

**COMMISSION MEMBER RAMONA RIPSTON'S
STATEMENT OF DISSENT TO DECISION AND ORDER
REMOVING JUDGE MICHAEL E. PLATT FROM OFFICE**

I dissent from the Commission's decision to remove Judge Platt from judicial office and to disqualify him from acting as a judge. The Commission's action will also in all likelihood result in Judge Platt's being barred from engaging in his profession as a lawyer. In fact, the consequences of the Commission's decision could not be more serious for the individual involved.

Judge Platt is a decent man who engaged in some ill-considered and improper acts for which he deserves serious and appropriate discipline. The question is whether he deserves the most extreme sanction that this Commission has the power to impose. In fact, the only significant decision the Commission was required to make in this case was whether to order public censure, a severe sanction that Judge Platt forthrightly acknowledged to be appropriate, or whether to bar him forever from judicial service and in all likelihood from practicing his profession. Under the California Constitution, there are two forms of discipline which are of the highest magnitude. Article VI, section 18, subdivision (d) provides that for the most serious offenses the Commission may either "censure a judge . . . or remove a judge . . ." The question in Judge Platt's case was which of the two forms of discipline was appropriate given all of the circumstances.

Out of a desire to help others or, as the Masters who heard the case put it, to be "a rescuer," on four separate occasions Judge Platt arranged for the unlawful cancellation of a traffic ticket.¹ He was not motivated by personal gain, as the Commission grudgingly acknowledges. In one of the cases, for instance, Judge Platt arranged, at the request of his bailiff, for the dismissal of a ticket received by a young man who would shortly be on his way to college at U.S.C. – a young man with an excellent academic record, whose ticket would ordinarily have been dismissed in any event when it came up for a hearing. The other three incidents involved a friend, the friend's wife, and the friend's niece: all three occurred as the result of calls from the friend's wife asking if Judge Platt could help the family.

Judge Platt's case cannot properly be evaluated without considering his motivations, his personal history, his record as a judge, the likelihood that he will conform his conduct to judicial norms in the future, and the relationship of these factors to the acts he committed. So much is clear from the report of the Masters, which describes Judge Platt's "rescuer" mentality, relates

¹After the Commission decides to file charges, a case is presented by a Commission prosecutor to three special Masters appointed by the California Supreme Court – one justice of the Court of Appeal and two Superior Court judges. The Masters preside over the proceedings, take and hear the relevant evidence, and submit a Report containing their Findings of Fact and Conclusions of Law to the Commission. The Masters do not, however, make any recommendation as to what, if any, discipline should be imposed.

evidence regarding his combat experience in Vietnam, notes the role played by the serious heart attack he suffered shortly before the improper conduct began, and paints a picture of a compassionate judge who was and still is highly respected in the legal community, despite its knowledge of his misdeeds. To reiterate, the Masters' findings make it clear that Judge Platt's offenses involved no financial or personal benefit or gain.

Unlike my colleagues, I would consider the motivations that led a judge with an outstanding record of service to his country, to his community and to the legal system to do something as foolish as to "fix" four traffic tickets for people he wanted to help. I do not assume as the Commission does, that "his proclivities to help others" will continue to cause him to engage in ethical violations in the future (and, presumably, that the imposition of public censure would be to no avail). Indeed, I consider this critical conclusion of the Commission, in which it rejects the factors in mitigation listed by the Masters, to be entirely arbitrary and plainly erroneous.

