

JUSTICE CALIFORNIA

Telephone (415) 847-2024
e-mail: info@justicecalifornia.org

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California Judicial Council Deceives Legislature, Public Council Provides Misleading Data of Public's Concerns about Judicial Fairness

The following bulletin is the fourth of a series aimed at a) exposing concerns about inappropriate and/or illegal conduct of members of the California Judiciary; and b) obtaining an investigation, and confirmation or denial of the supporting facts providing the basis for the concerns. **This bulletin is of particular concern, because it illustrates the California Judicial Council's historic inability to accurately self-monitor, and self-report, about issues involving the judiciary — and, in fact, its willingness to distort the truth.** This bulletin precedes a JusticeCalifornia analysis of the new (and, in JusticeCalifornia's opinion, self-serving) Commission for Impartial Courts 161-page draft report about judicial campaign contributions (see the report at <http://www.courtinfo.ca.gov/jc/tflists/documents/cic-finalreport.pdf>.) The Commission for Impartial Courts was appointed by California Supreme Court Chief Justice Ron George. Chief Justice George appointed Associate Supreme Court Justice Ming Chin to chair the Steering Committee of the Commission. Both Justices are up for retention elections in 2010, and both received hefty contributions from lawyers during their 1998 retention elections. (See JusticeCalifornia Bulletin #1, as well as the Civil Justice Association of California report "Campaign Contributions to the California Judiciary, 1997-2000" www.cjac.org/finalrept2000.pdf; pages 40-42).

JusticeCalifornia invites the legislature and others to consider the following information about the deceptive practices previously employed by the California Judicial Council, and consider whether or not it is irresponsible for the legislative and executive branches to continue to allow the California Judiciary, *which holds itself out as a model to the country and the world*, to self-monitor and self-report.

We are writing to you because you occupy a leadership position or sit on a legislative committee which will or may consider bills during this legislative session addressing serious problems in California's courts.

JC 2009 JUDICIAL CLAIM # 4:

JusticeCalifornia Claim: The California Judicial Council is purposefully creating misleading propaganda, rather than factual information, for dissemination to the legislature and the public. The purpose of the propaganda is to cover up the fact that two landmark studies prepared for the CA Judicial Council in 2005 reveal that a) fairness and diversity rank at the very bottom of the California judiciary's list of objectives; b) the overwhelming majority (73%) of those surveyed by the Judicial Council agreed that **"Decisions made by local judges are influenced by political considerations"**; and c) the largest unmet expectation of the public is judicial accountability -- in other words, the public wants better reporting on the job performance of California judges. In response to these problematic findings, the Judicial Council misrepresented the findings of these

landmark studies, and then conducted follow-up focus groups in a highly improper manner purposefully designed to elicit desired and misleading responses rather than accurate and unbiased data.

Supporting Facts:

A. The Praxis Report: Fairness and Diversity rank lowest in study of judicial objectives.

Although the California Judicial Council claims in its 2000 and 2006 six-year strategic plans (available on the California Courts website) that its number one goal is “Access, Fairness and Diversity”, a June 22, 2005 report issued by Praxis Consulting for the Judicial Council revealed that diversity and fairness ranked lowest in a 2005 survey regarding objectives of California trial courts and the Judicial Council’s Administrative Office of the Courts. Less than 1% (6.6) of the total 1,038 trial court objectives identified fell into the Diversity/Culturally Appropriate Services categories, and less than one-half of 1% (4.4) of the total 1,038 trial court objectives fell into the Equal Justice/Fairness category.

(<http://www.courtinfo.ca.gov/reference/documents/cafinalrep061305.pdf> , see pp 12-14, 35, 45)

The Praxis report explains that examples of goals and objectives falling into the "Diversity/Culturally Appropriate Services" include to "(1) be aware of the service needs of the diverse ethnic population of the county; (2) provide culturally appropriate services, (3) encourage diversity for all appointments made by the court, (4) ensure that court personnel reflect the diversity of the population, (5) address ethnic bias, and (6) understand cultural differences."

