

Portrait of a Very Good Court: San Mateo County Superior

Hon. Bill Burleigh, Monterey Superior Court (Ret.)



If you went to a factory and asked them to design an ideal court system for you, they would probably come up with something like the court in San Mateo County.

I retired 10 years ago and I spend a few pleasant months each year sitting as a visiting judge. I have probably worked in over 20 different courts, from Lancaster to Arcadia. Most are good, a few are very good and a few are dreadful. In my opinion, based on serving in San Mateo County for about nine months in the last few years, San Mateo is the best.

I am writing this article not to praise San Mateo County, even if they deserve it. I am writing this to point out some of the things they do procedurally that you might consider adopting. I am not much for uniformity of court systems, and I flinch every time the AOC makes all counties do the same thing, even when it doesn't make sense. I think we can all learn from others and decide what is best for our particular court. I expect to use facts to support my conclusions. I have interviewed the key people to try and figure out why they work so well.

Here we go:

Lost Files: In every court I have visited, files were misplaced fairly often. I always figured it was just normal human behavior, inevitable in a busy, high volume court system. Some courts even have a printed form where the file should be: "Lost. Contact _____." Many times I have worked with the attorneys' files in order to dispose of the matter. In my nine months in San Mateo, I don't remember ever having a file gone missing.

This seems to be the explanation: only three clerks (full time) are allowed to pull or put away files. The position is considered highly skilled and prestigious, even though the pay is not higher than other clerks. A card with case data, initialed by the clerk, is put in the place of any pulled file, for all felonies and general jurisdiction civil cases. In the rare case when a file is lost, an SOS goes out and it is given highest priority. All files are entered into the computer and can be traced to a court or other location. Courtroom clerks pick up the files from the calendar filing clerks and are responsible until the file is delivered to the file clerk. (One judge has had a file for five years (!) and the clerks know exactly where it is.)

High Profile Cases: As you know, some courts struggle with the cause celebre and the Mongol hordes of reporters -- calendars suffer, parking disappears, tempers flare. San Mateo had the Peterson case and two other death penalty cases going at the same time, and once you got to the courtrooms floor, it was hard to tell. Here is what they did:

The courtrooms start on the second floor in Redwood City, and cameras were kept below that level. The Court set up a password-protected private web site for the media, and every day the admitted evidence -- document and photo -- was posted on the site. They were given easy access to physical evidence. The Court requested and the press cooperated and appointed a liaison (who happened to be an Associated Press representative). The Presiding Judge, Mark Forcum, his CEO Peggy Thompson, and other staff, met with the press on a regular basis or as requested. The County bargained with K-mart for additional parking spaces. The County rented a whole block of parking spaces, actually closing off the street, for the television vans. Most of the front patio area was given over to the press for interviews. The P.J. says that the press policed itself and there were no problems. The Court's relationship with the media was positive and one of mutual respect. CBS TV said that San Mateo Court had the most well organized trial that they had experienced. Although the trial put stress on the staff and the judges, the trial calendars did not suffer, and the public was not inconvenienced.

Missing Criminal Defendants: In many courts, when I called an in-custody criminal case the deputies were not sure where the defendant was. Usually it was because he was delivered to the wrong court, was ill, or refused to come to court, but that message did not make it to the bailiff. In San Mateo County I do not remember ever having that experience. The defendants were always present or there was an explanation for their absence.

Here is why: San Mateo has an "Integrated Criminal Justice Computer System" that is shared by the Court and the Sheriff's office. When a judge sets a criminal case for hearing, it goes on the Sheriff's computer, and the computer always knows where the defendant is. Probably of equal or perhaps higher importance, the P.J. and the Sheriff meet as needed and there is a lot of communication between the Sheriff and the Court. They get along well together and there are no adversarial positions. They work out their problems.

CCP § 170.6's: As we all know, attorneys use the disqualification statute on a regular basis, against almost all judges, usually for no discernible reason. It is just done as a matter of course against even the best judges. Not so in San Mateo County. I have never received one and I was not aware of any being filed. I asked several judges about this and they had no explanation. The P.J. when I was there, Mark Forcum, said that it was probably because there is a high level of communication between the Bench and the Bar. The P.J. meets regularly with a committee of the Bar. The Presiding Criminal Judge meets regularly with the D.A., Jim Fox, and the head of the Private

(over)

Defender Association, John Digiacinto. The latter says that, although he doesn't tell his lawyers what to do, there is a general attitude that 170.6s are bad business unless there is a specific reason for one. There is mutual respect between his lawyers and the judges, fostered by a "wonderful system of communication." Mark Forcum, as P.J., wrote a letter to the Board of Supervisors praising the Private Defender's Association, and posted it on the Court's public web site.

