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8 STATE OF CALIFORNIA
9 BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

10

11 Inquiry Concerning a Judge)
12 No. 13)
13)

A N S W E R

14 TO: COMMISSION ON JUDICIAL QUALIFICATIONS

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16 COMES NOW the HONORABLE JUDGE JAMES J. McCARTNEY and
17 answering the charges contained therein, admits, denies and
18 alleges as follows:

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II

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Answering Count One, JUDGE McCARTNEY denies generally
and specifically each and every allegation contained therein.
Answering Count One, Paragraph A, People v. LaCroix
(CR 94649), JUDGE McCARTNEY admits as follows:
A. JUDGE McCARTNEY did direct Mrs. LaCroix to
"shut up."

1 B. JUDGE McCARTNEY did order Mrs. LaCroix to leave
2 the Courtroom.

3 C. JUDGE McCARTNEY did order her confined to the
4 County Jail for five days for contempt of Court.

5 D. JUDGE McCARTNEY did state substantially "five
6 days in jail right now."

7 E. JUDGE McCARTNEY did call Mr. LaCroix a "liar"
8 and a "cheat" and told him that he was lying.

9 F. JUDGE McCARTNEY did pronounce sentence upon
10 defendant, Mr. LaCroix.

11 G. JUDGE McCARTNEY did tell the defendant,
12 Mr. LaCroix, that he would sentence him to 180 days if he kept
13 interrupting.

14 That aside from said express admissions,
15 JUDGE McCARTNEY denies generally and specifically each and
16 every allegation contained therein.

17
18 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
19 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

20 A. That on March 24, 1971, JUDGE McCARTNEY had the
21 case of People v. LaCroix for the purposes of probation and
22 sentence hearing. That among the spectators was Mrs. LaCroix
23 with the couple's five children ranging in ages from approximately
24 seven to twelve years of age. That due to the highly derogatory
25 material in the probation report in regards to the children's
26 father (Mr. LaCroix), JUDGE McCARTNEY felt it would be inappro-
27 priate for the children to be in Court and therefore directed
28 Mrs. LaCroix to take the children outside the Courtroom.

1 B. JUDGE McCARTNEY allowed defendant, among other
2 things, to discuss, item by item, the prior record contained in
3 his probation report. During the discussion with the defendant,
4 Mrs. LaCroix had come back into the Courtroom and seated herself
5 behind her husband in the portion of the Courtroom usually
6 reserved for the party litigants and their counsels. While
7 further questioning the defendant, Mrs. LaCroix persisted in
8 interrupting the proceedings by making direct comments to the
9 Court. At this time, JUDGE McCARTNEY stated to Mrs. LaCroix
10 that if she had anything to say, she could say it at this time.
11 Mrs. LaCroix did address the Court at this time. JUDGE McCARTNEY
12 then advised Mrs. LaCroix that he wished to discuss further
13 matters with her husband and directed her to remain quiet.
14 Mrs. LaCroix persisted in further interruptions at which time
15 JUDGE McCARTNEY told her to "shut up." Mrs. LaCroix continued
16 to make various statements and continued to interrupt the
17 proceedings despite these admonitions.

18 C. JUDGE McCARTNEY then directed Mrs. LaCroix to
19 leave the Courtroom. As Mrs. LaCroix was leaving the Courtroom
20 reluctantly, she turned and looked at JUDGE McCARTNEY in a
21 glowering and insolent manner. JUDGE McCARTNEY then directed
22 Mrs. LaCroix to return before the bench so that he might make
23 inquiry into the meaning of her insolent manner and her other
24 conduct while in his Court. Mrs. LaCroix refused to return
25 before the bench even after repeated directives by
26 JUDGE McCARTNEY to do so. At this time, JUDGE McCARTNEY did
27 find Mrs. LaCroix guilty of contempt of Court and ordered her
28 confined to the County Jail for five days.

1 D. The defendant, Mr. LaCroix, himself admitted that
2 he had lied. During the process of sentencing, the defendant,
3 he continued to make interruptions and at this point
4 JUDGE McCARTNEY stated to the defendant that he would sentence
5 him to 180 days if he kept interrupting. The record will show
6 that at the supplemental probation hearing on April 7, 1971,
7 defendant's sentence was modified wherein he would serve a
8 total of 30 days.

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III

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 Answering Count One, Paragraph B (Joseph Clair Meyers,
TR 80985), JUDGE McCARTNEY admits as follows:

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 A. That he sentenced defendant to three years
probation on the condition that he attend ten Project
Awareness sessions and pay a fine of \$182.00.

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 B. That he advised the defendant to "get in the
Court, get in this Courtroom or I'll have you arrested and
brought into Court."

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 C. That he directed the bailiff to "get a Court
Reporter."

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 D. That a plea of guilty that was heretofore
entered by defendant, Mr. Meyers, and the sentence attendant
thereto was ordered vacated in the interest of justice.

