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Judges and ethical perceptions

Dyson William Cox

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JUDGES AND ETHICAL PERCEPTIONS

A Thesis
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Interdisciplinary Studies

by
Dyson William Cox
May 1992
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ABSTRACT

The premise of this paper was that many judges are insensitive to the stress that is experienced by persons appearing in court. The examination of the decisions of the California State Supreme Court ordering the removal or censure of judges supports that opinion and the conclusion that ugly incidents often result because of that insensitivity.

A major conclusion of this paper is that abuse was the basis for many complaints against judges. The draft report, Achieving Equal Justice for Women and Men in the Courts, found bias against women in all courts throughout the state.

From 1961 to 1990, thirteen judges were removed from office; ninety-three retired or resigned rather than contest the allegations filed against them. Public records are not available as to why the judges retired or resigned or to which courts they were assigned. In 1990, more than twice the number of complaints were filed against superior court judges than about the same number of municipal court judges. The complaints were about the same. Yet, a recommendation for the removal of a superior court judge has only been submitted in one instance. Does the Commission use a double standard in making its recommendations for removal of judges?

Each year the Commission in its annual report summarizes the complaints against judges. Filing of false affidavits is a recurring problem. Why has the treatment of a perjurious written declaration been so casual?
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CHAPTER 1
BACKGROUND

I began this study with a great concern about the perceptions of justice that individuals have who appear in courts and note erratic and unusual behavior on the part of judges. I had opposed Deputy District Attorney James J. McCartney in several trials in the late sixties and had observed several unusual acts that occurred during trials. What little information that was available during an investigation into his conduct that was done by the Commission on Judicial Performance was followed with intense interest by myself, other attorneys, and judges. All judges and most attorneys had heard accounts of unusual incidents in his court. Most of the attorneys and judges knew little about the Commission and its functions. Rumors as to what had occurred at the hearings provided some vague conceptions about its function and the role it performed for the State Supreme Court.

The recommendation of the Commission on Judicial Qualifications that Judge McCartney be removed from office was not followed by the State Supreme Court, but he was censured publicly for several of his actions. The punishment imposed in his case by the California State Supreme Court and the reasons are presented in its opinion stated in McCartney v.
Before Judge Kenneth Lynn Kloepfer assumed office, I had been on a regularly scheduled felony sentencing calendar where he, as a Deputy District Attorney, represented the People of the State of California and I represented a large number of defendants. I felt that I knew him well from a professional standpoint having observed him in court frequently over a period of several years. He argued for maximum punishments in virtually every case and often his examples were bizarre. He regularly attacked defense attorneys for their actions in representing their clients and routinely accused them of unethical conduct.

Because of my contacts with Judge McCartney before his election to office and with Judge Kloepfer before and after his election to office, I followed the scraps of information about the hearings conducted by the Commission on Judicial Qualifications with intense interest. My concern about the pattern of their conduct was increased due to my membership on the Ethics Committee and because I had sat in the same court building with Judge Kloepfer from 1982 to 1987.

I was appointed to the sit in the San Bernardino County Municipal Court on October 17, 1975 and was aware of his conduct as a prosecutor though I do not recall that he ever appeared before me. He had been transferred to the Fontana Municipal Court and at some subsequent time to the Victorville Municipal Court before I was appointed.
After Judge Kloepfer assumed office in January of 1981, rumors about his conduct became the subject of courthouse comment. Throughout the period that he was a judge articles appeared in the local newspaper's Letters to the Editors condemning and supporting his actions.

From September 1984 to September 1987, I was a member of the Ethics Committee of the California State Judges Association. I attended the meetings of the committee regularly during the three years and shared in the discussions of the various issues that were submitted to the committee. I appreciated the high quality of the opinions and views that were presented and discussed by the judges. I recall one judge who at one meeting labeled me a moralist, and at the next tagged me as being a liberal. I thought the two labels in such a short period were obviously inconsistent, but at least he was listening to what I said, as I tried to share with him and others my opinions. Many of the discussions were the basis for letters responding to judges' questions and written formal opinions that were distributed to all sitting judges in the state.

In January of 1986, I received the annual report of the Commission on Judicial Performance for the year 1985. This was the first time that I was aware that the reports were published and available to judges. Since that time, I have obtained, reviewed, and reread several times all thirty reports for the years 1961 to 1990.
When I began this paper, I had expected to review the thirty annual reports and the Supreme Court opinions that have imposed the discipline of removal from office upon judges and write a brief paper about the weaknesses of some judges.

After I realized that no superior court judge had been removed from office during the period of the existence of the Commission on Judicial Performance, I expanded the materials that I believed it necessary to examine to include the opinions that had resulted in the imposition of public censure upon sitting judges. Eleven superior court judges have been subjected to that punishment.

During the past three years, in addition to several newspaper articles, magazine articles, and publications of the American Judicature Society, I obtained a copy of the draft report, *Achieving Equal Justice for Women and Men in the Courts.* As one of my main concerns as expressed in this paper is the lack of sensitivity of many judges to the stress that is experienced by persons appearing in court, I concluded that it was necessary to review that study.

By chance, I found the book, *The Appearance of Justice.* It is concerned with the conduct of federal judges and thus cannot be correlated directly to my concerns about the conduct of California judges. However, in my opinion, many of the reports of incidents of misconduct by federal judges relate to the kind of misconduct that occurs in state courts and in California courts.
On several occasions in the past few years, the Los Angeles Times has published articles about the conduct of the judges who sit in the federal courts in the Central District of the State of California. The articles have identified those several judges who are rude to attorneys and parties, who are arbitrary in their actions, and who appear to believe that they sit upon a throne rather than upon an expensive chair created as a bulwark for a democracy.

I have used many of the examples as a background to my conclusion that a continuing emphasis must be placed upon proper actions by judges in all courts as they function in their judicial roles.

I have included several of the statements about the history of the conduct of U.S. Supreme Court justices and federal judge as a preparation for my comments and reviews of the conduct of judges in California.

As expressed above, the materials that I identified as being relevant to this paper increased significantly. My expectation that I would write a paper of moderate length was short lived. Clearly incidents occur in the courts when the purposes of judges and people clash. Because of my personal experiences and the many publications that I have identified above, it was necessary to expand this paper. In addition, I believe that the various articles and publications and the several books that emphasize aspects of judges conduct should be noted in one convenient source.
In this paper I have done what had not been done before in California when I began this study. I have collected in one article summations of all of the opinions of the State Supreme Court that have resulted in the removal of judges from office in California and the imposition of public censure.

Further, in my summary of the annual reports of the Commission on Judicial Performance, I have noted the changes in the laws that control the imposition of censure and noted the incidents that now include private and public reproval as additional disciplinary controls upon the conduct of judges.

I started this review of materials about judges with a discussion of the California Judicial Conduct Handbook. This handbook was distributed to all sitting judges in 1990. I consider it a very valuable tool for sitting judges to review and consider whenever they are faced with a conduct situation. It provides many citations about real problems and the possible consequences of repeating the errors of judges who have been disciplined in the past.

All of these efforts to identify the nature of the mistakes that some judges make have resulted in a long commentary. I hope that my views about the publications and my professional acquaintance with Judge McCartney and Judge Kloepfer will contribute to an understanding of the conclusions reached in this paper.

When judges commit acts of misconduct, it lowers the respect for all judges. Efforts to inform, educate, and
sensitize judges to the significance of their appearance, manners, and acts as they make rulings and control the actions within the courtroom and in their chambers must continue.
CHAPTER 2

OVERVIEW

Newspapers and television report about the improper conduct of government employees, teachers, doctors, lawyers, and judges almost daily. The media has a responsibility to inform and in the process the newspaper reporters and television newscasters whet the curiosity of the public. Judges have not been above criticism and unfortunately the list of those who have failed to conform to recommended and imposed standards is extensive. An aspect of American governmental polity has resulted in some of those problems.

Early failures to maintain the separation between the executive and judicial branches contributed to patterns of behavior that have continued from the early history of our nation to recent times. In *The Appearance of Justice* John P. MacKenzie identifies long standing problems that have existed since the U.S. Supreme Court was established. His examples illustrate his point that many of the founding fathers did not distinguish between their roles as judges, and their roles as former members of the legislative or executive branches of government.

In 1793, John Jay, Chief Justice of the U.S. Supreme Court took a leave of absence from the U.S. Supreme Court. During that absence he served as Ambassador to England and
performed "diplomatic tasks." He remained in that position until 1795. Upon his return to the United States, he resigned from the U.S. Supreme Court to become Governor of New York State. Similar actions by other justices and politicians occurred frequently during the early history of our nation.

Mr. MacKenzie details the frequent involvement of members of the federal bench in cases in which they had a financial interest. Despite this financial interest they pretended to a lack of bias that was not reasonable.

For years federal judges have used as an excuse for their ignoring common sense a federal court rule that they should not remove themselves from cases if they "believed that they could be fair." Mr. MacKenzie discusses at length the "Velvet Glove" tactic. The judge by denying any bias places the burden on the attorney to waive his right to object to a certain judge hearing his case.

The subtle ways in which an attorney can be discriminated against in a later case provide the leverage that has resulted in attorneys declining to risk challenging federal judges about their financial interests in cases. Full disclosure by many federal judges often would have shown a bias.

In California, the use of an affidavit of prejudice in a case is used to prevent a judge who is perceived to be biased from hearing a case.

The title of this paper "Judges and Ethical Perceptions" could focus upon the personal perceptions of judges or upon
the perceptions of the people that appear before a judge. This paper will focus upon the perceptions of people as they observe the conduct of a judge as that judge functions in a judicial capacity. The conduct of judges against whom complaints have been filed constitutes the basis for the summations and conclusions that will be presented. Persons include the public, litigants, attorneys, and employees.

Much effort has been expended by the California Judges Association (CJA), the Ethics Committee of the CJA, the American Bar Association, the American Judicature Society, the National Conference of Judges, and other organizations to establish programs to improve the conduct of judges.

Another aspect of the study relates to seminars that are conducted to help judges. Many seminars are conducted to assist judges to recognize what may be perceived as problems in interacting with women or men, and minority ethnic groups.

Special sessions have been provided for several years at the California Judicial College by experienced judges teaching newer judges and experienced judges to alert them to the possibility that they may have prejudices that can be reflected in their conduct and in their decisions.

Another aspect of this study will be an examination of those situations that are caused by the judge. Inexperience, frustration, anger, and other factors have been reported and relate to the misconduct of judges. Such complaints have been lodged with the Commission on Judicial Performance and have
been examined and detailed in the published decisions of the California State Supreme Court.  

An important aim of this paper is to provide judges with suggestions as to a word or a phrase or a short statement that can be discreetly displayed on the bench. It may be a short sentence, or an acronym, or an old Latin word (i.e., a Latin word without vowels). The purpose is to provide in a short word or brief phrase a mnemonic device that appeals to the judge and will cause the judge to pause and consider his or her actions.

Just advising a judge to use common sense will not always help the judge through a difficult situation. Common sense often is a trap. Even a brief examination of the complaints filed by unhappy litigants or members of the public illustrate the bizarre conduct that has occurred in courts in the guise of dispensing justice. Often no element of common sense can be found that led to the conduct.

Many judges and court commissioners conduct proceedings for 300-500 persons a day. A court that has 100 cases called per day is not unusual. When so many nervous persons are ordered to appear before a somber figure in a black robe strange incidents often occur. The causes of many of the incidents are obvious.

Persons are placed in a strange environment. The judge has great authority over the persons; even the language used by the judge and the attorneys is different from that of the
public. The normal reactions, conduct, and language of the persons appearing is often inappropriate. Staff, attorneys, and judges speak words that do not always mean what they mean outside of a courtroom.

It is my contention that many judges lack sensitivity to the emotional impact of the courtroom environment upon those who are strangers to the process. Efforts of the judicial system to overcome this lack of sensitivity or concern have been intense during the past fifteen years. I believe that despite the intense efforts made to affect the conduct of all judges, that many judges function within a shell that virtually defies penetration by usual practices.

Through this paper, I shall make another attempt to change the attitude of judges as they sit on a bench and make rulings there or in their chambers during judicial proceedings. I shall call this approach by the trite phrase, "shock treatment." We have grown up in the judeo-christian environment concerned about what were labeled the seven deadly sins. They are encompassed within the Ten Commandments. When judges examine the many instances in which the conduct of their associates has been unreasonable, they may wish to adopt or adapt some idea to assist them through an unexpected and unwanted incident.

Many attorneys practice law with the intent to create conflict in the courtroom with the judge and try to deliberately cause the judge to become angry in order to force
error by the judge. This aspect of the problem has not been discussed in any of the reports of the Commission on Judicial Performance about the conduct of judges. I will not address that problem.

I shall review the thirty reports of the Commission on Judicial Performance and will discuss from those numerous complaints at least seven deadly sins committed by judges as they function in their judicial capacities.

Traditionally, the seven deadly sins have been listed as anger, covetousness, envy, gluttony, lust, pride, and sloth. Since gluttony will be deleted from the accepted list of seven deadly sins this year and has never been listed as a complaint against a judge, I will not refer to the seven deadly sins and will not limit the identification of deadly sins of judges to six or even seven. The terms for the deadly sins are strong and some of them may even evoke abhorrence or disgust. Some persons may argue that the words are too strong to use in describing the flaws of judges.

However, even a cursory review of the kinds of complaints that have been lodged against judges will dispel that naivete. Further, judges and observers of judicial conduct have debated this question, "What standards should be imposed upon the behavior of those who control the lives of thousands of persons?" Should we ignore the history written in the record of the complaints of persons appearing in the courts of California for the last thirty years? The second question
demands a clear "no" answer.

This paper does not purport to be a psychological study of the conduct of judges. This is an empirical study. It is personal in that it will reflect many of my observations and impressions about other judges. My experiences will reflect my contacts with judges from all counties of the state during training and educational seminars for twelve years. For three of those twelve years, I was a member of the Ethics Committee of the CJA. I shall use my experiences as a framework for identifying problems and as support of my selection of examples of misconduct and examples of possible ways to correct the problems that judges experience and often create.

As I have reviewed the materials on the misconduct of judges, I have been struck by the lack of attention devoted to the problem of ethical conduct of judges twenty to twenty five years ago and the emphasis that has been placed upon judicial conduct in publications, newspaper articles, books, and training programs during the past few years. 17

In a small collection of administrative papers provided me when I was appointed was a two page pamphlet listing the seven canons of judicial conduct. My attention was not directed to any materials on the subject.

Now a judge must attend a five day course within two to three months of taking the bench. The course includes intense scrutiny of attitudes of judges that can lead to charges of bias against ethnic groups and women. In addition, all judges
must attend a two weeks seminar in the July following their appointment or election to office. In this period they review in greater detail various aspects of the duties and responsibilities entailed in functioning as a judge.

Throughout each year, special programs are conducted lasting from one and one-half to five days on various subjects that are critical to judges who wish to maintain currency on the law and on approaches to solving the various problems that frequently arise in the court. Although attendance is not mandated, the seminars are well attended and reimbursement of expenses of attending is paid for by many counties.

Most of the seminars include courses that deal with biases and prejudices. All the judges that are registered for the seminar must attend those particular classes.
CHAPTER 3
INTRODUCTION

Judges function in a fishbowl. When they sit in a courtroom they are always at center stage. Even when other actors, the attorneys or witnesses, are performing, the presence of the person in the black robe transcends the situation. Despite the apparent openness, as in most court rooms there are no walls or partitions between the spectators and the judge, there is little communication between the public (including witnesses, and litigants) and the judge. Witnesses will rarely speak directly to the judge and the judge should hesitate to speak to witnesses.

At arraignments the persons charged with a crime are expected to know fully the seriousness of the crime, the affect it can have on their lives, and the proper words to say when the judge wants an immediate response to a question. However, even the criminals who appear frequently in court lack average language skills. Based upon my experience as a teacher in a one room school and in an elementary school, it is my opinion that many of the ninth grade dropouts that I have represented read at a third or fourth grade level.

Judges and attorneys often rely upon inadequately trained translators and bailiffs to explain complex legal concepts to those charged with crimes. Expediency has been used as an
excuse for rushing through arraignments and accepting pleas from persons who do not have the faintest conception of what the criminal justice process entails.\textsuperscript{18}

The clerk or the bailiff or the court reporter may pass a note or whisper a message to the judge. A limited communication occurs between the public and the staff and questions are sometimes posed to the judge. Criticisms of mannerisms, or of attitudes of a judge seldom are made and probably less often are brought to a judge's attention. Even family and friends may fail to identify problem areas for a judge.

Part of the reason for this one way path of communication is the possible violation of the prohibition upon ex parte contacts with a judge. The potential for abuse of the judicial process is so great that a judge must look to other ways to assure himself or herself that the perception that the public, the attorneys, and the litigants have is what the judge desires and that it is correct.\textsuperscript{19}

Ethics is a subject that generally has been brushed aside by judges as they perform their adjudicative function. In the past few years the business community, the educational systems, the politicians, and judges have been alerted to problems in major sectors of some of our populous communities to serious deficiencies in ethical practices.\textsuperscript{20}

For many years the Ethics Committee of the California Judges Association has provided guidance to judges who ask for
assistance to help resolve problems that have risen in court administration and in judicial functions. The committee has published informal and formal opinions on a variety of subjects. Its functions do not include the practice of law and it refuses to address the issues that require the interpretation of statutes. The opinions are advisory in nature. The committee does not practice law, condemn conduct, nor prescribe actions. The burden of making a judgement is left upon the judge.

The Center for the Study of Judicial Education and Research conducts concentrated study programs for judges in all areas of judicial activity and since 1980 has presented programs on jurisprudence and the humanities.

The jurisprudence and humanities programs were designed to relate the day to day activities of judges to legal concepts that form the basis for much judicial conduct. They provide a basis for the relation of ethical conduct to judicial conduct.\textsuperscript{21}

In 1960, a Commission on Judicial Qualifications was authorized by the legislature. The Commission began functioning in 1961 and submitted its first five page letter report to Governor Edmund G. Brown on January 26, 1962.

In 1961, seventy five complaints were filed against judges. The pattern of reporting actions was set in broad terms and an analysis indicated that most of the complaints were made by dissatisfied litigants. The commission takes no
action on the question of whether or not the judge was correct in a legal matter. It relies upon the appellate process to resolve such questions.

During the year, two justice court judges, one municipal court judge and one superior court judge resigned or retired while investigations were pending. No recommendation for removal or retirement was filed with the Supreme Court as of December 31, 1961.

Reports have been submitted annually and the last few have been about seventy pages long. They include a summary of the complaints that have been made about judges. The more recent reports provide an analysis of the complaints and report on the actions taken to assist judges to improve their conduct, and to resolve problems.

A brief summation of the actions of the Commission on Judicial Qualifications reported upon in 1990 indicates that about 600 of the 885 complaints investigated were resolved by a response to the complainant. Often the complaint was unfounded or was simply based upon dissatisfaction with the judgement that was made in a case. About thirty of the cases were resolved by asking the judge to explain his or her actions. Some 200 cases required investigation. Most of those were resolved by letters to the judges that made suggested modifications in behavior.

These two very brief summaries of the two reports submitted to the governors in 1962 and in 1991 illustrate the
quantitative changes that occurred in the California courts during that period.

Many of the complaints filed against judges require formal investigations into extremely serious allegations. The process requires the appointment of hearing masters. Evidence is taken over a period of a few months and then after review formal recommendations are made to the State Supreme Court. The State Supreme Court reviews the transcripts of the hearings and the recommendations, and provides the judge being investigated an opportunity to object to the recommendations and to present evidence in mitigation of the derelictions alleged. After many months, the State Supreme Court will issue its decision.

In the past thirty years, the Commission on Judicial Performance has recommended to the California State Supreme court that only one superior court judge, the Honorable Charles F. Stevens of the San Diego County Superior Court, be removed from office. The State Supreme Court found the evidence insufficient to justify his removal from office and dismissed the action.

Ten municipal and justice court judges have been removed from office for judicial misconduct. It was recommended that Judge James J. McCartney be removed from office but he was censured. It was recommended that Judge Kenneth L. Kloepfer be censured but he was removed from office. Municipal Court Judge Charles D. Boags was removed from office after being
convicted of crimes of moral turpitude and the judgment had become final. Lewis A. Wenzel, a San Diego County municipal court judge was convicted of associating with prostitutes. A recommendation that he be suspended from office was submitted by the Commission on Judicial Performance to the State Supreme Court. Although the conviction was overturned on appeal, he resigned from office and the State Supreme Court held that the issue of removal was moot and took no further action in the case.

Associate Supreme Court Justice Marshall F. McComb was removed from office because of senile dementia and San Diego County Municipal Court Judge Robert Roick was removed from office because of health problems.

Many judges have retired or resigned upon notice of the initiation of an investigation. Other municipal court judges, superior court judges, justices, and justice court judges have retired or resigned from service rather than contest the findings of the commission. The Commission on Judicial Performance reports each year the status of such investigations and the actions taken by the California State Supreme Court as it agrees with the recommendations, modifies them, or disagrees with them.

The reports of the Commission on Judicial Performance have changed through the years from brief letter reports to formal summations of the actions taken by the commission. The reports include the authority for the actions of the
commission, analyses of the complaints, and summations of the actions taken on the complaints.

The reports reflect the changing nature of the judicial function during a period of significant increase in the population of California, the changing ethnic composition of California, and the large increase in the number of cases filed in the courts.

California, because of its size and the size of its court system, cannot be labeled a microcosm of American society or of the diverse American court system. However, the problems that have been experienced in California have been experienced in other jurisdictions and in the federal courts.

California was the first state to establish a commission to examine the conduct of judges and to provide a method to assure that citizens had an agency to which they could submit complaints about judges. The title of the Commission on Judicial Qualifications was changed in 1976 to the Commission on Judicial Performance. This change reflected the changing role of the commission as its duties and responsibilities were clarified and as they were modified. During the thirty years of the existence of the commission, 45 states have established similar commissions and the remaining five have a similar procedure that examines the conduct of their judges.

The federal bench came under scrutiny in the sixties because of the alleged misconduct of Associate Supreme Court Justice Abe Fortas and Associate Supreme Court Justice William
Each of them had accepted retainer fees for performing duties and responsibilities for corporations that could have conflicted with their responsibilities as U.S. Supreme Court justices.

John P. MacKenzie in, *The Appearance of Justice*, presents a fascinating expose of the deficiencies and questionable conduct of many of our more famous U.S. Supreme Court Justices. Mr. MacKenzie discusses at length the lack of control over federal judges and justices and argues that the public is entitled to know about the charges made against many of them. State and California judges are subject to similar scrutiny and the State Supreme Court opinions that confirm or modify the recommendations of the Commission on Judicial Performance provide a review of the conduct of judges who have been charged with prejudicial conduct or with misconduct.

The problems that judges experience through inadvertence or lack of concern are significant. The procedures that have been designed to assure that competent attorneys are appointed to be judges do not function well. Occurrences with reference to confirmation hearings held for nominees to the U.S. Supreme Court Supreme Court by the Judiciary Committee and in the Senate relate to some of the complaints filed against members of the state judiciary.

During the time that Associate Justice Abe Fortas was on the Supreme Court he frequently went to the White House and attended meetings of President Lyndon B. Johnson's kitchen
cabinet. He was a close friend of President Johnson and made suggestions and proposed actions that should be taken. Apparently, he did not discriminate between his role as a Supreme Court Justice and that of a political advisor.

After President Johnson nominated Associate Justice Abe Fortas to be Chief Justice of the Supreme Court, his friendship became an issue during the confirmation hearings. Had not Justice Abe Fortas been a close friend of President Lyndon Johnson, his questionable and errant conduct would not have been examined when he was nominated to be the Chief Justice of the United State Supreme Court.

The Senate and public became engrossed with a problem that would not go away. In addition to giving President Johnson and his staff advice, Fortas had accepted a lifetime retainer from a corporation. Further, the corporation assured Associate Justice Fortas that his wife would be provided a similar lifetime benefit if he should die. Because of these and other allegations, he finally withdrew his name from consideration for appointment to the most prestigious legal position in the country.

President Richard Nixon tried to change the composition of the U.S. Supreme Court so that it would favor his political views and in doing so nominated unqualified persons to sit upon the Supreme Court. Many older Americans recall the names of Clement F. Haynsworth, Jr. and G. Harrold Carswell as being those incompetent persons. Nixon’s nominations of these men
were rejected by the Senate.

President Ronald Reagan nominated the brilliant and radically conservative Appellate Court Justice Robert Bork to be a U.S. Supreme Court justice. However, the public did not appreciate Bork’s brilliance and probably were perplexed by the narrow views that he espoused for the role of women in American society. Because of television the public became aware of the nature of the confirmation process, and possibly to the politicians’ dismay, future confirmation hearings will continue to be transmitted throughout the world.

Fortunately for the public, all governors and all presidents make many excellent appointments to judicial positions. Whether or not the good appointments outnumber the poor ones can not be determined until several decades after the appointments are made.

The public occasionally becomes distressed with what they perceive about the conduct of state court judges and unseat those that they do not believe should continue in office. The most dramatic in the history of California was the unseating from the State Supreme Court of Chief Justice Rose Elizabeth Bird, Associate Justice Cruz Reynoso, and Associate Justice Joseph Grodin in the 1986 general election.

In that time period, the electorate favored the death penalty. Because of decisions made by the "Bird Court," and the strong articles written condemning these supreme court justices, the perception of the public was that they would not
confirm the imposition of the death sentence upon a criminal. They were unseated.

Despite the concentrated efforts of dedicated judges to the task of orienting newly appointed and newly elected judges to the problems of being a judge, unusual mistakes occur. They occur with experienced judges and with those of a few years experience and those who are new to the role.

Many of the complaints about judges are about the conduct of judges as they react to litigants, lawyers, parties, and their staff in the court room. Often incidents occur that are precipitated by violations of basic rules of common courtesy.

It is the position of this writer that the problems are basic to a need for sensitivity on the part of judges to the lack of orientation to the judicial process that is found among the majority of persons who enter a court room as a plaintiff or a defendant.

A major study that has been prepared in draft form addresses the problems of gender bias in the courts of California. Significant progress has been made in attacking all the problems that may arise as a judge engages in conduct that affects the lives of litigants and those who work in his presence or observe the functioning of the judicial process.

Despite the progress, the number of incidents continues to increase. This is partly a function of the increase in the number of full time judges who sit in California. It is also a function of the increased awareness of the public that it
has a right to hold judges accountable for their conduct.

In examining the various problems that occur that related to overt and covert behavior of judges, I have been struck with their apparent relationship to the seven deadly sins. Gluttony is to be dropped from the list this year. The remaining ones should be considered in relationship to the kinds of problems that have evoked complaints from citizens, attorneys, associates, the employees and parties to court actions.

I shall examine the various reports and documents that reflect what has been done to help resolve many of the problems. I expect to establish some warning signs, phrases, or even acronyms for judges to think about as they go about their daily assignments.

Why should this paper address a problem that is well known? Annual reports are published and at least since 1985 have been distributed to all sitting judges. Reports have been submitted to the Governor since 1962. Yet, in 1989, in San Bernardino County, neither the Administrator of the Municipal Court nor of the Superior Court had a file of the 29 reports.

In my opinion, no judge can function properly without a basic view about life and its purposes. Whether a judge verbalizes or expresses it in some way, the criminals, the litigants, and the lawyers know what it is. However complex the judge may be, the public will usually evaluate a judge in
simplistic terms as being either a "hanging judge," or one who is compassionate and concerned about what happens to the people who appear before him or her.

In theory all judges are fine men and women who dress in a black robe as they rule upon issues that affect the persons that appear before them. Actually, some of those judges make mistakes. In the past, problems have been identified and they will be identified in the future.

