Comments Regarding the SEC Report and Recommendations, Item SP 12-05:

Court administrators have their own ideas about what the courts should be doing and how they should be doing it, and most have little respect for the judges they "supervise." Some are even willing to go behind the backs of judges to implement or protect their "policies and procedures." When caught engaging in this outrageous conduct, they are seldom held accountable by judicial leadership.

These problems at the local court level are merely symptoms of a much greater problem facing judges statewide. "Judicial independence" is looked upon with disfavor. Uniformity is equated with access to justice and fairness. Rules proliferate and administrators "facilitate" judicial education, ensuring that judges understand the "policy objectives" of the branch.

A vast army of these administrators has developed over time, not to implement the policy directives of the judges of the state but to "develop" policy for those judges through various committees and task forces commissioned to make the courts more responsive to the needs of the "consumer." Much of the work of these committees and task forces is nothing more than officious intermeddling -- attempts to set policy for the branch when the administrators believe that judges are not moving fast enough or do not get the big picture. Judges have become "judicial officers" -- just one passive and nearly silent group among the many "stakeholders" encouraged and empowered to "develop policy" for the courts.

Judges who remember when they ran their own courts occasionally bristle at these administrators, but most enjoy the relief from the daily task of running the courts. Sadly, many also welcome the lack of direct accountability for the day-to-day decisions of the court that these administrators provide. A symbiotic relationship has developed -- the judges increasingly have given up control of their courts, allowing the administrators to make the unpopular decisions. The administrators thereby deflect criticism from the judges who should be accountable for those decisions in the first place.

A few outspoken judges have objected to this proliferation of administrators, but many quickly learned where the real power was. They praised the administrators at every opportunity for their hard work on behalf of the courts. They supported their increasing influence and made them the cornerstone of the court's operations. Those judges who spoke out against this development were ignored or marginalized.

In 2009 the Judicial Council voted to close all courts statewide one day each month. The judges of the trial courts were given little say in the decision, and those who did not promptly agree to a commensurate "voluntary" pay cut were outed to the press.

In response to this unprecedented closure of the trial courts, a small group of judges joined to independently advocate on behalf of the judges of the trial courts. From the outset, these judges warned that the extraordinary growth and increasing influence of the Administrative Office of the Courts, without meaningful oversight by the Judicial Council, had led to a crisis of governance.

Unfortunately those cautionary messages were ignored and openly ridiculed by judicial leadership. Pleas for fiscal restraint during times of economic hardship were disregarded. Repeated requests for the Judicial Council to exercise control and oversight over a seemingly unaccountable Administrative Office of the Courts were rejected out of hand. The objectors were called “strident and uninformed,” they were interrupted mid-sentence, called “Mister” instead of “Your Honor,” and they were told to stick to their prepared remarks. They were called “clowns” when they objected to raises given to top-paid administrators while courts were closing and court employees were being furloughed and laid off.

As judicial leaders continued to unanimously approve AOC recommendations, often without serious discussion or consideration of other alternatives, judges became increasingly dissatisfied with the failure of oversight by the Judicial Council and the out-of-control spending of dwindling judicial resources. Money was wasted at a time when the courts could least afford it. Trial court trust funds were spent recklessly, without the consent of the trial courts. Judges watched in disbelief as hundreds of millions of taxpayer dollars were pilfered for pet projects and administrative bloat.

When the Judicial Council failed to address this crisis, a legislative solution was offered -- a bill that would require the express consent of the trial courts before the Council could spend the resources that were allocated for their operation. The new Chief Justice complained that she was “blindsided” by this legislative proposal and that she should be given time to address these failures of governance. Judges made it clear that action needed to be taken promptly to address their concerns. They were surveyed, then surveyed again, and they were told that the judiciary needed time to deal with its own problems without legislative interference.

The Strategic Evaluation Committee (SEC) was appointed by Chief Justice Tani Cantil-Sakauye in March 2011 to “conduct an in-depth review of the AOC with a view toward promoting transparency, accountability, and efficiency.” The skeptics feared that the judges selected by the Chief Justice for this task would overlook many of the failings of the AOC, and that their “in-depth review” of the AOC would be nothing more than a superficial review of its operations and a justification for its rapid growth and increased influence. Many believed it would be just one more exercise designed to justify the status quo and delay any meaningful action.

Instead, our thanks are due to those on the SEC who brought their diverse backgrounds and broad perspectives from small, medium and large counties and who gathered extensive information from surveys of judicial officers and court executive officers; from interviews with AOC division directors, managers, and employees; from site visits of AOC offices; and from voluminous records requested over the course of a year. Their diligent efforts produced a 300-page report that was a stinging indictment of the AOC and the Judicial Council that had failed in its duty to oversee the operations of the AOC.