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 That aside from said express admissions,
JUDGE McCARTNEY denies generally and specifically each and
every allegation contained therein.

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AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,

1 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

2 On April 29, 1971, the defendant Meyers was advised
3 of all of his constitutional rights, explaining to said
4 defendant the blood alcohol results would not be run and
5 therefore were not available unless and until the defendant
6 plead not guilty. In that event, the defendant would be
7 entitled to all discovery including the blood alcohol test
8 results. The .10% blood alcohol presumption of being under
9 the influence was explained to defendant and although the
10 defendant expressed an ambivalent attitude as to his guilt or
11 innocence, he requested the Court to enter his plea of guilty.
12 The defendant further volunteered to the Court that he had
13 been drinking and driving and admitted his driving ability had
14 been impaired to an appreciable degree, and therefore his plea
15 of guilty and the sentence was entered accordingly. Subsequently,
16 Defendant Meyers approached JUDGE McCARTNEY in the hallway
17 outside the Courtroom, again inquiring as to his blood alcohol
18 test results and he questioned as to whether he would be found
19 not guilty if the blood alcohol test results showed that it
20 was less than .10%. JUDGE McCARTNEY advised the defendant
21 Meyers that all of this had been previously explained to him
22 in the Courtroom; that the hallway in the Court Building was
23 not a place to discuss these matters, and in any event, he was
24 not in a position to advise the defendant Meyers as an
25 attorney. Defendant Meyers insisted upon asking questions and
26 expressed his doubt that he was in fact guilty of the charge.
27 Defendant asked that "if my blood alcohol test would be run and
28 comes out less than .10%, could I come in and set the plea of

1 guilty aside?" At this time, JUDGE McCARTNEY directed the
2 defendant Meyers to enter the Courtroom for the purpose of
3 setting aside the plea of guilty and the sentence and to set the
4 matter for trial either by jury or Court. Instead of proceeding
5 into the Courtroom as directed by JUDGE McCARTNEY, Defendant
6 Meyers insisted upon asking further questions and advice of
7 JUDGE McCARTNEY as to what he thought as to Defendant Meyers'
8 guilt or innocence. Under said circumstances, JUDGE McCARTNEY
9 repeated his request of Defendant Meyers at least three or four
10 times to enter the Courtroom to set aside the plea heretofore
11 entered. Upon his continuous and repeated questioning and
12 seeking of advice, JUDGE McCARTNEY at that time ordered Defendant
13 Meyers to enter the Courtroom and if he refused to do so, he
14 would be arrested and brought into the Court for the purposes
15 of setting aside the plea. Defendant Meyers did ultimately
16 enter the Courtroom and the plea of guilty and the sentence was
17 set aside and the matter set for trial.

18
19 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
20 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

21 The Commission on Judicial Qualifications does not
22 have jurisdiction to proceed any further pertaining to this
23 charge in that it has not complied with Rule 904(b), Title
24 Three, Division I of CALIFORNIA RULES OF COURT in any of its
25 particulars.

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IV

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Answering Count Two, JUDGE McCARTNEY denies

28 generally and specifically each and every allegation contained

1 therein.

2 V

3 Answering Count Two, Paragraph A (Mrs. Carol Perry),
4 JUDGE McCARTNEY denies generally and specifically each and every
5 allegation contained therein.

6 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
7 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

8 That on March 24, 1971, during the process of finding
9 Mrs. LaCroix guilty of contempt of Court and sentencing her to
10 five days in the County Jail and while directing the bailiff,
11 John Finck, to put Mrs. LaCroix in custody, JUDGE McCARTNEY
12 distinctly heard an outcry from his clerk, Mrs. Carol Ann Perry,
13 to the effect, "Oh, no, not that!" JUDGE McCARTNEY at said
14 time asked Mrs. Perry at least five times to apologize and
15 advised her that in the absence of her apology he would find
16 her in contempt of Court. She refused to apologize. After the
17 repeated refusals of Mrs. Perry to apologize, JUDGE McCARTNEY
18 then advised Mrs. Perry that she was in contempt of Court and
19 that she was going to jail. It was only at that time that
20 Mrs. Perry inquired of JUDGE McCARTNEY as to "What did I do?"
21 JUDGE McCARTNEY replied, "For what you said." Mrs. Perry then
22 replied, "OK, then I apologize." JUDGE McCARTNEY at said time
23 immediately released her from the contempt. After releasing
24 Mrs. Perry from the contempt, JUDGE McCARTNEY recessed and
25 went to see Mrs. Nadine Waymire, the first assistant to the
26 Municipal Court Clerk of the County of San Bernardino and
27 obtained an assurance of the immediate replacement of
28 Mrs. Perry. After obtaining such assurance, JUDGE McCARTNEY

1 did reenter the Courtroom to reconvene said Court proceedings
2 and also at which time JUDGE McCARTNEY directed Mrs. Perry to
3 leave the Courtroom. JUDGE McCARTNEY then continued the Court
4 proceedings with a new clerk.