What can be done to prevent all mistakes? Of course that is a goal that will never be reached. However, since problems do continue to occur, various approaches must be taken to try to prevent judges from making inadvertent, careless, or even intentional mistakes. Acceptance of the idea that a person may have prejudices or biases that affect his or her courtroom demeanor will constitute a major step in preventing abuse of attorneys, litigants, staff, witnesses, and observers.

I have known of judges who have had posted on their desks warning words that were expected to cause them to pause and make a considered response to a significant occurrence. Perhaps the word or phrase was not strong enough.

Whether or not such phrases as, "Do not be lustful," or "Do not be a thief," or "Do not abuse women!" will prevent some of the mistakes that judges make can not be assured, but such strong statements do emphasize the nature of many complaints that are made against judges from year to year.

The seven deadly sins are: anger, covetousness, envy,
lure, pride, sloth, and gluttony. A question that I shall consider often during this study is, "Do the seven (now six) deadly sins relate to the conduct that results in complaints being filed with the Commission on Judicial Performance.

However, limiting this paper to the six deadly sins would not suffice as a basis for examining the problems experienced within the court systems. This paper will examine aspects of the functioning of the judicial process that range beyond the six deadly sins and may be based upon legislation and interpretation of statutes and general standards of morality.
CHAPTER 4
PURPOSE

I began this paper in 1989 with the limited intent to examine the thirty annual reports of the Commission on Judicial Performance and relate those reports to what I knew about judicial conduct and misconduct. As I began that task, I became aware of other publications that had become available since my retirement in 1987. Among them are The California Judicial Conduct Handbook and Achieving Equal Justice for Men and Women in the Courts. In addition, I chanced upon John P. MacKenzie's book, The Appearance of Justice. Each of these influenced my views and in order to place the concepts of judicial conduct and misconduct in proper perspective, I believed it necessary to review them and comment about their evaluations of conduct that occurs in the courts, and to note any recommendations made.

When I realized that no superior court judge had been removed from office by the California State Supreme Court, I decided that I must include in my examination of the reports of the conduct of judges in California those opinions of the California State Supreme Court that imposed public censure upon a judge. The result has been a long paper.

It was not until the publication of the California Judicial Conduct Handbook in 1990 that summaries of all of the
decisions by the Supreme Court that resulted in the removal of judges from office were published in one book. Section V of the Handbook also includes the decisions that imposed public censure upon judges.

I have independently reviewed the cases and the thirty annual reports of the Commission on Judicial Performance from 1961 to 1990. During my review of a variety of newspaper articles, magazines, and books, I found no reference to any articles published on the subject of the disciplinary actions of the Commission on Judicial Performance.

Jack E. Frankel was an excellent spokesman for the Commission on Judicial Performance. During the thirty years that he directed its activities he presented programs and appeared before legal and judicial organizations throughout the country to emphasize the nature of and the importance of the Commission and similar organizations.

As a result of my examination of all of the reported cases of the Supreme Court on the subject of removal from judicial office and public censure and the annual reports of the Commission, and other publications and books referred to above, this paper has increased in length. If I had not included these specific publications and articles in my review of the conduct of judges, I think it would have been seriously flawed.

Only by examining these very specific articles and opinions have I gained a broader understanding of the nature
of the actions that constitute judicial misconduct that has occurred and continues to occur in the state of California.

The purpose of this study is to examine the opinions of the California State Supreme Court regarding removal from office and public censure of judges to determine the nature of the actions that resulted in public discipline.

In addition, I expect to propose an acronym, or phrase, or sentence that will serve as a device to help judges avoid inappropriate conduct as they perform their judicial functions.

Private, state and federal organizations have prepared guides, books, and devoted articles in magazines and flyers to alert judges to the high probability that they could be disciplined or even removed from office for inappropriate conduct.

Since 1960, there has developed a virtual growth industry that deals with the promulgation of advice to judges. In California, reports of perceived judicial misconduct have increased significantly in the past thirty years. Steven Lubet has summarized one aspect of judicial misconduct in a small book titled *Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges.* Barbara L. Solomon has published in convenient form the summaries of published advisory opinions of various state supreme courts that have reviewed the actions of erring judges. Her collection relates primarily to the advice
contained in the Canons of Judicial Conduct published by the American Bar Association.26

Despite these and other efforts to assist judges, the reported incidents of inappropriate conduct increase each year. This paper is an effort to collect examples of such conduct in one article and thus emphasize for the reader and judges the requirement that judges take steps to eliminate the many obvious and often blatant acts of misconduct that occur each year in the California courts.
CHAPTER 5
PROCEDURE

I have anticipated that this paper will be based upon many of my personal experiences and evaluations. I will use as background for my discussions and comments, several publications and reports about judicial conduct. They include:

THE CALIFORNIA JUDICIAL CONDUCT HANDBOOK.\(^{27}\) It provides a convenient reference to the kinds of inappropriate incidents that have occurred in courts and in chambers and makes suggestions that may help judges avoid similar misconduct.

The opinions of the California State Supreme Court ordering that certain judges be removed from office.

The opinions of the California State Supreme Court ordering that certain judges be censured publicly.

The thirty annual reports of the Commission on Judicial Performance from 1961 to 1990.

The draft report of the Judicial Council Advisory Committee on Gender Bias in the Courts that has been published and distributed for comment. It is titled Achieving Equal Justice for Women and Men in the Courts.\(^{28}\) The Los Angeles Times has praised its proposals as "being brilliantly to the point."\(^{29}\) Sexual bias is one of the areas that is of concern to many judges and to the public.

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As mentioned above, I hope to develop an acronym that may serve as a reminder to judges to stop before exacerbating a situation that may have gotten out of control. There is a glut of information available on the subject of judicial misconduct. The numbers of reported incidents have increased significantly in the past thirty years. Investigations are conducted in confidence. Reports are made to the Governor each year of the number of incidents, and the results of the investigations of those incidents. Judges are provided copies of the annual reports. I am unaware of any studies that have been made of the use that judges make of the reports.30

I shall comment from time to time on newspaper articles and magazine articles that have discussed or commented upon misconduct of judges. Other than references in articles to U.S. Federal Judges, my comments will relate to California judges and California courts.
When I was appointed to the bench in 1975, there was little emphasis directed to ethical issues. A judge who sat in a court house twenty-five miles away "appointed himself to advise me" and I began functioning. I don't recall his ever contacting me nor do I recall asking him any questions. One of the judges in the courthouse where I sat was very helpful and gave me practical advice about various aspects of performing judicial responsibilities.

Most judges that I knew were too busy working to be concerned about a new judge. However, a few did intrude with unneeded and unwanted advice. One even sent his bailiff into my court room to sit and observe and report to him about my actions.

I attended a two and one half day seminar in early December after taking the bench in October of 1975. In July of 1976, I attended an intensive two weeks seminar conducted by the California Judges College.31

Through the next few years many additional programs were established to orient new judges and to remind more experienced judges of their duties and responsibilities. Now, newly appointed and newly elected judges must attend a five day program within ninety days of taking the bench. This
course is followed by a two weeks course that judges are expected to attend in July.

Judges may select and attend a variety of programs that are usually presented by sitting judges who have expressed a particular interest in a subject or have been recognized as experts in some significant evidentiary or procedural issue. These programs have been improved as those who teach now have built upon the past. University professors frequently present specialized areas or assist judges in the preparation and presentation of subjects that are considered to be important.

The programs are of great value as they provide opportunities for judges to exchange ideas and discuss problems with other judges who face similar issues. Most counties provide financial support for judges to attend a reasonable number of these varied programs each year.

Pamphlets and manuals that are used by judges and professors are available to judges upon their making a request for them and are presented to judges who attend sessions. The California State Bar and the Rutter Group are two of several organizations that present programs on additional subjects that are helpful to judges as well as to attorneys and paralegals.

One of the more valuable of recent publications of the California Judges Association is the California Judicial Conduct Handbook. This book was distributed to all sitting judges shortly after its publication in 1990. It is
available on request to retired judges who are members of the California Judges Association.

The Hon. David M. Rothman comments in the introduction that the California Judicial Conduct Handbook was compiled to provide a source for all "materials related to judicial conduct in California since 1960." That date was selected as the California Commission on Judicial Qualifications was authorized by the legislature in that year. Its history and the California State Supreme Court decisions that have confirmed or modified the recommendations of the commission are invaluable resources to judges and to students who wish to understand the duties and responsibilities of judges.

In my opinion, the Handbook is practical and should be of value to new and to experienced judges. The first major section, "Judicial Conduct," is divided into two parts. The first is titled "Conduct in the Courthouse" and the second is titled "Conduct in Private Life."

This handbook is realistic as it starts with a comprehensive table of contents and ends with a practical index. It provides a summary of situations that a judge must face upon donning a judicial robe in the context of real court situations. Thus, a judge who encounters a problem will be able to review quickly the suggestions and examples of actions taken by judges who have confronted unusual problems.

SECTION A. CONDUCT IN THE COURTHOUSE

The first section consists of a very extensive listing of
conduct that should be avoided. Accompanying the comments are references to the judicial canons, informal or formal opinions of the ethics committee, and case citations.

A new judge should read the table of contents before ever stepping out from chambers to assume the role of judge. Short messages are communicated in the brief headings of each section. A judge is somewhat like a circus performer. He or she must constantly walk a tight rope as regards his or her conduct and as he or she functions as a judge. These constructive suggestions should help a judge maintain his or her balance.

The ability to remain aware of all of the very significant elements that make up the events that occur predictably and unpredictably in a court room is the major factor that distinguishes good and bad judges.

Judge David M. Rothman begins the section on "Conduct in the Courtroom" with an admonishment about not becoming involved (with litigants or attorneys) and to gain self awareness. Functioning as a judge in a busy court can be compared to the role of the ringmaster in a circus. As the ringmaster must be aware of the various "acts" that may be occurring simultaneously, the judge must be aware of all the factors that make up the judicial process.

One area that has proven the downfall of some judges has been a failure to avoid the appearance of impropriety. Actions taken by judges that evidence prejudices and bias
against women, blacks, Spanish-Americans, or other identifiable groups have been officially disapproved by the members of the CJA. It is significant to note that the vote to bar membership in organizations that discriminate except for religious organizations was very close.

The vote on the question was presented to the members of the CJA in 1986. A brief summary of the background for the vote follows. In 1984, at the annual meeting of the American Bar Association, the question of membership in discriminatory organizations was debated. The issue had been debated at three prior annual meetings of the American Bar Association. The delegates finally approved a resolution that decried membership in organizations that "invidiously discriminated."

In 1985, the issue was made an agenda item for discussion at the annual CJA meeting. It was discussed by those for and against the adoption of such a statement by the CJA. By a vote of the members present it was agreed that the matter would be presented and voted upon at the 1986 annual meeting of the CJA.

The question of whether or not judges could appropriately be members of organizations that discriminate was discussed and debated at many seminars and meetings of judges throughout the state from October of 1985 to September of 1986.

At the 1986 annual meeting, after an emotional and lengthy discussion, it was passed by only two votes of the approximately 400 members present plus nineteen votes that
were voted by proxy. Thus, the ban upon membership in organizations that "invidiously discriminate" became the official position of the CJA at the 1986 meeting. The problem has not been resolved as some judges continue their membership in organizations that discriminate against women and against ethnic groups.

As mentioned above a study of the incidence of gender bias in California courts was published in 1990 and has been distributed to judges and bar associations and to other interested groups for comment. Recommendations have been made and it is expected that many of them will be implemented.\(^\text{34}\)

Each section of the Handbook has pertinent comments and specific examples about conduct that should be avoided. It is not my intent to summarize all of the many sections of this excellent guide, but I do wish to highlight some of the comments that Judge Rothman makes.

It is important to emphasize that the examples that Judge Rothman uses are taken from informal and formal opinions of the Ethics Committee of the CJA, from commentary to the Canons of Judicial Ethics, from annual reports of the Commission on Judicial Performance, from decisions made by the California State Supreme Court as it has reviewed recommendations of the Commission on Judicial Performance, and from comments of experienced judges made at seminars.

I shall select some of the more egregious examples of misconduct of judges to illustrate my opinion that there are
at least six deadly sins committed by judges in their judicial roles.

"Expression of racial and ethnic bias." Although some of these comments were supposedly attempts at humor, the Supreme Court in reviewing the recommendations of the Commission on Judicial Qualifications found them to be offensive and inappropriate.

Comments of Judge Chargin, Judge Geiler, Judge Stevens and Judge Kennick were found to be abusive for making such remarks as "hot tamale" to persons with Spanish surnames, and "blacks liking watermelon" to blacks. These are just two examples of many instances that occurred both on and off the bench by these and other judges.

Newspaper and magazine articles and official reports have noted the many instances of bias against women that occur in courts. "Five reported cases have involved incidents of gender bias by judges, including lewd remarks in 'street language' to and about a clerk, stereotypic remarks about women, verbally berating a woman attorney, telling sexist jokes to women in chambers, and repeated use of terms of 'endearment.'" Although these are obvious examples of inappropriate verbal expressions of bias, the study found that such behavior extends to all aspects of the judicial process.

I shall comment below on the study of gender bias that was completed in 1990, but think that the summary comments by
Judge Rothman in the Judicial Conduct Handbook warrant quoting at this time. Gender bias has been found in "...many other aspects of the judicial process, including failure to control attorney misconduct, inequality in judicial appointments, custody and support rulings in dissolution proceedings that have a disparate impact on women, judicial prejudices toward the victims of domestic violence, obstacles to access to the court for those victims, disparity of available services and facilities between women and men in jail, lack of adequate care for the particular health needs of women in jail, and lack of a comprehensive personnel and standards on gender bias in the judicial system."⁴¹

Judges must not prejudge cases. The opinion and decision of the California Supreme Court case in Kloepfer v. Commission is instructive as to many actions which demonstrate judicial excess.⁴² The appellate division of the San Bernardino County Superior court found that the trial judge (Kloepfer) had "displayed such animosity toward the defense in the trial that it denied even the semblance of a fair trial. The judge was rude, abusive and hostile to a defense witness; he made it clear that he disbelieved the witness, and he was abusive to the defendant."⁴³

In another case wherein a motion to suppress certain evidence had been granted, Judge Kloepfer refused to grant a motion to dismiss the charges and expressed the opinion that as he had read the report, he believed that there was enough
evidence to convict and that the defendant was guilty of the charge.

The examples of bizarre conduct that have been recorded in the history of the reports of the Commission are many. A few examples of a judge acting as an advocate are listed.

"Making recommendations to the prosecutor, giving one witness the raspberry, passing a sympathetic note to a witness, calling some witnesses, excessive examination of a witness, and inappropriately curtailing the examination of a witness, and also disallowing cross-examination of a witness, conducting investigation in a case, entering judgement without giving an opportunity for presentation of a defense, home towning (i.e., giving local attorneys advantages), acting out of revenge, use of language that infers guilt of a defendant, and making inappropriate comments to a jury after the verdict."44

Many judges have been disciplined privately and some publicly for displays of anger and abuse of court personnel, attorneys, and parties. All judges should be aware of the causes of frustration and must control their anger.

The old saw that "power corrupts and absolute power corrupts absolutely" should be frequently reviewed by judges. (This conclusion was stated by Lord Acton in 1887 in a letter written to Bishop Creighton.) Some judges believe that when they were installed in office, that they were anointed. The examples of abusive conduct serve as a reminder to judges of
the necessity to be courteous to all persons in a courtroom and to consider the impact of their actions upon litigants, the attorneys, and the spectators.

All of the examples listed have been detailed in the reports of the Commission on Judicial Performance and can be found in the cited cases wherein the California State Supreme Court sustained the recommendations of the Commission on Judicial Performance.

The frequency of the word abuse to describe actions should serve as a warning in itself. Examples are: "Abusing staff, abusing victims, abusing litigants, abusing pro per litigants, and abuse of persons speaking a foreign language." 45

Too many judges have coerced guilty pleas from defendants by threatening to impose more severe sentences in event a person chooses to go to trial and is convicted. The opinion reference Judge Ryan illustrates such conduct. 46 The Supreme Court repeated its admonishment, "The desire to expedite proceedings does not justify any action that discourages defendants from exercising their constitutional rights." 47

The California Supreme Court decisions and their opinions are packed with examples that may astound those who read of the often lengthy period during which some judges frequently abused persons appearing in their court and abused the judicial process. The names of some of the judges are well known, i.e., Kennick, Ryan, Geiler, Cannon, McCullough,
Kloepfer, Gonzalez, Gubler, and Stephens. The length of the list supports my position that many judges lack sensitivity to the emotional state of persons who appear in court.

The conduct of several of these judges as reported in the recommendations of Commission on Judicial Performance and the opinions of the California State Supreme Court confirm the need for the Commission and for the establishment of published procedures to assure that complaints are examined.

Instances in which judges have attempted to use their office for private interests have occurred. Canon 2b of the California Code of Judicial Conduct states, "Judges should not allow their families, social, or other relationships to influence their judicial conduct or judgment." 68

In recent years, two judges have become involved in trying to influence the district attorney not to prosecute family members. Judge Boags involved himself in some 200 tickets that had been given to friends of his son. He was convicted of a misdemeanor offense involving moral turpitude and was removed from office. 69

In another case, the Los Angeles Times alleged that Los Angeles County Superior Court Judge James Correl had gone to the Whittier police station and had used his judicial authority inappropriately. "By using his judicial authority (he) avoided posting $500 bail for his son or letting him remain in jail for six hours, the standard time Whittier police hold drunk driving suspects before releasing them on
their own recognizance." A recent newspaper article indicated that the Commission on Judicial Performance would not take any public action on the matter.

Some examples of abuse of judicial power follow: "Conducting investigation in case not before the judge, conducting an improper ex parte investigation, fabricating reasons for ruling, retaliatory ruling, ruling to frighten the accused, and attempting to influence the prosecution."

Judges have the power to impose sanctions upon persons, staff, litigants, or attorneys for interfering with the judicial process or for inappropriate conduct. The power to hold persons in contempt may be enforced with fines or jail sentences. It is a power that must be used with discretion. Unfortunately, its use has been abused by judges carried away with power, frustration, anger, or on occasions animosity.

If a judge holds a person in contempt he or she must establish a record that describes the incident. Then, that record can be reviewed by an appellate court to determine whether or not the action was proper. Often, such records are incomplete and for that reason contempt orders are often reversed.

Judges should be cautious in using humor during judicial proceedings. Too many judges have told "dirty jokes" to women attorneys or in the presence of women clerks or other staff personnel.

The types of incidents that have resulted in reprimands
and in some judges being unseated are grotesque. Judge Geiler, during a trial expressed his disbelief of a witness's testimony by making the noise known as a raspberry. He had a battery operated dido (sometimes called a cattle prod) that he threatened to use on an attorney if he asked certain questions during a preliminary hearing. On another occasion he touched the same lawyer on the buttocks with the dido and laughed about the incident with his clerk. Judge Geiler's vulgar physical contact with a court commissioner was inappropriate and should serve as a warning that the Commission and the Supreme Court will not consider such actions as "friendly horseplay."

The records are filled with examples of inappropriate conduct by judges. Rumors about incidents often are heard. Some such statements astonish and occasionally result in complaints to the Commission on Judicial Performance. Trying to separate fiction from fact is not easy and much of the effort of the Commission is devoted to distinguishing significant from trivial charges.

When an individual, or a commission, or the Supreme Court reviews the records of complaints against an individual or against judges as a group, it is difficult to believe that such outlandish behavior has occurred. In America, judges are either appointed to office by the governors of the states or run for office. The members of the federal judiciary are nominated and if approved by the Senate are appointed for life.
by the president. The requirement that a judge has been an attorney for several years before being eligible to assume office would seem to assure that clowns and buffoons should not apply, be appointed, or elected.

A problem that may never be solved is that many persons change personality when they are appointed to a judicial position. In California, there is no set procedure. The governor may ask for recommendations to certain positions or the local bar associations may make recommendations. Once the candidate's name is accepted by the governor as a candidate, judges and attorneys are requested to rate the proposed judge on various factors that are believed to provide a reasonable degree of probability that the person will be an excellent judge.

The system used in California and that of the federal government has not functioned well for the past fifteen or more years. Whether or not a merit system would function more effectively is not likely to be tested comprehensively in the states or by the federal government for the next twenty five years.

Since 1983, the major factor that has been used by California governors to determine whether or not a person will make a good judge is whether or not that person has ever been a prosecutor. This factor is apparently considered to be critical in order to assure that the judge will impose harsh sentences on those convicted of crimes. All other traits or
characteristics fade into the background.

Typically, prosecutors and ex-prosecutors band together and rate career prosecutors and former prosecutors as being those who possess all of the characteristics that will assure outstanding performance as a judge. Lack of other legal experience is considered unimportant. Whether or not the person is industrious or even intelligent is unimportant. Denials of a litmus test for persons being considered for appointment to the bench in California are met with disbelief by many observers.

The problem of trying to predict the ability of a person to function as a judge exists whether a person is being considered for appointment or whether that person runs for judicial office. Unless the person can claim that he or she was an aggressive prosecutor and has a burning desire to be harsh and to impose maximum sentences, he or she is unlikely to be elected to judicial office.\(^5^4\)

A further complication is that after being seated a judge must consider how those with a biased viewpoint will look upon his or her rulings. The court observers, probation officers who carry law enforcement badges, prosecutors, and the law enforcement personnel who testify in court will keep tabs on the judge. When the judge runs for office, as all state judges must do, the support of the law enforcement agencies in the local area is critical to victory in a contested election.\(^5^5\)
The comments above are made preliminary to a brief look at a major factor in rating or considering the effectiveness of judges, i.e., how judges deal with people. Unfortunately, most former prosecutors lack empathy for the disappointments and hurts that people experience. Most prosecutors, appear to believe that all of the defendants that appear in court are worthless. Despite their reliance upon friends and attorneys to support them in their effort to become judges, they often change personality when they take the bench. Abusiveness toward attorneys is one of the factors that Judge Rothman notes.

Verbal assaults are frequent. Some examples follow: "Shut up! (plus an obscenity) in a telephone conversation with a prosecutor, I don’t have time to practice law for you, rudeness to attorneys to encourage settlements, anger with counsel for refusal to stipulate to probable cause, and making a request that resulted in forcible removal of a public defender from a courtroom by two marshals."^56

Rumor has surfaced that one judge who referred in open court to an attorney as being brain dead (only one of several grotesque and abusive statements) is under investigation by the Commission on Judicial Performance. Since no superior court judge has been removed from office by the Supreme Court for wilful misconduct or conduct prejudicial to the administration of justice, even if reprimanded a judge’s conduct is not likely to change.
Some judges have created problems for themselves and for the judicial process by interfering with attorney-client relationships. Many public defenders have suffered abuse from judges who apparently disapproved of the system. Some of the examples of inappropriate conduct come from the decisions of the California State Supreme Court that have been referred to above. The names of Judges Cannon, Wenger, Gonzalez, Kloepfer, and Ryan have appeared frequently in the footnotes of this handbook about this subject as well as others.

Some judges have difficulty in disassociating themselves from long term friendships with police officers and district attorneys. One trap is the long established weekly or monthly poker game. Care must be exercised to prevent the game from becoming an extension of the court.

A morning coffee klatch of judges and attorneys in San Bernardino County was perceived by some as being a preview to "coming attractions in the court room" and was categorized by one attorney as being "Thunderbird Justice."\(^57\)

For many years probation officers went to judges with ex parte statements and information about recommendations for sentences. The system had evolved over many years and was accepted by new judges as "it had always been done that way." Finally, the practice was challenged and an Appellate Court found such a practice to be inappropriate.\(^58\)

Neither prosecution nor defense should take advantage of long time friendships to discuss either calendars or actions...
that may be taken in particular cases. The appearance of impropriety is obvious to defense attorneys who are often aware of such practices by Deputy District Attorneys and probation officers in the past. They had no way to prevent what the judge had come to consider a convenient process to help him schedule cases and estimate the length of proceedings.

Can a judge ask for comments from other judges about issues, sentencing, procedures or other aspects of the judicial process? The commentary on Canon 3A(4) does not "preclude judges from consulting with other judges, or with court personnel whose function is to aid the judge." However, some judges do not agree and object to one judge consulting another on issues in a case or sentencing practices.

A judge should look very carefully at the term "court personnel" if he or she is contemplating soliciting advice regarding judicial actions. Ex parte discussions with probation officers are inappropriate. Discussions with a courtroom clerk, or a bailiff, or a court reporter about evidentiary issues, or sentencing matters, or conduct of parties, attorneys, or even the public is unseemly.

Judges should be very careful not to delegate judicial functions to other persons. Judge James J. McCartney violated this most basic concept by conferring with a bailiff and accepting recommendations from the bailiff as to what sentences should be imposed on convicted persons.
A judge should be aware of the wide range of incidents that can occur because of contacts with the public, with the police, with attorneys, and with other judges. The lists of kinds of incidents that should alert a judge provided in the Handbook are practical and helpful.

Ex parte appearances are an example of the need for caution on the part of a judge. Settlement conferences may result in inopportune comments. The helpful friend or official should not intrude in the judicial function.

However, anyone who has been a judge recognizes that the advice that is provided is without limit. Tact, diplomacy, deliberate reticence, and refusal to respond to questions or to appear to concur with suggestions may help a judge through difficult situations.

The judge's small staff, ie., the bailiff, the courtroom clerk, and the court reporter are critical to the impressions that the public and other court house personnel have of that judge. Despite the importance of dealing courteously with such people, abuses by clerical and judicial aides happen.

The manner of the abuse by judges that occurs is expressed in some of the brief statements made in the Handbook: "Berating clerk or reporter for lateness, berating a reporter for asking a witness to speak up, volatile outburst, or using profanity to a clerk, ordering arrest of court reporter who went on vacation, grabbing a court commissioner (inappropriately)."
Judges often display a lack of judgment or discretion in their activities. One judge, who wrote several times to the Ethics Committee requesting advice, belonged to more than fifty organizations. Many of them had conflicting goals. He expected the secretary who performed the administrative work for several judges to take care of his communications with all of these diverse organizations, to prepare his personal correspondence, and to type his notes for his lectures at a local law school. The judge was unable to distinguish between judicial, quasi-judicial, and non-judicial activities.

One judge became a member of the board of a national organization. He attended two day meetings in New York City ten months out of each year. In addition he had to fly to and from New York. His first step to justify the absence was to take night traffic sessions and then to claim that as he was working one or two evenings per month that he should be compensated for that time by being excused from his work on normal workdays. This continued over a five year period and continually affected the work load for the remaining judges.

A few years ago, the San Bernardino County District Attorney decided that he did not have enough deputies to provide a prosecutor in courts that were hearing traffic trials. An appellate court had held that a prosecutor was not needed in such cases. The appellate court justices and the District Attorney did not appear to understand that judges do not call witnesses or prosecute cases. One of the duties of
judges is to assure that correct judicial procedures are followed.

One judge took the position that if a prosecutor was not present, then he would not call the law enforcement officer to the stand to testify. Many letters were written to the "letters to the editor" in the local paper. Some condemned the judge. He did respond to the criticism but did not clarify the reason or reasons for his acts.

The contentions were various and the several judges who worked in the same complex did not agree. Some would call the officers as witnesses, others would not. The importance of the judge in a trial maintaining his or her objectivity was lost on the public, on the police, by the prosecutors, and by the newspaper editor. The judge who intrudes in a trial becomes either a defense attorney or a prosecutor.

Although asking a simple question may clarify a situation, a judge should be cautious about involving himself or herself in a case. Some judges are disliked by either the defense or by the prosecution for appearing to favor one side or the other. Jurors are very perceptive and it is critical that a judge not favor or appear to favor either side.

