

**REBUTTAL TO
WINNER REPORT**

Factual Errors

Qualifying Language

Reporting Errors

Unidentified Sources

July 10, 2000

**For more information:
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TABLE OF CONTENTS

- I. Media Release
- II. Analysis of the Winner Report
- III. Attachments to Analysis of Winner Report
 - a. May 9, 2000 *San Francisco Daily Journal* article
 - b. June 22, 2000 correspondence to Honorable John A. Sutro, Jr.
- IV. Citations to Unidentified Sources of Facts and Qualifying Language in Winner Report
- V. Winner's Factual Errors

July 10, 2000
For immediate release

Contact: Mauna Berkov
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Media Release

Marin Family Law Attorneys Refute Winner Report - Release Own Analysis

Today a group of Marin County attorneys released a detailed refutation of the Winner Report and demanded a retraction of her allegations regarding unethical conduct by the attorneys. The attorneys' response includes a point-by-point listing of the misrepresentations in Ms. Winner's Report, her unprofessional use of unidentified sources and her reliance on one-sided and unsubstantiated allegations by disgruntled litigants and their attorneys.

"The accusations against Marin County attorneys in the Winner Report are factually unsubstantiated and are baseless attacks against our reputations," said family law attorney Sandra Acevedo, speaking for the Marin attorneys responding to the Winner Report. "It is clear that the report was procured and/or paid for by family law litigants who were unhappy with the results of their cases. Nevertheless, those of us who represent children in these custody proceedings cannot compromise our statutory duty to protect minor children in order to satisfy two warring parents, one or both of whom may disagree with our report or recommendations to the court," Acevedo said.

"Ms. Winner's just a pen for hire. How can someone claiming to be an investigator get away with talking only to one side of a dispute? She never contacted me or my client or any of our witnesses. From some of her comments, it also looks like she didn't even bother to look at the court files. In fact, she's so reckless with the truth that she even says I own an office that I've been renting for the past 5 ½ years," said Terence F. Colyer, a San Rafael attorney.

Colyer went on to say, "The real story here is that our independent judiciary is being attacked by a group of disgruntled litigants who have each had their full day in court. That judiciary is the only thing that protects all of us against mob rule. If the recall campaigns succeed, the rule of law will have suffered a major setback."

On February 28, 2000, Karen Winner released her report to the media which was purported to be an unbiased analysis of the family law courts in Marin County. The report became the basis for several front-page articles in local newspapers. The report, which was widely quoted by the media, included assertions that Marin County family law attorneys were engaged in unethical practices.

Over the last month, the lawyers against whom Ms. Winner made allegations of misconduct began researching Ms. Winner's claims. The attorneys taking part in the

response to the Winner Report are: Sandra Acevedo, Mauna Berkov, Judith Cohen, Terence F. Colyer, C. Clay Greene, Mary Halbert and Scott Lueders.

“We have produced a point by point written analysis citing numerous factual errors in the Winner Report. We were moved to go public with this information because: 1) Winner failed to contact any individuals targeted in her report to verify the information on which she based her conclusions; 2) we were never contacted by any newspapers to refute the charges prior to their publishing articles which extensively quoted the flawed report; and 3) we demand to have the record corrected and our names cleared,” said Mauna Berkov.

“We have discovered at least 37 factual errors, 15 unidentified sources for facts, and 57 facts that rely upon losing attorneys and litigants for credibility,” said Berkov. “Worst of all, Ms. Winner alleges criminal conspiracies between and among attorneys, judges, and county agencies without providing any evidence to support her conclusions. Ms. Winner relies upon unsubstantiated allegations, inaccurate information, conjecture, and speculation to imply misconduct.”

“We believe retaliation is the motivating force behind the report,” said attorney C. Clay Greene. “Karen Winner is in the business of traveling the country as a hired gun to ‘investigate’ selected judges, attorneys and evaluators. One wealthy Marin County father wrote checks to Ms. Winner for \$12,000 towards her fees for this report. This father has had supervised visitation with his daughter because of ‘inappropriate’ nude photos he took of her, as substantiated by public documents. In her report, Ms. Winner targeted the attorneys and the judge responsible for protecting this child from this father, but she failed to mention the context of the case and the father’s conduct toward his child. Instead, Winner focused on an unrelated attorney’s fees issue. Her failure to report the truth demonstrates Winner was more concerned with appeasing her clients and attempting to discredit the targeted judges and attorneys than she was in protecting the children involved in these cases.

“In clear violation of state law, Winner even went so far as to release confidential juvenile court records identifying the minor children. Winner doesn’t adhere to even minimal professional journalistic ethical standards for investigative reporting or confidentiality,” Greene said.

“This attempt to compromise the system created to protect children at risk isn’t taking place only in Marin County, it is occurring across the United States,” said family law attorney Judith Cohen. “If tolerated it will have a chilling effect on an attorney’s willingness to act as an advocate for children who are caught in volatile and sometimes harmful domestic struggles. For the sake of children across the country we demand Winner’s practice be exposed and stopped,” concluded Cohen.

Additional comments regarding the methods used by Karen Winner and the credibility of the Winner Report can be obtained from:

Peter Sussman – 510-845-3418

Current member of the National Society of Professional Journalism Ethics Committee

Co-author of the SPJ Code of Ethics

Former President of the Northern California Chapter of the SPJ

Judge Roderic Duncan – 510-845-1412

Alameda County Family Law Judge who was the subject of a recall effort

Judge Rex Sater – 707-542-8477

Retired Family Law Judge Sonoma County

Analysis of the Winner Report

Introduction

This analysis was prepared by a group of attorneys who were named in the Winner Report. Members of the attorney group are: Sandra Acevedo, Mauna Berkov, Terence F. Colyer, C. Clay Greene, Mary Halbert and Scott Lueders. In addition, the following attorneys representing children endorse and support this response to the Winner report: Tracy Barrett, Judith Cohen, Christopher Emley, Richard Helzberg, Cora Lancelle, Allison Wells.