The report of the SEC was delivered to the Judicial Council by Judge Charles Wachob, Placer County Superior Court, Chair of the Strategic Evaluation Committee. Judge Wachob reported that the committee's process was thorough and diligent, and that their interviews were "incredibly candid." He clearly advised the Judicial Council of the need for, and significance of, a safe haven for people to talk about issues related to the AOC if one desired candid, honest, complete and accurate information. He also advised that the tone of the report could have been "much worse."

Judge Wachob stated, "Many people expressed that they had been wanting someone to tell their concerns to for a long time -- in a safe way -- where there would be no possibility of any retribution or financial consequences to their court or whatever. It was almost like a confessional at some point. But they were very candid conversations. The conversations often ended with requests that we not divulge their comments to anybody and with assurances of confidentiality."

In spite of this declaration of the need to ensure confidentiality, the Judicial Council inexplicably provided a forum for "Public Comment" that ensured the complete opposite. The process was apparently designed to ensure that those with positive views of the AOC would be more willing to post comments. Many who only shared critical views upon assurances of confidentiality would certainly be deterred from restating criticism, knowing their names would be posted for all to see. Other than to out those who were critical of the AOC, what was the possible purpose of having one restate critical views already presented through the SEC report without the security of confidentiality?

The SEC report confirmed what was evident from the numerous reports previously made available to the Judicial Council: "*Statewide Administrative Infrastructure Initiatives Review Final Report*," delivered to the Judicial Council in 2006; the 2008 report authored by four members of the Judicial Council -- Judges Carolyn Kuhl, Michael Welch, Jamie Jacobs May and Charles McCoy; the 2011 survey of over 2000 current and former judges by the California Judges Association; and the Chief Justice's own separate survey through the 58 presiding judges, which produced many concrete examples of AOC malfeasance and dysfunction.

Sadly, our judicial leaders appear incapable of securing sufficient “input” to allow them to recognize and acknowledge what everyone else seems to have realized long ago -- the AOC is an out-of-control, bloated, control-oriented, wasteful and unguided bureaucracy. Unfortunately, the Judicial Council has consistently failed to address these problems and that failure has not gone unnoticed by the Legislature, the State Auditor, the vast majority of California’s judges, the press and the public at large.

Given this persistent failure of judicial leadership to take action to rein in the AOC, democratization of the Judicial Council is the obvious next step to ensure more thoughtful, balanced, informed and representative leadership of the branch. Broad and diverse perspectives would promote open and thoughtful discussion and lead to informed decision making. Members of the Judicial Council would be accountable to the judges who elected them. Dissenting viewpoints would be considered rather than dismissed and marginalized.

There is not a single project, booklet, computer system or service connected to the AOC that is more important than, or on equal footing with, ensuring that the public maintains full access to California’s courts. The recommendations of the SEC should have been endorsed at the Judicial Council meeting in June, and their implementation begun with direction and prioritization set forth by the Judicial Council. Further delay or continued deferral to the AOC, its interim Administrative Director Jody Patel or the unidentified new Administrative Director to make changes “they” deem appropriate is further abdication of the responsibilities of the Judicial Council to the administrative organization it is supposed to direct.

Roger K. Warren and Alexander Aikman provide some insights into the views of those who believe large administrative bureaucracies are critical to the judiciary. Mr. Warren, the President Emeritus of the National Center for State Courts, stated in his public comment to the SEC, “In light of the Judicial Council's broad constitutional mandate to improve the administration of justice and the absence of any evidence that the AOC acted outside its delegated authority, the SEC Report's oft-repeated criticism of the AOC for not confining its performance to "core" and "essential" functions, rather than "discretionary" and "non-essential" functions, is nonsensical and misdirected.”

Mr. Warren apparently believes that the AOC’s functions are to be broadly interpreted and that their “essential” and “core” functions are unlimited unless specifically restricted by the Judicial Council. He notes, “The Judicial Council and Chief Justice, not the AOC, set strategic and operational priorities for the entire judicial branch, including the AOC. That is the fundamental purpose of the Judicial Council's comprehensive and inclusive judicial branch strategic and operational planning processes.”

The problem is that the Judicial Council has failed to properly oversee the AOC, has permitted the AOC to control strategic and operational priorities without cost benefit analysis or concern for the impact on courts, and has refused to engage in any meaningful consideration of alternatives to those offered by AOC staff. Additionally, the Council's insular nature fails to provide a "comprehensive and inclusive" strategic and operational planning process for the branch. A quick review of the report of the State Auditor or the many reported comments in response to the surveys by the CJA and Chief Justice clearly and emphatically establish those failings.

