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LETTER OF TRANSMITTAL

1980 REPORT OF THE
COMMISSION ON JUDICIAL PERFORMANCE
TO THE GOVERNOR

U.S. Department of Justice
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To: His Excellency, Edmund G. Brown, Jr.
Governor of the State of California

The 1980 Report of the Commission on Judicial
Performance is presented herewith.

January
1981

JOHN T. RACANELLI
Chairperson

86184

MEMBERS

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** Membership terminated December 1980 -- term expired
*** Membership terminated January 1981 -- elected to Superior Court

COMMISSION ON JUDICIAL PERFORMANCE

1980 ANNUAL REPORT

November 8, 1980, marked the twentieth anniversary of the approval by the California voters of the constitutional amendment creating the Commission on Judicial Qualifications, predecessor to this Commission. That event constituted the first establishment in the United States of a permanent and independent unit of state government for the purpose of receiving, investigating, and acting upon complaints about misconduct by state court judges at all levels. Since then, virtually all of the states have adopted comparable legislation.

Article VI, section 18(c), of the Constitution charges the Commission with the responsibility to recommend to the Supreme Court that a judge be publicly censured or removed from office for wilful misconduct in office, persistent

failure or inability to perform duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission also may recommend that a judge be retired for disability that interferes with the performance of duties and is or is likely to become permanent. In addition, the Commission may privately admonish a judge found to have engaged in an improper action or a dereliction of duty, subject to review by the Supreme Court.

I

Presently pending before the California Supreme Court are recommendations made by the Commission on Judicial Performance in 1980 for removal of a Justice Court Judge and for censure of a Superior Court Judge.

The Commission recommended that a judge of the El Dorado Justice Court be removed for wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission detailed eleven separate findings of abuse in the exercise of the contempt powers in its 37-page report filed with the Supreme Court, March 20, 1980, after a month-long hearing before a special master. The judge is

disqualified from acting as a judge until the Supreme Court reviews the recommendation. (In re: Jerrold Wenger, No. S.F. 24135.)

This is the Commission's eighth recommendation for removal or involuntary retirement since it was established in 1961. Of the previous seven, three judges were removed, two were involuntarily retired, one was censured, and one recommendation against a judge was dismissed.

The Commission found, after a formal hearing, that a judge of the Los Angeles County Superior Court who had repeatedly engaged two employees of the State Legislature against their will in conversations "in which he used vulgar and offensive language of an explicitly sexual nature," committed conduct prejudicial to the administration of justice that brings the judicial office into disrepute. August 14, 1980, the Commission recommended that the judge be censured for this misconduct. (In re: Robert S. Stevens, No. L.A. 31304.) This marks the sixth time the Commission has recommended a judge be censured. The Supreme Court imposed censure in all five earlier cases.

Since the Commission began operation, seventy-three judges have resigned or retired while under investigation.

Many of these judges recognized that a disabling physical or mental infirmity was adversely affecting their judicial work. Others, especially in the early years of operation, acted to preempt the investigation and avoid adverse publicity and other consequences.

II

As of January 1, 1981, the jurisdiction of the Commission extended over 1276 judges, as follows:

Supreme Court	7
Courts of Appeal	59
Superior Courts	628
Municipal Courts	488
Justice Courts	94

The Commission met nine times in 1980: four one-day sessions and five two-day sessions for a total of fourteen meeting days. At the conclusion of the year's last meeting, December 12, 1980, seventeen pending matters were carried forward into 1981.

During 1980 the Commission received and considered 260 complaints. Of these, 195 were closed without action after initial review and scrutiny, because their allegations did not warrant further investigation or constitute misconduct within the Commission's jurisdiction.

The Commission frequently receives, from both lawyers and the public, communications which claim, in effect, judicial error or object to a particular application of a judge's discretionary powers. Attempts to solicit review or modification of a ruling, in the guise of allegations of misconduct, will not invoke the Commission's powers. Similarly, calls and letters concerning court administrative problems or criticizing a judge's manner or individual style reach the Commission's office. Many such complaints stem primarily from disappointment about a disagreeable legal entanglement or result.