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VI

7 Answering Count Two, Paragraph B (Mrs. Nadine Waymire)
8 JUDGE McCARTNEY admits as follows:

9 A. That he entered the office of Mrs. Nadine Waymire,
10 an assistant clerk of the San Bernardino County Municipal Court
11 District, Central Division, and that he requested a change of
12 clerk immediately.

13 B. That he did advise her that he would not allow "my
14 Court Clerk to interrupt me while I was finding someone in
15 contempt."

16 C. That he did want another Court Clerk "right
17 now."

18 That aside from said express admissions,
19 JUDGE McCARTNEY denies generally and specifically each and
20 every allegation contained therein.

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22 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
23 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

24 The Commission on Judicial Qualifications does not
25 have jurisdiction to proceed any further pertaining to this
26 charge in that it has not complied with Rule 904(b), Title
27 Three, Division I of CALIFORNIA RULES OF COURT in any of its
28 particulars.

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VII

Answering Count Two, Paragraph C, People v. Bone ,
(CR 95563, TR 80988), JUDGE McCARTNEY does admit as follows:

A. That the Court Reporter, Mr. Senn, interrupted the proceedings to say that they were not reportable during the discourse between the Deputy Public Defender Freeman and himself.

That aside from said express admissions, JUDGE McCARTNEY denies generally and specifically each and every allegation contained therein.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE, JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not have jurisdiction to proceed any further pertaining to this charge in that it has not complied with Rule 904(b), Title Three, Division I of CALIFORNIA RULES OF COURT in any of its particulars.

VIII

Answering Count Two, Paragraph D, JUDGE McCARTNEY denies generally and specifically each and every allegation contained therein.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE, JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not have jurisdiction to proceed any further pertaining to this

1 charge in that it has not complied with Rule 904(b), Title
2 Three, Division I of CALIFORNIA RULES OF COURT in any of its,
3 particulars.

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IX

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Answering Count Two, Paragraph D, No. 1

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(Mrs. Frances W. Rea, a court reporter), JUDGE McCARTNEY

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alleges as follows:

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A. That he has no information or belief on the
10 subject sufficient to enable him to answer the following
11 allegations, "Mr. Atkinson, an official reporter of the
12 Victorville Municipal Court had telephoned Mrs. Rea and at
13 his request she agreed to report the preliminary examinations
14 on that date starting at 1:30 p.m.," and placing his denial on
15 that ground, denies each and every such allegation.

16

B. JUDGE McCARTNEY admits that Mrs. Rea arrived at
17 the Victorville Municipal Court at approximately 1:22 p.m.,
18 and that he expected the official reporter, Mr. Atkinson, at
19 the Victorville Municipal Court for the purposes of reporting
20 the preliminary examinations promptly at 1:00 p.m.

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That aside from said express admission, JUDGE McCARTNEY
22 denies generally and specifically each and every allegation
23 contained therein.

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AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,

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JUDGE McCARTNEY ALLEGES AS FOLLOWS:

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The Commission on Judicial Qualifications does not
28 have jurisdiction to proceed any further pertaining to this

1 charge in that it has not complied with Rule 904(b), Title
2 Three, Division I of CALIFORNIA RULES OF COURT in any of its,
3 particulars.

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6 Answering Count Two, Paragraph D, No. 2,
7 JUDGE McCARTNEY denies generally and specifically each and
8 every allegation contained therein.

9
10 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
11 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

12 The charge contained in Count Two, Paragraph D,
13 No. 2, is uncertain in that it cannot be ascertained therefrom
14 as to what date the alleged incident took place.

15
16 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
17 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

18 The Commission on Judicial Qualifications does not
19 have jurisdiction to proceed any further pertaining to this
20 charge in that it has not complied with Rule 904(b), Title
21 Three, Division I of CALIFORNIA RULES OF COURT in any of its
22 particulars.

23
24 XI

25 Answering Count Two, Paragraph E, JUDGE McCARTNEY
26 admits as follows:

27 A. That he questioned Rudolph L. Corona, Municipal
28 Court Coordinator, Central Division, San Bernardino Municipal

1 Court, on the 28th day of October, 1971, in his own chambers
2 at approximately the hour of 12:00 p.m. (noon), with a Court
3 Reporter in attendance, in addition to Rose Grady, Municipal
4 Court Clerk, and the Marshal, Warren L. Van Valey.

5 B. That a discussion was held on the subject, among
6 others, of the stocking and distribution of the Affidavit of
7 Prejudice forms.

8 That aside from said express admissions,
9 JUDGE McCARTNEY denies generally and specifically each and
10 every allegation contained therein.

