Accountability is a Duty of Public Service
(2006-2012 Judicial Branch Strategic Plan)

I have read and considered the SEC report in its entirety and urge the Judicial Council to immediately adopt and implement all recommendations. Time is of the essence.

I am Judge Tia Graves Fisher. I have served on the bench in Los Angeles County for 15 years, during which time I have worked with various court committees including membership on the Executive Committee. I have been a member of CJA and am currently a member of the Alliance of California Judges, serving as a Director since January 2010. In 2011, the Chief Justice appointed me to the Advisory Committee on Accountability and Efficiency (A&E). I also serve on the A & E Contracts Working Group. I have extensive executive governance experience in the non-profit world, including expertise in corporate compliance as pertains to governmental regulatory action as well as risk management best practices. Prior to my judicial career, I served as a prosecutor tasked with management oversight of multiagency law enforcement task forces, including local, state and federal agencies. I have conducted extensive research relative to the AOC as a discrete institution, including its policies and procedures, culture, leadership and growth since the Lockyear-Isenberg Act of 1997.

For years, the Judicial Council stood idly by allowing political expediency to become the driving force behind branch spending priorities. Within no time flat, after 1997 state court funding became law, Mr. Vickrey and the former Chief Justice led a bloodless coup by which the AOC actually took control of the judicial branch and its now centralized money supply. While the Judicial Council suddenly appeared through its pronouncements to be taking on unprecedented policy making authority over all the trial courts, in fact it was the AOC which both promoted its own policies and once rubber-stamped by the Judicial Council, proceeded to implement them in a preconceived and unsupervised fashion.

Ironically enough, the oblivious Judicial Council never even exercised the powers it usurped from the trial courts, but simply delegated them to an eager bureaucracy devoted to the expansion of its own power. Rather than "mission creep" causing the AOC tentacles to spread, a "Mission Impossible/Stepford Judge" story line emerged with Mr. Vickrey playing the lead role at the apparent behest of the former Chief Justice. Make no mistake; the mess we are in is the direct result of Judicial Council leadership turning a blind eye to the intentional and aggressive implementation of AOC generated social and political policies that extend well beyond the boundaries of their limited constitutional authority.

My research demonstrates that since the Lockyear-Isenberg Trial Court Funding Act of 1997, the former Chief Justice, the Judicial Council and the former AOC Director, all recognized that in order to "re-engineer" the judicial branch, trial court judges would have to be "re-educated" and controlled. In addition to grooming "early adopter judges" who were rewarded for their loyalty, the AOC commenced a covert operation against independent trial court judges who refused to capitulate. Democratization of the Judicial Council would have put an effective end to the AOC's efforts to revamp and reinvent justice that could be marketed to "stakeholders." Slowly, trial court judges awakened to realize that AOC "control" measures went beyond individuals' personalities, and were instead emblematic of purposeful judicial council governance policy. When those judges dared utter the word "Democracy," so began the California Judicial Wars. Adopting and implementing the SEC

recommendations would put a stake in the heart of the AOC's subterfuge that has financially devastated the judicial branch and undermined public confidence.

I searched long and hard before finding an organization chart with the Judicial Council at the top. Finally, there it was in a 1978 Judicial Council Annual Report. Like an archeologist whose shovel hits buried treasure, I was giddy with delight when I saw the rectangular box at the top of the 1978 Judicial Branch organization chart outlining the words "Judicial Council." Next, I noted the respect that the 1978 Judicial Council accorded then Governor Brown in the cover letter salutation, "HIS EXCELLENCY, EDMUND G. BROWN JR."

In that 1978 report, the role of the Judicial Council was defined in accordance with Article VI of the California Constitution. "The Judicial Council in the discharge of its constitutional duty is required to survey the condition of business in the several courts and to report and make recommendations to the Governor and the Legislature at the commencement of each general session."

Fast forward to 1997; when former Chief Justice Ron George heralded the landmark Lockyear-Isenberg Trial Court Funding Act of 1997, describing it as a "long awaited victory for the trial courts…that heralds a sea change in the administration of justice." In the 1997 Judicial Council Annual Report, not only is there no organization chart, but the Judicial Council promotes the AOC as taking the "leadership" role to "pursue the development and implementation of branch wide policies that are in the best interests of the public and the judicial branch… [By] creating programs and systems to make the court system more fair, accessible, and accountable." Post 1997 through the present, in multiple AOC generated reports, the AOC regularly and confidently asserts the dramatically increased credibility, accountability, and predictability that follow from AOC branch leadership that developed as a result of the 1997 Trial Court Funding Act.