The purpose of this analysis is to:

- Explore the credentials of Karen Winner and her “methodology” in the researching and writing of her “report.”
- Expose the people and their motives behind the Winner “report.”
- Cite and correct numerous errors contained in the Winner “report.”
- Refute the conclusions of the Winner “report.”
- Exonerate the attorneys of all allegations made by Winner.
- Suggest positive and effective approaches to addressing issues in family court law and procedures.

Summary of Findings

The information contained in this analysis clearly demonstrates that Karen Winner:

- Failed to meet even minimum standards for “investigative reporting,” and failed to follow basic conduct for fairness and balance.
- Violated California law by releasing confidential juvenile court information and case files in the report.
- Failed to interview any of the attorneys accused in the report.
- Failed to substantiate “facts” cited in the report. Gross factual errors evident throughout the report invalidate its conclusions.

- Has no experience or training in the laws or legal procedures used in California Courts, yet extensively criticized both.
- Repeatedly cited unknown and unnamed persons as the bases for her conclusions.
- Repeatedly drew conclusions based on little or no factual evidence.
- Drew conclusions relying primarily upon dissatisfied litigants and their attorneys with a specific axe to grind.
- Cited experts without demonstrated or appropriate qualifications (i.e., citing a retired Kentucky judge on California procedural issues).
- May have been party to the commission of a crime in the release of confidential information from the Marin County Grand Jury.

Unverified Allegations

Ms. Winner violated basic standards of journalistic ethics when she alleged criminal conspiracy committed by judges, Marin County Courts, child custody evaluators, Special Masters and attorneys without interviewing any of the individuals accused in her “report.” Prior to release of the “report” and the ensuing newspaper headlines, the named attorneys had no opportunity to provide the facts that would have refuted the allegations made by Winner and by those quoted in her “report.”

The National Society of Professional Journalism Code of Ethics requires a reporter to: “Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.” According to the Associated Press Manual on Libel, AP reporters must attempt to interview both sides of a dispute to fully report on the subject, something Karen Winner not only failed to do but never even attempted.

In every case cited, Ms. Winner relied upon only one side of the dispute to develop her “facts.” She relied upon dissatisfied litigants and their attorneys 57 times in reporting the “facts” upon which she bases her unfounded criticism of the attorneys.

Failure to Investigate

Under the guise of being an unbiased and factual investigation, the true intent of the “report” is clearly to compromise the independence of the judiciary and undermine the effectiveness of attorneys representing children. Rather than being an independent and unbiased investigation, Winner simply ignored the facts available to her which did not support the conclusions she was determined to reach. In keeping with her failure to include information which would have proven her conclusions wrong, Winner resorted to

tabloid attacks on the ethics and integrity of attorneys, frequently targeting lawyers representing children in acrimonious child custody cases. This technique of "report" writing directs attention away from verifiable truths in favor of sensationalism in an obvious attempt to gain media attention.

True Motivation and Purpose of Report Not Revealed

Winner's independence and objectivity are highly suspect, as she:

- failed to interview all parties involved in the cases she cited;
- failed to review all relevant facts available to her;
- failed to interview the attorneys, judges, child custody evaluators, Special Masters she criticized;
- was paid large sums by losing parents in child custody cases to attack the attorneys, judges, child custody evaluators and Special Masters involved in those cases.

The funds to pay for Winner's services came directly from disgruntled litigants. Exactly how much Winner was paid and by whom is unknown. However newspaper accounts reveal that at least one disgruntled parent is directly involved with payments to Winner. We believe this to be a clear case of someone using wealth to buy revenge.

Yevrah Ornstein, a wealthy divorced father with a documented history of harassing judges and attorneys, wrote checks to Winner totaling \$12,000 (see attached *San Francisco Daily Journal* article). Ornstein was investigated for taking "inappropriate" nude photos of his daughter. Subsequently, after separate, long and acrimonious custody proceedings in two states, Ornstein agreed to and signed court orders providing for supervised visits with his daughter. The most recent order provides for a halt to his harassment of judges, attorneys and all other professionals involved with his case.

Illegal Publication of Confidential Juvenile Court Information and Records

One of the most important duties of attorneys who represent children is the protection of their privacy. The law clearly states that all juvenile court records are to be sealed and only released by an order of the court. Winner violated section 827 of the State of California Welfare and Institutions Code by releasing confidential juvenile court information and case files, identifying minor children involved in suspected child abuse cases.

The intent of the law is to protect innocent children who are victims of abuse. In Winner's zealousness to attack judges, attorneys and court experts she has wittingly and unlawfully reproduced legally protected and confidential documents that anyone can now obtain by purchasing her "report," thus invading the privacy of the children involved.

Professional Ambition Above Journalistic Ethics

Winner has been commissioned to write reports by dissatisfied litigants in other parts of the United States. For fees starting at \$10,000 per report, Winner uses the same report template and the same type of bias and unprofessional and faulty reporting practices. From a review of Winner's promotional material and web site it is clear that she is "for hire" to write biased "reports" for parents desiring to target family court judges, attorneys, child custody evaluators and Special Masters.

Allowing this type of retaliation in an attempt to undermine the effectiveness of hard working professional, ethical and caring attorneys must not be tolerated.

