

JUDICIAL ACCOUNTABILITY INITIATIVE LAW
(J.A.I.L.)

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October 20, 1999

Mr. Gil Garcetti
LA County District Attorney
18000 Criminal Courts Bldg.
210 W. Temple Street
Los Angeles, CA 90012

Hand Delivered

Re: The matter of possible criminal conduct committed by
ex-judge George W. Trammell in connection with and during
his presiding in the case of People v. Ming Jin, Yu Chu
and Pifen Lo, LASC Case No. 108979.

Request that you review this matter - again.

Dear Mr. Garcetti:

We, the citizens, that make up the Judicial Accountability Initiative Law - J.A.I.L. (www.Jail4judges.org), with the delivery of this letter, hereby petition and request, that you - again review the matter of ex-judge George W. Trammell, for his possible commission of crimes, in connection with and during his presiding in the case of People v. Ming Jin, Yu Chu and Pifen Lo, LASC Case No. 108979.

As you are aware, your office has already reviewed this matter twice, and determined twice, that there was not a basis for bringing criminal charges against ex-judge Trammell. First, a 4-8-97 LA Times p.B9 article "Former Judge Reportedly Won't Be Tried in Sex Misconduct Case" reported in part:

"In a written opinion issued March 12 [1997] that has yet to be made public, prosecutors opted not to file charges against Trammell, two sources confirmed Monday, saying that the district attorney's office believed the judge's role in a relationship that developed last year with a Pifen Lo, 37--a former defendant in his courtroom--did not fit the definition of any crime".

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Second, a 1-3-98 Daily News p. News-11 article "Trammell cleared of sex allegations" reported in part:

"No criminal charges will be filed against former Superior court Judge George Trammell III, who resigned amid allegations that he forced a defendant's ex-wife to have sex with him in exchange for leniency, authorities said Friday. [P] There was a 'lack of credible and sufficient evidence to support a conviction in criminal court,' Ronald H. Carroll, head deputy of the district attorney's Special Investigations Division wrote to Robert Pash, chief of the Court Services Division of the Los Angeles County Sheriff's Department."

As you are also aware, the Trammell matter was also reviewed by:

(1) OCSC Judge Frank Fasel (In re Ming Ching Jin on Habeas Corpus petition, LASC Case No. BA 108979, App. Court-2nd Dist., Div. 3, Case No. B108738), who issued evidentiary findings of fact on May 30, 1997; and,

(2) The California Commission on Judicial Performance, which on January 5, 1998, issued its Decision and Order Imposing Public Censure and Order Barring Judge Trammell from receiving Assignments.

Both of those reviews, independently concluded that ex-judge Trammell had abused his judicial authority, office and power, by engaging in improper ex-parte meetings with defendants (without their respective counsel) who were criminal defendants in a case before Trammell and that Trammell engaged in sexual relations with one of those defendants. Further, as you are also aware, the day after a search warrant was obtained for ex-judge Trammell's home and judicial chambers, he resigned his judicial position. He also later resigned from the California State Bar. Judge Fasel granted the above habeas corpus petition. The Commission on Judicial Performance barred Trammell from ever again acting as a judicial officer. Clearly all the above are evidence of Trammell's culpability - and probably his guilt.

Subsequent to the two reviews by your office, on 1-11-98 the LA Times published on p.M6 an opinion piece written by attorney Charles L. Lindner (a past president of the L.A. Criminal Defense Bar Association) regarding the Trammell matter entitled "L.A. County's Dual Standard of Justice Marches On".

There Mr. Lindner wrote in pertinent part:

"This is the second time the district attorney has refused to file charges against Trammell. The D.A. first indicated last March that no charges would be filed, but [Judge] Fasel's findings prompted a review of that decision. The results of that review were disclosed late in the afternoon on the day after New Year's, when media presence would be minimal, at best.

"In arguing against prosecution, the district attorney said that Lo's testimony before Fasel cannot be corroborated. Trammell only has said that his relationship with Lo was amiable, not sexual.

"The great irony in reading the Deputy Dist. Atty. Ronald H. Carroll's memorandum rejecting criminal filing against Trammell is that it reads like a defense lawyer's brief. Carroll enumerates every conceivable reason for why Trammell's defense counsel could destroy the prosecution's case. Absent the D.A.'s letterhead, Carroll's memorandum could have been written in the public defender's office.

"Among the reasons not to prosecute Trammell, one is particularly noteworthy. The memo asserts that Lo is a convicted felon (Trammell having given her felony probation) and therefore, not credible. This 'Convicted felon' reason is certainly interesting, since the district attorney's office regularly uses convicted felons as witnesses in prosecutions. In fact, the D.A. recycles it felonious snitches to testify over and over again.

"Fasel found that Trammell pressured Lo to submit to acts of sexual intercourse in exchange for a promised official act of mercy on behalf of Jin [Lo's ex-husband]. Fasel could not have reached this conclusion lightly with respect to a fellow judge. If true, Trammell would be guilty of rape under color of governmental authority.

"For some reason, the district attorney's office minimized the gravity of Fasel's findings, challenged Lo's credibility--despite audio tapes on which Trammell strongly implies repeated intercourse with Lo--and set aside a wealth of other information, including Trammell's correspondence with a woman state prisoner who called

herself 'Pifen and George's Love Counselor,' and gifts given to Trammell.

"The district attorney's unwillingness to prosecute Trammell is totally inconsistent with its aggressive stance in other sexual assault cases. The D.A. routinely files charges where there are no physical injuries to the victim, even when the victim is a prostitute, or a convicted felon. It vigorously prosecutes charges of 'date rape' in which the question of whether the victim consented is extraordinarily thin, and it regularly tries rape cases in which there is ample history of previous consensual sex between the putative victim and his or her alleged assailant.

"In contrast, Trammell's case has not been handled with just 'kid gloves'; it has been handled as if Trammell were highly radioactive.

"There are ways to remedy 'insider justice.' The county grand jury has the power to command the D.A. to present evidence in the Trammell case. Unfortunately, L.A. County grand juries have a long track record of being the tame sheep of the district attorney. It would be prudent for the foreman, accordingly, to request that the state attorney general intervene or that a special prosecutor be appointed. If 13 of the 23 grand jurors are convinced that 'probable cause' exists that a crime was committed and that Trammell was associated with its commission, the body can issue an indictment.

"Second, 'rape under color of authority,' bribery and obstruction of justice are federal civil rights violations when committed by state judges. The U.S. attorney and the FBI have remained far too restrained in conducting an independent federal investigation of Trammell.

"The D.A.'s rejection of Trammell's prosecution points up the continuing and inappropriate relationship between the judiciary and the prosecution. The vast majority of judges are ex-prosecutors, and many current prosecutors aspire to become judges. As such, the system is essentially a closed fraternity, in which defense attorneys are mostly viewed as obstructionist roadblocks to the speedy incarceration of 'bad' guys. It is also expert, as the Trammell case illustrates, in dispensing

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'insider justice' for the 'good' guys, even if that means ignoring the good-faith findings of another judge.

"Only a jury can remove this blight on local justice."

Although, Mr. Carroll of your office replied to Mr. Lindner's piece, in a 1-21-98 LA Times "Letter to the Editor", claiming Mr. Lindner "has done a disservice to public prosecutors and the county's citizens", we at J.A.I.L., believe that Mr. Lindner's statements are/were much more persuasive, than the positions Mr. Carroll and your office have put forth and taken in this matter. Further, we at J.A.I.L., believe that it is your office who has done a disservice to the county's citizens - and our legal system, by the positions your office has taken in this matter.

That belief is backed up by the following. First, the 4-9-98 NewTimes LA cover story "JUDGE DREAD - L.A. Judge George Trammell forced sex on a woman whose husband faced life in prison. Here's how D.A. Gil Garcetti let the jurist walk away from rape charges" reported in part, starting at p.16:

"Some observers say Trammell's behavior with all three women--Lo, Chu, and Wade--demonstrates a frightening pattern of taking advantage of vulnerable women whose credibility is so suspect that investigators probably wouldn't believe them.

"Although the D.A.'s office apparently didn't investigate whether Trammell pressured other women to have sex in exchange for judicial favors, New Times has interviewed a former prostitute who says she too was victimized by him. Her story is uncorroborated and she never reported it to authorities, but it almost eerily resembles Lo's experience.

"Terry Hodgkinson says that in 1978 she appeared before Trammell, then a municipal court judge, on pimping and pandering charges and was placed on four years probation. Soon afterward, she says, he showed up at her tropical fish and pet store in Encino at closing time.

"Hodgkinson, now 45, says he asked her to show him her office and as they stepped inside, he turned and told her why he was there. 'He said, "I have an ultimatum for you--either you fuck me or you go to jail for rest of your probation,"' she says. 'I dropped my pants down right then and there.'

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"Hodgkinson says the two had intercourse in her office and the judge drove off. Because she was a hooker and a heroin addict, Hodgkinson thought no one would believe her if she reported the incident. So she kept her mouth shut and tried to forget about it. 'I told friends and cried to them about it,' she says. (Hodgkinson's foster father, a retired state government official who asked to remain anonymous, confirmed to New Times that she told him about Trammell's actions at the time.)

* * *

"Like Lo, Hodgkinson believes Trammell took advantage of other women like her.

"'In the late 1980's, I met two other prostitutes who had been busted a lot and had come before Trammell,' she says. 'They told me he gave them an ultimatum, too-- sleep with him or back to jail. They did it, just like I did, because they did not want to go back to jail.'

"Last year, Hodgkinson read about Lo's tribulations. 'I called my lawyer and said, "Is there a way I can help this woman?"' Her attorney called the lawyers involved in the habeas corpus proceedings and passed on what Hodgkinson had said. Enid Ballantyne, Chu's attorney, says she called Deputy D.A. Richard A. Rosenthal of the Special Investigations Division and passed on Hodgkinson's information.

"Hodgkinson has never been contacted by prosecutors."

Mr. Garcetti, has your office ever contacted Ms. Hodgkinson? Has your office investigated the possibility that Trammell, in fact abused his authority before and coerced sex from other women? Obviously, if such had occurred, it would be very probative toward supporting Ms. Lo's claims. Could you please answer these questions in writing for us at J.A.I.L. Mr. Garcetti, in the next seven (7) days?

Second, on 11-13-98 the decision/opinion of the Court of Appeal came down in Lo v. Superior Court (1998) 67 Cal.App.4th 1045. That case concerns the civil complaint of Ms. Lo, her ex-husband Jin, their three children, and Ms. Chu, against Trammell, his clerk, his bailiff, L.A. County and the State of California, for intentional misrepresentation, assault and battery, false imprisonment, abuse of process, civil rights violations, negligence and intentional and negligent infliction of emotional distress. There the Court issued a writ ordering the trial court to vacate its order sustaining the demurrer of the State and County, distinguishing between Trammell's

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in-court and out-of-court conduct for respondeat superior purposes.
There the Court stated in pertinent part:

"We will not burden this opinion with the myriad other cases, in California and other jurisdictions, in the intervening 25 years chronicling sexual abuse by judges.

"We decline to find an abuse of judicial power for personal gratification so unusual and startling to shield defendants from respondeat superior liability."

2 The cases are rife with judicial abuses of power motivated by arrogance as well as sexual desire. (See Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 678.) Abuse of power can be motivated by greed, arrogance, sexuality, or any other improper motive. Our Constitutional system of checks and balances was designed to protect us against the Founders' expectations that unchecked power would lead to rampant abuse. They considered abuse of power so common as to design an entire system of government expressly to check it."

The above statements by the Court, clearly show that there are a few courageous souls, brave enough to break the judicial code of silence, who will admit just how serious the problem of judicial abuse of power is and who will do their duty to attempt to hold those culpable accountable. They are to be commended. But can that be said about your office here, Mr. Garcetti?

Third, Mr. Garcetti, we will chronicle here for you here some recent further examples of judicial abuses of power motivated by sexual desire and attach copies of such.

1. a) 6-16-97 PEOPLE MAGAZINE p. 52 article "JUDGING THE JUDGE - Abusing his power in his court and community, a Tennessee jurist [David Lanier] turned sexual predator"; and, b) 9-13-97 p.A13 article "Judge Convicted of Sex Assaults Missing - Now considered a fugitive, Tennessee jurist David Lanier had been ordered back to prison by Supreme Court Ruling".

2. a) 9-10-93 LA Times p.A4 article "Ex-N.Y. Judge Gets 15 Months for Threats, about New York state's highest judge Sol Wachter pleading guilty to and being sentenced to 15-months in jail for terrorizing his former lover and her teen-age daughter; and,

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b) 3-17-96 Daily News p. Viewpoint-1 article "Saga of the judge who landed in jail".

3. a) 6-99 California Lawyer cover story "The Lonesome Quest - Even if plaintiff Joan Huntsman loses her sexual harassment suit against a judge nothing will be the same at the Victorville courthouse; and, b) 8-9-99 Metropolitan News - Enterprise front page article "Panel Upholds Some Misconduct Charges Against San Bernardino Judge".

Note, Mr. Garcetti, that none of the above judges had criminal charges brought against them, by county or state authorities. When prosecuted, it was the federal authorities who stepped in.

Fourth, Mr. Garcetti, we provide you with copies of the following articles/documents of further examples of the favoritism and failure of the legal system, to properly address misconduct and violations of the law by judges.

4. 1992 California Commission on Judicial Performance Annual Report, p. 11, IV. DISPOSITION OF COMMISSION CASES, point 3 re Judge Kamansky.

5. 1997 California Commission on Judicial Performance Annual Report, p.81, Appendix 3. 10-YEAR SUMMARY OF COMMISSION ACTIVITY. (Note the inordinate amount of "0" - zeroes, and the less than 1%.)