From 1999 to 2000, Mr. William Vickrey, then AOC Director, also served on the Board of Directors of the Conference of State Court Administrators (COSCA), supported by the National Center for State Courts (NCSC). At the 1999 COSCA annual meeting in Williamsburg, Virginia, the group considered and discussed a Position Paper that set forth, "From a judicial system perspective, success has always meant that the process was fair…Regardless of the courts' view of their constitutional role, they are expected to be part of the solution when a solution is presented. As societies expectations of courts change, or at least become more explicit, courts can either dogmatically continue to declare their traditional role, or they can change their objectives to conform to those of society, and then market that change."

Though the COSCA Position Paper referenced a few "disadvantages" to their policy position including "potential impact on judicial neutrality" and "among other things, the Code of Judicial Conduct requires judges to avoid the appearance of bias," COSCA nonetheless forged ahead with their support for courts as consumer support providers by recommending that, "Judicial administrators should assert the courts' centrality to these processes and shape the progression of these initiatives." COSCA adopted the following Motion in 1999 at the annual meeting.

1. State Courts should assume administrative leadership in court programs which seek to address and solve the underlying causes of disputes brought before the courts.

By the 2001 Judicial Council annual report, the former Chief Justice redefined Article VI of the California Constitution as follows, "In 1926, more than 20 years before most other states, California voters approved a constitutional amendment establishing the Judicial Council as the policymaker for

the third branch of government and granted this new body responsibility for overseeing the statewide administration of justice." George went on to tout the benefits of state funding, claiming it would provide "for the first time a statewide stable, secure, and highly accountable funding system…no other reform in California Court history has done more to free courts from day to day financial uncertainty."

In 2001, likely emboldened by the successes of Mr. Vickery and the AOC in California, the COSCA policy committee presented a "Position Paper of Effective Judicial Governance and Accountability." The NCSC based group of state court administrators urged that "court administrators are closest to the issues and best qualified to make the policy determinations necessary to ensuring the highest level of service to which the public is entitled."

An implementation strategy was obviously necessary as predictably, trial court judges would balk at the notion that court administrators would set judicial policy and make funding decisions based on public opinion, seemingly without regard to the rule of law and judicial ethics. The implementation strategy suggested in the 2001 COSCA Position Paper would "require" a judiciary that "must be able to speak with one voice." Too often, "the judicial branch speaks with multiple, and even contradictory voices," complained the unknown COSCA author. COSCA's 2001 policy position paper went on to recommend that court administrators "assume a more active role in the legislative process in matters of court…governance, including submission of legislative proposals."

By 2003, it was evident that the AOC had taken the reins of power, with Mr. Vickrey providing branch messaging. In a glossy AOC publication titled, "Innovations in the California Courts, Models for Administering Justice," the AOC documented its view of judicial education. "Education that gives judicial officers and employees professional development and informs them of the best business practices in the field enhances the independence of the courts and the judicial branch as a whole." The AOC also documented that it had "launched initiatives to address needs in the area of court administration, infrastructure and statewide administration." Judicial Council oversight of the AOC was by then all but missing, though a Judicial Council logo does appear on the front and back page of the publication.

In 2005, the AOC commissioned a survey of "Trust and Confidence in the California Courts" in consultation with the National Center for State Courts (NCSC). The NCSC consultant who wrote the report thanked Mr. Vickrey for his vision of "what a policy-relevant opinion survey on the courts would look like" and Vickrey's "keen eye to what is useful." Not surprisingly, the survey recommended adherence to "principles of procedural fairness" as the "best approach to "reducing the reluctance the majority of people feel because of unease about what might happen to them." "Procedural Fairness" sometimes called "Due Justice" is a term of art, a euphemism purposefully used as a "marketing tool" for justifying the use of outcome based, consumer satisfaction surveys that measure the brand of justice favored by the AOC. Due process be damned - is the ugly truth underlying AOC management theory.

Therefore, it comes as no surprise that Hon. (Ret) Roger Warren, complains that the SEC report is flawed. He writes that he couldn't find any evidence in the report that the AOC staff had engaged in any tasks or projects that were beyond the scope of activities authorized by the Judicial Council. Of course Warren could not find anything in this area since the Judicial Council never provided instruction relative to tasks or projects or their scope. Rather, the Judicial Council opted for the "Carver Model" of oversight, setting forth grand vision and then handing the baton to the AOC to implement. The "Carver Model" has been a miserable failure as documented in the SEC report.