In deciding to reject the mitigating factors, the Commission relied heavily on the prior private admonishment it imposed on Judge Platt. What was the prior grievous offense that demonstrated Judge Platt's "Pattern of Misconduct"? As a newly appointed judge, he had "solicited attorneys who appeared before him to purchase raffle tickets for a local church and to purchase tickets for a fund-raiser for a local child care center; he had also "placed open boxes of *candy bars* in his chambers and on his bailiff's desk for purchase by attorneys and court staff, with the proceeds benefiting his children's parochial school." It was this type of do-gooder conduct that persuaded my colleagues that Judge Platt, a decorated Vietnam Marine Corps veteran wounded in action overseas, and a successful prosecutor in the California courts for 15 years, was so driven by his humanitarian "proclivities" that he could not be trusted to comply with the rules of Judicial Ethics in the future, even if public censure, the second most severe form of discipline possible under the California Constitution, were imposed on him. In reaching this conclusion, the Commission disagreed not only with those who know Judge Platt, such as the District Attorney of San Joaquin County and the Chief Probation Officer of that county, both of whom testified on his behalf, but the legal community that Judge Platt served, which provided strong support for his retention. Among the statements from lawyers and judges were the following:

David B. Cole, a San Joaquin County law enforcement officer who had worked with Judge Platt stated:

"If I were forced to find fault with Judge Michael Platt, the only characteristic I would identify is perhaps his extreme willingness to act as a human being, through his attempts to exhibit concern and caring for the people that he tries to help."

A retired judge testified that Platt's misdeeds were the result of a:

"misguided desire to help and moments of stupidity as to the significance of his actions Judge Platt's military background probably was a contributing factor in his ethical lapse. His combat experience in Vietnam

was based on mutual help, comradery [sic], and necessity, and desire to protect at the risk of one's own life [your] fellow Marines.”

An active judge testified that:

“If I was to criticize Mike for anything, Mike is a rescuer. Mike thinks he can save probably more people than he can.”

Given that Judge Platt is guilty of the disqualifying “proclivity” of wanting to help people – a trait apparently uncommon among judges – there was substantial evidence in the record that he could be rehabilitated. In short, it is not necessary to ruin the life of a dedicated jurist and public servant, as well as that of his wife and young children, in order for this Commission to perform its function properly. As the Masters pointed out,

“Judge Platt has expressed remorse for the harm that he has caused by ‘fixing’ [the four] traffic tickets. Without being asked to do so, he apologized to clerks Mary Ann Nayer and Cathy Graham for placing them in an inappropriate position. He also has repeatedly and openly apologized to members of his community for the ‘damage that [he has] caused . . . to the integrity of the [judicial] system[.]’” Those who know and work with him perceive Platt’s remorse to be genuine and sincere.”

The Masters also reported that:

“Immediately after being informed that the Commission had ordered an investigation into the allegations . . . , Judge Platt ‘acknowledge[d] and [took] full responsibility for his actions,’ admitted that he had ‘not faithfully discharged his judicial function in a manner in keeping with [his] oath of office,’ and expressed regret that his actions ‘have caused the general public to erode their faith in the judicial process[.]’”

That Judge Platt was sincere in his expressions of remorse and his acceptance of responsibility is further demonstrated by the statement of a lawyer-member of the Commission. At the close of the hearing before the Commission, the Commissioner assured Judge Platt:

“I believe that your expression of the regret and contrition is genuine.”²

²The full colloquy was as follows:

COMMISSIONER: Judge, I thank you for your statement. Many times judicial officers do not stand up and speak and will leave it to counsel, as able as counsel is.

I feel your pain, and I believe that your expression of the regret and contrition is genuine.

I have a wish that your remarks be made available to every judicial officer in this state in hopes that they might help them avoid having to stand where you’re standing today.

I have two specific questions I would like to ask.

JUDGE PLATT: Yes.

Moreover, the record shows that Judge Platt has taken steps to educate himself with outside help regarding the rules of ethics and his obligations to abide by them regardless of any personal desire to help people.

