STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE NO. 54	ANSWER TO NOTICE OF FORMAL PROCEEDINGS

TO: THE COMMISSION ON JUDICIAL PERFORMANCE

JUDGE MARION E. GUBLER ANSWERS THE COMMISSIONS CHARGES IN ITS FORMAL PROCEEDINGS AS FOLLOWS:

COUNT ONE

1. Answering Count One, A, 1 and 2, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

2. Answering Count One, B, 1 and 2, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

3. Answering Count One, C, 1, 2, 3, 4 and 5, this answering party admits he made orders releasing guns to police or law enforcement officers at the request of defendants, defendants attorneys, or parties entitled thereto, but denies that these orders were wrongful or improper. Said orders were made pursuant to the permissive and discretionary powers granted to a judge set forth in California Penal Code Section 245, 1418,

1419, 12028, California Rules of Court Section 922(g), other Statutory Law, Case Law and other rules, regulations and law pertaining thereto.

4. Answering Count One, D, 1, 2, 2a and 2b, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

5. Answering Count One, E, 1 and 1a, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

6. Answering Count One, F and F 1, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

7. Answering Count One, G, 1, 1a, 1b, 1c, and 1d, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

8. Answering Count One, H, 1, 1a, 1b and 1c, this answering party has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation therein contained.

COUNT TWO

1. Answering Count Two, paragraphs A through H this answering party realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 8 of the answer to Count One.

FIRST AFFIRMATIVE DEFENSE

The Commission's Notice of Formal Proceedings is de*ficient in that it is ambiguous, confusing and unclear, and* fails to notify the accused of what Canons, Statutes or other provisions of the law he has allegedly violated.

The numerous statements of alleged wrongdoing by the accused are not related clearly to the commission of a particular public offense, or to a clearly defined specific duty owed under a particular Canon, Statute, or other provision of the law. In view of these ambiguities and the lack of clarity, the accused is unable to properly prepare to represent himself herein.

The Notice of Formal Proceedings fails to meet the due process requirements and the fundamental fairness required in the spirit of California Penal Code Sections 950, 952, 1004 and other such sections or other law related thereto, in setting forth the provision of the law allegedly violated.

The one thing which does appear to be clear about these proceedings is that they are consistant with common barratry as defined in California Penal Code Section 158 and are as a result of a vindictive prosecution by representatives of the Public Defender's Office. Said Public Defenders have had consid-

erable confusion in their minds about whose duty it is, and what the proper steps are, to operate and manage the business of the courts, as well as to take any appeals therefrom. Further discovery herein may well disclose a situation involving champerty and maintenance as defined in California Business and Professions Code Section 6129.

This proceeding should be dismissed without further continuance or delay.

SECOND AFFIRMATIVE DEFENSE

This defense is set up on the ground that there has been unreasonable delay in the bringing of the charges set forth herein. The events upon which the charges are based and the dates thereof go back to early 1979 and 1980, and total in some instances in excess of 1095 days of delay. The bringing of these charges two or three years or in excess of 1095 days after the alleged date of occurance violates the spirit and the doctrine of the law which provides for the right to a speedy trial.

This matter is quasi-criminal in nature and the Commission should not deny to the accused the standard constitutional and statutory protection afforded by a speedy trial.

California Rules of Court 909(a) states that these proceedings should be conducted according to the legal rules of evidence as follows:

> "At a hearing before the Commission or masters, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation."
> (Emphasis Added)

Memories fade, witnesses move away or die, documentary evidence is lost or misplaced, and numerous things occur simply by the passing of such extended periods of time that an extremely prejudicial situation is created for the accused. There is just as much and perhaps more prejudice in this kind of case as in a regular criminal trial which mandates a strict compliance with constitutional and statutory guarantees in this area.

That curbstone appellation derives from the case of Rost v. Municipal Court, 184 Ca.App.2d 507, and has come to apply to speedy trial issues generally even though the Rost case itself encompassed a consideration of the effect of pre-arrest delay upon the constitutional right to a speedy trial or hearing.

The right to a speedy trial or hearing is embedded in both the Federal and State Constitutions.

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy...trial..."
>
> Sixth Amendment, United States Constitution.
>
> "In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy...trial..."
>
> Article I, Section 13, California Constitution.

Beyond the constitutional pronouncement, the State legislature has enacted specific statutes reflective of and declaratory of the constitutional right to a speed trial.

See: Section 1381-1389.7 Penal Code.