6. 4-29-98 Daily News p. News-12 editorial "Three drinks, you're out."

7. 6-9-94 LA Times p.A3 article "Judges Flout Law on Closed Disciplinary Hearings Lungren Says."

8. 12-17-93 Daily Journal p.6 opinion piece "Judges Can't Judge Themselves - Council on Judicial Performance Is Rigged to Protect the Judiciary" by Peter G. Keane.

9. 1-8-93 Daily Journal p.6 editorial "On Secrecy ... Punish Bad Judges in Public", which was reprint from the San Diego Union-Tribune.

10. 8-19-98 front page Daily Journal article "Judge Censured For Lying About Childhood Event - Ware Receives First Such Reprimand From 9th Circuit Council". (Note the last paragraph reference to L.A.'s Senior U.S. District Judge A. Andrew Hauk.)

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11. a) 9-22-94 Daily Journal front page article "'Petinent' Hauk Will Not Hear Certain Cases"; b) 10-5-94 Daily Journal "Letters to the Editor - Charges Against Hauk Weren't Dropped"; c) 3-23-95 LA Times p.A24 article "Judge's Comments Have Upset Many Groups"; and, d) 3-28-95 LA Times editorial "Questions About a Judge"; and,

12. 6-9-99 front page Metropolitan News-Enterprise "Ninth Circuit Affirms Convictions in Gifts-for-Judicial-Favors Scandal" in the case of U.S. v. Frega racketeering conviction of a prominent San Diego attorney, and the two San Diego Superior Court judges he conspired with; while earlier a third judge rolled and pled guilty. Note, again the county and state authorities failed to prosecute and it was federal authorities that had to step in.

Mr. Garcetti, judicial corruption and judicial abuse of power damages the integrity of our legal system more than anything else. It can corrupt and undermine an entire nation. We must hold our judges accountable and must bring them to justice.

Mr. Garcetti, it is time to stop the "insider justice" and "inappropriate relationship between the judiciary and the prosecution", Mr. Lindner described above and that the above articles and documents clearly show exists. Mr. Garcetti it is time to break the "code of silence" that permits and fosters this "dual standard of justice" for judges. Mr. Garcetti, we ask that you try again. Please review this matter another time.

We ask Mr. Garcetti, that your office:

1) review this matter again, including investigating leads re other women that also were possibly coerced into having sex by Trammell, and determine whether criminal charges should be brought against ex-judge Trammell;

2) present the matter of ex-judge Trammell to the L.A. County grand jury foreman for review and determination, if an indictment should be brought against ex-judge Trammell;

3) again request that the California Attorney General's Office take and reinvestigate the matter of ex-judge Trammell, for determining if that office should bring criminal charges against ex-judge Trammell;

4) if charges are not brought in the above three instances, refer the matter to the U.S. Attorney's Office for review for possible charges; and,

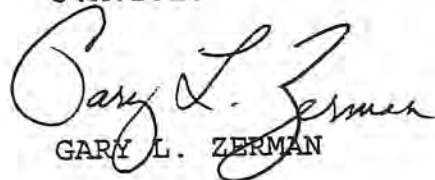
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5) provide a copy of this letter to the L.A. County grand jury foreman, Attorney General Lockyer, U.S. Attorney Mayorkis, the L.A. County Supervisors and Governor Davis.

Finally, Mr. Garcetti we from J.A.I.L., provide you here with a copy of our Judicial Accountability Initiative Law petition. The Trammell matter, and your office's handling of it, readily demonstrate not only why such a measure is in fact desperately needed, but also why true accountability of judges will never come from the government sector or from government officials. It must and will come from the people.

We await your reply, and stand ready to assist your office with any further information or help you may desire.

Very concerned,
for the members of
J.A.I.L.


GARY L. ZERMAN

GLZ/ms
enclosures

JUDGING THE JUDGE

Abusing his power in his court and community, a Tennessee jurist turned sexual predator



◀ Judge David Lanier's sexual advances dated back to '79. "By 1986," says an investigator, "he had totally gotten out of hand."

▼ "He picked on women because they were people he had power over," says a Dyersburg police officer of Lanier (in '93).

JOANNA PINNEO



IN DYERSBURG, TENN. (POP. 20,000), Judge David Lanier embodied the law. Tall, portly and carefully coiffed, Lanier neither smoked, drank nor used profanity. He also wielded considerable power. "He handled adoptions, child custody cases, divorces. If your kids got in trouble, you'd see him in juvenile court. And when you died, he probated your will," says Joey McDowell, a police investigator in Dyersburg. "Cradle to grave, he controlled everything."

Except, it turned out, himself. Four years ago, Lanier, now 62, was sentenced to 25 years in prison on two felony and five misdemeanor counts of using the power of his office to violate the civil rights of five women by sexually assaulting them in his chambers. The conviction was overturned last year because Lanier was tried under a federal civil-rights statute, which, a U.S. appeals court ruled, did not apply to sex crimes, even those committed by federal officials. On March 31, though, the Supreme Court unanimously ruled that the law could apply—a decision that

DAVE DARNELL/THE COMMERCIAL APPEAL



may also have ramifications in Paula Jones's suit against President Clinton. Her suit is civil, not criminal, but A.E. Dick Howard, a constitutional law professor at the University of Virginia, says the Supreme Court's ruling against Lanier "would certainly be favorable,

▶ "I realized that I had to fight," says Vivian Archie, whom Lanier was convicted of raping.

▶ "People said you need to quit stirring the pot," says Patty Wallace (left, with Sandy Sanders).

not unfavorable, to a cause of action like Paula Jones's."

Whatever its implications, the case against Lanier involved a grotesque abuse of power. The judge's family had long ruled Dyer County, some 70 miles north of Memphis, like a fiefdom. His father, James Parker Lanier, created a formidable political machine while serving as county clerk from 1938 to 1962. So it was no surprise that after David graduated with a law degree from the University of Tennessee, he went into the family business, becoming mayor of Dyersburg in 1965, at the age of 31. Defeated for an eighth term in 1979, Lanier, married and the father of two daughters, was elected to the influential post of chancery court judge in 1982.

Eight years later police were investigating Lanier for taking kickbacks from local lawyers. When they began hearing

BETH GWINN



that he had groped and even raped women, their investigation switched focus. Convinced that local prosecutors—Lanier's brother James was elected Dyer County district attorney in 1990—would never take on the judge, they turned to the FBI. The feds heard from dozens of women who claimed Lanier harassed them, eight of whom testified.

One, Sandy Sanders, now 37, maintained that while she was a youth-services officer for the county, Lanier fondled her twice. In 1989 she was sitting in a chair in his office when, she says, he came over and grabbed her breast. "I knocked his hand away," she recalls. "I was shocked and stunned, it happened so fast." Court clerk Patty Wallace, 38, said that in 1988, during a

court session, Lanier had reached under a table and rubbed her leg. The groping lasted 45 minutes, with Wallace trying to inch away but otherwise maintaining her composure so as not to make a scene. Fearing Lanier's influence in town, she didn't report the assault to authorities, but she was apprehensive he might try something again. "I had to have surgery because I was grinding my teeth so bad at night," she says. "I was ready to shoot myself."

The most egregious assault involved Vivian Archie, now 30. In 1990, Archie interviewed with Lanier for a job as his secretary. Newly divorced, with a 20-month-old daughter, she was desperate for a steady paycheck. When she shook the judge's hand at the end of her interview, he pinned her down in an armchair and, while pinching her throat and neck and pulling her hair, ordered her to perform oral sex. "He told me he would take my daughter away from me if I ever said anything," says Archie. Terrified, she kept quiet but, shattered by the experience, plunged into depression and became addicted to cocaine and pills. She was virtually suicidal when the FBI approached her in 1991 to talk about Lanier. "When they came to me, I felt relieved," she says. "It started bubbling out of me, and I told them everything." She kicked her addictions and became the government's star witness.

At his three-week trial in Memphis,

which began on Dec. 1, 1992, Lanier denied assaulting anyone. "I have never forced myself on any woman at any time," he told the court. "I'm a hugging-type person." Publicly, Lanier portrayed his accusers as loose women who had engaged in consensual sex. Around Dyersburg many tended to agree with the judge, seeing his prosecution as some sort of political vendetta. "Nobody in Dyersburg supported us when this first came out," says Archie, who moved to Orlando to escape the hostility. "We were called sluts, whores."

The federal jury that convicted Lanier saw things differently—though he was found not guilty of groping Wallace, because she hadn't pushed his hand away. Two years into his 25-year sentence, the sixth circuit court of appeals overturned the verdict. While the case now goes back through the appeals process as the Supreme Court has ordered, Lanier, divorced and reportedly living in California, is free. But Archie, who has a second daughter, Scarlett, 2, and works as a legal secretary, is confident he will yet feel justice's sting. "We sacrificed a lot to get our dignity back," she says. "And now is not the time to stop. He took away my rights. He made me feel like nothing."

■ BILL HEWITT

■ CINDY DAMPIER in *Orlando*, KATE KLISE in *Dyersburg* and MARGIE SELLINGER in *Washington*



LINDA L. CREIGHTON

▲ During his investigation, the FBI's Bill Castleberry (in Dyersburg in '93) talked to dozens of aggrieved women in the municipal building's basement to shield their identities.

➤ "I'm glad today that I faced it all," says Vivian Archie (with daughter Scarlett outside their Orlando apartment complex in February). "I came out a stronger person."



JOANNA PINNIO

Judge Convicted of Sex Assaults Missing

LA TIMES
9-13-97
P. A13

■ **Law:** Now considered a fugitive, Tennessee jurist David Lanier had been ordered back to prison by Supreme Court ruling.

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—The sordid saga of a Tennessee judge who sexually assaulted at least five women in his chambers has taken another strange twist, descending from a high-level dispute about the reach of federal law to a national manhunt for a criminal on the run.

Portly ex-judge David W. Lanier, who was freed by one federal court but sent back to prison by the U.S. Supreme Court, has disappeared.

This week, the U.S. Marshal's Service issued a "Wanted" poster for his arrest.

"We know he's been traveling in California and out West. We have some pretty good leads," said Tommy Thompson, a deputy U.S. marshal in Memphis who is leading the search.

Lanier, 63, has been seen in Canada, Nevada and Florida in recent months—as well as in the small town of Dyersburg, Tenn., where he long reigned as a powerhouse figure.

The son of the county's Democratic political boss and brother of the county district attorney, Lanier had been seen as virtually above the law until 1992.

After years of rumors about Lanier's predatory behavior toward female employees and courthouse visitors, federal prosecutors in Memphis brought 11 charges of sexual assault, including two rapes, against him. His victims included court employees, job applicants, clerks and even a mother with a custody case before the judge. They testified he had pressed himself against them and grabbed them. Several said that he had exposed himself under his black robe and demanded oral sex.

On the witness stand, the jowly judge with the graying pompadour told jurors he had sex with several women but said they had all approached him.

"I have never forced myself on any woman at any time," he said. "I'm a hugging-type person."

The jurors apparently disagreed, convicting him on five counts. A trial judge gave him a 25-year prison term.

However, his conviction was overturned in 1995 by the U.S. appeals court based in Cincinnati, which ruled that there is "no general constitutional right to be free of sexual assaults." Therefore, Lanier could not be charged with a federal crime for assaulting employees and female visitors while acting "under color of law."

In March, the U.S. Supreme Court unanimously reversed that opinion and sent the case back to be reconsidered by the appeals court.

The latest twist has again focused the victims' anger on the federal appellate judges.

"They gave him his passport back knowing full well what would happen. Why did they think he wanted it back?," said Sandy Sanders, a court employee in Dyersburg who testified against Lanier.

Nashville attorney Alfred Knight, who represented Lanier before the Supreme Court, says he has not spoken to him for months and has no idea where he is.

The U.S. 6th Circuit Court of Appeals has refused to comment on the case. It had given Lanier until Wednesday to report to federal authorities. When the deadline passed at 5 p.m., the court ordered all of his appeals dismissed.

For women's rights groups, Lanier's case gained national notoriety not only as a shocking example of judicial misconduct but also as an equally stunning example of official blindness to the problem of sexual assaults by powerful government officials.

Some of the federal judges who heard Lanier's appeal made jokes from the bench about what crimes they could be charged with if they had been wearing their black robes at the time. One joked about whether the federal law would apply if a judge "beats the hell out of a . . . scalper for a ticket to the Reds game."

Just a day after the oral argument, they ordered Lanier freed.

"This case has been an outrage at every stage of the process," said M.C. Sungaila, an Encino attorney who filed a friend-of-the-court brief on behalf of the Southern Poverty Law Center and the California Women's Law Center.

At first, Lanier acted with impunity because his brother was the local prosecutor. Officials in Nashville said state law did not give them the power to intervene.

For its part, the U.S. Supreme Court disagreed with the 6th Circuit, but its opinion leaves the law hazy. The Ku Klux Klan Act of 1871 made it a federal crime for state officials, acting "under color of law," to violate a person's civil and constitutional rights. That law has been used against prison guards and police officers in brutality cases, such as the Rodney G. King beating case in Los Angeles.

But it remains unclear whether the law can be used in cases where the victims—such as the women sexually assaulted by Lanier—are not in official custody.

Now, neither the 6th Circuit Court nor the Supreme Court will issue a clear ruling on the question.

Ex-N.Y. Judge Gets 15 Months for Threats

By JOHN J. GOLDMAN
TIMES STAFF WRITER

NEW YORK—Labeling the case "bizarre and aberrational," a federal judge Thursday sentenced Sol Wachtler, the former chief judge of New York state, to 15 months in prison for terrorizing his former lover and her teen-age daughter.

