

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning a Judge)
No. 13)
_____)

To: JUDGE JAMES J. McCARTNEY

It appearing that from January, 1971, until the present time you have been a judge of the San Bernardino County Municipal Court; and

That, as a result of a preliminary investigation conducted by this Commission, this Commission has concluded that formal proceedings to inquire into the charges against you shall be instituted.

NOW, THEREFORE, you are hereby charged with willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The specifications of the charges and the alleged facts upon which such charges are based are as follows:

COUNT ONE

In handling criminal cases you have engaged in

intemperate language, displays of uncontrolled temper unbecoming to the judicial office, and uncalled for and unreasonable verbal abuse, to wit:

A. While presiding during a criminal sentencing proceeding in People v. LaCroix (CR 94649) on March 24, 1971, after attempts by the defendant's wife, Mrs. LaCroix, to speak while you were questioning her husband, you told her to "shut up." You directed Mrs. LaCroix to leave the courtroom, and as she was leaving, you ordered her, in a screaming voice, to come back, saying you were not going to have anyone make faces or smirk at you. Mrs. LaCroix took another step or two and you pounded on the bench and in tones of rage and fury ordered the marshal to arrest her and take her to jail, stating substantially, "Five days in jail! Now! Right now!" Thereafter you verbally abused your clerk, engaged in a colloquy with her, left the courtroom, and returned. Upon continuing with the LaCroix matter, you called the defendant a liar and a cheat, and when he denied this, you told him he was lying and that you had been a district attorney for 20 years and had prosecuted people like him. When the defendant

spoke again, you shouted that you had given him 60 days and if he said another word, you would make it 180 days. You thereupon pronounced sentence on the defendant. Throughout the foregoing proceedings your voice was very loud and angry.

B. In a traffic violation case involving Joseph Clair Meyers (TR 80985), near noontime on April 29, 1971, you sentenced the defendant to three years probation on the condition that he attend ten Project Awareness sessions and pay a fine of \$182. After the court adjourned for lunch, you subsequently opened the door from outside and yelled, "Get in the Court, get in this Courtroom or I'll have you arrested and brought into court." You entered the courtroom with the defendant and said to the bailiff, "Get a court reporter." You kept insisting on getting a court reporter even though it was pointed out that the reporters had gone to lunch. During this time your face appeared to be flushed with anger. Mr. Meyers tried to speak, you admonished him not to say anything, and you ordered his plea and sentence vacated. Mr. Meyers pleaded with you not to vacate his plea, and you said you did not

want him to say anything until it could be recorded. Mr. Meyers said, "I didn't know that I couldn't speak to a judge in the hall on a man-to-man basis." You apparently noticed the bailiff writing, and you ordered him to take notes, stating that you wanted him as a witness. You ordered the sentence and plea vacated "in the interest of justice."

COUNT TWO

You have engaged in displays of anger, improper language, and bullying in your relations with court attaches and other personnel, and you have engaged generally in a course of conduct harmful to a proper working relationship between a member of the bench and such personnel which has interfered with the administration of justice in the San Bernardino County Municipal Court District and has tended to bring the judicial office into disrepute, to wit:

A. In the criminal proceeding involving Donald LaCroix (referred to in paragraph A of Count One above), after stating in effect that you were sentencing Mrs. LaCroix to five days in jail, you turned toward your clerk, Mrs. Carol Perry, and in a screaming and angry

tone of voice said, substantially, "And Perry, get out of my courtroom. I heard that remark you made, and I am sick and tired of it."

Mrs. Perry said, "I didn't say anything." You stated that Mrs. Perry was going to jail for five days right then and told the marshal to take Mrs. Perry to jail. There followed a colloquy between you and Mrs. Perry about an apology. After she said she was sorry, you removed your robe, and continuing with the same loud voice you had previously been using, stated that you were going to see her supervisor about this right then, and you thereupon left the courtroom. Mrs. Perry began to cry, and a few minutes later you returned and said in a very loud voice substantially, "Perry, get out of my courtroom right now," adding that she was not to come back again.

B. At approximately 2:15 in the afternoon on March 24, 1971, you entered the office of Mrs. Nadine Waymire, an assistant clerk of the San Bernardino County Municipal Court District, Central Division. You stated substantially that you wanted to talk with Mrs. Waymire, that you wanted another court clerk "right now," that

the clerk, Mrs. Perry, had insulted you in your own office and your own court, and that you would not stand for it, and that Mrs. Perry would not apologize until you had threatened to send her to jail for contempt. You emphasized your demand by pounding your fist on Mrs. Waymire's desk. Mrs. Waymire agreed to get you another clerk. During this incident, you appeared to be considerably upset and the more you talked about the matter the more agitated you appeared to become.

