[J]ustice must satisfy the appearance of justice." (Mr. Justice Frankfurter writing for the court in *Offutt* v. *United States* (1954) 348 U.S. 11, 14 [99 L.Ed.

11, 16, 75 S.Ct. 11].) (*McCartney* v. *Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 539; 116 Cal.Rptr. 260; 526 P.2d 268.)

► It is beyond me how it can be argued that such behavior is not "conduct prejudicial to the administration of justice" simply because Judge Stevens otherwise performed his judicial duties "fairly and equitably." "[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done." (*Rex* v. *Sussex Justices* (1924) 1 K.B. 256, 259 (Lord Hewart).) The administration of justice is prejudiced by the public perception of racial bias, whether or not it is translated into the court's judgments and orders. (*In re Charles S. Stevens* (1982) 31 Cal.3d 403, 405; 183 Cal.Rptr. 48; 645 P.2d 99 [Kaus, J., concurring].)

► Petitioner vigorously insists that any ethnic or sexual remarks he may have made were made in jest, and that in fact he has never treated ethnic or minority groups unfairly. However, Judge Gonzalez' subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary. Particular friends or associates may assure themselves that the judge's ethnic remarks are made in jest, but such facially blatant ethnic slurs as those Judge Gonzalez uttered from the bench are apt to offend minority members not familiar with petitioner's views and may be construed by the public at large as highly demeaning to minorities. Regardless of his personal feelings on racial harmony or the propriety of ethnic humor, Judge Gonzalez should have known that his admittedly "salty" courtroom comments were unbecoming and inappropriate. The ethnic slurs uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as wilful misconduct. . . .

The comment made off the bench regarding the black district attorney's wife's miscarriage and the Christmas party Jewish remark pose a less serious threat to public esteem for the integrity of the judiciary. However, as held in *In re Stevens*. . . ethnic and racial epithets uttered in chambers do constitute the lesser offense of conduct prejudicial. . . . 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. We hold that petitioner's "one less minority" and inbreeding remarks constitute conduct prejudicial to the administration of justice. (*Gonzalez* v. *Commission on Judicial Performance* (1983) 33 Cal.3d 359, 376-377; 188 Cal.Rptr. 880; 657 P.2d 372.)

► **More important than the appearance of fairness is the reality of fairness.**

► [A] judge's prime responsibility is the evenhanded dispensation of justice. . . . (*Furey , supra*, 43 Cal.3d at 1317.)

► [I]n indulging his petty animosity toward deputy public defenders, and in culmination of a pervasive course of conduct of overreaching his authority over subordinates, petitioner intentionally committed acts which he knew or should have known were beyond his lawful power. The resulting misconduct entailed the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness within a legal system which cannot escape the inherent imperfections of mankind.

No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude. The ideal of our legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if one man clothed with judicial power may ignore with impunity such a basic institutional mandate as the sanctity of the attorney-client relationship merely because the attorneys are young deputy public defenders and their clients are indigent.

It is immaterial whether petitioner's abuse of power resulted in just or unjust treatment for any given defendant. It is undisputed that petitioner bore no ill will towards the individual defendants enumerated in count six. Petitioner's bad faith was directed towards our legal system itself; his arbitrary substitutions of counsel because of his personal beliefs as to the defendants' guilt and his personal hostility to their counsel smacks of an inquisitorial intent to serve imagined truth at the expense of justice. Our adversary system of justice and our elaborate procedure for the prosecution of alleged criminals represents an institutional recognition of the fallibility of the individual. Much as our political system apportions power among jealous branches of government, so within the judicial branch we have striven to disperse the functions of the judicial process among many adverse participants in the hope that the institutions of our legal system will bear a collective capacity for justice and righteousness which no single mortal can achieve. It is this commitment to institutional justice which petitioner's individual conduct threatens to corrupt. Risk of recurrence of such conduct cannot be tolerated. (*Geiler, supra*, 10 Cal.3d at 286.)

