

California's Star Chamber

'Jenny' Proceedings Are Marked By Secrecy, Partisanship

By Shawn Steel
and Patrick Manshardt

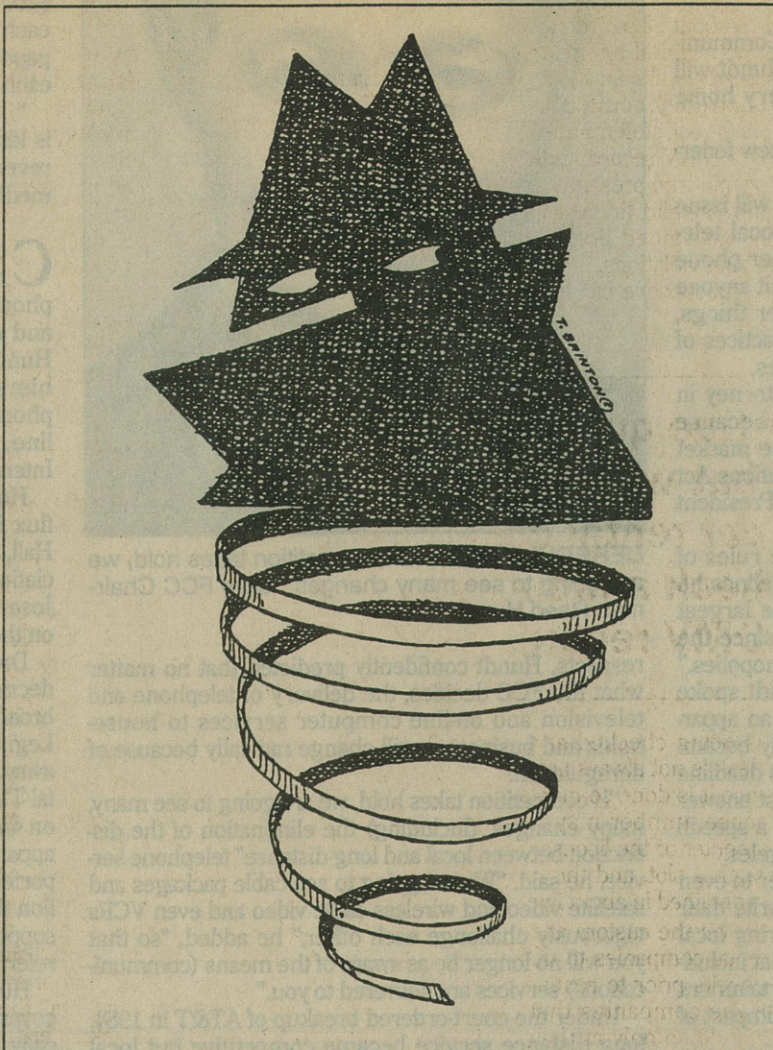
The members of the Commission on Judicial Nominees ought to be ashamed of themselves. Meeting in secret, they handed down an "unqualified" rating to California Supreme Court nominee Janice Rogers Brown.

Gov. Pete Wilson and everyone else involved refused to yield to this attempt at political blackmail. Justice Brown was confirmed to the court on Thursday, despite the negative rating. But the suspicion remains that the rating of Justice Brown, a self-described conservative, had more to do with the ideological agenda of the State Bar than with an honest evaluation of her capabilities as a judge.

The Commission on Judicial Nominees Evaluation (known as the JNE or "Jenny" Commission) consists of 21 lawyers and six public members, all of whom serve at the will of the Board of Governors of the State Bar. In an era when both California and the U.S. Supreme Court are rethinking the wisdom of quotas and set-asides, the diversity requirements of the panel are representative of the left's usual obsession with race, gender and ethnicity: The rules require that at least one-third of the commissioners be minorities and at least half must be female.

As State Bar critic Mark Pulliam, an attorney in San Diego, stated, the unqualified rating for Justice Brown is nothing more than "political blackballing" by the commission. The commission acts as sort of a judicial "Star Chamber" of the State Bar. Both it and the infamous 15th century court held their proceedings under the cloak of utmost secrecy and neither was subject to any outside scrutiny.

More disturbingly, hearsay allegations are protected by the com-



of the accusers from public scrutiny. Court of Appeal Justice Arthur Scotland has suggested that the commission's promise of confidentiality allows critics to derail candidates out of personal animosity for their political leanings.

One does not have to look far for evidence of political bias on the part of the commission. Commission vice chair Arturo Vargas was formerly the vice president of community education and public policy for the Mexican American Legal Defense and Educational Fund. MALDEF's political agenda has included lobbying for the rights of illegal immigrants and supporting racial quotas. Information on individual commission members, however, is almost impossible to come by since both the commission and the State Bar are unusu-

The circumstances around the nomination also raise suspicions of political animus. Brown, an associate justice on the Court of Appeal and the first female African American nominee to the Supreme Court, was praised in a letter signed by all nine of her colleagues on the 3rd District for her intelligence and ability to do the job. Justice Brown's appointment is supported not only by the governor but by Attorney General Dan Lungren and Chief Justice Ronald M. George. The commission's rating was rendered even more suspect when Brown received the support of former California Supreme Court Justice Allen Broussard, himself an African American and a highly regarded liberal who told the commission he did not agree with its evaluation.

Much has been made of Justice Brown's relatively short time of 18 months on the bench. However,

would have disqualified such legal giants as California Supreme Court Justice Roger Traynor and U.S. Supreme Court Justice Earl Warren. Additionally, Brown has 18 months' more experience as an appellate court justice than Wilson's second choice for the post, former U.S. attorney Robert Bonner, who received a rating of "qualified" from the panel.

Why would such a diverse panel find Brown unqualified? The answer lies in the mix of African American female and conservative philosophy that the State Bar's liberal establishment finds so unsettling.

One liberal judge who asked not to be identified predicted Brown would be another Clarence Thomas. Conservative African Americans like Brown and Thomas embarrass the civil rights establishment by their success in life despite humble beginnings (Justice Brown was the daughter of Alabama sharecroppers). Their life stories belie liberal arguments that people of color have little chance of success in "racist" America without quotas, set-asides and government handouts.

The Jenny Commission's continued secrecy and partisanship raise the need for true reform in the judicial evaluation process. The people of California deserve better than a judicial Star Chamber. Just as important, the members of the State Bar deserve to be served by an organization that is run for the purpose of improving legal services instead of implementing a social and public policy agenda that would evaporate in the sunlight of public policy.

The State Bar may soon get its comeuppance with the plebiscite later this month that will determine if membership in the organization should continue to be mandatory. The Jenny Commission's unsuccessful power play may turn out to have important ramifications for the future of the State Bar itself.

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