Lest there be any doubt what the legislative policy is, consider the following:

> "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and

> heard and determined at the earliest possible time, and it shall be the duty of all courts and judicial officers and of all prosecuting attorneys to expedite such proceedings to the greatest degree that is consistent with the ends of justice..."
>
> Section 1050, Penal Code.

What with all the legislative reinforcement of the constitutional requirements, the California courts of review have stated time after time that the constitutional provisions are "self-executing" and that it is not necessary to rely upon specific statutory enactments to assert the right to a speedy trial.

See:

Barker v. Municipal Court, 64 Cal.2d 806.

People v. Wilson, 60 Cal.2d 139.

Zimmerman v. Superior Court, 248 Cal.App.2d 56.

Cody v. Justice Court, 238 Cal.App.2d 275

With its decision in 1967 in Klopfer v. North Carolina, 286 U.S. 213, the United States Supreme Court declared that the speedy trial provision of the Sixth Amendment to the Federal Constitution is applicable to the states through the Fourteenth Amendment. What the Klopfer decision did specifically was to strike down North Carolina's nolle prosequi statute. The decision barely raised a ripple in California, first because this state specifically abandonded nolle prosequi as a prosecution vehicle in adopting Section 1386, Penal Code, in 1872, and, second, because this state has a long and rather sophisticated line of cases interpreting the constitutional right to a speedy trial.

There can no longer be any question that the United States Supreme Court considers the right to a speedy trial to be a fundamental right along with the other rights explicated in the Sixth Amendment, i.e., the right to be informed of the nature of the charge, the right to confront witnesses, the right to compulsory process, and the right to counsel.

Perhaps a perspective can be established by considering independently the effect upon the right to a speedy trial of an extended delay prior to arrest. On this point, Calfiornia has three leading cases.

First came Harris v. Municipal Court, 209 Cal. 55, then came Rost v. Municipal Court, 184 Cal.App.2d 507, and more recently the case of Jones v. Superior Court, 3 Cal.3d 734.

Out of the Harris case can be distilled an abundance of constitutional argument on the speedy trial issue. The attorneys are probably without number who have found themselves snagged on the issue of showing prejudice while urging that their defendant has been denied his right to a speedy trial. Yet the Harris case declares that prejudice is presumed whenever it is shown that there has been an unreasonable delay in bringing a defendant to trial. In other words, a defendant need not affirmatively show actual prejudice.

> "It is enough for the defendant to show that the prosecution has been unreasonably delayed. It will not be presumed that good cause for the delay in fact existed. If there was any good cause it was for the prosecution to show it."

Harris v. Municipal Court, supra, 209 Cal. 55 at 64.

The Harris court stated at page 61 that the legislature in enacting the sixty-day limitations of Section 1382, Penal Code, has declared by necessary inference that a trial delayed more than sixty days without good cause is not a speedy trial. A delay of 1095 days in the instant case would be clearly presumed to be prejudicial.

The Harris case stood for thirty years as the only California case dealing with the effect of pre-arrest delay. It served as the underpinning for the decision in 1960 in Rost v. Municipal Court, supra. Quoting liberally from the Harris, opinion, the Rost court held that an unexplained delay of one hundred and forty days between the filing of a misdemeanor complaint and the arrest of the defendant deprived him of his constitutional right to a speedy trial. The instant case of 1095 days involves a delay almost eight times as long as the Rost case.

From the Rost case evolved the rule that a defendant must be served with a warrant of arrest within a reasonable time after the complaint is filed. What may or may not be reasonable depends upon the circumstances of the case.

> "There are many situations in which the lapse of much more than 140 days between complaint and arrest would not be unreasonable. However, without explanation the lapse of 140 days is on its very face unreasonable where the defendant is at all times available for service. ...the Legislature has declined to require that the arrest must take place within 60 days of the filing of the complaint, 60 days being the time it has provided as a limit for dalay without good cause in other situations. It would, therefore, seem that an

> unexplained delay of 60 days would not be unreasonable. But somewhat beyond that period the unexplained delay becomes unreasonable."

Rose v. Municipal Court, supra, 184 Cal.App.2d at 513-514.

More recently the California Supreme Court in Jones v. Superior Court, supra, 3 Cal.3d 734, ordered the issuance of a writ of mandate compelling dismissal of a prosecution for sale of heroin on the basis that an extended pre-arrest delay vilolated the right to a speedy trial. What happened in the Jones case is that two police officers made a reasonably diligent effort to track down Jones prior to the time that a warrant was obtained for his arrest. Once the warrant was issued, it was turned over to someone else on the police department and that was the end of the matter for approximately 19 months. Ultimately Jones swam into the net. The instant case involves in excess of 36 months.