11
12 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
13 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

14 The Commission on Judicial Qualifications does not
15 have jurisdiction to proceed any further pertaining to this
16 charge in that it has not complied with Rule 904(b), Title
17 Three, Division I of CALIFORNIA RULES OF COURT in any of its
18 particulars.

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20 XII

21 Answering Count Two, Paragraph F, JUDGE McCARTNEY
22 denies generally and specifically each and every allegation
23 contained therein.

24
25 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
26 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

27 The Commission on Judicial Qualifications does not
28 have jurisdiction to proceed any further pertaining to this

1 charge in that it has not complied with Rule 904(b), Title
2 Three, Division I of CALIFORNIA RULES OF COURT in any of its
3 particulars.

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5 XIII

6 Answering Count Two, Paragraph F, No. 1 (Mrs. Waymire,
7 Mrs. Lynn Fabrizio, Mrs. Perry, Mrs. Grady, and Mrs. Ida Dimmit),
8 JUDGE McCARTNEY alleges as follows:

9 A. That he has no information or belief sufficient
10 to enable him to answer the following allegations: "Mrs. Waymire
11 has had difficulty assigning clerks to your Court. Mrs. Lynn
12 Fabrizio and Mrs. Perry have strenuously objected to assignments
13 to your Court. Mrs. Grady is usually quite upset at the end
14 of each work day. Mrs. Ida Dimmit, a reporter, has been unable
15 to continue working," and placing his denial on that
16 ground, denies each and every such allegation contained therein.

17 That JUDGE McCARTNEY denies generally and specifically
18 each and every allegation contained therein.

19
20 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
21 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

22 The charge contained in Count Two, Paragraph F,
23 No. 1, is uncertain in that it cannot be ascertained therefrom
24 as to what dates the alleged incidents took place.

25
26 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
27 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

28 The Commission on Judicial Qualifications does not

1 have jurisdiction to proceed any further pertaining to this
2 charge in that it has not complied with Rule 904(b), Title
3 Three, Division 1 of CALIFORNIA RULES OF COURT in any of its
4 particulars.

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XIV

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Answering Count Two, Paragraph F, No. 2 (Mrs. Fabrizio),
JUDGE McCARTNEY denies generally and specifically each and every
allegation contained therein.

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AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

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The charge contained in Count Two, Paragraph F, No. 2,
is uncertain in that it cannot be ascertained therefrom as to
what dates the alleged incidents took place.

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AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

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The Commission on Judicial Qualifications does not
have jurisdiction to proceed any further pertaining to this
charge in that it has not complied with Rule 904(b), Title
Three, Division I of CALIFORNIA RULES OF COURT in any of its
particulars.

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XV

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Answering Count Two, Paragraph F, No. 3,
JUDGE McCARTNEY admits the following:

28

A. That on January 1, 1972, Mrs. Kathryn Britto

1 was reporting proceedings in the case of People v. Cossentine
2 (TR 84105).

3 B. That Defendant Cossentine requested that he be
4 assigned to another Court.

5 C. That an inquiry was made as to the grounds.

6 D. A prisoner in the jury box appeared to be making
7 statements from the jury box.

8 E. That the following statement was made by
9 JUDGE McCARTNEY, "Now, I think the record should indicate,
10 ladies and gentlemen, that I'm extremely relaxed, not raising
11 my voice, and totally capable of handling the case"

12 F. That he asked Mrs. Grady, Mr. Howard Senn and
13 Mr. Freeman as to whether they found him upset in any way.

14 G. That he asked Mr. Cossentine whether he was in
15 fact red in the face, shouting, nervous or impolite to anybody.

16 JUDGE McCARTNEY alleges that he has no information
17 or belief on the subject sufficient to enable him to answer the
18 allegations, to wit: "After another matter was called,
19 Mrs. Britto requested Mr. Senn, a Court Reporter who was present
20 marking calendar assignments, to have the bailiff call for a
21 replacement reporter," and placing his denial on that ground,
22 JUDGE McCARTNEY denies each and every such allegation.

23 That aside from said express admissions,
24 JUDGE McCARTNEY denies generally and specifically each and
25 every allegation contained therein.

26
27 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
28 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

1 The Commission on Judicial Qualifications does not
2 have jurisdiction to proceed any further pertaining to this
3 charge in that it has not complied with Rule 904(b), Title
4 Three, Division I of CALIFORNIA RULES OF COURT in any of its
5 particulars.

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XVI

8 Answering Count Two, Paragraph F, No. 4,
9 JUDGE McCARTNEY denies generally and specifically each and every
10 allegation contained therein.

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12 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
13 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

14 Deputy Marshal F. J. Van Wagner III, did not leave
15 his Court because of anything that he did but because of the
16 set ways of Mrs. Grady, among other things. Marshal Van Wagner
17 stated to JUDGE McCARTNEY that Mrs. Grady pulled a file out of
18 his hand and another time, she refused to allow him to see a
19 file by covering the file with her arms.