Recommendations

Our hope is that by speaking out to expose this scheme, we will help stop Winner before she defames more innocent attorneys who choose to represent children in need. Therefore:

- We insist that Ms. Winner retract her allegations of conspiracy.
- We insist that she acknowledge and correct the factual errors dominating her report.
- We call on Ms. Winner to release the names of those who paid her and how much money she received from each.
- We call for an independent review committee to investigate the charges in the Winner "report." We have written a letter to the Honorable John A. Sutro, Jr. with our recommendations as to how this committee could most effectively respond to the Winner "report." (A copy of that letter is attached.)
- We call for the immediate removal by Winner of all juvenile court confidential information and case records from her "report" and her web site.
- We call for the immediate removal by Winner of all confidential child custody information from her "report" and her web site.
- We call for an investigation by the appropriate authorities of the violations of state law prohibiting the release and publishing of confidential juvenile court records and confidential child custody information by Karen Winner and by those who supplied her with these records and information.
- We call for the retraction of the defamatory allegations against all of the attorneys made in Winner's "report."
- We call for Winner to publish this Media Release and Analysis on her web site.

Attachments:

Letter to Honorable John Sutro, Jr. regarding Family Law Review Committee

Documentation of payment by Ornstein to Winner (*San Francisco Daily Journal* article)

June 22, 2000

HAND DELIVERED

The Honorable John A. Sutro, Jr.
Judge of the Superior Court
Marin County Hall of Justice
San Rafael, CA 94913

Re: Family Law Department

Dear Judge Sutro:

Although many of us have not yet met you personally, you may recognize our names as several of the family law attorneys involved in high profile cases cited in the "Winner Report." We have been criticized in connection with our professional roles in those cases—sometimes by name and other times by inference only.

We are writing to offer our enthusiastic support of Your Honor's decision to appoint a blue ribbon committee to evaluate the practices and procedures of the Family Law Department and to make recommendations to improve the Court's handling of family law cases as may be warranted. We will certainly make ourselves available to the committee to the extent requested to offer our own input.

We are concerned, however, with the announced composition of the committee. Whatever its findings and recommendations, we believe it imperative that the committee have public credibility as an impartial body beholden to no special interest. Including local family law attorneys and current members of the Court may invite the accusation that the committee is nothing but an attempt to support the status quo and those of us who have been involved in the cases drawing public comment. We would prefer a committee composed of outsiders. A committee consisting of The Honorable Donald B. King and retired Superior Court Judges Breiner, Broderick, McGuire, Savitt, and Smith would seem to be beyond reproach. Such individuals could access both individual files and review the overall systems of the Family Law Department as part of a comprehensive assessment.

We are also concerned with the specific charter for the committee. Perhaps Your Honor has already defined the assignment specifically based upon the Court's own notion of what should be reviewed. We have not seen anything publicly released about this subject. Without appearing to be presumptuous, we offer the following possible areas for the committee's attention:

1. Is there any convincing evidence that the selection process for child custody evaluators and children's advocates needs to be altered?

2. Does a review of the Court files in the cases cited in the Winner Report suggest that outcomes were dictated either (a) by favored treatment for certain attorneys representing one of the parties or (b) by a party's wealth?

3. Is there any credible evidence in the cases cited in the Winner Report of "unprofessional conduct, and questionable or unscrupulous practices in the courts" which have harmed children in these cases?

4. In the referenced cases, is there evidence that the Court has unlawfully ordered child and spousal support payments to "favored lawyers and court appointees for their fees, so that children didn't receive full child support payments?"

5. Is there credible evidence that the Court has "ignored the procedures and laws" in the referenced cases?

6. Is there credible evidence that the Court has awarded custody of any child to the "wrong parent" in the cited cases?

7. Is there credible evidence of a criminal conspiracy involving attorneys, mental health professionals, and/or personnel of the Court in the handling of any referenced case?

There are surely other subjects which may warrant the committee's attention, but we feel that the foregoing are important for consideration in view of the allegations of the Winner Report. We are confident that any objective review of our roles in the referenced cases will exonerate each of us from the accusations made by Ms. Winner.

Please let us know if we can do anything to assist the Court or its committee in this evaluative process. We recognize that any system has strengths and weaknesses and are eager to see change which improves the quality of outcomes for family law litigants and their children, rather than change for the sake of change.

Respectfully submitted,


SANDRA ACEVEDO


MAUNA BERKOV


JUDITH H.B. COHEN


TERENCE F. COLYER


C. CLAY GREENE


MARY HALBERT


SCOTT LUEDERS

SAN FRANCISCO

Daily Journal

Tuesday, May 9, 2000

FAMILY FEUD

Fueled by the Ire and Pocketbooks of Former Family Court Litigants, a Marin Group Is Agitating For the Recall of Three Local Judges

First of Two Installments

By John Roemer

Daily Journal Staff Writer

A spiteful quarrel among Marin County family law lawyers, judges and litigants mimics the divorce court infighting that rips dysfunctional families.

And even as the first judicial recall campaign in county history gets under way, unhappy ex-spouses are extending attacks on family law judges beyond Marin, led by groups called the California Judicial Investigative Task Force and the National Coalition for Family Justice.

A tactic used by some litigants is to hire New York consultant Karen Winner, the author of the 1996 book "Divorced From Justice," to investigate and report on local court practices.