Wachtler, 63, a pillar of Republican politics who had been regarded as a potentially strong challenger to Gov. Mario M. Cuomo in next year's gubernatorial election, resigned from the bench in November when the charges were brought. He pleaded guilty in March to one count of using communication devices across state lines to threaten kidnaping.

"My only hope now is to try to put my life back together and to try to make amends for what I've done," Wachtler said in court before his sentencing.

Defense lawyers contended that the former chief judge of the Court

of Appeals was mentally ill when he mailed threatening letters to Joy Silverman, a Republican fund raiser, after their four-year affair came to an end.

"What he did was unacceptable and wrong but one must consider the nature of his life and what he has done for society," Ted Wells, one of the defendant's lawyers told District Judge Anne E. Thompson before she announced her sentence.

But the defense lawyer's contention that depression and mental illness were at the root of the former judge's crime was quickly disputed by U.S. Atty. Michael Chertoff.

"His plan was not just to harass Joy Silverman but to torture and torment her and her daughter," Chertoff told Judge Thompson. "I don't dispute there were emotional problems with Sol Wachtler, but he knew what he was doing."

In imposing sentence in Trenton, N.J., the venue chosen because Wachtler's first harassing letters

to his former mistress were mailed from New Jersey, Thompson said that his action was "not an expression of love. It was an expression of anger."

In addition to the 15-month prison sentence, three months less than prosecutors sought, she imposed financial penalties totaling almost \$61,000.

Wachtler will pay a fine of \$30,000 to the government and \$30,900 in restitution to Silverman, the subject of his 13-month long campaign of harassment. Prosecutors charged that Wachtler threatened to kidnap Silverman's daughter and mailed the teen-ager a condom with a letter containing sexual references.

As chief judge of the Court of Appeals, Wachtler had authority over all New York state courts and more than 5,000 other judges. He had been frequently mentioned as a possible nominee to the U.S. Supreme Court.

His indictment—exposing the secret life of a pillar of the judiciary—caused a sensation in New York.

Silverman, a Manhattan socialite who President George Bush tried to appoint in 1989 as ambassador to Barbados but who was rejected by a Senate committee as too inexperienced, complained to William S. Sessions, FBI director at the time the investigation was launched, that someone was threatening her.

Her allegations set off massive FBI scrutiny. Agents eventually traced threatening calls to phones Wachtler used and recovered his fingerprints. When he was seized in his auto, a voice-altering device was confiscated.

Outside court on Thursday, the former top judge stopped to talk with reporters.

"I have had better days," he said.

LA TIMES

Saga of the judge who landed in jail

In September 1993, Sol Wachtler, 64, after resigning in disgrace as New York state's chief judge, pleaded guilty and was sentenced to 15 months in federal prison for harassing Joy Silverman, a woman with whom he had had an affair. This nationally prominent jurist was now to get an inmate's view of the American system of crime and punishment. Following are excerpts from his prison diary, which Wachtler intends to incorporate into a book. He kept the journal at the medium-security Federal Correctional Institution in Butner, N.C., and later at the Federal Medical Center in Rochester, Minn. At both prisons, Wachtler underwent treatment for manic depression, the disorder he was diagnosed as having at the time of his crime.

By Sol Wachtler

SEPTEMBER 28, 1993 — Day 1. I wish I had the gift of description — the ability to find the words to describe my feelings this morning. As I was facing this apogee of my shame, I was hoping that there would be no press to greet me — no pictures taken to feed the hungry maw of the tabloids — to further embarrass my family and friends.

No such luck. As the vehicle transporting me pulled up to the prison in Butner, N.C., the first thing I saw was the cold, gleaming and menacing razor-wire fence surrounding the squat gray buildings. The second was the cameras and microphones.

"Not nearly the number of reporters who were waiting for Jim Bakker, the

fingerprinted, I was introduced to the stunning invasion known as the "strip search."

Of course, I knew what a strip search was — I had written about this procedure in more than one of my court opinions.

But knowing what it is, and even knowing the necessity for it, does not prepare you for the degrading experience of being stripped naked in front of strangers who then examine every crevice and orifice of your body.

I had been told that an essential reason for the strip search was to humiliate the newly arrived prisoner as part of his introduction to prison life. Dehumanize would be a better word.

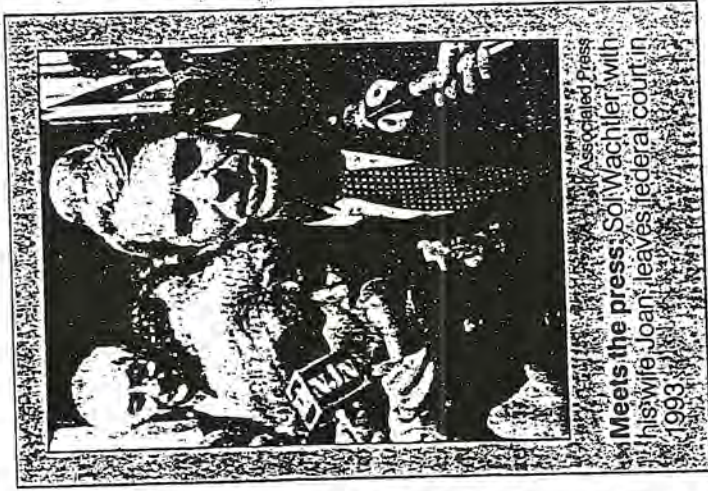
I expected to be led to a cell. What I didn't expect was to be put in solitary confinement, which, at Butner, is the same as disciplinary segregation. But that's where they led me.

Ten years ago, as a judge on the New York Court of Appeals, seated in my magnificent, mahogany-paneled chambers, I wrote an opinion in the case of *Wilkinson vs. Skinner*.

Wilkinson was a prisoner suing Skinner, who was a county sheriff. The prisoner was complaining that being put in segregation for a five-day period constituted cruel and unusual punishment.

Writing for the court, I observed: "Merely confining an inmate in a segregated cell does not constitute cruel and

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Meets the press: Sol Wachtler, with his wife Joan, leaves federal court in 1993.

evangelist," the warden later told me, "but then again, he was from around here."

I was met by four guards who searched and handcuffed me. The duffel bag that my wife, Joan, and I had packed so methodically the day before was taken from me, and I was led, hands manacled behind my back, down a long corridor to the prison receiving office.

After being photographed and

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Life behind bars: stabbing, solitary among ex-judge's nightmares

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unusual punishment."

When I wrote that opinion, would I ever have dreamed that one day I would be confined in segregation — not for five days but for well over a month?

I was soon to learn just how intolerable such confinement could be when I was escorted to "seclusion" — a row of 10-foot-by-12-foot cells, each with its own steel sink and toilet.

Against one wall there was a metal rack covered by a three-inch-thick, cloth-covered pad — this was the bed. The door was solid steel, with a small vertical slot to allow the guard to peer in. A knee-high horizontal slot was used for food trays.

Before being locked in my cell, I was placed in a shower stall with a steel barred door and again strip-searched. Then I was issued an orange canvas jumpsuit with matching sneakers.

I was again handcuffed and led to my cell. And then I heard them — the occupants of the other "seclusion" cells. One, called "dogman" by the guards, howled like a wounded canine, another screamed "Shut up!"

Another sang a tuneless melody with the words "silver threads and golden needles." Several kept screaming "Officer! Officer!" and all seemed preoccupied with a need for "smokes" and "matches." Many simply pounded on their doors.

One of the guards told me that I could expect this clamor to continue unabated, since most of the inmates in the isolation cells were either mentally ill or disciplinary problems or both.

"When can I leave?" I asked.

"When the doctors are through with you and decide it is safe for you to join the general population."

Dinner has just been slipped through the door by a pair of disembodied hands in rubber gloves. There is no chair or table in my cell, so I eat sitting on the steel shelf, which I will use for a bed, using my lap as a table. I feel aboriginal.

The meal consists of two leathery meat patties, a portion of very oily fried potatoes, and what appears to be cabbage in a cream sauce. Everything is served cold, but I am hungry, so I eat it all with my plastic spoon from the Styrofoam tray.

SEPT. 30 — This morning I was awakened by an overpowering stench. The toilets have backed up. Raw sewerage gushes

from the other cells into mine. I raise my feet and sit on my slab bed.

I was asked if I had any fear for my safety. I told them the only inmates I would fear would be those whose appeals were unsuccessful in my court — a fear that one of them might take the loss personally.

I was assured that most of the inmates were from this part of the country and none had dealings with the New York state correctional system.

That turned out to be untrue. But I was oblivious to any such danger as I was led in handcuffs into the general population.

I was immediately struck by the enormous size of most of the inmates. Bulging biceps, bull necks. I wondered whether these giants came into prison in that condition or got that way working out on the many free-weight piles in the prison yard.

While I was pondering this, one of them came over to me and said: "Hello, Judge. My name is Sanders. Name sound familiar?"

"I can't say that it does," I said, thrusting my hands in my pocket so he wouldn't see them tremble.

"Does People v. Paul Sanders ring a bell?"

"Should it?"

"I was before your court 12 years ago. I've been here for eight. I did the same thing you did: kidnapped a lady."

I started to correct him as to my crime, but thought better of it.

"You ruled in my favor," he said.

"Pleased to meet you," I said with relief.

A fellow approached me with a court paper bearing my name as chief judge. It was a certificate denying a convict named Alexander Anderson permission to appeal to the Court of Appeals. It was attached to a letter signed by Stuart Cohen, a former law clerk of mine, now deputy clerk of the Court of Appeals.

Pointing to my name on the order, he smiled broadly and said, "Do you know this fellow?" There was no hostility in his voice, just pointed sarcasm.

I smiled weakly and said, "You must be Alexander Anderson."

He smiled back and, sensing my discomfort, said: "Hey man, you gotta do what you think is right."

NOV. 21 — This afternoon all the prisoners returned to their units for the 4 o'clock count. Our evening meal followed. I took my turn on the pill line, called my wife, Joan, and at about 7:30 went to my



"I expected to be led to a cell. What I didn't expect was to be put in solitary confinement."

— Sol Wachtler

cell. I had intended to listen to my radio with the earplugs and then sleep.

At about 8:05, I was stabbed twice in the back.

I was lying on my left side. I don't know whether I had dozed off, or was simply lingering on the edge of sleep, when my pillow was folded over my face and I felt two strong punches in the right center of my back. I got to my feet in time to see my cell door close behind someone bolting from my cell. Cell doors are not locked in the mental health unit.

As I turned on my light, I felt my undershirt sticking to my back. I knew that I was bleeding. I opened my door, but saw no one in the hall.

I shouted for help.

As soon as I was in the prison hospital I was examined — not by a doctor but by a physician's assistant. He told me that the wounds were superficial, that they did not penetrate the chest cavity, and that it did not appear that any internal organs had been damaged.

The assistant then put stitches in the wounds — no anesthetic. I was then

X-rayed and consigned to protective custody — another euphemism for seclusion, which is a euphemism for the "hole," which is a name for hell.

□
NOV. 22 — I was handcuffed and brought to a small room in the seclusion wing. A uniformed person was there and, after introducing himself as Lt. Briggs from security, he proceeded to ask me to tell him, once again, what happened last night. I complied.

"Sol," he said, "you did a lousy job. We all know you did it to yourself."

I looked at him in silence and disbelief.

"Are you saying I stabbed myself in the back?" I finally managed.

"I'm saying that we know who did it, and I'm looking at him."

"But why would I want to stab myself?"

"Because you want to get out of Butner, and you figured that this would be the quickest way to do it."

□
DEC. 17 — I have been in solitary confinement for almost a month. They apparently have no additional clues as to my assailant, so they don't know where to put me.

They felt it would be dangerous to put me back where my stabber may be waiting to finish his job, and they know that keeping me in the hole much longer could affect my sanity. They had to decide what to do with me.

At a conference in a small room near the seclusion cells, the assistant warden — who is a psychiatrist — another psychiatrist and a psychologist told me of their solution.

They said the doctors at Butner had tentatively diagnosed my condition as far more serious than they, or even my own doctors, had initially thought. They said that during the commission of my crime I was delusional.

Thus they felt I was in further need of treatment. Toward that end, they intended to have me flown to Minneapolis, Minn., to a prison affiliated with the Mayo Clinic. The name of the prison: Rochester.

□
DEC. 19 — When we arrived at the Federal Medical Center, Rochester, we were taken to the receiving office, where my companion's handcuffs were removed, and I was unchained.

He was told that he would be assigned to a cell pending his physical exam. I, on the other hand, would be assigned to seclusion on a temporary basis.

"Excuse me, sir," I inquired. "By seclusion do you mean solitary confinement?"

"By seclusion, I mean the hole," he answered.

If someone were to ask me to identify the worst moment of my confinement, this would be it. I had just been released from one month in the hole at Butner. My stab wounds still throbbed.

My nearly five hours of being chained in transit by plane caused every muscle to ache. I had not slept in two days. And now I was being told that I was to be interned, once again, in the airless vault of seclusion. *(Wachtler was soon released from solitary.)*

□
APRIL 18 — I remembered the prison tours I took when I was a judge. You can imagine the welcome they extended to the chief judge of New York state. I was made to feel like a vestige of royalty.

I always knew that I was seeing only what I was supposed to see, but I felt that my visit was a demonstration to the inmates that we cared about their conditions of confinement.

Now that I am a prisoner, and judges are being shown the facility that imprisons me, I realize how deluded I was in those years by my own vanity and by those escorts who so carefully planned my itinerary.

For example, these judges were shown a part of the mental health unit that was air-conditioned and comparatively spacious. They were not escorted through the vast majority of the units, which had unventilated, cramped, double-bunked cells built for two but each holding four inmates.

The guards are on their best behavior, and troublesome inmates are either put in the hole or tucked away in some remote locale. The cabinets that house TV sets, always padlocked, are miraculously opened.