C. On May 27, 1971, in proceedings relating to the case of People v. Bone (CR 95563, TR 80988), during a discourse between you and Deputy Public Defender Freeman, the court reporter, Mr. Senn, interrupted the proceedings to say that they were not reportable. You reprimanded Mr. Senn for not bringing this up earlier and thereupon spoke words in a ludicrously slow manner.

D. You unjustly castigated two reporters for allegedly reporting late to your courtroom:

1. On July 28, 1971, you were involved in an incident with Mrs. Frances W. Rea, a court reporter. Mr. Adkinson, an official reporter of

the Victorville Municipal Court, had telephoned Mrs. Rea and at his request she agreed to report the preliminary examinations on that date starting at 1:30 p.m. Mrs. Rea arrived at 1:22 p.m. In the meantime, you had issued a warrant for the official reporter, stating that you had expected that person to report at 1:00 p.m.

2. One afternoon while you were presiding in Department C, you became involved in an incident with Mrs. Faith Hewitt, court reporter. The bailiff had called Mrs. Hewitt to court and she arrived in Department C at 1:05 p.m. There was no one else present except the bailiff and clerk. You were not in chambers. After waiting for five minutes, Mrs. Hewitt told the bailiff she would be in her office when the judge was ready. At 1:20, the bailiff called and Mrs. Hewitt went back to Department C. At this time you were on the bench and demanded in an angry voice to know why Mrs. Hewitt was not in

court when requested.

E. On October 28, 1971, in chambers, you engaged in extensive and hostile questioning of Rudolph L. Corona, Municipal Court Coordinator, as to the stocking and distribution of Affidavit of Prejudice forms. In response to your pressing interrogation and demand for an explanation of why such a form was kept in stock, Mr. Corona explained that he was simply following the orders of the presiding judge. Despite this explanation, you persisted in further prosecutorial questioning of Mr. Corona on this subject.

F. You have engaged in a course of conduct in your courtroom which has created a general atmosphere of tension and has caused impossible working conditions for court attaches, and which has led to requests for other assignments by such personnel; to wit:

1. Mrs. Waymire has had difficulty assigning clerks to your court.

Mrs. Lynn Fabrizio and Mrs. Perry have strenuously objected to assignments to your court. Mrs. Grady is usually quite upset at the end of each work day.

Mrs. Ida Dimmit, a reporter, has been

unable to continue working because of the humiliating experience that she had suffered as a result of your inquisitorial questioning.

2. Mrs. Fabrizio has been repeatedly chastized for her work by you.

3. On January 21, 1972, beginning at approximately 8:30 a.m., Mrs. Kathryn Britto was reporting proceedings in the case of People v. Cossentine (TR 84105). Mr. Cossentine requested that he be assigned to another court, you inquired as to his grounds, and further remarks were exchanged regarding the request. Remarks from prisoners seated in the jury box directly behind the reporter concerning your remarks were made during this time. You became agitated and upset; you appeared pale and angry, and spoke rapidly at a speed far beyond that of regular courtroom colloquy, interrupting the defendant and speaking while the defendant was speaking. You stated for the record that you were completely relaxed and were not shouting. You

questioned other persons present, the court clerk (Mrs. Grady), another reporter (Mr. Howard Senn), and Deputy Public Defender Freeman, as to whether they felt you appeared upset. You asked whether you were red in the face and whether you were shouting or nervous. You were not red in the face, but were quite pale. You were not shouting, but you glared at Mr. Cossentine with a look of utter contempt. Mrs. Britto was frightened and shaken by this incident. She was writing as fast as she possibly could. At the end of the Cossentine matter, while Mrs. Britto sat at her machine with her hands trembling, you requested her to approach the bench and then requested that she prepare a transcript of the proceedings. After another matter was called, Mrs. Britto requested Mr. Senn, a court reporter who was present marking calendar assignments, to have the bailiff call for a replacement reporter. Later, when you called Mrs. Britto to the bench to request the preparation of another transcript, she told you her hands were shaking and that she was very upset.

Upon your inquiry, she explained that this was caused by what went on that morning in your courtroom.

4. Because he felt that the atmosphere of the court prevented him from handling his duties as bailiff adequately, Deputy Marshal F. J. Van Wagner III requested not to be assigned to your court.