In choosing between two permissible forms of discipline provided by the California Constitution, I would give weight to a number of other factors that my colleagues totally ignore.³ I would consider the fact that Judge Platt has demonstrated the qualities that warrant our having confidence in his ability to learn from his mistakes. I would take into account, for example, the fact that he demonstrated his courage when he volunteered to serve his country in Vietnam at a time when many others sought ways to avoid the dangers involved, and that he was wounded in battle as a result. I would credit the fact that he is capable of toughness as demonstrated by the fact that he spent 15 years prosecuting criminal offenders and was able during that period to overcome whatever “rescuer” mentality might have caused him to want to come to the aid of those experiencing serious problems with the law. I would weigh in the balance his judicial abilities, including the service Judge Platt performed to the legal community when he served as “a dedicated and innovative” juvenile court judge and “created new programs for at-risk minors.” I would credit the respect shown him by the members of the legal community of San Joaquin

COMMISSIONER: Can you represent to us truthfully that the four incidents of traffic-fixing – ticket-fixing with which you have been charged by the Commission and acknowledged by you to have occurred as the only such incidents in which you participated during the time period covered by those four incidents?

JUDGE PLATT: Absolutely and positively.

COMMISSIONER: If it should occur that you are censured instead of removed and you engage in that conduct again in the future even once, or interject yourself into the judicial process of another bench officer as you have done in the past even once, do you believe that removal would then be an appropriate discipline?

JUDGE PLATT: I believe that resignation would be the appropriate response to that.

COMMISSIONER: Would you do so?

JUDGE PLATT: Yes.

COMMISSIONER: Thank you.

Following the colloquy, the Commission adjourned, deliberated, and by a 9-1 vote decided to remove Judge Platt from office.

The hearing at which the colloquy occurred is the final step in the disciplinary process. Following the Masters report, the prosecutor and the accused judge are afforded the opportunity to appear before the Commission and argue their respective positions. Rule 132, Rules of the Commission on Judicial Performance.

³ In imposing discipline, the Commission is required to consider “the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system.” *Broadman v. Commission on Judicial Performance*, 18 Cal.4th 1079, 1111 (1998). In this case, either public censure or removal would serve these purposes equally well if the Commission properly explained the reason for its choice, and the majority opinion does not suggest otherwise. Rather it bases its decision, as I have previously noted, on the erroneous determination that Judge Platt has an incurable “proclivity” to help people with difficulties.

County, not a single one of whom filed against him for judicial office despite the “extensive publicity about the [present] charges of misconduct.” Finally, I would at least acknowledge the Masters’ statement that Judge Platt’s misconduct began shortly after a near fatal heart attack he suffered while presiding over a death penalty case. The Masters “infer[red] this near-death experience may have heightened Platt’s sensitivity to the plight of friends and acquaintances and his sense of need to help rescue them.”

Under all of the circumstances and considering Judge Platt’s motivations, his records as a jurist, his past service to his community and his country, his public and private apologies, his unequivocal acceptance of responsibility, and his effort to improve his future performance, I would err on the side of lenity and compassion. Imposing public censure is by no means a slap on the wrist. The public humiliation is in itself an extremely severe punishment. Judges who are publicly censured – and there are very few who are either censured or removed – are rarely, if ever, re-elected. Somehow, however, I suspect that if Judge Platt were censured he would be the exception, because I am convinced that his concern for people and his desire to help them would, when properly channeled, make him an outstanding judge who would continue to maintain the respect in which he is presently held by the legal community and the public at large.

I understand that the filing of the decision without awaiting my dissent was an inadvertent error and not a deliberate act. Nevertheless, dissents serve a purpose in orderly deliberations. Sometimes when fair and open-minded individuals have a chance to read what dissenters have written, dissents turn into majority opinions. It even happens on the United States Supreme Court on occasion. Surely, we should allow for the operation of such a process on this Commission. It is important that we conduct our deliberations in a fair and orderly manner and give full consideration to the views of both sides and of all Commissioners. That requires not only the fair opportunity for full discussion that we had following the Commission hearing, but the opportunity for those who join a majority decision to read and consider the formal dissenting opinion before making a final decision. Because of a misunderstanding, that did not occur. For the above reasons, I respectfully dissent from the Commission’s decision to remove Judge Platt from his judicial office.