

1 RONALD G. BROWER
2 Attorney at Law
3 1055 N. Main St., Penthouse Suite
4 Santa Ana, California 92701-3601
5 (714) 997-4400

6
7
8
9 Attorney for Respondent
Claude E. Whitney

10 STATE OF CALIFORNIA
11 BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

12 INQUIRY CONCERNING A JUDGE)
13 No. 117)
14)

RESPONSE TO NOTICE OF
FORMAL PROCEEDINGS

15
16 Respondent Claude E. Whitney, answers the formal charges
17 of the Commission On Judicial Performance on file herein as
18 follows:

19 /////

20 ////

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 As a prefatory statement, let it be known that I am very proud and
2 honored to be a member of the judiciary. It is my intent and, I
3 believe, my practice, to follow the law; uphold the integrity of
4 the Bench; to promote the administration of justice by managing the
5 resources of the court; to serve the public in a timely, efficient,
6 equitable and courteous manner; and to treat all who appear before
7 me with dignity and respect. Unfortunately, I do misspeak on
8 occasions and make inadvertent, unintentional errors, which I
9 regret and duly apologize. I am always open for input, from any
10 source, for information or advice on how I can be a better or more
11 efficient judicial officer, and/or how I can assist in making
12 another person's job easier or more efficient. I attend as many
13 continuing education courses as possible and have always been open
14 to any suggestions by counsel as to how I might better serve the
15 law.

16

17

COUNT 1

18

19 A. Respondent denies abdication of judicial responsibility to
20 ensure the rights of defendants.

21 1. Admit defendants advised collectively they would not
22 be released on their own recognizance, but deny any indication
23 this meant no discretion was exercised pursuant to
24 P.C.1270(erroneously charged as P.C. 1209 (weekends). It has
25 been the policy of the Central Orange County Municipal Court
26 for over twenty years to have the Detention Release Unit

1 assist in matters of bail and own recognizance releases. Each
2 defendant had been reviewed and determined not to be eligible
3 for own recognizance release prior to appearance in the
4 in-custody arraignment calendar. In addition, bail review is
5 available 24 hours a day, 7 days a week upon request.

6
7 2. Admit in-custody defendants told all sentences "terminal".
8 However there were some exceptions, such as Vehicle Code
9 Section 23152 and Penal Code Section 270. It is and was my
10 understanding that probation is not a right of the defendant,
11 but an act of clemency extended by the court. (Peo. v. Brasley,
12 (1974) 41CA3d 311,316. In addition, I believe that
13 P.C.1203(d) provides that in misdemeanor cases, a court may,
14 at its option, either refer the matter to a probation officer
15 for investigation and recommendation or summarily grant or
16 deny probation. Further, one of the beneficial consequences
17 of a "terminal" sentence is that a defendant may apply for
18 relief from all penalties and disabilities resulting from
19 conviction after one year from the date of pronouncement of
20 judgement. Pen. C. 1203.4a.. Otherwise, the allegations are
21 denied.

22
23 3. Admit in-custody defendants told all sentences
24 consecutive. Pen C. 669 indicates that a determination
25 for a sentence to run consecutive or concurrent is a
26 part of the judgment and must be made by the judge

1 personally. (P vs. Caudillo (1980) 101 Cal App. 3d 122,126.
2 Otherwise, the allegations are denied.

3
4 4. Deny failure to advise defendants that " it is his or
5 her right to have counsel before being arraigned". Each and
6 every defendant was advised of his or right to counsel at all
7 stages of the proceedings, which advisement was given prior to
8 the arraignment. The advisement of rights was given according
9 to the script provided respondent by CJER-California Judicial
10 Education and Research. Admit did not specifically ask "if he
11 or she desires the assistance of counsel". Our Supreme Court
12 has indicated approval of a procedure by the judge, at the
13 outset of the court proceedings, to collectively advise all
14 defendants in the courtroom of their constitutional rights,
15 and then preface the plea of each defendant with
16 an enquiry to ensure that the defendant heard and understood
17 the general statement. Mills v. Municipal Court, 10 C3d 288.
18 I enquired of each defendant as to whether or not they
19 understood their constitutional rights and the charges prior
20 to any plea. In all cases the constitutional rights of
21 each defendant was respected.

