STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning a Judge,

No. 9

To: The Honorable Murray Draper, Chairman,
California Commission on Judicial Qualifications

Judge Gerald S. Chargin hereby answers the charges contained in the Notification of Charges filed by the Commission herein:

I

ANSWER TO CHARGE (a), WILLFUL MISCONDUCT IN OFFICE

A. Re The Hearing in the Matter of Paul Pete Casillas, Jr.

Judge Chargin denies that he committed willful misconduct in office by the manner in which he conducted the hearing In the Matter of Paul Pete Casillas, Jr., No. 40331, in the Juvenile Division of the Superior Court for Santa Clara County on September 2, 1969, or by the statements he made at that hearing.

The remarks that Judge Chargin made at the hearing were

prompted by the nature and the aggravated circumstances of the crime charged and admitted by the juvenile before the court. His disposition of the case was to order the lenient sentence recommended by the Juvenile Probation Department, i.e., placement of the juvenile with his grandmother.

The case before him was one of incest committed by a youth, who was 18 years of age at the time of the hearing, against his 15 year old sister. This was not a single, isolated instance of incest, but rather was one of a series of acts of incest over a period of years with his sister, who was no more than 12 years of age when the first admitted act occurred. The girl was pregnant at the time of the hearing. The parents of the offender and the girl, in whose home they resided, were also present in court at the time of the hearing. The judge made his extemporaneous remarks knowing he was going to render the extremely lenient sentence recommended by the probation officer. This is submitted not in justification of the nature of the remarks but rather to set forth the background and context in which the remarks were made.

It has been Judge Chargin's practice to accompany juvenile sentencing with strong warnings designed to forestall repetition. Admittedly, on this occasion, Judge Chargin's remarks were strong; however, he acted in good faith in lecturing the offender. Moreover, his language alone cannot be deemed misconduct in office. The speech in no way prejudiced the rights of the offender before the court or

affected the sentence ordered.

Even if Judge Chargin's words alone could be considered to be misconduct, the circumstances under which they were spoken demonstrate that he was not engaged in willful misconduct.

The remarks were an isolated instance of speech used in a private sentencing hearing in a good faith attempt to deter further crime. Judge Chargin's life and his record of judicial service show that he is not bigoted and that the implication of bigotry raised by his unfortunate choice of words at the hearing is completely foreign to his character. Though he spoke the words, Judge Chargin's good faith attempt was to shock the offender into a full realization of the repulsive nature of the crime he had seemingly callously committed. The Judge's hope was that the offender could be rehabilitated and that he would not be encouraged to commit further crimes by the lenient punishment ordered.

By way of affirmative defense, Judge Chargin asserts that the words used by judges in carrying out procedures within their jurisdiction, in good faith, are privileged. The privilege must apply at least where, as here, there is no doubt that no one before the court was in any way prejudiced by the mere use of the words.

While the words used by Judge Chargin may appear to be clearly wrong, punishment of judges for negligently using strong language would be a dangerous precedent. It would be virtually impossible to establish a general rule to distinguish

language that constitutes misconduct from language that does not. Almost any controversial language could provide some group with ammunition for a charge of misconduct. The result would be a decrease in the independence of judges marked by an extreme reluctance to speak on occasions when speech is demanded.

B. Re Public Statement.

Judge Chargin denies that he committed willful misconduct in office by publicly explaining and apologizing for his remarks at the above-numbered hearing.

Making the public statement attached to the Commission's Notification of Charges cannot constitute willful misconduct in office. The statement was made only after parties who had not been before the court had publicized portions of the transcript of the hearing. In the circumstances, Judge Chargin felt it was his duty to explain that the youth before the court had, in fact, received lenient treatment and that the actual purpose of the harsh words was not to display bigotry but to forestall future criminal behavior by the youth.

In addition, Judge Chargin felt that in the circumstances it was his duty to point out that his language at the hearing in question was an isolated instance and wholly uncharacteristic in its implications about his thinking or his past or possible future behavior.

Moreover, assuming that such a statement could be construed as misconduct in office, still Judge Chargin's

statement was not in any sense a willful commission of any such misconduct. His intent was to protect the integrity of the courts by explaining the circumstances that gave rise to language he used.

By way of affirmative defense to the charge of willful misconduct, it must be pointed out that the public statement explaining Judge Chargin's language was not made in office. As noted above, the statement was issued only after partial public disclosures by parties who had no direct interest in the matter before the court. The statement was not issued as a part of the disposition of the case, nor did the thoughts expressed in the statement in any way prejudice the disposition of the case, which disposition was final before the statement was issued.

By way of affirmative defense to both charges of willful misconduct, Judge Chargin submits that in so far as subsection (d) of section 18 of Article VI of the California Constitution requires suspension from the practice of law, of a judge removed under subsection (c) of said section and Article, said provisions would deny Judge Chargin equal protection of the law.

Neither the language used in the hearing nor the public statement made by Judge Chargin would provide an adequate basis for disbarring an attorney who was not also a judge from the future practice of his profession. Therefore, the fact that the language and statement were made by a judge

cannot provide a basis for disbarment from the practice of law without violating the principle of equal protection of law.

II

ANSWER TO CHARGE (b), CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE THAT BRINGS THE JUDICIAL OFFICE INTO DISREPUTE.