Many persons were outraged at what they perceived to be a waste of the time of the officers who had come to court to testify. Some law enforcement officers were angry because they could not "convict" the traffic violators. However, what may appear to some to be a tempest in a teapot may have great
significance to concepts held strongly by other persons.

In this rather lengthy exchange of letters to the editor over several months, the point was lost by the public. The judges in the complex disagreed because some of them did not want to lose police support in their next election. The press failed to explain the significance of the positions being taken by the several actors. The editor failed to exercise his responsibility to identify the issues involved for defendants, the police, the District Attorney and the judges.

None of the parties appeared to read or understand the positions being espoused by their opposition. The articles that were written exacerbated the situation. Probably the only benefit that was derived was the sale of a few more newspapers by the publisher of the paper.

Few persons would want a judge to be prosecutor in a case as they can be in Italy. But then, I have to pause, because most persons that react to judicial procedures want the judge to assure that all persons, except their friends and relatives, are convicted.

The most recent rulings of the U.S. Supreme Court in areas of protection of the rights of the people narrow the control over those rights and make it easier for convictions to be gained and harder for convictions to be overturned. Headlines in articles and cartoons lampooning the U.S. Supreme Court give a perception that the U.S. Supreme Court as constituted is determined to take away some of the significant
rights of the people that were thought to be embedded in the Bill of Rights.  

A few years ago, a group sent a questionnaire to superior court and appellate court judges in California asking that they respond to certain questions about abortions and right to life concerns. The Ethics Committee after careful study of the issue held that "Such questions call for a prejudgment of issues that may come before the judge. To respond would impair the judge's duty to act at all times to promote public confidence in the integrity and impartiality of the judiciary by improperly prejudging a pending or impending legal issue, or appearing to do so."  

All of the petty issues that arise in any aspect of life can become a feature of judicial concern. A courthouse is like a beehive and the activities of the various players can easily become public knowledge and public concern. Controversies among judges may affect the efficiency of the court and have resulted in reprimands of judges. A judge must be prudent in conduct and in expression through the entire course of his daily judicial activities. Judges should refrain from expressing displeasure about affidavits being filed against them and must not take any action to influence another judge assigned a case in such an instance. Response to public criticism or use of the press as a vehicle to express indignation is loaded with danger. Probably a thick skin is the only sure way to prevent a
situation from escalating and creating greater emotion and concern.

Often family and business relationships may result in situations that can compromise the integrity of a judge. The smaller the community the greater the possibility that a situation can arise. Judges should continually review the "duty to decide cases" with the possibility that a conflict exists due to relationships caused by family or business.65

As I have reviewed my awareness of the activities of the Commission on Judicial Qualifications (Performance) I am struck by the lack of information that had been made available about the functioning of the Commission during the great majority of the time that I was on the bench. Other than an occasional article in the newspaper about the results of hearings, the operation was "hush-hush." All attorneys and judges in San Bernardino County were aware of the length investigation into the conduct of Judge McCartney, but only of rumors and vague statements about what had occurred during the actual hearing. A similar statement can be made about the procedures involved with the eventual removal from office of Judge Kloepfer.

The nature of complaints and the lengthy procedure required to process, investigate, conduct hearings, make recommendations, and review the recommendations make it difficult to maintain confidentiality. Probably the most difficult aspect of the process is calling witnesses away from
the workplace to testify and then that the results may be unknown for many months.

The suggestions that are made result from the history of investigations and should be taken very seriously by anyone unfortunate enough to be subjected to complaints and an investigation. These are examples of conduct that has caused reaction and comment and discipline other than the serious inconvenience that may have resulted from the complaints.

"Interfering with the investigation and banning a perceived accuser from court,

"Disingenuous reply to inquiry from commission,

"Unwillingness to examine courtroom demeanor,

"Unwillingness to provide reasonable cooperation,

"Indifference to inquiry."66

The process is prolonged and certainly upsetting to the judge being investigated, and to his or her family or friends. The results can extend to removal from office and disbarment. In the past, many judges did not contest the allegations and retired to save a retirement benefit or to assure that they could practice law.

Up to 1980, seventy-three judges had retired or resigned rather than contest or even await the results of a formal investigation into their conduct.67

Because of some problems that have arisen due to the nature of the charges, the Commission has proceeded with actions to hear and make recommendations even though some
judges under investigation have resigned or retired. This has been done to prevent a judge from running for judicial office in the future or to determine whether or not a judge should be prohibited from practicing law.

SECTION B. CONDUCT IN PRIVATE LIFE

Plutarch in Lives: Caesar, reports an oral tradition that "Caesar's wife must be above suspicion!" So, the conduct of judges, male or female, must be above suspicion. New judges should be aware that whatever they do, their conduct both on and off the bench will be scrutinized and evaluated. They should also note that the results of the evaluations will not be provided directly to the judge.

Judges live within an all but impervious glass bowl. Like the child in Texas who lacked an immune system and lived out his life in a large plastic balloon that provided him a sterile environment, so judges live in isolation from much of the turmoil that surrounds them. Seldom will relatives, friends, or their staff bring criticism to their attention.

Judge Rothman begins his discussion of section two of the Handbook with three important quotes from the commentary about the canons listed in the Code of Judicial Conduct. 68

"Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." 69

When a judge examines his or her conduct or the conduct
of associates he or she should keep in mind these two principles of the Code of Judicial Conduct.

"An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe high standards of conduct so that the integrity and independence of the judiciary may be preserved..."  

"Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."  

Perhaps a judge may ask, why should I be disciplined for what I do in private? The history of the Commission on Judicial Performance throughout the years of its existence has assured that its acts and recommendations were in conformity with the law and that its procedures were in compliance with the California Rules of Court. Standards for the imposition of discipline have evolved from the cases that resulted from complaints about judges.  

"Judicial discipline for misconduct in private life can only be imposed for conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Wilful misconduct, the more serious offense warranting discipline under the Constitution, can only take place where a judge acting in his or her official capacity commits it (an act) in bad faith"
The principles are succinct, and provide excellent guides for behavior. However, just as there are many examples that are provided to help judges avoid inappropriate behavior in the courthouse so there are many examples of misbehavior that have occurred and have resulted in discipline or have contributed to a judge being removed from office even though, the conduct occurred outside of the courthouse.

High emotions resulted when one judge threatened to jail a telephone employee if his phone service were interrupted. Judge Noel Cannon threatened to shoot a traffic office who had stopped her for excessive use of her horn. On another occasion she threatened to shoot one of the service employees at the apartment complex where she lived.

One judge at a soccer game, became angry with one of the spectators and stated that he was a pervert. After the incident occurred, the judge initiated probation violation proceedings against the man.

A value of the Handbook is that suggestions are made that provide broad guidelines to judges. "Non-judicial activities, whether quasi-judicial or extra-judicial in nature, should not be allowed if there is a substantial likelihood that the undertaking will:

1. interfere with the performance of official duty;
2. interfere, or seem to interfere with the impartiality of the participating judge; or
3. impair the dignity and prestige of the judicial
Instances have happened when judges interfered with law enforcement officers, with the procedures and independent judgement of other judges, and with administrative personnel. Ego (pride) appears to be the source of many of the problems that judges create for themselves. Many small matters may be indicative of more serious problems.

Judges should not use their status to obtain preferred seating at a restaurant, or for hotel accommodations, or cheaper plane fares.

Judges should be careful not to abuse the use of the telephone system in a courthouse for personal advantage. Some judges pay for a private line in their chambers.

Letterhead stationary is another aspect of judging that requires concern and attention to detail. Many judges pay for their own stationary which usually has a line at the bottom stating, "Not paid for with public funds." The line that must be drawn can create some interesting anomalies. A judge should think about the purpose of a letter before he or she mails it at public expense.

One judge was distressed that a clerk in a court where he was visiting rejected mail that had been mailed at county expense where he normally sat. The mail consisted of payment of bills, social letters, and letters to friends. He was wrong and the clerks in the court where he normally sat were wrong, but practices of judges are seldom questioned.
Judge Rothman provides four examples of letterhead stationary that he believes may be used appropriately in different situations. After reviewing the examples a judge can decide which letterheads are proper for use. It is unlikely that all the members of the ethics committee will agree upon the recommended letterheads and some of the examples. However, a judge should take care that his or her actions are proper.

Not all non-golfers believe that a judge, even on private stationary which uses his title, has a right to request golfing privileges at a spa.77

Acceptance of judicial office mandates that the judge divest himself of interests in businesses that may come before him. In discussions above the impact of many improper relationships with companies and relatives who have interests in businesses that came before certain judges were noted. Narrow lines must be drawn for the guidance of judges and high barriers must be erected to prevent the appearance of impropriety.

A judge may not be a salesperson for a product or a service as it certainly would affect many persons responding to "judicial" hyperbole praising the product. Judges who have been C.P.A's or real estate brokers have special limitations upon their conduct. A judge should examine the kinds of situations that may arise before accepting judicial responsibilities.
Judges may not accept gifts in excess of $1000.00 per year as an honorarium for speeches, articles, or publications on the governmental process except for travel expenses. A practical guide for those gifts from exempted organization is provided on p. II-23 of the Handbook.

The strength of some of the prohibitions is shown by reference to the California Constitution, Art. I, Sec. 7. "Acceptance of a pass or discount [from a transportation company] by a public officer... shall work a forfeiture of that office." Judge Rothman comments that frequent flier miles may be accepted by judges as the same benefit is extended to the general public.

Judges are not divested of their rights as citizens when they take the oath of office. They have a right to and should participate in civic and charitable activities. However, there are some restrictions upon judges' activities in organizations outside the courthouse:

"The activity must not reflect adversely upon a judge's impartiality and the activity must not interfere with the performance of a judge's judicial duties." Judges may not participate in fund raising, no matter how worthy the cause.

The list of kinds of activities that may engage the off time activities of judges is lengthy. In the examples given above some of the basic ground rules have been stated or restated. A worthy goal or purpose will not be sufficient to insulate the judge from criticism if the organization or its
officers stray out of the guidelines that affect judges.  

Persons who have been politically active before assuming judicial office should be alert to the prohibitions that exist and control the activities of a person who takes the oath of judicial office. In addition, there are many questions that are discussed in the Handbook that do not provide clear "yes" or "no" answers to some specific questions. Even restrictions that would appear to be obvious have been violated by judges or by political candidates seeking endorsement or approval of candidacy from a judge.

Judges can be active with regard to measures related to the improvement of the law. In 1986, a measure proposed that salaries of all public elected and appointed officials, and school administrators, and many other employees be limited to a salary of $64,000.00 per year. The ethics committee, upon receiving a request from the executive board of the CJA for a recommendation, debated intensely whether or not the CJA and judges could join with an umbrella group consisting of political organizations, school organizations, the district attorneys' organization and many others to actively oppose the measure. The recommendation of the Ethics Committee was that such united action would be proper.

Several simple questions that often are posed to judges are discussed. "When is it appropriate to wear a judicial robe? When may a judge's photograph accompany text of an article? Can a judge's photograph appear with a commercial
article? Can a judge’s photograph in his or her robe accompany a request for funds by a worthy organization?®

Can a judge properly assist a political candidate who influenced the judge’s appointment to office? When and for whom can a judge solicit funds for a campaign? These and many other questions are answered. However, for some questions there is no clear answer. Then, a judge must evaluate all the factors and must make a reasoned decision as to what he or she will do.

As mentioned above, the topics that are discussed in the Section of the Handbook on judicial conduct are almost without limit. Virtually any aspect of good or bad conduct may be found within the summaries of the annual reports on judicial conduct and many of the comments above have been extracted from them.

In the annual reports the comment is frequently made that the summaries of complaints do not reflect the high quality of the work of the many judges who are not criticized during long tenures on the bench. I have not tried to summarize or list all of the mistakes that have been made by judges either on the bench, in chambers, or during participation in community activities. I have tried to highlight the kind of conduct that has occurred and in addition to illustrate the problems that are created for judges when they let emotions disrupt a judicial proceeding.
CHAPTER 7

THE COMMISSION ON JUDICIAL PERFORMANCE

I have referred briefly to the history of the Commission on Judicial Qualifications above. In 1975, the name was changed to the Commission on Judicial Performance (Commission). The Commission has jurisdiction only over sitting judges and justices of the appellate courts and the state supreme court. A review of annual reports confirms the evolving nature of the work of the Commission. From 1960 to 1990, the personality and driving force behind the development of the concepts that resulted in the formation and the procedures that came to be a part of work of the commission was the senior attorney of the commission and later its executive director, James E. Frankel.

In California, from the time of the establishment of the first Commission on Judicial Qualifications in the United States in 1960, until James Frankel’s retirement in 1990, he led the efforts to clarify concepts, to identify problems, and to assure the protection of the judges and the judicial system from flawed conduct. His leadership was recognized throughout the nation and his efforts to improve the work of the commission served as a guide to those following his pioneering efforts throughout the country.

The actions that can be taken by the Commission on
Judicial Performance are those authorized by the California Constitution. Thus, a judge cannot be placed under an order of temporary suspension. Judges are often sent advisory letters that comment about inappropriate conduct that does not justify the imposition of public or private censure. The judge can respond to the criticism, however, no formal hearing results. Though argued against by some, copies of letters sent to judges are retained in a judge’s file for possible use in the future.

California Rules of Court have been written that authorize certain punishments. Notice of the intent of the court to impose private admonishment of a judge’s actions provide the judge with an opportunity to appear and to have a formal hearing.

Since its establishment and through 1989, the Commission on Judicial Performance has recommended that fourteen judges be removed from office. The State Supreme Court has rejected its recommendations in two cases. The recommendation that the Hon. Charles F. Stevens of the San Diego Superior Court be removed from office was dismissed for insufficiency of the evidence. The recommendation that the Hon. James J. McCartney be removed from office was rejected and he was publicly censured.

Through 1990, the Supreme Court has removed ten judges from office for conduct tending to bring the judiciary into disrepute or for wilful misconduct. The recommendation that
the Hon. Kenneth L. Kloepfer of the San Bernardino County Municipal Court be censured was rejected and he was removed from office in 1989. The Hon. David Kennick of the Los Angeles Municipal Court was removed from office in 1989.

The conviction of the Hon. Charles D. Boags of the Beverly Hills Municipal Court on charges of obstruction of justice became final in 1990 and he was removed from office pursuant to the California Constitution, Article VI, section 18 b.

Two judges have been removed from office who were physically or mentally incapable of performing their judicial responsibilities. It was recommended that Judge Lewis Wenzel of the San Diego County Municipal Court be suspended from office after being convicted of associating with prostitutes. His conviction was overturned but he did resign from office. The State Supreme Court took no action after holding that the question of his sitting as a judge was moot.

A total of thirteen judges have been removed from office by order of the California State Supreme Court. The Supreme Court reviews the recommendations of the Commission on Judicial Performance and gives the respondent judge an opportunity to refute the allegations or to present evidence in mitigation of the charges. The findings and conclusions of the Supreme Court are published and are available to the courts, the respondent judge, judges, attorneys, and the public for review.
In addition to the published opinions reference the removal of judges from office, the opinions of the Supreme Court regarding the findings that justify the imposition of public censure of a judge are available to the judge, the courts, judges, attorneys, and the public.

The findings of the Supreme Court with regard to the necessity for removal from office and the findings with reference to the requirement for public censure provide guidance to sitting judges as to conduct that is inappropriate. The next two chapters of this paper will consist of reviews of the opinions of the Supreme Court with regards to removals and public censures of judges.
CHAPTER 8

SUMMARIES OF CASE OPINIONS ORDERING REMOVALS FROM JUDICIAL OFFICE

SECTION A. Geiler v. Commission

The Hon. Leland W. Geiler, a judge of the Municipal Court of Los Angeles County, was removed from office by order of the California State Supreme Court in 1973. This was the first time that a judge was removed from office in California pursuant to the authority provided in 1960 which established the Commission on Judicial Qualifications. In one previous instance, Charles F. Stevens v. Commission on Judicial Qualifications, the recommendation for removal was not accepted. In this case, as in all of the subsequent instances of removal from office, the Supreme Court has acted with restraint and has carefully defined its authority and powers, and has explained the necessity for its action. Often the court has cited its rulings in other cases to explain its rulings in later cases.

Probably the two most important distinctions that the court has made in issuing its findings, rulings, and conclusions are the difference between wilful misconduct and prejudicial conduct. The court pointed out in this case that the "Phrase 'wilful misconduct in office' in the constitutional provision setting forth grounds for removal
connotes something graver than the lesser included offense of conduct prejudicial to the administration of justice that brings the judicial office into disrepute; the more serious charge should be reserved for unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, while the lesser charge should be applied to conduct that a judge undertakes in good faith but to an objective observer, the act would appear to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office."

Although the procedures followed by the State Supreme Court may be referred to often, the purpose of this paper will not be served by reviewing the procedural standards established by the Supreme Court or the institutional requirements or functions considered by it. This review has been made to identify the nature of inappropriate actions that resulted in a judge being removed from office. In making this review, unsustained allegations will not be discussed.

The pattern that was established for the opinions provides a brief summation of the charges that were sustained with an indication whether or not the conduct condemned was wilful misconduct or conduct prejudicial to the administration of justice. Discussions about the nature of the conduct of individual judges often display patterns of behavior that are shocking in their vulgarity and in their lack of concern for civilized standards of social intercourse.

In Judge Geiler's case findings were made in three
summary statements.

"Vulgar and profane conduct engaged in with the intent of curtailing victim's cross-examination of witnesses, and profane and abusive reprimanding of court employees constitutes wilful misconduct in office. ...Use of vulgar language in dealing with professional associates, employees, and officers of the court constitutes conduct prejudicial to administration of justice that brings the judicial office into disrepute. ...Bad faith interference with attorney-client relationship between public defenders and their clients constitutes conduct prejudicial to the administration of justice." The Supreme Court found that these various acts justified removal from office.

It is important to note that in this case, the masters concluded that Judge Geiler was not guilty of twenty-three charges of wilful misconduct and conduct prejudicial to the administration of justice in office as alleged by the Commission. The masters found that Judge Geiler had been guilty of five charges of conduct prejudicial to the administration of justice and concluded that as to the other counts he had not been guilty of either wilful misconduct or conduct prejudicial to the administration of justice. "The masters unanimously recommended that petitioner be censured for the following reasons: 1. Indiscreet use of vulgar, unjust judicial and inappropriate language directed toward court attaches and lawyers, and 2. His crude and offensive conduct
The examiners and Judge Geiler separately filed objections to the masters' report and the Commission held oral arguments in accordance with the rules of court. The Supreme Court after consideration of the evidence presented made its own findings of fact and conclusions of law.

The Supreme Court found Judge Geiler guilty of five charges of wilful misconduct and four charges of conduct prejudicial to the administration of justice and ordered that he be removed from office.

In discussing this case and in other cases, the Supreme Court emphasizes that it is not bound by the conclusions of the masters, by examiners, or by the conclusions of the Commission. The Supreme Court does not rehear the case; it determines whether the evidence supports the findings.

In statements above, I have emphasized that the offenses of the judges who have been removed from office and publicly censured are related to the seven deadly sins. The masters did not recommend that Judge Geiler be removed from office, that conclusion was made by the State Supreme Court. Their conclusions are confirmed by the nature of his conduct. Judge Geiler had shocked a public defender by touching his buttocks with an electric cattle prod. In another incident "(he) had approached a court commissioner from behind and had grabbed this victim's testicles." Petitioner had made lustful references to his female clerk, ... and was found to
have habitually used vulgar and profane language in his conversations with this clerk." Petitioner was also found to have invited two female attorneys into his chambers and talked about the salacious nature of evidence concerning homosexual acts and rape, and punctuated his commentary with profane terms for bodily functions."

Other charges that were sustained or found to be valid involved Judge Geiler’s interference in eight cases with public defenders’ efforts to represent clients properly. The Supreme Court writes with elegance about the rights of indigent defendants and condemns the acts of Judge Geiler and his abuse of power. "(Judge Geiler’s) bad faith was directed towards our legal system itself; his arbitrary substitutions of counsel because of his personal beliefs as to the defendants’ guilt and his personal hostility to their attorneys smacks of an inquisitorial intent to serve imagined truth at the expense of justice." Not only was Judge Geiler’s conduct unjudicious, but he acted in bad faith. In addition, many of his acts were unlawful.

SECTION B. Spruance v. Commission

As this is only the second case in which the California State Supreme Court removed a judge from office, the interpretation of the Constitution and the delineation of the grounds that justify removal are important in reviewing and understanding the procedures used and the reasoning of the court.
The Supreme Court found that Judge William D. Spruance conducted his court in a "bizarre and judicial manner." Judge Spruance had cross-examined in an improper manner an attorney who had taken the witness stand after filing an affidavit against the judge. Then Judge Spruance levied "witness fees" against the attorney as a condition for disqualifying himself from hearing the case. He was rude and cavalier in his treatment of attorneys and had given a witness the "raspberry" to express his disbelief of testimony by the witness. In a traffic matter in which a defendant had been late to court, Judge Spruance had made a "vulgar gesture" to him.

Judge Spruance had used his judicial office to favor his political supporters, friends, and relatives of friends. In one case he had tried to get a deputy district attorney and that attorney's supervisor to reduce a charge of driving under the influence of alcohol to reckless driving. The defendant was a friend of Judge Spruance and the case had been tried in another court. To further complicate the situation, the defense attorney was dating Judge Spruance's daughter. It was clear that he had intruded into a case that would not normally have come before him in order to use his office to influence the outcome of the case to benefit a friend.

Judge Spruance presided at the court trial of the son of a man who had been active in the campaign to elect Judge Spruance to office. After the district attorney had refused
a suggested plea bargain, Judge Spruance purported to conduct an evidentiary hearing and suppressed evidence in the case. Following that he found the defendant not guilty on what he termed to be a technicality.

The Supreme Court found that Judge Spruance, "...as an experienced criminal defense attorney, should have known that there was ample evidence in the absence of any defense to find the defendant guilty of at least one of the two counts. Petitioner's attempt to put a gloss of good faith on the whole incident, by declaring that the defendant 'had been saved by a technicality' was intended to conceal the fact that petitioner's conduct was motivated by his relationship with the defendant's father and with the defendant's counsel, as well as petitioner's desire to punish the deputy district attorney for his refusal to accept the suggestion of a negotiated plea."96

A nephew of a friend and political supporter appeared before the defendant on a charge of "engaging in a speed contest." Without a district attorney present and without giving notice to the district attorney, Judge Spruance reduced the charge to illegal parking.

Judge Spruance was cited for running a red light. He went to another judge, who attempted to disqualify himself. Judge Spruance expressed his unhappiness in some manner, so the judge then marked out the word "disqualified," and wrote on the ticket "11-2-71 and his initials, R.F." Without that
judge's knowledge, Judge Spruance changed the note to read "11-2-71 all session T.S. Dismissed on completion, R.F." Judge Spruance had not attended traffic school.

Judge Spruance often appointed two attorney friends to represent defendants at public expense. In many of these instances, the accused were not entitled to such representation or had not requested appointment of counsel.

The Supreme Court summarized the conduct of Judge Spruance in these words. "Taken as a whole the record indicates that petitioner engaged in a pervasive course of conduct of overreaching his judicial authority by deciding cases for reasons other than the merits, by improperly influencing another judge, and by using the judicial process to gain special favors for friends and political supporters. The record also shows that petitioner has under color of judicial office repeatedly committed petty, vindictive, vulgar and otherwise unjudicial acts."97

The Supreme Court then considered whether the conduct objected to is such that discipline can be imposed under the California Constitution. The court noted that other than for "habitual intemperance or wilful and persistent failure to perform his duties, the Constitution provides that a judge may be censured or removed from the bench only for wilful misconduct or prejudicial conduct."98

The Supreme Court reviewed each of the allegations of wilful misconduct and prejudicial conduct and concluded that
though his vulgarity might change his "petty tyranny and favoritism, and other acts were done in bad faith, and constitute wilful misconduct which require his removal from office." In 1975, the Supreme Court removed municipal court Judge William D. Spruance from office in the San Leandro-Hayward Judicial District of Alameda County.

SECTION C. Cannon v. Commission

On July 10, 1975, the Supreme Court, after reviewing the findings and recommendations of the Commission on Judicial Qualifications, ordered that Judge Noel Cannon of the Municipal Court for the Los Angeles Judicial District of the County of Los Angeles be removed from office. The court found that she had engaged in twenty-one acts of wilful misconduct in office and eight acts that constituted "conduct prejudicial to the administration of justice." A relatively brief summation of the charges will reflect the unusual and peculiar nature of her actions.

Judge Cannon developed an hostility toward public defenders who appeared in her court that resulted in her interference with the conduct of an effective defense by the attorneys for their clients. She was arbitrary and found four public defenders in contempt of court and jailed them during preliminary hearings. In some of those matters she then forced other public defenders to proceed to participate in hearings without giving them an opportunity to prepare.

She abused her power to set bail and issued bench
warrants without proper cause. A defendant, who was ill with meningitis, failed to appear for a scheduled hearing. Judge Cannon issued a bench warrant for $50,000.00 and ordered the defendant’s arrest at the hospital over a doctor’s objections.

Charges had been dismissed against a defendant. When the defendant refused to stipulate to probable cause for the arrest, Judge Canon ordered the defendant returned to custody.

In a case involving a juvenile, who had been certified to juvenile court as to some of the counts of a multiple count indictment, the defendant refused to stipulate to a continuance of the preliminary hearing. Judge Cannon then vacated the order certifying the juvenile to the Juvenile Court and set bail. When the mother and the son reacted to the judge’s actions she set bail at $100,000 each and took them into custody.

In one case in which Judge Cannon relieved a public defendant as counsel, the Supreme Court made the following statement. "You (Judge Cannon) have engaged in conduct calculated to instill in defense attorneys a state of submissiveness and fear so as to expedite preliminary hearings, thereby infringing on a defendant’s constitutional right to effective assistance of counsel." In this case the public defender had attempted to determine what questions Judge Cannon had objected to in cross-examination. After relieving her as counsel for the defendant, Judge Cannon said, "We have had the record read. If you can’t tell from that,
you are not qualified to represent the defendant."¹⁰³

Judge Cannon during procedures in chambers "cautioned a
deputy public defender not to ask certain 'stupid' questions
at a preliminary hearing. If you are thinking of any
outlandish questions, check with the people in lock-up to see
how they would recommend the food in county jail for the
weekend."¹⁰⁴

The list of incidents seems to be without limit. Newspaper articles in the Los Angeles Times from the early
1970's until she was removed from office had detailed what had
been described as bizarre conduct. Judge Cannon had her
chambers painted pink, had a pink mechanical canary in her
chambers that could be heard during court proceedings, and had
a live pink poodle that she kept in her chambers or held on
her lap during court proceedings. When criticized by her
colleagues, she accused them in the L.A. Times of "immorality,
intemperance, inability, absenteeism, and unpunctuality."¹⁰⁵

Three incidents have been described involving guns. When
she had displayed her pink chambers to the press, she had
commented to reporters that "women should arm themselves
against attack with derringers and hat pins."¹⁰⁶ At her
apartment she got into an argument with a maintenance man and
demanded the presence of security personnel. After about
thirty minutes of shouting profanities, she told one man, "I'm
going to shoot you, George, you son of a bitch. And you are
going to die slowly."¹⁰⁷
On her way to the court house on Nov. 30, 1972, an officer advised her not to use her horn repeatedly. The officer said, "...She told me she would honk her horn any time she damn well pleased." The officer advised her that making excessive noise was covered by a Vehicle Code Section. At which time she said, "You go to hell, Officer."

This situation is a classic example of what can happen if emotions continue to escalate. It may also be an example of what can happen if a judge’s colleagues are not informed of a problem. In many courts, judges often function in isolation. In the Los Angeles County Judicial District, there is a presiding judge. He should have been informed by the marshal’s office that Judge Cannon appeared to be out of control. The following exchanges should be read by all judges.