Alexander Aikman, a well-known administrative guru and former vice president of the National Center for State Courts, provides a preview of the course of action -- or inaction -- the AOC would likely urge upon the council. His views seem shaped by a mistrust of, if not an outright disdain for, judges. His belief in the primacy of administrators mirrors the current culture of control permeating the AOC.

Mr. Aikman finds nothing but fault with the SEC report, arguing that no changes should be rapidly implemented by the Council. He characterizes the SEC investigation as incomplete because not every single court employee in the state was contacted (a process that would have turned a 55-week process into one taking years), ignoring the fact that the committee sent out over 3,500 surveys to all current and recently retired judges and justices, all 58 current court executive officers, all AOC directors and unit managers, all other AOC employees and everyone who has worked at the AOC in the past five years, as well as to those outside the judiciary who have an interest in its operations.

He argues that new AOC leadership (as yet unnamed) must determine which, if any, SEC recommendations should be adopted. Mr. Aikman seems to suggest that the judicial role is valuable largely because the respect inherent in the office provides a credible public face for the actions of administrators, whom he considers the true visionaries. Consistent with that view, he expressly urges the Council to simply *ignore* the views expressed by judges seeking swift implementation of the SEC's recommendations.

A few of his views bear repeating, as they are representative of the misguided direction the Judicial Council has adopted over the past decade that has contributed to the fiscal crisis we now face:

"No attempt should be made to try to eliminate either mistakes or discretion (of the AOC) or set the Council up as a supernumerary administration."

"Observers have noted for many years that judges' perspectives are 'professional,' i.e., focused on their status as professionals and their 'independence' rather than on the court as an institution with requirements and needs independent of individual judges' preferences."

“It will not be easy to disregard the many voices calling for immediate and dramatic action**,** but it is best for the Council and branch if it does so.”

His public comment mirrors many of his earlier published comments. The following is from his article, “The Need for Leaders in Court Administration,” which appeared in *The Court Manager*, Volume 22, Issue 1:

“Judges should set the parameters of the position and then get out of the way.”

“If judges will allow administrators to do the management job they were hired to do, and if judges can learn to be comfortable having a strong manager make decisions *without their input or control*...the judicial branch will continue to grow and prosper.” (Emphasis added.)

“Judges need to know what management is, *how to be an employee* (emphasis added), without jeopardizing one’s electability or adjudicatory independence, and how to oversee the work of their administrator without imposing their individual judgment about how things should be done or specific outcomes that must be achieved.”

Mr. Aikman sees no fault with the AOC. Rather, judges are the problem. In the same article cited above, Mr. Aikman wrote: “Judges are not writing about why their administrators should be regarded as peers with different skill sets rather than assistants who deal with organizational details with which they do not want to deal. Judges are not writing about the need for effective administrators. Therefore, the second part of the need is *judicial* education.” (Emphasis in original.)

It is views like those of Mr. Warren and Mr. Aikman that created the AOC that we have today. It is the failure of the Judicial Council to take its rightful position at the top of the organizational chart and fulfill the responsibilities inherent in that role that has allowed the AOC to run amok. The Judicial Council must finally resume its statutorily-based authority over the AOC and reject calls for judges’ voices to be “ignored.”

It is time for the Judicial Council to give meaning to the Chief Justice’s proclamation that keeping the courts open is her first priority, and to instill policies which will ensure that result. It is time for the Chief Justice and the Judicial Council to utilize what the Chief Justice declared would be “the Bible” to formulate the process for reform that will restore confidence in our branch. It is time to reject the policies and practices promoted by Mr. Warren and Mr. Aikman that allow administrators to dictate the direction of the court. It is time for the Judicial Council to do more than finally place itself on the top of an organizational chart -- Judicial Council members must assume the roles and responsibilities the position entails or they should expect passage of a Constitutional amendment that will allow them to be removed and replaced by those who will.

The failure of a single member of the Council to support Judge Wesley's motion that the Judicial Council promptly adopt at its June meeting Recommendation No. 4-1 of the SEC report -- "The Judicial Council must take an active role in overseeing and monitoring the AOC and demanding transparency, accountability, and efficiency in the AOC's operations and practices" -- was an embarrassment for the branch. How could that recommendation possibly warrant further study or additional comment? How could someone who purports to be a leader of the judiciary willfully continue to abdicate that basic responsibility?

Please move forward expeditiously to implement all of the recommendations of the Strategic Evaluation Committee and begin to restore credibility to the judiciary. Anything less will provide further evidence that the Judicial Council values administrators over judges and a bloated court bureaucracy over open and accessible courts.

W. Kent Hamlin
Superior Court Judge
Superior Court of California, in and for the County of Fresno