When the Commission determines after careful study that such complaints fail to sustain the objective burden of stating facts of apparent impropriety or wrong-doing, even further investigation is precluded. The Commission's staff informs writers and callers there is no basis for proceedings against the judge. Occasionally, a judge may be told of such a complaint for information and edification.

In 65 instances the Commission investigated the complaint before reaching a decision. At times, limited inquiry enables the Commission to close the matter without requiring a response from the judge. Normally, the Commission informs the judge of the complaint and requests

comment. If the judge provides an acceptable explanation, the case is closed and the judge and complainant are so notified. In some cases, the case may be closed after the judge is advised that the Commission does not approve of some aspect of his conduct. In this way limited lapses in conduct may be called to a judge's attention for remedial purposes.

The process outlined above describes the bulk of the Commission's work. Complaints are evaluated after inquiry and deliberation, and those less serious in weight and scope are concluded without an official preliminary investigation or formal proceedings.

When the allegations in a complaint suggest significant questions of judicial conduct, the Commission orders a full preliminary investigation. The Commission may direct that a complaint sufficiently serious on its face proceed to this stage without passing through the less formal inquiry procedure. Twelve preliminary investigations into a judge's conduct under the California Rules of Court were begun during the year.

In the same period, eight private admonishments were administered. An admonishment may be imposed after either

completion of a preliminary investigation or a formal hearing. If it is after investigation the judge may appeal by requesting a formal hearing. None of the admonishments in 1980 was appealed. Two of the eight admonishments were imposed after formal hearings.

III

The Commission now has a five-member staff: director/ chief counsel, secretary/administrative assistant, clerk, judicial secretary, and a new legal position, staff counsel/assistant director.

The Commission has become increasingly cognizant of the importance of thoroughly evaluating complaints of judicial misconduct at the investigation stage when deciding whether to proceed against a judge. In mid-1979, the Commission assessed its workload, which had been increasing as a result of both the broadened powers granted by constitutional change in 1976 and a heightened public awareness of the Commission's role and effectiveness with a resulting willingness by the public to use the Commission. Accordingly, the Commission sought and obtained authorization for a new legal position, designated staff counsel/assistant director. The legal staff had consisted previously solely of the Director/Chief Counsel (formerly Executive

Officer). The new post was filled October 1, 1980, after an extensive selection process, by Betty Beck Bennett, an experienced attorney who had practiced principally in the East Bay area.

When the circumstances of an individual case require, the Commission will continue to avail itself, through a harmonious working relationship with the Attorney General, of the legal and investigative services of Deputy Attorneys General and Special Agents from the investigation bureau of the Department of Justice. The high level of professional assistance furnished by those individuals and that Department has been an important asset to the Commission and to the citizens of California.

IV

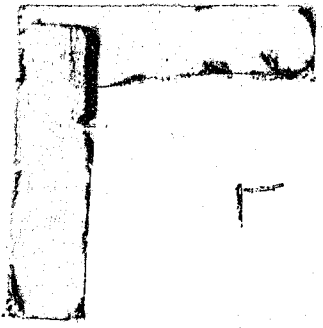
Some observers see a need for better public awareness of the judicial process. Stanley Anderson, Professor of Political Science at the University of California, Santa Barbara, compares the Commission to Sweden's Judicial Ombudsman and the Danish Special Court of Complaints.* Anderson recommends that the Commission expand its

* "Judicial Accountability: Scandinavia, California & the U.S.A." (American Journal of Comparative Law, Vol. XXVIII, Summer 1980, No. 3)

educational activity, explaining and clarifying the work of judges as the Ombudsman does. Although Anderson observes that the Commission was not created expressly to fulfill that function, he sees it as a natural extension of its original role. Anderson wrote:

[The Commission] has performed an excellent job as judicial inspector-general, with an overriding concern for image and effectiveness and an awareness of the long-term dependence of the former on the latter. If the Commission did not exist, we should have to invent it.

He advocates, however, increased educational communication both to deal more effectively with the confused complainant and to increase general awareness of the Commission's work and purpose.



END