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November 3, 1997

Ms. Donna M. Vargas, Staff Counsel
Cal. Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, California 94105

Re: 8-14-97 complaint against Judges Lorna Parnell, Lawrence Rubin, Jack Newman, Alan Haber, Hugh Gardner, David Perez and James Albracht.

Attention Ms. Vargas:

I am in receipt of your 10-27-97 letter, which stated, in full:

At its October meeting, the Commission on Judicial Performance determined not to take further action with respect to your complaint dated August 14, 1997.

It was concluded that the actions of the judges which were the subject of your letter provided an insufficient basis for commission proceedings. Therefore, no further action is justified based on the information you provided.

We do appreciate your time and effort in bringing this matter to the commission's attention.

I find your letter, and the Commission's purported decision "not to take further action", disgraceful. Although, I am not surprised. In fact, the Commission mostly doing nothing about judicial misconduct, or worse yet covering it up, and ignoring your foundational duty to protect the people of this state from miscreant judges, is simply - business as usual.

Recall the LA Times 6-9-94 p. A3 article entitled "Judges Flout Law on Closed Disciplinary Hearings, Lungren Says", which jumped on the bandwagon of public outrage over the Commission's dereliction and led to Prop. 190? And then its passage? Well to anyone who has dealt with or followed the Commission, they would know Prop. 190, although a well intentioned public effort, actually largely was a facade. Because after the reform radar screen was dropped, the Commission went back to business as usual - acting to protect miscreant judges rather than discipline them, and only

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acting out of embarrassment when a judge's misconduct finally was too bad or too often, and no longer could be ignored or covered up. You don't act simply because a legitimate complaint has been filed - those in fact are routinely ignored.

Clearly, Prop. 190 was mostly window dressing, proved by the fact that Victoria Henley and crew were not removed from the Commission, yet John Plotz was. Ms. Henley and crew were there while all the violations of law complained about by Attorney General Lungren in his office's 6-7-94 letter [referenced in the above article] were being committed - and despite Prop. 190, they are still there. Yet Mr. Plotz who pointed out how the Commission was ill serving the people of this state, was dismissed and ridiculed by the Commission. How could anyone really believe that things would change, when Ms. Henley and crew have made it clear they serve the judges and not the people of this state?

Your letter, is simply further proof that Prop. 190 was window dressing and that things have returned - back to business as usual. You fail to investigate complaints and protect miscreant judges, to the detriment of the people of this state and its legal system.

Your letter appears to indicate that absolutely no investigation was done. Please advise in writing if that is correct. If so, please explain why. If not so, please advise in detail what investigation of the allegations in my complaint was done. Recall that in my 8-14-97 complaint I stated that:

"The judicial misconduct and criminality complained of herein occurred in (1) Ortiz v. Haight, Brown & Bonesteel, et. al., LASC Case No. SC 041998 and (2) Sharp v. Kelly & Cogan, et. al., LASC Case No. SC027110."

More particular, it concerned the above named judges being compromised by the Haight, Brown & Bonesteel law firm, who had been accused in the Ortiz case of "systematically" conducting illegal searches (including the illegal use of law enforcement personnel), against opposing parties and their counsel for the purposes of obtaining litigation control. Did you obtain copies of those court files? Please advise in writing if that was done, and if not, why?

Of course, as evidence of my allegations, recall that I provided you copies of the following front page Daily Journal articles: 1. 5-10-96 - "Suit Charges Firm Asked for Illegal Searches" re Ortiz v. Haight Brown & Bonesteel, SC041998. (2 pages); 2. 7-10-96 - "Lawyer Claims Firm Misused Criminal Case - Malicious Prosecution?" re Sharp v. Kelly & Cogan, SC027110. 3 pages; note

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that the firm representing defendants Kelly & Cogan is HAIGHT.)

Then also I informed you that you should obtain the file on Sharp v. Haight, Brown & Bonesteel, Steven Moyer, Lori Behar, Craig Fallenberg, Ben Ortiz, Bank of America, et. al., LASC Case No. BC170960, where Mr. Sharp is suing for violation of his privacy rights and conversion of his personal property, for the defendants in fact conducted illegal searches against him and wrongfully obtained his private records. There is now an amended complaint that sets forth Haight's efforts to compromise judges to obtain litigation control. Did you obtain copies of that court file? Please advise in writing if that was done, and if not, why?

The main complaint against all these judges, is that they violated California Code of Judicial Conduct, Canon 3, D, while presiding over matters in the Ortiz and Sharp cases. The issue of Haight's illegal searches and compromising of law enforcement personnel was staring them in the face (some repeatedly) and they did nothing, or worse yet aided and abetted Haight, and worse yet, like the Commission with John Plotz, punished those who brought the matter before and to them. The conduct of some of these judges, particularly Parnell, Newman, Perez, Haber and Albracht, clearly show that they have been compromised and are in the pocket of Haight. (See below.)