Examples of goals and objectives falling into the "Equal Justice/Fairness" category include those that: "(1) provide equal access for all people, (2) implement consistent policies and procedures to promote fairness and standardization, and (3) treat all court users fairly."

The Praxis report also noted that victims and litigants, and attorneys who used the courts most, had the least confidence in and most negative opinion of the courts (p. 46 of the Praxis report.).

B. 9/25/05 Trust and Confidence Report: 73% of those surveyed believe judicial decisions are influenced by politics.

The Praxis report was followed by a September 2005 Report called “Trust and Confidence in the California Courts” (Part I, A Survey of the Public and Attorneys)

http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf

Page 32 of the 2005 Trust and Confidence Report summarizes survey findings about how the public rates the performance of State and local courts. **73% of those surveyed agreed that “Decisions made by local judges are influenced by political considerations”.**

Page 26 of the 2005 Trust and Confidence Report addresses “neutrality” issues, defined on page 24 of the report as *“honest and impartial decision makers who base decisions on facts”*. The summary on page 26 of the report indicates that a substantial percentage of those surveyed **disagreed** with the statement *“The Courts in my county are unbiased in their case decisions.”*

The breakdown by ethnicity was:

African Americans:	53% disagreed
Asian American:	35% disagreed
White:	33% disagreed
Latino:	30% disagreed

C. The Judicial Council's July 2007 Fact Sheet: Council falsely claims that the majority of Californians believe the courts do an "outstanding job" regarding neutrality.

The Judicial Council addressed judicial "neutrality" data in a "Fact Sheet" issued by the Judicial Council in December, 2006, and re-released in July 2007.

http://www.courtinfo.ca.gov/reference/documents/factsheets/trust_p2.pdf .

The Judicial Council announced in the Fact Sheet that with respect to neutrality "*the majority of Californians say the courts do an outstanding job*" (Fact Sheet, Page 3.) However, the actual Trust and Confidence report reveals that less than 28% of those surveyed "strongly agreed" that courts in their counties were unbiased (Report, page 26). The breakdown of those "strongly agreeing", by ethnicity was:

African Americans:	14%
Asian American:	27%
White:	24%
Latino:	28%

D. The Judicial Council's 2006 Focus Groups: The Council purposefully conducted improper focus groups to create the illusion that Californians believe judges are fair, and would not take a bribe.

The above-mentioned July 2007 Fact Sheet says that in 2006, the Judicial Council undertook "phase II" of the Trust and Confidence Study by conducting **focus groups** and interviews. The Fact Sheet says that court users in the focus groups indicated that they "*have an especially high regard for judges.*"

The actual focus group report was released in December 2006 and is called "Trust and Confidence in the California Courts" Phase II, Focus Groups and Interviews. On page 32 of the report, readers are informed that focus group data indicated that "*Most court users find the courts to be neutral and impartial, with many people asserting that a California judge would never take a bribe*" http://www.courtinfo.ca.gov/reference/documents/Calif_Courts_Book_rev6.pdf

A videotape summarizing Phase I results, and video clips from some of the focus groups, can be found on the California Courts website. The video clips include the footage of focus group participants answering questions about judicial bribes and fairness. http://www.courtinfo.ca.gov/reference/4_37pubtrust.htm

The videotape reveals that a balding male facilitator led the focus groups, and deftly guided the answer to the important questions about fairness and impartiality of judges--by asking leading questions and then raising his own hand in answer to his questions:

Questions he asked included:

"Who agrees that judges would not take a bribe?" and then the facilitator shot his hand up, followed by videotaped focus group participants raising their hands.

"Are judges on balance fair or unfair-who would say fair?" and then the facilitator again shot his hand up, followed by videotaped focus group participants raising their hands.