5. In administering and conducting your court, you have violated state law on breaks for employees.

COUNT THREE

You have been grossly incompetent as a judge in your relationship with counsel which has damaged the administration of justice in San Bernardino through a course of conduct which has consisted of your engaging in improper criticism of counsel, prolonged and unnecessary argument with counsel, improper colloquy with counsel regarding the filing of affidavits of prejudice by counsel seeking to protect the rights of their clients, and badgering and general discourtesy toward counsel, to wit:

A. On May 27, 1971, while presiding in People v. Bone (CR 95563, TR 80988), you engaged the defendant in a lengthy discussion relative

to the defendant's not being represented by counsel. When you asked the defendant why he had not asked for a public defender at his arraignment, the defendant stated that he did not understand what was going on and had since seen Mr. Freeman of the Public Defender's Office who advised him to ask for a continuance and for the appointment of a public defender. You ordered a member of the Public Defender's office to "go and find Mr. Freeman" and repeated the order three or four times. When Mr. Freeman could not immediately be found, you attempted to have Mr. Ward, the Public Defender of San Bernardino County, brought into court by the bailiff. Mr. Freeman was eventually summoned. A lengthy discussion ensued concerning Mr. Freeman's advice to Mr. Bone. You continued to upbraid and criticize the deputy public defender despite his explanation that he had advised the defendant while serving in a voluntary capacity for Legal Aid and without being aware that the defendant's next court appearance would be the day of trial.

B. In a preliminary hearing on a bookmaking matter held on June 25, 1971, involving private counsel, Philip Kassel, a proceeding in which the

prosecution called only one witness, the matter required almost an entire day of testimony. The testimony could have been presented in approximately one hour. Frequently, when an objection was made, you sat back, closed your eyes, and stared at the ceiling for periods in excess of 20 or 30 minutes before making a ruling. On several occasions you departed from the bench and went into chambers, locking the door, and remained without calling a recess. At approximately 2:00 p.m., you ordered the attorneys, the two defendants, the witnesses, and the court reporter and other people into your chambers and asked if any of the attorneys had read a copy of an article in the Los Angeles Daily Journal, which article had no connection with the matter at bench. At approximately 4:45 p.m., the district attorney moved to hold the defendants to answer. Defense counsel made a brief argument in objection. You drew your chair back from the bench, closed your eyes, and then stared toward the ceiling in excess of 45 minutes without speaking a word. It was after 5:30 p.m. that you spoke and indicated that the defendants would be held to answer.

C. In People v. Watkins (CR 95489), you engaged in extensive dialogue with defense counsel, Deputy Public Defender Phillip Barnett, relative to the filing of an Affidavit of Prejudice. During this dialogue, you in effect complained that Affidavits of Prejudice filed by the Public Defender's office left out the word "Honorable" before your name.

D. On January 3, 1972, in People v. Anderson (F 16083), while you were handling the master calendar court, you stated, contrary to the representations of Deputy Public Defender Raymond Rager, that you had not been informed of the intent of the Public Defender's office to file Affidavits of Prejudice in all cases in your court. The Public Defender's office had previously declared its intention to file such affidavits. Prior to Anderson, several cases were assigned to your court and the involved deputy public defenders immediately indicated their intention to file Affidavits of Prejudice. When Deputy Public Defender Rager attempted to file an Affidavit of Prejudice in Anderson, you rejected it as untimely. When Mr. Rager returned, after leaving the courtroom

to obtain a Writ of Prohibition, after you looked at this writ, you stated you were not aware that the Public Defender's office intended to file Affidavits of Prejudice in all cases assigned to your court. During these proceedings, you engaged in an argument with the deputy public defender as to whether or not he had made the intent of the Public Defender's office clear to you. During these proceedings, you became agitated, spoke very loudly, and even assumed, at one point, a fighting stance.

E. In People v. Worley (97106, 97382), a misdemeanor case, private defense counsel Gary Smeltzer moved for a new trial on the grounds of alleged prejudicial error by the trial court. Counsel requested that the clerk make an entry on the record, but you ordered the clerk not to make an entry. Subsequently, you called the bailiff to the stand where he was asked to testify to his knowledge as to whether the court had ordered the clerk not to make the entry. Later, you went into chambers, and returned to the courtroom without your judicial robe, and took the witness stand, and after being administered the oath, testified. At this time there was no judge on

the bench. While in chambers during this case, you muttered to yourself and engaged in frequent outbursts of profanity.

COUNT FOUR

You have bullied and badgered criminal defendants appearing without counsel, you have abused the rights of such defendants, and have argued with such defendants in an improper manner harmful to the reputation of the judiciary and to the administration of justice, to wit:

A. In support of this charge, paragraph A of Count One is hereby incorporated by this reference as if fully set forth herein.

B. In support of this charge, paragraph B of Count One is hereby incorporated by this reference as if fully set forth herein.

