JUDICIAL MISCONDUCT INVOLVING BIAS: ETHNICITY, NATIONALITY, RACE, GENDER and SEXUAL ORIENTATION

(Commission on Judicial Performance & Supreme Court Cases)

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Ethnicity/Nationality/Race

Shortly after the petitioner began testifying at a hearing on a petition for a restraining order, Judge Pollard asked to address the respondent and asked him where he was born, eliciting the response that he was born in California. The judge then said that she was "concerned about the throwing of rocks and the spitting," and stated, "Usually that is the kind of behavior I see in Middle Eastern clients…." The judge added, "[I]f the declaration says, 'He drags me around the house by the hair,' it's almost always a Hispanic client." [*Public Admonishment of Judge Nancy Pollard* (2011).]

The judge was discussing the prospects of settlement with counsel off the record in open court in a criminal case involving African-American defendants. The defendants were in the holding cell; family members of one of the defendants were in the audience. The judge remarked that he guessed that the only thing that would make the defendants plead was for him to come out in a white sheet and pointy hat, which he indicated that he would not do. [*Public Admonishment of Judge Harvey Giss* (2011).]

A judge used the court computer to forward to judicial officers a satirical email that promoted negative stereotypes about people from a certain country, apparently realizing that it would be offensive to at least one judge whose ancestors were from that country. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 6, p. 26.]

A judge's remarks in a public setting appeared to reflect negative racial and ethnic stereotypes. [Com. on Jud. Performance, Ann. Rept. (2007), Advisory Letter 12, p. 32.]

The judge was disciplined for comments to litigants in two cases. In one, the judge made remarks reflecting bias. The judge referred to the defendant having transferred ownership of a restaurant to his wife who, the judge stated was "probably a very nice lady, probably doesn't know how much she owns, I don't think" and that "in her native Syria (?) probably wouldn't be allowed to own property." [*Public Admonishment of Judge James M. Brooks* (2006).]

A judge's email to other judges gave the appearance of ethnic bias in the discharge of administrative responsibilities. [Com. on Jud. Performance, Ann. Rept. (2006), Private Admonishment 5, p. 31.]

After a trial resulting in the defendant's conviction, Judge Van Voorhis gave unsolicited advice to defense counsel who was still at counsel table with his client filling out forms. The judge's advice included telling the attorney, who was born in Ecuador, to "lose the accent." This conduct resulted in Judge Van Voorhis's removal from office. [*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.]

In addition to other misconduct, in two separate civil matters, the judge made remarks during court proceedings that disparaged the litigants and counsel. Some remarks appeared to advocate one side of the case, and some remarks appeared to reflect bias against a particular class; some of the remarks had been made in the presence of the jury. [Com. on Jud. Performance, Ann. Rept. (2001), Private Admonishment 3, p. 19.]

In questioning prospective jurors about their attitudes concerning race in a criminal trial, a judge repeatedly used a racial epithet and negative stereotypes in reference to the defendant's race, with the defendant's apparent consent. The commission urged the use of other means to accomplish the judge's stated purpose of ferreting out attitudes of racial bias. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 6, p. 22.]

During a chambers proceeding in a civil case, a judge referred to the case by the national origin of the litigants and made other comments which appeared to disparage persons from that nation. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 14, p. 23.]

A judge made remarks during a court proceeding that gave the appearance of bias against a litigant based on the litigant's country of origin. [Com. on Jud. Performance, Ann. Rept. (1998), Advisory Letter 32, p. 28.]

In addition to other misconduct, after a defendant became physically disruptive and had to be restrained, the judge said that the defendant did not have a "Chinaman's chance" of reaching him. There was additional misconduct. [*Public Admonishment of Judge James L. Stevens* (1998).]

Judge Gordon was censured for conduct that included referring to his court clerk as the "little Mexican" or "peon" and to a court reporter, a person of Japanese ancestry, as "little Buddha head." [*In re Norman W. Gordon* (1996) 13 Cal.4th 472.]

Judge Flier referred to an African-American defendant before him as "good boy" in open court. [*Public Reproval of Judge Richard S. Flier* (1995).]

During argument by an attorney of Japanese-American ancestry, Judge Haugner interrupted and said, "No, no listen. You filed your papers…. Do you have something to add to those papers which isn't in there, some brilliant case you found somewhere in the Upper Tokyo reports or somewhere that nobody knows about, tell me about it. Otherwise there's no need to argue over what you already have." [*Public Reproval of Judge Richard A. Haugner* (1994).]

A judge made a joke about a defendant that could reasonably have been construed as racist. [Com. on Jud. Performance, Ann. Rept. (1993), Advisory Letter 13, p. 18.]