Recall in the 8-14-97 complaint, I also informed you that you should obtain Mr. Ortiz's deposition taken in Ortiz v. Haight? Did you, as part of your investigation obtain copies of that deposition? Please advise in writing if that was done, and if not, why? Mr. Ortiz in fact was right in the middle of Haight's dirty work - he did their dirty tricks for them.

Which brings me to the most troubling aspect of how you, the Commission have behaved. Which is that you have never contacted me since I filed the complaint (except sending acknowledgement of receipt of the complaint.) You never wrote me. Never called me. Never interviewed me. Never asked if I had any evidence or further evidence of my allegations. Nor Mr. Sharp. Nor Ms. Barker.

How can that be? How can you even pretend that your purported actions are an investigation? There has been no inquiry. You have never looked into this matter. Clearly, your actions show you do not want to know what in fact happened. You do not want to investigate. You do not want to protect the people of this state. This is clear evidence, as usual - the way it was before Prop. 190 - that you are biased in favor of the judges and prejudiced against complaining parties - the people. The evidence is clear that you

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will not do your duty. (Again, see the above LA Times article re Lungren and the letter from his office re the Commission's past inexplicable failures.)

For if you had contacted me, I would have provided you, as further evidence of the allegations made in my complaint, the enclosed copy of an 8-20-96 letter (four pages) from the Baker, Silberberg & Keener law firm, by attorney Karl Keener, to attorney Richard Katz, regarding the Ortiz case. The Baker firm was counsel of record for the Haight firm and Mr. Katz was counsel of record for Mr. Ortiz. The letter was produced in the Sharp v. Haight, Brown & Bonesteel, et. al., LASC Case No. BC 170960, by defendants Haight, et. al., by their counsel of record in response to a formal discovery request by plaintiff Sharp. The letter should speak for itself. However, should you need any further explanation let me know and I will readily provide it.

I remind the Commission that Mr. Ortiz was at one time the head of Haight's in-house investigation department, an ex-LAPD officer, and in his original complaint alleged that Haight had "systematically" told him to conduct illegal searches. Mr. Ortiz complaint and later declaration, stated he had thousands of documents evidencing the illegal searches. I further remind the Commission that it readily appears that Mr. Ortiz in fact participated in those illegal searches while in the employ of Haight, including some on Mr. Sharp, and that Mr. Ortiz's lawsuit was simply a veiled attempt at blackmailing fellow conspirators Haight. Mr. Ortiz is now in hiding.

Again, the Ortiz case passed through the hands of several of the complained about judges, and was the topic (along with the documents he possessed) of quite a lot of conversation with them, and the complained about judges in the Sharp case, but they all did nothing about reporting the Haight firm (Mr. Ortiz's employer to the proper authorities) or ordering the "documents" - the evidence of the illegal searches, turned over to, the proper authorities for investigation. They all ignored Haight's criminal conduct and their duties under the judicial canons to report it - and worse.

Mr. Sharp has recently obtained a copy of the trial transcripts from Sharp v. Kelly & Cogan, and I will be getting a copy. I will be preparing a formal and detailed amended complaint here - largely doing your duty - what you have failed to do. This process should not be this difficult. However, until I complete that I provide you with the following charges/examples of judicial misconduct, that occurred in the two cases.

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1. Judge Parnell. On 6-3-96 Mr. Katz, Mr. Ortiz's attorney, turned over some of the documents to Judge Parnell. She reviewed them in-camera, she held them in her hands and saw them with her eyes - the evidence of Haight's illegal conduct. Yet on 6-11-96 ordered Mr. Katz and Mr. Ortiz to turn all of those documents, and all copies, back over to Haight. The judicial canons required her to order Mr. Katz and Mr. Ortiz to turn the documents over to the proper authorities and for her to report Haight to the proper authorities for investigation. Instead this judge aided and abetted Haight in covering up their illegal conduct. (See the Ortiz file, transcript of the 6-11-96 proceeding and attendant papers filed by both sides.)

Then later in Sharp, she wrongly prevented the taking of the depositions of Haight attorneys Behar and Moyer, which had been noticed after they twice refused to give declarations attesting that they had not conducted and had no knowledge of anyone conducting illegal searches regarding Mr. Sharp. (See the enclosed Keener letter.) This judge obstructed justice and helped Haight cover up their illegal conduct, by aiding and abetting Haight, by preventing those depositions, and worse yet, by without cause wrngly sanctioning plaintiff and his counsel.

She did this on two occasions. (See Sharp file re 9-5-96 and 10-2-96 hearings, transcripts of each and the attendant papers filed by both sides; see also her 12-20-96 minute order belatedly issued, long after the hearing and after the Sharp trial had concluded, which fails to include the fact that plaintiff's reply papers corrected the error in Mr. Zerman's declaration - stating that it was Judge Rubin who signed that particular order and did those specific wrongful acts, not Judge Parnell (She did htose listed above). Further the main basis of plaintiff's motion for reconsideration was Haight's bad faith and deceit, in faxing their motion for an immediate Evidence Code section 402 hearing (seeking the very same evidence), to plaintiff on the afternoon of 9-5-96, while just moments earlier had stood before Judge Parnell, arguing such was irrelevant. Further, Parnell would not allow attorney Andrew Echiverria to speak (when he appeared on plaintiff's behalf at the 10-2-96 hearing, to testify that Haight had conducted illegal searches on his family and himself in a case where Haight was defense counsel), yet all the while claimed that: plaintiff did not have credible evidence; his motions were frivolous; made in bad faith; "totally and completely without merit"; and found "subjective bad faith on the part of plaintiff and his attorney of record, Mr. Zerman" and "that any reasonable attorney would find plaintiff's motion for reconsideration to totally and completely without merit".