A. Re The Hearing in the Matter of Paul Pete Casillas, Jr.; Conduct and Statements at the Casillas' Hearing.

Judge Chargin denies that he engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute by the manner in which he conducted the hearing In the Matter of Paul Pete Casillas, Jr., No. 40331, in the Juvenile Division of the Santa Clara County Superior Court on September 2, 1969, or by the statements he made at that hearing.

Judge Chargin asserts that his speech, by itself, absent any prejudice to any party before the court, cannot constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Judge Chargin's remarks were made at a hearing that is private by law. They were intended to further the administration of justice by forestalling any further criminal behavior on the part of the juvenile being sentenced while following the recommendation of the Juvenile Probation Department in placing him with his grandmother.

No possible prejudice to the administration of justice nor disrepute could have arisen if Judge Chargin's speech at the hearing had not been released by parties not before the court. It was not Judge Chargin's intent or expectation that anyone beyond those before the court on the date of the hearing should hear any speech that he might make that day.

By way of affirmative defense, Judge Chargin asserts that history, logic, and policy all dictate that the phrase "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" was meant to apply only to conduct of a judge while not on the bench. The legislative history of the charging language shows that it was added to Article VI, section 18 of the California Constitution in 1966 and that the purpose of the amendment was to add to the original section some language that would give the Commission on Judicial Qualifications jurisdiction of a judge's behavior while not on the bench. The words "willful misconduct in office" were retained to cover behavior while on the bench.

Logic would be abandoned if the words "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" were read to include conduct both on the bench and off. The words "willful misconduct in office" were retained in the constitutional section when the new language regarding conduct prejudicial to the administration of justice was added, and the same punishment is provided for violations under the words "willful misconduct" and "conduct prejudicial, etc.,". Since the phrase "conduct prejudicial, etc.," is obviously a wider, more general, category of offenses, the retention of the words "willful misconduct" would have been without purpose. Obviously, then, if both phrases are to be given some logical meaning, "willful

misconduct in office" must be read to cover offenses while on the bench and "conduct prejudicial, etc.," to cover offenses while not on the bench.

The public policy supporting the independence of the judiciary also supports the conclusion that the phrase "conduct prejudicial, etc.," was a charging phrase meant to apply to offenses only while judges were off the bench. While acting in office a judge is protected by the more difficult to establish standard of "willful misconduct in office" and the danger of interference with his traditional independence is lessened. The same considerations do not apply to a judge's acts off the bench and thus the policy of judicial independence is not so directly affected by charges made under the phrase "conduct prejudicial, etc.,". Therefore, since Judge Chargin's remarks at the hearing in question were made while on the bench they will support a charge, if at all, only under the phrase "willful misconduct in office".

B. Re Public Statement.

Judge Chargin denies that he committed conduct prejudicial to the administration of justice that brings the judicial office into disrepute by publicly explaining and apologizing for his remarks at the hearing in question.

Just as making the public statement attached to the Commission's Notification of Charges cannot constitute willful misconduct in office, making the statement cannot constitute conduct prejudicial to the administration of justice that

brings the judicial office into disrepute. As noted above, the statement was made only after parties who had not been before the court had publicized portions of the transcript of the hearing. Judge Chargin felt that to further the administration of justice and to lessen any possible effect these partial disclosures would have on the reputation of the judicial office it was his duty to explain some of the circumstances of the hearing, the disposition of the case, and the actual purpose of the words used at the hearing. Moreover, Judge Chargin felt that in the circumstances it was his duty to point out that his language at the hearing in question was an isolated instance and wholly uncharacteristic in its implications about his thinking or his past or possible future behavior.

Judge Chargin's intention in making the public statement was to protect the administration of justice and reputation of the judicial office. Thus, the public statement cannot be construed as conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

By way of affirmative defense to the charge that Judge Chargin committed conduct prejudicial to the administration of justice that brings the judicial office into disrepute both in regard to the conduct and comments at the hearing and in regard to the public statement, Judge Chargin asserts that the charging language of the California Constitution is so vague and ambiguous as to deprive Judge Chargin and others similarly

situated of due process of law.

The constitutional language "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" is so vague that the judges subject to its sanctions must necessarily guess at its meaning. Therefore, the language fails to inform judges as to what the state commands or forbids. As such, the constitutional language violates the first essential of due process of law and cannot be used as a basis for censure or removal of a judge.

By way of affirmative defense to both charges of conduct prejudicial to the administration of justice that brings the judicial office into disrepute, Judge Chargin submits that in so far as subsection (d) of section 18 of Article VI of the California Constitution requires suspension from the practice of law, until further order of court, of a judge removed under subsection (c) of said section and Article, said provisions would deny Judge Chargin equal protection of the law.

Neither the language used in the hearing nor the public statement made by Judge Chargin would provide an adequate basis for disbarring an attorney who was not also a judge from the future practice of his profession. Therefore, the fact that the language and statement were made by a judge cannot provide a basis for disbarment from the practice of law with-

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out violating the principle of equal protection of law.

WHEREFORE, respondent respectfully prays that the charges against him, and each of them, be dismissed.

DATED: January 16, 1970.

HANSON, BRIDGETT, MARCUS & JENKINS

By: /s/ Gerald D. Marcus
GERALD D. MARCUS
Attorneys for Respondent.

Verification

I, GERALD S. CHARGIN, say:

I am the respondent in the above entitled action; that I have read the foregoing "Answer", and know the contents thereof; and I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on January 17, 1970, at Menlo Park, California.

/s/ Gerald S. Chargin
HONORABLE GERALD S. CHARGIN,
Judge of the Superior Court.