

# ...AND JUSTICE FOR ALL

## PART II

- Chapter 4 Structuring the Court System
  - Chapter 5 Selecting and Disciplining Judges
  - Chapter 6 Releasing, Detaining and Indicting  
Criminal Defendants
- 

TEMPORARY COMMISSION ON THE STATE COURT SYSTEM

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*Ex. D*

jected to the following criticisms:

- It is not able to handle minor cases.
- It has no disciplinary power short of removal.
- It is cumbersome and acts slowly.
- It lacks confidentiality.
- There is no permanent staff.
- There is no appellate review.
- It can be preempted by legislature.
- It is used so infrequently it must not be responsive to problems.

However, the New York system is also defended on these grounds:

- Many of the alleged defects do not actually exist when the role of the appellate divisions in the discipline process is recognized.
- The effectiveness of the system is really not known because formal records are not kept. California, which does keep such records, appears to be much more effective, but this is not necessarily true.
- It is less expensive because it does not require a separate staff.

The California system also has its critics. They allege that it has the following defects:

- The existence of the commission is not very well known, and thus complainants do not know where to file complaints.
- Laymen are not qualified to pass on the conduct of judges.
- Proceedings are secret, so no one knows if the commission is acting properly.
- The same agency is investigator, prosecutor, judge, and jury.
- It interferes with the independence of the judiciary.

Almost invariably, however, the California system is held up as the most effective procedure yet developed to deal with judicial misconduct or incapacity. In every comparison with the New York system, California's is preferred.

## THE NATURE OF JUDICIAL MISCONDUCT AND INCAPACITY

In considering the question of what procedure is best designed to deal with judicial misconduct and incapacity,

the first problem is to identify the various types of misconduct and incapacity. They are, in increasing order of seriousness:

### Conduct on the bench

- administrative misconduct - such as, not filling out reports, not wearing robe, not advising proper officer of actions
- laziness - such as, starting court late, ending early, taking afternoons or days off, taking extended vacations, not appearing at scheduled cases without explanation, slowness in deciding cases
- lack of patience with persons in court - such as, cutting off counsel and witnesses, being abrupt with court personnel
- rudeness and arbitrariness - such as, shouting at, berating, or making derogatory comments about persons in court
- improper use of alcohol - such as, appearing in court with odor of liquor on breath or partially under influence of alcohol
- inability to hold court because under influence of alcohol
- showing bias against certain classes of litigants - such as, making derogatory comments based on race, religion, or other characteristics of persons in court
- \* - allowing personal considerations to influence judicial decisions - such as, favoring friends or making decisions which would indirectly favor self or friends
- \* - corruption in office - such as, agreeing to decide a case to favor a party in exchange for money

### Conduct off the bench

- devoting excessive time to nonjudicial duties
- excessive concern with publicity
- financial "wheeling and dealing"
- indirect political activity
- associations with persons that give rise to suspicions about partiality - for example, litigants, politicians, lawyers, or reputed underworld figures
- running for public or political office
- engaging in immoral conduct
- engaging in illegal conduct
- engaging in illegal conduct that involves moral turpitude.