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A review of the transcripts will show that there really was no hearing on either date, but instead Judge Parnell was dictatorial, impatient, rude, threatening and violated Judicial Canons 1, 2A, and 3 (particularly D); see also your 1995 Annual Report, Section IV, Disposition of Cases, p. 23 Private Admonishments, Point 1 and p. 24 Demeanor, Points 1-8. Yet you did nothing.

2. Judge Newman. On 8-14-96 when the parties returned to his courtroom, after plaintiff Sharp had challenged him for cause, he recused himself, but then went on to rule on a matter. Then to cover that clear violation of the law (he no longer had authority or jurisdiction to rule on the case) and his abuse of his power, he then left out of the minute order that he had recused himself and incorrectly lists "The Court denies plaintiff's motion to postpone the trial", when it was defendants' motion to resume the trial, which plaintiff opposed. Why would he do this? Why would he behave like this? Further, he then went on to attack me for asserting my client's right to challenge him. (See Sharp court file, transcript of the 8-14-96 hearing and attendant papers filed by both sides and all the papers re plaintiff's challenge of Judge Newman for his demonstrated bias. Judge Newman's conduct on 8-14-96 was a clear violation of the law and the Judicial Canons - see your 1995 Annual Report, section IV, Disposition of Cases, Private Admonishments, Points 1, 6 & 7 and Disqualification/Disclosure, Points 13-16.) Yet you did nothing.

3. Judge Haber. On 8-19-96 a hearing was conducted before him in Sharp on Mr. Sharp's application for a writ of possession against Haight, attempting to get Haight to return Mr. Sharp's documents - the product of Haight's illegal searches. Note that hearing is referenced in the 1st paragraph of the Keener letter. Mr. Keener was present at the hearing. Why?

A review of the transcript hearing will readily demonstrate that Judge Haber was helping out Haight and refused to do his duty to grant the application and order Haight to turn over the documents. For example, see the Keener letter at the bottom of page 2 and top of page 3, where in part it states:

Incidentally, during the course of the argument on Monday, Mr. Zerman announced that he had in his possession the Court file on the Ortiz case, and that in reviewing the Court file he noted that the documents which had been filed by your office under seal had somehow become partially unsealed and he was able to read portions of at least one of the documents. You may recall that Mr. Ortiz was the author of some of the reports contained

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within that sealed envelope, documents which were submitted to the Court as purported evidence of illegal investigations. Perhaps you have some idea of how the sanctity of those documents can be better preserved.

I hope you can now appreciate some of the problems you created by publicly and privately publicizing this lawsuit. I am not sure how one goes about unringing the bell, but I think we had better explore that possibility.

I indeed brought the Ortiz file to court and I in fact asked Judge Haber to take judicial notice of the documents in the envelope filed by Mr. Katz. (Those were the same documents Judge Parnell had earlier reviewed.) What competent attorney would not have? He refused - repeatedly. The question is why? This was despite the fact that Judge Haber (like Parnell) repeatedly claimed Mr. Sharp lacked evidence to support his application for a writ of possession. As Mr. Keener states in his letter, and as plaintiff Sharp urged to Judge Haber, the evidence was right in front of him - in the envelope Mr. Katz had provided to the court in Ortiz. Again, Haber repeatedly refused to look at it. Not only should Judge Haber have taken judicial notice, he should have turned those documents and Haight and Ortiz over to the proper authorities for investigation. Again, he did neither. Why?

See also how on 8-28-96 and 9-17-96, Judge Haber continued to improperly and illegally help out Haight. Why? Judge Haber should have reported Haight to the proper authorities and ordered the documents turned over also. Instead he obstructed justice and helped Haight cover up their illegal conduct. Why? (See the Sharp file, the transcripts of those hearings and the attendant papers filed by both sides.) Judge Haber has violated Judicial Canons 1, 2A, and 3 (particularly D). Yet you did nothing.

4. Judge Albracht. Recall he was the trial judge in Sharp, and as stated in my earlier complaint, he:

... participated in a ploy, in contravention of the law and public policy, to torpedo the punitive damage phase of a case, thereby allowing established bandit attorneys Kelly & Cogan, (clients of HAIGHT), defendants in a malicious prosecution case Sharp v. Kelly & Cogan, et. al., LASC Case No. SC027110 - to wrongfully escape the almost certain imposition of punitive damages for their established illicit misconduct.