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21 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
22 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

23 The Commission on Judicial Qualifications does not
24 have jurisdiction to proceed any further pertaining to this
25 charge in that it has not complied with Rule 904(b), Title
26 Three, Division I of CALIFORNIA RULES OF COURT in any of its
27 particulars.

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XVII

Answering Count Two, Paragraph F, No., 5,
JUDGE McCARTNEY denies generally and specifically each and every
allegation contained therein.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The charge contained in Count Two, Paragraph F, No. 5,
is uncertain in that it cannot be ascertained therefrom as to
what dates the alleged incidents took place.

AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not
have jurisdiction to proceed any further pertaining to this
charge in that it has not complied with Rule 904(b), Title
Three, Division 1 of CALIFORNIA RULES OF COURT in any of its
particulars.

XVIII

In answer to Count Three, JUDGE McCARTNEY denies
generally and specifically each and every allegation contained
therein.

XIX

Answering Count Three, Paragraph A, JUDGE McCARTNEY
admits as follows:

A. That on May 27, 1971, in the case of People v.

1 Bone (CR 95563, TR 80988), he summoned Mr. Freeman.

2 B. That he did summon Mr. Ward, the Public Defender
3 of San Bernardino County.

4 That aside from said express admissions,
5 JUDGE McCARTNEY denies generally and specifically each and every
6 allegation contained therein.

7
8 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
9 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

10 The Commission on Judicial Qualifications does not
11 have jurisdiction to proceed any further pertaining to this
12 charge in that it has not complied with Rule 904(b), Title
13 Three, Division I of CALIFORNIA RULES OF COURT in any of its
14 particulars.

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17 Answering Count Three, Paragraph B, JUDGE McCARTNEY
18 admits the following:

19 A. That on June 25, 1971, in the case of People v.
20 William L. Birch and Herschel H. Jennings (CR-26266), a
21 preliminary hearing was held before JUDGE McCARTNEY.

22 B. That JUDGE McCARTNEY did at approximately 2:00 p.m.,
23 request Mr. Philip Kassel and his two clients, Mr. Helkides, the
24 Deputy District Attorney, Court Clerk, Mrs. Grady, and the Court
25 Reporter, Mrs. Hewitt, into the Judge's chambers. Among other
26 things JUDGE McCARTNEY did discuss an article which appeared
27 in the Los Angeles Daily Journal on June 24, 1971, entitled,
28 "Charges may be pared without consent of D.A."

1 That aside from siad express admissions,
2 JUDGE McCARTNEY denies generally and specifically each and every
3 allegation contained therein.

4
5 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
6 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

7 That the preliminary hearing in the case of People v.
8 Birch and Jennings, Defendants (CR 26266), commenced at
9 10:30 a.m. Court was recessed at 11:00 a.m. to 11:15 a.m., to
10 allow the defense counsel, Mr. Kassel, to make an appearance in
11 the Superior Court. That after reconvening, the Court again
12 recessed at 11:50 a.m. to allow the defense counsel, Mr. Kassel,
13 to go to a probation and sentence hearing in the Superior Court.
14 Recess was declared until 1:00 p.m. That at 1:00 p.m., Court
15 reconvened until 2:20 p.m. at which time the Court recessed
16 until 2:50 p.m. Upon reconvening, the Court again recessed at
17 3:35 p.m. and reconvened at 3:50 p.m. The transcript shows
18 that at 4:45 p.m. to 4:55 p.m., JUDGE McCARTNEY studied the
19 search warrant and affidavit on the bench. Further testimony
20 and arguments by counsel were held and the defendants were held
21 answerable to the Superior Court. Two witnesses were called by
22 the prosecution and the transcript consists of 159 pages.

23
24 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
25 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

26 The Commission on Judicial Qualifications does not
27 have jurisdiction to proceed any further pertaining to this
28 charge in that it has not complied with Rule 904(b), Title

1 Three, Division I of CALIFORNIA RULES OF COURT in any of its
2 particulars.

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4 XXI

5 Answering Count Three, Paragraph C, JUDGE McCARTNEY
6 admits the following:

7 A. In People v. Watkins (CR 95489), on
8 October 20, 1971, Deputy Public Defender Phillip Barnett did
9 appear relative to the filing of an Affidavit of Prejudice on
10 behalf of the Defendant Watkins.

11 B. JUDGE McCARTNEY after reviewing the Affidavit of
12 Prejudice signed by a Charles E. Ward, asked Mr. Barnett, "Do
13 you think you might have the courtesy to use 'Honorable'? The
14 other people do."

15 C. In the afternoon session after a supplemental
16 Affidavit of Prejudice was filed by Mr. Barnett, JUDGE McCARTNEY
17 inquired, "I think it's a matter of common courtesy to put
18 'The Honorable Judge James J. McCartney'."