► **The Court, while mindful of the crush of judicial business, has steadfastly refused to accept it as an excuse for the denial of rights.**

► [It] does not appear that it was the pressures of her assigned work load which forced her into the improprieties charged and found. It is manifest in any event that a lack in the quality of justice cannot be balanced by the fact that justice, such as it is, is administered in large quantities. (*Cannon, supra*, 14 Cal.3d at 706.)

► His stated goal of expediting the adjudication of cases in his court, though laudable, should not blind him to the fundamental elements of a fair criminal proceeding. (*McCullough* v. *Commission on Judicial Performance* (1989) 49 Cal.3d 186, 195; 260 Cal.Rptr. 557; 776 P.2d 259.)

► During the last few years there has been great public concern over the problem of trial court delay and congestion. It may be argued that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the superior court. However, a judge must decide each case on its own individual merits. (*Geiler, supra*, 10 Cal.3d at 285.)

► **The Court is also unimpressed by the argument that a particular bit of misconduct is somehow immune from sanction because it was (or was not) legal error.**

► The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. *It is immaterial that the conduct concerned was probably lawful. . . . (Geiler, supra*, 10 Cal.3d at 281 [emphasis added].)

► Petitioner denies the impropriety of any of his entries into the jury room. He cites *People* v. *Vinson* (1981) 121 Cal.App.3d 80, 84 [175 Cal.Rptr. 123], for the proposition that a private communication between a judge and juror does not necessarily constitute reversible error. However, once again Judge Gonzalez fails to grasp the heart of the matter. He has not been charged with committing reversible error by his actions, nor is this the standard for determining whether his misconduct is sanctionable. Rather, petitioner was charged with having "conducted . . . court business in a manner demonstrating ignorance of and indifference to procedures required by law which are essential to the fair, orderly, and decorous administration of justice." . . . Although informal communications between judge and jury may not result

in reversible error if an appeal is in fact taken, for our present purposes it is important to stress that such communications do interfere with the parties' right to the assistance of counsel and do undermine public esteem for the integrity and impartiality of the judicial office. (*Gonzalez, supra*, 33 Cal.3d at 374-375.)

► Judge McCullough admits that he committed the act which formed the basis of the Commission's charge, i.e., that he directed the jury to find Sumaya guilty. . . . [T]he fact that Sumaya's conviction was reversed does not justify or excuse the judge's action. Depriving a criminal defendant of his fundamental right to be tried by a jury manifests disrespect for the constitutional protections of our legal system. (*McCullough, supra*, 49 Cal.3d at 192.)

► As already explained, good faith does not preclude a determination of conduct prejudicial. It is true that a judge should not be disciplined for mere erroneous determination of legal issues, including questions of limitations on the judicial power, that are subject to reasonable differences of opinion. . . . But, as explained, petitioner engaged in collection practices that were clearly improper. . . . (*Gubler* v. *Commission on Judicial Performance* (1984) 37 Cal.3d 27, 47-48; 207 Cal.Rptr. 171; 688 P.2d 551.)

► **The Court's solicitude for the rights of litigants and attorneys, its mistrust of arrogance and high-handedness, and its rejection of the idea that "mere" legal error cannot be misconduct—all these themes come together when the Court considers abuse of the contempt power. In no other area has the Supreme Court insisted so vehemently on high judicial standards.**

► In contempt proceedings the court is often the prosecutor, judge, and jury. The contempt power is virtually unique in our system of justice because it permits a single official to deprive a citizen of his fundamental liberty interest without all of the procedural safeguards normally accompanying such a deprivation. Petitioner would have done well to recall the words of one of this court's first opinions, a case involving the future Justice Stephen J. Field: "The power [of contempt] is necessarily of an arbitrary nature, and should be used with great prudence and caution. A Judge should bear in mind that he is engaged, not so much in vindicating his own character, as in promoting the respect due to the administration of the laws. . . ." (*People* v. *Turner* (1850) 1 Cal. 152, 153.) (*Furey, supra*, 43 Cal.3d at 1314.)