Recall also that my earlier complaint referenced as evidence, my

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letter complaints to the LA County Sheriff's Department regarding bailiffs Richard Chaffin, Sgt. Black and Sgt. Goldsmith and asked you to:

note that there was no report done on Cogan going berserk and disturbing the peace, yet he clearly should have been arrested, because as Judge Albracht stated shortly after proceedings resumed after Cogan went berserk:

... Mr. Cogan became enormously agitated, screaming, making loud guttural noises. He was met at the door by his wife, who joined in claiming -- I heard her say 'they have sliced you up and cut you up,' and as he proceeded down the hall there were very, very loud screams uttered by Mr. Cogan and his wife.

... Bailiffs were called. A number of bailiffs came into the courtroom. Appropriate personnel looked after the security of the staff and the jurors and all parties, and Mr. Cogan was ultimately taken out to the front where he continued to yell.

The jurors appeared reluctant to leave the courtroom. After the court had assured itself that Mr. Cogan was being contained by appropriate sheriff's personnel and subsequently taken back to the sheriff's civil office,
...

* * *

... I was just talking to our deputy in charge out here who was my bailiff for several years in Santa Monica, and that is probably the most violent outburst I have ever seen in court, and I practiced criminal law and heard criminal cases for a combined twenty-five years. (Sharp 12-6-96 TT 51:12-52:19.)

Did you in fact obtain copies of my letters to the LA County Sheriff's Dept.? Please advise in writing if you did that, and if not why?

It is clear that there was an effort by Judge Albracht, in conspiracy with others, to obstruct justice, when there was never an arrest of Cogan for disturbing the peace - in a courtroom and courthouse. And further proof is that: there was no report written of the event; that the judge never brought Cogan in for inquiry before the parties (or in any fashion); and never brought the bailiffs/deputies who responded and contained Cogan and his wife, in for inquiry before the parties.

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Did you ever interview Judge Albracht and get him to answer these questions? Explain his conduct? Did you ever even contact any of these judges? Please advise in writing if you ever contacted/interviewed him, or others. If so, what did he/they answer. And if not, why?

Further, Judge Albracht was given copies of some documents at the beginning of the Sharp trial which showed Haight had conducted illegal searches on Mr. Sharp and had illegally obtained his private documents, as well as showing that Haight was in on (if not the instigator) of the conspiracy to maliciously prosecute Mr. Sharp. (See the enclosed Keener letter.) These documents, and Haight's involvement were the subject of in-camera hearings. (I would particularly advise you to obtain copies of those transcripts).

Clearly, Judge Albracht should have turned those documents and Haight over to the authorities at that time, but instead he let the trial proceed. Further, this evidence clearly presented conflicts of interest for the Haight attorneys that could not be waived (and would not be waived by honest clients - they would have reported their attorneys to the authorities, but it was represented they were waived, leading one to conclude Haight and their clients were in fact in para delicto), yet this judge blindly ignored the conflict and his duty, only to have the conflict and conspiracy surface over and over again in the trial. For example, Haight attorney Moyer had worked with and been the supervisor of Jerry Gordon (at the LA County Public Defender's Office) - who had filed the underlying bogus criminal complaint against Mr. Sharp; Moyer repeatedly attempted to conceal this relationship from the court and plaintiff. In fact Moyer clearly lied to Judge Fujisaki at a 10-11-95 hearing to cover it up from plaintiff. Then later Moyer called as a expert witness, Gerald Chaliff, who also worked with and had been the supervisor of both Moyer and Gordon, at the P.D.'s Office.

We were not supposed to have won the trial - but did so despite this judge and his misconduct. That is why Albracht stepped in and torpedoed the punitive damages and participated in the ploy of Cogan going berserk. That was a pretext, to his granting the motion for mistrial. His rulings regarding such, are totally unsupported in both fact and law.

But there is more. He not only granted the mistrial, and allowed Kelly & Cogan to escape punitive damages, he then ruled that the punitive damages could not be retried. Unprecedented - and with no basis in law. However, this was a ploy to have plaintiff cave

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in and take the general damages award and walk away, because at the time the Torres v. Auto Club appellate decision (and related cases) required the same jury to impose punitive damages. Thus under Torres, if plaintiff won his appeal, all that could be hoped for was another entire trial. But Haight (and the others) were foiled. Torres was reversed recently by the California Supreme Court.

But there is more. Judge Albracht, without basis in law or fact, blamed Cogan's going berserk on me. The evidence is clear I did nothing wrong, and did nothing to make Cogan go berserk. See the 12-6-96 transcript. Recall also that this judge never inquired of Cogan why he went berserk. Why?

Later in identical bogus declarations (submitted in support of their bogus motions for mistrial), both Kelly and Guevara would state that Cogan had been in the hospital and under medication and that plaintiff's side knew this - but the fact of the matter is it was not only not known (and probably untrue), but that neither Moyer, nor Behar ever told the court or plaintiff's side such. Again, assuming I did anything wrong, there is nothing to explain how that caused or justified defendant-attorney Cogan (an attorney of 25-years, who had just earlier been determined by the jury to have conspired to file a false police report, maliciously prosecuted Mr. Sharp and attempted to blackmail him) going berserk. In fact, Cogan and his fellow defendants, and their bandit attorneys Haight, had every reason to concoct this ploy - to escape the imposition of punitive damages.