19 That aside from said express admission,
20 JUDGE McCARTNEY denies generally and specifically each and every
21 allegation contained therein.

22
23 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
24 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

25 That on October 20, 1971, Deputy Public Defender
26 Phillip Barnett filed an Affidavit of Prejudice against
27 JUDGE McCARTNEY, said Affidavit being signed by Charles E. Ward.
28 That a supplemental Affidavit of Prejudice under CCP 170.6 was

1 filed by Mr. Barnett and JUDGE McCARTNEY stated to Mr. Barnett
2 as follows: "Sir, would you be kind enough to tell Mr. Ward
3 that I received other documents-I have never received legal
4 documents that didn't say at the title, you know. I call you
5 'counselor'. I think it's a matter of common courtesy to put
6 'The Honorable Judge James J. McCartney'. Do you think that
7 it's in good taste?" To which Mr. Barnett stated, "That was an
8 oversight, and I apologize." The balance of the transcript
9 consisted of 29 pages and has to do with the propriety of filing
10 of the Affidavit of Prejudice in this particular instance.
11 Mr. Barnett was given sufficient time (until November 23, 1971)
12 to file whatever Writ he wished to do so. Ultimately, the upper
13 courts held that the filing of the Affidavit was in fact
14 untimely.

15
16 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
17 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

18 The Commission on Judicial Qualifications does not
19 have jurisdiction to proceed any further pertaining to this
20 charge in that it has not complied with Rule 904(b), Title
21 Three, Division I of CALIFORNIA RULES OF COURT in any of its
22 particulars.

23

24 . XXII

25 Answering Count Three, Paragraph D, JUDGE McCARTNEY
26 admits as follows:

27 A. That on January 3, 1972, he did handle the Master
28 Calendar and among the cases was People v. Anderson (F 16083).

1 B. At approximately 10:00 a.m., on January 3, 1972,
2 Deputy Public Defender Rager did file an Affidavit of Prejudice
3 in the Anderson case and JUDGE McCARTNEY indicated that it was
4 filed too late.

5 C. That JUDGE McCARTNEY was not aware that the Public
6 Defender's Office intended to file Affidavits of Prejudice in
7 all cases assigned to his Court.

8 That aside from said express admissions,
9 JUDGE McCARTNEY denies generally and specifically each and every
10 allegation contained therein.

11

12 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
13 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

14 That at the time that JUDGE McCARTNEY indicated to
15 Deputy Public Defender Rager that the filing of the Affidavit
16 of Prejudice was too late, he stated to Mr. Rager that he would
17 give him time to file his Writ of Prohibition in his Court.
18 Said Writ of Prohibition was filed at approximately 2:32 p.m.
19 wherein the case of People v. Anderson was continued over to
20 January 28, 1972, at 8:30 a.m., in Department C.

21

22 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
23 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

24 The Commission on Judicial Qualifications does not
25 have jurisdiction to proceed any further pertaining to this
26 charge in that it has not complied with Rule 904(b), Title
27 Three, Division I of CALIFORNIA RULES OF COURT in any of its
28 particulars.

XXIII

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2 Answering Count Three, Paragraph E, JUDGE McCARTNEY
3 admits as follows:

4 A. That in the case of People v. Worley (97106, 97382)
5 the defense counsel, Gary Smeltzer, did move for a new trial
6 on the grounds of alleged prejudicial error by the trial Court.

7 B. JUDGE McCARTNEY did take the witness stand, and
8 after being administered the oath, testified in the absence of
9 a Judge on the bench.

10 C. The bailiff was sworn and testified as to his
11 knowledge of the events that took place.

12 That aside from said express admissions,
13 JUDGE McCARTNEY denies generally and specifically each and every
14 allegation contained therein.

15
16 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
17 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

18 The Commission on Judicial Qualifications does not
19 have jurisdiction to proceed any further pertaining to this
20 charge in that it has not complied with Rule 904(b), Title
21 Three, Division I of CALIFORNIA RULES OF COURT in any of its
22 particulars.

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24 XXIV

25 Answering Count Four, JUDGE McCARTNEY denies generally
26 and specifically each and every allegation contained therein.

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XXV.

Answering the allegations incorporated in Count Four, Paragraph A, JUDGE McCARTNEY incorporates herein by reference each and every admission, denial, and allegation of Paragraph I and II of JUDGE McCARTNEY's answer to the charges contained in Paragraph A of Count One.

XXVI

Answering the allegations incorporated in Count Four, Paragraph B, JUDGE McCARTNEY incorporates herein by reference each and every admission, denial, and allegation of Paragraph III (including the first affirmative defense) of JUDGE McCARTNEY's answer to the charges contained in Paragraph B of Count One.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE, JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not have jurisdiction to proceed any further pertaining to this charge in that it has not complied with Rule 904(b), Title Three, Division I of CALIFORNIA RULES OF COURT in any of its particulars.

