

# Superior Court of California

COUNTY OF SANTA CRUZ  
Justice with Dignity and Respect

TIMOTHY R. VOLKMANN  
Judge of the Superior Court



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September 8, 2020

Carlos J. Palacios  
County Administrative Officer  
701 Ocean Street, Room 520  
Santa Cruz, CA 95060

Dear Mr. Palacios:

As the Assistant Presiding Judge for the County of Santa Cruz Superior Court, I was tasked with reading the 170 page report from the company based in Boston, Massachusetts. While their submission was clearly not for the purpose of evaluating Court processes and ninety-nine percent of the alleged research was focused upon the District Attorney and Public Defender offices, the numerous inaccuracies and misstatements require a response. I am sending a copy to the representatives from Boston and to the Law firms that are the focus of the report.

I do not know who from the Boston group came to our Court. No one from that entity contacted me regarding their evaluation. However, I have contacted the judges who are with our Court and were involved in misdemeanors, in the early part of this year. On page 83, it is stated that “each judge announces to the courtroom roughly the following . . .” That is not true. While there are misdemeanor judges who offer a short description of the process to make parties feel more comfortable, others go person by person, describing the process, as parties are called. If an interpreter is not present during these opening comments, the judges routinely repeat this information, including an advisement of rights, and including the right to counsel, individually with Spanish speaking defendants and the interpreters as those cases are called. As for the bullet points on page 83:

- 1) Attendees are, indeed, asked if they require an interpreter. Additionally, interpreters will follow up with people in the audience as to this issue. When parties are individually called, they are asked, again, if they wish an interpreter. Anyone who wants an interpreter receives that service. It should be further noted that the calendar, itself, will include references to the possible need for an interpreter, to assist the Judge as to who may need that level of assistance.

- 2) Arraignment is, indeed, the time when defendants learn of the charges directed against them and all defendants are advised that they have the right to counsel. “If you want an attorney, your case will be continued for 2 or 3 weeks for you to meet your attorney.” This description is the type of problem that develops when you have non-practicing attorneys, from another state, “evaluating” what is happening in an active courtroom. The 2-3 week timeframe is if the defendant wants to retain his/her own private counsel. If that is their intent, the Court routinely provides a 2-3 week continuance on the arraignment to allow for that retention. The matter is, then, set for a further arraignment/appearance of counsel. Matters are not continued solely due to an individual wanting to consult with counsel. Defendants are not told that if they desire counsel, their case will be continued. In fact, if a defendant desires counsel, including for the purpose of discussing an offer, counsel is appointed and the defendant speaks with counsel, that morning. This procedure is not done to “chill” one’s right to representation and such an assertion is false and the product of poor “investigation.”
- 3) It is noted that the \$50 fee is routinely waived. The Boston group failed to describe that the Court does not receive one cent from that fee. They do note that the fee is established by the County and it is the Court’s responsibility to advise the defendants of that fee. That advisement, however, is that a fee “may” be imposed, not that it must be paid to ensure representation. In fact, the financial form, itself, contains a checkbox describing “Defendant understands that they may (please note the word “May”) be responsible to pay a \$50 appointment fee.” (SUPCR-1127.)
- 4) Folks are advised that they have the opportunity to resolve their case with one appearance. If they are interested, they are, indeed, advised of the offer from the District Attorney’s Office, or from the Judge, directly. All ramifications and consequences of admitting an offense are described to the Defendant, individually, and it is accurate that they are given time to consider their options. Defendants are not required to choose between accepting an offer and consulting with counsel. The Boston group failed to include that if a party decides to plead “no contest” or “guilty”, they are advised, again, on an individual basis by the Judge, as to all of their rights, including the right to counsel. They, additionally, failed to mention that many misdemeanor pleas are handled through a written, multi-page form, that describes, once again, all rights being waived through an admission, including the right to counsel. If at any time during the process an individual wants the assistance of counsel, that is provided.
- 5) It is true that the defendants are told that they have a right to contest their charges and a right to a jury trial. They are also advised as to the process, from arraignment, to trial. That process includes a pretrial conference, where the Court and the attorneys discuss the matter. Resolutions often occur at this stage. If a pretrial does not result in a resolution, the matter is set for trial, with a Trial Readiness Conference, approximately eleven days before trial. At Trial Readiness, cases often resolve. If not, the parties are sent to the available trial courtroom. These dates are not to attempt to coerce a prompt resolution, but, rather, to ensure that the Defendant knows how the case will proceed.

“Out of custody defendants sometimes arrive in the courtroom after the colloquy has begun . . .” (page 83, last paragraph). For those Judges that offer some opening remarks at the beginning of the calendar, I can imagine that sentence is accurate. However, I confirmed that the Judges who offer such opening remarks will individually inquire of defendants, “Were you here, earlier?” “Did you understand your rights?” If any questions remain, they are answered by the Court. Additionally, as previously mentioned, the right to counsel is further discussed, if a defendant wishes to resolve his/her matter, and is, also, contained within the multi-page Waiver of Rights form.