And if we have the good fortune of having the visitors present during lunch, the meals are actually edible.

The only thing accomplished by these tours is to create yet another group of propagandists who spread the word that life in prison is pretty good or — far more ominous for the future treatment of prisoners — that life in prison is too good.

□
Epilogue: Wachtler left the Minnesota prison in October 1994 to finish the final two months of his sentence at a halfway house in Brooklyn. He now runs a dispute-resolution consultancy in Great Neck, N.Y., which also raises money to provide legal assistance to the poor.

CALIFORNIA LAWYER

JUNE 1995

The Lonesome Quest

Even if I am not Jean Hunsman, I lose her sexual harassment

and fight to get her nothing will be the same as the victim's case

Focus on ADR

Merits of Mediation
Banishing the Boilerplate

Pro Bono Blockbusters

Edward Humes on
Mean Justice





Patricia

THE LONESOME QUEST

PATRICIA BARRY'S 1986 LANDMARK CASE SHOOK UP THE WORKPLACE. NOW SHE'S HOPING TO DO THE SAME THING TO THE COURTHOUSE.

The interoffice memo dated September 4, 1991, looked official enough. The author's tone, however, was anything but formal. Written on San Bernardino County stationery, it was from newly elected Victorville Municipal Court Judge John B. Gibson to "Joan Huntsman, Division Manager." The subject matter was "new procedures" that Gibson wished to discuss with Huntsman, who was a court division manager.

"Naturally I would consider it a great personal honor to implement you, old or new," Gibson wrote. Continuing the innuendo, Gibson stated he couldn't see Huntsman on Wednesdays because he lunched with two other judges. "[O]ften they discuss all of the new procedures they have been implementing with [another clerk], due to their close contact with her:

"In all seriousness, I would cancel all of the appointments to reverse my vasectomy to have a meeting with you to implement new procedures." He signed off with his nickname: "Love and kisses, Buggs."

Four years later, Huntsman handed over a copy of the memo to someone with more than a passing interest in sexual harassment law. Los Angeles attorney Patricia J. Barry had helped usher sexual harassment law into the workplace. She brought the case in which the U.S. Supreme Court ruled for the first time that sexual harassment creates a hostile work environment and violates Title VII. *Meritor Savings Bank v. Vinson* (1986) 477 US 57. When Barry saw Gibson's memo, she thought she might have another landmark women's rights case.

"The guy [Gibson] thought he had so much power that he could put something like that on county stationery and pass it around," says Barry, who is a sole practitioner with an office in Hollywood. "He thought he was insulated from any threat of punishment."

In 1996 Barry filed a \$1 million civil lawsuit against Gibson, Victorville judges Stanley W. Hodge and Jules E. Fleuret, the county, and the state. Suddenly Huntsman, a 67-year-old grandmother, became the unlikely Anita Hill of

BY MATTHEW HELLER • PHOTOGRAPHY BY BRETT PANELLI

the Victorville courthouse. Another veteran court manager, Robin Paddack, 49, joined Huntsman in the case.

So far, though, *Huntsman v Gibson*, No. SVC32381, has not yielded a *Meritor*-type result. Last year an Orange County judge granted defense motions for summary judgment, ruling, among other things, that Huntsman's claims were barred by the statute of limitations and that the majority of Paddack's did not "appear to have anything to do with sexual harassment."

However, that decision is being appealed, and recent harassment allegations involving other California jurists have only cemented Barry's resolve to expose what she calls the "systemic discrimination" against women by male judges. In October the Commission on Judicial Performance (CJP) publicly admonished San Diego Municipal Court Judge Harvey H. Hiber for giving a clerk notes, letters, and greeting cards, some of which contained sexual innuendo, and for giving her an unwelcome kiss. Then in March it accused Placer County Municipal Court Judge W. Jackson Willoughby III of separate incidents of inappropriately touching a female bailiff and a female courtroom clerk.

"We need to be hitting judges over the head," says Barry. "We need to say, 'These women are civil servants, they have rights, they have worth, and you're going to have to show a modicum of respect.'"

In some ways, Barry has already secured a significant win. One Victorville judge has retired, and the CJP has accused Gibson of "inappropriate conduct" toward female employees. As for Huntsman and Paddack, they've become local heroes. But none of this means Barry is through. Just as she helped change the workplace, she's got her sights set on reforming the courthouse.

Thirty-five miles from San Bernardino, Victorville's main attraction is the Roy Rogers-Dale Evans Museum, dedicated to the town's most famous celebrities, the husband-and-wife cowboy team. In this town of 60,000 there's always been a bit more activity at the courthouse than in the rest of this small community. The courthouse also serves the cities of Hesperia, Adelanto, and Apple Valley—another 130,000 people. Lately, though, Victorville's courthouse has been especially busy as the sagebrush plains of the high desert are swallowed up by tract-home subdivisions and inevitable disputes arise between developers and homeowners.

Servicing the needs of these small towns is a tightly knit legal community, one that is very active in local politics. The mayor of Victorville is a prominent lawyer. Another lawyer is on the Apple Valley Town Council, and another had a brief stint as police chief in Adelanto. Richard M. Ewaniszyk, co-counsel for Gibson in the CJP proceeding, is also Adelanto's city attorney.

The eleven-member Victorville bench includes only one woman, Margaret A. Powers, and one minority member. Most of the judges, among them Powers and Gibson, are former prosecutors in the San Bernardino County District Attorney's office, which is equally the province of (mostly white) men.

Matthew Heller is a staff writer for the Los Angeles Daily Journal.

Although Powers was made supervising judge of the consolidated Victorville courts three years ago, the courthouse has not always been a friendly place for women.

In 1980 Carol S. Koppel-Claypool became the first woman to win a contested judicial election in Victorville, ousting incumbent Wallace Taggart by only 32 votes. After taking a seat on what was then a four-member municipal and superior court bench, she complained that Judge Trevor Hamilton appointed lawyers who filed affidavits to disqualify her when they appeared in her court.

"It was a very difficult time in my life," recalls Koppel-Claypool, who resigned in 1987 and now sits on temporary assignment in Los Angeles County.

During her years as a judge in Victorville, Koppel-Claypool says none of her three male colleagues ever asked her to join them for lunch. They also kept their distance at judicial retreats and conventions. "I sensed there was a certain fear of me as well as a dislike.... They were not my friends."

Betty A. Richli, now an associate justice of the Fourth District Court of Appeal in Riverside, also was allegedly a target of boorish male behavior. While a San Bernardino Superior Court judge in the early 1990s, she went to dinner one night with Gibson, Huntsman, and fellow judge Stanley Hodge. In a court declaration filed in her case, Huntsman said Gibson told a story that night about Victorville Superior Court Judge Stephen H. Ashworth, who had allegedly joked he was going to tell colleagues at a judicial conference that he had had sex with Richli and that it was not satisfying.

Later, during a class on fairness at the conference itself, Richli reportedly raised her hand to make a comment. Ashworth, evidently thinking she was going to bring up his "joke," hid under a table.

In a deposition in Huntsman's case, Richli said she did not recall any such discussion at the dinner with Gibson. But Hodge corroborated Huntsman in his own deposition. Asked whether Gibson laughed while relating the incident, Hodge replied, "Yeah, he thought it was funny." For his part, Gibson testified that if the dinner occurred, "[T]here well could have been some banter there."

After the dinner, Huntsman ran into Richli in a hallway at the courthouse. "I said, 'I don't know how you can take what they were dishing out. How do you put up with that?'" she recalls. "She said, 'It goes with the territory.'"

Barry had seen these kinds of allegations before. Nearly two decades earlier Mechelle Vinson, a teller at Meritor Savings Bank, walked into Barry's Washington, D.C., office in August 1979 and began to tell her story. At the time, Barry was working as a sole practitioner, specializing in federal employment discrimination.

It was Barry's first sexual harassment case. The young attorney listened as Vinson told her that shortly after being hired by bank vice president Sidney Taylor, he asked her to dinner and, during the course of the meal, suggested they go to a motel to have sex. At first she refused, but out of fear of losing her job, she eventually agreed. After that, Vinson said Taylor made repeated demands on her for sexual favors. Over several years, Vinson estimated they had had sex some 40 or 50 times

and that he had fondled her in front of other employees and had raped her on several occasions.

Even though the case law on hostile work environments was nonexistent, Barry thought she had an easy win. At the time, the preeminent appellate ruling that was most relevant to Vinson's situation was *Barnes v. Costle* (1977) 561 F2d 983, in which the court held that the abolition of a female employee's job because she spurned her male superior's sexual advances violated Title VII. But Vinson had not been fired. She'd gone on sick leave for an indefinite period, and the bank let her go because of excessive use of that leave.

Barry turned to Catharine A. MacKinnon's seminal book, *Sexual Harassment of Working Women* (1979), to help build her legal argument. After an eleven-day bench trial, the district court judge ruled against Vinson. Barry appealed, and the court of appeals reversed and remanded. (Judges Robert Bork, Antonin Scalia, and Kenneth Starr wrote a dissenting opinion. In an interesting footnote, they argued that although harassment is "reprehensible," Title VII was passed to outlaw discriminatory behavior "not simply behavior of which we strongly disapprove.") The bank filed a petition for certiorari, which was granted. By this time the case had garnered the attention of women's groups, and the



"THERE WAS VIRTUAL ABANDONMENT OF THESE WOMEN BY THE COUNTY."

Working Women's Institute, the Women's Legal Defense Fund, several women's bar associations, and eight state attorneys general filed amicus briefs in support of Vinson. The women's groups held a moot court for Barry and helped her prepare for oral argument. MacKinnon wrote the brief.

In June 1986 the U.S. Supreme Court agreed with Barry, holding that a "hostile work environment" claim of sexual discrimination was actionable under Title VII.

The opinion garnered national publicity. It was to women's employment rights what *Roe v. Wade* was to reproductive rights. Such a win often leads to fame and fortune for the attorney, a thought that sustained Barry for eight years while she carried Vinson without being paid. (She eventually was paid after the case concluded—an amount that came to roughly \$10 an

hour.) Tall, outspoken, and committed to the feminist cause, Barry had the credentials to rival the high profile of such well-known attorneys as Gloria Allred. Still, Barry's career didn't take off.

Another important sexual harassment case did come her way—*Fisher v. San Pedro Peninsula Hospital* (1989) 214 CA3d 590, in which the court held that an employee could state a claim for sexual harassment if the employee witnessed others undergoing harassment, even if the plaintiff was not the direct victim. Unfortunately, the attendant wealth and fame common with such cases passed Barry by.

"I was living in San Luis Obispo at the time," says Barry. "I think I should have packed up and moved to Los Angeles. I should have promoted myself. Instead, I was up to my neck in work as a sole practitioner doing police misconduct and civil rights cases."

When Barry first met Huntsman in 1995, Barry was working as a sole practitioner out of a small office in Lomita, a Los Angeles suburb, having moved in 1989 from San Luis Obispo. Barry thought she had an open-and-shut case, reminiscent of *Meritor*.

There were differences, of course, between the two cases. For example, Huntsman's allegation against the Victorville judges involved a noncorporate workplace. There was nothing, moreover, to suggest that any of the judges had tried to have sexual contact with Huntsman. Nevertheless, "It was familiar territory,"

Barry says. "Here are the very people who are called upon to interpret *Meritor*.... How can these men ever be fair to women when they're offenders themselves? If they had been corporate managers, they would have been fired for their conduct."

Barry, along with co-counsel Joseph M. Ribakoff and Allan A. Villanueva, did some investigating. Sexual harassment training was not mandated for the bench. According to Gibson's deposition, "[Training] was made available for all employees if they wanted to go."

"There was a virtual abandonment of these women by the county," says Barry. "The county looks the other way ... because these [judges] are kings."

Huntsman's 1996 complaint focused primarily on Gibson who, after nine years with the San Bernardino County DA's office, was elected to the Victorville Municipal Court in June 1990. According to Huntsman, supervising Superior Court Judge Anthony J. Piazza cautioned Gibson to "watch what you say" around women. But in September 1991 Gibson sent her the "vasectomy" memo. When Piazza died three months later, Gibson allegedly became more bold. "You thought Tony Piazza had power," Huntsman quotes Gibson as telling her. "Just wait till you see me in action."

At the time, something of a power struggle was raging at the courthouse. With the consolidation of the county's municipal and superior courts under way, the question was, who would be in charge of Victorville's clerks? Huntsman, who began working at the courthouse in 1976 and was promoted to division manager in 1985, had ten years' more experience than any of the other clerks. But Huntsman claims that Gibson, Hodge, and Fleuret favored Francine Collier, the chief superior court clerk—in large part because of her looks.

In his January 1998 deposition, Gibson, who is now a superior court judge as a result of the consolidation, called Collier "undoubtedly one of the most impressive people I have ever met in my life," and said her qualifications were "vastly superior" to Huntsman's. In June 1993, after a meeting attended by Gibson and other judges, county officials stripped Huntsman of her managerial duties and placed her under Collier. Barry believes that Gibson used his power to humiliate Huntsman and eventually to derail her career. "He wanted to get rid of her, and his weapon was sexual harassment," she says.

Among the "sexually demeaning comments" Gibson allegedly made to Huntsman was sticking his finger out of his robe near his genital area and saying, "Say hello to Mr. Bobo." Gibson did not respond to a request for an interview, but he has denied making such a comment, saying in his deposition, "I do not nickname my genitalia."

On another occasion, Huntsman stopped by Gibson's chambers and found him visiting with a friend, Jim Hasty. Turning to Huntsman, he asked Hasty, "Isn't that the best pair of legs and ass you've ever seen?"