When Judge Cannon arrived at her chambers, her emotional state is illustrated by her comments. She said to her bailiff, "Find the son of a bitch; I want him found and brought in right away. Give me a gun; I am going to shoot his balls off and give him a .38 vasectomy." At about the same time, Judge Cannon said to her other bailiff, "God damn, get that son of a bitch here; find that bastard; I’m not going to start court until that son of a bitch is here; when I find him, I’m going to cut off his balls and have them hang over my bench; I’m going to castrate him; I’m going to give him a vasectomy with a .38."
Judge Cannon then left her chambers and went with one of her bailiffs to the police officer's waiting room. There she spoke to a sergeant and said, "God Damn it, find him, find that son of a bitch for me. I am not going to take the bench until you find that male chauvinist pig."

She returned to her chambers, and several officers came to her court. She then told her bailiffs, "God damn it, no one is to leave, if anyone tries to leave, shoot the bastard." She appeared to be hysterical. While they were present, she said that "She could sound her God damn horn any place in the city and no male chauvinistic officer could tell her otherwise."

The officer arrived later in the morning and could hear her shouting at the sergeant. He waited about ten minutes and entered. The Supreme court found the testimony of the police officer to be true. In brief, she chastised him mildly, discussed unrelated matters about the questions asked by public defenders, and talked about a religious seminar that she had attended during a holiday. She suggested that the guillotine had been used recently in France and thought it should be used in the U.S. She gave him some religious pamphlets to read and he left.

The officer was asked, "Did she ever ask you to apologize, during the conversation?" the answer was,"No." He was asked, "Later on did you receive a letter of commendation from Judge Cannon?" He answered, "Yes." He was asked to
relate the substance of the letter of commendation. "Yes, sir, it was just addressed to Chief Davis, Chief of Police, and it said the Los Angeles Police Department is the finest in the world and Officer (Blank) was the finest of the fine, and it was signed, Noel Cannon."111

With reference to these and other incidents of conduct relating to defense attorneys other than public defenders, the Supreme Court made the following findings, "Petitioner’s conduct was arbitrary, unreasonable and in bad faith, and constituted wilful misconduct in office. Petitioner not only used profane, abusive, and inexcusable language, but she also misused the authority of her office by ordering persons to appear in her court where no matters were pending requiring their attendance and by directing her bailiffs to use force if they attempted to leave."112

The Supreme Court addressed other aspects of her unusual if not outlandish conduct and found some of it inappropriate but not wilful misconduct and some of the charges were not sustained.

One important matter that should be addressed is that she had installed a minister in a room adjacent to the "lockup." She had arranged for him to be paid from some private funds that she had contributed to a fund. She admitted that her conduct was inappropriate and agreed that "religion in any form should not be injected into the judicial process."113

In another case she unlawfully ordered a court reporter
to delete material from the transcript of a preliminary hearing. The statements are quoted: "Now, (a public defender) did this to me and he better not do it again, and none of you had better do that to me again, lying to me in open court...I have had this practiced on me by Public Defender after Public Defender, and in particular by (a public defender) of your office who lies to me in open court." 114

Although Judge Cannon admitted to this allegation, she argued that it was not related to the formal charges against her. The Supreme court found that "Petitioner’s conduct in ordering a portion of the record deleted in People v. Moore was a violation of Code of Civil Procedure section 274c, and constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute." 115

Seventeen defense attorneys and one district attorney appeared at hearings to testify in behalf of Judge Cannon. They denied that she had been rude or abrasive in her conduct with them and said that they had not observed her treating other attorneys improperly. She was praised for her hard work. The Supreme Court found that the evidence presented in mitigation of the charges was irrelevant to the nature and severity of the proven allegations.

The Supreme Court removed her from office but found that "since her unjudicial conduct did not amount to moral turpitude, dishonesty or corruption...that if otherwise qualified she can practice law in California." 116
On July 13, 1981, the Supreme Court concluded after a review of the evidence and arguments presented in this case that the unanimous recommendation of the Commission on Judicial Performance should be followed and that the Hon. Jerrold L. Wenger should be removed from office. In reaching this conclusion, the Supreme Court found that Judge Wenger had committed wilful misconduct in nine instances and had been guilty of prejudicial conduct in another instance.

Many of Judge Wenger’s acts were not isolated instances. He continued to repeat errors that he had made previously in similar circumstances. When peremptory disqualifications against him were filed, he would contact improperly the judge to whom the case had been assigned. In three cases he denounced the disqualifications by three attorneys as being an affront to the court. In another case Judge Wenger asked questions about the advice that an attorney had given his client.¹¹³

When Judge Wenger did not like what attorneys had done in a client’s interest, he would threaten them or "ban" them from his court room.¹¹⁹ He abused the contempt power by "attempting to punish nonobedience to his informal directions (in a civil matter) as a contempt."¹²⁰

One of the unusual charges against Judge Wenger was that "You have wilfully and unlawfully resisted, delayed and obstructed a public officer in the discharge or attempt to
discharge the duties of his office in that on or about July 11, 1979, you refused, for improper personal reasons, to allow Susan D____, a duly appointed Deputy District Attorney of El Dorado County to appear in the Justice Court of El Dorado Judicial District on matters duly and lawfully assigned to her."\(^{121}\) The court noted that Judge Wenger had interfered with the official duties of the Deputy District Attorney, by banishing her from his court. "This act limited the District Attorney's options to make personnel assignments and thus, did obstruct a public officer from performing official duties to that extent. The Supreme Court found that the conduct constituted wilful misconduct in office."\(^{122}\)

The reason that Judge Wenger unlawfully banished Ms. Susan D____ from his court was that she had reported incidents of questionable conduct to the Commission on Judicial Performance without first consulting him.

Judge Wenger committed other acts of wilful misconduct. These deserve noting:

"Judge (Wenger's) backdating of affidavit for arrest warrant was wilful misconduct in office."\(^{123}\)

In another instance, "Judge (Wenger's) issuance of (a) no-bail arrest warrant without the filing of a criminal complaint or initiation of a contempt proceeding was conduct prejudicial to the administration of justice."\(^{124}\)

Judge Wenger asserted that he finally understood what his flaws were and requested that he be permitted to continue to
sit as a Justice Court Judge. The Supreme Court held that his late realization of his mistakes was not a factor that was in mitigation of his conduct.

"Mitigation requires more than an unfulfilled intent to reform. ...The aim of commission proceedings is not punishment but to protect the judicial system and the public which it serves from judges who are unfit for office. ...Faithfulness to that aim requires removal here."\(^{125}\)

As Judge Wenger’s acts did not constitute grounds for disbarment, the Supreme Court found that if otherwise qualified he could practice law.

**SECTION E. Gonzalez v. Commission\(^{126}\)**

In 1983, the State Supreme Court sustained eighteen findings of the Commission on Judicial Performance as to wilful misconduct and sustained two of three findings of conduct prejudicial to the administration of justice as to Mario P. Gonzalez, a municipal court judge of the East Los Angeles Judicial District of Los Angeles County. He was removed from office.

The summary by the Commission lists his various acts under headings. The titles are brief editorials about judicial conduct.

"Arbitrary Prejudice to Rights of Criminal Defendants."

Because of his animosity toward the public defenders and the concepts of the functioning of that office, he denied defendants’ constitutional rights. In one instance he refused
to hear a bail motion because a public defender had 'opened his mouth' during the judge's questioning of the defendant. The Supreme Court held "that such hostile, arbitrary, and unreasonable conduct jeopardizes the liberty of an indigent defendant for reasons not related to the merits of the case and therefore constitutes wilful misconduct."127

"Impugning Judicial Colleagues."

"Judge Gonzalez has made insulting and derogatory comments from the bench and in chambers impugning the character and competence of his judicial colleagues. ... Petitioner's brash criticisms and colorful insults were manifestly uttered in bad faith while petitioner was acting in his judicial capacity."128

"Abuse of Judicial Authority". "Judge Gonzalez has engaged in a continuous course of overreaching and abuse of judicial authority. ...Judge Gonzalez has conducted court business in violation of proper judicial procedures, to the detriment of the fair, orderly, and decorous administration of justice."129

"Abandonment of Judicial Role." "By leaving the bench during judicial proceedings Judge Gonzalez has demonstrated a flagrant lack of respect for his judicial office. ...If only for a few moments at any one time, on these occasions he abandoned his role in the adjudicative process in utter disregard for his obligation diligently to perform the duties of his office."130
"Political Exploitation of Office." "Though his 'press release opinion' [in which Judge Gonzalez declared a dog leash license ordinance unconstitutional] may indeed have earned him a certain political notoriety, such a blatant exploitation of the judicial office for political ends seriously and impermissibly undermines public esteem for the impartiality and integrity of the judiciary."¹³¹

"Misuse of Lawful Power." "By his wholesale plea bargaining scheme Judge Gonzalez has deliberately misused his otherwise lawful power to reduce sentences and fines in individual cases... Judge Gonzalez' further declared aims of filling the county coffer and scoring convictions for the state are of course completely extraneous to the administration of justice. Judge Gonzalez certainly should have known that his 'bargain day' sentencing offer - even if limited to vehicular offenses - contravened the principle of individualized sentencing embodied in our Penal Code."¹³²

"Offensive Comments in Court." "Judge Gonzalez should have known that his admittedly 'salty' courtroom comments were unbecoming and inappropriate."¹³³

"Derogatory Remarks Off the Bench." "Derogatory remarks, although made in chambers or at a staff meeting, may become public knowledge and thereby diminish the hearer's esteem for the judiciary - regardless of the speaker's subjective intent or motivation. The reputation of an individual judge necessarily reflects on the community's regard for the
"Reactions to Allegations of Misconduct." "In a tone that rapidly grows tiresome, he reiterates a conspiracy theory typically raised as a defense in judicial misconduct investigations, and contends that the three attorneys simply fabricated their stories. As he does with virtually every allegation, Judge Gonzalez fundamentally misperceives the nature and gravity of the charge and instead views the entire matter as one of political disagreement or personality difference."

SECTION F. Furey v. Commission

Judge Robert H. Furey, Jr. was removed from office as the Justice Court Judge of the Santa Catalina Judicial District in 1987. The Supreme Court sustained eight counts of wilful misconduct, and ten counts of conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

Many of the allegations of acts of misconduct that were sustained by the State Supreme Court appear to have resulted from arbitrary reactions to behavior of persons appearing in court who tried to ask questions about the procedures and orders that Judge Furey was making.

Judge Furey jailed a defendant for contempt when the defendant accused the judge of harassing him. The defendant had appeared to explain why he had not completed a community service program. Judge Furey interrupted him and threatened
him with contempt. Although the defendant appeared to be mentally ill, Judge Furey ignored that and ordered him taken into custody. At a probation violation hearing, over counsel’s objection that the defendant had not received written notice of the violation, the judge criticized what he called a "perfunctory medical excuse" and sentenced the defendant to 180 days in the county jail. The appellate department of the superior court reversed the order revoking probation and the jail sentence and ordered all proceedings against him terminated.

"The Supreme Court found that Judge Furey’s impatience and hostility and his abuse of the contempt power constituted prejudicial conduct."\(^{137}\)

A defendant appeared to request a continuance to pay a $300.00 fine as the sentence had been conditioned with an alternative of serving ten days in the county jail. Judge Furey refused the request and said, "It is $300 or ten days, today." When the defendant pointed out that other defendants were being granted stays to pay fines, Judge Furey ordered him to be silent. The defendant reacted and Judge Furey imposed an additional ten days for contempt. The defendant reacted a second time, and Judge Furey added another ten days. When the defendant reacted a third time the Judge added another ten days. Later that day the defendant was released when a public defender appeared on his behalf.

"The Supreme Court found that Judge Furey’s abuse of the
contempt power as well as his impatience and hostility toward many defendants who appeared without counsel constituted prejudicial conduct.\textsuperscript{138}

When a defendant appeared and filed an affidavit of prejudice against Judge Furey the case was transferred to another court. Judge Furey then wrote a to that judge recommending that the judge impose a stiffer sentence than standard because of "the defendant's bad attitude."\textsuperscript{139}

The Supreme Court found that "...because of Judge Furey's inexperience and admission of his error, that the act constituted prejudicial conduct rather than wilful misconduct.\textsuperscript{140}

A defendant appeared in court to discuss his inability to pay a fine for jaywalking. Judge Furey had presided at the trial and knew that the defendant was indigent and possibly mentally ill. Thinking that the defendant might be violent, Judge Furey had a bag that was outside of the defendant's reach searched. A small paring knife was found. Judge Furey then found the defendant to be in violation of a statute prohibiting knives over four inches long from courtrooms. He then ordered the defendant taken into custody and set bail at $10,000.00.

A public defender was requested to appear with the defendant later that day. At that hearing Judge Furey found the defendant in contempt of court for bringing the knife into the court room and sentenced him to five days in the county
jail and ordered a mental examination. The public defender objected to the mental examination and Judge Furey reacted by imposing a fine of $500.00 on the defendant to be served at $30.00 for each day spent in custody. The defendant made some delusionary remarks and Judge Furey made two more findings of contempt and fined him $500.00 to be served at $30.00 per day. The public defender filed a petition for a writ of habeas corpus that was granted by the superior court.

"The Supreme Court adopted the conclusions of the Commission that Judge Furey engaged in prejudicial conduct by his display of impatience and hostility to the defendant and by his abuse of the contempt power. ... The result of the judge’s actions was that a mentally disturbed indigent defendant who had appeared in court to request an extension to pay a fine of $50.00 was sentenced to approximately 65 days in jail."\(^{141}\)

On one occasion, Judge Furey told the defendants before hearing any evidence regarding their cases that if there were any discrepancies in the officers’ testimony and their testimony, that he would believe the officers. He said that officers would not commit perjury over a trivial matter.

After an officer had testified in a case, the defendant, who was not represented, started to read from the vehicle code. Judge Furey stopped him and found him guilty. The conviction was reversed by the appellate division of the superior court.
"The Supreme Court adopted the conclusions of the Commission that Judge Furey committed wilful misconduct when he made his announcement to the defendants and when he denied the defendant an opportunity to cross-examine the officer and to make a closing argument."\textsuperscript{142}

It is important to note that the Supreme Court in expressing its opinions often explains the distinctions between such concepts as wilful misconduct and conduct prejudicial to the administration of justice. In Judge Furey's case, the Court noted that a finding of "wilful misconduct requires clear and convincing evidence of a malicious or corrupt purpose." The court concluded that Judge Furey's purpose "was to coerce guilty pleas and thereby expedite the calendar and therefore the judge was guilty of wilful misconduct."\textsuperscript{143}

Much of the Supreme Court's opinion is devoted to Judge Furey's inappropriate conduct in actions taken with reference to one woman. Judge Furey became aware of a letter that the woman had written to the Commission on Judicial Performance and posted in various public places in Avalon. She alleged that he "had evicted her from his courtroom (on Catalina Island) and had ordered his bailiff to punch her in the mouth."

Judge Furey wrote her a letter which ordered her to appear in court. She appeared and then refused to answer Judge Furey's questions. He then ordered her to appear in the
Long Beach Municipal Court, where he sometimes sat on assignment, to show cause why she should not be found in contempt. He also threatened her that if she were found in contempt and taken into custody he would order a mental examination to be conducted of her. He added that she must stay out of his courtroom unless she were a party or a witness.

Several other incidents occurred involving this woman that were precipitated by Judge Furey. In one instance where she appeared as a defendant in a case in the Santa Catalina Court she filed an affidavit against Judge Furey. He then transferred the case to another judge and wrote that judge a letter in which he alleged that "any statements made by the defendant should be viewed with skepticism. ...Her ability to distort and/or lie can be most persuasive."  

In a case in which she appeared in clothing that Judge Furey considered to be an affront to the court, he ordered her taken into custody and "ordered that she not be allowed to make a telephone call." She was released that day after the superior court granted a petition for a writ of habeas corpus and the contempt order was vacated.

The Supreme Court found in several incidents that Judge Furey was guilty of wilful misconduct. In summary of the incidents and in stating the court’s reasons for adopting the Commission’s recommendation for removal from office it noted these factors. The court considered other instances where
judges had been removed from office and weighed Judge Furey's claim that removal from office was too harsh. The court had previously commented that whether or not some persons may have applauded his treatment of a "controversial and difficult person" was not in issue. "...a judge's prime responsibility is the even handed dispensation of justice, even for the controversial and difficult persons in society." In the several instances discussed, the court found that Judge Furey had been guilty of wilful misconduct and had abused his contempt power.

The Supreme Court pointed out that "neither hard work nor inexperience can mitigate wilful misconduct." Judge Furey asked that he be suspended for a period of time rather than being removed from office.

The court noted that suspension is not an option that is open to the Supreme Court. The powers provided the Supreme Court are only to publicly censure or to remove from office. The attitude of the Supreme Court in this and in other cases was expressed in these words: "The purpose of these proceedings is not to punish errant judges but to protect the judicial system and those subject to the awesome power that judges wield. ...(the court then added) That purpose will best be served in this case by adopting the recommendation of the masters and the Commission."

SECTION G. Ryan v. Commission

On May 8, 1988, Judge Richard Ryan was removed from
office in the municipal court by the State Supreme Court. The Court held that Judge Ryan had committed four acts of wilful misconduct and fourteen acts of prejudicial conduct.

The four acts of wilful misconduct are listed below:

Judge Ryan held an attorney in contempt for statements made to the judge’s secretary outside of the judge’s presence and after a court session had ended. Even though he realized that his order was invalid he continued to pursue the action with the district attorney’s office. He failed to notify the attorney after he dropped the contempt action. The Supreme Court found that Judge Ryan’s pursuit of the contempt action was done in bad faith and for an improper purpose "...and that Judge Ryan committed wilful misconduct." 150

A woman appeared before Judge Ryan in a civil matter and was ordered to pay a judgment. She reacted and said, "You can’t get blood out of a turnip." Judge Ryan heard her comment and ordered his bailiff to take her into custody. He did not give her any advisory of rights and sentenced her to 24 hours in the county jail. He asked his bailiff for the citation for contempt and was given an incorrect code section. He failed to comply with the requirement that a judge prepare a summary of the acts that led up to the finding of contempt.

The Supreme Court’s comments as to this act are very strong. "This is another inexcusable example of Judge Ryan’s abuse of the contempt power. Once again, the judge completely ignored contempt procedures. Judge Ryan failed to return (the
defendant) to court to inform her that she was in contempt. Moreover, he never gave her a chance to respond to the contempt order. Judge Ryan committed unjudicial conduct in relying on the bailiff for the legal citations to put in his order.\textsuperscript{151}

Judge Ryan was too anxious to eliminate a jury trial in a drunk driving charge. He offered a defendant a "no time" disposition and when it was refused told the district attorney that he would impose a sentence of thirty days if the defendant were convicted in a jury trial. The district attorney questioned the action and Judge Ryan said that he would do so because the defendant refused the plea bargain and further that he lied during the trial. (This statement was made before there had even been a trial and was evidence of Judge Ryan's bad faith.)

The defendant was convicted and Judge Ryan sentenced him to thirty days in the county jail plus fines and assessments. He refused to give reasons for the sentence on the record. This was considered to be an unusually harsh sentence and the defendant's attorney filed a petition for a writ of habeas corpus. The superior court ordered Judge Ryan to justify his sentence.

Judge Ryan hired an attorney to represent him at county expense. After exhausting appellate remedies, Judge Ryan alleged that the defendant had lied during his trial. No charges or allegations of perjury were ever made by the
district attorney's office.

Because of his bad faith and improper motives, the masters and the Commission "determined that the judge (Ryan) had committed wilful misconduct in this matter."

In further explanation of its conclusion, the Supreme Court pointed out that "the judge was willing to fabricate justifications for a challenged ruling. This is misconduct of the very worst kind, evidencing both moral turpitude and dishonesty."

In another case Judge Ryan, following a preliminary hearing, contacted the district attorney ex parte to urge that a case be prosecuted as a felony rather than as a misdemeanor. Although no harm resulted to the defendant, the Supreme Court concluded that by "intruding into the charging authority of the administrative branch of government Judge Ryan committed wilful misconduct."

In a trial of a hit and run accident, Judge Ryan conducted his own investigation of the incident, contacted a parts manager and called that person as a witness over the objections of the district attorney and the defense attorney. The evidence was damaging to the defendant's case. The appellate department of the superior court set aside the conviction because of the judge's improper actions.

The Supreme Court concluded that "Judge Ryan's handling of (this) matter was improper and constituted prejudicial conduct."
Judge Ryan, following acceptance of a plea of guilty to a charge of unlawful taking or driving of a vehicle, placed the defendant on probation for two years on condition that she serve twenty days in the county jail in a work release program. The probation officer removed her from the work release program because of a back injury. Judge Ryan, over the objection of the probation department reinstated her in the program. She was again terminated from the program for failure to comply with the program rules and Judge Ryan scheduled another hearing. The county counsel advised Judge Ryan that he had no authority to act in the matter. Judge Ryan responded by threatening to hire the "most expensive attorney he could find" if his actions were challenged.

The county counsel filed a petition for a writ and Judge Ryan hired private counsel to represent the court. In doing so, Judge Ryan failed to comply with a county requirement that he submit a written request to substantiate the hiring of the attorney. He later billed the county for the attorney's services. The superior court found that Judge Ryan had unlawfully ordered the defendant into the work-release program.

The Supreme Court after reviewing the several instances of unlawful acts by Judge Ryan made the following conclusion. "This is another instance where the judge became personally embroiled in a case before him. He exhibited bad faith in threatening to retain 'the most expensive attorney that he
could find.’ Nevertheless, we do not find wilful misconduct here, because the record indicates that the judge may have been genuinely concerned about (the defendant’s) situation. We do conclude however that the judge’s improper actions constituted prejudicial conduct.\textsuperscript{156}

In a matter where the defendant had pleaded guilty to two misdemeanor counts with counsel present, the attorney failed to appear for the sentencing. Judge Ryan proceeded to sentence the defendant without his counsel being present, without giving notice to counsel, and accepted an invalid waiver of counsel. The Supreme Court found that these actions were wilful misconduct.\textsuperscript{157}

In another instance Judge Ryan had sentenced a defendant who had pleaded guilty to a misdemeanor charge with counsel present and had placed him on formal probation for three years. Later, the probation department petitioned the court to revoke probation based upon some criminal convictions. The defendant was brought before Judge Ryan in chambers for the revocation hearing. Judge Ryan asked the defendant if he wanted an attorney appointed, and upon defendant’s request appointed the public defender.

No court reporter was present and Judge Ryan proceeded to ask the defendant if he had committed the crimes alleged. The defendant admitted to the acts. Judge Ryan then requested the probation officer to prepare a sentencing report.

In three instances Judge Ryan was charged with
prejudicial conduct for failing to provide a court reporter in criminal matters. The requirement had been stated In re Armstrong (1981) 126 Cal. App. 3d 556.

Judge Ryan took an arbitrary position that reporters were not required and directed his clerk to discharge the reporters that were assigned to his courtroom unless there was a timely request made for their services. The district attorney made it a practice to stamp on all filings a request for a court reporter. In pro per defendants were not informed of the right to have a court reporter present and did not know they had to request that a court reporter be present to provide a verbatim account of the proceedings.

In one instance a superior court judge had remanded a matter to Judge Ryan for further proceedings with a court reporter present. Judge Ryan protested the ruling because he did not believe that reporters were required and that they were an unnecessary expense to the county.

The Supreme Court reviewed the background of the three cases and the failures of Judge Ryan to inform the defendants of their rights and of the necessity to make a request. After several instances, Judge Ryan finally conceded that Armstrong requires a court reporter upon request. The Commission noted that "The judge's stubborn and obstructionist attitude have effectively denied those defendants their constitutional right to have court a reporter present." The Supreme Court "...concurred with the masters and the Commission that Judge
Ryan's conduct in these matters was prejudicial.\textsuperscript{159}

Several allegations of improper communications with the press about pending cases were sustained by the Supreme Court.

In one case a reporter heard that he had made his decision and asked Judge Ryan in chambers to let her review it. He did so and told her why he had decided the case as he had.

In the case where Judge Ryan had found an attorney in contempt for remarks made to his clerk when the court was not in session, he discussed the contempt order with a newspaper reporter while the matter was pending and while the validity of his order was being contested in the superior court.

In the case where Judge Ryan sentenced a defendant who had refused a plea bargain to thirty days in the county jail plus substantial fines when he was found guilty by a jury, he explained his sentence to the press and wrote a letter to the editor of the newspaper. The Supreme Court agreed with the masters and the commission. "Judge Ryan committed prejudicial conduct in the matters."\textsuperscript{160}

Judge Ryan told sexual jokes on two occasions to women attorneys. They were offended by the jokes. The Supreme Court commented that it was immaterial whether the offensive jokes were told in the court room or in chambers. The Supreme Court also used as examples for its concern about the conduct of Judge Ryan instances involving Judge Geiler and Judge Gonzalez.\textsuperscript{161}
"...derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer's esteem for the judiciary - again regardless of the speaker's subjective intent motivation. The reputation in the community of a judge necessarily reflects on that community's regard for the judicial system."\textsuperscript{162} "We conclude that Judge Ryan's offensive and insensitive jokes constituted prejudicial conduct."\textsuperscript{163}

The masters and the Commission found that Judge Ryan was not diligent in performing his duties and responsibilities sitting as a judge. Despite his blatant failures and the Supreme Court sustaining such findings other judges are continuing such prejudicial conduct.\textsuperscript{164} Evidence from clerks, bailiffs, and court reporters is available but such personnel must be protected from retaliation if they can be expected to come forward to testify about the frequent absences of many judges from their duties.

Judge Ryan regularly left the court after completion of his calendar leaving the courthouse at about 2 p.m. each day. On Fridays he left in the morning and often did not return.

Canon 3B(1) specifically addresses Judge Ryan's conduct. "Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials."\textsuperscript{165}
One judge has often presented the argument to his associates that as he is quicker in accomplishing his duties, he should not have to do a slow judge's work. His argument overlooks the loss of time to police officers, clerks, and attorneys as they must search for other judges to accomplish administrative responsibilities that are shared by all judges.

The Supreme Court was not impressed by Judge Ryan's arguments and found that his failure to "fulfill certain aspects of his judicial function amounted to prejudicial conduct." In summary, the Supreme Court concluded, "Judge Ryan committed four acts of wilful misconduct and fourteen acts of prejudicial conduct. ...The judge's conduct exhibits a pattern of personal embroilment in the cases assigned to him. He has lost his temperance and objectivity on several occasions, resulting in prejudice to the parties appearing before him or in the abuse of his contempt power. He has attempted to defend his position in the courts and in the media with little regard for procedure or judicial decorum."

Judge Richard Ryan, a Municipal Court Judge of the Roseville-Rocklin Judicial District, Placer County, was removed from office by order of the California State Supreme Court in May of 1988. He was not prohibited from practicing law, if he passed the Professional Responsibility Examination.

SECTION H. McCullough v. Commission

In 1987, the Hon. Bernard McCullough, a judge of the
municipal court, was subjected to the discipline of public
censure by the Supreme Court. In a brief summary of
reasons, the Commission On Judicial Performance had stated its
recommendations to the Supreme Court.

In one instance, Judge McCullough had not decided a
submitted case for three years and four months. During that
period he had submitted salary affidavits at thirty day
intervals certifying that no case was pending and undecided
which had been under submission for more than ninety days.