XXVII

Answering Count Four, Paragraph C, People v. Cossentine (TR 84105), JUDGE McCARTNEY admits as follows:

A. That on January 21, 1972, the defendant Cossentine did attempt to file an Affidavit of Prejudice without knowledge of the appropriate statute.

1 B. JUDGE McCARTNEY did question the defendant, who
2 was proceeding in propria persona, as to his reasons. Defendant
3 Cossentine, among other things, did state, "I feel that the Court
4 has been under some pressure-intense emotional and nervous
5 pressure."

6 C. The defendant did use the term "change of venue."

7 D. JUDGE McCARTNEY did state as follows: "Go out the
8 door, turn to the left, go down to the Clerk's office, and
9 they'll supply you with the Affidavit. And if that's the
10 appropriate Affidavit and that's the one you want to file and
11 if you file it, I'll honor it."

12 That aside from said express admissions,
13 JUDGE McCARTNEY denies generally and specifically each and every
14 allegation contained therein.

15
16 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
17 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

18 JUDGE McCARTNEY stated to Defendant Cossentine as
19 follows: "Well, Sir, I'm saying that if you want me to appoint
20 the Public Defender to represent you, I will. You'll fill out
21 an Affidavit of Indigency and I'll consider it." That
22 JUDGE McCARTNEY further advised Defendant Cossentine where to
23 obtain the appropriate Affidavit.

24
25 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
26 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

27 The Commission on Judicial Qualifications does not
28 have jurisdiction to proceed any further pertaining to this

1 charge in that it has not complied with Rule 904(b), Title
2 Three, Division I of CALIFORNIA RULES OF COURT in any of its
3 particulars.

4
5 XXVIII

6 Answering Count Five, JUDGE McCARTNEY denies
7 generally and specifically each and every allegation contained
8 therein.

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10 XXIX

11 Answering Count Five, Paragraph A, JUDGE McCARTNEY
12 admits as follows:

13 A. That on August 25, 1971, at 11:37 a.m., the case
14 of People v. Campbell (CR F-15727), was continued until 1:30 p.m.
15 on August 25, 1971, on stipulation of counsel of record and
16 the District Attorney's Office in the presence of the defendant.
17 That at 1:35 p.m. the Court reconvened and JUDGE McCARTNEY
18 stated as follows: "Let the record indicate that Judge Chapman
19 just made an order directing this case into his Court after I
20 have had jurisdiction in this case since yesterday--have had
21 jurisdiction, ordered it back at 1:30, have come into this
22 Court, have called the case, and after calling the case I was
23 told by Judge Chapman, without any reason whatsoever that the
24 matter is to be brought to his Court.

25 I am now going to Judge Chapman's Court immediately to
26 find out about the matter and to discern why this is being done.
27 This Court is in recess for 15 minutes."

28 B. JUDGE McCARTNEY did go to Judge Chapman's chambers

1 together with Mr. Clark Hansen, Deputy District Attorney,
2 Marshal Van Valey, Attorneys Mr. Paul Steinman and Mr. Beswick
3 and Faith Hewitt, the Court Reporter.

4 That aside from said express admissions,
5 JUDGE McCARTNEY denies generally and specifically each and every
6 allegation contained therein.

7
8 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
9 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

10 The Commission on Judicial Qualifications does not
11 have jurisdiction to proceed any further pertaining to this
12 charge in that it has not complied with Rule 904(b), Title
13 Three, Division 1 of CALIFORNIA RULES OF COURT in any of its
14 particulars.

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17 Answering the allegations incorporated in Count Five,
18 Paragraph B, JUDGE McCARTNEY incorporates herein by reference
19 each and every admission, denial and allegation of Paragraph
20 XXIII of JUDGE McCARTNEY's answer to the charges contained in
21 Paragraph E of Count Three.

22
23 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
24 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

25 The Commission on Judicial Qualifications does not
26 have jurisdiction to proceed any further pertaining to this
27 charge in that it has not complied with Rule 904(b), Title
28 Three, Division I of CALIFORNIA RULES OF COURT in any of its

1 particulars.

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Answering Count Five, Paragraph C, JUDGE McCARTNEY
denies generally and specifically each and every allegation
contained therein.

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AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

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The Commission on Judicial Qualifications does not
have jurisdiction to proceed any further pertaining to this
charge in that it has not complied with Rule 904(b), Title
Three, Division I of CALIFORNIA RULES OF COURT in any of its
particulars.

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XXXII

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17

Answering Count Five, Paragraph D, JUDGE McCARTNEY
admits that he has been observed humming to himself on the bench.

That aside from said express admission, JUDGE McCARTNEY
denies generally and specifically each and every allegation
contained therein.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not
have jurisdiction to proceed any further pertaining to this
charge in that it has not complied with Rule 904(b), Title
Three, Division I of CALIFORNIA RULES OF COURT in any of its

1 particulars.