But this judge was not interested in finding out why Cogan went berserk. He knew. He was in on the ploy. He simply was looking for a pretext to allow Kelly & Cogan (and his benefactor Haight who had helped put them in this position) to escape punitive damages. So he ruled I violated an order (again I vehemently disagree and state that Albracht had no basis for his rulings), that somehow caused Cogan and his wife to go berserk, which allows him to grant a bogus mistrial, and as punishment - plaintiff Mr. Sharp does not get to try punitive damages, thus Kelly & Cogan (and Haight) escape and are allowed to seek further clients to victimize.

Judge Albracht failed to timely report Kelly & Cogan for being found liable for an act of moral turpitude - malicious prosecution (and conspired to file a false police report). He further ignored the fact that they both committed several acts of perjury during the trial, and Kelly and Moyer fabricated evidence - a calendar.

Instead, he falsely accused me and Mr. Sharp - which was the essence of the malicious prosecution case we were trying. He then

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wrongly imposed \$500 in sanctions against me, in direct violation of the law and in abuse of his judicial office. He imposed these sanctions under C.C.P. section 177.5, which expressly prohibits such when counsel is engaged in advocacy. He was told such by me in papers I filed and expressly at the 1-28-97 hearing. (See the transcript of the hearing, the attendant papers I filed, plus my 2-25-97 letter to Supervisor Michael Antonivich, protesting such.) This was a clear abuse of his power and office.

But when Cogan's going berserk was a ploy and he is never called in for inquiry, there is no report when he disturbs the peace, and there was no basis for granting the mistrial, and no bias for imposing sanctions on me, what is a little prohibition in the law to stop a renegade rogue jurist, who has already sold his soul to Haight. (See also the Daily Journal profile on Albracht, which is a self indictment that he does not have, and never had, the temperament to be a judge. Why have you allowed him to remain on the bench so that my client and I had to suffer his wrath and illegal conduct? How many past complaints have been filed against him? Again, you will only act out of embarrassment.)

Clearly Judge Albracht here has violated Judicial Canons 1, 2A and 3 (particularly D). During the Sharp trial he was irrational, rude, bias, ignored the law (repeatedly) and conspired with Haight in the ploy to torpedo punitive damages and to let Kelly & Cogan, and Haight escape punishment for the despicable deeds. Like you.

Again, I will be getting the trial transcripts and will be preparing a detailed complaint. Maybe that will embarrass you into acting. Regardless I simply will not tolerate your apathy and dereliction of duty.

I would remind the Commission to recall how bad it looked regarding the saga of the three (3) San Diego County Superior Court Judges - Adams, Greer and Malkus, who were bought off by attorney Patrick Frega. The Commission ignored that for years, and acted only out of embarrassment (what little it did was pitiful and it still allowed many other involved jurists to escape unscathed). Your credibility squandered - if there was any. Now you do it again. Such only proves you are protecting miscreant judges and ignoring the people of this state and your duty to protect them. Again, I remind you never even contacted me, and experience shows that is the same situation in virtually every other case.

Also, I enclose here copies of two (2) recent LA Times articles which show judges are ignoring their ethical duties and wrongfully taking gifts, and crossing over lines they should not. Clearly,

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they are for sale, or at least being rented.

1. 10-6-97 p. B8 article "Judges Role In cruise Raises Questions - Ethics: Foundation spent \$350,000 on trip that included 10 jurists. Eight say they paid; 2 others gave lectures on ship."; and,

2. 10-11-97 p. A20 article "Judge's Removal From Case Sought - Courts: Lawyers want Pasadena jurist to recuse himself because he was on the same cruise as one of the trial's expert witnesses."

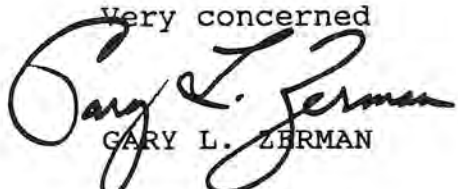
Finally, I will leave you with Judge Newman's comment after he recused himself on 8-14-96 (when we returned to his court after unsuccessfully challenging him for his bias and his failure to inform the plaintiff of his relationships with the other side), but then unlawfully went on to rule and give Haight what they wanted, and I inquired why he did not inform us:

MR. ZERMAN: Have you ever attended parties at the Haight, Brown & Bonesteel office?

THE COURT: The whole courthouse has attended parties at Haight, Brown & Bonesteel.

MR. ZERMAN: Exactly the point, Your Honor.