“The Court responds that the four Courtrooms in Watsonville are almost always in use primarily for civil cases, and collaborative court projects” (page 21, paragraph two). Specifically, there are six judicial officers who hear the following case types in the four courtrooms and the jury assembly room (due to a lack of available courtrooms): all Family Law matters, all hearings on protective orders (including domestic violence restraining orders, civil harassment restraining orders, gun violence restraining orders, and workplace and school violence restraining orders), all Juvenile Justice matters (Delinquency), all Juvenile Dependency matters, all Small Claims cases, all City of Watsonville Adult Misdemeanor hearings, and all traffic and minor violation matters in which an individual is cited in south county and mid-county.

“Coronavirus Temporary Measures. The Watsonville Courthouse is closed” (page 22, side bar). This is, simply, not accurate. During the pandemic, neither the Watsonville Courthouse, nor the Santa Cruz Courthouse has been closed for a single day. In the early stages of the pandemic, there certainly were hearings that were continued, but many were heard either in-person, or through the usage of remote appearance technology. To date, we are proceeding with in-person hearings, or remote appearances. The clerks’ offices, the Self-Help Center and the Family Court Services divisions have been open each day, since the pandemic emergency began.

“Three judges hold sessions only in the Watsonville Courthouse” (page 23, paragraph one). Inaccurate. There are four judges and two commissioners who hear sessions at the Watsonville Courthouse.

Finding Number 6, page 126: This finding is false, possesses no basis in fact, and is professionally offensive. It not only reflects upon the Judges of this county, but reflects upon the attorneys who, as Officers of the Court, have a duty to see matters proceed in a legally viable manner. It is offensive to the court clerks, court reporters, the interpreters, representatives from probation, county mental health workers, and the bailiffs, all of whom have a professional and personal stake in seeing that the members of the Santa Cruz community who appear in our Courtrooms are treated with dignity and respect.

While the term “chill” (page 126, first paragraph) is vague, at best, such a situation does not occur in any Santa Cruz County courtroom. The conclusion that there is a failure “to protect the right to counsel in misdemeanor cases,” is without a shred of merit. The opening remarks by some misdemeanor judges is neither confusing, nor inappropriate. The rights of each individual, including the right to counsel, is repeatedly described during every morning court session and, at the time of any change of plea, is offered, once again. Written forms are used for many pleas. Interpreters provide their talents, including the assistance

in filling out such forms. Judges are required to find any waiver of rights is knowing, intelligent and voluntary. Judges have no interest in an individual returning to court to withdraw a plea. This serves as another reason for a clear record and the use of written waiver forms.

It is acknowledged that many individuals in the misdemeanor courts have not been in the court system, previously (page 126, paragraph two). That is exactly why many of them want to resolve their cases and move on with their lives. However, their goals never interfere with their right to assistance of counsel.

Criminal cases in Watsonville (page 148): Criminal matters are heard in Watsonville. Decisions as to what cases are tried in what courthouses have been years in the making and involved all local participants in the criminal justice system. The opinion of the Boston group is noted.

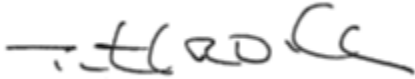
Uniform indigency screening and advice of rights policies (page 148): There is no specificity offered as to the basis for any concern over financial screening. All judges use the same form. I've been a judge in this county for twelve years and I have not seen a single complaint raised as to the financial screening process and an individual's right to counsel. If a person does not satisfy the financial criteria, but feels they cannot personally retain counsel, and wishes to be represented, the Court has the option of appointing the Public Defender, monitoring the case to its' conclusion and, if needed, have a hearing as to the defendant's ability to pay attorneys' fees (clearly, this involves non-indigent individuals. Indigent individuals always receive counsel, if they wish.). This is an option in name, only, as fees are rarely, if ever, imposed. In any event, that person would be capably represented throughout the process. As to the advisement of rights, those are uniformly administered. All judges use the same plea/waiver forms and all judges know the waivers they need to receive before accepting a change of plea. In my twelve years on the Bench, I am not aware of a single case where a request was made to withdraw a plea founded upon an allegation that a party did not understand his/her right to counsel. This takes into account the tens of thousands of pleas that have been accepted over that time frame. This is a non-issue.

I trust that my personal disappointment in the poor quality and lack of thoroughness and accuracy of this "report" has been clearly stated. I believe I am also speaking for my fellow judges as to their shock and surprise with the misstatements and non-truths offered in this document. While ninety-nine percent of this document contains information not known by the Court (regarding the inner machinations of the District Attorney's Office and the Public Defender Offices), the findings of the Boston group as to this Court, are so devoid of fact and so absent of even a fundamental grasp of the courtroom, as to cause concern as to the legitimacy of any of their findings/recommendations.

As Judges, we take our responsibilities to the Santa Cruz public with the upmost level of seriousness and care. We are proud of our efforts for this community. We have justifiably earned the numerous complimentary and appreciative letters and calls that each of our judges has been honored to receive. I am proud to work with all of my fellow judges and I know, firsthand, the preparation and professionalism that they bring to each day they

spend on the Bench. To have some outside entity perform a questionable evaluation (not even understanding the difference between a continuance and alleged veiled threat to delay a case, for example), and, then, have the audacity to offer “findings” and “recommendations” is personally and professionally offensive to all of us. They should be ashamed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Volkmann', with a stylized flourish at the end.

TIMOTHY R. VOLKMANN  
Judge of the Superior Court/Assistant Presiding Judge

C/C Jon Mosher/David Carroll  
Lawrence Biggam  
Mitchell Page  
Thomas Wallraff