22
23 5. Admit defendants told sentences would be imposed the
24 day of arraignment if they plead guilty to the charges and
25 if they plead not guilty, the public defender would
26 be appointed, bail would be set and the matter continued for

1 one week for a pre-trial conference. The one week continuance
2 was at the request of the public defender because it took
3 that long to process the paperwork. (It is still the court
4 practice and policy to continue not guilty pleas for one
5 week if the arraignment takes place on Thursday or Friday.
6 This is done with the consent, approval and request of the
7 Public Defender). However, the public defenders had been
8 advised of their appointment on arraignment day and could
9 make a request for an earlier date and/or a request for own
10 recognizance release. Otherwise, all allegations are denied.

11
12 6. Admit failure to personally advise English speaking aliens
13 of possible convictions on non-citizens. All Hispanic
14 defendants, whether alien or not, were told of the
15 possible consequences of deportation, etc. as required
16 by Pen. C. 1016.5, through an interpreter. It should be noted
17 that 1016.5 does provide in the absence of a record it is
18 presumed a defendant did not receive the advisement and
19 the plea may be withdrawn.

20
21 With respect to the allegations regarding Jose John
22 Lopez, Debra Gean Brown, Anthony Joe Montoya, Tammy Lynn
23 Hinds, Carla Jean Barcus, Raymond Bradfor Yapelli, Carlos
24 Vincio Giron and Barbara Van den Brink, they were all
25 advised of their right to an attorney before arraignment
26 and an inquiry made of each of them as to whether they

1 understood their constitutional rights and the charges.
2 To the inquiry, they each answered affirmatively.

3

4 B. Charged that judicial abdication of responsibility to
5 ensure rights of in-custody defendants appearing for
6 arraignment on criminal charges by not allowing the
7 public defender's office to participate in the in-custody
8 arraignment process, plus inadequate advisement as charged
9 hereinabove, resulted in the defendants not receiving
10 assistance of counsel at arraignment, as exemplified by
11 the following:

12

13 All allegations charged in "B" are denied, but will answer
14 as follows:

15

16

17 1. In reliance on the case of Peo. vs. Mathias, 178 C App 3
18 568, failure to provide counseling attorneys at arraignment
19 is not error. I have never refused counsel access: upon a
20 defendants request for an attorney; when I believed that he/
21 she did not understand either his/her rights or the charges;
22 or upon appointment by the court. Therefore, it was my belief
23 that the public defender did not have a "client" until they
24 were appointed by the court. However, pursuant to an
25 agreement, the public defender now speaks with all in-
26 custodies prior to the calendar call. With respect to the

1 charge that Ms. Mies was "yelled" at, the court waited for
2 an appropriate time and then requested Ms. Mies to move
3 away from the defendant in order for the court to call the
4 calendar. While I may have spoken louder than necessary,
5 the tone used was not necessarily "yelling". However, I
6 did apologize to Ms. Mies upon completion of the calendar.

7
8 2. The incident involving Mr. Lund had its beginning some
9 time previous to the event. Mr. Lund approached the court
10 with respect to the public defender being in the court. The
11 court indicated the courtroom was open to the public and they
12 were as welcome as anyone, provided they did not interrupt
13 the court proceedings. On the day in question, Mr. Lund
14 interrupted the court during advisement of rights. He
15 was requested not to interrupt the proceedings, but
16 continued to do so and was finally requested to leave
17 the courtroom.

18
19 C. Charge that with respect to Barbara Van den Brink, she
20 was deprived of counsel; the benefit of a previously
21 negotiated disposition; and given an illegal sentence.