GLZ/ms
enclosures
cc
Santa Monica Outlook
LA Weekly
LA Times
Daily News
San Diego Union-Tribune
San Francisco Examiner
San Francisco Chronicle
Sacramento Bee
Governor Wilson
State Senator Quentin Kopp

Very concerned

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August 20, 1996

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226-1812-0012

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*OK to file
copy to FBI
[Signature]*

Dec. 8/21/96

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Re: Ben Ortiz v. Haight, Brown & Bonesteel

Dear Mr. Katz:

As may know, the hearing in the Sharp matter went forward as scheduled on Monday, August 19, 1996. According to the Court Clerk you had not filed any papers in that matter.

Obviously, I have no way of determining at this point the extent to which you may be communicating with Mr. Sharp and/or Mr. Zerman. In the event you have not seen the Reply papers which they filed on Monday morning, I enclose for your information copies of the Declarations of David L. Sharp and Gary Zerman. While you may not find all of Mr. Sharp's Declaration of interest, I suspect you will find the statements he has made about you and your handling of the Ortiz matter of particular interest. This starts at the bottom of Page 18 and continues over through Paragraph 18 on Page 21 whereupon he characterizes you and he notes that "... Mr. Katz decided upon a litigation strategy against Haight that I believe can best be described as 'blackmail' pure and simple ..."

In the pages in between he reports that you disclosed to him the names, parties and attorneys who are allegedly the subject of illegal investigations; that you had committed malpractice in revealing the existence of the documents to the newspaper in the first place; that you had given copies of the papers to Thomas

Girardi; that you have withheld documents contrary to the Court's order; and that Mr. Ortiz was involved in illegal investigative searches as to Mr. Sharp and others.

When you finish reading Mr. Sharp's declaration, you will probably be interested in reading Mr. Zerman's Declaration as he reports the telephone conversation that the two of you had on Thursday, August 15, 1995. While most of that Declaration relates to your purported "ranting and raving", I was particularly interested in noting that "... Mr. Katz stated that attorneys for Haight (Baker, Silberberg & Keener) had sent him portions of that application. Mr. Katz did not deny any of the statements made in the application, but Mr. Katz did imply that I should not have disclosed to Haight what he said to me ..."

Based upon the pleadings which I have obtained from Messrs. Sharp and Zerman, authored in the past several weeks, and now having observed them first hand in Court, I feel relatively confident in predicting that Mr. Ortiz, and perhaps you, will soon be sued by Mr. Sharp.

I also feel reasonably confident that if they obtain Mr. Ortiz' deposition transcripts they will undoubtedly sue Mr. Ortiz as he repeatedly confirmed his involvement in what he characterized as illegal investigations. As you may have ascertained by now, Messrs. Sharp and Zerman have an agenda all of their own, and hear and see things that many of us do not.

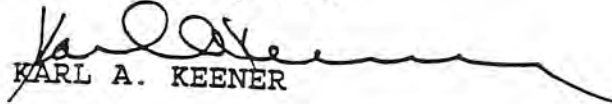
At this point they have directed a number of allegations against you. I must admit that I am more than concerned about the fact that you apparently elected not to file a declaration denying that you have documents in your possession in violation of our Court's order. At this point it appears that you have a decision to make. Either you are going to publicly refute those allegations under oath in the Sharp matter, or I will have to take your deposition in the very near future.

Incidentally, during the course of the argument on Monday, Mr. Zerman announced that he had in his possession the Court file on the Ortiz case, and that in reviewing the Court file he noted that the documents which had been filed by your office under seal had somehow become partially unsealed and he was able to read portions of at least one of the documents. You may recall that Mr. Ortiz was the author of some of the reports contained within that sealed envelope, documents which were submitted to the Court as purported evidence of illegal investigations. Perhaps you have some idea of how the sanctity of those documents can be better preserved.

I hope you can now appreciate some of the problems you created by publicly and privately publicizing this lawsuit. I am not sure

how one goes about unringing the bell, but I think we had better explore that possibility.

Very truly yours,


KARL A. KEENER

KAK:ls

Enc.

Richard M. Katz, Esq.
August 20, 1996
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bcc: Gary C. Ottoson, Esq.
Haight, Brown & Bonesteel

Judges' Role in Cruise Raises Questions

■ **Ethics:** Foundation spent \$350,000 on trip that included 10 jurists. Eight say they paid; 2 others gave lectures on ship.

By KENNETH REICH
TIMES STAFF WRITER

In a stunning legal coup last year, Los Angeles trial lawyer Thomas V. Girardi and his frequent litigation colleague Walter J. Lack won a \$333-million settlement from Pacific Gas and Electric Co. in a toxic pollution case.

For Girardi, one of the nation's most successful trial attorneys, this was only one of many triumphs.

Girardi, 58, the president-elect of the American Board of Trial Advocates, has won verdicts or settlements in excess of \$1 million more than 100 times in a career of more than three decades.

Much of his work is in the burgeoning field of lawsuits that challenge the dumping of toxic pollutants.

In the PG&E case, Girardi and Lack pocketed a legal fee of at least \$120 million; the rest of the settlement went to 650 plaintiffs in the desert town of Hinkley, Calif., near Barstow, where the water supply was found to have been contaminated by leaky PG&E dumps of chromium.