A judge made rude remarks that suggested bias against a certain ethic group. For instance, with no basis other than a defendant's ethnicity, the judge said the defendant was probably not legally in the United States. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 30, p. 16.]

In addition to other misconduct, a judge twice made remarks which could reasonably be construed as racist. In communications with the commission the judge recognized the problems, promised reform, and agreed to attend a program on fairness sponsored by the California Center for Judicial Education and Research. The judge was relatively inexperienced. [Com. on Jud. Performance, Ann. Rept. (1991), Private Admonishment C, pp. 9-10.]

A criminal defendant was born in a certain country. The judge told the defendant that persons of his nationality "have a horrible reputation in this country," and made other racist remarks. The judge enjoyed an otherwise high reputation from all segments of the bar. The incident was apparently isolated. In dealings with the commission the judge recognized the impropriety of the remarks, expressed remorse, and promised to apologize to the defendant. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 3, p. 11.]

In dealing with a non-English-speaking defendant and with the defendant's proposed interpreter, a judge gave the impression of impatience and discourtesy. The commission reminded the judge that a patient tone is particularly important with non-English-speaking parties and witnesses. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 3, p.11.]

Addressing an obstreperous traffic court defendant, a judge made a remark which appeared to denigrate the defendant's national origin. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 13, p.12.]

Judge Gonzalez was removed from office for misconduct including, in a colleague's chambers, responding to news that a black deputy district attorney's wife had had a miscarriage by stating, in essence, "Oh good, one less minority." At a Christmas party, the judge asked a female Jewish deputy district attorney whether "with all the inbreeding your people do, aren't you afraid that they will produce a race of idiots?" or words to that effect. On pronouncing judgment on a male of Mexican extraction on a charge of beating his wife, the judge stated that although such behavior might be tolerated in Africa or Mexico, it would not be tolerated in America. During voir dire in a criminal case, he questioned a Japanese venireman about inflation and then commented that he did not know why he was speaking to a Japanese juror about inflation, because "what do fishheads and rice cost?" During another jury voir dire in a criminal case, the judge asked a black woman on the panel who had said that she worked as a grocery clerk if she knew the price of watermelon. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

Judge Stevens was censured for repeatedly and persistently using racial and ethnic epithets, and making racially stereotypical remarks to counsel and court personnel. In a civil settlement conference, the judge referred to attorney Alejandro Gonzales as "acting like a Mexican jumping bean" after he changed his position on settlement. In connection with a child abuse proceeding involving a Hispanic defendant with a Spanish surname, the judge observed from his prior experience that (in effect) Spanish persons live by different standards than we do; that wife abuse is common and more acceptable for them; and that such abuse might explain defendant's conduct toward her child. He also used terms such as "cute little tamales," "Taco Bell," "spic," and "bean" when referring to persons with Hispanic surnames in conversations with court personnel.

During an in-chambers discussion regarding a criminal case involving two black defendants and a white victim, Judge Stevens remarked to counsel that black persons have to learn to live in their own neighborhoods and that it was "typical" of black persons to fight unfairly. The judge also referred to black persons as "Jig, dark boy, colored boy, nigger, coon, Amos and Andy, and jungle bunny." With one exception, the judge did not use these terms in open court or with reference to a party, witness or attorney in a case before him. In a probate case involving a controversy between black litigants regarding burial of a loved one, the judge stated in the presence of court personnel only, "let's get on with this Amos and Andy show." On another occasion, he privately referred to his court clerk as being "lazier than a coon."

During another in-chambers discussion, Judge Stevens stated to a public defender that "Filipinos can be good, hard-working people and that they are clean, unlike some black animals who come into contact with the court." [*In re Charles S. Stevens* (1982) 31 Cal.3d 403.]

Judge Chargin was censured for remarks made in a juvenile delinquency proceeding. The judge's remarks included, "Mexican people, after age 13 years of age, it's perfectly alright to go out and act like an animal. [¶] … [¶] Maybe Hitler was right." [*In re Gerald S. Chargin* (1970) 2 Cal.3d 617.]

Gender

Judge Johnson was disciplined for remarks he made while sentencing a defendant convicted of rape and other sexual assault offenses against a woman with whom he had previously been in a relationship. In explaining why he was imposing a six-year sentence, despite the prosecution's request for a 16-year sentence, the judge referred to his past experience as a prosecutor in the sexual assault unit, and said that he had seen women who had been "ravaged and savaged" and whose vaginas had been "shredded by the rape." He continued:

> I'm not a gynecologist, but I can tell you something: If someone doesn't want to have sexual intercourse, the body shuts down. The body will not permit that to happen unless a lot of damage is inflicted, and we heard nothing about that in this case. That tells me that the victim in this case, although she wasn't necessarily willing, she didn't put up a fight. And to treat this case like the rape cases that we all hear about is an insult to victims of rape. I think it's an insult. I think it trivializes a rape.

