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## A Financial Fiasco Is in the Making

By [Kelly Patricia O Meara](#)

"Put your concerns in writing and mail them to me." Click; the line goes dead. The voice on the phone was that of Los Angeles Superior Court Presiding Judge James Basque as Insight pressed him to explain whether the Los Angeles Superior Court Judges Association (LASCJA), of which he is the chairman, has made any attempt to pay 30 years of back taxes to county, state and federal authorities.

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It has been more than two years since Insight broke the story of the Los Angeles Superior Court judges earning money off the books by providing minimum continuing legal education (MCLE) classes to attorneys in the courtrooms. The fees collected were deposited into a private bank account that has come to be known as the \$100,000 "coffee and flowers" fund (see "Is Justice for Sale in L.A.?", May 3, 1999).

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The problem with this arrangement is that, apparently to cover for the fact that the judges weren't paying taxes on this income, whether earned or extorted, the LASCJA illegally used the employer-identification number (EIN) of the County of Los Angeles. In time the county politely asked the learned jurists to stop using that number. But no criminal charges were filed against the judges and no one raised the issue of **making** good on back taxes. So when Basque abruptly ended that telephone conversation, Insight decided to take another look at the status of that private bank account and to revisit the Los Angeles County Superior Court Finance Office.

Insight put its "concerns" about those back taxes in writing, as requested by the presiding judge, and hand-delivered the formal request to his chambers. Basque neither responded to the questions nor agreed to a meeting, instead deferring to the county's counsel, Frederick Bennett.

Although Bennett says that he "has some background information concerning the [judges] association," not once in his three-page response did he discuss whether the judges have made any attempt to pay what could amount to 30 years of back taxes and penalties. Instead, he obfuscates, rambling on that he is "informed and believes the association has used its own taxpayer's identification number since approximately 1997, when the county auditor [J. Tyler McCauley] indicated that would be the better practice."

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Yes

No

Maybe

Makes no difference

Will focus debate on alternativ R & D

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RESULTS



For the LASCJA to use its own identification number, as required by law, is a "better practice?" What about it being illegal for the judges to have enjoyed their private income for so many years under the county's EIN? Not a word. But Bennett continues to defend the judges by explaining that "the association does not pay taxes," as he is "informed and believes that it is an organization exempt from taxes."

Bennett provided a copy of the LASCJA's year 2000 federal IRS 990 Form indicating the organization's tax-exempt status but advised that the information he was providing should be verified with the LASCJA's attorney, John J. Collins of the Pasadena law firm of Collins, Muir and Traver.

Collins had less information than Bennett. It appears that Collins can only speak about the LASCJA back to the winter of 1997, when he first began representing the association. Asked if he is aware of any efforts by the judges to pay taxes on these large sums of money earned during the 30-year period, Collins tells Insight: "I can't speak about that because I don't know they made any money."

That assuredly is a lawyerly response, given that Collins admitted to having read Insight's earlier article about the LASCJA which contained details about checks being deposited into the judges' private Bank of America account. It at that time contained a little more than \$100,000.

Neither Collins nor the judges have addressed the issue that, based on the bank records, large sums of money may be owed in back taxes. Furthermore, based on correspondence from Collins, it is clear that the association's counsel is much more informed about the status of the account than he lets on.

Since Insight began looking into the "slush fund" of the Superior Court judges and their finance office, requests for information have been submitted by private citizens, including Marvin Bryer, a retired computer analyst in La Crescenta, Calif. He became involved in the Superior Court's **financial** matters because of problems his daughter was having in a child-custody case. In February 1998, Bryer made a statutory request through Collins to inspect the LASCJA's records. Collins refused, saying LASCJA "is not a public entity nor an exempt organization as defined under this statute." He stated that "the Los Angeles Superior Court Judges Association is a private organization and its documents, including **financial** records and tax information, are confidential and not subject to disclosure."