## VI.
## A MISCELLANY OF MISCONDUCT

► Those who accept judicial office must expect and endure. . . criticism. As one court aptly stated, "the judge must be long of fuse and somewhat thick of skin." (*DeGeorge* v. *Superior Court* (1974) 40 Cal.App.3d 305, 312 [114 Cal.Rptr. 860].) (*Ryan, supra*, 45 Cal.3d at 532.)

► "Judges are supposed to be men of fortitude, able to thrive in a hardy climate." (*Craig* v. *Harney* (1947) 331 U.S. 367, 376; 91 L.Ed. 1546, 1552; 67 S.Ct. 1249.) (*Furey, supra*, 43 Cal.3d at 1320.)

► As to the contempt power, petitioner again failed to make the required written findings and an order. He seems to have learned nothing from the fact that several of his contempt orders had been set aside by higher courts for these procedural defects. . . .

Moreover, we have seen ample confirmation of petitioner's growing animosity toward Ms. Cuskaden. These incidents do not merely reflect "procedural shortcomings," as he would have it, but are part of a disturbing pattern of wilful misconduct toward a litigant and courtroom spectator. As the masters noted, he was probably dealing with Ms. Cuskaden in a manner applauded by those who believe her to be a controversial and difficult individual. But a judge's prime responsibility is the evenhanded dispensation of justice, even for the controversial and difficult persons in society. We thus conclude that in indulging his animosity toward Ms. Cuskaden petitioner was guilty of wilful misconduct in office. (*Furey, supra*, 43 Cal.3d at 1317.)

► Petitioner particularly complains of the Commission's conclusions . . . that she "acted wilfully, maliciously and in bad faith in the exercise of the contempt power and also failed to comply with the provisions of Code of Civil Procedure section 1211" and to the conclusion that "Such conduct constituted wilful misconduct in office." She contends as to each matter that the Commission seeks to hold her accountable for what is at worst an erroneous judicial ruling and/or decision as distinguished from "judicial misconduct" within the meaning of the pertinent constitutional provisions.

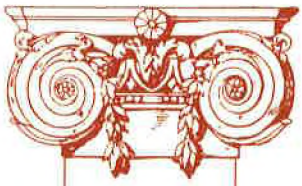
Petitioner completely ignored proper procedures in punishing for a contempt committed in the immediate presence of a court, as provided in Code of Civil Procedure section 1211. This, without more, constituted an act of bad faith in each instance. (*Cannon, supra*, 14 Cal.3d at 693-694.)

► [I]gnorance of proper contempt procedures, without more, constitute[s] bad faith. . . . Judge Ryan should have known, or should have researched,

the proper contempt procedures in this matter. His failure to do so constituted bad faith under the *Wenger* two-prong test. (*Ryan, supra*, 45 Cal.3d at 533.)

► Moreover, even if the conduct of the public defenders was clearly contemptuous, petitioner's vehement expressions of personal hostility were absolutely improper. A judge must not, as previously noted, place the defense of his own character above his obligation to promote respect for the law in adjudicating contempts of court. . . . If petitioner thus could not vent his personal animosity in the face of contemptuous conduct, he certainly could not do so in the face of any disrespect attendant to the public defender's affidavit of prejudice policy. No matter how provocative are the personal attacks or innuendos by lawyers against a judge, the judge simply "should not himself give vent to personal spleen or respond to a personal grievance" because "justice must satisfy the appearance of justice." (Mr. Justice Frankfurter writing for the court in *Offutt* v. *United States* (1954) 348 U.S. 11, 14. . . admonishing judges to "banish the slightest personal impulse to reprisal" in protecting the authority of the court.) (*McCartney, supra*, 12 Cal.3d at 538-539.)

# VII. VOLUNTARY DISABILITY RETIREMENT



In addition to its duties as an investigator of judicial misconduct, the commission reviews applications for disability retirement by judges. See Government Code sections 75060-75064, which are reprinted in the appendix to this report. Before taking effect, a disability retirement must be approved by the commission and the Chief Justice.

In 1989 seven disability retirement applications were approved. Two others were denied. One was still pending at the end of the year.

The commission continues to seek badly needed reform in this area.