Gibson maintains the comment was taken out of context. From her own "self-laudatory" remarks, "Judge Gibson knew that Ms. Huntsman was quite proud of her own anatomy, particularly her derriere and legs," his answer to the CJP charges states. Nevertheless, he "regretted making [the comment] as soon as he said it."

A few days later the remark came up while Gibson, Hasty, and Fleuret were dining with their wives. As a joke, Fleuret said

he had heard that Huntsman was going to report him to the CJP. Gibson responded, "Joan wouldn't do a thing like that."

He was right. Huntsman didn't file any kind of official complaint. "I did not want to make any waves because I desperately needed my job," she explains. Huntsman's husband was an invalid, and her job was their sole means of support.

In October 1993 Huntsman was demoted and transferred to the San Bernardino court. In 1994 now-retired Judge Carl E. Davis, who was in charge of implementing the court consolidation, laid her off.

Huntsman sank into a deep depression. "I felt I had let my family down," she says. "I was ashamed I had lost my job." She got nowhere with applications for vacant clerical jobs with the county. Then in late 1995 she got a call from a former colleague, Victorville court services manager Robin Paddack, who had obtained her position, replacing Collier, after winning an administrative grievance over a transfer from Barstow to Fontana. Paddack suggested that Huntsman contact Barry.

On Huntsman and Paddack's behalf, Barry reported Gibson to the CJP in November 1995. Four months later she filed suit, alleging that Huntsman was entitled to damages for sexual harassment, wrongful termination, and failure to reinstate. In the same suit, Barry claimed that over a five-month period Gibson repeatedly taunted and "humiliated" Paddack, in retaliation for bumping Collier, while Hodge and Fleuret complained to her supervisor about her performance "without justification."

Barry named the County of San Bernardino and the state as defendants for, among other things, failing to protect court employees from discrimination. "There is a pattern of abuse against women" by county judges, Barry charged, citing a sexual harassment lawsuit filed in 1991 in San Bernardino Superior Court against Judge James Cramer by a female court administrator. Cramer died while the action was pending.

The *Daily Press* newspaper in Victorville and the *San Bernardino County Sun* ran detailed stories on the allegations and published letters from readers who were supportive of the plaintiffs. Huntsman says she was approached at a local grocery store by a court employee. "She said, 'Just think of the people you're helping. We are so proud of you.'"

From the outset, however, Barry knew she had a major problem with Huntsman's case because the statute of limitations had expired on Huntsman's claims arising from Gibson's alleged mistreatment of her in Victorville. But Barry thought she could proceed by showing that Gibson was directly involved in the later "tangible job actions" taken by the county against Huntsman. "He was the person behind the county getting rid of her," she insists. "They would not have taken job actions against her if not for him."

The defendants countered that the plaintiffs had blown things out of proportion. "I predicted from the very beginning that neither [Huntsman or Paddack] had any facts sufficient for their claims," says Joseph Arias of Lewis, D'Amato, Brisbois & Bisgaard in San Bernardino, attorney for the three Victorville judges.

The San Bernardino County bench recused itself, and the case was assigned to Orange County Superior Court Judge Randell L. Wilkinson in October 1996. The litigation was intensive, filling 17 court volumes with some 30,000 pages of documents, and often acrimonious. After clashing repeatedly

with Barry in depositions, Arias's co-counsel, Dennis J. Mahoney, accused her in a motion for attorneys fees of trying to destroy the judges' careers so she could "rescue her own flagging practice." Barry counters that, in fact, 1996 had been her biggest year yet in terms of gross revenue, \$175,000.

According to Arias, the timeliness of the complaint was a key issue. "Huntsman was disgruntled because she lost her position," he explains. After talking to Paddack, "she remembers that certain defendants did certain things she now considers to be offensive—all after the fact. [At the time] she never considered anything a judge did as sexual harassment." He adds: "The occasional isolated joke doesn't make a case under FEHA [the Fair Employment and Housing Act]."

The defense also contended there was no evidence that Gibson had anything to do with Huntsman's demotion, transfer, or eventual termination. In his deposition, former Judge Davis said he had never heard that Gibson was trying to oust Huntsman. "I don't believe I've ever had any meaningful conversation with [Gibson] other than 'hello,'" he testified.

THE CJP ACCUSED GIBSON OF ENGAGING IN "INAPPROPRIATE CONDUCT."

Ruling on summary judgment motions in April 1998, Judge Wilkinson found Huntsman's claims against Gibson—and most of those against the county and state—were time-barred. There was no substantial evidence that the county discriminated against the plaintiff by not rehiring her, he said. Wilkinson also tossed out Paddack's case. Most of her allegations, he said, involved only "ill-tempered conduct in the workplace"; the rest did not amount to "pervasive and continuous sexual harassment."

In March 1999 Barry filed an appeal with the Fourth District Court of Appeal in Santa Ana. Among other things, she argued that Huntsman has a timely claim against Gibson for infliction of emotional distress based on the late discovery of another memo. In a document dated January 30, 1992, which the plaintiffs only obtained in November 1997, Gibson thanked the municipal court staff "for the unanimous vote to have Joan Huntsman put to death." Gibson told the CJP he probably did author the memo, but it was clearly in jest and "relates to something innocuous."

These days, Fleuret, 51, is the only one of the defendant judges who remains on the Victorville bench. In 1997 Hodge, also 51, retired to start a private practice in Victorville, and Gibson was transferred to the courthouse in Barstow.

In December Gibson was accused by the CJP of engaging "in a pattern of inappropriate conduct" toward female employees. In support of this charge, the CJP included many of Huntsman's allegations as well as the accusation of a female probation officer who claimed that in November 1993 Gibson kissed her on the lips in his courtroom. According to his answer, he did not mean to offend the officer, only to congratulate her after learning she was pregnant. As Barry points out, however, what Gibson intended is not a defense. What matters is whether a reasonable person in the plaintiff's shoes would find the conduct offensive.

The county, meanwhile, now mandates sexual harassment training for judges. But Paddack, for one, isn't sure the educational effort has conveyed the right message. "They were told they shouldn't compliment their clerks and should treat every employee as an adversary," says Paddack, who still works in the Victorville courthouse. "It's a pretty rough deal to have to work in an environment like that."

Barry isn't satisfied either. She is intent on winning at the court of appeal and obtaining a published decision that makes the State of California liable when judges engage in tortious conduct. Short of that, she plans to push for more sexual harassment training for judges. □



ROBIN PADDACK

Panel Upholds Some Misconduct Charges Against San Bernardino Judge

By J'AMY PACHECO
Staff Writer

A panel of special masters has made several findings of misconduct by a San Bernardino Superior Court judge, but has rejected the most serious charges against the jurist.

In a 44-page report made public Friday, the masters found that Judge John B. Gibson engaged in conduct prejudicial to the administration of justice by dismissing a criminal case in which the prosecution failed to appear, without first contacting the District Attorney's Office as was the custom in the court.

The masters also found that Gibson engaged in prejudicial conduct by kissing a female probation officer on the lips; by making improper, sexually oriented remarks about a female court employee; and by circulating a sarcastic memo suggesting that the woman—who unsuccessfully sued the judge for sexual harassment—be creatively

But the masters—Justice J. Gary Hastings of this district's Court of Appeal, San Francisco Superior Court Judge Lillian Kwok Sing and San Luis Obispo Superior Court Judge Judge Michael L. Duffy—rejected charges that the judge gave untruthful testimony under oath, and that the dismissal of the criminal case was made out of animosity toward the District Attorney's office.

Lawyer 'Gratified'

Gibson's attorney, Jerome Sapiro of San Francisco, said he was "gratified" that the panel rejected the charges of willful misconduct, but said he and the judge are "still discussing whether to acquiesce."

"The most serious allegations against Judge Gibson have been found to be without merit," Sapiro said. "We're

very gratified by that. Judge Gibson was shocked and dismayed by the original allegations. To have him exonerated as to most of the allegations in the first count is very gratifying."

Sapiro was referring to the three alleged acts of misconduct concerning the 1996 criminal case. The Commission on Judicial Performance accused Gibson of improperly dismissing the matter, of holding an improper ex parte communication with the supervising deputy district attorney about the matter, and of later testifying untruthfully about the matter before visiting Judge Robert Law.

At the hearing, Law testified that he believed Gibson had dismissed the case—which had been reinstated on the prosecution's motion after an earlier dismissal by Gibson—out of "anger at being reversed by [another San Bernardino County judge]." However, the masters found Law's testimony not "credible or supported by facts," and said Law gave an appearance of bias against Gibson.

The masters concluded that Gibson's actions concerning the dismissal of the case do not translate into wil-

ful misconduct, but that the jurist "acted negligently and contrary to his own custom and practice."

The panel said Gibson's actions "would appear to an objective observer to be not only unjudicial but conduct prejudicial to public esteem for the judicial office."

'Out of Character'

But they stressed that the matter was the "only incident of its kind presented by the evidence, and appears to be out of character," concluding that the "overwhelming evidence demonstrates that Judge Gibson is a conscientious judicial officer, respected by prosecuting authorities as well as the defense bar."

Concerning the ex parte communication, the masters concluded that it qualifies as "improper action" rather than willful misconduct or prejudicial conduct. The panel concluded that Gibson did not give untruthful testimony before Law, and wrote that there was "no foundation" for concluding that his testimony was untruthful.

(Continued on Page 4)

MISCONDUCT CHARGES

(Continued from Page 1)

The masters also declined to find willful misconduct in connection with the accusation that Gibson engaged in the sexual harassment of former court clerk Joan Huntsman.

In 1996, Huntsman and Court Manager Robin Paddock filed a civil suit accusing Gibson of sexual harassment. The suit also named three additional judges, a court administrator, the county of San Bernardino and the state of California.

Orange County Judge Randell Wilkinson granted summary judgement in favor of the defendants in April 1998, but the charges resurfaced before the commission.

Gibson was accused of making inappropriate remarks about Huntsman's anatomy and in her presence. While Gibson had admitted some of the allegations in his initial response to the commission's charges, he attributed his relaxed conduct to a personal relationship he and his wife had developed with Huntsman prior to his taking the bench.

In considering those allegations, the masters said there was no evidence Gibson acted in the same manner with any other person besides Huntsman, who, the panel concluded, "encouraged a less than professional relationship."

But the masters said if there had been "an objective witness" to the incidents, the witnesses would have "perceived those actions to fall within the concept of prejudi-

cial conduct." Gibson also committed misconduct, the masters said, in composing and circulating among the court's staff members, his memo titled, "The death of Joan Huntsman," constituted prejudicial conduct.

Sapiro said he and the judge "disagree with some of the findings" regarding Huntsman, adding that it "doesn't necessarily mean that we would protest them."

"That's something we have to think out," he said. "On balance, I was very heartened by the fact that the special masters put the relationship between Judge Gibson and Ms. Huntsman in what I think is the proper context, particularly with its findings about the relationship before and after Judge Gibson became a judge."

Sapiro said the judges "obviously put a lot of thought into the findings they made," and stressed that he doesn't wish to treat those findings "cavalierly."

"We are still discussing whether to acquiesce in the findings or not," he said. "That decision has not been made."

Gibson's attorney and commission attorneys have until Aug. 18 to file any objections to the report. The commission would then normally schedule arguments and deliberations.

The masters' findings aren't binding on the 11-member commission.

Gibson won election to the Municipal Court in 1990, and was elevated to the Superior Court last year as a result of court consolidation. He spent nine years as a San Bernardino County deputy district attorney prior to taking the bench.

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IV.
DISPOSITION OF
COMMISSION CASES

before him when they requested continuances.

Judge Van Voorhis impaired public confidence in the integrity of the judiciary and brought the judiciary into disrepute through the following conduct:

Prior to his election campaign in 1986, Judge Van Voorhis and his wife were divorced, but continued to live together. During his first judicial election campaign in 1986, Judge Van Voorhis referred to her as "my wife" in his literature and in public. In making that reference, he misinformed the public of his actual marital status.

The above conduct warranted discipline under Article VI, section 18(f)(2) of the California Constitution. In particular, it was conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In determining that a public reproof would be adequate discipline, the commission considered the absence of prior discipline, the judge's recognition that he should have handled the incidents differently, and his assurance that this conduct will not be repeated.

3. The commission publicly reproofed Judge Craig S. Kamansky of the San Bernardino County Superior Court for the conduct set forth below:

In the course of a commission investigation concerning his off-bench conduct, Judge Kamansky was asked by the commission to supply certain videotapes. The judge agreed to supply the tapes, but before doing so, he deliberately overtaped them. When asked by the commission about the altered videotapes, the judge repeatedly denied the deliberate overtaping. When presented with evidence to the contrary, the judge ultimately admitted his misrepresentations.

Judge Kamansky's actions constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

► 1992 Private Admonishments

Private admonishments are imposed under California Rules of Court, rule 904.3. The private admonishments imposed in 1992 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This has made some summaries less informative than they otherwise would be; but since these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, we think it is better to be vague in these descriptions than to omit them altogether.

A. A judge found an ailing 83-year-old traffic defendant guilty of a pedestrian infraction and fined him \$106. The man said he did not have the money. The judge offered him two days in jail. After some further discussion the defendant said:

DEFENDANT: You raise the revenue in the most dishonest way. Demeaning.

COURT: Okay, sir, you're remanded to the Sheriff for contempt. I find you in contempt. Five days.

DEFENDANT: Oh, 83 years old.