The Supreme Court found that Judge McCullough’s failure
to respond to inquiries from the attorneys of record in the
case and from the Commission "amounted to persistent failure
to perform judicial duties." The Supreme Court found that
the failure to decide the case, and his execution of salary
affidavits, and receipt of salary for the period was "conduct
prejudicial to the administration of justice that brings the
judicial office into disrepute." Based upon its findings
the Supreme Court imposed public censure upon Judge
McCullough.

In 1989, the Supreme Court removed Justice Court Judge
Bernard McCullough from judicial office in the San Benito
Judicial District of San Benito County. The Supreme Court,
after reviewing the procedures and recommendation of the
Commission on Judicial Performance, found that Judge
McCullough had committed four acts of wilful misconduct in
office.
In one case, Judge McCullough ordered a jury to find a defendant guilty of the charged crime, a misdemeanor. The Supreme Court noted that depriving a criminal defendant of his fundamental right to be tried by a jury manifests disrespect for the constitutional protections of our legal system.\textsuperscript{173}

In another case, a friend asked Judge McCullough to excuse him from appearing on an arraignment on a misdemeanor charge. Without contacting the District Attorney, Judge McCullough continued the case. During the next two years, Judge McCullough continued the case twenty times. "The Supreme Court called this a casebook example of wilful misconduct."\textsuperscript{174}

In two cases, Judge McCullough proceeded to trial in matters even though the defendants' attorneys were not present. The attorneys had called the court explaining that they had conflicts in appearances and had requested continuances. The Supreme Court held that forcing the defendants to trial without counsel was wilful misconduct. The court suggested that Judge McCullough should have held hearings to determine whether or not there was good cause for the failure of the attorneys to appear in their matters.

Despite the public censure that the Supreme Court had imposed upon Judge McCullough in 1987 for failure to decide cases and for signing salary certifications while the cases were pending, he continued this pattern of conduct. In 1989, the Supreme Court found that he had failed to sign a judgment
"His failure to respond to our public censure evidences a lack of regard for the Commission, this court, and his obligations as a judge."\textsuperscript{175}

SECTION I. Kloepfer v. Commission\textsuperscript{176}

The Hon. Kenneth L. Kloepfer was removed from office in the Municipal Court of San Bernardino County in 1990 pursuant to the Supreme Court's 1989 opinion that had become final. The Commission on Judicial Performance had recommended that he be censured publicly. Findings by the Commission of four acts of wilful misconduct and twenty-one acts of prejudicial conduct were sustained.\textsuperscript{177} The court discussed and rejected Kloepfer's claim that the combination of the investigatory and adjudicatory functions in the commission denied him due process. The court also rejected Judge Kloepfer's claim that due to the delays in the commission proceedings that he had been denied due process.

The comments of the Supreme Court regarding the two contentions are significant as they firmly establish the periods of time that acts may be considered as they affect the actions of the commission in reviewing conduct of not only Judge Kloepfer but other judges.

During the lengthy proceedings attorneys and judges were concerned about the nature of the conduct of Judge Kloepfer and the incidents that had been referred to during and after the completion of the hearings by the masters. As an example,
the first incident that was discussed occurred within a few months of Judge Kloepfer taking the bench in 1981. A court reporter cried as a result of being berated by Judge Kloepfer.

This incident and others have to be placed in context and form a part of the continuing pattern of "rude, abusive, and hostile behavior" that the Supreme Court found was typical of the charges made against Judge Kloepfer.

Most of the attorneys who appeared before Judge Kloepfer were aware of many of the incidents that occurred. Some were percipient witnesses to incidents or were recipients of the abuse. The judges were only aware of rumors of incidents and hearsay about occurrences.

An unresolved question remains. What can or should judges who only hear about incidents do about allegations of misconduct? These were not peaceful periods. Judge Kloepfer and one other judge were in virtual "warfare" during most of the period that incidents were occurring.

Ten acts of prejudicial conduct are listed. They can be grouped as conduct directed toward court reporters, conduct directed toward attorneys, conduct directed toward defendants, and conduct directed toward parties and witnesses. Generally the statements of Judge Kloepfer were rude and abusive.

As a district attorney, Judge Kloepfer had been responsible for training newly appointed district attorneys. Yet, his statements in court to some prosecuting attorneys in the municipal court were strong and disparaging. To one
attorney he stated, "You are an embarrassment to the People of the State of California and it's frightening to think that you represent their interests." Another attorney was accused of being "psychologically afraid to take a case to trial" and then he made this demand, "Give me a list of the cases you have tried and the court in which they were tried."

In one trial, Judge Kloepfer displayed such hostility to the defendant, defendant's counsel, and a defense witness that the Appellate Division of the San Bernardino County Superior Court held that defendant had been denied even the semblance of a fair trial. According to the Supreme Court's opinion the conduct of Judge Kloepfer was pervasively rude and threatening as he conducted hearings and trials.

The Supreme Court addressed Judge Kloepfer's argument that no one was harmed (by his conduct) in strong terms. The Supreme Court stated, "His argument reflects his inability to appreciate how impulsive, discourteous, threatening, and arbitrary statements by a judge affects the perceptions of the judiciary and the justice system."

The Supreme Court found that Judge Kloepfer had failed to accord defendants their basic constitutional rights in five instances. Judge Kloepfer had practiced law as a prosecuting attorney for thirteen years before running for office. During the thirteen years he had tried many kinds of criminal cases and had been responsible not only for negotiating plea bargains but also for representing the people at the time.
guilty pleas were taken by a judge in hundreds of cases. For three years he was the representative of the people on a felony sentencing calendar at which time pleas were confirmed and rights were waived by defendants after being advised by the defendant's attorney, by the district attorney, or often by the judge taking the plea.

As a district attorney Judge Kloepfer had taught classes for the San Bernardino County Sheriff's Academy on a variety of subjects including search and seizure and procedures in making lawful arrests. Without this detailed knowledge of Judge Kloepfer's background of training and experience, the Supreme Court found that in the various proceedings where he had denied or circumvented the defendant's constitutional rights that Judge Kloepfer "knowingly failed to ensure the constitutional rights of a criminal defendant and did so to avoid the burden of proceedings in which the defendant would have adequate representation."^182

The Supreme Court detailed five instances in which denial of adequate representation occurred. Among them was an instance where the defendant appeared without counsel for a pretrial conference. The defendant had subsequently appeared and his retained counsel was late. Without giving the defendant an opportunity to explain Judge Kloepfer remanded him into custody for not going to a panel that assisted defendants to identify an attorney to assist him and for not discussing his case with a district attorney.
Judge Kloepfer had contended that this was not typical of his conduct. The Supreme Court disagreed. "We disagree with petitioner's characterization of his conduct as atypical. To the contrary, it is all too typical of his pattern of discourteous remarks, threats, and intimidation, and punitive rulings made on the basis of unfounded assumptions."\(^{183}\)

Two other examples of his arbitrary conduct follow. Judge Kloepfer ordered a defendant arrested though she had not been ordered to appear for a hearing and her attorney was present.

In another case, a defendant appeared with proof that the case underlying a charge of probation violation had been dismissed. Despite that act, Judge Kloepfer proceeded to conduct a hearing on the alleged probation violation over defendant's objections and request that he be represented by counsel. Based upon hearsay testimony of an officer, Judge Kloepfer found the defendant in violation of probation and sentenced him to six months in the county jail. The public defender, filed a notice of appeal and a writ of habeas corpus for the defendant.

Apparently, even when Judge Kloepfer recognized his mistakes he continued to compound them. He ignored the appeal, and by stipulation of counsel reasserted jurisdiction, which he lacked and could not properly do. He set aside the sentence and ordered the defendant released from custody. The public defender then filed an affidavit of prejudice against
Judge Kloepfer. Judge Kloepfer denied the affidavit and then conducted another violation of probation hearing, found the defendant in violation of probation, and sentenced the defendant to four months in the county jail. The Supreme Court found that his series of judicial gaffs all supported the commission's conclusion that he had engaged in wilful misconduct and prejudicial misconduct.\(^{184}\)

The Supreme Court found that Judge Kloepfer had abused his contempt power and his power to issue orders to show cause and bench warrants in five instances. The records of proceedings in Judge Kloepfer's court are replete with instances where he ordered persons to "shut up" even though they were seeking information that would have helped them to understand what was going on in the court. He frequently held persons in contempt for asking questions or asking their attorneys questions.

In one instance he ordered the person who had posted bail arrested when the defendant failed to appear. The Supreme Court noted, "Ordering a person to appear in court when no matter requiring his attendance is pending constitutes a serious misuse of the judicial office."\(^{185}\)

On the fourth general count, the Supreme Court found that Judge Kloepfer failed to remain objective and involved himself in three matters that came before him.

In one case after granting a defense motion to suppress evidence he denied the deputy district attorney's motion to
dismiss the case. Judge Kloepfer stated that he had read the police report and believed there was enough evidence to proceed and that he believed that the defendant was guilty. Although Judge Kloepfer had thus established that he had prejudged the case, he denied an oral motion by the defense to disqualify himself from the case.

Judge Kloepfer criticized the district attorney’s office in open court for seeking extraordinary relief from one of his rulings.

Following a preliminary hearing, Judge Kloepfer stated, "Mr. ______ is fraudulent, a liar, and deceitful!" He then increased bail from $13,000.00 to $150,000.00 and ordered attorney’s fees of $1,500.00 paid from the bail. This was done although the bail had been posted by defendant’s grandmother.186

In the last of the five general charges that were sustained by the Supreme Court, it was found that Judge Kloepfer had improperly ordered defendants to reimburse the county for the services of a public defender in two cases.

Judge Kloepfer did not advise one defendant that he had a right to have a hearing as to his ability to pay the fees assessed, and that he had a right to have a hearing as to the appropriateness of the fees. Judge Kloepfer set the fees at $2000.00 and subsequently criticized the public defender for attempting to get the amount of the fees modified. The Supreme Court held that these acts constituted wilful
misconduct.

Following a preliminary hearing, Judge Kloepfer ordered reimbursement for the public defender’s services by another defendant of $1500.00 without conducting a hearing and ordered that the money be taken from a bail deposit. Neither of the required hearings listed above were held. The Supreme Court held that these acts were prejudicial conduct.

Several attorneys testified at the hearings as to Judge Kloepfer’s honesty and integrity. Although presented as evidence in mitigation of the requirement for the removal from office, the Supreme Court held, "This evidence, and that which confirms that petitioner had a good reputation for legal knowledge and administrative skills are not mitigating. Honesty and good legal knowledge are minimum qualifications which should be expected of every judge."  

The summation of the Supreme Court’s conclusions show great perception as to the flaws that were demonstrated frequently through the several years that Judge Kloepfer sat as a judge in San Bernardino County. One of his colleagues shortly after he took office had described his conduct toward clerks, court reporters, attorneys, and litigants as being that of "a big bully."

Through his years as a prosecutor, Judge Kloepfer had been an aggressive and harsh advocate. His strong statements regarding his intent to impose severe sentences on criminals appealed to the public and to the law enforcement agencies
that supported him when he unseated Judge D. Larry Thorn in 1986. His sentences as imposed through the years as a judge reflected his view that harsh punishment was the only way to deal with crime.

The summation of the rather lengthy review of the Supreme Court opinion in the 1990 Annual Report of the Commission on Judicial Performance is as compelling as a Greek tragedy as it illustrates the faults that led to Judge Kloepfer's removal from office. "The court (pointed out) that the judge's years of experience as a deputy district attorney suggested that he was aware of the constitutional and procedural rights of criminal defendants, but failed to use his knowledge to ensure those rights. The court found that the record belied the judge's claim that he had learned from past experience and modified his courtroom behavior. The court stated, '(the record) demonstrates instead an inability to appreciate the importance of, and conform to, the standards of judicial conduct that are essential if justice is to be meted out in every case (49 Cal.3d at 866).’ The court concluded that Judge Kloepfer's removal was necessary to protect the public and the reputation of the judiciary."188

SECTION J. Kennick v. Commission189

In 1990, Judge David M. Kennick of the Los Angeles County Municipal Court was removed from office for persistent failure to perform judicial duties. This was the first time in the thirty years of its existence that the Commission on Judicial

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Performance had made a recommendation for removal of a judge on that basis. Judge Kennick had been absent from work on 96 days during 1985 and 1986. However, he had only reported being ill on 21 of those days, and he had not provided any medical evidence to support his claim of illness made at the commission’s hearing. The Supreme Court, in sustaining the Commission’s recommendation for removal, noted that under the California State Constitution as amended in 1976, "persistent failure to perform judicial duties standing alone is a sufficient ground for removal." 190

It is important to note that Judge Kennick argued that the actions of the Commission and the Supreme Court were rendered moot as he had retired after the report of the Commission recommending removal had been filed. The Supreme Court held that it was necessary to proceed with the hearing to determine whether or not Judge Kennick could hold judicial office in the future and whether or not Judge Kennick should be suspended from the practice of law.

Although the Supreme Court held that the sole reason for removing Judge Kennick from judicial office was his persistent failure to perform his judicial duties, it also reviewed other issues that had been raised in the recommendation for his removal.

The Supreme Court held that he had engaged in prejudicial conduct when he was arrested for driving under the influence in that he was rude and uncooperative. Further, he went to a
California Highway Patrol office and asked a sergeant "if the paperwork could be lost between the office and the court?"

The Supreme Court found that he had engaged in wilful misconduct in that he "had shouted at a district attorney, that he was discourteous, impatient, and demeaning to litigants appearing before him, and that he denied parties a full opportunity to be heard, and was rude and intimidating to witnesses. The court also found that he was abusive and intimidating to an attorney appearing before him, and denied her a right to be heard." 191

Judge Kennick was charged with gender bias in that he addressed female attorneys, court personnel, and others as "sweetheart, sweetie, honey, and dear in the course of conducting court business." 192 The Supreme Court found that such terms were "unprofessional, demeaning, and sexist and that the use of these appellations was prejudicial conduct." 193

But that is not the end of this sad story. Judge Kennick favored friends in making appointments of counsel to represent indigent defendants and persisted in communicating ex parte with attorneys that he had appointed to represent defendants. His lack of judgement was further exemplified in that he engaged in prejudicial conduct when he "assured a waitress (while at a bar) that she should not worry about her arrest for driving under the influence." 194

SECTION K. In re Boaga 195

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The State Supreme Court removed Judge Charles D. Boags from his office as Judge of the Beverly Hills Municipal Court pursuant to Article VI, Section 18(b) of the California Constitution. In December of 1988, Judge Boags was convicted of the charge of conspiracy to obstruct justice, a crime involving moral turpitude. In February of 1989, as a result of the conviction and based upon a recommendation of the Commission on Judicial Performance, Judge Boags was suspended from office without pay. The constitution requires that when such a conviction becomes final a judicial official must be removed from office. The conviction became final in May of 1990 and the Supreme Court removed Judge Charles D. Boags from office.

SECTION L. SUMMARY OF REMOVALS

From 1961 to 1990, eight municipal and two justice court judges were removed from office for acts of misconduct or acts that were prejudicial to the administration of justice. One municipal court judge was removed from office due to health problems that prevented him from performing his duties. One Supreme Court associate justice was removed from office because of senile dementia. One municipal court judge was removed from office after a conviction for obstructing justice became final. The total number of judges removed from office from 1961 to 1990 was thirteen.

A recommendation for removal of one superior court judge, the Honorable Charles F. Stevens, from office was not
sustained because of insufficient evidence. The Supreme Court dismissed the action.\textsuperscript{197}

The Commission recommended that Judge James J. McCartney be removed from office and he was censured publicly. The Commission recommended that Judge Kenneth Lynn Kloepfer be censured publicly and he was removed from office. The Commission recommended that Judge Jerrold L. Wenger be censured publicly and he was removed from office.

Associate Justice Marshall F. McComb of the State Supreme Court was removed from office because of senile dementia. Judge Charles Robert Roick of the San Diego County Municipal Court was removed from office because of disabilities that prevented him from performing his judicial responsibilities.
CHAPTER 9

SUMMARY OF ANNUAL REPORTS OF THE COMMISSION ON JUDICIAL PERFORMANCE AND CASES IMPOSING PUBLIC CENSURE

When the Commission on Judicial Qualifications was authorized, its power revolved around the two phrases wilful misconduct and conduct prejudicial to the administration of justice that brings the judiciary into disrepute. The Supreme Court has imposed public censure on judges in sixteen cases.

Many judges have accepted that punishment as an alternative to the possibility of being removed from office. Many judges have resigned or retired rather than challenge the allegations that brought them to the attention of the Commission and to save whatever pension they may have earned. As of the end of 1990, ninety-one had done so. An additional factor that was considered by many judges was that removal from office also raised the possibility of being prohibited from practicing law.

I have not intended in this paper to emphasize or concentrate upon statistics. However, following my lengthy examination of the cases cited that support the removal of judges from office, I noted that no superior court judge, or appellate court justice, or supreme court justice has been removed from office for wilful misconduct in office or for conduct bringing the judiciary into disrepute. The only
California State Supreme Court Justice removed from office was Associate Supreme Court Justice Marshall F. McComb who was removed from office because of incapacity caused by senile dementia.

I have reviewed the broad statistics indicating the number of sitting judges presiding during the years from 1961 to 1990 and the number of complaints filed against them. During the early years of the report, the number of justice court, municipal court and superior court judges who retired during the time that an investigation was being conducted was stated. However, that was not done from 1964 to 1988.

In 1976, the voters approved an option of private admonishment as a disciplinary device to educate and alert judges. In this section of paper, I will note the number of sitting judges, the number of complaints filed against them, the number of inquiries/investigations initiated, the number of public censures and the cause of the censure, and the number of private admonishments with a general indication of the reasons for the complaint that resulted in the admonishment. As the style of the reports has changed through the thirty years, the statistics and information provided cannot be correlated. In a few years, I was unable to confirm the number of sitting judges even though I contacted the California Judges Association, the Administrative Office of the Courts and the Commission on Judicial Performance.

Since no superior court judge has been removed from
office, the nature of the complaints that justified public
censure should be of interest and may relate to the bases for
removal of municipal and justice court judges from office.

SECTION A. COMMISSION ON JUDICIAL QUALIFICATIONS, 1961
ANNUAL REPORT. In 1961, the number of sitting judges was not
stated in the report.

Seventy-five complaints were filed against sixty-eight
judges. Sixteen were justice court judges, thirty-five were
municipal court judges, twenty were superior court judges, one
was an appellate court justice, and three could not be
identified.

During the investigations, two justice court judges, one
municipal court judge, and one superior court judge retired.

SECTION B. COMMISSION ON JUDICIAL QUALIFICATIONS, 1962
ANNUAL REPORT. In 1962, there were 904 sitting judges.

Ninety-five complaints were filed. Twenty-seven were
against justice court judges, thirty-five were municipal court
judges, forty-four were superior court judges, and four were
appellate court judges.

An unstated number of cases were investigated.

During the investigations, five municipal court judges
and one justice court judge retired or resigned.

SECTION C. COMMISSION ON JUDICIAL QUALIFICATIONS, 1963,
ANNUAL REPORT. In 1963, there were 927 sitting judges.

One hundred fourteen complaints were filed with the
commission against judges. Sixteen were justice court judges,
thirteen were municipal court judges, and thirteen were superior court judges.

Forty inquiries/investigations were conducted. During the investigations, ten judges retired or resigned from office. Five were from the justice courts, four were from the municipal courts, and one was from the superior court.

SECTION D. COMMISSION ON JUDICIAL QUALIFICATIONS, 1964 ANNUAL REPORT. In 1964, there were 933 sitting judges.

Sixty-seven complaints were filed against judges. Thirty inquiries were made to judges. Six judges retired without a formal hearing taking place. (It should be noted that the statement of the number of complaints against judges at the different court levels was not given in this annual report, though provided in 1961, 1962, and 1963.)

A recommendation for removal of Judge Charles F. Stevens from the San Diego County Superior Court was made. The statement summarizing the case is brief. The State Supreme Court found that the evidence was insufficient to support the recommendation. The recommendation was rejected and the proceeding was dismissed.

As no discipline other than removal was available to the State Supreme Court a movement began to include censure as an appropriate punishment in those cases where removal was too harsh a penalty for the offense or offenses committed.

SECTION E. COMMISSION ON JUDICIAL QUALIFICATION, 1965 ANNUAL REPORT. In 1965, the number of sitting judges was not
provided in the report.

Twenty nine inquiries/investigations occurred. Four of the judges contacted resigned or retired after receiving notice of being investigated. No recommendations for removal were made this year.

SECTION F. COMMISSION ON JUDICIAL QUALIFICATIONS, 1966 ANNUAL REPORT. In 1966, there were 965 sitting judges.

Seventy-five complaints were filed against the judges. Twenty-nine inquiries/investigations were made. Some of them justified criticisms or admonishment by the commission but did not warrant removal from office.

"In recent years, such infractions have included neglect and inattention to duties, disregard for rules and standards of practice, as well as arrogance, aggravated discourtesy, and violations of canons of judicial ethics. Usually specific changes or improvements have resulted from actions of the Commission."198

SECTION G. COMMISSION ON JUDICIAL QUALIFICATIONS, 1967 ANNUAL REPORT. In 1967, there were 999 sitting judges.

One hundred and one complaints were filed. Forty-eight inquiries or investigations were made. Five judges retired or resigned during the course of the investigations.

SECTION H. COMMISSION ON JUDICIAL QUALIFICATIONS, 1968 ANNUAL REPORT. In 1968, there were 1030 sitting judges.

One hundred thirty-two complaints were filed. Forty-eight resulted in inquiries or investigations.
SECTION I. COMMISSION ON JUDICIAL QUALIFICATIONS, 1969
ANNUAL REPORT. In 1969, there were 1050 sitting judges.

One hundred fifty-five complaints were filed against judges. Forty-six warranted inquiries or the opening of investigations. Four judges retired or resigned during the investigations.

SECTION J. COMMISSION ON JUDICIAL QUALIFICATIONS, 1970
ANNUAL REPORT. In 1970, there were 1094 sitting judges.

One hundred eighty-one complaints were filed with the Commission. In thirty-three cases inquiries/investigations were conducted. The Commission recommended censure of two judges during the year.

The State Supreme Court adopted the recommendation that Judge Gerald S. Chargin be publicly censured. In a juvenile court proceeding "Judge Chargin made improper and inflammatory remarks reflecting upon the juvenile’s family and members of his ethnic group." The Supreme Court held that the conduct was prejudicial to the administration of justice and brings the judiciary into disrepute.

The second recommendation was received too late for the State Supreme Court to take action on it in 1970.

SECTION K. COMMISSION ON JUDICIAL QUALIFICATIONS, 1971
ANNUAL REPORT. In 1971, there were 1087 sitting judges.

Two hundred seventeen complaints were filed against judges. Inquiries or investigations were conducted in fifty-four instances. The Commission recommended to the State
Supreme Court that Judge Leland W. Geiler be removed from office.\textsuperscript{200}

Judge Bernard B. Glickfeld, a judge of the Superior Court was censured for making improper remarks during discussions of the disposition of criminal charges. He made insulting remarks about the victim and repeated some of them in open court in connection with the case. The Supreme Court held that "Judge Glickfeld's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute."\textsuperscript{201}

Two judges retired or resigned during the conduct of investigations.

SECTION I. COMMISSION ON JUDICIAL QUALIFICATIONS, 1973 ANNUAL REPORT. In 1973, there were 1,135 sitting judges.

One hundred ninety-seven complaints were filed against judges. Forty inquiries/investigations were initiated.

The Commission recommended censure and severe censure following completion of two investigations. The State Supreme Court imposed public censure on Judge Antonio E. Chavez,\textsuperscript{202} and severe public censure on Judge Leopold Sanchez.\textsuperscript{203} Both of these judges were from the Los Angeles County Superior Court. Each had provided presigned bail release forms to bondsmen.

The court held in each case that since no judicial officer had ruled on the propriety of bail that providing presigned release forms to the bail bondsmen constituted
wilful misconduct. In the Sanchez case, the State Supreme Court commented that there was no showing made that the judge had profited from his actions.

The Commission recommended that the Hon. James J. McCartney be removed from office. The matter was pending at the time of filing of this annual report.

During this year, the State Supreme Court removed Judge Leland W. Geiler from office.\textsuperscript{204}

Two judges resigned during investigations of their alleged misconduct.

SECTION M. COMMISSION ON JUDICIAL QUALIFICATION, 1974 ANNUAL REPORT. In 1974, there were 1133 sitting judges.

Two hundred forty-seven complaints were filed. Thirty-six inquiries/investigations were conducted.

The Commission recommended the removal of Judge William D. Spruance from office.

The Hon. James J. McCartney was publicly censured after the State Supreme Court rejected the recommendation of the Commission that he be removed from office.\textsuperscript{205} In commenting on changes made to the constitution in 1976, the court used the decision in \textit{McCartney v. Commission} to clarify its position. "The persistent \textit{failure} to perform duties need not be wilful, and persistent inability to perform the judge's duties is a new basis of closing whatever loophole exists between 'disability' and 'failure.'"

In \textit{McCartney v. Commission on Judicial Qualifications},
the State Supreme Court in 1974 acknowledged the judge's inability to conduct court matters effectively, but ruled 'such shortcomings cannot be condemned as injudicious behavior.' In its opinion, the State Supreme Court likened the judge's handling of judicial tasks to the 'fog-mired High Court of Chancery in Dickens' Bleak House, which was so dedicated to the intricacies of justice that the estates probated before it were entirely depleted by court costs and legal fees. That infamous inefficiency, so well depicted by Dickens, was hardly cause for dispensing with the Lord Chancellor."

Three judges retired or resigned during investigations.

During 1974, the Commission recommended that private admonitions be authorized as an alternative disciplinary measures. It was proposed that private admonitions and a reprimand by the Commission be included in the California Rules of Court to assure that less serious offenses not be ignored.

The problem was that to impose public censure or removal from office the Commission had to provide the State Supreme Court with a full record of the proceedings. Many allegations are admitted and the adoption of the recommendation would eliminate a lengthy and cumbersome process for less serious offenses. The California Judicial Council concluded that such a procedure would require a constitutional amendment.

SECTION N. COMMISSION ON JUDICIAL QUALIFICATIONS, 1975

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ANNUAL REPORT. In 1975, the number of sitting judges stated in the report could not be substantiated.

Two hundred thirty-nine complaints were filed against judges and forty-eight inquiries or investigations also were initiated. Because of these investigations three judges retired or resigned. Municipal court judges William D. Spruance and Noel Cannon were removed from office by the State Supreme Court.

SECTION O. COMMISSION ON JUDICIAL PERFORMANCE, 1976 ANNUAL REPORT. In 1976, the number of sitting judges stated in the report could not be substantiated.

Two hundred fifty-one complaints were filed against judges and sixty-three inquiries/investigations were begun. Three judges resigned or retired before the investigations were completed.

In 1976, the Commission was renamed the Commission on Judicial Performance. In addition, the voters approved by a significant vote of eighty-three percent to seventeen percent several modifications in the law that had provided for the actions by the Commission on Judicial Qualifications in 1960. These major changes were:

"1) To provide for a tribunal of seven Court of Appeal judges to determine a recommendation for censure, removal or retirement of a judge of the Supreme Court;

"2) To add to 'habitual intemperance,' as a ground for discipline, the language 'in the use of intoxicants or drugs;’
"3) To allow private admonishment by the Commission of a judge 'found to have engaged in an improper action or a dereliction of duty,' subject to Supreme Court review.

"4) To change one of the grounds for censure or removal from 'wilful and persistent failure to perform his duties' to 'persistent failure or inability to perform the judge's duties.'"208

SECTION P. COMMISSION ON JUDICIAL PERFORMANCE, 1977 ANNUAL REPORT. In 1977, there were 1178 sitting judges.

