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BRUCE VAN VOORHIS

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE BRUCE VAN VOORHIS, NO. 165.	VERIFIED ANSWER OF BRUCE VAN VOORHIS TO NOTICE OF FORMAL PROCEEDINGS

Comes now the Honorable Bruce Van Voorhis and pursuant to Rule 119 of the Rules of the Commission on Judicial Performance, admits, denies and alleges as follows in response to the Notice of Formal Proceedings now pending before the Commission:

COUNT ONE

1. Judge Van Voorhis denies each and every, all and singular, generally and specifically, the allegation in Count One that "In the case of People v. Karl Elze, No. 01-112062-5, you made, or gave the appearance of making, a legal ruling for a purpose other than the faithful discharge of your judicial duties, in violation of the Code of Judicial Ethics, canons 1, 2A, 3B(2) and 3B(8)."

2. Admits the allegation that on January 30, 2001, he granted a defense motion objecting to the admissibility of statements of the defendant made prior to the administration of a field sobriety test. In the Elze case, illegal flight from the police distinguished the case from the atmosphere of a routine traffic stop. At the time, Judge Van Voorhis suppressed the evidence of the statements of the defendant, his decision

was exclusively and entirely based upon the consideration of the evidence presented, including evidence that the statements were involuntary under the circumstances, his finding of fact that the statements were involuntary, and his application of California law to those facts. Judge Van Voorhis denies making any ruling in People v. Elze, or any other case, for that matter, in order to see how an attorney would handle the ruling.

3. As to the allegation in Count One, concerning early February 2001, the allegation was first presented to Judge Van Voorhis several months later. Judge Van Voorhis is unable to recall, and therefore denies, exactly what particular words were stated to Deputy District Attorney Stacey Brock concerning her being entitled to introduce the evidence of such statements, or concerning the idea that evidence was suppressed in order to "see how she would handle it." Judge Van Voorhis regrets not being able to strengthen his defense by recalling the particular wording of the remark. He honestly admits that there are many versions possible. Judge Van Voorhis acknowledges both the possibility that he somehow misspoke and the possibility that Ms. Brock didn't hear what was stated. However, both Judge Van Voorhis and Ms. Brock recall the context of the remark. Even Ms. Brock has admitted that a blunt, sincere confession of unfaithful performance of judicial duties does not fit into the context of the brief conversation. After completion of the trial of People v. Karl Elze, he was asked by the prosecuting attorney to engage in an informal discussion of trial tactics and legal skills. Judge Van Voorhis admits possibly stating to Ms. Brock that California law permits the admissibility of unmirandized statements of a defendant made prior to the administration of a field sobriety test. During the trial, the Deputy District Attorney decided to contest the admissibility of the statements made prior to the administration of a field sobriety test, and obtain a pre-trial ruling from the court relating to the admissibility of those statements rather than reserving the opportunity to use the statements for impeachment in the event defendant Elze decided to testify and say something different. It may very well be that the Deputy District Attorney expected a totally different pre-trial ruling because of case law that was factually distinguishable from the circumstances of the Elze case. The message

of the post-trial discussion was that trial attorneys often suffer an unexpected defeat, so unimportant issues perhaps should not be contested and a skilled and experienced lawyer is expected to assess the consequences of an unexpected defeat without faltering. The point Judge Van Voorhis was attempting to get across to the Deputy District Attorney was that experienced and skillful lawyers know that judges are human, and therefore capable of results that are unanticipated and unexpected by the lawyer. Judge Van Voorhis was attempting to show the Deputy District Attorney that the possibility of an unexpected result (even an absurd one) should be considered in deciding upon trial tactics. At this point in the context of the discussion, an illustration of an absurd, unexpected result appears to have been either communicated poorly or misconstrued. Judge Van Voorhis does recall that Ms. Brock voluntarily heard him say that by pursuing an unimportant evidentiary ruling during trial, a damaging defeat is always possible. Judge Van Voorhis recalls emphasizing this point by mentioning ridiculous reasons that a judge could have for making rulings, but he cannot recall the specific wording of any of the examples. Judge Van Voorhis recalls that one of the examples of an unexpected result was based on an attorney who had been displaying astonished reactions to rulings and this formed the basis of some type of sarcastic remark. Regardless of whatever illustration Ms. Brock heard (or thought she heard), it was part of an innocuous warning for the young lawyer to be prepared for the unexpected and could only be misconstrued as an alarming confession if taken completely out of context. Judge Van Voorhis recalls concluding his message by trying to convey to Ms. Brock that having suffered an unexpected defeat, a skilled lawyer should assess the consequences of the ruling and continue the case without faltering or showing the court disrespect. The brief conversation regarding trial tactics then concluded.