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XXXIII

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Answering Count Six, JUDGE McCARTNEY denies generally and specifically each and every allegation contained therein.

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Answering the allegations incorporated in Count Six, Paragraph A, JUDGE McCARTNEY incorporates herein by reference each and every admission, denial and allegation of Paragraph XX (including the affirmative defense) of JUDGE McCARTNEY's answer to the charges contained in Paragraph B of Count Three.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE, JUDGE McCARTNEY ALLEGES AS FOLLOWS:

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Answering the allegations incorporated in Count Six, Paragraph B, JUDGE McCARTNEY incorporates herein by reference each and every admission, denial and allegation of Paragraph XXIII of JUDGE McCARTNEY's answer to the charges contained in Paragraph E of Count Three.

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1 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
2 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

3 The Commission on Judicial Qualifications does not
4 have jurisdiction to proceed any further pertaining to this
5 charge in that it has not complied with Rule 904(b), Title
6 Three, Division I of CALIFORNIA RULES OF COURT in any of its
7 particulars.

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XXXVI

10 Answering Count Six, Paragraph C, JUDGE McCARTNEY
11 admits as follows:

12 A. That between July of 1971 and March of 1972,
13 approximately 205 Affidavits of Prejudice were filed against
14 him.

15 That aside from said express admission,
16 JUDGE McCARTNEY denies generally and specifically each and every
17 allegation contained therein.

18

19 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
20 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

21 The Commission on Judicial Qualifications does not
22 have jurisdiction to proceed any further pertaining to this
23 charge in that it has not complied with Rule 904(b), Title
24 Three, Division I of CALIFORNIA RULES OF COURT in any of its
25 particulars.

26

27 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
28 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

1 Judge on the bench during such testimony.

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4 Answering Count Seven, Paragraph B, No. 1, in the
5 case of Lujan v. State of California (T 208271), on or about
6 December 10, 1971, JUDGE McCARTNEY admits that he took the
7 stand and testified as a witness and there was no Judge on the
8 bench.

9 That aside from said express admission,
10 JUDGE McCARTNEY denies generally and specifically each and every
11 allegation contained therein.

12

13 AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE,
14 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

15 There was an allegation in the corrum nobis proceeding
16 that JUDGE McCARTNEY had abused the defendant's rights, that
17 the defendant did not understand English. That JUDGE McCARTNEY
18 took the stand to give the defense attorney full opportunity
19 to ascertain the truth by way of cross-examination. It is to
20 be noted that the defense attorney did drop his Writ of Corrum
21 Nobis after this hearing.

22

23 AS AND FOR A SECOND, DISTINCT AND AFFIRMATIVE DEFENSE,
24 JUDGE McCARTNEY ALLEGES AS FOLLOWS:

25 The Commission on Judicial Qualifications does not
26 have jurisdiction to proceed any further pertaining to this
27 charge in that it has not complied with Rule 904(b), Title
28 Three, Division I of CALIFORNIA RULES OF COURT in any of its

1 particulars.

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Answering Count Seven, Paragraph B, No. 2, in the case of People v. Worley (97106, 97382), JUDGE McCARTNEY admits that he took the stand and testified when there was no Judge on the bench.

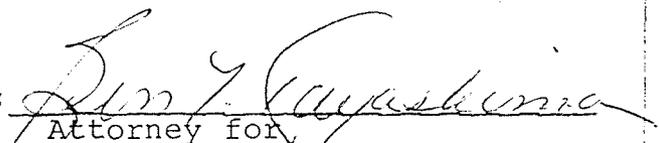
That aside from said express admission, JUDGE McCARTNEY denies generally and specifically each and every allegation contained therein.

AS AND FOR A FIRST, DISTINCT AND AFFIRMATIVE DEFENSE, JUDGE McCARTNEY ALLEGES AS FOLLOWS:

The Commission on Judicial Qualifications does not have jurisdiction to proceed any further pertaining to this charge in that it has not complied with Rule 904(b), Title Three, Division I of CALIFORNIA RULES OF COURT in any of its particulars.

KAYASHIMA & TESSIER

BY:


Attorney for
Judge James J. McCartney

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VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am ~~HX~~ JUDGE JAMES J. MCCARTNEY

in the above entitled action; I have read the foregoing ANSWER

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 21, 1972 at Pomona, California
(date) (place)

Judge James J. McCartney
JUDGE JAMES J. MCCARTNEY
Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

401 South Main Street, Pomona, California 91766

On September 21, 1972, I served the within ANSWER

on the Commission on Judicial Qualifications
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at Pomona, California
addressed as follows:

Commission on Judicial Qualifications
Room 3041, State Building
350 McAllister Street
San Francisco, California 94102

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 21, 1972 at Pomona, California
(date) (place)

Lana Lea Schott
LANA LEA SCHOTT
Signature