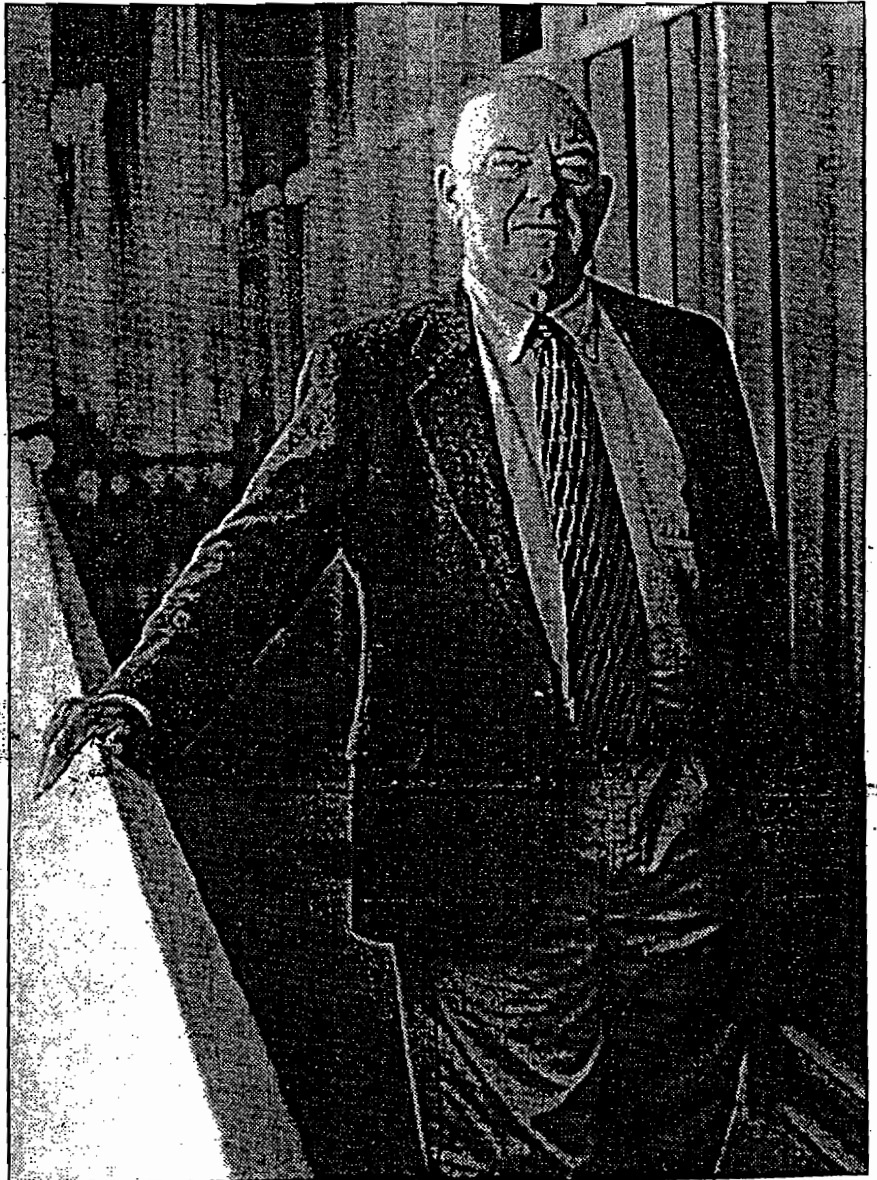
Winner's Marin findings, published in February, provoked much of the current backlash against alleged cronyism and other claimed improprieties by the county's family law bench and bar.

Judges and some family law practitioners in Marin "put power, profit and self-interest over the welfare and safety of children and litigants," Winner wrote.

Another Winner report, targeting lawyers and judges in Sacramento County, is scheduled to be released at a Capitol press conference next week.

Acting on their anger over cases Winner described, Marin citizens are gathering signatures in a recall drive against Superior Court judges Michael Dufficy, Lynn Duryee and Terrence Boren.

The judges say they will resist.



S. TODD ROGERS/Daily Journal

MICHAEL DUFFICY — "It's a lot easier to get 20 signatures on a recall petition than it is to prevail in the Court of Appeal," the Superior Court judge said of his opponents.

■ In a court case featuring the disclosure of supposedly confidential commentaries on all Marin judges, a county family court commissioner is being targeted for disqualification by a San Rafael divorce lawyer and his client, the wealthy ex-wife of filmmaker George Lucas. See Page 9.

The recall effort and the Winner report center on Dufficy, 61, who for eight years has been Marin's sole family law judge.

The campaign ropes in the other jurists because of their actions in two high-profile divorce and custody cases. One involves San Rafael

auto dealer John Irish and his former wife, Deborah. The other concerns Carol Mardeusz, a Novato woman charged criminally in a child custody dispute with a former boyfriend.

Martin Silverman, a former Marin County grand juror who helped commission the Winner report, said he believes the recall campaigns against Duryee and Boren are a mistake.

"I'm disappointed that Duryee and Boren are included because I feel it dilutes our effort to target Dufficy," Silverman said last week.

Peter Romanowski, a recall leader, is a Sausalito pastor and marine salvage specialist who still seethes as he recalls his own mid-1980s divorce.

"The court was corrupt, and now Dufficy is the same," Romanowski said, adding that he got involved in the campaign to provide religious input.

"The recall is good, but the group lacked moral leadership," he said in a telephone interview. "They needed a Martin Luther King, a Jesse Jackson. So this pastoral gift of mine has helped pull all of this together."

The Winner report also excoriates Court Commissioner Sylvia Shapiro-Pritchard, who hears family law cases but cannot be recalled because she is appointed by the court rather than elected.

Also frequently criticized in the report: San Rafael family-law practitioner Mauna Berkov, one of "a small coterie of people [who] obtain much lucrative business through their appointments and referrals" from Dufficy and Shapiro-Pritchard, according to Winner.

The Daily Journal has learned that Winner was paid and largely inspired by Yevrah Ornstein, a wealthy Marin resident with strong feelings about Berkov, who represented his ex-wife, and Dufficy, who has repeatedly turned down his requests for unsupervised visits with his daughter.