While Collins says the LASCJA is a "private" organization, according to California Secretary of State Bill Jones, the association filed for tax-exempt status in December 1997 - well within the time frame of Bryer's request for inspection of the records. When Insight reminded Collins about this correspondence, the lawyer once more stonewalled, saying: "I'm not giving you any opinion on that. That's not part of my function. I'm not telling you what their legal status is. Everything that's out there is a matter of public record. You've got the filings, the informational returns and that's enough for you to come to your conclusions."

Meanwhile, the LASCJA continues to use the county courthouse for its private business. According to documents filed with the California secretary of state, the LASCJA lists the courthouse at 111 North Hill Street as its business address. Then there is a letter from Collins dated November 2000 stating that "the tax returns for 1998 and 1999 have been deposited in Room 119 [the Superior Court Finance Office] of the Central District Court. i you should ask for Mr. Alf Schonbach, who is the court administrator||finance and accounting." Despite assurances from county auditor McCauley that the judges no longer were conducting their private business from the court premises, Collins continues to direct inquiries about the LASCJA to the court's finance office.

Schonbach long has been a key player in the oversight of the LASCJA account. And it is Schonbach who was in command of the Superior Court Finance Office when one of his underlings, Gregory Pentoney, and an attorney friend, Robert Fenton, cooked up a scheme to collect \$5 million in unclaimed sums deposited - and long forgotten - in the county's Condemnation and Interpleader [C&I] trust fund. Pentoney and Fenton pleaded guilty to one felony count of taking a bribe and receiving a bribe. Pentoney was sentenced to two years in state prison; Fenton received 16 months.

As a result of a series of Insight articles about theft from the C&I trust account, Schonbach was directed to produce a listing of the unclaimed funds and make it publicly available. This currently reflects a balance of a little more than \$54 million but does not include the "zero-balance" cases, where principle has been paid but interest still is accruing. Insight's articles also prompted the Los Angeles County Board of Supervisors in September 2000 to request a special audit of the C&I account - at a cost to taxpayers of \$18,000 - which eventually was made public last February.

The accounting firm of Vasquez Farukhi & Co. conducted the special audit of the C&I trust account and stated it did not find "any material misstatements in the Condemnation and Interpleader Fund." In other words, the C&I account is in good shape. But is it?

For the purposes of defining the fund Vasquez Farukhi explained that the "SK4 [Condemnation and Interpleader Fund] was established by the County of Los Angeles for the Superior Court of the county to account for four types of deposits consisting of eminent domain [condemnation] deposits, interpleader [deposits for credit relief], nonbondsmen bail deposits and deposits made in compliance with judicial order." Having been advised by Los Angeles County Treasurer Joe Spillane that the county takes in between \$400 million and \$600 million a year, **financial** analysts tell Insight it seems odd that the C&I fund audit would reflect a mere \$54 million.

Even more odd is that no one in the county government could provide Insight with a bottom-line figure of how much cash was collected through the C&I fund for fiscal 2000 alone. Spillane explained that he had little or no knowledge of the court's finances. He receives a bottom-line figure from the auditor but has no clue about the deposit specifics. "We're not looking," explains Spillane, "for each of the individual deposits for each of the funds. That would be impossible. My function is to account for funds that are in the treasury, balance those to our bank accounts and our investments and have cash available for disbursement." Spillane insists, "The auditor has the detail. I don't know what is in the condemnation fund because it's a fund that we don't maintain." Claiming to have exhausted his knowledge of how the money moves in Los Angeles, Spillane recommended that Insight speak with McCauley, the county auditor - a task easier said than done.

Several weeks passed before McCauley allowed a brief telephone interview and, while the agreed-upon focus of the conversation was to provide a bottom-line figure on the amount of cash being collected at the Superior Court, the auditor said he could provide few specifics. For those, he said, Insight would have to go to Schonbach in the Superior Court Finance Office. And, of course, Schonbach refused to discuss the court's cash collections.