C. In People v. Cossentine (TR 84105), on January 21, 1972, the defendant attempted to file an Affidavit of Prejudice without knowledge of the appropriate statute. You questioned the defendant, who was proceeding in propria persona, as to his reasons. When Deputy Public Defender Freeman attempted to tell the defendant the proper statute, you stated that the Public Defender would first have to be appointed. The defendant

stated that he had experience in paramedicine and that it was his opinion that you were under intense nervous and emotional pressure. You argued with him, referring to your own medical knowledge. The defendant had first used the term "change of venue," but later mentioned the term "Affidavit of Prejudice," but did not know the proper code section. You eventually told the defendant that he could get a form at the clerk's office if he thought the form related to the appropriate section.

COUNT FIVE

You have engaged in conduct and language unbecoming a member of the bench, subjecting the judicial office to disrepute and disrespect, and tending to embarrass the members of the bench in your judicial district, to wit:

A. On August 25, 1971, during proceedings in People v. Campbell (CR F-15727), in open court you questioned the propriety of the action of Presiding Judge Chapman in directing the case at bench into his own court. You then entered Judge Chapman's chambers along with four or five other people and thereafter engaged in unseemly dialogue with Judge Chapman relative to his assignment of

the case. While in Judge Chapman's chambers, you appeared to be agitated, nervous, and excited, and spoke rapidly in a loud voice.

B. In support of this charge, paragraph E of Count Three is incorporated herein by reference as if set forth in full.

C. While in chambers during proceedings in the case of People v. Worley (97106, 97382), you muttered to yourself and engaged in frequent outbursts of profanity.

D. You have been observed losing your temper, shouting, pounding the bench, and using profanity, including "God dammit, son of a bitch," on numerous occasions. You have been observed humming to yourself on the bench and it has been called to your attention by Marshal Warren Van Valey that spectators in the courtroom could hear you.

COUNT SIX

Your general conduct on the bench, the state of apprehension and tension that exists in your courtroom, your treatment of court personnel and of counsel, your aggravated inefficiency and gross incompetence in conducting court, and your long delays in issuing rulings from the bench, have

resulted in there being no competent judicial officer to perform the work normally to be accomplished by the person holding your position and have materially interfered with the administration of justice.

A. In support of this charge, paragraph B of Count Three is incorporated herein by reference as if set forth in full.

B. In support of this charge, paragraph E of Count Three is incorporated herein by reference as if set forth in full.

C. Your conduct has created the impression among attorneys, parties, court personnel, and members of the public that erratic and bizarre behavior can be expected from you. As a result of your general conduct, partially through the use of Affidavits of Prejudice filed by counsel endeavoring to protect their clients' interests, you hear very few trials, and these are mainly limited to trials involving out-of-town attorneys and self-representing defendants. Between July of 1971 and March of 1972, 205 Affidavits of Prejudice were filed against you.

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COUNT SEVEN

In conducting your court, you have not properly adhered to the judicial function, and have abdicated and deviated from that function, to wit:

A. During the period from January to March of 1971, you frequently called upon your bailiff, J. W. Finck, in a clandestine manner, for his opinion as to the appropriate sentences in criminal matters, mostly matters involving defendants proceeding in propria persona. This was often done on the pretext of calling the bailiff to the bench to run an errand.

B. In two cases you have taken the stand and testified as a witness, leaving the court without a judge during such testimony.

1. On December 10, 1971, in Lujan v. State of California (T 208271), a coram nobis matter, you took the stand and testified as a witness as to your manner of conducting court hearings. You were also the judge in this matter, so that when you were testifying as a witness there was no other judge.

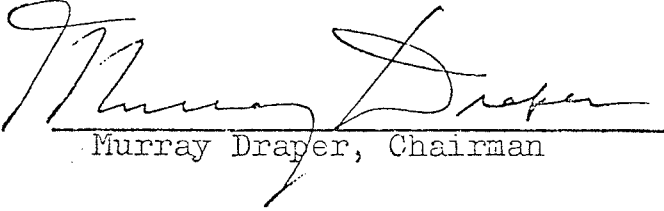
2. In People v. Worley (97106, 97382),

a misdemeanor case, after a dispute between you and defense counsel Gary Smeltzer as to whether or not you had ordered the clerk not to make an entry with respect to a motion for a new trial, you went into chambers, returned to the courtroom without your judicial robe, and took the witness stand. After being administered the oath, you testified. At this time there was no judge on the bench.

You have the right to file written answer to the foregoing charges within 15 days after service of this Notice upon you with the Commission on Judicial Qualifications, Room 3041, State Building, 350 McAllister Street, San Francisco, California 94102. Such answer shall be verified, shall conform in style to subdivision (c) of Rule 15 of the Rules on Appeal, and shall consist of an original and 11 legible copies.

By Order of the Commission on Judicial Qualifications.

Dated: August 2, 1972


Murray Draper, Chairman