Winner said in a telephone interview that Ornstein had signed checks totaling about \$12,000 for her work. Others may have contributed to the fund, she added.

"[Ornstein] has money and he's very angry," Dufficy said in an interview at his chambers at the Marin Civic Center Courthouse.

Ornstein, who describes himself as a children's rights activist, in a 1997 newspaper article compared Marin's child protection policies to Nazi Germany. He lost his right to unsupervised visits in 1991, after county officials investigated photos of Ornstein with his then-2-year-old daughter, showing both in the nude, according to court documents.

"There were several hundred inappropriate pictures of his daughter that a photo lab turned over to the sheriff," Dufficy said.

Ornstein declined to be interviewed. In the 1997 article he wrote for the Coastal Post, a West Marin monthly, he described Marin County detectives with a search warrant placing his daughter with his ex-wife but said the case went nowhere:

"No evidence, no charges, no trial, no conviction. I am innocent."

The judge said Ornstein made a deal with county prosecutors to avoid a criminal charge in exchange for agreeing to therapy and to visits with his daughter under the supervision of a court-appointed observer.

"The irony was I didn't even make a ruling — he stipulated to everything," Dufficy said. "I did deny his requests to modify the visitation order, and he didn't like it."

Dufficy termed Ornstein a vexatious litigant. In 1997 Ornstein wrote the judge on the stationery of a group called "In Defense of Our Children," which names him as director and lists as advisers several of the complainants in the Winner report. The letterhead includes a photo of Ornstein holding his daughter in his arms.

The nine-page letter blasts his ex-wife's lawyer, Berkov, and threatens to expose the "Machiavellian scheme" that Marin's family court has supposedly devised to keep him separated from his daughter.

"Imagine the hue and cry when the American public learns of the turning of an innocent child into a commodity and the extortion of an innocent, devoted father," Ornstein wrote.

"I make the tough decisions," Dufficy said. "That's what I'm paid to do, and I've never been overturned by the Court of Appeal. When I was a lawyer I never had a malpractice claim. I've been married to the same woman for 42 years. I don't get traffic tickets and I don't go over limit when I'm hunting ducks."

"Yet I get pressure, intimidation and this recall tactic. It's a lot easier to get 20 signatures on a recall petition than it is to prevail in the Court of Appeal."

With the petitions certified, county officials said recall advocates have 160 days to persuade about 12,000 voters to sign a call for a special election.

Dufficy said he and his fellow jurists will mount their own campaign to combat the recall effort. "We're going to resist strongly, but it's a tough situation to be in," he said.

Dufficy ridiculed Winner's charge that he lines the pockets of attorney friends by appointing them to represent children in custody disputes.

"Cronyism? I know everyone," said the judge, who was born in Marin in 1938 and practiced law there beginning in 1964. "Appointees are guaranteed the ripe sum of \$50 an hour, and at that price there aren't many willing to do it, so of course you often get the same ones."

Dufficy also took issue with Winner's claim that while on the bench he hid his financial stake in a San Rafael building that housed lawyers' offices, creating a potential conflict of interest. "I sold my share in 1990, when I became a judge," he said. "It's another example of Karen Winner not doing her homework."

A third Winner accusation is that Dufficy's legal secretary wife unfairly worked for lawyers with cases before him. Dufficy proffered two Judicial Council ethics opinions giving the situation the green light unless his wife worked on a case specifically before him.

The second opinion, which Dufficy requested after the Winner report came out, suggested that to be on the safe side he might give a blanket disclosure concerning his wife's employment status at

the outset of calendar calls.

"I'm concerned about ethics," Dufficy said. "I will say I have never made a general announcement, but it's certainly no secret who my wife is."

The Winner report also discusses several cases in detail. One concerned a mother's effort to prevent her ex-husband from taking their small sons boating on San Francisco Bay.

The father, an experienced yachtsman, appealed for a letter of support from the editor of *Latitude 38*, a local boating magazine. Dufficy ruled in the father's favor and wrote the editor to say he had done so.

"There's a little egg on my face there and I admit it," the judge said. "I scratched my head over the ruling, but he's been an ocean racer, and I said from the bench that it's safe for him to take the boys out in good weather. Then like a damn fool I sent the editor an e-mail about it before the order was officially entered. I shouldn't have done it, but I'm not going to change the order."

Dufficy said he now regrets remaining on the family law assignment as long as he has. "We had a master calendar for years, and the family law matters went up and down the corridor. Some jurisdictions think it's the least desirable assignment, so the junior judge gets it, as if it were second-class litigation.

"But when I came on there was some pressure from the Judicial Council for family law judges to stay with it longer, to achieve continuity. In retrospect, I wish I'd moved on after four years."

Too long on the job leads to trouble, he said: "There's never a jury, so the judge makes every single decision. You build up

a critical mass of unhappy people who get in a room together and make you sound like a jerk. It's gotten to a frightening point."

Fallout from the dispute alienates clients from their lawyers. Cindy Ross, a leader of the recall effort, said her anger peaked when Dufficy agreed to divert about \$2,000 in child support payments from her ex-husband to a court-appointed psychologist and a lawyer for the child.

Her dissatisfaction has led Ross to distrust her own attorney, Michael Samuels of San Rafael, who supports Dufficy and conceded the atmosphere is strained.

"The political situation complicates matters between my client and me," said Samuels, who until recently headed the family law section of the county bar association. "In my opinion the judges are fair."

He noted that family law practitioners have written an open letter backing Dufficy and Shapiro-Pritchard.

"Our judges deserve grateful recognition for accepting responsibility for the very difficult decisions they are required to make for parents who refuse to compromise," the letter reads in part.