One of the arguments advanced by the prosecution forces in opposing Jones' petition for a writ of mandate was that only the statute of limitations should tell us what is an appropriate period between the commission of a criminal offense and the commencement of a prosecution. This is common argument which has *echoed through many a courtroom. But Chief Justice Wright noted* that the statute of limitations is just that, a statute, and that it cannot foreclose a judicial inquiry into the constitutionality of delays occurring within the period of the statute. To hold otherwise would mean that the judiciary had abdicated to the

legislature the power to determine the minimum standards which govern the right to a speedy trial.

Jones also held that a defendant is under no obligation to come forward and surrender, even if he is aware the police are looking for him, and his failure to do so cannot be held to justify a delay.

Jones v. Superior Court. (1970) 3 Cal.3d 734, 91 Cal. Rptr. 578.

In conclusion then this answering party should be granted the full protection of a speedy trial guarantee and this matter should be dismissed without further delay.

THIRD AFFIRMATIVE DEFENSE

Judges in the State of California have been granted certain permissive and discretionary authority to release property, including guns, to defendants or to other persons designated in writing by the owner of said property any time after the final determination of the action or proceedings.

California Penal Code Section 245 provides in part as follows:

> "(a)...When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument, and such weapon or instrument is owned by such person, the court may, in its decretion, order that the weapon or instrument be deemed a nuisance and shall be confiscated and destroyed in the manner provided by section 12028." (Emphasis Added)

The above section of the Penal Code used the term may which is permissive and not shall which is mandatory. It also

uses the word discretion which is consistant with the word may and its interpretation as being permissive, as opposed to being mandatory.

The plain and apparent meaning of the above statute is to give a judge the permission or discretion to either (1) declare the weapon or instrument a nuisance and confiscate and destroy it in the manner provided by California Penal Code Section 12028 or (2) to decline to declare said weapon or instrument a nuisance and further decline to order confiscation and destruction. In the latter case it would be permissive or discretionary to order the release of said property to the defendant owner or to other persons designated by the defendant owner to receive the same.

California Penal Code Section 1418 provides for the manner of disposal of exhibits in criminal cases as follows:

> "...The court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the court without prejudice to the state, delivered to such party..." (Emphasis Added)

The language of the above code section used the word may which is again permissive or discretionary and provides for release of property to defendants, agents designated in writing or owners.

California Penal Code Section 1419 deals specifically with weapons, drugs and explosives, etc., and provides in part as follows:

> "...Any such property filed as an exhibt shall be, by order of the trial court, destroyed or sold or otherwise disposed of under the conditions provided in such order." (Emphasis Added)

This section uses the words destroyed or sold or otherwise disposed of without any specific reference to other code sections or specific instructions of how or under what conditions the destruction, sale or other disposition is to take place. This forces the judge to use his permissive or discretionary powers as previously set forth herein above. It would be reasonable to assume that the courts discretion would in some circumstances justify the defendants assignment or disposition of the property to a law enforcement officer and permitting the defendant to recover the reasonable value of the property if not the property itself.

Some cases have held that the court has a mandatory duty to return firearms to defendants under certain circumstances. See Franklin v.Municipal Court, 26 C.A.3d 884; 103 Cal. Rptr. 354 and Espinosa v. The Superior Court, 50 C.A.3d 347; 123 Cal. Rptr 448. The court would have a mandatory duty to return firearms taken from defendants under circumstances described in California Penal Code Sections 12025, Paragraph Two, 12026, 12027 and 12031 (b), (f), (g), (h), (i) and (j).

California Penal Code Section 12028 provides in part as follows:

> "...The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the District Attorney of the County, that the retention thereof is necessary or proper to the ends of justice, may annually...

offer the weapons...for sale..."
(Emphasis Added)

This section points out that discretion to sell or not sell or otherwise dispose of weapons is vested not only in the judge but also the District Attorney in order to accomplish the ends of justice.

The reasonable reliance upon the apparent plain meaning of these various provisions of the law should justifiably protect a judge from criticism leveled at him as a result of other less obvious opinions or interpretations of the same. Any thing less would exceed both the limits of the law and the concept of fundamental fairness.

