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Stephen R. Cornwell, CA Bar #40737

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McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH
Post Office Box 28912
5 River Park Place East
Fresno, California 93729-8912
Telephone: (209) 433-1300

Attorneys for: Honorable Howard R. Broadman

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING)	VERIFIED ANSWER TO THIRD AMENDED
A JUDGE NO. 108)	NOTICE OF FORMAL PROCEEDINGS AND
)	REQUEST FOR PUBLIC HEARING
)	(California Constitution
)	Article VI, Section 18(f)(1),
)	CRC 906, 907.1)

TO THE COMMISSION ON JUDICIAL PERFORMANCE:

NOW COMES THE HONORABLE HOWARD R. BROADMAN and requests that the hearing of this matter be conducted publicly pursuant to the Constitution of the State of California articles VI, Section 18(f)(1) and California Rules of Court Section 907.1 and answers the charge of the Commission on Judicial Performance as follows:

Respondent denies that he has been guilty of willful misconduct in office or that he has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

COUNT ONE

Respondent denies that he has abdicated his duty to

1 respect and comply with the law by taking judicial actions in
 2 knowing or reckless disregard of constitutional and other mandates
 3 and more particularly alleges as follows:

4 A. Respondent admits to imposing conditions of probation in
 5 People v. Johnson which conditions are a matter of judicial record.
 6 Respondent denies that he imposed any of such conditions in gross
 7 disregard of the defendant's right to privacy under the Federal and
 8 State Constitutions but rather such conditions were imposed after
 9 careful consideration of the defendant's Constitutional rights, the
 10 potential for rehabilitation of Darlene Johnson and the interests of
 11 the living children of Darlene Johnson, the interest in preventing
 12 a reoccurrence of these events, the consent of the defendant Darlene
 13 Johnson and her willingness and desire to have such conditions
 14 imposed, and other matters of compelling interest that justified the
 15 imposition of these conditions including the implantation of
 16 Norplant. Respondent admits that he considered the defendant's
 17 motion for reconsideration and denied the same but further denies
 18 that such denial was a gross disregard of the defendant's
 19 constitutional right of privacy, denies that such action was
 20 punitive and denies that it was a gross disregard of the
 21 rehabilitative goals of Penal Code section 1203.1. Respondent
 22 further denies that there was competent evidence that the defendant
 23 in fact had medical problems which contraindicated the use of
 24 Norplant. Respondent further alleges that Norplant was and is a
 25 prescription drug and would have to have been implanted by a
 26 competent and licensed medical doctor as contemplated by Respondent
 27 and such doctor would have been qualified to judge whether such use
 28 of Norplant by the defendant was safe and healthful and to determine

1 competently what the true medical condition of Darlene Johnson was
2 and to determine if Norplant was contraindicated by such conditions.
3 Respondent denies that such action was punitive or that it was in
4 gross disregard of the rehabilitative goals of Penal Code section
5 1203.1.

6 B. Respondent admits that he imposed as a condition of
7 probation in People v. Zaring such conditions which are a matter of
8 judicial record but denies that this action was taken in gross
9 disregard of the defendant's constitutional right of privacy.

10 C. Respondent admits that in People v. Zaring that he
11 remanded Linda Zaring to custody for failing to appear in court on
12 time and set bail and then two days later arraigned her on her
13 alleged violation of probation and set a hearing for November 27.
14 Respondent further admits that on November 27 that he conducted a
15 hearing on her alleged violation of her probation and found her
16 guilty of a violation of her probation and thereafter set the matter
17 for sentencing on November 29. Further, respondent admits that on
18 November 29 he conducted a sentencing hearing and sentenced her to
19 a term in prison as had been originally recommended by the probation
20 department report but for a lesser term less than had been
21 recommended by the probation department report. Respondent denies
22 that this was in gross disregard of Penal Code section 1203.2(b) and
23 denies that this was a gross abuse of his judicial power.

24 D. Respondent admits that in People v. Hooks that he obtained
25 a waiver of time for sentencing. Thereafter the court initially did
26 not specify its purpose although defense counsel inquired.
27 Respondent admits that he requested research on treatment for
28 prisoners with HIV and that he thereafter denied the request to

1 withdraw the waiver. Respondent denies that his actions were
2 intended to be deceptive and a gross abuse of his judicial power and
3 further alleges that he did, on reflection of the merits of the
4 waiver and a review of the transcript, set aside the waiver of time
5 on the court's own motion and did thereafter sentence the defendant
6 for the term of fifty years.