4. In answering the remainder of Count One, Judge Van Voorhis is informed and believes and thereon admits that Ms. Brock, as of February 2001, had been an attorney for less than three months.

COUNT TWO

In answering the general allegations of Count Two, Judge Van Voorhis admits that he stipulated to a public reproval by the Commission on Judicial Performance on September 8, 1992, the terms of which are a matter of public record. Other than as admitted, Judge Van Voorhis denies that he has engaged in a pattern of failing to be patient, dignified, and courteous to attorneys, court staff and jurors when dealing with them in his official capacity.

In answering Paragraph A.1 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Admits that he presided over the trial of People v. Karen Silva.

2. Denies that he criticized the manner in which William Gardner posed questions to witness Gary Gifford. During defense counsel's cross-examination of Gifford, Judge Van Voorhis repeatedly gave rulings and guidance to Mr. Gardner as to how to question the witness. The defense attorney improperly gave offers of proof without having competent, admissible supporting evidence available to be produced in court, repeatedly asked improper questions, and placed in front of the jury inadmissible evidence.

3. Admits to making the comments contained in Paragraph A.1 of Count Two but denies the comments were made with the intent of disparaging Mr. Gardner's professional competence. The defense attorney wanted to prove that another person, Mr. Gonzales, could be suspected of possessing the illegal drugs seized by police officer Gifford from defendant Karen Silva's residence. The defense attorney tried to prove four things: (1) that Mr. Gonzales had been detained on a traffic stop near defendant's residence and taken into custody about twenty-four hours before the search of defendant's residence and the arrest of the defendant for possession of illegal drugs, (2) that the facts relating to Mr. Gonzales' arrest may have indicated that Mr. Gonzales may have recently been at the house where the defendant was arrested and where illegal drugs were seized; (3) that the facts relating to Mr. Gonzales' arrest may have been used in the affidavit supporting the issuance of a search warrant which led the search of

defendant's residence, the seizure of illegal drugs, and the arrest of the defendant; and (4) Mr. Gonzales may have been convicted of something that might raise a suspicion about his culpability for the drugs seized. Judge Van Voorhis ruled it was improper for defense counsel to question Officer Gifford in an effort to prove these matters, since Officer Gifford had no personal knowledge concerning Mr. Gonzales' arrest, having knowledge of it only through hearsay, and was incompetent to testify to the facts that the defense attorney sought to prove. The approach taken in this case enabled the defense attorney to place in front of the jury inadmissible evidence. The repeated improper conduct of counsel understandably made the judge incredulous of the defense attorney's good faith. In attempting to enforce the requirement that questioning be done in good faith, i.e., possessing a colorable belief that the question is appropriate under California rules of evidence, Judge Van Voorhis admits to stating the gratuitous, undignified reference to law school.

4. Judge Van Voorhis admits that when Mr. Gonzales' name was first mentioned he declined a request from the prosecutor to privately discuss Mr. Gonzales outside the presence of the jury. The record reflects that only later did it become apparent that Mr. Gardner was attempting to present inadmissible evidence, specifically, that Mr. Gonzales had been convicted of a crime. Mr. Gardner then attempted to state on the record the nature of the offense Mr. Gonzales had been convicted of, and the Deputy District Attorney interrupted, again requesting a sidebar conference. Judge Van Voorhis quickly addressed Mr. Gardner and did not state a ruling on the prosecutor's second request.

In answering Paragraph A.2 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Judge Van Voorhis admits that he admonished Deputy District Attorney Kathleen McMurray for eliciting testimony from the arresting officer about the defendant's performance on a gaze nystagmus test without having presented expert witness testimony

as to the scientific validity of the test. Judge Van Voorhis denies his admonishment was intended to be criticism of the Deputy District Attorney's job performance.