Current Calendar: In many courts, probably half of my criminal jury trial calendar consisted of cases over two years old, and it was difficult to find one less than a year old. Some courts let the attorneys agree on the date of the next appearance and rubber stamp the date. In San Mateo the calendars are current, and it would be hard to find a year old case set for jury trial.

Here's why: Only judges control calendars. They will not accept stipulated continuances unless it fits the court's calendar. Only the Criminal P.J. can plea bargain a felony. All felonies go through just one judge, which cuts down on judge shopping. The D.A. assigns his best and most experienced deputies to both misdemeanor and felony pre trials. Very few misdemeanor cases go to trial. I remember one deputy's comment, after we had done misdemeanor pretrials for a week, that we had not set a single case for trial. And justice is done because the judge, the deputy D.A. and the defense lawyer all agree that the disposition is reasonable. They all know the value of a criminal case.

Private Defenders: I can't complain about the quality of the public defenders in any of the courts where I worked. But San Mateo has the only private attorney system that I have seen, and it is clearly more efficient and economical. The Private Defender Program is operated by the San Mateo County Bar Association, and is administered by an experienced criminal attorney. Representation of the indigent is provided by some 108 lawyers, almost all of whom are in solo practice. The program began in 1968 and I am surprised that it has not caught on throughout the state. My experience was that they were highly motivated, aggressive, and professional. Because they are in private practice, the County does not have to pay benefits or provide a conflicts panel. They have 28 private investigators at their disposal, more than most P.D. offices, also at low cost because they pay no benefits. The annual cost per case in San Mateo County, using private defenders, is \$491. Compare that to public defender offices: Contra Costa: 867; Santa Clara (including alternative and conflicts panel): \$1,256; Alameda: \$660. Most importantly, the lawyers love the freedom and independence of the system. When a lawyer from another county's public defender system sets up practice in San Mateo, and joins the Association, he or she is "thrilled", according to the Chief Defender, John Digiacinto.

O.R. Reports: In most counties, the judge at in-custody arraignments has to rely on the statements from the ill-prepared or uninformed attorneys, to set bail or O.R. If there is an O.R. report, it is at the second appearance, and is sketchy and superficial. In San Mateo County, at first arraignment, in every file, there is a thorough and detailed report of the defendant's prior criminal history, record for appearing in court, ties to the community, references, statements from the victim, etc. Amazing. They are prepared by the Probation Department and they are the very best possible. I am sure that the soon-to-be-named new Court CEO will send you a sample if you call (650) 599 1763.

Collegiality: Here is my most important point. About the only thing I did not like about my 22 years on the bench was the petty politics, bickering and manipulation among the judges. Meetings were

painful, and assignments were used for punishment. I was surprised when I started work on assignments that many courts are like this. Assigned judges seem to be a lightning rod for complaints, and I would hear from one group of judges about the lack of character of another group. Morale was often low in their clerks offices, in part because of the hostility among the judges. There were happy exceptions.

In San Mateo County, collegiality is the norm. The judges show respect for each other even if they don't feel it. I was not aware of any petty politics. On the contrary, every judge I had contact with spoke highly of his or her colleagues. And there are none of the usual prima donnas: each judge, no matter how much experience, is willing to handle the most tedious and low-level calendar. The P.J., Mark Forcum, handled night traffic court. No judge goes home for the evening without checking with the P.J. or the clerk to see if they are needed in another court. A couple of times I had a heavy felony sentencing calendar, and another judge would stay after the courthouse closed to help me out-unsolicited. In my home county it is the policy not to help out other judges, because, to quote from the P.J. at the time, it encourages the other judge to be lazy and inefficient.

San Mateo tries to assign a judge to a field that the judge prefers, but each judge is expected to work in the trenches occasionally. They don't stay indefinitely in criminal or civil. New judges do everything. It is interesting to see a judge go from a death penalty jury trial to misdemeanor arraignments. It makes for a healthy court system.

The judges have dinner together quarterly, just for fun; no business. One judge in Redwood City picks a lunch spot once a week and e-mails the location to the other judges to join him. In South San Francisco they usually go to the same funky restaurant in the warehouse district.

Statistics: San Mateo County has 26 judges, two family law commissioners, and four traffic and small claims commissioners. There are about 700,000 people in the County.

Conclusion: I admit I have not visited all the courts in the State, but I would be surprised if there are many as solid and in such good condition as San Mateo County. They have their act together. One theme seems to flow through it all: communication. Just like a good family.

It would behoove other courts to send their P.J. to San Mateo for a week to observe, and perhaps hear cases.