The Judicial Council knows how to properly conduct focus groups, and knows that the facilitator, by raising his own hand in response to a leading question posed by him, was acting in a manner designed to elicit biased, rather than accurate data. The Judicial Council knows this because in anticipation of a May 1998 Court Planning conference, it commissioned and received a detailed guide on how to properly conduct focus groups. The guide is called "Using Focus Groups in Community-Focused Court Planning", and for years it was available on the California Courts website. (JusticeCalifornia is no longer able to locate it on the court website, but has copies.) The focus group guide includes the following tips:

"It should be noted that focus groups must be planned and operated skillfully in order to avoid biasing the information gathered."

"Open ended questions [\"what has been your experience in our traffic court system?\"] are the most distinctive feature of an effective focus group session as they greatly increase the chances of collecting unbiased data. This is so because the open-ended question does not imply or suggest a prescribed correct answer. Instead, participants are encouraged to respond based on their specific situation."

"A facilitator guides focus group meetings. Therefore, choosing the facilitator is one of the most influential factors affecting the quality of focus group results."

"An effective facilitator guides the discussion and listens to what is said. The facilitator should not engage in discussion, share personal views, or otherwise shape the outcome of the group interview."

"[I]f unbiased data is to be gathered, the facilitator must suspend his/her personal views and seek out the perceptions of the focus group participants."

"Facilitators must be attentive to how they respond to comments-both verbally and nonverbally. Often unconscious gestures and comments suggest agreement or disagreement and can shape the direction of participant responses."

In addition the focus group guide gave sample questions to ask regarding fairness of the courts:

"Based on your interactions with the ____ County court, do you perceive our justice system to be fair? If no, in what areas do you perceive that there is a lack of fairness?"

E. 2008-2009 Judicial Council Elkins Task Force Study/Focus Groups Criticized

On December 18, 2008, the Sacramento "Capitol Weekly" printed Malcolm Maclachlan's article entitled: "Family Law Task Force getting flak for recruitment, 'insider' panelists."
<http://www.capitolweekly.net/article.php?xid=xmp3h1blzclao1>

The newspaper reported that Patty Bellasalma, president of the National Organization of Women, and Fred Sottile, president of the Los Angeles chapter of Fathers for Justice, agreed that new family law focus groups commissioned by the Judicial Council's "Elkins Task Force" to identify problems in the family courts were improperly conducted. Bellasalma reported that the Elkins Task Force specifically solicited members of father's rights advocacy groups to participate in focus groups, thereby biasing the sample, and Sottile reported that the questions asked at the focus group were "slanted." Both Bellasalma and Sottile agreed that the Elkins Task Force, which

specifically excluded court reform advocates and victims from its membership, could not properly investigate problems in the family court: **Bellasalma**: “When you ask that same entity to investigate itself, and then you put on the panel judges who have historically protected the institution and themselves over the public good, how much substantive change is really going to occur?” **Sottile**: “There are no people who have been victimized by family law. The Task Force is a group of people with no perspective. These people are all in the business who get paid by the business.”

On April 6, 2009, the Judicial Council’s Elkins Task Force held a hearing in San Francisco at which family law litigants and advocates were invited to voice their concerns and suggestions about California’s courts. Throughout the day, the task force heard speaker after speaker (mothers, fathers, and advocates for mothers, fathers and children) describe how California judges throughout the state simply do not follow the law, or respect litigants.

JusticeCalifornia is hopeful that these and other concerns voiced at the April 6, 2009 hearing will be accurately reflected in the Elkins Task Force report.

QUESTIONS FOR THE JUDICIAL COUNCIL:

1. Are the “Supporting Facts” stated true or false?
2. Why is the Judicial Council creating and disseminating propaganda, rather than objective and unbiased recitations of facts gleaned from studies and surveys it commissioned?
3. Why isn’t the Judicial Council ensuring that fairness and diversity are at the top of the list of judicial objectives?
4. Why isn’t the Judicial Council supportive of Judicial Performance Evaluations, although the public has made it very, very clear in all studies conducted by the Judicial Council that a) the public has concerns about the impartiality of the judiciary, and b) **reporting on judicial performance is the public’s largest unmet expectation?** (see http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf, page 33 of the report.)
5. Why weren’t family court reform advocates, victims and litigants included on the Judicial Council’s Elkins Task Force, although many applied?