The Honorable (Ret) Roger Warren, former NCSC President and thereafter AOC "Scholar-in Residence," while concurrently serving as the NCSC Project Director for National Sentencing Reform, while earning $123,125 in 2010 from the NCSC (NCSC 2010 - 990 tax return) while also earning about $6,000 a month plus benefits while working part time for the AOC necessitating at times that he commute from his Williamsburg, VA home, engages in revisionist constitutional history in his public comments.

Warren argues that California trial judges have an express constitutional duty to "cooperate" with the Judicial Council and by extension the AOC who, has the constitutional responsibility to "assure in good faith and to the maximum extent possible that Council initiatives are guided by customer input and advice and fairly implemented in light of any expressed or reasonable foreseeable customer concerns." He further emboldens the AOC as the legitimate constitutional leader of trial judges arguing that since the AOC has the constitutional authority to implement Judicial Council policy; it is a logical next step that California trial court judges better take heed of who is boss. Warren's commentary includes a veiled warning that judges who attempt to "impede" "undermine" or "subvert" the Judicial Council are attempting the "impede" "undermine" and "subvert" the constitution.

I am a Judge not a Barista. I do not take orders from justice "stakeholders," nor do I take orders from the AOC. I specifically disavow Mr. Warren's twisted constitutional analysis. Through his work at the NCSC and AOC, Warren participated in the heretofore successful efforts to empower AOC bureaucrats to not only control judges, but to recommend legislation with or without Judicial Council oversight. While his AOC advocacy shines brightly throughout his flawed constitutional argument, he is nonetheless free to advocate as he is no longer a working judge. He is free to advocate as he sees fit, for the AOC as an institution, and for substantive sentencing reform which he has done openly for years as the Director of the NCSC Sentencing Reform Project. His simultaneous "Scholar-in-Residence" work at the AOC, however, during a time of massive California state sentencing reform that conspicuously dovetails with Warren's sentencing reform advocacy is troubling as Separation of Powers concerns are implicated.

Similarly, other critics of implementing the SEC recommendations argue that the AOC is a leading advocate for their particular advocacy agenda and accordingly, their favored AOC programs must take priority. Non-profit social service providers, legal service law firms, and court management consultants to name a few, tend to disregard the well documented failures of the Judicial Council and AOC. These groups count among the AOC's reliable "stakeholders" who unabashedly define "meeting the needs of the public" as a "core function" of the judiciary. They identify the role of the AOC as tantamount to that of a social service agency. Their arguments appear to have come directly out of the NCSC/COSCA playbook, whereby court bureaucrats drive the agenda and judges are "expected to be part of the solution." Their arguments divert attention from the obvious budget crisis, while urging us to believe that were it not for AOC leadership they would all but perish. These "stakeholders" too, however, are victims of AOC incompetence. Some appear to suffer from Institutional Stockholm Syndrome, an additional risk one may face when relying too heavily on an insular, secretive, controlling bureaucracy.

Thus far, the Judicial Council has continued its complicity with the AOC, by providing financing for favored special projects that often come with pricy consultants to marshal implementation forward. Meanwhile the AOC engenders loyalty by arguing that favored special interest advocacy groups possess a vested right to influence judicial branch fiscal priorities in the name of "access to justice."

Mr. Aikman, another opponent of immediate implementation is a Court Management Consultant. He wrote, "I fear that today the goal of some of the most vocal critics of the JC and AOC is to gain greater judicial control over administration – starting with the AOC – for the primary purpose of making it easier for judicial critics to thwart or blunt the import of statewide initiatives with which they disagree or that introduce change that they find uncomfortable or inconvenient." Mr. Aikman condescends when he references "uncomfortable or inconvenient" as the mindset of trial court judges who allegedly fear legitimate statewide initiatives that introduce change.

The oath I took 15 years ago takes real courage to uphold and has empowered me to write this public response. I promised to support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Thank you to Chief Justice Cantil-Sakauye who demonstrated courage and vision when she appointed the SEC Committee. Thank you to the members of the SEC Committee whose dedication reminds us of the solemn commitment we make when we enter public service. Thank you to Justice Miller and the E & P Committee for your consideration of my comments.