It is not at all unusual and in fact is quite common, for superior and municipal courts to release evidence including firearms to defendants, defendants attorneys, or their assigns when a case has been concluded and there are no aggravating circumstances. This responding party is aware of several such practices and reasonably believes said practices are provided for in the law. It would appear obvious that other municipal and superior court judges have similar interpretations of the law in this area. If the Commission is of the opinion that this should not be done, then it should give notice to members of the Judiciary and seek legislation which would clarify the law in this area.

Subsequent to the filing of the preliminary investigation in this matter responding party received a written request from a defendants attorney dated March 30, 1981, concerning the release of a firearem. See Exhibit "A" attached hereto. Said

request was sent to the Commission by responding party on April 14, 1981 requesting an opinion as to whether the request should be granted or denied. See Exhibit "B" attached hereto. The Commission acknowledged receipt of exhibits "A" and "B" in its letter to responding party dated April 20, 1981. See Exhibit "C" attached hereto.

The Commission apparently takes the position that it will not give advice on these kinds of matters but will however be critical of judges when they have to make a decision thereon. Common courtesy as well as professional, ethical and legal considerations require a judge to either grant or deny this kind of request. It cannot simply be ignored.

When a judge makes such an order either granting or denying the same it is done in the regular course of his duties as a judge and any disagreement should be by way of appeal or appropriate writ and not by a proceeding before the Commission on Judicial Performance. See the case of Frank W. Harty, Sheriff County of San Joaquin v. Superior Court, County of San Joaquin, _____Cal.App.3d _____.

The due processes of the Law and Doctrines of Fundamental Fairness require an immediate dismissal herein.

FOURTH AFFIRMATIVE DEFENSE

The Law of the State of California provides for the appointment of the Public Defender in criminal matters only. The Public Defender has no standing to represent defendants in civil matters. The matter of fees for Public Defenders services is

civil in nature and not criminal.

California Penal Code Section 987a provides that:

> "In a noncapital case, if the defendant appears for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the assistance of counsel. If he desires and is unable to employ counsel the court shall assign counsel to defend him." (Empasis Added)

Since Los Angeles County has a Public Defender's Office the courts must appoint representatives of said office to represent defendants in criminal matters where they desire counsel and are unable to hire same.

California Penal Code Section 987.8 provides that at the *conclusion of the case the court shall (not may) after a hearing*, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel and make an order requiring the defendant to pay that which he has the ability to pay. Said section further states in part as follows:

> "(a)...Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt...(b)...The order shall have the same force and effect as a judgment in a civil action and shall be subject to execution..." (Emphasis Added)

California Penal Code Section 987.8 Orders are civil in nature. The Public Defender has been appointed only to represent the defendant in the criminal part of the case and has no standing to represent defendants on the civil matter involving California Penal Code Section 987.8 Orders.

In complete disregard of the above mentioned law Public Defenders Robert Jason, Edward Van Gelder, James Racusin and others have all, insisted that they did have the right to represent defendants in these civil matters. They objected to the making of any and all orders pursuant to California Penal Code Section 987.8 and further disputed the amounts of said orders, the method of payment and even the form of the orders. When the court made such orders said Public Defenders instructed the defendants not to pay such orders. Their conduct amounted to a direct, illegal and unlawful interference with the valid processes of the court.

California Penal Code Section 987.8 provides further in part as follows:

> "(a)...If the court determines that the defendant has the present ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendants financial ability..."
> (Emphasis Added)

The above cited law provides the court shall order payment of said costs in the manner which it believes is reasonable. It does not say the court must order the fine paid before these costs or that these costs be paid after the fine. It further does not prohibit the court from ordering the payment of these costs from the defendants bail and especially when he consents to the same.

Factors considered by the court in determining reasonable compensation for appointed counsel were: (1) The time and labor

required by the Public Defender, (2) The number of appearances made, (3) The hourly county wage rate to the Public Defender involved, (4) The ability of the defendant to pay any or all of the costs, and (5) Factors set forth in California Penal Code Section 987.3.

All questions raised in the area of assessment and payment of costs for services of the Public Defender are outside the lawful authority of the Public Defender or the Commission and should only be raised on a civil appeal or by appropriate writ by the defendant and/or his private attorney. To permit the Public Defender or the Commission to complain and proceed on these issues in view of the clear and established law in the area exceeds both the limits of the law and the concept of fundamental fairness.

The Commission should not be a party to this flagrant misapplication of the law in this area. Further proceedings herein will not only be contrary to the applicable law but will also have a chilling effect on all the judges in the County of Los Angeles and in the State of California. Further proceedings herein will improperly dissuade said judges from carrying out their statutorily mandated duties under California Penal Code Section 987.8 and in otherwise carrying out their constitutional responsibilities.