Two hundred seventeen complaints were filed. One hundred seventy of the files were closed because there were no allegations of judicial misconduct. Inquiries regarding the actions of fifty-three judges were made. Eleven preliminary investigations were held. Three judges were exonerated of any inappropriate actions. One judge retired from office while an investigation was proceeding. The Supreme Court approved private admonishment of eight judges by the Commission on Judicial Performance.

Associate Justice Marshall F. McComb of the California State Supreme Court was involuntarily retired by a special tribune. He was found to be suffering from a condition of senile dementia.

SECTION Q. COMMISSION ON JUDICIAL PERFORMANCE, 1978 ANNUAL REPORT. In 1978, the number of sitting judges stated in the report could not be substantiated.

Two hundred seventy-four complaints were filed against
judges. Seventy-two inquiries were made. Twenty preliminary investigations were begun. Seven private admonishments were issued.

Procedurally, the admonishment may be given following an investigation or a formal proceeding. The record of the private admonishment becomes a part of the judge's file and may be used in the future to support disciplinary actions.

Judge Charles Robert Roick, a San Diego County municipal court judge was removed from office because of disabilities.

One judge resigned during an investigation.

Judge Arden T. Jensen, a judge of the superior court, was publicly censured for filing affidavits that he had no cases that had been submitted pending for more than ninety days. The affidavits were not correct.

SECTION R. COMMISSION ON JUDICIAL PERFORMANCE, 1979 ANNUAL REPORT. In 1979, the total number of sitting judges was not provided in the annual report.

Two hundred ninety-one complaints were filed. Seventy-six inquiries or investigations were initiated.

Three private admonishments were administered.

Two judges retired or resigned during the conduct of investigations.

SECTION S. COMMISSION ON JUDICIAL PERFORMANCE, 1980 ANNUAL REPORT. In 1980, there were 1276 sitting judges.

Two hundred sixty complaints were filed against judges. Sixty-five inquiries or investigations were initiated.
Eight private admonishments were administered. If the judge requests, a formal investigation will be conducted. In this year, two private admonishments were given after formal investigations.

From 1960 to 1980, seventy-three judges retired or resigned in lieu of requesting a hearing with reference to investigations being conducted about them.

SECTION T. COMMISSION ON JUDICIAL PERFORMANCE, 1981 ANNUAL REPORT. In 1981, there were 1,280 sitting judges.

Two hundred sixty-seven complaints were filed. Fifty inquiries or investigations were initiated. Four formal hearings concerning the complaints about judges were conducted.

Judge Leland W. Wenger was removed from office.

Judge Robert S. Stevens, a judge of the Los Angeles County Superior Court was censured publicly. Prior to becoming a judge he had been a member of the legislature. For four years, he called Mr. and Mrs. Edward Murphy, employees of the legislature. He talked to them about his sexual fantasies and "proposed that the Murphys engage in various kinds of sexual activity with him and with other persons, all in explicit, vulgar, and offensive language." They objected but he continued to harass them. Several public officials and other legislative employees became aware of the telephone calls.

In August of 1979, the problem was reported in the Los
Angeles Times. The Commission on Judicial Performance determined that his conduct was prejudicial to the administration of justice and recommended that he be censured. The Supreme Court imposed the sanction of public censure.

Seven private admonishments were authorized by the State Supreme Court.

Section U. COMMISSION ON JUDICIAL PERFORMANCE, 1982 ANNUAL REPORT. In 1982, there were 1308 sitting judges.

Three hundred sixty complaints were filed against judges. Sixty-eight inquiries or investigations were initiated.

One judge resigned or retired during the conduct of an investigation.

Six judges were privately admonished.


The Hon. Hugo Fisher, a judge of the San Diego County Superior Court, was publicly censured by the State Supreme Court for a continued pattern of ex parte communications with one litigant's attorneys. This continued for a period of six years. Opposing counsel was not informed of the contacts.211

The Hon. Charles S. Stevens, a judge of the Santa Barbara County Superior Court, was publicly censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute.212 During hearings in
chambers he frequently made various inappropriate and ethnic remarks that disparaged Blacks, Mexicans, and Filipinos. He was excused because most of the members of the Supreme Court held that his decisions were fair in spite of his comments.

Justice Kaus and Justice Mosk disagreed with the opinion but for different reasons. Justice Kaus commented, "It is beyond me how it can be argued that such behavior is not conduct prejudicial to the administration of justice, simply because Judge Stevens performed his duties fairly and equitably. 'Justice not only should be done, but should manifestly and undoubtedly be seen to be done.'"  

Justice Mosk dissented because the Commission found that at all times Judge Stevens had performed his duties fairly and equitably and free from bias and should not have been censured. He objected because the Commission was imposing its standards of speech on the judiciary in violation of the United States Constitution. In addition, he contended that such actions were inappropriate as being a waste of the taxpayers' monies and related this "inappropriate action" to the challenge that had been posed to the State Supreme Court that it was delaying decisions during an election year because of the unpopularity of some of its rulings.

I do not agree with the conclusions of the Commission and Justice Mosk. The Supreme Court held by a majority of the justices that despite the reports of many degrading remarks about ethnic groups by Judge Stevens that he was fair.
Judge Lewis Wenzel was suspended from office because of he was charged with publicly offensive, disgraceful behavior, i.e., associating with prostitutes and soliciting or engaging in an act of prostitution. Following a review of the transcripts of the testimony in the trial, the Commission found that the offenses involved moral turpitude and recommended that he be suspended without pay until the convictions became final.

The State Supreme Court ordered that briefs be submitted. Although, the convictions were overturned because of an error in the instructions given the jurors, Judge Wenzel resigned from office. Then the State Supreme Court dismissed the proceedings as being moot.\textsuperscript{215}

\textbf{SECTION V. COMMISSION ON JUDICIAL PROCEEDINGS, 1983 ANNUAL REPORT.} In 1983, there were 1,341 sitting judges. Three hundred fifty-one complaints were filed against judges. Sixty-three inquiries or investigations were conducted.

Six private admonishments were imposed by the Commission. Three judges resigned or retired during the conduct of investigations into allegations of their misconduct.

Judge Mario P. Gonzalez was removed from office.\textsuperscript{216}

Judge Bobby D. Youngblood, a judge of the Santa Ana Municipal Court, was "severely publicly censured."\textsuperscript{217} Some examples of his actions were listed by the State Supreme Court that justified severe public censure.
Judge Youngblood had ordered persons to appear before him without legal authority to do so and had jailed one of them unlawfully. He presided over a case involving Pacific Telephone, and at that time was a party in a case against that company. He altered a previously entered judgement after an ex parte communication with the plaintiff and without giving notice to Pacific Telephone. Judge Youngblood contacted employees of Pacific Telephone and threatened to place them in jail if his telephone service were interrupted following his rulings.

Judge Harry R. Roberts, a Superior Court Judge of Mono County was publicly censured for eight allegations of misconduct. Three examples are cited. One count of misconduct was based upon his conviction for obstructing police officers. In another count, though he had a legitimate concern [in a child neglect hearing] he expressed that concern "... in an unacceptable, nonobjective and nonneutral manner, demonstrating unwarranted impatience, disbelief and hostility toward counsel, litigant and witnesses." In a third count, the State Supreme Court concluded that Judge Robert's "... attempt to exert pressure upon prosecutor, defense counsel and appellate court alike discloses an unhealthy and wholly improper concern with the protection of his own rulings from appellate reversal." (218)

SECTION W. COMMISSION ON JUDICIAL PERFORMANCE, 1984 ANNUAL REPORT. In 1984, there were 1,341 sitting judges.
Three hundred eighty-eight complaints were filed. Sixty-two inquiries or investigations were conducted by the Commission.

Judge Marion E. Gubler of the Burbank Municipal Court was publicly censured for several acts of misconduct. In a major challenge to the authority of the State Supreme Court to publicly censure a sitting judge for what was contended to be legal error, the State Supreme Court "refined the error vs. misconduct distinction which it had defined in earlier Commission cases. ...the court identified bad faith as the 'touchstone' for finding wilful misconduct, discussed the element of 'conduct prejudicial' and the 'grossly negligent' misuse of judicial power."²²⁰

This decision of the State Supreme Court was fifty-nine pages long. A summation points out that "Most of the charges (against Judge Gubler) stemmed from the Judge's efforts to coerce from criminal defendants statutory payment to the county for their legal representation by public defenders.

These efforts included requiring the payment of attorneys fees before fines, ordering unauthorized appearances of defendants in court for fee-collection purposes, recording fee orders as apparent conditions of probation, and taking attorney fees from bail deposit without defendants' request or consent. The Judge had also once threatened to increase another judge's fee order."²²¹

To emphasize the significance of Judge Gubler's actions,
the Supreme Court noted in its opinion that he had "given defendants the incorrect impression that payment of fees could be enforced by criminal sanctions. ... Though some of the acts in question would not necessarily constitute misconduct or even legal error when viewed in isolation, they became misconduct as part of petitioner's larger scheme for using threats. ... That scheme violated the provisions of Penal Code Section 987.8 that provide for collection of attorney fee orders only by execution as on a judgment in a civil action and prohibit enforcement by contempt."222

The State Supreme Court found that Judge Gubler's attempt to influence the decision of a court commissioner in setting the fee for an attorney's services was improper. After Judge Gubler had been disqualified from hearing the matter, he wrote a letter to the commissioner assigned the case and suggested that the fee be set at $500.00.

The State Supreme Court concluded Judge Gubler's "act of writing the note was for a corrupt purpose, i.e., for a purpose other than the faithful discharge of judicial duties, and thus constituted wilful misconduct."223

Several of Judge Gubler's acts should be listed.

Judge Gubler increased fees for a defendant because he was angry with the defendant's attorney. The court held that Judge Gubler's "hostile, arbitrary and unreasonable conduct jeopardized the liberty of an indigent defendant for reasons not related to the merits of the case and constituted wilful
In three cases, Judge Gubler assessed unreasonable fees based on inadequate information as to the ability of the defendants to pay. Further, the judge did not conduct hearings to ascertain whether or not the defendants could pay all or part of the fees.

In one case the statement was ambiguous and the defendant had been released on bail, another defendant was not even asked about his financial status, and in the third case, the defendant’s attorney had indicated that his client was indigent and was retarded. The court considered that Judge Gubler’s conduct in these instances was prejudicial to the administration of justice and brought the judiciary into disrepute.

In four cases, Judge Gubler ordered the release of confiscated firearms. Two of them were ordered released to his bailiff and to a friend of his bailiff. The other two were released to the friend of the bailiff for sale to other persons. The judge argued that the question was whether or not his acts were legal and that issue should be resolved through legal action not by disciplinary action.

The Supreme Court held that the release of the guns to the bailiff was contrary to P.C. 12020 and P.C. 1030 and that such acts were improper. The court pointed out that such acts violated Judge Gubler’s obligations under canon 2(b) of the Code of Judicial Conduct. The court held that such acts
constituted conduct prejudicial to the administration of justice.

One judge resigned or retired during an investigation.

One private admonishment was issued.

SECTION X. COMMISSION ON JUDICIAL PERFORMANCE, 1985 ANNUAL REPORT. In 1985, there were 1385 sitting judges.

The format of the annual report was changed from a letter report which had become rather lengthy to a printed booklet. The format and outline of subjects reported upon was improved and contributed to its readability.

Part I provided a background discussion of the "Development of the Commission on Judicial Performance, 1960 – 1985."

Part II was titled "Summary of Commission Disciplinary Action in 1985."

Three hundred seventeen complaints were filed. As was true in previous years, the great majority of the complaints were closed because they did not relate to allegations of judicial misconduct. Inquiries or investigations were initiated in fifty-four matters and forty-seven judges were questioned about allegations. Eleven investigations were begun. Four hearings were conducted and two judges resigned after formal proceedings were begun.

Part III was titled "Public Discipline." Judge Robert Z. Mardikian of the Fresno Superior Court was publicly censured for failure to decide 14 cases within ninety days of their
being taken under submission. Several of the cases had been resubmitted without consultation or request of the litigants or their attorneys. Previously, the Commission had made inquiries about some of the cases but that had not caused Judge Mardikian to speed up the decision making process.

The Commission rejected findings that "the delays were the product of an intentional disregard of and refusal to perform judicial duties and that many of the salary affidavits which petitioner executed were false and knowingly believed to be false." The Commission took into consideration Judge Mardikian's reputation as a hardworking and diligent judge. He had health and family problems, and the Fresno Court lacked proper staffing.

As a result of this case the Supreme Court in its decision discussed actions that an overworked judge can take to resolve his problems. Actually, they appear to be simple management techniques. The major suggestion was that judges assign priorities to the cases that they have taken under submission in order to meet deadlines.

The Supreme Court commented that routine resubmissions cannot be condoned, and personal difficulties cannot be accepted as justification for failures to complete work in a timely manner. The Supreme Court provided an out for the overworked judge. The suggestion was made that "proper cause would exist if the parties stipulate to vacation of the order, on the basis of change of circumstances, or if there exist
extraordinary circumstances such as sudden illness which prevents the judge from attending to his duties for a protracted period of time, and where reassignment of the matter would cause a delay of equal or greater length."²²⁷

Five judges were privately censured.

The incidents emphasize the recurring nature of many problems that judges appear to cause. Examples follow:

One judge deprived a defendant of his right to counsel and another was vengeful and punitive in the actions he took toward a defendant.

One judge abused his power by issuing an order in a matter that was not in litigation or properly before him.

One judge abused defense counsel and deprived the defendant of a fair and impartial trial.

One judge failed to decide a case within a year of the filing of post trial briefs.

"Two judges engaged in unacceptable off-bench conduct outside of and unrelated to the performance of their judicial duties."²²⁸

SECTION Y. COMMISSION ON JUDICIAL PERFORMANCE, 1986 ANNUAL REPORT. In 1986, there were 1429 sitting judges.

Four hundred and seventy-six complaints were filed against judges. Three hundred sixty-three were closed after examination by the staff as they did not allege actionable conduct. One hundred and thirteen complaints warranted inquiry or investigation. Twenty-six complaints resulted in
private disciplinary actions against judges. Investigations were begun in four cases. One judge was censured publicly and two judges were removed from office.

Part I. Public Discipline

The Hon. Frank Creed, Jr., of the Fresno Superior Court was censured publicly for failing to decide cases within the 90 day period following taking the matters under submission. This case was brought before the Commission on Judicial Performance by the Commission on Judicial Appointments. The evidence presented to the three judges appointed masters in the case found that for a period of five years "Judge Creed had repeatedly and unjustifiably delayed filing decisions in cases submitted to his court. During this time, he continued to execute erroneous salary affidavits and to collect his salary even though cases remained pending and undecided in his court for periods of 90 days."\(^{229}\) The Commission adopted the findings of the masters and the Supreme Court imposed the disciplinary action of public censure.

The Supreme Court made what in my opinion is a strange conclusion. It found that "He did not knowingly falsify the salary affidavits, and did not intentionally or maliciously disregard his adjudicative responsibilities."\(^{230}\) The Supreme Court noted that no one was harmed by the excessive delays, that he had an excessive workload, and an inadequate staff. The court also praised him for being a hard working judge.

Part III. Private Discipline and Dispositions.
Private discipline was imposed upon three judges.

One judge failed to decide cases within 90 days despite filing salary affidavits.

One judge failed to decide three cases within ninety days of taking it under submission. One of the cases had been undecided for four years. One judge was censured privately for abusing the power of contempt in two matters. Also, he was discourteous to witnesses, litigants, and attorneys and it appeared to observers that had he prejudged the matters.

As has been done for several years, twenty-two advisory letters were sent to judges who had been discourteous, or had appeared to violate specific canons of judicial conduct.

SECTION Z. COMMISSION ON JUDICIAL PERFORMANCE, 1987 ANNUAL REPORT. In 1987, there were 1,446 sitting judges.

Five hundred forty-seven complaints were filed. Four hundred twenty-two complaints were closed because they did not relate to conduct that is within the jurisdiction of the Commission. One hundred twenty matters warranted follow-up. Seventy-five letters of inquiry were sent to judges. Preliminary investigations were begun in twenty cases.

Private disciplinary action was taken in thirty-eight matters.

Five judges resigned or retired after investigations were begun.

The Commission recommended severe public censure of the Hon. L. Eugene Rasmussen. Judge Rasmussen did not contest the
conclusion and the recommendation was adopted by the Supreme Court.

Judge Robert H. Furey, Jr., was removed from office and Judge L. Eugene Rasmussen and Judge Bernard McCullough were censured publicly.

The wilful misconduct of the Hon. L. Eugene Rasmussen, Justice Court Judge of the South Lake Tahoe Justice Court, occurred when he violated Canons of Judicial Conduct. These several incidents occurred from 1981 to 1984.

Canon 2 of the California Code of Judicial Conduct states that "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."\(^{231}\)

At a football game Judge Rasmussen called a coach a "pervert" and initiated revocation of probation proceedings against the coach for personal reasons unrelated to his duties as a judge. He told a defendant what his sentence would be during a time that the defendant’s attorney was not present. He was openly critical of a fellow judge, and had suggested that an attorney who had objected to his questions to a client in chambers be investigated by the State Bar. He frequently harassed attorneys who had filed affidavits of prejudice against him.

Judge Rasmussen had violated Canon 3A(3) which states: "A judge should be patient, dignified, and courteous to
litigants, witnesses, lawyers, and others with whom he deals in his official capacity." In addition to the misconduct mentioned above, he would withhold judgements in cases unrelated to matters that were properly before him; he refused to disqualify himself although he had indicated what his sentence would be to a defendant whose counsel was not present; and he would attempt to discourage attorneys from filing affidavits of prejudice.

The Supreme Court held that his misconduct was "a disturbing, intolerable affront to the legal profession, and to the public." The strength of this statement seems to be inconsistent with the continuing pattern of misconduct and imposition of the discipline of public censure.

Judge Bernard McCullough was censured publicly following a recommendation submitted by the Commission to the Supreme Court in 1986. Judge McCullough had failed to decide one case for three years and nine months. This occurred after he had been censured privately on three occasions as to that case. During the period he executed salary affidavits certifying that he had no case pending for more than ninety days. The State Supreme Court concluded that his failure to decide the case and to respond to the private admonishments and his execution of the salary affidavits were conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

One section of the report was devoted to listing thirty-
four examples of misconduct that warranted the imposition of private discipline.

This report is the first one to include a section devoted to reporting on complaints about gender bias. It provides a brief discussion of what constitutes gender bias and refers to the changes that have occurred in California with regard to the new Standards of Judicial Administration specifically directed at eliminating gender bias in the courts. In addition, the report notes the continuing efforts of the California Judicial College to alert newly elected or appointed and experienced judges to the various ways that gender bias becomes apparent in a court proceeding.

The report discusses briefly the two California cases that imposed discipline because a judge's conduct evidenced his prejudice against women. These cases were reviewed previously. They are: In Re Charles S. Stevens and Geiler v. Commission on Judicial Qualifications.

Examples of gender bias that has occurred are presented from court records in New York, Minnesota, and Illinois.

SECTION AA. COMMISSION ON JUDICIAL PERFORMANCE, 1988 ANNUAL REPORT. In 1988, there were 1,462 sitting judges.

In PART III, "Summary of Commission Disciplinary Action in 1988," the various actions are discussed that were taken in response to six hundred ninety-three complaints.

One hundred ninety-nine of the complaints were investigated. An official inquiry was made in one hundred
fourteen of them. In twenty-two cases formal investigations were initiated.

Three judges retired or resigned during the conduct of the investigations.

There were eight private admonishments imposed and forty-seven advisory letters were sent to judges.

Public censure was recommended to the State Supreme Court in three cases. The judges were David M. Kennick, David Press, and Kenneth Lynn Kloepfer.

Judge Richard Ryan was removed from office in 1988. This case was discussed in detail above.

Examples of actions that were the basis of private disciplinary actions were provided.

Delay in deciding cases occurred despite filing of salary affidavits.

One judge made statements that were so contrary to the law that they could not have been legal error. In the Commission's opinion the acts "constituted an abandonment of the law and showed bias."235

One judge arrived late each day and took long lunch hours. He would work beyond normal court hours which inconvenienced court personnel, attorneys and litigants. Sometimes he did not bother to appear for work.

One judge conducted a trial and the defendant was a personal friend. His rulings showed a bias for the defendant. He wrote a letter of recommendation for the defendant and
tried to cause some of the law enforcement officers to help the defendant.

One judge was perceived to be campaigning when he used the bench to address jurors. In addition, he appeared to promise certain rulings in his campaign materials.

Before one of the local newspaper reporter, one judge accused an attorney of unethical conduct.

Several typical remarks that caused the Commission to send advisory letters related to improper conduct in various judicial proceedings. A few typical problems were harshness, sarcasm, impatience, and name-calling.

Several letters expressed concern about abuse of the judge's contempt power. Some of the judges used the power of their position to malign attorneys. Other judges often made improper remarks to juries.

Some of the judges accepted ex parte communications from prosecutors and attorneys about clients or parties.

Some judges failed to decide cases within the ninety day period after taking the case under submission and submitted affidavits that they had no cases that had been more than ninety under submission.

Also, the Commission listed another dozen examples of misconduct under the heading "miscellaneous." They might better have been titled, "Examples of poor judgment."

One judge deliberately gave an inaccurate address on his declaration of candidacy. Another judge appeared to favor a
defendant who was a law enforcement officer. He overturned a verdict of guilty against the officer and ordered the record sealed. These acts were beyond his authority. During a settlement conference, one judge appeared to threaten the attorneys if they settled the case at a later time. At an order of examination, a judge seized the debtor’s wallet, examined its contents, took some cash and divided it between the creditor and the debtor. The judge’s opinions that the debtor’s conduct was evasive did not justify his conduct.

The Commission named another section of the report "Small Potatoes." Among the subjects that are discussed are Ticket Fixing, Favoritism, Ex parte communications, Humor, Short hours, Duties of presiding judges, and Delay of decision. One that should arouse the interest of judges who read the annual reports is the sub-section titled "Failure To Cooperate with the Commission."

All of the subjects addressed in formal opinions are published by the State Supreme Court as it has evaluated the evidence presented to it after formal investigations. The implied advice contained in the opinions is available to the judges and to the public.

SECTION BB. COMMISSION ON JUDICIAL PERFORMANCE, 1989 ANNUAL REPORT. In 1989, there were 1,555 sitting judges.

Eight hundred and sixty complaints were filed against 505 judges. Inquiries were made regarding one hundred forty seven of them. Staff inquiries were made in eighty-one of those
cases. Following these screening efforts, investigations were begun in thirty-eight cases. Formal charges were issued in five cases and one formal hearing was held.

The Commission recommended that Judge Bernard McCullough be removed from office.

Four public reprovals by the Commission were issued.

This report, for the first time in many years, indicated the number of complaints that were received against judges in the various courts of the state. Forty-two complaints were made against justice court judges, two hundred ninety-four complaints were made against municipal court judges, four hundred ninety-eight were made against superior court judges, and twenty six were made against appellate court justices.

Seven hundred eighty-two complaints were closed without any discipline being imposed. Many of the complaints were filed because of dissatisfaction with the outcome of a case. The position of the Commission throughout its history is that it is not the proper agency to consider the legal issues that are raised. The appellate process should be followed by litigants when they are dissatisfied with a judge’s rulings or findings.

Three judges retired while investigations were being conducted.

Part IV. "Public Discipline"

Judge Charles D. Boags of the Beverly Hills Municipal Court was suspended from his position when he was convicted of
the charge of obstructing justice.

The Supreme Court removed Judge Bernard McCullough of the San Benito Justice Court from office. This opinion was summarized above.

Pursuant to an amendment to the California Constitution approved by the voters in 1988, the Commission issued four public reprovals.

Judge Bruce Clark of the Ventura Municipal Court was publicly reproved for ex parte communications about a case with Assemblywoman Cathy Wright. Judge Clark was visited at his home by Ms. Wright who asked that her daughter be excused from appearing in court. He did this and ordered that the tickets be dismissed upon her completing traffic school. He did not inform the prosecutor of his actions. The Commission found that Judge Clark had violated Canons 2A, 2B, and 3A(4).

Judge Calvin Schmidt of the Harbor Municipal Court (Orange County) was issued a public reproval for ordering released from custody a stepdaughter of a friend. Bail had been set by another judge. After the stepdaughter failed to appear in court following filing of new charges, Judge Schmidt released her again though bail had been set at $50,000.00.

The Commission found that the "releases were arbitrary and capricious exercises of judicial discretion and undermined public confidence in the integrity and impartiality of the judiciary. Judge Schmidt also made contributions from his own
campaign funds to non-judicial candidates in patent violation of Canon 7."^{239}

Judge Glenda Dorn of the Corcoran Justice Court in Kings County received $75,000 from a client that was not paid for legal services. She did not advise the law firm for which she worked of receipt of the money nor did she report it to the State Bar. Also, she failed to include it on her annual "Statement of Economic Interests" which is required of all judges. The Commission found that the receipt of the money occurred off the bench and that her judicial actions were not compromised.

The Commission issued a public reproval of Judge John Schatz, Jr., of the Santa Clara County Superior Court. Judge Schatz contacted other judges and prosecutors about charges made against his son. When questioned by the Commission about these contacts he denied them. Judge Schatz also contacted judges and the prosecutor to request dismissal of a pending burglary charge because his son was going to enlist in the military. The charge was dismissed but the son did not enlist in the military. Despite the false statements made by the judge, the Commission decided that a public reproval was adequate because "the judge recognized that his conduct was inappropriate" and because of "his assurance that the conduct would not be repeated."^{240}

Part V. "Private Discipline

Thirteen judges were administered private admonishments
pursuant to California Rules of Court, rule 904.3. The reasons appear to be a repeat of the major items listed from year to year as those offenses that do not justify more harsh censure. Records are kept as to these actions, but such records have only been used in one case to substantiate removal from office.  

The inappropriate conduct included the following: abuse of contempt power, conducting proceedings with a friend as a litigant, requesting favorable treatment from other judges in sentencing relatives, reckless driving involving alcohol, retaliating against an attorney’s client, berating attorneys, failure to advise defendants of their constitutional rights, attempts to influence the work of law enforcement officers, failure to decide a case within ninety days, and one judge engaged in a personal non-professional relationship with a court employee during the court day.

Statistics are not reported as to which courts the judges were assigned.

Thirty six advisory letters were sent to judges. The majority of the letters related to the demeanor of the judge. The items were listed under the following subject headings. "Demeanor, Ex Parte Communications, Rushing Through Calendars Without Regard for the Rights of Defendants, Abuse of Contempt Power, and Delay(s) in making decisions in cases."  

SECTION CC. COMMISSION ON JUDICIAL PERFORMANCE, 1990 ANNUAL REPORT. In 1990, there were 1,555 sitting judges.
The COMMISSION ON JUDICIAL PERFORMANCE, 1990 ANNUAL REPORT, is significant for California. It is the thirtieth report made about the actions that were initiated in 1960 to compile the incidents of complaints against judges and to indicate the actions taken to correct errant behavior.

Jack E. Frankel, the first Director and chief attorney, guided the Commission for all of those years and retired in 1990. The report was dedicated to him and provides a glowing assessment of his heroic efforts to improve the process and to report about the actions taken by the Commission. The report also reports about progress made in other states that were modeled after the California experiment. Patricia Henley was appointed Executive Director and Chief Counsel of the Commission to replace Jack E. Frankel.

I will not summarize the achievements of Mr. Frankel nor attempt to forecast the future. With reference to this annual report, I shall stick to the format that has evolved in summarizing the reports above.

Eight hundred eighty-five complaints were filed against judges. Twenty-nine preliminary investigations were conducted and nine formal investigations were begun.