In a world of growing legal acrimony and defensiveness, Girardi wins points for civility and an uncommon ability to cut through the kind of jargon that leaves many jurors' eyes glazed.

Please see JUDGES, B6



MARK ROBERT HALPER / For The Times

Attorney Thomas Girardi's legal foundation sponsored cruise.

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JUDGES: Role in Cruise Raises Questions

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San Francisco trial attorney Joseph Cotchett calls him "the most streetwise man I've ever met. He can take a complex set of facts and reduce it to a highly understandable situation for a jury. The average jury loves Tom Girardi because he doesn't talk like a lawyer. . . . He's not a great reader of legal books, either, but in front of a jury, he is dynamite."

Girardi's reputation as an influential member of the legal system was on display recently when several lawyers and judges assailed him for allegedly trying to curry undue favor with judges.

The criticism stemmed from Girardi's Foundation for the Enrichment of the Law, which he said he and Lack created to give some of their substantial earnings back to the legal system.

First, the foundation contributed \$1.2 million to refurbish and expand the jury facilities at the county's downtown civil court complex at 1st and Hill streets.

Then, through the foundation, Girardi and Lack spent \$350,000 to charter the Cunard cruise liner *Sea Goddess II*, to take 90 family members and friends in the legal and medical professions—including 10 active and retired judges—on a seven-day voyage in August in the Mediterranean Sea.

Girardi said eight of the 10 judges paid their own way on the cruise, and the lawyers and doctors who went were expected to reimburse the foundation with contributions.

Seven of the eight paying judges confirmed that they had paid for the trip. One, asking not to be identified, initially said he understood that it was a free trip but later said that he would pay.

What created the most controversy was the fact that among those on the trip were three of the five retired judges—Jack Tenner, John Trotter and Jack Goertzen—who had served on arbitration or mediation panels in the PG&E case. All, according to Girardi and their own statements, had paid before the cruise, or would pay in the near future.

Two federal district judges from Los Angeles who did get a free cruise—Dickran Tevzian and Ronald Lew—delivered lectures on the trip. They had a letter from a federal circuit judge in Washington who serves as chairman of the Committee on Codes of Conduct for the U.S. Judicial Conference saying that it was proper for them to accept the \$3,070 cruise in exchange for lecturing.

Tevzian said he had been a friend of Girardi since high school, but has usually avoided involvement in the lawyer's cases. He said he had disclosed their friendship in one settlement agreed to by both parties in one case.

Another judge who went on the cruise, Coleman Swart, supervising Superior Court judge in Pasadena, said: "Tom is a personal friend. I never hear any of his cases, never have." Swart said he paid his own way.

Four legal ethics professors from a variety of universities consulted by *The Times* said there was nothing improper about the cruise as long as the other judges paid their way, disclosed the trip to future litigants if Girardi was involved—and the cruise was not to celebrate the PG&E settlement.

Several lawyers and judges, some of them prominent figures in Los Angeles' legal community, criticized the trip, complaining that it symbolized Girardi's acquisition of too much influence over the legal system. But all of them spoke only on the condition of anonymity.

Girardi denied that the cruise was a celebration of the PG&E case, another phase of which is still being heard in Los Angeles County Superior Court.

He stressed that the purpose of the cruise—which left Monte Carlo and stopped at Portofino, Sardinia, Sorrento, Capri, and Taormina, Sicily, before returning to Monte Carlo—had included "an extensive professional program."

One of Tevzian's lectures was titled, "What to Do When Your Corporate Client Becomes the Focus of a Criminal Investigation."

Since the PG&E settlement, which was announced in mid-1996,

He is "the most streetwise man I've ever met. He can take a complex set of facts and reduce it to a highly understandable situation for a jury."

JOSEPH COTCHETT
San Francisco trial attorney
commenting on Los Angeles trial lawyer
Thomas V. Girardi

"we've had five big verdicts or settlements, so this wasn't a celebration of that," Girardi said.

Like most trial lawyers, Girardi is an exponent of the contingency fee system in which a lawyer bears all the costs of the litigation and charges no fees to the plaintiffs unless and until a verdict or settlement is obtained. Then the fees often run between 33% and 40%.

He says that if he had his way, all civil cases would be conducted on this basis, making it much more feasible for citizens who are not well-to-do to sue for damages.

Several of those showing up on the passenger manifest of the *Sea Goddess II* cruise have been expert witnesses in a number of recent Girardi and Lack toxic cases, resulting in settlements with Exxon and Lockheed, among other defendants.

A common thread running through these cases has been allegations that large corporations negligently allowed contaminants to enter into water or other supplies used by the plaintiffs, subjecting them to cancer and other diseases.

Most recently, Girardi filed suit against the Jet Propulsion Laboratory in Pasadena for allegedly causing cancer in dozens of local residents through faulty chemical disposal practices. The JPL denies the charges.

In a recent setback, Girardi was the lead lawyer in a class-action suit against the movie industry over accounting practices that allegedly understated profits. The suit lost in a lower court and is now on appeal.