7 E. Respondent denies that he took any action in Carter v.
8 City of Porterville which was a gross disregard of Code of Civil
9 Procedure section 36, or that was a gross abuse of his judicial
10 power or that any such action as taken caused the plaintiffs any
11 unnecessary hardship.

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COUNT TWO

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Respondent denies that he has made public comments which
violated the California Code of Judicial Conduct or that he made
statements as a forum to defend certain judicial actions.
Respondent further alleges as follows:

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A. Respondent denies that he has used the media as a forum to
defend his actions bringing the judicial office into disrepute or
that his conduct constituted wilful misconduct in office.
Respondent admits that comments about matters occurring in People v.
Johnson were made to the media but alleges that such matters were
made when Respondent believed that comment by him under these
circumstances was proper, not a violation of the Canons of Judicial
Ethics, and were matters of compelling public interest and conduct
guaranteed by the First Amendment of the United States Constitution.
Respondent denies that he ever personally sought media attention by
the imposition of any conditions in this or any other cases and

1 alleges further that public attention was directed to these issues
2 by persons other than himself and any attention that was focused
3 thereon was in the discretion of media persons themselves.
4 Respondent denies that any statements made to media were made for
5 the purpose of defending his judicial actions and denies that such
6 actions were prejudicial to the administration of justice bringing
7 the judicial office into disrepute.

8 B. Respondent admits of the receipt of the Commission's May
9 16, 1991, letter and further admits to certain statements made to
10 journalist Janice Castro but denies that Respondent acted in wilful
11 disregard of the Canons of Judicial Ethics or that any such comments
12 made were made with the knowledge that this would undermine public
13 confidence in the objectivity and impartiality of the judiciary.
14 Respondent further denies that he actively sought publicity
15 regarding his decision. Respondent further alleges that such
16 statements as were made to Janice Castro were made in the belief
17 that such comments were permissible inasmuch as Respondent had
18 recused himself from hearing further matters in People v. Johnson
19 believing, as a result, that such matters were, therefore, not
20 pending or impending before him. Respondent further alleges that
21 since the Commission's inquiry in 1992 regarding the interview with
22 Janice Castro he has refused all media requests for interviews and
23 statements regarding any specific case.

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25 C. Respondent denies that any statements made by him
26 regarding People v. Zaring were violations of Canon 3 of the Canons
27 of Judicial Conduct, were wilful misconduct in office or was conduct
28 prejudicial to the administration of justice which brought the

1 judicial office into disrepute. Respondent further denies that
 2 during the interview regarding said article that he quoted Linda
 3 Zaring while mimicking a black accent.

4 Respondent denies that any of the aforementioned conduct
 5 alleged by the Commission constituted bad faith or wilful misconduct
 6 in office or that it constituted conduct prejudicial to the
 7 administration of justice which brings the judicial office into
 8 disrepute as charged.

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COUNT THREE

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Respondent denies that he has failed to conduct himself in
 a manner that promotes public confidence in the integrity and
 impartiality of the judiciary. Respondent further alleges as
 follows:

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A. Respondent admits the factual allegations of paragraph A
 but denies that this action showed disregard for the integrity of
 the bench and for respondent's judicial obligation to display
 fairness and impartiality regarding cases in which he was not a
 litigant and further alleges that Arthur Kralowec did disqualify
 respondent from proceedings in Metzger v. Kralowec purportedly
 because Respondent could not be fair and impartial and further
 Respondent agrees that he could not be fair and impartial in Metzger
v. Kralowec despite the fact that he was not a litigant therein.

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B. Respondent admits that on August 22, 1994, upon
 Mr. Kralowec entering Courtroom No. 4, that he stated:
 "Mr. Kralowec, you can leave the courtroom. You can leave the
 courtroom, Mr. Kralowec." Respondent denies this his actions showed
 a lack of judicial temperament and impartiality but rather his

1 actions were taken to avoid conflict and difficulties that were to
2 be anticipated in this circumstance. Respondent further alleges
3 that other than Respondent's direction to remove himself from the
4 courtroom, that Arthur Kralowec was not treated any differently than
5 other counsel who would have to wait for completion of the court's
6 business before Cynthia Logan was available to obtain a trial date
7 and that thereafter, at the completion of the court's calendar,
8 Cynthia Logan did provide Arthur Kralowec with a trial date in the
9 calendar clerk's office causing him no undue delay.