Samuels noted his client signed court documents authorizing diversion of the support payments. "It may be unfair, but that's what my client agreed to. It was a very touchy situation, and any other solution could have had an adverse impact on her."

Ross said she suggested diversion of her support payments as a sarcastic protest against the way the deck seemed stacked against her in court.

"It's a very strange climate here," she said last week. "It's insane. It's like a bad marriage."

Page	Paragraph	Description
6	1	"raises several disturbing questions"
12	6	qualifying Words- allegedly
13	3	qualifying word reportedly
15	2	qualifying: rhetorical ?
17	3	qualifying: probably
17	3	was considered: qualifying
18	3	qualifying: rhetorical question
18	5	qualifying: "I don't know that.."
21	5	qualifying: can't readily be explained."
21	5	qualifying: all the more puzzling..."
21	5	qualifying: rhetorical ?
26	2	qualifying; Possibility of criminal conspiracy
31	5	qualifying: rhetorical ?
31	5	qualifying: rhetorical ?
38	5	qualifying: rhetorical ?
42	4	qualifying: rhetorical ?
42	5	qualifying: rhetorical ?
42	5	qualifying: rhetorical ?
44	2	qualifying: seem
44	2	qualifying: found extremely questionable.
48	3	qualifying: seemed orchestrated
48	3	qualifying: possibility of collusion
48	3	qualifying: conspiracy plausible
50	2	qualifying: rhetorical ?
52	2	qualifying: allegation of criminal conspiracy

Page	Paragraph	Description
12	4	Unidentified Source
13	3	Unidentified Source
14	1	Unidentified Source
17	5	Unidentified Source
18	3	Unidentified Source
18	3	Unidentified Source
18	3	Unidentified Source
18	5	Unidentified Source
20	3	Unidentified Source
29	1	Unidentified Source
30	4	Unidentified Source
32	4	Unidentified Source
32	5	Unidentified Source
36	4	Unidentified Source
50	2	Unidentified Source

INTRODUCTION TO WINNER'S FACTUAL ERRORS

The attached compilation of errors appearing in the Winner report includes only some of the most egregious misrepresentations and distortions of the facts and is not intended to be inclusive of all inaccuracies.

Winner Report Factual Error

Page: 48, Irish-Planet

Winner alleges:

“Given the hefty financial benefits to the evaluator, his apparently skewed findings on Deborah Planet in this case, along with the highly questionable court actions cited earlier which seemed orchestrated against Deborah Irish Planet, the possibility of collusion or criminal conspiracy certainly seems plausible.”

The truth is:

1. This sentence sets the modern record for most qualifying words in a single sentence. Count them—“apparently”, “questionable”, “seemed orchestrated”, “possibility of collusion”, “seems plausible”—Five! A cub reporter would be fired for this type of innuendo.
2. The *Associated Press Stylebook* says all efforts should be made by reporters to show both sides of a conflict. Ms. Winner has not interviewed a single person who did not agree with the report’s conclusion. She even alleges crimes and conspiracies by Judges, County departments, and many attorneys. AP would kill the entire story if it contained passages like this.

Winner Report Factual Error

Page: 6, Introduction

Winner alleges:

The court appoints favored evaluators and children's attorneys.

The truth is:

1. Many family law attorneys will not take this work because the county pays only a fraction of private client fees, and because the work is very difficult.
2. In most cases all parties agree to the evaluator and children's attorneys. Only when no agreement can be reached does the judge appoint an evaluator after input from the parties and a Family Court Services mediator.

Winner Report Factual Error

Page: 6, Introduction, repeated many times

Winner alleges:

Some attorneys “line their pockets” representing children’s rights in custody cases.

The truth is:

Marin County pays \$50/hour to children’s attorneys. Private clients generate considerably more. A typical family law attorney rate in Marin is \$220-275/hour.

Winner Report Factual Error

Page: 4, Introduction

Winner alleges:

“Judge Dufficy and Commissioner Shapiro routed court-ordered child and family support to favored lawyers and court-appointees for their fees, so that children did not receive full child support payments.”

The truth is:

1. Winner failed to report that attorney’s fees for children have been legally determined to be a form of child support for which both parents are obligated. Only in the circumstance where a parent refuses or fails to pay his/her share of the children’s attorney’s fees is the child support payment used to satisfy this obligation.
2. Ms. Winner failed to provide any form of proof of favoritism except for the opinions of losing attorneys and litigants.

Winner Report Factual Error

Page: 4, Introduction

Winner alleges:

“In some custody cases, the Judge and Commissioner repeatedly relied on questionable experts who received lucrative sums from the parent with the most money and then provided ‘biased’ ‘tainted’ reports to create a false record against the parent with less money.”

The truth is:

1. The parent with greater financial resources is usually ordered to pay all or most of the cost for the child custody evaluation, as is reasonable.
2. There is no evidence presented that the experts lacked the training and experience required by California law.
3. Winner presented no evidence that the experts were paid more than was appropriate for the services rendered.
4. There is no evidence presented of the falsification of records.
5. We don't know who is being quoted.

Winner Report Factual Error

Page: 4, Introduction

Winner alleges:

“These false findings were admitted into evidence and used by the judge and commissioner to grant custody to the ‘favored’ parent, ...”

The truth is:

1. Ms. Winner failed to provide any form of proof of favoritism except for the opinions of losing attorneys and litigants.
2. Who is she quoting? An unnamed source? A losing litigant or attorney?

Winner Report Factual Error

Page: 12, Introduction

Winner alleges:

Some attorneys have served as both attorney and Special Master in the same case.

The truth is:

This has never happened. It is unethical to switch roles in this manner.