APPENDIX 3.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
	693	860	885	744	966	950	997	1,263	1,187	1,183

COMMISSION INVESTIGATIONS COMMENCED

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Staff Inquiries	114 (16%)	81 (9%)	92 (10%)	109 (15%)	136 (14%)	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)
Preliminary Investigations	22 (3%)	38 (4%)	29 (3%)	33 (4%)	15 (2%)	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)
Formal Proceedings Instituted	2 (<1%)	5 (1%)	9 (1%)	6 (1%)	2 (<1%)	9 (1%)	14 (1%)	4 (<1%)	8 (1%)	5 (<1%)

DISPOSITION OF COMMISSION CASES

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Total Dispositions	677	839	893	712	975	930	940	1,213	1,176	1,174
Closed after Initial Review	532 (79%)	746 (89%)	787 (88%)	621 (87%)	827 (85%)	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)
Closed without Discipline or Advisory after Investigation	86 (13%)	36 (4%)	45 (5%)	48 (7%)	93 (10%)	79 (8%)	53 (6%)	94 (8%)	102 (9%)	113 (10%)
Closed with Advisory	47 (7%)	36 (4%)	41 (5%)	29 (4%)	40 (4%)	26 (3%)	41 (4%)	41 (3%)	34 (3%)	43 (4%)
Private Admonishment	8 (1%)	13 (2%)	11 (1%)	9 (1%)	11 (1%)	7 (1%)	6 (1%)	7 (1%)	4 (<1%)	10 (1%)
Public Admonishment (or Repeval)	0 (0%)	4 (<1%)	2 (<1%)	0 (0%)	3 (<1%)	2 (<1%)	3 (<1%)	6 (<1%)	3 (<1%)	4 (<1%)
Public Censure (by Supreme Court or Commission)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	4 (<1%)	1 (<1%)
Removal	1 (<1%)	1 (<1%)	3 (<1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (<1%)	0 (0%)	0 (0%)
Judge Resigned or Retired with Proceedings Pending	3 (<1%)	3 (<1%)	4 (<1%)	5 (1%)	1 (<1%)	7 (1%)	3 (<1%)	9 (1%)	5 (<1%)	2 (<1%)

EDITORIALS

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OUR OPINION

Three drinks, you're out

WHY should anyone follow the law when a judge doesn't take it seriously?

Despite becoming a major embarrassment for the judicial community and a public nuisance, Ventura County Superior Court Judge Robert Bradley has refused to step down from the bench.

And a state panel with the power to remove Bradley from office has been dragging its feet, even though Bradley already has broken probation after his guilty plea for two drunk-driving charges.

Although he has been suspended from the bench, he continues to collect his \$107,389 annual salary.

Bradley, first appointed to the bench in 1983, has a serious alcohol problem. Voluntarily admitting himself to rehab clinics — at public expense — has not straightened him out.

On Saturday, Bradley was arrested for violating probation after trying to enter his estranged wife's home while under the influence of alcohol.

First arrested in early December with a blood-alcohol level nearly three times the legal limit, he was arrested again in early January with a blood-alcohol level of 0.27 percent.

On Jan. 13, after showing up for work drunk, he was placed on administrative leave.

A month later, he pleaded guilty to two DUI charges, was fined \$1,900 and sentenced to 30 days in jail and three

Ventura County judge should have the book thrown at him

years' probation. He also was ordered to abstain from alcohol for three years, to enroll in a multiple-offender DUI program and to install a device in his car that prevents it from starting if he has been drinking.

Despite the seriousness of the charges, it took the state Commission on Judicial Performance until late March before launching proceedings to disqualify Bradley from the bench.

All the time, Bradley has been collecting his six-figure salary.

There's evidence he used his position to avoid arrest on suspicion of drunk driving in 1996 and again in 1997. A close friend said Bradley has had problems with alcohol for 20 years.

Justice has not been kind to Bradley. Allowing a man to descend into hell without intervening and forcing treatment is a cruel and unusual form of punishment.

The system has not only failed Bradley, it has dismally failed the public.

By not removing him from office in a timely and diligent manner, it has enforced the perception that two separate and unequal systems of justice are at work in America today: the preferential treatment system for the rich and the well-connected, and a "three strikes, you're out" system for everyone else.

The panel has the power to remove Bradley from office and bar him from accepting judicial assignments after his retirement. It should act today.

Judges Flout Law on Closed Disciplinary Hearings, Lungren Says

By HENRY WEINSTEIN
JAMES LEGAL AFFAIRS WRITER

Six years after California voters enacted a measure calling for greater public access to judicial disciplinary proceedings, "an open hearing has yet to be conducted in this state," Atty. Gen. Dan Lungren said this week as he urged support for legislation to strip away the veil of secrecy from inquiries into judges' conduct.

In letters to legislators, Lungren said the system has thwarted the will of voters who in 1988 enacted Proposition 32, which called for open judicial disci-

Continued from A3

plinary hearings if the charges involved "moral turpitude, dishonesty or corruption."

Judges charged with such acts by the Commission on Judicial Performance have avoided public hearings after they "sought and received some form of secret writ relief from other courts of record in this state," Lungren said in his June 7 letter. "This complete frustration" of constitutional provisions concerning open hearings raises "troubling questions regarding the functioning of California's judicial disciplinary procedures."

He said the secret hearings also raise

open from the filing of formal charges, as proposed," Henley said in a letter to Alquist. "It has been the commission's experience that closed hearings can be appropriate and should be retained in some instances."

Ventura County Superior Court Judge Steven Z. Perren, who is vice president of the judges association, said there is no need for hasty action, though he acknowledged that the state's current system "is under fire." He said that Chief Justice Malcolm Lucas has appointed a special committee to examine the issue of judicial discipline in the state and is scheduled to report in September. He also said the American Bar Assn. is preparing a set of model rules for judicial disciplinary procedures.

Perren said judges felt the Legislature should not act until the state commission and the ABA have issued their reports.

"There is a tremendous concern among the judges that once damned, they are always damned," Perren said.

Commission records state that although the number of complaints against judges went from 260 in 1980 to 950 last year, the number of judges disciplined rose hardly at all—from eight to 10. The largest number of judges disciplined by the commission in a single year was 18 in 1989.

Commission officials generally have taken the position that the lack of discipline simply reflects the overall high quality of the state's judges.

The commission is composed of five judges appointed by the state Supreme Court, two lawyers appointed by the State Bar and two members of the public appointed by the governor.

Both the Alquist and Brown bills would require amending the California Constitution. Hearings on both bills are scheduled for next week in Sacramento. Passage would require a two-thirds vote in the Legislature, and then a majority vote in a general election.

The California Judges Assn. and the commission oppose the bills.

The commission does not oppose all open hearings but wants to reserve the right to close some under certain circumstances, commission general counsel Victoria B. Henley said.

"If a change is to be undertaken now, the commission would not support having all proceedings

conclusion that the accused judge's political interests outweighed any interest the voters might have before they cast their ballots in learning the truth; that this judge had been charged with serious misconduct," Lungren wrote.

A system of completely open formal proceedings is not only valuable for reasons of good government, but also will better protect complaining witnesses from judicial retaliation in these cases and ensure full and accurate fact-finding, Lungren wrote. "The present system of confidentiality in formal proceedings is clearly unworkable and is

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"Inherent in these rulings was the

end."

confidentiality at the stage of formal proceedings . . . is long overdue."

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Judges Can't Judge Themselves

Council on Judicial Performance Is Rigged to Protect the Judiciary

By Peter G. Keane

Recently Chief Justice Malcolm Lucas referred accusations of improper conduct against himself to the Commission on Judicial Performance. This spotlights an agency that is virtually unknown to the public and little known even to most lawyers. But, unfortunately for the interests of ultimately determining the truth or falsity of the charges against Lucas, the commission's findings will be of no value. Because of its history, its structure and the way it operates, the commission lacks any credibility.

The Commission on Judicial Performance is established in California's Constitution. The commission's mandate is to insure public confidence in the courts by exposing judicial misconduct and removing corrupt, dishonest and grossly incompetent judges. Everyone agrees that this is a vitally important mission that is essential to the integrity of our legal system and to the overall well-being of our society. The commission has dismally failed to carry out that mission.

An examination of the annual reports of the commission for the last five years shows an agency that is dead in the water with regard to the performance of its duties. That examination also shows that the ethical standards to which judges in California are held are appallingly low. Consider two recent cases handled by the commission that are illustrative of dozens of similar examples:

■ A judge under investigation deliberately altered and taped over tapes that were requested by the commission in its investigation of him. The judge then lied to the commission about tampering with the tapes. When finally confronted with undeniable proof of his destruction of material evidence in order to obstruct the investigation, he admitted it. Yet that judge was allowed to remain on the bench. In any other employment situation, such as that of a clerk, a secretary or a janitor, someone who intentionally lied during an investigation — not to mention deliberately destroyed evidence — would be fired.

Why should a judge, whom society justifiably presumes will be a paragon of ethical behavior, be held to lower ethical standards than a janitor?

■ In another matter, "A judge received gifts from parties and attorneys appearing before the judge. The judge also received gifts from parties that were frequent litigants in the court on which the judge sat. The gifts had an actual value of many hundreds of dollars."

In a series of Pennsylvania cases involving gifts to judges, the judges were removed from office. However, the commission rewarded this California judge with a private admonishment.

What does it take to get a judge removed in California? It is hard to tell. In the last five years the commission has not recommended the removal of a single judge. This lack of performance is so insupportable that it gives the commission the appearance of being in the pocket of the judges whom they are supposed to regulate. That appearance may be wrong, but if it is, then the best one can say about the commission is that it is almost totally ineffectual.

Perhaps a beneficial outcome of Chief Justice Lucas referring the allegations against himself to the commission is that it will cause an increased scrutiny of the commission that will result in public awareness of its impotent history. Out of this can come genuine reforms that bring about an honest system of judicial discipline rather than the farce that we have now.

I propose three simple reforms that would be easy to implement and that would have a dramatic and positive effect: (1) opening formal proceedings to the public, (2) increasing the number of public members on the commission, and (3) giving the commission its own rule-making power.

Open Hearings

Since the abolition of Star Chamber proceedings, our system of justice has favored open trials and public hearings. But the commission proceedings — even formal hearings on serious charges — are held behind tightly closed doors. Not only do judges judge judges, but they do it in secret. There is no way that the public can have confidence in such a system, nor should they. And in light of the commission's clear nonperformance, there is no honest reason to continue to accept this questionable system on trust alone.

Judges are not such delicate flowers that they must be sheltered from public scrutiny. Few people, if any, would accept the arrogant thesis that the public in Cali-

fornia is so ignorant and untrustworthy that information about judges' misconduct must be hidden from them. On the contrary, the public is quite capable of intelligently assessing evidence of judicial misconduct. Indeed, the U.S. Supreme Court has said clearly that the public should be given this information: "The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion ... An enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt more than it would enhance respect." *Landmark Communications Inc. v. Virginia*, 435 U.S. 829, 842 (1978).

In addition, existing California law already requires the commission to operate openly in serious cases. In 1988 the Legislature expressly amended the constitutional provisions relating to the commission and said: "Because responsible public disclosure and accountability is proper, desirable and consistent with the goal of public confidence, it is the intent

of friends of friends, particularly in the large metropolitan centers. As such, when judges are judging each other, it is the fox guarding the chicken coop.

Since commission meetings are cloaked in such deep secrecy, of course, we really don't know how the members deliberate or what sorts of factors they consider. But the system is so custom-designed for all sorts of shenanigans, like "just the right phone calls" by judges who are both friends of the judge under investigation and friends of commission members, that it gives the present process a strange odor.

Even when the judges are not actively pulling strings for their friends, by their numbers on the commission they dominate the meetings and create an atmosphere, outlook and mood that considers only the attitudes and needs of judges. The perceptions and interests of the public at large probably run a distant second, if they are not ignored entirely.

As with its secret proceedings, California's judge-dominated commission is an exception among the other states in the nation. Only seven states — including

the configuration of the commissions in Wisconsin and New Mexico.

Give the Commission Rule-Making Authority

State and local governmental agencies ordinarily have authority to set their own rules of procedure after there has been some process of public input. The results are in the pages and pages of rules of diverse agencies like the Department of Motor Vehicles, the Department of Fish and Game, etc., which are found in the California Administrative Code.

Suspiciously unique among the agencies of California state government, the Commission on Judicial Performance lacks this elemental power to make rules for its own operation. That power is vested in the Judicial Council, which itself consists of 15 judges, four lawyers, two legislators and no members of the public. The operational rules that have been promulgated by the Judicial Council are cumbersome and judge-protective.

But considerably more disturbing and incredible than the commission's inability to put together its own operational rules is the way in which the California Code of Judicial Conduct was created. The code contains the basic ground rules for how judges must act and what they may and may not do. I believe California is the only state in the union whose Code of Judicial Conduct was set up by a private organization that is answerable to no one: the California Judges Association.

The CJA is simply the trade association of California's judges, which lobbies for the bread-and-butter interests of its member judges. CJA's establishing the rules for judicial conduct is equivalent to the California Department of Real Estate following rules set by the Board of Realtors or the Public Utilities Commission following rules written by Pacific Gas & Electric.

This is an ethical sham that has resulted in a judicial "fix" of the entire process. It cynically and blatantly stacks the entire system against any honest and straightforward disciplining of judicial misconduct.

The CJA code has set standards that would be laughable if they were not so embarrassing. One illustration will show that I am not exaggerating:

■ The American Bar Association Model Code of Judicial Conduct, on which the CJA based its own new code, contains a considerable amount of mandatory language to the effect that judges "shall" or "shall not" engage in certain types of conduct. For instance, "A judge shall respect and comply with the law ...," "A judge shall not allow family, social, or other political relationships to influence the judge's judicial conduct ..."

The CJA rejected the clear mandate of "shall" and replaced it with the weakly, mealy-mouthed substitute of "should." So we now have rules that say, "A judge should respect and comply with the law ...," etc.