10 Respondent denies that his conduct as charged constitutes
11 wilful misconduct in office and conduct prejudicial to the
12 administration of justice that brings the judicial office into
13 disrepute within the meaning of the California Constitution and
14 further denies that his conduct was in disregard of Canons of the
15 California Code of Judicial Conduct.

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17 FIRST AFFIRMATIVE DEFENSE

18 The acts complained of were the exercise of the reasonable
19 expression of Respondent's First Amendment rights.

20 SECOND AFFIRMATIVE DEFENSE

21 The acts complained of by the Commission may have been
22 legal errors but were made in good faith in the furtherance of the
23 performance of the exercise of reasonable judgment in imposing
24 sentences in compelling circumstances.

25 THIRD AFFIRMATIVE DEFENSE

26 The charges of the Commission on Judicial Performance are
27 unconstitutionally vague and violate the due process, equal
28 protection, and right to confrontation guarantees of the

1 constitutions of the State of California and of the United States.

2 FOURTH AFFIRMATIVE DEFENSE

3 That the Commission on Judicial Performance lacks subject
4 matter jurisdiction to review the propriety of probation conditions
5 not declared illegal or improper.

6 FIFTH AFFIRMATIVE DEFENSE

7 That the Commission's accusation exceeds the subject
8 matter jurisdiction of the Commission on Judicial Performance by
9 reviewing legal judgements made in good faith which constitutes an
10 impermissible infringement on the independence of the judiciary.
11 Each of the alleged violations charging a violation of the Canons of
12 Ethics involving good faith judgement have an improper chilling
13 effect upon the judiciary's constitutional need for independence and
14 as such exceeds the Commission's subject matter jurisdiction.

15 SIXTH AFFIRMATIVE DEFENSE

16 These proceedings are in violation of Respondent's
17 guarantees of Due Process specified in California Rules of Court
18 Rule 904.2 in that the Commission failed to provide the name of any
19 person making a verified statement regarding any allegation of
20 wrongdoing by Respondent or alternatively that the investigation was
21 on the Commission's own motion to allow Respondent to be afforded a
22 reasonable opportunity to present matters in opposition.

23 SEVENTH AFFIRMATIVE DEFENSE

24 That the prosecution herein is in violation of the
25 Respondent's guarantee of Due Process provided for in the United
26 States and California Constitutions which mandates that such
27 prosecution be timely and prompt and without delay.

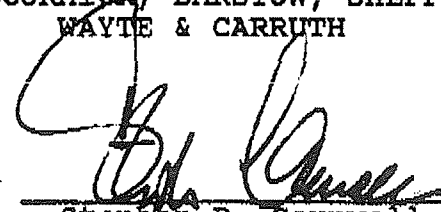
28 EIGHTH AFFIRMATIVE DEFENSE

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That the Commission on Judicial Performance has failed to properly disclose its investigation and to comply with discovery rules in accordance with the California Rules of Court thereby barring these proceedings.

DATED: July 5, 1995.

MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH

By 
Stephen R. Cornwell
Attorney for the
Honorable Howard R. Broadman

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VERIFICATION

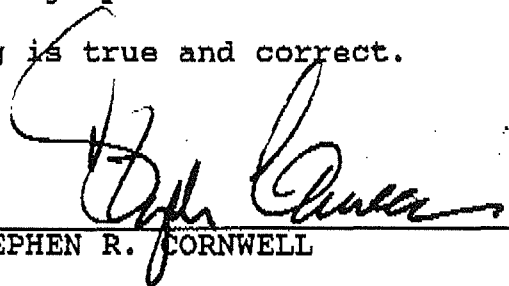
STATE OF CALIFORNIA, COUNTY OF FRESNO

I have read the foregoing VERIFIED ANSWER TO SECOND AMENDED NOTICE OF FORMAL PROCEEDINGS AND REQUEST FOR PUBLIC HEARING (California Constitution Article VI, Section 18(f)(1), CRC 906, 907.1) and know its contents.

I am one of the attorneys for Howard Broadman, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on ^{July} ~~June~~ 5, 1995, at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


STEPHEN R. CORNWELL