

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE
BUILDING A, ROOM 312 515 FIFTH STREET, N.W.
WASHINGTON, D.C. 20001

TELEPHONE: (202) 727-1363

Members

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December 29, 1978

The Honorable Nicholas S. Nunzio
Associate Judge
The Superior Court of the
District of Columbia
Washington, D. C. 20001

Dear Judge Nunzio:

In December of 1976, the Commission received a complaint pertaining to certain actions of yours in the case of United States v. Harvey Petway, Criminal No. 83114-76. During the course of that investigation, in May of 1978, the Commission also received a complaint pertaining to your actions in the case of United States v. Jerome Harling, Criminal No. 48687-76. The Commission, through its Special Counsel, conducted an investigation which included a review of pertinent court records and interviews with knowledgeable persons. While both these matters were under investigation, the Commission was advised that your actions in the case of United States v. Gene A. Braxton, Criminal No. 96562-75, were under scrutiny in the District of Columbia Court of Appeals.

During the course of the Commission's investigation, decisions in Harling v. United States, D. C. App. D. C., 11719, decided June 21, 1978; Petway v. United States, D. C. App. D. C., 11972, decided September 8, 1978, and Braxton v. United States, D. C. App. D. C., 12412, decided October 25, 1978 were announced by the District of Columbia Court of Appeals.

Prior to these events, on March 29, 1976 in a private letter of reprimand, the Commission had officially disapproved of your actions in U. S. v. Henderson McCalop, Criminal No. 83760-74, and U. S. v. William H. McCalop, Criminal No. 83761-74, and U. S. v. Paul Tyson,

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Criminal No. 41684-75 for comments made by you towards the jury panel at the conclusion of the case.

On November 27, 1978 the Commission forwarded to you a draft Notice of Formal Proceeding outlining its areas of concern and inviting you, if you desired, to meet with the Commission informally prior to having the Commission take any final action with respect to issuance of a Notice of Formal Proceeding, pursuant to our Rules.

Thereafter, on December 13, 1978, accompanied by counsel, you appeared before the Commission and addressed yourself to the matters raised by the Commission in its draft Notice. Following your appearance, discussions were undertaken between your counsel and Special Counsel exploring the possibility of a disposition short of a Formal Hearing. To that end, you agreed to waive your rights to a Formal Hearing before the Commission and agreed that this letter will be made public.

After consideration of the complaints, the reports of Special Counsel, relevant portions of the transcripts in the reported cases, and the submissions made by you and your counsel, the following appears:

- (a) You unreasonably and unjustifiably removed defense counsel in the case of Harling v. United States thereby requiring reversal and a new trial;
- (b) You interjected yourself injudiciously and intemperately in the case of Petway v. United States resulting in reversal of the case and remand for a new trial;
- (c) You interjected yourself improperly in the tactics of defense attorneys in the case of Braxton v. United States, ultimately resulting in a dismissal of the indictment.

In all the foregoing instances, while acting in your official capacity, you failed to conduct yourself in a manner that would promote public confidence in the judiciary in violation of Canon 2A of the Code of Judicial Conduct; acted in an impatient, discourteous and unreasonable manner in violation of Canon 3A (3) of the Code of Judicial Conduct; and failed to accord interested persons a right to be heard in violation of Canon 3A (4) of the Code of Judicial Conduct.

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The Commission recognizes, and you pointed out in your statement to the Commission, that for reasons of court administration you have been scheduled for an extraordinary amount of time in the trial of serious felony cases over the last four years. The Commission also acknowledges that you presided with distinction over one of the most difficult and celebrated criminal cases of the last decade, and we note that, because of your concern for the Court's backlog you failed to take advantage of the full vacation and sick leave to which you were entitled.

In conclusion, while there appear to be certain mitigating factors, the Commission believes that your conduct in the foregoing cited cases has been improper and ill-advised and they are formally censured.

With this letter, the Commission is closing its inquiry.

DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE

By Henry A. Berliner, Jr.
Chairman