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1979 REPORT OF THE
COMMISSION ON JUDICIAL PERFORMANCE
TO THE GOVERNOR

U.S. Department of Justice
National Institute of Justice

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* Membership terminated December, 1979

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LETTER OF TRANSMITTAL

To: His Excellency, Edmund G. Brown, Jr.
Governor of the State of California

The 1979 Report of the Commission on Judicial
Performance is presented herewith.

February
1980

THOMAS KONGSGAARD
Chairman

COMMISSION ON JUDICIAL PERFORMANCE

1979 ANNUAL REPORT

The work of the Commission consists of receiving and acting on complaints made against California judges. During 1979, 291 complaints were filed. All were carefully scrutinized. The great majority, 215, did not warrant Commission proceedings and were closed after examination. Most of the closed complaints arose from an individual's dissatisfaction with a judge's determination, which is not a valid basis for Commission action.

The Commission has no authority to review claims of judicial error. Complaints about judicial rulings covered by judicial discretion and hence not subject to disciplinary review greatly outnumber allegations of judicial misconduct. The Commission attempts to delineate for the public, the bar, and the bench judicial conduct which is subject to disciplinary proceedings. Complainants were notified if their allegations did not constitute misconduct within the Commission's jurisdiction.

During 1979, the Commission instituted 76 inquiries into judicial conduct. Of these, 62 involved a written communication with the judge. After reviewing the judge's

response, the Commission closed most cases. In several of these cases, the Commission used cautionary or disapproving language in notifying the judge that the proceeding was closed or took other corrective measures.

The Commission conducted 18 preliminary investigations on those cases requiring more extensive attention. Three investigations led to private admonishments. Two judges chose to resign or retire from judicial office while investigations were underway. There were no recommendations to the Supreme Court for censure, removal, or retirement. At the close of the year, 14 matters were pending and carried forward to 1980.

The Commission met nine times, totaling twelve days, during 1979 to conduct regular business. In addition, the Commission devoted many of its resources to the investigation into the conduct of the Justices of the Supreme Court, CJP 3012 and CJP 3012 A-G. See Mosk v. Superior Court (1979) 25 Cal.3d 474. Those proceedings are not included in the figures set forth above, as the results have been separately announced. See Report of Status and Announcement Regarding Investigation, November 5, 1979. The Commission devoted 45 full days (29 for hearings and 16 for meetings) from December 1, 1978, to November 2, 1979, to these proceedings.

The Commission has concluded that certain constitutional changes regarding the review of judicial conduct are appropriate. The need for accountability of the judicial branch of government must be met differently from that of

the legislative or executive branches. The rule of law requires a strong and independent judiciary, as well as judges of high integrity. Judicial independence must not be invoked as a code word to protect nonfeasance and misfeasance. Judges themselves are subject to the rule of law under the Constitution which established the Commission. Based upon its experience and mindful of its role as a watchdog to improve judicial performance and enhance standards of conduct, the Commission early in 1980 will propose to the Legislature changes in Article VI, Sections 8 and 18, of the California Constitution. These changes will deal primarily with the rule-making power for the Commission's proceedings, limited exceptions to confidentiality, and the role of the Supreme Court in reviewing disciplinary actions taken by the Commission.

The Commission invites public discussion of its proposals. For the public to realize benefits from improved standards of judicial performance, it must become interested in potential improvements in judicial disciplinary procedures.

We close our report by noting that during the year three members concluded their service on the Commission. Kathryn Gehrels, a lawyer member, served for two and one-half years and Ann Shaw, a public member, served for four years. Both gave of themselves unstintingly. Their deep concern for the Commission's objectives and the grace with which they attended to Commission affairs were treasured by their associates.

Bertram D. Janes, a judge member, completed ten years and eight months on the Commission, serving as its Chairman the last six years. His retirement from judicial office on December 1 marked thirty-two years of public service to the people of California: City Attorney, City of Portola; District Attorney, County of Plumas; Judge, Superior Court and Justice of the Court of Appeal.

No one has contributed more to the fulfillment of the Commission's ideals than has Justice Bertram Janes of Plumas County and Sacramento. He brought to the Commission an unassuming openness and mountain country fiber. A person of professional excellence and learning and individual honor and integrity, Justice Janes has been the consummate jurist. The California Commission on Judicial Performance and his fellow Californians are in his debt.



END