While McCauley could provide little **financial** information about the courts, he was surprisingly well-versed in the "special" audit of the C&I account conducted by Vasquez Farukhi. Asked why the audit reflected a balance far less than acknowledged by the treasurer, McCauley had his ducks in a row. Recall that Vasquez Farukhi certifies the audit of the SK4 (Condemnation and Interpleader Fund), which it declares includes four

deposit items, including nonbondsmen bail and judicial orders. But if the audit includes these deposit items, then the balance reported is far below the amount reported to be collected by the court.

So what is going on here? McCauley tells Insight: "It was just a mistake by the auditor. They should not have included those [nonbondsmen bail and judicial orders]. I have to talk to Alf Schonbach, but I was assured by my staff that no such funds come through the C&I account. I don't know where the contract auditor got that statement he put in the report."

A respected accounting firm states that it has audited a trust fund consisting of specific deposits, then the county auditor claims the contract auditor just made a mistake - that it couldn't have audited those deposits because they're not part of the audited trust fund. And somehow no one in the Los Angeles County government, including the Board of Supervisors that requested the special audit, caught the multimillion-dollar blunder until Insight began asking why the audit as certified was short tens of millions of dollars.

While the county auditor was quick to point out the "mistake" on the part of the contract auditor, Vasquez Farukhi doesn't see it that way.

Lead auditor Lee Waddle tells Insight that the description used in the audit of the C&I fund "would have come out of [the county's] records. It would come out of the L.A. County accounting manual or a form. We just don't dream things up. I'd have to go back and check my work papers."

When Insight asks Waddle to do just that - to clear up the matter by locating the source of the description of the C&I account - he says, "No, we get paid by the hour here and I really can't be spending time on that. I couldn't do it anyway as far as particulars go because we have tight controls from the ethics of the organization. As far as the report goes, it stands by itself. Whatever it says, it says. If you want to know who set up the criteria, you'll have to check with the county."

Check with the county? Spillane, McCauley and Schonbach, the same county officials who either refuse or are unable to answer questions about the court's finances? The officials who say they are unable to provide detailed information about the amount of cash deposited in the Superior Court in a single year? Perhaps taxpayers in Los Angeles will have time to find out what happened to all those millions.

Meanwhile, Insight pressed on trying to obtain a bottom-line figure for cash taken in by the court. McCauley's office finally provided a 37-page computer printout that allegedly reflects the court's cash deposits for fiscal 2000. Although the printout provides a monthly ending balance for credits and debits, the report provides no details about the source and amounts of the debits and credits represent, providing only the unauditable lump-sum transfers.

As one accountant put it, "This is archaic. It's ridiculous to think that a county as large as Los Angeles can't program an accounting system that reconciles the books on a daily basis and [that] also can easily produce specific information about various accounts and provide yearly fund balances. It's just absurd."

\*\*\*FAULTY NUMBER CRUNCHING\*\*\*

How could the books for the County of Los Angeles be in such a mess if the authorities there weren't trying to hide something, critics ask. At least some of the problem appears to lay with the computing system. The Countywide Accounting and Purchasing System (CAPS) is a product of American Management Systems (AMS) and has been used in Los Angeles since 1987. IRS Commissioner Charles Rossotti is the founder and former chairman of AMS and remains a major stockholder in the company that

provides computing services not only to Los Angeles County but to key federal agencies, including the IRS.

As Insight recently reported, due to severe problems with its AMS accounting system, the Department of Housing and Urban Development (HUD) was unable to balance its books under the recently departed secretary Andrew Cuomo (see "Cuomo Leaves HUD in Shambles," March 5) and, in 1999, was unable to account for \$59 billion (see "Why Is \$59 Billion Missing from HUD?" Nov. 6, 2000). Not surprisingly, under pressure from Insight, HUD since has decided to scrap the HUDCAPS computer program. But others have had similar problems with AMS finance systems, including the states of Mississippi and Kansas. Then again, as any auditor will be glad to confirm, there is nothing like institutionalized confusion to cover for and invite corruption.



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