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DENNIS A. CORNELL, ESQ.



JACK E. FRANKEL
DIRECTOR-CHIEF COUNSEL

State of California
Commission on Judicial Performance
1390 Market Street, Suite 304
San Francisco, CA 94102
(415) 557-2503

December 15, 1989

Honorable John Schatz, Jr.
Santa Clara County Superior Court
270 Grant Avenue
Palo Alto, California 94306

Dear Judge Schatz:

At its November, 1989 meeting, the commission determined that you should be publicly reprovred for the conduct set forth below.

The conduct which is the subject of the public reprovral is as follows:

1. On the morning of July 11, 1989, you went to the chambers of Judge James L. Browning, Jr., of the San Mateo County Municipal Court, to discuss a criminal case against your son, Christopher Schatz, charging violation of Health and Safety Code Section 11364 (possession of narcotics paraphernalia). The case was calendared for arraignment that morning. Your son did not appear. You identified yourself to Judge Browning as a Santa Clara Superior Court judge, and engaged him in discussion of your son and your son's case.

Deputy District Attorney Marta Diaz entered chambers at the request of Judge Browning shortly before 9:00 a.m. You, DDA Diaz, and Judge Browning discussed the possibility of diversion, and the sentence which would be given on a guilty plea. You asked whether a lower fine than that indicated might be given. On your request, you were given diversion papers. DDA Diaz pointed out to you that you could not appear for your son. The arraignment was continued one week, to July 18, 1989.

On July 18, 1989, you again appeared in court on your son's behalf. You approached the bench and began speaking to Commissioner Gruber. When DDA Diaz saw you conversing with Commissioner Gruber, she went to the bench. You were asking Commissioner Gruber to enter a plea of not guilty on your son's behalf and continue the matter as long as possible. Noting that your son was not present, DDA Diaz asked that a bench warrant issue. This request was placed on the record and taken under submission by the commissioner.

Honorable John Schatz, Jr.
December 15, 1989
Page Two

2. On August 22, 1989, the Commission on Judicial Performance sent you a preliminary investigation letter requesting your comment on the incident reported above, and asking the following question:

"The commission also wishes to know whether you have ever contacted any other judge, court commissioner, court, law enforcement agency, or prosecutorial agency on your son's behalf regarding any charges against him. Please explain."

In a letter dated September 13, 1989, you responded to this inquiry as follows:

"In answer to the 'have you ever' question on page 2, my answer is 'no.'"

Your response to the commission was false, for you had previously contacted the District Attorney in Santa Clara County regarding another criminal case against your son, as described in Count 3, below.

When asked about this inconsistency, you offered the explanation that you interpreted the commission's question "as referring to any other officials in San Mateo County where the events in question had taken place."

3. In early December, 1988, you telephoned District Attorney Leo Himmelsbach and asked to meet with him. He agreed to meet you for breakfast on December 13, 1988. At the meeting, you told DA Himmelsbach about a Santa Clara County burglary case against your son which you believed was a weak case. You told DA Himmelsbach that your son wished to enter the military, but could not do so unless the charge against him was dismissed. DA Himmelsbach told you that in his experience military recruiters would sometimes come to court or write letters for defendants; he also said that in his experience, the military refused to accept defendants who were on probation, but did not make dismissal of charges a condition of acceptance. DA Himmelsbach agreed to bring the case to the attention of Deputy District Attorney Tom Ferenholz.

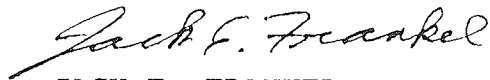
DDA Ferenholz represented the prosecution in court on December 15, 1988. No military recruiter appeared in court. When counsel went into chambers to discuss the case with Municipal Court Judge Hanifan, you also went into chambers. DDA Ferenholz suggested that the matter be continued for some further checking. However, on the representation that your son would be entering military service immediately and that dismissal of the case was a prerequisite to enlistment, the

Honorable John Schatz, Jr.
December 15, 1989
Page Three

burglary charge was dismissed pursuant to Penal Code Section 1385. Although your son apparently took some steps toward enlistment thereafter, he ultimately did not enter military service.

In determining that a public reproof would be adequate discipline, the commission considered your recognition that your conduct was inappropriate, and your assurance that such conduct would not be repeated.

Very truly yours,



JACK E. FRANKEL
Director-Chief Counsel

JEF:bw