

Has election trial testimony been tainted?

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SANTA CRUZ — Questioning voters in the three-week-old City Council election trial had become almost routine, but that routine was interrupted Tuesday when one voter revealed investigators for defense attorneys had discussed key elements of the case with her during a pre-trial interview.

By the day's end, attorneys challenging the validity of 457 votes — cast mostly by students — in the four UCSC

precincts in last November's election, had uncovered at least four such situations, according to reports.

While not illegal, such discussions could cast doubt on the credibility of the students' testimony and could damage the case of defense attorneys Mitchell Page and Robert Taren.

"Nobody's coaching anybody, or telling them what is or is not a 'good' answer," said attorney John Bohrer, who is working with Tim Morgan for the 22 conservative and moderate voters challenging the election. "But on the other hand, these (students) are the cream of the crop.

They can read and write. They're intelligent people and you don't have to tell them what to say. If the issue is formed for them in a certain way, they certainly know what to say on the stand..."

Page, who with Taren is defending newly-elected Councilwoman Jane Weed and former Mayor Bruce Van Allen, said the incidents are isolated. While he wouldn't say some of his investigators may have gone too far, he conceded they "may have said things I wouldn't personally have said."

But no permanent damage has been done to his case, he said, and there is no reason to believe other testimony is tainted, or that there has been any coaching or rehearsals.

He said he had emphasized to his investigators that any hint of coaching would seriously compromise the case and warned them against it.

But he refused to reveal exactly what directions he had given his team and what questions they had been directed to ask the 350 students contacted. Such information is "confidential," he said. He would say only they were the "same kind of questions we've been asking in court."

Some 20 investigators were contacting students and questioning them, said Dee Hansch, head of the progressive Santa Cruz Action Network. SCAN is working for Page and Taren in the case, part of the ad hoc Right to Vote Committee.

Hansch said callers would say they were working on behalf of Van Allen and Weed, trying "to ascertain what the student's situation is."

She would not say what she had been directed to ask, but said the only advice she gave the students was "to tell the truth, and don't be nervous."

Workers also mailed a letter to students, saying the Right to Vote Committee needs "to talk to you to build our case" and directing the student to call the committee.

Bohrer said Wednesday that during his direct examination of the student witness Tuesday, she seemed to be answering in a way calculated to favor the defense and in language drawn from precise legal issues in the case.

Upon questioning the woman further, he said, she testified one of Page's investigators had called to ask her questions and had discussed with her the laws involved in the case.

Bohrer, pursuing the matter, found the woman had then discussed the case with a roommate and with other witnesses waiting outside court to testify.

Page, taken aback, left the courtroom and angrily told the waiting students not to discuss the case.

The challenge centers around the plaintiff's contention students should have cast their ballots in the precincts in which they were living at election time, even if their living arrangements were only temporary.

But Page and Taren say the students had established permanent residence, or "domicile," at UCSC. Even though they had moved off campus, and many had lived in several different places, they retain their domicile on campus until they intend to settle permanently elsewhere, they say.

The university precincts voted 9-1 in favor of Weed and Van Allen in the election which saw Weed squeak to victory on a 145-vote margin. Should the student votes be discounted, as Morgan is asking, moderate candidate Bill Fieberling, who finished sixth behind Van Allen and Weed, could take Weed's seat and swing the balance of power to the conservatives and moderates.

Superior Court Judge Harry Brauer is hearing the case without a jury. Testimony is scheduled to continue today. Some 120 voters have been testified so far. As many as 255 more may be called, Morgan has said.