Every report has commented about the inappropriateness of many of the complaints about judges. This report is the first to identify statistically those who complained about judges. Seventy-one percent were made by litigants or their families, fourteen percent came from the public, eight percent were made
by lawyers, and complaints from all other sources, including judges, court employees, jurors, and others, totaled seven percent.

Forty-five percent of the complaints were about what was perceived as legal error; ten percent were complaints about demeanor and alleged rudeness; and five percent alleged bias.

Eight hundred thirty-two cases were closed in 1990 that did not involve discipline. One hundred and six cases were investigated and of these forty-five were closed without discipline being imposed.

From 1961 to 1991, ninety-one judges voluntarily resigned or retired upon being notified that a formal investigation about their conduct had been initiated. No indication has been made in the annual reports as to the courts which the judges left. Discipline was imposed in fifty-seven cases that were investigated.

Three judges were removed from office in 1990. They were Judge Kenneth L. Kloepfer of the San Bernardino County Municipal Court, Judge David Kennick of the Los Angeles County Municipal Court, and Judge Charles D. Boags of the Los Angeles County Municipal Court. These cases have all been discussed above.

Judge Raymond D. Mireles of the Los Angeles County Superior Court was issued a public reproval. Judge Mireles ordered two police officers to bring a "piece of" or a "bodily part" of a certain attorney to his court. They brought him to
the judge's court using force. Judge Mireles did not explain to them and the attorney that he had not intended that they act so forcefully. The Commission found that he did not actually intend that the officers comply literally with his order.

Judge Glenda K. Doan was issued a public reproof. This case was discussed above.

In 1990, the Commission issued 11 private admonishments and 41 advisory letters.

The incidents resulting in private discipline and admonishments were similar, although with some variations from those reported in the 1989 report, and no useful purpose will be served by repeating them at this time.

Areas that should be mentioned are the "Mistreatment of Attorneys, Delaying filing decisions, Conscious Disregard of the Law, Ex Parte Communications, and the frequent occurrence of the Abuse of the Contempt Power.

Nineteen advisory letters were sent to judges commenting upon a variety of instances of conduct that warranted reprovals or admonishments but did not constitute in the Commission's opinion a basis for public reproof or public censure.

PART VII is titled "Looking Back and Looking Forward."

Jack Frankel, on the occasion of his retirement was asked to write an essay about his experiences as Director of the Commission on Judicial Performance and states the reason that
the Commission on Judicial Qualifications was established.

Goscoe Farley, the Executive Director of a Judiciary Committee on the Administration of Justice noted these complaints about judges that had resulted in the formation of the committee that he chaired.

"These complaints were directed at certain judges who failed in one way or another to render the service required by their position. Some delayed decisions for months or even years. Some took long vacations and worked short hours, despite backlogs of cases awaiting trial. Some refused to accept assignments of cases they found unpleasant or dull. Some interrupted court sessions to perform numerous marriages, making this a profitable sideline by illegally extracting fees for the ceremonies. Some tolerated petty rackets in and around their courts, often involving "kickbacks" to court attaches. Some failed to appear for scheduled trials because they were intoxicated, or took the bench while obviously under the influence of liquor. Some clung doggedly to their position and their salaries for months and years after they had been disabled by sickness or age."²⁴⁶

Mr. Frankel discusses the implications of judicial selection criteria and emphasizes that in the late 1950's criteria for appointment and selection were important topics. The authorization for appointment of a Commission on Judicial Qualifications did not address needed changes and no significance difference has occurred in California to change the power of the Governor to appoint whom he wishes to judicial office.

I have noted above my criticisms of the appointment process. Merit selection and movement away from the "litmus" tests that now prevail should improve the quality of the judiciary. As Mr. Frankel states the present system of
appointment for a return of political support will not assure that the judiciary is selected from the more highly qualified and experienced attorneys.

I will close these comments upon the work of the commission by quoting Mr. Frankel. As mentioned above my purpose in this section has not been to review the work of Mr. Frankel in leading the Commission. I do note that some of his concerns are concerns that I have expressed. The requirement for the Commission has been established in its thirty year history. The pattern of its work has evolved. There are some criticisms that I will make in a section below that will summarize my opinions.

"The Commission on Judicial Performance has now gone about as far in terms of disciplinary grounds and measures as the concept will allow. The constitutional grounds for removal or censure now include persistent failure and inability to perform, as well as the traditional wilful misconduct and conduct prejudicial; the grounds for admonishment include engaging in improper actions or dereliction of duty. Besides removal and involuntary retirement, there is the confidential advisory letter, monitoring for up to two years, private admonishment, severe private admonishment, public reproval, censure, and severe censure."
CHAPTER 10

GENDER BIAS IN THE COURTS

In late fall following my appointment to the bench in 1975, I attended a program conducted for municipal court judges. As I was going to one of the meetings, I recall two judges conversing about some judicial appointments. One of them decried the appointment of a little bitty "two titty" judge to office. From the results of the study of gender bias, it would appear that sexist attitudes still exist.

The study conducted from 1988 to 1990, indicates that there are many serious problems that must be addressed by sitting judges if the work situation for female employees and women judges is to improve.

Many of the incidents of wilful misconduct noted in this study about ethical perceptions reflect bias against women litigants, women attorneys, staff, and witnesses. The correction of the problems will take concerted action by judges as they preside in the court and as they conduct proceedings in chambers. The recommendations of the committee that examined the problem is comprehensive and too long to be quoted as a part of this study. The significance of the study is the fact that it found bias against women to be prevalent in all stages and levels of judicial proceedings. The areas that were examined by the committee were: civil litigation and
courtroom demeanor, family law, domestic violence, criminal and juvenile law, and court administration. Recommendations within each of the areas show that the problems are prevalent throughout the judicial process as indicated above.

In the "Civil Litigation and Courtroom Demeanor" area ten recommendations are listed concerning such subjects as: judicial conduct, conduct of other bench officers, judges and court employees, efforts at informal resolution of gender bias complaints, membership (of judges) in discriminatory clubs, attorney conduct exhibiting gender bias, appointed counsel, attorney employment, and membership (of lawyers and judges) in discriminatory clubs.

The recommendations under the heading "Family Law" indicate a deep concern about the fairness of the present procedures. They are: child support too low, child support as bargaining chip, division of marital assets, judges, lawyers, mediators, devaluation of family law, other barriers to access, and the need for research.

Under the area "Victims of Domestic Violence" are these headings: temporary restraining orders, emergency protective orders, court safety, non-English-speaking, victims, family court services, personnel, diversion, district attorneys and city attorneys, law enforcement, and judicial education.

Procedures with reference to "Appointed Counsel" are detailed. Recommendations with reference to "local probation programs," and "institutions and placements" are provided.
"Education and training programs" are discussed and important minimum goals are listed.

It would seem that in a civilized society, the difference between men and women would be recognized. One of the areas of flagrant discrimination has been the inadequacy of the design and construction of jails to assure that the needs of women are met. The committee found it necessary to mention under the heading of "Special needs for institutional females" that the California Youth Authority and local agencies examine such matters as:

"Provision for adequate and appropriate clothing designed for women, provision for meeting hygiene and sanitation needs and increased access to laundry facilities during the menstrual cycle, and hardware and shackles amenable to female form. ...The protocols should also address pregnancy-related issues. Limits on the use of leg chains, waist chains, and handcuffs should be encouraged unless there is a security risk. Pregnancy should not limit a woman's ability to earn work credits. Job assignments should be made with a physician's approval."²⁴⁸

I emphasize that the items listed above are just a few of those listed that express a concern about the inadequacy of treatment and facility design of prisons and jails with regards to women.

The next area that is listed is titled "Medical problems for incarcerated females." Among the subjects discussed and
recommendations made are that women in custody be provided full gynecological care and pregnancy-related services.

Attorneys who have represented juveniles and prison inmates have been aware of many problems indicated by this title, "Sexual assault and harassment." The nature of the problems that exist in juvenile and prison facilities are legion. The report recommends that the authorities be required to assure "detainees' safety from sexual harassment and assault perpetrated by guards, counselors or staff, other inmates, detainees in the institution, and inmates with whom contact is made during transportation to and from court and in the courthouse lock-up."249 It is unfortunate that it should take a study of this type to force an examination of the lack of safety of inmates in state and county custody.

The next three areas that are considered are related to and identify concerns with the lack of knowledge of parents of the laws that affect them and their children. Many parents are not aware of their obligations under the law to their children. Often, the parents or one of them is not given proper notice as to actions that may be taken by the courts with reference to children. Even though family law is relegated to a low priority in many court systems, it and "Enhancing the status of the juvenile court" should become goals of the California court system.250

The recommendations of the Committee are stated rather succinctly. "Reevaluation of weighted caseload measures to
accurately reflect the complexities of juvenile court law, statutorily mandated multiple review hearings, and intense court supervision required in juvenile dependency case. Review judicial assignment procedures and inadequate facilities and staffing in juvenile court. Review methods to enhance status of juvenile court and the judicial assignments to that court. 

Throughout this study, the importance of examination by judges of their attitudes and how their conduct affects the attitudes of staff, attorneys, and litigants is emphasized.

The last section of the study is titled, "Judicial training." The points stated in summary require that the Center for Judicial Education and Research cooperate with local courts to develop "training on issues relating to criminal and juvenile law that pertain to attitudes of gender bias." A critical aspect of this awareness is that the attitudes of judges toward low-income women and their children are significantly different from their attitudes toward middle and upper income persons.
For several years at each seminar or training session for judges a training program has been conducted on judicial fairness. Judges who are appointed or elected to office, are scheduled to attend such a seminar within ninety days after they take office. The Center for Judicial Education and Research conducts most of these courses. In addition, courses on judicial fairness are held during a two weeks seminar that is held each summer for newly appointed and elected judges and others who wish to review procedures and changes in the laws.

The purpose of the course on Judicial Fairness is briefly stated: "Our courts have the duty to be fair to all people who use them. The courts should also appear to be fair. All participants in our justice system, however, are the products of their personal lifetime experiences, including unsuspected biases, stereotypes, and prejudices, which cause some people to view the system and individuals within it, as unfair.

"This course helps in identifying problem areas and assists in managing and controlling the conduct of attorneys, witnesses, parties, spectators, and court staff, to create a more fair and humane physical and psychological environment in our courts. The faculty will solicit and offer practical techniques useful to judges in promoting equal treatment in
the courts and in improving the public’s perception of our
judiciary. 253

In January of 1991, a seminar booklet that was prepared
by the CJER for sessions about gender bias contained the
following subjects and articles:

"TABLE OF CONTENTS
   I. Codes and Standards
   II. Articles
   III. Cases
   IV. Bias Studies
   V. Resource Bibliography
   VI. Future Challenges
   VII. Summary of Selected Testimony on Gender
       Bias in the Courts. 254

The course includes, in Section II, seventeen articles. Among
them are "Ruling Without Bias, How Stereotypes about
Women Influence Judges, Racial Discrimination in Criminal
Sentencing, Time for Judges to Overturn Their Biases, The Way
Others See Us, Bias in the Courtroom, Women Lawyers - Judges
say Gender Bias is Thriving in Rural Courtrooms, Judicial
Performance Panel Gets Few Complaints of Sexist Judges,
Justice in a Rural County: Is It Fair or Biased? Encouraging
Fairness from the Bench, and Can Justice Survive Bias in the
Courtroom?"

These articles cover a wide range of areas in which bias
has been noted and continues to occur throughout the state and
at all stages of judicial proceedings. They provide a judge with an opportunity to examine conduct that is reprehensible. Experienced judges who participate in the seminars lead discussions and assure that such subjects are discussed within small group sessions before judges become set in patterns of behavior that exhibit gender or ethnic bias.

Each section listed above contains articles and comments about various aspects of maintaining fairness in the courtroom. Not all the articles can be read and discussed during the time allotted to the subject of gender bias.

To provide judges an opportunity to examine the subject in depth, the manual contains an extensive bibliography that was prepared by the Hon. Richard A. Bancroft (Ret.), Alameda County Superior Court and the National Judicial Education Program to Promote Equality for Women and Men in the Courts. There are approximately 200 listings about gender bias.

In addition, a listing of books, articles, and cases, about problems experienced by ethnic minorities is provided to the student judges.

Another section about "People with Disabilities" is provided to assure that a judge is aware of the instances in which discrimination has occurred in the courts with reference to persons with physical or mental handicaps. As mentioned above the significant event in California that resulted in so much attention being directed to the questions of gender bias, occurred in 1986. At the annual meeting of the CJA in 1986,
by a narrow margin, the membership affirmed the view that judges should not belong to organizations that "invidiously discriminate."

Since then many seminars and portions of seminars have been devoted to the subject of gender bias and concern about bias shown to ethnic groups and the physically and mentally disabled.

The result of that vote has been that conduct of judges has been examined more rigorously by the Commission on Judicial Performance. Also, complaints about the conduct of judges evidencing gender bias have increased as information about the process that is followed by the Commission on Judicial Performance has been widely disseminated to bar associations and to the public by information releases.
CHAPTER 12

SUMMATION

I began this paper with the opinion that many judges lack sensitivity to the nature of problems and stress faced by many persons who come into court and as a result often precipitate incidents that are a disservice to justice. In this paper I have reviewed the relatively new California Judicial Conduct Handbook, all the opinions of the Supreme Court on removals of judges from office, all the opinions of the Supreme Court on public censure of judges, and have commented on the training program that is presented to all new judges within ninety days of their taking office. Based on all of this information, I conclude that my opinion was correct. Many judges are insensitive to the stress that is experienced by defendants, court room clerks, attorneys, witnesses, jurors, and litigants when they are in court.

The information that is available to judges is comprehensive and much of it relates to my suggestion that many judges should look at their conduct from the standpoint of its relationship to the six deadly sins. It may be easy to say that other judges abuse women and women attorneys, but it is another to describe their conduct and then to relate that conduct to what you may also be doing. I cannot make direct
correlations between the reported incidents, the descriptions of the conduct, and the six or more deadly sins that judges commit. In broad terms they have occurred often in courts under the guise of the administration of justice.

A few of the judges did admit to making mistakes. Judge Cannon agreed that she should not have placed a religious program that she financially supported in the county jail. A few judges said, I know what my mistakes are, I can do better. One of the tragic aspects of a review of these many cases is that most of the judges who were removed from office or censured did not believe that they had done anything wrong.

Lust in its ugliness has been described in lurid detail. The spelling has not changed from its early Anglo-Saxon origin. Its meaning is more often expressed in its synonyms and perhaps those words are what we have noted in the opinions of the Supreme Court. Appetite, desire, greed, passion, eroticism, sensuality, lechery, lewdness, and salaciousness all relate to conduct described and engaged in by some judges.

Sloth has been and continues as an offense against the people and the courts.

Reactions of judges to people and people to judges often result in angry confrontations. Too many such incidents have been the subject of Supreme Court decisions. Anger usually eliminates judgement and creates problems between a judge and attorneys, and judges and litigants.

I have not found a touchstone or talisman which will
assure that a judge will not make a mistake. I did not have one when I sat as a judge. As a result of the detailed reviews that I have made I will list a few statements or phrases or words that may help judges to pause to consider their acts before they make a mistake in judgement or in conduct.

In 1961, seventy-five complaints were filed against sitting judges. In 1990, eight hundred ninety-five complaints were filed against sitting judges. Many reasons can be given for the great increase. If it were just the difference in the number of judges, the number of complaints would merely have doubled.

Probably the most significant factor in the increase in reported complaints was the establishment of the Commission on Judicial Qualifications. However, it took more than that act to create the climate wherein reports would be filed. Each year they seem to come in ever increasing numbers.

Although, the efforts to make judges aware of the kinds of acts that have been described as gender bias, that area does not account for the almost twelve fold increase in allegations of misconduct of judges. The major area that cuts across the wilful misconduct that has been the cause of removal of judges and the conduct that is prejudicial to the administration of justice that brings the judicial office into disrepute is summed upon in one shameful word. It is ABUSE.

Abuse can be categorized in different areas. The major
area is that of abuse of persons. Probably abuse occurs most frequently in contacts with the powerless. That means the poor, the indigent, and the uneducated. The well known attorney and his or her clients rarely encounter discourtesy and abruptness from a judge, whether he or she is local or from the big city. I shall return to this concern in comments below.

Other areas in which judges commit abuses are in abuse of the contempt power and in abuse of the judicial process. In theory none of the offenses that have been described in graphic detail should ever have happened. Judges are intelligent; most have earned at least two academic degrees; and in California all have passed an intensive two and a half or three day bar examination.

If that is not enough, examine the praise that is heaped upon them when they are recommended for office. If they run for office, read the indorsements about their skills and abilities in prosecuting successfully hundreds or even thousands of criminals.

And yet, mistakes keep occurring and too often the mistakes are repeats of what occurred last year, and the year before that, and the year before that. I shall repeat a statement that expresses an anomaly. No superior court judge or appellate court judge has ever been removed from office in California for wilful misconduct in office or conduct prejudicial to the administration of justice that brings the
judicial office into disrepute.

In 1989, two hundred ninety-four complaints were filed against municipal court judges and four hundred ninety-eight complaints were filed against superior court judges. There were six hundred five municipal court judges and seven hundred eighty-nine superior court judges sitting that year. So the difference in the number of judges does not account for the great difference in the number of complaints made against the judges in the superior courts contrasted to the number of complaints made against those judges in the municipal courts. The nature of the complaints were similar.

Of the judges who have been removed from office for the reasons stated above, none were superior court judges. Of two judges removed from office for disabilities, one was Judge Charles Robert Roick, a San Diego County Municipal Court judge; the other was Associate Supreme Court Justice Marshall F. McComb, who was removed from office because of senile dementia. Only one judge has been removed from office in the past thirty years for conviction of a crime of moral turpitude.

The most serious discipline that has been imposed upon a superior court judge pursuant to the authority of California Constitution and the recommendations of the Commission on Judicial Performance to the State Supreme Court has been severe public censure.

In my view, the acts considered by the Supreme Court in
its decisions with reference to some superior court judges justified removal from office. Yet, dissenting opinions were only expressed in two cases. Justice Richardson wanted more information about the allegations against Judge Robert S. Stevens. Associate Supreme Court Justices Mosk and Kaus dissented for different reasons in the case against Judge Charles S. Stevens.

A question that faced the Supreme Court was whether justices of the State Supreme Court had delayed publication of certain decisions until after a general election had been held. Associate Justice Mosk referred to what he considered a waste of time in his dissent to the Charles S. Stevens case and the waste of time of the justices in the hearing to which they were subjected, but there was no relationship shown.

Under limited circumstances cases that have been taken under submission by the appellate courts or the State Supreme Court can be resubmitted. By doing this the requirement that cases be decided within ninety days of their being taken under submission has been avoided.

However, all trial court judges must sign an affidavit on a monthly basis stating under penalty of perjury that they have no cases pending for more than ninety days that have not been decided.

The problem is that affidavits have been signed and continue to be signed even though often the declaration is false. Many judges have signed such affidavits over extended
periods of time. The Supreme Court decisions have found such acts to constitute the filing of false affidavits. One municipal court judge had filed such affidavits over a six years period of time. A superior court judge had done so for a period of three years.

Perhaps the word sophistic will express my concern about the many instances where the Commission on Judicial Performance found that some of the superior court judges did not intend to prepare improperly those affidavits. In fact, despite such a finding by the Commission, the Supreme Court disagreed in the case of Superior Court Judge Creede.

Sophistic is defined as specious or fallacious. One definition of sophistry is plausible but fallacious argumentation.

It is hard to believe that a continued pattern of conduct of signing and filing under penalty of perjury an affidavit does not indicate an intent to collect salary that cannot be paid without the required statement that no cases taken under submission remain pending for more than ninety days. A private admonition or even in some few instances the imposition of public censure has not been sufficient to prevent the recurrence of this improper conduct by too many judges.

I do not advocate an indiscriminate removal of office for any judge. The Supreme Court has acted with restraint throughout the thirty years of the history of the Commission
on Judicial Performance. It has provided reasoned opinions that have fully justified the removal of the judges and has complied with the Constitution and the procedures established in the California Rules of Court.

I mention this because it was not until I had read all thirty opinions several times and was trying to check out relationships between or among the opinions that I realized that only municipal court and justice court judges had been removed from office as a result of the complaints and procedures established for the Commission on Judicial Qualifications/Performance and the power entrusted to the Supreme Court.

I have reviewed all of the opinions regarding the judges removed from office and I have reviewed all of the opinions regarding judges who were censured publicly for their acts. The acts are not significantly different. Sixteen judges have been censured publicly. Eleven were superior court judges; four were municipal court judges; and one judge was from a justice court.

As I mentioned above, I did not become aware of the availability of reports of the Commission on Judicial Performance until 1985. Other than my making requests to two judges for reports for certain years, I have not had any discussions with any judge about the reports. I have never heard them discussed at any judges' seminar during the twelve years I sat as a judge.
With reference to a recommendation that a judge be disciplined, the members of the Ethics Committee discussed on a few occasions, whether or not a judge who was being investigated could ask his associates and attorneys who appeared before him if he could solicit them for monetary support. Letters were written to the judge’s attorney as the judge’s identity was kept confidential. I do not recall the advice that was given and do not have copies of any of the letters.

A few months ago, I asked a superior court judge if he were aware that no superior court judge had ever been removed from office by the State Supreme Court. His reaction was strong and emphatic. He stated that should be expected as the actions of superior court judges are under the constant surveillance of the appellate court.

I believe that he missed a very significant point. The appeal process rarely is based upon the misconduct of a judge. The appellate process protects litigants only as it affects legal issues. The attitude of a judge, the tone of his or her voice, the actions within chambers, the denigration of women, the abuse of clerks and court reporters, and the differentiation in treatment of juveniles is rarely found in the written transcripts of case proceedings.

I became so involved in reviewing the many reports and the Supreme Court decisions that I have not had the time to do a survey of the judges of California as to their interest in
or concern about the reports.

Justice Mosk in a dissent in the case In re Robert S. Stephens commented about what he considered to be a waste of the Supreme Court's time and resources to examine the question of whether or not the Supreme Court Justices had deliberately delayed making decisions in certain controversial cases in an election year. Other than in that footnote, I know of no question being raised as to the value of the reports to judges, attorneys, litigants, and the public.

During a 1986 judicial campaign in San Bernardino County, the many complaints that had been made by attorneys against Judge Kenneth Lynn Kloepfer were published in the local newspaper. Despite such information that became the basis for the removal of Judge Kloepfer from office in 1990, he was reelected by a two to one margin. This information did not come from the conduct of hearings by the Commission but was apparently made available to a candidate by attorneys who had appeared in court before Judge Kloepfer.

There may be isolated instances where the reports of the Commission on Judicial Performance have influenced the outcome of an election. In general, I doubt that they have done so.

Judge James J. McCartney, after being unseated by Daniel Rankins in 1976, left San Bernardino County. He returned to the county in 1982 and ran an aggressive campaign against the Hon. Joseph Katz, a judge of the superior court. Strong statements were made by each of the candidates. The Superior
Court judges unanimously opposed Judge McCartney. I do not
know what use Judge Katz made of the public censure of Judge
McCartney. Judge Katz won by a two to one margin.

Despite the questions I have raised above, I am in favor
of the continued work of the Commission on Judicial
Performance. However, I believe that its standards should be
applied equally at all levels of the judiciary. I am aware of
and am sure other judges retired and active know of alleged
conduct of judges in the superior courts and in the municipal
courts that reflect violations of some of the most basic
standards of ethics and courtesy.

Arrogance is not just a word in a dictionary. I was
surprised to find it in only two references in the several
hundred pages of reviews and comments that I have examined in
preparing this paper. Arrogance is related to courtesy and
the manner in which one person relates to or communicates with
another. Pride, anger, lust, covetousness, sloth, and envy
are emotions and motives that affect superior court judges and
appellate court judges as well as those who serve in the lower
courts.

It would be naive to believe that a municipal or justice
court judge who has been rude and discourteous to attorneys,
litigants, witnesses, jurors, and staff and has suffered no
public or even private censure changes his or her behavior
when he or she becomes a superior court judge.

Every annual report that has been prepared throughout the
thirty years of the Commission has commented on the small percentage of judges that are the subject of the complaints that were filed during that year. The statistics do not reflect the complaints that are not filed for fear of reprisals, loss of job, or temerity.

The report on Gender Bias probably comes closest of any publication to identifying the seriousness of and the pervasiveness of the problem of abuse of women attorneys by judges, and the abuse of women litigants by judges.

We can hope that the comment about the small percentage of judges who are offenders in court proceedings is accurate but a study should be conducted to determine whether or not that self-congratulatory statement is deserved.

This has become a long paper. Much of the information that has been reviewed became available to me after I began this study three years ago. My interest in the problem expanded and I believe it was necessary to review in broad detail the more recent materials to provide a comprehensive examination of the information about misconduct that is readily available to judges.
I have discussed briefly the materials that I have reviewed above and now raise two questions.

Why have only justice and municipal court judges been removed from office? A simple answer would be that superior court judges are more intelligent and more experienced than municipal court judges. That ignores the fact that many superior court judges were first appointed or elected to sit in a municipal court or justice court.

My experience in appearing before superior court judges as contrasted with appearances in other courts is that the ego of superior court judges and the arrogance of displayed conduct is more forceful than that of municipal court and justice court judges. The phrase that expresses the power of the king in the middle ages that "The king can do no wrong!" becomes theirs by right of office. The discourtesies of the judges in the municipal courts and the justice courts are found in the discourtesies of judges in the superior courts.

Why has the preparation of false affidavits for payment of salary been treated so casually? Although several judges have been publicly censured for such acts each of the recent annual reports of the Commission reviewed above refers to the filing of false reports as a continuing problem.
My personal experiences and concerns cannot provide an answer to the questions. I pose them because they identify a concern as to the objectivity of the panels of judges that have examined the conduct of judges for the past thirty years. Have different standards been applied to the conduct of municipal court judges and justice court judges than those applied to superior court judges? The perfunctory answer by the Commission would likely be a flat "no." As I am unaware of any studies that have been made of the opinions of the Supreme Court Justices in the removal actions and in imposing public censure upon judges, I cannot be conclusive in my opinions.

I did not begin this study expecting to find such a disparity in the removals from office and I am sure that few judges are aware of what I noted only after having reviewed all of the opinions that were written that justified the removal of judges from office.

One of my major purposes in writing this paper was to state in an acronym, a word, a phrase, or a sentence a concept or idea that would serve as a warning to a judge. My hope was too simplistic. I believe that the problems are too complex to express in one or two ideas. However, there are some generalizations that can be made in the form of brief sentences. They relate to the major area that I believe is the source of problems that judges experience and that have been the basis of removal from office of many judges. They
relate to my first expressed concern that many judges lack a sensitivity to the emotions that accompany a person who appears in court as a plaintiff or a defendant.

One quick terse sentence that expresses this warning is DON'T BE ABUSIVE. For the individual judge the warning can be changed to any of the following statements:

DON'T ABUSE PEOPLE, or DON'T ABUSE ATTORNEYS, or DON'T ABUSE LITIGANTS, or DON'T ABUSE WITNESSES, or DON'T ABUSE AIDES.

But that is not the whole story about abuse. A judge MUST NOT ABUSE THE JUDICIAL PROCESS.

Arrogance as a description of conduct was found in one sentence in the California Judicial Conduct Handbook and in one annual report of the Commission. I did not find it used in any of the other materials I reviewed. However, if you check the synonyms for arrogance, some of them relate specifically to the conduct of judges. Pride, egotism, conceit, hubris, condescension, and disdain, are just a few of the words that can reflect the attitudes of many judges.

I tried to relate the seven deadly sins to the act of judging. Although the idea of a sin being related to the misconduct of a judge functioning in a judicial role may be somewhat old-fashioned I believe that there is great value in using the terms and have noted the synonyms for the basic words. Perhaps by using some of those synonyms the reality of the gross nature of some of the conduct of those few judges
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who make newspaper headlines can be emphasized.