Born in Denver in 1939, Girardi grew up in the Westchester neighborhood of Los Angeles and graduated from what is known now as Loyola-Marymount University and Loyola Law School. He also has a master's degree in law from New York University.

He opened a solo practice in Los Angeles and won his first sizable verdict, for \$65,000, in 1965. In 1971, he won a medical malpractice verdict of \$1.4 million, the largest malpractice verdict in the state at the time.

The foundation that he and Lack created, and which Girardi says he controls, has also made a \$2.4-million gift to Loyola Law School, payable at \$400,000 a year for six years.

Girardi, an adjunct professor of law at Loyola Law School, where he teaches medical-legal law, trial practices and trial-lawyer ethics, is married and has three children by a previous marriage.

Even his critics are grudgingly impressed by his persuasiveness.

When a reporter relayed Girardi's explanation for the ethics of the recent cruise to a lawyer for a corporation that Girardi is suing, the exasperated attorney said, "You mean, he is so powerful, he can get away with that!"

Times Rome bureau researcher Maria de Cristofaro contributed to this story.

Judge's Removal From Case Sought

■ **Courts:** Lawyers want Pasadena jurist to recuse himself because he was on the same cruise as one of the trial's expert witnesses.

By KENNETH REICH
TIMES STAFF WRITER

When two prominent Los Angeles trial lawyers arranged for 90 family members and friends in the legal and medical professions to go on a Mediterranean cruise last August, it triggered sniping from rival attorneys.

Now one of the judges who went on the cruise is facing a motion calling for him to recuse himself from a case. The reason: One of the trial's expert witnesses was on the cruise too.

The motion, aimed at Pasadena Superior Court Judge Coleman A. Swart—one of 10 judges who went on the cruise arranged by attorneys Thomas V. Girardi and Walter J. Lack—was announced earlier this week in a civil case involving a contractual dispute.

Swart, the supervising judge in the Pasadena court, denied that any conflict exists.

However, in response to the recusal motion, the judge offered three times in a hearing Tuesday afternoon to order the expert witness—Lack law partner Paul Engstrom—disqualified as a witness in the case.

Although denying that there is a question of partiality in his hearing the case, Swart said he was offering to disqualify Engstrom to save the time and expense of a possibly lengthy hearing in another court on the disqualification motion.

The judge, who says he paid for his part of the weeklong cruise on the Sea Goddess II out of Monte Carlo, said he does not know Eng-

strom personally.

"I obviously was on this trip," Swart said. "I would not be able to identify Mr. Engstrom if he walked in the courtroom. I might be able to recognize his face as somebody that I saw on the trip or that I may have said hello to, but I could not put a name with a face, as far as Mr. Engstrom is concerned."

However, he went on, according to a court transcript released Friday: "I'm prepared at this time to disqualify Mr. Engstrom as a witness in this case, and I think perhaps that would be the most expedient way to handle this matter."

But Andre Jardini, the attorney for the defendants in the case of Wolf Air et al. vs. Associated Aviation Underwriters, said he would not accept the judge's offer and would persist in trying to disqualify him from hearing the case.

Jardini told Swart that his proposed solution "is papering over the problem."

The attorney said that to him and his clients, the presence of the judge and the expert witness on a cruise arranged by the witness' partner creates "extraordinary and unusual and unfortunate" circumstances.

"An objective person might reasonably entertain doubts based on those circumstances of [your] impartiality," Jardini told Swart.

But the judge said: "I think to put the court in a position that you have to disqualify yourself every time somebody appears as a witness who you may have at least had some casual connection with, I think, is not the intent [of the law]."

Engstrom said in an interview Friday: "I don't even know the judge, except to say hello to him. I have given a deposition in the case, but I have not been called as a

witness and I have not testified, so I don't know that there's any problem here."

Girardi has said the Sea Goddess cruise was purchased at a discount but eight of the 10 judges who went paid their own way, and the other two, U.S. District Judges Dickran Tevrizian and Ronald Lew, went free because they gave lectures on the trip.

The cruise cost \$3,070 per person. The normal price for it on the Cunard liner is \$6,500.

Some lawyers criticized the cruise because among the judges aboard were three of the five retired judges who participated in a toxic pollution lawsuit that Girardi and Lack filed against Pacific Gas & Electric. The two lawyers won a \$333-million settlement for their clients last year, receiving a fee of at least \$120 million. The judges served on private mediation or arbitration panels.

This week, a PG&E attorney said a letter raising questions about the judges' ethical standards and the fairness of the mediation is being sent to the association that administers the work of many private judges, Judicial Arbitration and Mediation Services.

The retired judges who went on the cruise, all saying they were paying their own way, were Jack Tenner, John Trotter and Jack Goertzen. Trotter and Goertzen are arbitration service judges, and Tenner formerly was with the service.

Judge Keith Wisot, an arbitration service administrator, has said there is no indication that any of the judges did anything wrong in going on the cruise.

However, some critical attorneys and judges have suggested that the discount offered to the invitation-only cruise passengers was something the judges could not ordinarily have received.

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