Later, when the prosecutor inquired why the court was not viewing the fact that threats and a weapon were involved as aggravating factors, Judge Johnson responded, "I just found the threats to be technical threats. I found this whole case to be a technical case. The rape is technical. The forced oral copulation is technical. It's more of a crim law test than a real live criminal case." [*Public Admonishment of Judge Derek G. Johnson* (2012).]

In addition to other misconduct, a judge used sexist and demeaning terms and gestures to female court staff. The judge sent an inappropriate flirtatious email to another female court employee. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 2, p. 23.]

A female attorney representing a criminal defendant before Judge Fletcher did not appear at a scheduled hearing. After an unrecorded telephone conference with her office, the judge stated in open court: "She shouldn't be handling criminal cases. [¶] Here's another example of a civil attorney who shouldn't be handling criminal cases." He then commented that she "probably had something more important to do today, like go to a PTA meeting." He continued: "She has a whole bunch of kids. She's been having kids ever since I've known her." The Supreme Court adopted the commission's findings that the judge's statements were inappropriate and could be deemed prejudicial misconduct, citing *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297 for finding "unprofessional, demeaning and sexist remarks" to be prejudicial misconduct. This conduct resulted in Judge Fletcher's removal from office. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

A judge engaged in displays of affection toward court employees which were unwelcome to some. In mitigation, the judge attended training in appropriate workplace conduct. The judge also made a comment to an attorney appearing before the judge which reflected gender bias. [Com. on Jud. Performance, Ann. Rept. (1998), Advisory Letter 38, p. 29.]

Judge Gordon was censured for conduct involving on several occasions making sexually suggestive remarks to and asking explicit questions of female staff members, referring to staff members using crude and demeaning names and descriptions, referring to a fellow jurist's physical attributes in a demeaning manner, and mailing a sexually suggestive postcard to a staff member addressed to her at the courthouse. The actions were determined to be conduct prejudicial to the administration of justice that brings the judiciary into disrepute. [*In re Norman W. Gordon* (1996) 13 Cal.4th 472.]

In addition to other misconduct, a judge made comments during trial which may have fostered an impression of gender bias. [Com. on Jud. Performance, Ann. Rept. (1996), Advisory Letter 18, p. 25.]

On several occasions, a judge's remarks to women attorneys needlessly intruded upon personal matters which created an unwelcome sexual atmosphere in the courthouse. [Com. on Jud. Performance, Ann. Rept. (1994), Private Admonishment 3, p. 17.]

A judge tacitly permitted an attorney to make vulgar, offensive, gender-biased remarks during a chambers hearing. The remarks were also insensitive to minors. This fostered the appearance that the judge approved of the remarks. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 18, p. 15.]

A judge made comments to the press which gave the appearance of gender bias. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 31, p. 16.]

In addition to other misconduct, Judge Kennick was removed from office for referring to women attorneys as "sweetheart," "sweetie," or "baby." [*Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297.]

During a settlement conference, a judge made rude, impatient, and sexist remarks to parties and counsel; the judge made unwarranted threats to counsel and a party; the judge met with parties without counsel's presence or consent; the judge denounced counsel in open court and to the parties. The admonishment was severe. [Com. on Jud. Performance, Ann. Rept. (1990), Private Admonishment B, p. 19.]

A judge made sexist remarks in a family law matter. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 3, p. 22.]

A judge made sexist statements at a dinner speech. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 29, p. 25.]

A judge kept a sexist picture on the bench and appeared to observers to join courtroom staff in offensive, sexist conversations. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 34, p. 25.]

At a time when five to six men were in Judge Geiler's chambers, the judge's court clerk entered the judge's chambers at his request. Shortly thereafter, she left. As she was leaving, Judge Geiler commented, "How would you like to eat that?" referring to his clerk. The judge occasionally asked the clerk, "Did you get any last night?" This conduct resulted in Judge Geiler's removal from office. [*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270.]

Sexual Orientation

A judge's remarks about sexual orientation may have created the appearance of bias. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 16, p. 23.]

After transferring a juvenile court case to another judge, the judge chastised the minor's parent in open court, stating that the parent had caused the minor's misbehavior. The minor was present. The remarks appeared directed to the parent's sexual orientation and were gratuitous. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 19, p. 15.]

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