It is readily apparent that members of the Public Defenders Office have conspired to misuse the powers of their office in order to stop the legal and lawful activities of responding party as a judge and as chairman and a leader of the Presiding Judges' Association of the Municipal Courts of

Los Angeles County.

Further proceedings in this matter are not only outside the limits of the law but will cause a cessation of the cooperative activities among judges and within their associations (1) to continue to make California Penal Code Section 987.8 Orders, (2) to solve problems with reference to appointing contract attorneys in Public Defender conflict cases, (3) to continue to work on the mechanics of having law enforcement agencies serve backlogged bench warrants, and (4) to otherwise cooperate with the Executive and Legislative branches of government to solve the problems of the courts and to bring about economy and efficiency therein.

Most of the Municipal Court judges in Los Angeles County are making California Penal Code 987.8 Orders in the same way and following the same procedures as the responding party herein. These methods and procedures have been discussed in numerous judges association meetings and most of the judges have indicated they are doing exactly the same thing. There is nothing wrongful or illegal about trying in a reasonable way to carry out a duty to make such orders.

This proceeding should be dismissed without further delay.

FIFTH AFFIRMATIVE DEFENSE

Judges in the State of Calfiornia, by reason of sound public policy, have been granted judicial immunity for every act performed within the scope of their official duties even if a malicious tort whether they are judges of inferior courts or judges of courts of general jurisdiction. (see Taliaferro v.

County of Contra Costa, 182 C.A.2d 587, 6 Cal. Rptr 231)

A judge is not liable in damages or otherwise for his judicial acts (see Picket v. Wallace, 57 C. 555; Oppenheimer v. Ashburn, 173 C.A.2d 624; Lewis v. Linn, 209 C.A.2d 394; City of Santa Clara V. County of Santa Clara, 1 C.A.3d 493) though they may be in excess of his jurisdiction (see Picket v. Wallace, 57 C. 555; Oppenheimer v. Ashburn, 173 C.A.2d 624; Lewis v. Linn, 209 C.A.2d 394) and are alleged to have been done corruptly and maliciously, (see Picket v. Wallace, 57 C. 555; Oppenheimer v. Ashburn, 173 C.A.2d 624; Taliaferro v. County of Contra Costa, 182 C.A.2d 587) so long as there is not a clear absence of all jurisdiction over the subject matter. (Lewis v. Linn, 209 C.A. 394; Paddleford v. Biscay, 22 C.A.3d 139).

Judicial immunity is said to be absolutely essential to the existance, in any valuable form, of the Judicial Office itself, since a judge could be neither respected nor independent if the motives for his official actions or his conclusions, no matter how erroneous, could be put in question. (See Platz v. Marion, 35 C.A. 241).

The test of a judicial officers immunity is not whether he committed an error of judgment in acting as he did, but whether the act was within the general scope of his judicial powers and whether he acted in an honest belief that he was legally warranted in so acting. (See Singer v. Bogen, 147 C.A. 2d 515).

In applying the general rule of judicial immunity, the

California Courts favor a liberal construction of the scope of jurisdiction and relevancy. (See Lewis v. Linn, 209 C.A.2d 394, 26 Cal. Rptr 6)

Care should be taken in limiting the immunity of a judge from liability for his official acts only to situations where the judge lacks jurisdiction. Generally, if any reasonable ground for the assumption of jurisdiction is shown, the rule of judicial immunity applies. (See Singer v. Bogen, 147 C.A.2d 515 and Lewis v. Linn, 209 C.A.2d 394, 26 Cal. Rptr 6).

The privilege of judicial immunity is denied to a judge in legal proceedings only when the matter is so palpably irrelevant to the subject matter of the controversy that no reasonable man can coubt its irrelevancy and impropiety (See Lewis v. Linn, 209 C.A.2d 394).

In the instant case there is no question that the acts complained of were done as part of the official acts of a judge and were within the general scope of his judicial powers; that said acts were within the jurisdiction of a judge of the Municipal Court; that said acts were done in an honest belief that he was legally warranted in so acting and that said acts were reasonable under the circumstances.

A liberal construction of the law referred to hereinabove and required herein, as well as the doctrine of fundamental fairness and due process dictate that the Commission come to a conclusion and a decision that the facts do not constitute grounds for proceeding further herein. The matter should be dismissed without further continuance or delay herein.