22
23 I admit to inadvertently giving Ms. Van den Brink an
24 illegal sentence in that she was sentenced to a year
25 for multiple cases when the maximum was 6 months. I have no
26 recollection of any request or mention of any previous

1 negotiated disposition, nor is there any record of such an
2 alleged disposition. All other allegations are denied.

3
4 COUNT II

5
6 Charge that I have failed to be patient, dignified, and
7 courteous to lawyers and jurors.

8
9 Each allegation is denied, but will answer each as follows;

10
11
12 A. "Yelling" at Ms Gigliotti; threatened report to state bar and
13 "yelled" at her to leave the courtroom.

14
15 The only incident I ever had with Ms. Gigliotti related to
16 an incident wherein she was assigned to my court for pre-trial
17 hearings, which means she was to be in court by 9:00 a.m., and
18 she did not appear until approximately 3:30 p.m.. She did not
19 notify staff until her nonchalant late appearance. The staff
20 and other attorneys and custodies had to wait almost the
21 entire day for her not only to appear, but to make offers to
22 the the respective defendants. Her delay made it necessary
23 for staff to work overtime and for the defendants to spend an
24 inordinate amount of time in the holding cell. I spoke
25 sternly to Ms. Gigliotti regarding her professional
26 responsibilities, but did not request she leave the courtroom.

1 I have no recollection regarding any comments re the State
2 Bar.

3

4 B. "Yelled" at Ms. Mies to get away from in-custody defendants.

5

6 This charge has been answered hereinabove in Count 1,B,1 and
7 is adopted herein as though set forth in haec verba.

8

9 C. Removal of Deputy Public Defender Jeff Lund from the courtroom.

10

11 This charge has been answered hereinabove in Count 1,B,2 and is
12 adopted herein as though set forth in haec verba.

13

14 D. "Yelled" at Heidi Mueller in open court.

15

16 This matter, as I recall, concerned the matter of court
17 security. The bailiff in performing his duties with regard
18 to court security, required all in-custody defendants, when he
19 was the only deputy in the courtroom, to sit with their chair
20 as close to the counsel table as possible. This meant that the
21 arms of the chair were under the tabletop. This practice was
22 followed in preliminary hearings. My recollection of the
23 incident is that Ms. Mueller requested her client be allowed to
24 sit behind her during the hearing. I merely told her that was
25 unacceptable and the hearing proceeded. I did not believe the
26 incident significant, and recall nothing more.

1 E. "Yelled" at Deputy Public Defender Phil Zeleski for requesting
2 a court reporter on the first day of trial.

3
4 I do not recall "yelling" at Mr. Zeleski. He made a late
5 request for a court reporter on day of trial. I told him
6 our local rule 12 requires the requesting party give at least
7 five days written notice of the need for a stenographic
8 reporter; that we would do our best to accomodate him, but
9 would proceed with the trial. This would not work a
10 hardship on Mr. Zeleski, as reporters are seldom, if ever,
11 required until testimony commences.

12

13 F. "Yelled" at Ron McGregor for whispering to the bailiff.

14

15 This was the third time Mr. McGregor had disrupted the
16 proceedings. I was calling the calendar with the assistance
17 of my bailiff, when Mr. McGregor walked into court and,
18 without a pause to comprehend or assess the situation, walked
19 up to the bailiff and tried to engage him in conversation.
20 I asked him to cease the conversation as it was disturbing
21 the proceedings.

22

23 G. "Yelled" at Ron McGregor for whispering to Deputy Public
24 Defender Bonnie Dohrmann.

25

26 Mr. McGregor was "whispering" so loud that he was disruptive.

1 I told him to continue his conversation in the hallway. I
2 spoke directly and firmly, but did not yell.

3

4 H. "Yelled" at Ron McGregor for helping a pro per.

5

6 Mr. McGregor interrupted the proceedings by approaching
7 a litigant while in trial, who was not his client, and
8 without permission to approach. I do not recall any paper
9 on the floor, but do remember he was going through some
10 papers on the counsel table.