A judge should be industrious. Yet, there are judges who believe that they are exempt from the requirement to work for a reasonable number of hours each day. Sloth is a strong word, but not too strong to express the laziness, languor, lethargy, or torpor that impedes the activities of many judges. Only Judge David M. Kennick was subjected to the ultimate sanction of removal from office for failure to perform judicial duties. Investigations that have begun often have been hampered by a lack of persons who could or would testify as to the frequency of the absence of a judge.

Lust has been discussed in milder terms in several of the opinions that supported the removal of judges. Stronger words such as lechery or lewdness, though not used, were more appropriate to illustrate the vulgarity of the conduct of some judges.

Anger as a specific has not been the basis of removal of a judge from office. More often it may be found in discourtesy, or rudeness or in acts that are expressed in the abuse of persons. Animosity or hostility have more often been used to depict the improper actions of a judge toward persons.

Fury and wrath have not been used, but terms noted are those of displeasure, irritation, exasperation, acrimony, and indignation. They are all within the context of explanations of public censure. I assume such terms are found within the letters of admonishment and in the private warnings sent to
judges.

I shall complete this discussion of aspects of conduct with what I consider a major sin of many judges. Just as abuse can be followed by words or phrases so can this key concept. DON'T BE DISHONEST. Any judge can make mistakes; but some of the acts occur because of a lack of ethical principles. The title of this paper expresses my interest in ethical perceptions of the people who appear in courts. A judge's staff may cover for his or her absences, but the people who work for a judge know whether or not he or she is industrious or carries his or her share of the court's business.

A judge must not sign a false affidavit just to assure that he or she will be paid at the end of each month. Any competent administrator who forwards the judge's affidavit that no case has been submitted for more than ninety day knows whether or not it is false.

A judge must work a reasonable work day. Studies conducted in San Bernardino County in the early 1980's showed that many judges worked a minimum of ten hours a day. A judge who frequently disappears shortly after noon without contacting other judges to assure that they can complete their work is inconsiderate to say the least.

The stronger phrase is that it is dishonest as the work sheets that are prepared by the clerks and court administrator for submission to the Administrative Office of the Court are
incorrect. One judge frequently continued matters to a 1:30 p.m. calendar, knowing that the case would be continued. Upon ordering that continuance, he would depart without making himself available for assignments from the calendar court judge.

Clearly, it was inappropriate and resulted in other judges being assigned cases that he should have heard. In the Kennick case, the Supreme Court emphasized the requirement that judges be available for administrative functions as well as being available for obvious judicial actions.

A judge who ignores the law is either ignorant of the law or intellectually dishonest. Several of the opinions that have discussed removals from office have commented about judges who were aware of the law and did not follow it. In some statements this has been identified as an ABUSE OF PROCESS. Ignorance of the law has never been a defense to a crime; it should not be considered as an excuse for a judge's inappropriate conduct.

I have not previously discussed envy as one of the cardinal sins or as one of the sins of judges. Perhaps a brief listing of some of the synonyms would emphasize that it is necessary to be aware of it as a potential for trouble for a judge. Jealousy, resentment, mistrust, paranoia, suspicion, are synonyms and warning words.

In my relationships with other judges in San Bernardino County, I noted suspicion of the acts of other judges by one
or more judges. I have been aware of jealousy and resentment among judges as evidenced by their acts. I have known of some who were so paranoid as to evidence signs of mental illness. In some instances the mistrust and paranoia affected the efficiency and effectiveness of some of the courts.

Although, not identified as a problem for Judge McCartney, paranoia was one of his major problems in dealing with other judges, his staff, and the public. A Superior Court Judge in Riverside County became so concerned about his safety that he made nightly walks in his neighborhood with a paper bag over his head.\textsuperscript{256}

I believe that the greatest sin of all for a judge is to be a victim of his or her own intellectual dishonesty. A judge must follow the law. The Supreme Court in several opinions stated that the judge knew the law and did not follow it. The judges were criticized for that deficiency and in the case of municipal court judges some were removed from office.

I have deplored the failure of the Commission on Judicial Performance to condemn the continued filing of false statements by several judges to obtain monthly payments of their salaries.

Judges who do not work a reasonable day and rationalize that conduct on the grounds that they should not be penalized for being quick are not fulfilling their responsibilities to the public as encompassed in the oath they took.

Enough is enough. As with many papers, more questions
have been posed than have been answered. Materials are available in a convenient form to remind judges of their obligations to be industrious, courteous, and prompt in their judicial actions. I have reviewed several documents that collectively and individually can raise the awareness of judges to the many traps that await them as they function in their judicial roles.

A stronger message must be provided to judges to assure their compliance with all of the canons of judicial ethics. As new proposals for improvements and modifications of the canons have just been distributed to all judges and to interested organizations it may become the vehicle for a greater awareness by judges of the significance of all of the actions that they take when empowered by the state to function as judges for all of the people that come before them. Any short statement cannot begin to cover the varied and complex situations that have been noted above. The beginning of that awareness may be found in some brief statement and I have listed three suggestions.

DON'T ABUSE PEOPLE!
DON'T ABUSE THE JUDICIAL PROCESS!
BE HONEST!
ENDNOTES

CHAPTER 1. BACKGROUND........................................P. 1


4. In the latter part of 1991, I became aware of a listing and summary of the cases that were the basis of removal and public censure of California judges in THE CALIFORNIA JUDICIAL CONDUCT HANDBOOK. As my purpose in writing this paper was different from that of the Hon. David Rothman who prepared the Handbook, I did not consult his summations of cases in preparing my comments in this paper.


CHAPTER 2. OVERVIEW............................................ 8

6. "Pennsylvania Judge Sentenced to Prison," Los Angeles Times, June 28, 1990 p. A-12. "Cambria Judge Joseph F. O'Kicki was sentenced to two to five years in prison for bribery and corruption and fined $57,500 and was stripped of his $80,000 per year position and forfeited his pension."

"Judge's Actions Raise Ethics Questions," Los Angeles Times, May 19, 1991, B-12, p. 1, 5. "For the second time Judge James Correl sought to expedite his son's release (from jail). The probation department decried the intervention as it could lead to his son's belief that his father could use influence to pull strings."

8. The Appearance of Justice, supra p.4. President George Washington had Secretary of State, Thomas Jefferson, contact Chief Justice of the U.S. Supreme Court Justice John Jay to provide advice on pressing matters of state. Jay in comment on the separation of the departments: "These being in certain respects checks upon each other, and our being Judges of a Court in the last resort, are considerations which afford strong arguments against the propriety of our extra-judicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions, seems to have been purposely as well as expressly united in the Executive departments. We exceedingly regret every event that may cause embarrassment to the Administration, but we derive consolation from the reflection that your judgment will discern what is right, and that your usual prudence, decision, and firmness will surmount every obstacle to the preservation of the rights, peace, and dignity of the United States."

Personal ambition and interests appear to have affected Jay’s judgment as he took a leave from his position as Chief Justice to serve as Ambassador to England and did not formally abandon his judicial office until he returned to the U.S. in 1795. Then he resigned from his position as Chief Justice of the U.S. Supreme Court to accept the position of Governor of New York. He had been elected to that office as a result of a campaign run by friends while he was abroad.

9. The Appearance of Justice, supra p. 4. Note that the party of Chief Justice Jay voted for his assumption of this duty despite a clear resolution that would have confirmed the separation of powers. The resolution was worded "...to permit Judges of the Supreme Court to hold at the same time any other office of employment emanating from the holden [sic] at the pleasure of the Executive is contrary to the spirit of the constitution as tending to expose them to the influence of the Executive, (and) is mischievous and impolitic."

10. See footnote 4, above.

11. The Appearance of Justice, supra "The Velvet Blackjack," pp. 95-117. Among several other examples one reported instance was highlighted by comments in The Wall Street Journal. The headline of the article was a "Question of Ethics." The Wall Street Journal reported that Judge Fred Gray, Jr. a federal judge had presided over a case related to his own fortune. A friend who had helped Judge Gray become rich was involved as well as a bank in which Judge Gray held shares.

12. The Appearance of Justice, supra "The Velvet Glove," Ch. 4, pp. 95-117.
13. CALIFORNIA CODE OF CIVIL PROCEDURE, Section 170.6.

14. Overt conduct results in perceptions that are clear and difficult to refute. Short statements from California State Supreme Court decisions that have affirmed the many recommendations of the Commission on Judicial Performance illustrate this comment.

15. The Hon. James J. McCartney while presiding over a simple case, stood up, removed his robe, walked around the attorneys' table, swore to tell the truth, testified as to facts that he knew about the case, and then returned to his seat, redonned his robe, and sat down to listen to additional testimony, and then made his decision in the matter. McCartney v. Commission, 13 Cal. 3d 512 (1974).


17. Among the few administrative papers that I received from the Administrative Office of the Courts when they received my signed oath upon taking office, was a scroll like publication titled "Canons of Judges." It consisted of the seven canons that had been adopted by the American Bar Association in 1974. There was no commentary about the canons.

The changes that have occurred since 1975 are dramatic. I was not made aware of the published and unpublished opinions of the Ethics Committee of the CJA until 1984 when I was provided copies of them to orient me to membership on the Ethics Committee. Now all sitting judges receive copies of the annual report of the Commission on Judicial Performance. The first annual report that I saw was the one published in 1985. As a part of the projects that I have done I obtained a complete file of all of the reports that have been provided to the Governor. Neither the Municipal Court Administrator nor the Superior Court Administrator was aware of the availability of the reports and appeared not to know of their existence.

CHAPTER 3. INTRODUCTION..........................p. 15

18. Arraignments must be conducted by judges and or commissioners. Many in custody arraignments involve Spanish American persons who do not speak English and did not grow up in America. I was criticized because I would not take guilty pleas from Spanish speaking persons who could not answer simple questions about the judicial process. Probably 90% did not know what having a jury trial in America meant. Attorneys and many judges accepted a paper signed by an interpreter that she or he had explained the legal concepts to the defendant.
When video arraignments were begun a similar process was used in the San Bernardino County jail. A bailiff explained the concepts to the English or Spanish speaking defendant and the judge appeared on a screen, asked if the person understood his or her rights, and accepted most of the pleas of guilty to the charge or charge and sentenced the person. (The significance of these comments is that neither the bailiffs nor the interpreters understand many of the concepts that they supposedly are limited to reading to the Spanish speaking or illiterate.) The situation may have improved. The criticisms that were made of the system were not corrected when the procedure for TV arraignments was begun in the county.

19. Judge Kenneth L. Kloepfer was proud of the fact that his home phone number was listed. Judge Kloepfer could not practice law so he could not advise properly a concerned citizen or criminal as to what he or she should do. If he did discuss with a person some problem, then he would have to recuse himself from hearing any aspect of such a case. A judge cannot be a friend of those who appear as litigants before him. Complex rules have evolved and relationships must be carefully scrutinized to assure that family or social ties do not cause a breach in the wall of separation that must be maintained between a judge, and the attorneys and their clients.

20. Articles appear frequently in The Los Angeles Times and local and national newspapers discussing the complex ethical problems that have risen in areas with distinct interests that have wide influence upon others than the persons making the headlines. Two Los Angeles County judges have been criticized because of interfering with the judicial process when it affected their sons. Mayor Tom Bradley has been criticized because of allegations that he had used public funds for personal purposes. The Chancellor of the University of California at Santa Barbara was convicted of felonies involving the use of public monies to support a very elaborate life style.

21. In addition to five day seminars conducted on Jurisprudence and the Humanities, as parts of other seminars, judges are required to participate in programs that identify conduct that may be considered to be offensive by women and various ethnic groups. Many judges have resigned from various organizations that practice "invidious discrimination" as a result of a vote of the membership of the CJA in 1986.

In 1990, the results of a study of gender bias in the courts was distributed to all judges and to selected organizations for comments upon recommendations that were made to prevent all persons in the judicial process from engaging in conduct that indicates a bias against women. Despite the
U.S. Supreme Court ruling in the Duarte Rotary Club case, another Rotary group split evenly in trying to prevent that organization from accepting a woman as a member of Rotary. (Los Angeles Times, May, 1991).

22. The Appearance of Justice, cited above.

23. The Appearance of Justice, supra pp. 78-80,131,132.


CHAPTER 4. PURPOSE.........................p. 30


CHAPTER 5. PROCEDURE.........................p. 34


30. Two years ago when I needed copies of the 29 reports of the Commission on Judicial Performance, neither the San Bernardino County Superior Court nor the San Bernardino County Municipal Court had a file even listing the reports. The Municipal Court Administrator requested copies of all of the annual reports and now maintains such a file.

CHAPTER 6. CALIFORNIA JUDICIAL CONDUCT HANDBOOK.....p. 36

31. I served as a member of The College Committee of the CJA from October 1976 to October 1978.


SECTION A. "CONDUCT IN THE COURTHOUSE..........p. 38

34. I shall comment on the study and its proposals in a latter part of this paper.
36. In re Charles S. Stevens, supra.
42. Kloepfer v. Commission, supra p. 848.
43. Ibid., p. 832.
48. California Code of Judicial Conduct, Canon 2B.


51. Los Angeles Times, Oct. 9, 1991, B2. "The Commission on Judicial Performance has declined to take any public action against the presiding judge of the Los Angeles County Juvenile Court after investigating allegations that he intervened in a case involving his teen-age son and helped a Superior Court Commissioner with whom he had a business relationship. In a terse statement released Tuesday, the Commission said it had investigated the actions of Judge James Corral and 'made an appropriate disposition.' ...the statement left open the possibility that the judge was subjected to private discipline, that he received a warning letter from the Commission, or that the case was closed without any action."


55. See fn. 54. In an unpublished study, I found that all the judges who responded to a question about the need for support of police agencies to the conduct of elections considered such support to be critical to winning.


57. A prominent Ontario attorney was threatened with contempt by one of the Superior Court regulars for making the statement. The Thunderbird was a coffee shop where many attorneys and several judges met before beginning their morning court activities.


59. See comment in McCartney v. Commission, supra, at pp. 532-533; and see Ryan v. Commission, supra at p. 545.

60. McCartney v. Commission, supra at pp. 532-533.


62. Articles appear often in the Los Angeles Times lamenting the loss of rights by the citizens due to the rulings of the U.S. Supreme Court. Stephen Reinhardt, a judge of the United States Court of Appeals for the Ninth Circuit wrote this article on May 7, 1991, p. B7. "Conservative Rehnquist Court Unmasks its Naked Activism." The tortured trail of actions taken by Rehnquist to dismantle the protections of the Writ of Habeas Corpus is captured in this one sentence. "It is not surprising that the court led by Chief Justice William H. Rehnquist ... has shown little concern with individual rights or personal freedom. Rather it has sought to increase the authority of the government over the private lives of individuals and to undermine historic protections against police abuse."

In the case of McClosky II, a Rehnquist majority held "... a person sentenced to die following a prosecution tainted by serious government misconduct may not file a petition for habeas corpus if he previously filed one and failed to complain of the government’s misconduct — even though he was unaware of the critical facts because the government had deliberately concealed them from him." Judge Reinhardt states, "This court has shown little concern for individual rights or personal rights or personal freedom. It has sought
lives of individuals and to undermine historic protections against police abuse." An example of similar statements that are found in other writings follows: "It is clear what we can expect from the Supreme court for the foreseeable future. In the past four or five years, the conservative majority has overturned decades of civil-rights rulings, eliminated fundamental deterrents to unlawful police practices, gutted the longstanding protection of religious practices by persons other than those belonging to a majority religion, sanctioned the invasion of the bedroom and the criminalization of homosexual conduct, and proclaimed its eagerness to overturn the right to abortion as soon as one more vote can be garnered."


64. See comments above reference the California Code of Judicial Conduct.


67. Commission on Judicial Performance, 1980 Annual Report, pp. 3,4. "Since the Commission began operation, seventy-three judges have resigned or retired while under investigation. Many of these judges recognized that a disabling physical or mental infirmity was adversely affecting their judicial work. Others, especially in the early years of operation acted to preempt the investigation and avoid adverse publicity and other consequences."

SECTION B .................................................................p. 61


70. Canon 1 of the Code of Judicial Conduct.


73. In re Youngblood, supra p. 789.


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75. *In re Rasmussen*, supra p. 537-38.

79. The members of the Ethics Committee have strong opinions and often debate issues over a period of several months before a majority opinion or a consensus is reached. I have disagreed and still disagree with the opinion that a judge may serve as a member of the board of a local bar association. I question whether it is appropriate for a judge to be a member of the American Bar Association. I do belong as I find that the American Bar Association is an important source of legal publications that relate to national issues. I believe that it is inappropriate for a judge to be a member of the NAACP or the ACLU.

80. I disagreed with the conclusion that the CJA could join with other organizations with diverse interests and purposes to support a concerted action. When the vote was called for on the recommendation, a quorum of ten was present. I passed as the vote was called for and then an eleventh member arrived. When the vote came back to me, I abstained. The recommendation was made to the Executive Board of the CJA that the CJA could join with a diverse group of organizations to oppose the salary limitation act.


CHAPTER 7. COMMISSION ON JUDICIAL PERFORMANCE......p. 69

83. California Rules of Court, Sections 904.3, 904.4, and 904.5.

CHAPTER 8. Section A. *Geiler v. Commission*........p. 73


88. Ibid., p. 203.

89. Ibid., p. 205.

90. Ibid., p. 205.

91. Ibid., p. 205.

92. Ibid., p. 211.

SECTION B. SPRUANCE V. COMMISSION .................. p. 77


94. Summary statements in the opinion of the Supreme Court provide the background for the actions taken by the Supreme Court in this case. "It is solely for the Supreme Court to decide, not only the question of whether the conduct with which a judge is charged occurred, but also, unfettered by characterizations of the Commission on Judicial Qualifications, question as to whether the proven conduct falls within the class of conduct for which the constitution authorizes the imposition of discipline. West's Ann. Const. Art. 6, sections 8, 18 (a,c,e).

"Wilful misconduct, for which a judge may be removed from office, unjustifiable conduct committed in bad faith by a judge acting in his judicial capacity; it implies that the judge intentionally committed acts which were beyond his lawful power; it entails actual malice as motivation for a judge's ultra vires actions; requisite intent must exceed mere volition, as negligence alone, is not bad faith; the term also encompasses acts within lawful power of a judge which nevertheless are committed for a corrupt purpose." West's Ann. Const. Art. 6, section 18(c).

"Prejudicial conduct," for which a judge may be removed from office, includes conduct taken in good faith but which is prejudicial to public esteem for judicial office as well as wilful misconduct out of office." West's Ann. Const. Art. 6, section 18 (a,c,e).

95. Ibid., p. 845.

96. Ibid., p. 849.

97. Ibid., p. 852, 853.

98. Article VI, section 18, subdivision (c) of the California Constitution provides: "On recommendation of the Commission on Judicial Qualifications the Supreme Court may
(1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of (his) current term that constitutes wilful misconduct in office, wilful and persistent failure to perform (his) duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."


SECTION C. CANNON V. COMMISSION.........................p. 81


101. Ibid., p. 779.

102. Ibid., p. 780.

103. Ibid., p. 780.

104. Ibid., p. 781.

105. Ibid., p. 782.

106. Ibid., p. 781.

107. Ibid., p. 782.

108. Ibid., p. 783.

109. Ibid., 793. The following quotations are from a series of allegations make against Judge Cannon. I believe that it is important that they be quoted as they illustrate a point that many incidents escalate from a relatively minor situation, i.e., "Lady, don't blow your horn ... to threats to shoot the officer."

110. Ibid., p. 794.

111. Ibid., p. 794.

112. Ibid., p. 795.

113. Ibid. p. 796. (Several years ago, I was engaged in a criminal jury trial. The district attorney repeatedly made religious references to which I would object. The judge would sustain my objections but the prosecutor never ceased his irrelevant comments.)
Within the past few months, I have noted in a Los Angeles County Superior Court that a room has been made available to a Christian sect to conduct weekly prayer meetings."

114. Ibid., p. 781.
115. Ibid., p. 793.
116. Ibid., p. 798.

CHAPTER 8. SECTION D. WENGER V. COMMISSION........p. 86


118. Ibid., p. 625.
119. Ibid., p. 441.
120. Ibid., p. 441.
121. Ibid., p. 421.
122. Ibid., p. 441.
123. Ibid., p. 421.
124. Ibid., p. 421.
125. Ibid., p. 442.

SECTION E. GONZALEZ V. COMMISSION...............p. 90


127. Ibid., p.371.
128. Ibid., p. 371.
130. Ibid., p. 373.
131. Ibid., p. 374.
132. Ibid., p. 375.
133. Ibid., p. 376.
134. Ibid., p. 377.
135. Ibid., p. 372.

SECTION F. FUREY V. COMMISSION ......................... p. 92


137. COMMISSION ON JUDICIAL PERFORMANCE, 1987 ANNUAL REPORT, p. 4.

138. Ibid., p. 4.

139. Ibid., p. 5.

140. Ibid., p. 5.

141. Ibid., p. 5.

142. Ibid., p. 5.

143. Ibid., p. 5.

144. Ibid., p. 7.

145. Ibid., p. 7.

146. Ibid., p. 7.

147. Ibid., p. 7.

148. Ibid., p. 7.

SECTION G. RYAN V. COMMISSION ......................... p. 99


150. Ibid., p. 533.

151. Ibid., p. 533.

152. Ibid., p. 534.

153. Ibid., p. 535.

154. Ibid., p. 533.

155. Ibid., p. 537.

156. Ibid., p. 539.

157. Ibid., p. 540.
164. In the Victorville Municipal Court, two judges announced that because they work hard from Monday to Thursday that one of them would close his court room each Friday.

One judge was ridiculed as being the 20 hour a week judge in one of the municipal courts. An investigation was begun by the Commission, but evidence of his early departures and scheduling his Friday afternoon duties to Friday morning apparently was not obtained. Efforts to control such early "flight" from the courts from day to day and on specific days has not been easy to obtain because of the reluctance of judges, and other staff to become involved.

Judges who are busy do not run up and down hallways with a notebook to try to determine whether or not other judges are absent from their court rooms or chambers.

165. California Code of Judicial Conduct, Canon 3b(1).


167. Ibid., p. 547.

SECTION H. McCULLOUGH V. COMMISSION.................p. 108


171. Ibid., p. 8.

172. Ibid., p. 8.

173. McCullough v. Commission, 49 Cal. 3d at p. 192. In this case the Supreme Court cited its concern as expressed in Gonzales v. Commission, supra at p.369. "Petitioner's patent misunderstanding of the nature of his judicial responsibility
serves not to mitigate but to aggravate the severity of his misconduct."

174. Ibid., p. 194.
175. Ibid., p. 197.

SECTION I. KLOEPSER V. COMMISSION

176. Kloepfer v. Commission on Judicial Performance
49 Cal. 3d 826 (1989), 264 Cal. Rptr. 100, 782 P.2d 239.
177. Ibid., p. 826.
179. Ibid., p. 12.
180. Ibid., p. 12.
181. Ibid., p. 849.
182. Ibid., p. 850.
183. Ibid., p. 850.

SECTION J. KENNICK V. COMMISSION


SECTION K. IN RE BOAGS.................................p. 121

195. Judge Charles D. Boags was removed from office by the Supreme Court in 1990 after the decision that he was guilty of the crime of conspiracy to obstruct justice had become final.

198. "On recommendation of the Commission on Judicial Performance, the Supreme Court may suspend a judge from office without salary, when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or any other crime that involves moral turpitude under that law. ... If the judge is suspended and the Conviction becomes final the Supreme Court shall remove the judge from office." California Constitution, Article VI, Section 18 (b).

SECTION L. SUMMARY OF REMOVALS.........................p. 123

197. Stevens v. Commission, supra.


SECTION J. COMMISSION ON JUDICIAL QUALIFICATIONS, 1970 ANNUAL REPORT........................................p. 129

199. In re Chargin, 2 Cal. 3d 617.

SECTION K. COMMISSION ON JUDICIAL PERFORMANCE, 1971 ANNUAL REPORT........................................p. 129


201. In re Bernard Glickfeld, 3 Cal. 3d 617, 92 Cal. Rptr. 709, 471 P.2d 709.

SECTION L. COMMISSION ON JUDICIAL QUALIFICATIONS, 1971 ANNUAL REPORT........................................130


203. In re Sanchez (1973), 9 Cal. 3d 844.
204. Geiler v. Commission, supra. This matter was discussed in detail in Chapter 8.

SECTION M. COMMISSION ON JUDICIAL QUALIFICATIONS, 1974 ANNUAL REPORT ................................................. p. 131

205. McCartney v Commission, supra.


SECTION O. COMMISSION ON JUDICIAL PERFORMANCE, 1976 ANNUAL REPORT ................................................. p. 133


SECTION T. COMMISSION ON JUDICIAL PERFORMANCE, 1981 ANNUAL REPORT ................................................. p. 136

209. Wenger v. Commission, 29 Cal. 3d 615.


SECTION U. COMMISSION ON JUDICIAL PERFORMANCE, 1981 ANNUAL REPORT ................................................. p. 137

211. In re Hugo Fisher, 31 Cal. 3d 919.


SECTION V. COMMISSION ON JUDICIAL PERFORMANCE, 1983 ANNUAL REPORT ................................................. p. 139

216. Gonzalez v. Commission was discussed above.


SECTION W. COMMISSION ON JUDICIAL PERFORMANCE, 1984 ANNUAL REPORT ............................................p.140


221. COMMISSION ON JUDICIAL PERFORMANCE, 1984 ANNUAL REPORT, p. 5.

222. GUBLER V. COMMISSION, supra p. 23.

225. Ibid., p. 41.


SECTION X. COMMISSION ON JUDICIAL PERFORMANCE, 1985 ANNUAL REPORT .............................................p. 142


227. Ibid., p. 5.


SECTION Y. COMMISSION ON JUDICIAL PERFORMANCE, 1986 ANNUAL REPORT .............................................p. 146


230. Ibid., p. 3.

SECTION Z. COMMISSION ON JUDICIAL PERFORMANCE, 1987 ANNUAL REPORT .............................................p. 148

232. **CODE OF JUDICIAL CONDUCT**, Canon 3.


SECTION AA. **COMMISSION ON JUDICIAL PERFORMANCE, 1988 ANNUAL REPORT**


SECTION BB. **COMMISSION ON JUDICIAL PERFORMANCE, 1989 ANNUAL REPORT**


237. California Constitution, Art. VI, Sec. 18 (f)(2).


239. Ibid., p. 18.

240. Ibid., p. 19.


SECTION CC. **COMMISSION ON JUDICIAL PERFORMANCE, 1990 ANNUAL REPORT**


244. *Kennick v. Commission*, 50 Cal. 3d 297.


246. Ibid., p. 31.

249. Ibid., p. 32.

CHAPTER 10. GENDER BIAS IN THE COURTS

248. Achieving Equal Justice for Women and Men in the Courts, supra Tab 12, p. 5.
249. Ibid., Tab 12, pp. 29, 30.
250. Ibid., Tab 12, p. 30.
251. Ibid., Tab 12, p. 31.
252. Ibid., Tab 12, p. 31.

CHAPTER 11. COURTROOM FAIRNESS ....................... p. 169


254. California Center for Judicial Education and Research, "JUDICIAL FAIRNESS."

CHAPTER 12. SUMMATION .................................. 173

255. In re Robert Stevens, supra.

CHAPTER 13. CONCLUSION ................................... p. 185

258. Judge Roland Wilson, a former prosecutor and municipal court judge, was reported to have done so in the local newspaper. The paper bag had holes for him to see through as he walked about after the neighborhood where he lived.