BEARDSLEY & BUHAN
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3815 WEST OLIVE AVENUE
BURBANK, CALIFORNIA 91505

CRAIG N. BEARDSLEY
ELAINE BUHAN

TELEPHONE
(213) 841-7600
(213) 849-1906

March 30, 1981

Honorable C. Bernard Kaufman
Los Angeles Municipal Court
Burbank Judicial District
Post Office Box 750
300 East Olive Avenue
Burbank, California 91503

Re: Case Number : DR # 80-357-12375
State of California vs. Gomez, Andres

Dear Judge:

This letter will serve to inform the court of Mr. Andres M. Gomez wishes to sell his Smith & Wesson .357, 2" revolver (Serial # 33k0608) to Det. Van D. Miller.

The above revolver is presently in police custody and has been ordered by the Court to be destroyed.

Our hopes are that the Court will consider this purchase and sale and notify the undersigned of its decision.

Respectfully yours,

CRAIG N. BEARDSLEY

CNB/cms
Attachment: Bill of Sale

Exhibit "A"

CHAMBERS OF
The Municipal Court
300 EAST OLIVE AVENUE
BURBANK, CALIFORNIA 91503
MARION E. GUBLER, JUDGE

April 14, 1981

Commission on Judicial Performance
State Building
San Francisco, California 94102
Attention: Jack E. Frankel

Re: Request for opinion on sale or release of gun

Dear Mr. Frankel,

Enclosed please find a copy of a letter which is addressed to another judge on this court, but which was hand delivered to me because the other judge is on vacation.

The letter referred to above is self explanatory in nature.

Would the commission be kind enough to give an opinion as to whether this request should be granted or denied.

Very truly yours,

Marion E. Gubler

Marion E. Gubler, Judge

- Exhibit "B"

State of California
Commission on Judicial Performance
State Building
San Francisco, California 94102
557-0686

April 20, 1981

Confidential

Honorable Marion E. Gubler
Judge of the Superior Court
Burbank Municipal Court District
P.O. Box 750
Burbank, California 91503

Dear Judge Gubler:

We have your letter of April 14, 1981 with its enclosure. The Commission does not give legal opinions; it is not empowered to do so. We do wonder what authority you have found for court approval of a sale of a weapon by a convicted offender, to anyone, including law enforcement personnel.

It is our understanding from research incidental to another matter that Espinosa v. Superior Court, 50 Cal.App.3d 347, and Penal Code Sections 12028, 12032 and 1419 contain some relevant law. You may wish to consult these sources. However, this reference is not to be interpreted as in any way recommending either the grant or denial of the request in the letter to Judge Kaufman.

Very truly yours,

Jack E. Frankel

JACK E. FRANKEL

JEF:ng

— Exhibit "C"

The matters stated in this answer to notice of formal proceedings are true of my own knowledge except as to those matters which are stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct this 23 day of June 1982.

Respectfully submitted,

Marion E. Gubler

JUDGE MARION E. GUBLER

State of California
Department of Justice
George Deukmejian
(PRONOUNCED DUKE-MAY-GIN)
Attorney General

3580 WILSHIRE BLVD.
LOS ANGELES 90010
(213) 736-2304

November 24, 1982

John E. Burns
Attorney at Law
Gibson, Dunn and Crutcher
2029 Century Park East
Los Angeles, California 90067

Re: Inquiry Concerning A Judge No. 54

Dear Mr. Burns:

This will confirm our telephone conversation of November 24, 1982 in which I informed you that at the beginning of the hearing set for November 29, 1982, the Examiners would move pursuant to California Rules of Court 911 to amend the First Amended Notice of Formal Proceedings in two regards.

On page one, in the sixth line from the bottom, a request will be made to change "Rules 901-902" to "Rules 901-922."

On pages 15-16, a motion will be made to amend paragraphs H and 1 to read as follows:

> "H. You intentionally contravened the requirements of Penal Code section 987.8 by imposing attorneys fees that were arbitrary, unreasonable, and inconsistent with the defendant's apparent ability to pay, to wit:
>
> 1. That on or about May 1979 through December 1980, your general practice was to assess attorneys fees without regard to or compliance with the requirements of Penal Code section 987.8. Examples of your practice in this regard include:"

Very truly yours,

Gary R. Hahn

GRH:lgs

GARY R. HAHN
Deputy Attorney General

cc: Honorable Jack E. Goertzen
Jack E. Frankel