Winner Report Factual Error

Page: 8-9, Introduction

Winner alleges:

Mr. Colyer suppressed a Pacific Sun article critical of him, other attorneys and Judge Dufficy.

The truth is:

The publisher of the Sun decided not to publish this article since the article relied upon unnamed sources.

Winner Report Factual Error

Page: 8

Winner alleges:

“(Terry) Colyer and (Verna) Adams, along with Mary Halbert, co-own a law office, according to public records.”

The truth is:

Mr. Colyer and Ms. Halbert do not have and never have had any ownership interest in the property and are renters.

Winner Report Factual Error

Page: 12, Introduction

Winner alleges:

Mauna Berkov wields great influence in determining case outcome.

The truth is:

1. As attorney for the child, Ms. Berkov may only make recommendations to the judge. The judge determines the outcome.
2. As a Special Master, Ms. Berkov's duties are limited and clearly set forth in the agreement signed by the parties appointing her.
3. When representing parties, it is the advocate's role to influence the case outcome. This is the advocate's job—it is not favoritism.

Winner Report Factual Error

Page: 34, Ross-Reich

Winner alleges:

Judge Dufficy illegally deprived a child of child support payments in the Ross-Reich case.

The truth is:

The Judge ordered a limited psychological examination for the child. Both parents were ordered to pay one half the cost. Once the evaluation was complete, the mother refused to pay her share. As a result, the evaluator would not release the report without payment. In court, the mother's attorney agreed that her share could be withheld from support payments.

Winner Report Factual Error

Page: 33, Oldham

Winner alleges:

In the Oldham case, Ms. Berkov prevented the mother from knowing if her child reported sexual abuse to the child's therapist.

The truth is:

1. Ms. Berkov, who represented the child in this matter, opposed the taking of the deposition of the child's therapist by mother's attorney, as the child's rights to confidentiality would have been violated. The law prohibits the release of information from therapy, except when a therapist has a suspicion that child abuse has occurred.
2. However, the law mandates that a therapist report to Child Protective Services any suspicion of child abuse, which would have been done had there been any suspicion of such abuse in this case.
3. Had there been a report by the therapist in this case to Child Protective Services, the mother would have been so informed.

Winner Report Factual Error

Page: 47, Irish-Planet

Winner alleges:

“Dr. Oklan was appointed as the psychiatrist-evaluator in the custody evaluation of Deborah Irish Planet and her former husband, John Irish, cited earlier. Dr. Oklan diagnosed her with a ‘histrionic’ personality.”

The truth is:

If true, Ms. Winner is illegally quoting from a confidential Child Custody Evaluation Report. This is a violation of Family Code Section 311(b) and Marin County Superior Court Rule 6.41.L.4.

Winner Report Factual Error

Page: 48, Irish-Planet

Winner alleges:

Another evaluator in the Irish case, Frederica Conrad, Ph.D., defended Dr. Oklan by writing in her child custody evaluation, “ ‘ After discussing this issue with Dr. Oklan, it is clear that his diagnostic comments were not based solely on the MMP-II test results,’ she wrote in his defense.”

The truth is:

If true, Ms. Winner is illegally quoting from a confidential Child Custody Evaluation Report. This is a violation of Family Code Section 311(b) and Marin County Superior Court Rule 6.41.L.4.

Winner Report Factual Error

Page: 29, Irish-Planet

Winner alleges:

Dr. Oklan removed himself from the Irish-Planet case “after the validity of his findings were cast in serious doubt.”

The truth is:

Dr. Oklan removed himself from the case and explained in a letter to the court that he was doing so because Ms. Planet had threatened him.

Winner Report Factual Error

Page: 30, Irish-Planet

Winner alleges:

“There were statements in court by a medical doctor who treated Deborah Planet after she had allegedly been abused at the hands of her husband.”

The truth is:

No medical doctor testified in court about this subject.

Winner Report Factual Error

Page: 29, Irish-Planet

Winner alleges:

“John Irish was represented by private attorney, Terry Colyer, who was reported to have used extremely questionable tactics, such as accusing the mother of wrongdoing that were never proven in court, according to neutral observers who have been monitoring this case. There was never any issue of her fitness as a mother during the marriage.”

The truth is:

1. Almost all of the disagreement in this case focused upon the mother's fitness to parent the child.
2. Who are the neutral observers? Again here is an allegation based upon the opinions of unknown persons.

Winner Report Factual Error

Page: 36, Irish-Planet

Winner alleges:

Terry Colyer is a favored attorney by Judge Dufficy.

The truth is:

Ms. Winner relies on unidentified sources and offers no documentation of this charge.

Winner Report Factual Error

Page: 29, Irish-Planet

Winner alleges:

Judge Dufficy appointed Mauna Berkov Special Master.

The truth is:

The parents and their attorneys requested that Ms. Berkov serve as Special Master. Prior to the expiration of Ms. Berkov's term, the parties stipulated to her continuing as Special Master.

Winner Report Factual Error

Page: 30, Irish-Planet

Winner alleges:

As Special Master, Ms. Berkov impacted mother's visitations because the child said "bad daddy".

The truth is:

Ms Berkov requested that the court impose supervised visits for a period after the mother attempted to remove the child from preschool prior to the time her visitation commenced. The mother attempted to leave the preschool with the child and all the child's belongings, causing the preschool personnel to telephone the police, who responded by going to the preschool.

Winner Report Factual Error

Page: 30, Irish-Planet

Winner alleges:

Because of Mauna Berkov's involvement in the Irish case, a lot of damage was done.

The truth is:

1. Winner offers no factual evidence to support this allegation.
2. This appears to be the opinion of Ms. Planet.
3. What damage was done?