Should? As in "Thou should not steal, unless of course in your judicial wisdom you think it's OK?" This gives judges a unique type of wiggle room on their ethical behavior that nobody else in society enjoys.

The CJA-drafted code of conduct is full of these ethical dodges for judges. In dealing with those subjects where the code could not easily be manipulated into a system of double standards for judges through word games like substituting "should" for "shall," the writers simply deep-sixed any prohibitions on unethical judicial conduct. For instance the ABA Model Code prohibits deception in election campaigns and puts other sensible limits on the election activities of judges. The CJA code simply discarded that section altogether.

The solution to this grotesque shell game is a simple one and is in accord with the national standards of most states other than California. I propose: that the Commission on Judicial Performance should have the authority to set its own rules of procedure and to establish a code of judicial conduct.

Most judges in California are dedicated, competent public servants. But they are also human, and unfortunately some of them do not consider themselves to be servants at all. There are petty tyrants and arrogant bullies whose conduct discredits the bench. There are even those who are corrupt and dishonest.

At a time in our history when public confidence in institutions of government, particularly in our system of justice, is in a free fall, it is essential to have an effective Commission on Judicial Performance that will call bad judges to account. The commission can never be effective as long as it is dominated by judges and operates in secret.

The three reforms that I suggest are simple to understand and easy to implement. They are in accord with the practice of most other states. It is time to let some fresh air and sunshine into the shadowy, odorous back rooms of California's judicial misconduct investigations.



of this measure that appropriate commission proceedings be open to public scrutiny, and that this measure be construed so as to accomplish this purpose which is hereby declared to be the public policy of this state."

But despite this clear statement of public policy, the commission blithely defies the very provisions under which it operates and there have been no public hearings!

Nationwide, a majority of the states have rejected secret hearings in matters of judicial misconduct. That is the way it should be in California. If, after an investigation, the commission decides to accuse a judge of misconduct, the public is entitled to know the charges and to examine the evidence and arguments. Our democratic system should require that the judges who preside over disciplinary hearings of their colleagues should do their work in the full light of public scrutiny and accountability.

Increase Public Membership on the Commission

The nine-member commission is made up of five judges, two lawyers and only two members of the public. This absolute majority of judges on the commission is unhealthy. It is an invitation to corruption.

The California judiciary is a close connected network of people intensely loyal and empathetic to each other as members of the same unique club. There are overlapping links of friendships, and

Tennessee and Mississippi — have commissions with a majority of judges. Pennsylvania's commission used to have a majority of judges, but the state recently amended its constitution after a series of scandals.

Some states, such as Massachusetts and Oregon, have an equal number of members from the bench, bar and public. Other states have nearly equal representation, such as Connecticut and New Jersey with two judges, three lawyers and four public members.

Equal representation is a step in the right direction but it does not go far enough, since it implies that the interests of the three constituencies are of equal weight. But only the most arrogant and idiotic judicial view would deny that the pre-eminent societal interest in judicial discipline must be the interest of the public.

Certainly the commission should have some members from the bench and bar in order to provide their viewpoints. But in the process of determining whether a judge has committed misconduct, the public will must prevail. A number of jurisdictions, such as Iowa, Indiana and the District of Columbia, have gone so far as to have only one judge on their commissions.

However, I think one is too few. So I propose that the membership of the California Commission on Judicial Performance should be two judges, two lawyers and five public members. This is

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Friday, January 8, 1993

A Spectrum of Opinion and Analysis

OPEN FORUM

EDITORIALS

On Secrecy. . . Punish Bad Judges in Public

Allegations of wrongdoing by public servants are usually aired in public. Federal officials are subject to highly visible probes by special prosecutors. Even secretive grand juries often end investigations with scathing reports blasting public officials. And when punishment is meted out, it's front-page news.

Judges, however, somehow escape all this.

Allegations of misconduct involving Superior Court judges in California are referred to the state Commission on Judicial Performance, which keeps secret all charges, evidence, investigations and almost all punishment of judges. The only public disclosures the com-

mission routinely makes are its annual reports.

The report for 1991 said the commission received 712 complaints against judges. Of that number, 621 were rejected after initial review. Of the remainder, 29 judges received advisory letters, the mildest form of discipline. And that's it. No names or misdeeds are told. . . .

Investigations into judicial wrongdoing should be made in the public light. Judges are public servants whose salaries are paid with public money. They should be publicly accountable. . . .

An honest judiciary is an underpinning of liberty. When judges go astray, the public has a right to know.

— *San Diego Union-Tribune*

WEDNESDAY
AUGUST 19, 1998

CITY OF LOS ANGELES

\$2.50

Judge Censured For Lying About Childhood Event

Ware Receives First Such Reprimand From 9th Circuit Council

'Reminiscent of President

By Pamela A. MacLean

Daily Journal Staff Writer

SAN FRANCISCO — In its first public reprimand, the Judicial Council of the 9th U.S. Circuit Court of Appeals openly censured U.S. District Judge James Ware Tuesday for lying in speeches by saying he was the brother of a youngster gunned down in a racist shooting in Birmingham in 1963.

The punishment was levied under a 1980 law that created an institutional mechanism for discipline of federal judges, according to court clerk Cathy Catterson.

Concluding that Ware had not lied to any government official or on any government documents, the nine-member body stopped with censure and did not send the case to the Judicial Council of the United States to consider an impeachment recommendation. Nor did the council order any reduction or removal of Ware's caseload.

Public Confidence Undermined

"The misrepresentations reflect negatively not only on Judge Ware's integrity, but quite possibly have had a regrettable effect on public confidence in the Judiciary," the investigative report states.

The Judicial Council order, signed Aug. 5 by Chief Judge Procter Hug and joined by the eight other judges on the council, reprimands the San Jose jurist for conduct it said was "prejudicial to the effective administration of the business of the courts."

Joining Hug in signing the order were Circuit Judges Mary Schroeder, David Thompson, Thomas Nelson and Barry Silverman, and District Judges Michael Hogan, Edward Lodge, Judith Keep and David Ezra.

In response to the decision, Bay Area attorneys and judges, including the Northern District bench, reaffirmed their support of Judge Ware. But a newspaper editor in the Birmingham area expressed concerns about Ware's actions and at least one judicial ethicist said the public punishment was appropriate.

False Impression Allowed

Ware, 52, admitted he first told the story in 1973 of a young James Ware in Birmingham, Ala., whose brother Virgil was shot and killed as the two rode a bicycle. He did not correct the false impression that he was the James Ware of the story.

He repeated it in a 1994 newspaper interview and again at a 1996 judicial conference in Napa Valley.

The order adopted a 4-1 recommendation of a special misconduct investigative review committee to issue a public reprimand. The lone dissenting vote, by Chief Judge John Coughenour of the Western District of Washington, argued that the public order was unnecessary because

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Ware Draws Censure for Telling a Lie

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Ware had suffered enough public embarrassment.

Judge Ware, who declined to comment Tuesday, waived his right to appeal the order, effectively closing the case.

On this question of potential impeachable conduct, the committee report signed by Judge Mary Schroeder noted, "making of false statements, even in public, is not criminal activity." Nor did Ware reap material reward from the misstatements, she said.

Judge Schroeder added that a knowing and willful material false statement to a government agency is a criminal offense. The investigation found that Judge Ware "made no statement to any government agency that he was the James Ware who rode the bicycle in 1963." In his 1997 judicial questionnaire for appointment to the 9th Circuit he cited under oath that he had a half-brother named Virgil Ware.

"Judge Ware has credibly stated to the committee that at various times in his life he came to believe that he might have had a half brother named Virgil and that he knew that his father had family members with whom he was unacquainted," Schroeder wrote.

Under court rules, the chief judge may appoint an investigative committee to examine complaints of misconduct and report back to the Judicial Council. The council, consisting of the chief judge, four circuit judges and four district judges, then decides what, if any, action should be taken.

The five-member special investigation panel, in recommending to disclose the discipline said, "Because of the very public nature of the original tragedy and the public nature of the misrepresentations, as well as their discovery, it is important that discipline of Judge Ware be public and a part of the historical record. For these reasons, the committee concludes that more than a private reprimand is called for."

The recommendation was signed by 9th Circuit Judges Mary Schroeder, Procureur Hug and Alfred Goodwin and the chief judge of the Los Angeles District Court, Terry Hatter.

In dissent, Chief Judge Coughenour said he believed "Judge Ware has already suffered serious public embarrassment over this episode and, in my view, no purpose would be served by adding to this burden."

The investigative committee found that Ware's misconduct "occurred off the bench." The committee found no indication it had "any effect on the judge's otherwise highly regarded abilities as a judge."

Judge Ware often employed the tragic tale to explain how he had been made "hungry for justice." Ware told of seeing his teen-age brother, Virgil, shot off the

handlebars of a bicycle he was pedaling down a road in Birmingham.

The James Ware who saw his brother Virgil die still lives in Birmingham and is a power plant worker.

The lie was discovered by a Birmingham federal judge, U.W. Clemon, who read about Ware's nomination to the 9th Circuit and a separate story about the Birmingham James Ware in a newspaper account recalling the 1963 killing.

Through a chain of miscommunications and attempts to confront Judge Ware in August 1997, Judge Clemon believed Ware was adhering to the fictitious story. Clemon discussed this during a routine court meeting Oct. 30 in Birmingham, according to the report.

That disclosure prompted one of his colleagues on the bench to inform Sen. Jeff Sessions, a member of the Senate Judiciary Committee reviewing Ware's nomination. Ware was confronted directly for the first time in November that his misrepresentations were public knowledge, according to the report.

On Nov. 6, 1997, Ware admitted the lie and sent a letter to President Clinton withdrawing his name from consideration.

Ware flew to Birmingham two days later to meet with the family of Virgil Ware and apologize to the other James Ware.

Although Ware declined to comment Tuesday, at the time of his withdrawal from nomination to the appeals court, Ware told the president, "I am sorry that my misstatements about my background have caused such unintended consequences." He said he remained committed to the cause of civil rights and did not wish to be seen as "using the unfortunate tragedy which befell Virgil Ware as trying to better myself at someone else's expense."

Joe Dickson, editor of the Birmingham World, a newspaper serving the black community in Birmingham, said Tuesday, "The court may be privy to more than I am, but I was really, really upset that a federal judge would go that far in trying to make a point. But I am also satisfied, if the court is satisfied, with his move to rectify his wrong. I still feel a little queasy that he was one step away, if confirmed, from the Supreme Court."

Dickson said reaction to the judge's lie in 1997 caused strong reactions among his readers in Birmingham, Judge Ware's hometown. "People were appalled that he would do something like that. They were livid here. If the story had not been reported, he would have gone on living that lie," Dickson said.

Retired Yale University professor Geoffrey Hazard, an adviser on the ABA Code of Judicial Ethics, said the public punishment "seems to me about right. It was a disgraceful fabrication. It is like Pinocchio; if you tell a lie once, you begin to get

trapped in your own confabulation. It does sound reminiscent of the president.

"This was quite a notorious case. I think [the court] was obliged to respond publicly," Hazard said.

Northern District Chief Judge Marilyn Hall Patel said in a statement Tuesday she did not need to comment on the substance of the 9th Circuit order. But she said she did "want to make sure people know she and her colleagues on the court appreciate having Judge Ware on the court." Patel said the court "appreciates all the hard work and dedication [Ware] contributes to the court."

Retired Santa Clara County Superior Court Judge Peter Stone, who now works as a private judge for JAMS/Endispute in San Jose, said he thought "a good balance was struck" in the Judicial Council action.

"The entire matter was so public that the committee had to do something public," Stone said. "It's the least public thing they could do."

Stone and attorneys interviewed Tuesday praised Ware's abilities as a judge, and said they were heartened that the committee acknowledged that in its report.

Several lawyers in the San Jose area said they believed the public reprimand was too harsh, given that Ware had already suffered public embarrassment and the loss of a possible promotion to the 9th Circuit.

"He's been punished enough," said Tom Nolan, a criminal defense attorney with Nolan & Armstrong in Palo Alto. "He's already faced the consequences of his actions very publicly."

Attorneys said the Ware controversy, which stirred much discussion in the South Bay legal community when it was revealed last fall, has been all but forgotten in recent months.

The two most famous allegations of criminal conduct by judges in the 9th Circuit involved corruption cases against former district judge Robert Aguilar of San Jose and former judge Harry Claiborne of Las Vegas.

Aguilar resigned in exchange for dismissal of federal charges pending against him stemming from 1989 racketeering charges that resulted in two trials. The Judicial Council approved the deal in 1996, in *U.S. v. Aguilar*, 91 F.3d 90.

Judge Claiborne's tax violations case did not involve the judicial discipline system.

The court has also taken private actions against judges that became public. In 1994, the Judicial Council ordered Senior U.S. District Judge A. Andrew Hauk of Los Angeles to no longer hear police brutality cases based on "intemperate remarks from the bench."

Staff Writer Craig Anderson in San Jose contributed to this report.

'Penitent' Hawk Will Not Hear Certain Cases

By Thom Mrozek

Daily Journal Staff Writer

The Judicial Council of the 9th U.S. Circuit has adopted a recommendation to dismiss charges of bias and misconduct against U.S. District Senior Judge A. Andrew Hawk after he "acknowledged the inappropriateness of his conduct" and agreed to no longer hear civil rights cases, according to documents obtained Wednesday by the Daily Journal.

A three-page Order and Memorandum of Reasons signed Aug. 18 discusses two complaints made against Hawk, who has a reputation of making inflammatory remarks from the bench and occasionally becoming confused during oral arguments.

The ruling states that Hawk was "very penitent" about making some comments and concludes "there is no evidence that the judge is disabled and unable to comprehend arguments made to him." *In re Charge of Judicial Misconduct*, 93-80015, 93-80288.