11

12 I. "Yelled" at attorney Douglas Kirk for arriving late for
13 trial.

14

15 I have no recollection of this allegation. However,
16 if he was late without calling, I would have admonished
17 him for his tardiness.

18

19 J. "Yelled" at Deputy Public Defender in chambers.

20

21 I have no recollection of this allegation. However, I
22 do remember at one time, Ms. Barnum made a
23 representation to me that was untrue, and I told her
24 in substance, that I would not believe her again. I
25 believed her to be very unprofessional. She did not
26 offer any explanation for her misrepresentation.

1 K. Rude and demeaning to Deputy District Attorney Diana
2 Gomez and Deputy Public Defender Sheryl Beaseley.

3

4 I have no recollection of this allegation . These
5 two deputies were in my court on many occasions. My
6 recollection is that both were professional and
7 respectful of each other and the court on each and
8 every occasion.

9

10 L. Rude and demeaning to Public Defender Alan Crivaro.

11

12 I only remember that while conferring in chambers with Ms.
13 Boyd and the Deputy District Attorney, that Mr. Crevaro
14 burst into chambers without knocking. I told him I was
15 in conference and to leave immediately. I thought he was
16 very rude and inconsiderate in not knocking first. Further,
17 I should have been told that Ms. Boyd was calling for further
18 assistance. Ms Boyd is a very competent attorney who is not
19 lacking in any attorney skills. The conference proceeded
20 smoothly thereafter and I have no recollection of Ms. Boyd
21 leaving the room to have further consultation with Mr. Crevaro.
22 I am also unaware of any "common practice" regarding attorneys
23 from writs and appeals presenting arguments. In fact, this
24 incident is the only time in over 5 years a second attorney
25 from either the district attorney or public defenders offices
26 appeared during a conference.

COUNT 3

Charge that I have engaged in conduct that conveyed the impression of bias and prejudgment in criminal matters.

I deny each and every allegation of this charge, but will answer as follows:

A. Signing of bind over order (blue sheet) before completion of all testimony.

I generally do not sign the blank "blue sheet" until I have bound the defendant over to Superior Court, but have, on occasion, signed some during different stages of the proceedings because I may not have signed the form for a previous hearing.

B. Held to answer on a charge of petty theft with a prior without proof of the prior.

I do not recall this alleged incident. I previously submitted a copy of the preliminary transcript and the Superior Court proceedings which indicated that a PC995 was not taken and that defendant pleaded guilty to three counts, notwithstanding I had bound the defendant over on only two counts. In addition,

1 Deputy Public Defender Lawrence Buckley is a very experienced
2 and able attorney who would have made a timely objection
3 with respect to any lack of proof. In all probability, the
4 "prior" file was on the bench and was known by all concerned.
5

6 C. Commitment of Mark Rose
7

8 I did commit Mr. Rose and did make the remark about learning
9 something everyday. I was being flip in order to dissuade
10 any conversation with Ms. Dohrman. I have no recollection
11 regarding denial of a request to review any documentary
12 evidence or of a request to present additional reasons
13 for a further stay.
14

15 I deny that any of my actions constitute wilful misconduct in
16 office or conduct prejudicial to the administration of justice that
17 brings the judicial office into disrepute within the meaning of the
18 California Constitution, Article VI, section 18, subdivision (c).
19
20
21

22 Verification
23

24 I, the undersigned, declares:

25 That I have read the foregoing Response To Notice Of Formal
26 Proceedings and know the contents thereof; the same is true of my

1 own knowledge, except as to those matters which are therein alleged
2 on information and belief, and as to those matters, I believe them
3 to be true.

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

6

7

8 Dated: July 4, 1994

9

15/

CLAUDE E. WHITNEY

10

11

12

13

14

15

16