Winner Report Factual Error

Page: 36, Irish-Planet

Winner alleges:

“... a portion of Deborah Planet’s family support payments from her husband was diverted to therapists and evaluators.”

The truth is:

1. No therapist or evaluator received any diverted family support. Some of the family support was paid to the Special Master because Ms. Planet refused to pay her ordered share voluntarily.
2. All parties agreed to the appointment of the Special Master and agreed to pay the Special Master’s fees.

Winner Report Factual Error

Page: 24, Krause-Smith

Winner alleges:

“Until this point, reports of the child’s abuse had been covered up by the Marin County Court. Mrs. Smith had reported the abuse to Commissioner Shapiro, and also to the court-appointees on the case, Sandra Acevedo, the lawyer for the child, and Dr. Edward Oklan, the evaluator. They ignored the reports of abuse.”

The truth is:

Each and every reported allegation of child abuse was fully investigated by Child Protective Services. The professionals involved in this case did not ignore or cover up child abuse allegations.

Winner Report Factual Error

Page: 25, Krause-Smith

Winner alleges:

There was an “official finding” by the Los Angeles Juvenile Court that Dr. Oklan’s evaluation was “tainted” and “unreliable.” There was a “criminal conspiracy” to cover up child abuse in Marin County.

The truth is:

1. Juvenile Court proceedings are confidential and Ms. Winner’s discussion of these proceedings and the release of confidential juvenile court records violates the law.
2. There was no such finding by the Los Angeles Juvenile Court.
3. There is no evidence of a criminal conspiracy.

Winner Report Factual Error

Page: 25, Krause-Smith

Winner alleges:

“Fortunately for the child, the L.A. Juvenile court investigated, and the truth came out.”

The truth is:

1. The court findings in the 1997 Los Angeles Juvenile Court dependency proceeding do not bear any direct relationship to the 1994 child custody proceedings in Marin County.
2. The evidence presented in the 1994 child custody trial overwhelmingly supported the court’s conclusion that the child should reside primarily with her father.
3. The mother was proven to be emotionally unstable and unable to provide for the welfare of the child.

Winner Report Factual Error

Page: 12-3, Ornstein-Brennan

Winner alleges:

“It is unknown whether an appointee’s practice of not providing itemized bills is isolated to Berkov or is a system-wide problem.”

The truth is:

1. As Special Master, Ms. Berkov provides itemized statements to all parties.
2. When representing children not paid by the County of Marin, Ms. Berkov provides itemized statements to the parties.
3. Ms. Berkov’s billing service prepares monthly billing statements for all clients.
4. Ms. Berkov bills Marin County quarterly, and the itemized bills are a public record available for public review.
5. It is believed that Yevrah Ornstein who reportedly paid \$12,000 to Ms. Winner for her report drives this allegation, as Ms. Berkov represented his ex-wife.

Winner Report Factual Error

Page: 51, Ornstein-Brennan

Winner alleges:

Yevrah Ornstein tried to obtain billing statements from Berkov but was refused.

The truth is:

Mr. Ornstein's ex-wife was represented by Ms. Berkov. Based on Mr. Ornstein's litigiousness, the court ordered him to pay his ex-wife's attorney's fees. It is an ordinary practice for the court to order attorney's fees based on the attorney's declaration regarding his or her fees. After the court ordered Mr. Ornstein to pay these fees, his attorney requested an itemized billing from Ms. Berkov. It was completely within Ms. Berkov's rights to decline to provide the billing, which contained confidential information.

Winner Report Factual Error

Page: 21, George case

Winner alleges:

Ms. Berkov was appointed as the attorney to represent the George children.

The truth is:

Ms. Berkov was requested to serve as the children's attorney by the parties and both parents' attorneys. Judge Dufficy ordered what the parents had already agreed upon.

Winner Report Factual Error

Page: 19-21, George

Winner alleges:

Judge Dufficy illegally reduced Judith George's unmodifiable support payments.

The truth is:

1. The written agreement said the support could be modified when certain conditions including cohabitation occurred.
2. The judge found Ms. George was cohabiting with someone (whom she later married).
3. The decision was upheld upon appeal.

Winner Report Factual Error

Page: 22, Freeman

Winner alleges:

The case cited is the Freeman Case.

The truth is:

There was no Freeman case. Freeman is the former wife's remarried name. It is neither the father's or the children's names.

Winner Report Factual Error

Page: 22, Freeman

Winner alleges:

Before Judge Dufficy issued his written decision in court, he wrote a letter to the editor saying the editor would be pleased to know he ruled in favor of the father.

The truth is:

Judge Dufficy made his order orally in court, permitting the father to sail with the children. He then sent a letter to the editor. The written order confirming the father's right to sail with the children was prepared later.

Winner Report Factual Error

Page: 29, Freeman

Winner alleges:

Judge Dufficy's ruling that an experienced sailor father could take his children in Raccoon Straits in a motorized inflatable boat placed the children in danger.

The truth is:

The ruling required that the boating take place in day light, only when the sea is calm, that all wear life jackets, and that a full complement of safety equipment be aboard.

Winner Report Factual Error

Page: 14, Jarvis

Winner alleges:

Ms. Berkov made a referral to Dr. Lee in the Jarvis case, and in return got a biased opinion favoring Ms. Berkov's client.

The truth is:

1. Ms. Berkov's client lost the case. Judge Dufficy rejected Dr. Lee's recommendations.
2. Opposing counsel first suggested using Dr. Lee as the child custody evaluator.

Winner Report Factual Error

Page: 14

Winner alleges:

Ms. Berkov has an outside business interest with Dr. Lee.

The truth is:

Ms. Berkov and Dr. Lee have participated with others, as panelists in continuing education seminars. On occasion, they were paid for their presentations. This is not a shared business.