

Judges say DA losing verdicts

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SANTA CRUZ — During the first half of the year, there was a dramatic drop in guilty verdicts by Santa Cruz county juries, according to a judicial survey.

Guilty verdicts were returned in less than 40 percent of the cases brought to trial in Municipal and Superior courts, according to the figures which were compiled by Superior Court Judge Tom Black.

"That's a fairly low rate," Municipal Court Judge Robert Attack observed.

Typically, the conviction rate in criminal cases brought to trial is about 80 percent.

Local defense attorneys said the results show prosecutors should be more flexible in offering plea bargains and do a better job of deciding what cases they bring to trial.

Prosecutors say they are just doing what taxpayers pay them to do — taking cases to trial where the evidence points to a defendant's guilt, and refusing to back away from tough cases where guilt may be more difficult to prove.

Beside that, they say, jury trials make up less than 1 percent of the total number of cases handled by the District Attorney's Office each year.

When cases where guilty pleas are entered early on in court proceedings are considered, the rate of conviction soars to more than 90 percent, according to District Attorney Art Danner.

One Municipal Court judge said it may not be in the best interest of justice to pay too much attention to conviction rates.

"It's very dangerous to draw conclusions based on statistics proving some sort of a won-loss record like baseball players," Municipal Court Judge Tom Kelly said.

"It can lead to, I feel, improper criteria being used by the state in an attempt to improve their numbers. For example, if a prosecutor has a 'slam dunk' case where they're assured of a conviction, the tendency could be to keep those and unload cases where there may be a question of it going to trial.

Danner questioned Black's motivation for compiling the data, then releasing it to reporters and some local attorneys.

"I hope this is not his way of trying to intimidate us from trying the tough cases," Danner said. "He should know better than most that rulings by a court can change the course of a case. The court has as much to do with the outcome as prosecutors and defense attorneys.

Black said he compiled the data out of "curiosity," saying the recent prevalence of acquittals and hung juries had become a "major subject of discussion" among the

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judges.

"It seems something's haywire," Black said.

"If what's happened over the past six months were to continue for any significant period of time I would be concerned," Superior Court Judge Samuel Stevens said. "It shows something is out of balance."

In two recent well-publicized trials in Stevens' court, the District Attorney's Office insisted on trying the defendants for first-degree murder, but received substantially lesser verdicts from jurors.

Aaron Wilson was accused of plotting to rob and shoot Carl Kamradt, but was convicted by a jury of manslaughter. In the so-called "Vampire Trial" Deborah Jean Finch was accused of stabbing Brandon McMichael because she wanted to make her first "kill." A jury in that case returned a conviction on assault-with-a-deadly-weapon charges.

Defense attorneys in both cases offered guilty pleas to second-degree murder, but were rejected.

"I'm not saying we're perfect," Danner said. "But I can say it happens on the other side too...of course, if we dismiss cases it would be a clear signal to the defense attorneys that we're going to start wheeling and dealing, and we're not going to do that."

Stevens said he considered the survey results confidential and declined to publicly discuss his theories for the results.

Superior Court Judge John Marlo said that he had only glanced at Black's final tally and did not, himself, "keep a running count."

"But I will always try to get a disposition (before trial)," he said.

"I think what you have to do is look at the overall picture. We have so many civil cases pending, that whenever a case goes away, I'm delighted. I have five more I can try."

Attorney Ben Rice, president of the Santa Cruz County Criminal Defense Bar Association, and frequent critic of police and the District Attorney's Office, said he was not surprised by the results.

"It bears out what I've been saying for awhile, that the DAs are not evaluating the cases well and Art Danner is setting policies that are causing cases to go to trial that should never go to trial," he said.

Lawrence Cohen, a public defender in Santa Cruz County the last three years, agreed.

"Basically, what I think it comes down to, is prosecutors do have an obligation to prosecute cases," he said. "However, they also have an obligation to reasonably evaluate where the strengths and weaknesses are and not to try every case that could possibly be tried."

"We have policy guidelines," Danner said. "But within the guidelines they (prosecutors) have absolute authority to try the case, or not. They have that kind of discretion and they always will have."

He pointed out that a judge has the authority to dismiss cases where there is insufficient evidence.

"What he (Black) wants us to do is plea bargain everything," Danner said. "But on a number of these cases you cannot, by law, plea bargain."

"I think unless you understand the individual cases themselves and what was involved in each

one, you cannot make heads or tails of these kinds of statistics."

For the last three years, the rate of convictions in criminal jury trials has been around 80 percent, according to Danner. Over time, he said, the same should hold true this year.

Assistant District Attorney Toni Allen, who supervised the Municipal Courts until recently, said individual attorneys have discretion to settle cases. She said with only one prosecutor assigned to each courtroom, each one must have the authority to settle cases before trial.

"The Municipal Court attorneys are in court more than any other in the office," she said. "They have to do it by themselves. They're busy enough as it is and don't need to take so-called 'dog cases' to trial."

Danner said the figures show an increase in the number of mistrials due to hung juries. He attributes that to judges' power granted through Proposition 115 that limits defense and prosecuting attorneys' questioning of prospective jurors.

Black pointed out that Danner was a big proponent of Proposition 115.

"They're blaming the messenger," he said.

"The whole question is, after you read all this stuff, you say, so what," Danner said. "If this was a long-term trend I could say there was something more to it. The fact is, we're trying tough cases, winning more than we're losing, and we're not going to be dissuaded based on some figures we don't even agree with."