Special Committee Appointed

The order adopts recommendations made by a "special investigative committee" that looked into the allegations. In a highly unusual move, 9th U.S. Circuit Chief Judge J. Clifford Wallace appointed the committee in July. The nine members of the Judicial Council who signed the document include Wallace and Chief U.S. District Judge William Matthew Byrne Jr.

One of the complaints was filed by Julian Ayrs, a Los Angeles literary agent, who appeared before Hawk as a pro se litigant in December 1992 in an attempt to have an independent judge examine his request to have Bankruptcy Judge A. H. M. Greenwald recused from a case where he was a creditor. *Ayrs v. Greenwald*, CV92-6187.

"I ran into Hawk, who apparently knew [Greenwald] and was outraged I was trying to recuse him," Ayrs said Tuesday.

During the court appearance nearly two years ago, Hawk threatened to jail Ayrs. A transcript of the proceeding shows that Hawk compared Ayrs to the windmill-chasing Don Quixote and used an old maxim to chastise him for appearing in propria persona: "Anybody who represents himself has a fool for a client."

Other Actions Taken

The committee that looked into the complaints made under 28 U.S.C. 372 "has also taken other appropriate disciplinary action" that was not specified in the order. However, it appears the only remaining actions are to privately or publicly censure Hawk.

In dismissing Ayrs' complaint, the committee wrote that the complaint "offers no evidence to show the judge's conduct was motivated by bias. Complainant's charges of bias are conclusory and lack any supporting facts."

Ayrs has responded to Wallace in a stinging letter that accused the judge of running a "kangaroo [sic] court" and issuing an order "worth little more than toilet paper."

"I was quite shocked to read your memorandum," Ayrs wrote in a three-page letter dated Aug. 31. "It is incredulous to me that a judge of your 'apparent

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Judge Hauk Agrees to Stop Hearing Civil Rights Cases; Charges Dropped

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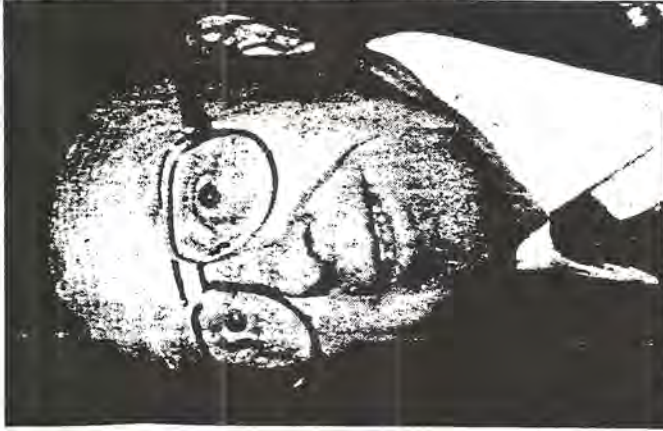
caliber would conduct such a sloppy investigation."

Details about the second complaint addressed by the committee remain unknown. Wallace was not available for comment Tuesday, but he has previously declined to discuss any specifics of the investigation. Byrne was also out of town and unavailable for comment.

Hauk maintains a policy of not speaking to the press about any case that has been in his court.

For years Hauk, 82, has maintained a reputation for being unpredictable and for making comments that have outraged women (he once said they have a "monthly problem"), homosexuals (he was referred to them as "faggots"), and various ethnic groups (Iranians were called "ignoramus" and others of Middle Eastern descent were called "Opeckers").

President Lyndon Johnson appointed Hauk to the federal bench in 1966. In 1980, the same year Hauk became chief judge of the Central District, The American Lawyer magazine called him the



A. ANDREW HAUK — The 9th Circuit Judicial Council says the senior judge has "acknowledged the inappropriateness of his conduct."

worst judge in the 9th Circuit.

While his colleagues on the bench won't speak on the record, the consensus among the other judges is that Hauk does step over the line, but nevertheless is a hard-working senior judge who succeeds in administering justice.

While bristling over his abrasive in-court demeanor, many attorneys agree with the assessment offered by the judges. While Hauk has insulted and threatened attorneys, there are several other judges who berate counsel on a regular basis, they say.

Making threats to jail attorneys — a warning often heard in Hauk's court — continues to concern criminal defense lawyers and civil attorneys who work with "liberal" causes. Hauk has on at least two occasions in recent years jailed attorneys representing plaintiffs in police brutality cases.

The [Judicial] Council has confirmed and adopted the judge's voluntary decision not to accept cases arising under 42 U.S.C. 1983 because it was mutually agreed that these cases have caused the most problems for the judge," the order states.

LETTERS TO THE EDITOR

Charges Against Hawk Weren't Dropped

I read with interest your article on the disciplinary hearings against Judge Hawk of the Federal District Court in the Sept. 22 issue of The Daily Journal ("Penitent' Hawk Will Not Hear Certain Cases").

I was one of the complainants who filed the grievance which resulted in the investigation of Judge Hawk. In addition, I was the gracious person who was kind enough to expeditiously send on a copy of the "confidential" order from the 9th Circuit judges outlining the action to be taken, so your reporter could write his feature.

Consequently, I was quite taken aback to read in your caption (page 28) that the charges against Hawk were "dropped."

On the contrary! The judges of the 9th Circuit noted that Hawk was "penitent" about his conduct towards me, that he would refrain from such conduct in the future with other litigants, and that such conduct from the bench as outlined in my complaint was inappropriate.

Therefore, it was ruled that Judge Hawk would be barred from taking any civil rights cases in the future, and that disciplinary action would be taken pursuant to U.S.C. section 372(c) (6) (B).

Under the code, the council could accept Hawk's voluntary retirement, order that he receive no further cases, or censure or reprimand him via private or public communication.

Clearly, the charges were not "dropped."

I trust you will print this letter to set the record straight.

*Julian Ayrs
Los Angeles*

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10-5-94

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Judge's Comments Have Upset Many Groups

By MARIA L. La GANGA
TIMES STAFF WRITER

In nearly 30 years on the federal bench here, U.S. District Court Judge A. Andrew Hauk has offended women, minorities, homosexuals and conservationists with his comments.

Last fall Hauk was barred by a panel of the U.S. 9th Circuit Court of Appeals from hearing any civil rights cases regarding police brutality.

The chief judge of the 9th Circuit ordered an unusual investigation after charges that Hauk made intemperate and abusive remarks from the bench. The panel also looked into reports that Hauk, 82, suffered a mental disability that left him unable to understand testimony. Hauk was declared fit to contin-

ue serving as a judge but prohibited from handling police brutality cases. In recent years, the 9th Circuit has reversed Hauk's decisions in several such cases. In one case involving the Los Angeles Police Department, the court said Hauk's remarks during trial showed "a pro-police bias."

He has referred to homosexuals as "faggots" during trials and, during jury selection in a drug trial, compared the defendant to former Panamanian dictator Manuel Noriega. During a 1979 antitrust case against the Organization of Petroleum Exporting Countries, he regularly referred to the defendants as "the Opeckers."

Ten years later, Hauk declared in court that women are "soft touches . . . particularly when sex is involved," a comment that led

the 2,000-member California Women Lawyers to seek an investigation into Hauk's "repeated public display of biased attitudes."

On Wednesday, in dismissing a major DDT case, he called environmentalists "do-gooders and pointy-heads." It was not the first time that he has taken such activists to task.

At one time, an avid skier and proponent of resort development, Hauk has done battle against conservationists who have wanted to leave certain mountain areas undisturbed.

In a 1975 interview, Hauk said he has "an intense desire to see people have access to ski areas, and I can't understand the determined resistance of some conservationists. I believe God put us here to use the Earth, conquer the Earth and preserve it."

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LOS ANGELES TIMES EDITORIALS



Questions About a Judge

The U.S. Constitution states that federal judges "shall hold their Offices during good Behavior." Apart from that, judges can stay until they die, short of impeachment by the House of Representatives. This safeguard has properly insulated judges from political vagaries and pressures. However, it also creates a difficult problem when it comes to judges who display intemperate behavior.

We cite the case of U.S. District Judge A. Andrew Hauk, 82, of Los Angeles. Since being appointed by President Lyndon B. Johnson nearly 30 years ago, he has earned a reputation as a cantankerous and bristly jurist. He did little to alter that reputation last week when he threw out a major environmental case with sneers about "pointy heads," "do-gooders" and "pseudo-scientists." It

was in that context that he rendered his decision letting off the hook the chemical companies that dumped millions of pounds of DDT into the Pacific. Environmental agencies spent \$24 million collecting evidence; an appeal is expected.

Earlier, Hauk had angered homosexuals (he used the slur *faggots*) and women ("soft touches"). Once, in what he perhaps saw as chivalry, he gave a lighter sentence to a woman convicted of bank robbery because she had acted at the behest of her pimp. Last year, the Judicial Council of the 9th Circuit Court of Appeals took the highly unusual step of prohibiting him from hearing cases involving police brutality after receiving complaints that he exhibited a pro-police bias.

In his defense, however,

even liberal colleagues say the caricature suggested by Hauk's crotchety comments is unfair. They say he is respected as a judge who will not roll over for the U.S. attorney and that he remains mentally alert. A feminist who spent a year as his law clerk came away genuinely liking and respecting Hauk.

Under the widely admired leadership of Chief Judge J. Clifford Wallace of San Diego, the Judicial Council has pioneered in examining gender, race and ethnic bias in the judiciary. Short of impeachment, the only way to discipline judges is for the council to limit their caseloads, as it has done with Hauk in police cases. Traditionally, when a judge does not realize it is time to retire, a group of colleagues pays a quiet visit. Perhaps that time has come for Hauk.

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Ninth Circuit Affirms Convictions in Gifts-for-Judicial-Favors Scandal

From Staff and Wire Service Reports

The racketeering conviction of a suspended San Diego lawyer and the mail fraud convictions of the attorney and two former San Diego Superior Court judges were upheld yesterday by the Ninth U.S. Circuit Court of Appeals.

Patrick Frega, a former San Diego Trial Lawyer of the Year, and ex-judges James A. Malkus and G. Dennis Adams won a partial victory, but it was unclear whether they would eventually receive reduced prison sentences.

Lawyers for the former judges said they were generally pleased with the ruling because their prison sentences were chiefly based on the racketeering conspiracy convictions.

The racketeering conspiracy was "the most heinous of allegations of corruption, and that's gone," said Adams' lawyer, Mario Conte, executive director of Federal Defenders of San Diego.

The appeals court upheld the mail fraud convictions 3-0, but ruled 2-1 that the racketeering conspiracy convictions were tainted by U.S. District Judge Edward Rafeedie's response to a question from the jury.

Jury Instruction

Rafeedie—a senior judge of the U.S. District Court for the Central District of California designated to try the case in San Diego after all of the Southern District's judges recused themselves—told jurors they could consider all the evidence in the case in deciding whether the defendants were responsible for acts of racketeering.

By failing to limit their consideration to Frega's 24 alleged acts of bribery, Rafeedie may have allowed a conviction based on acts that did not constitute bribery, the court said.

The court said the mail fraud convictions were properly based on a scheme to deny the public of the judges' "honest services." A 1987 U.S. Supreme Court decision

holding that a breach of the public interest in honest government wasn't enough to support a mail fraud conviction was superseded by a 1988 act of Congress, the panel concluded.

Lawyers for the former judges said they would probably appeal to the Supreme Court.

The opinion was written by Judge Stephen Reinhardt and joined by Myron Bright, a visiting senior judge from the Eighth U.S. Circuit Court of Appeals. Judge Pamela Rymer dissented on the racketeering issue.

Even if the partial reversal stands, a prosecutor told the *MetNews*, it will result in little or no reduction in the total sentences—41 months in prison for Frega and Adams and 33 months for Malkus.

Assistant U.S. Attorney Stephen Clark said the government may still seek rehearing or a new trial on the reversed count. But even if it doesn't, the appeals court's decision "will serve the interests of justice," Clark said.

The federal prosecutions of the three arose from an investigation that roiled the San Diego bench in the first half of the decade. An investigation ultimately disclosed that Frega had given more than \$100,000 in gifts to Adams, Malkus, ex-Superior Court Judge Bruce Greer, and their families in cars, repairs and computers.

Prosecutors charged that in return for those gifts, Greer—who served as presiding judge for two years—made favorable rulings in Frega's cases or assigned the cases to Malkus and Adams, who were also in collusion with Frega.

Greer resigned from the bench, and eventually became a witness against the other three and was placed on probation. He resigned from the State Bar with disciplinary charges pending.

Malkus also resigned from the court, and is on interim State Bar suspension. Adams was removed from the bench by the state Supreme Court in 1995, and as a removed judge cannot practice law without the permission of the high court.

Overt Acts

A 21-count superseding federal indictment listed 163 overt acts allegedly committed by the three men from 1983 to 1992. The original indictment was thrown out after Rafeedie ruled the federal bribery statute used to charge the indictment did not apply to state judges.

The Ninth Circuit panel rejected the contention that the superseding indictment constituted vindictiveness on the part of prosecutors for the successful challenge to the bribery charge. There was no showing that prosecutors intended the superseding indictment as retaliation or that they would not have brought additional charges if the earlier counts had not been dismissed.

The court said there was ample evidence to support the convictions.

In addition to favorable rulings, the judges also allegedly gave Frega advice about his cases and reviewed documents and testimony he planned to offer.

In one case Frega got Greer to transfer a lawsuit to Malkus, then arranged a job for Malkus' son, paid him \$10,000 above the usual salary, gave the son \$2,000 in money orders and had numerous telephone conversations with Malkus, the court said. After a non-jury trial, Malkus awarded Frega's client more than \$4 million.

The case is *U.S. v. Frega*, 99 S.O.S. 4391.