2. Judge Van Voorhis denies determining that Ms. McMurray was not aware expert testimony would be required. The arresting officer was asked questions about the one-leg-standing balance test, the heel-to-toe test, and the index-finger-to-nose test. In connection with statements supposedly made by the defendant during the "gaze nystagmus" test, the Deputy District Attorney started asking questions about the test, at which point the officer testified, "And what causes the jerky movement of the eye is the alcohol in the blood . . ." An objection by defense counsel was sustained, and Judge Van Voorhis said to Ms. McMurray, "You need to lay a foundation for this evidence before it's submitted to a jury," and asked her, "Do you intend to do that?" The Deputy District Attorney said that she was aware expert testimony would be required in this area, and commented, "I wasn't aware that the court wouldn't qualify her, based on her training and the times she had administered the test . . . ". Judge Van Voorhis concluded that the Officer's training and experience was insufficient to qualify the officer as an expert on why or how the gaze nystagmus test was an indicator of alcohol intoxication.

3. Judge Van Voorhis did refuse a request by Ms. McMurray to discuss the matter at bench. As the record reflects, the context of Ms. McMurray's request was as follows:

THE COURT: Many times, she has seen a person demonstrate some sort of symptom. That doesn't necessarily connect it with alcohol. Probably everybody she has ever arrested has a smaller finger on the end of their hand. That doesn't mean that everybody with a small finger is drunk . . .

THE COURT: That doesn't really solve the problem completely, because you went down a road that you could not complete, and this jury has heard about gaze

nystagmus, and they are supposed to wonder what it all means.

MS. MCMURRAY: If we could approach the bench, I think that's probably appropriate.

THE COURT: And what would you tell me up here?

MS. MCMURRAY: I have questions of the Court.

THE COURT: Ask me now.

MS. MCMURRAY: If this was in the police report, and I indicated there was no motion indicating that this was to be excluded from this trial –

The prosecutor was erroneously contending that if no motion to exclude such evidence was brought by the defense in limine, then it was acceptable to offer it in evidence. There was no basis to qualify the police officer as an expert witness. However, the implication to the jury was that the gaze nystagmus test was indicative of the defendant's intoxication. Defense counsel had objected and the court sustained the objection. There was nothing more to discuss. However, Ms. McMurray attempted to defend her actions six more times. Judge Van Voorhis continued to repeatedly admonish Ms. McMurray for initiating questions about the gaze nystagmus test without being prepared to present expert testimony that Judge Van Voorhis had ruled was required. Judge Van Voorhis repeatedly stated his concerns about the effect on the jury of having heard reference to the administration of the test without scientific evidence linking the test to proof of intoxication, and the jury's ability to follow instructions to disregard the testimony. Supposedly, Ms. McMurray was merely attempting to place the defendant's statements within the context of the test, but that did not require her to factually develop what the test consisted of and how it should be interpreted.

5. Judge Van Voorhis admits that he repeatedly admonished Ms. McMurray for initiating questions about the gaze nystagmus test without being prepared to present expert testimony, and repeatedly stated his concerns relative to the jury having heard

reference to the test. Judge Van Voorhis acknowledges that he told Ms. McMurray that if the police officer could not qualify as an expert that "[he] may have to take the jury away from you . . ." However, the full context of what he said was that if the officer did not qualify as an expert, "I may have to take the jury away from you because you leave them with the impression that it means something. You can't start off leaving them with the impression that it means something, and then never tell them what it means."

6. Judge Van Voorhis denies that he disparaged Ms. McMurray's performance by advising the jury, "The prosecutor has told you and me that she has no intention of showing that it has any more scientific basis than the little joke I made about the little finger, so we'll leave that topic." What Judge Van Voorhis stated was, "The testimony about gaze nystagmus will be stricken. The prosecutor has told you and me that she has no intention of showing that it has any more scientific basis than the little joke I made about the little finger, so we'll leave that topic." The court advised the jury that it was not to consider the evidence in order to insure that the criminal defendant received a fair and unbiased trial. The evidence needed to be stricken, and the jury needed to be explained the reason why it was being stricken. It was not done for the purpose of disparaging the Deputy District Attorney, but rather for the protection of the criminal defendant's rights.

In answering Paragraph A.3 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Judge Van Voorhis admits that in January 2000, he presided over the case of People v. Ward Hoye. He admits that Deputy Public Defender Esteban Alvear represented the defendant. Judge Van Voorhis admits that he had a post-trial discussion with Mr. Alvear regarding the manner by which he handled the case, but does not recall, and therefore denies, that he told Mr. Alvear, to "lose that accent". Judge Van Voorhis admits suggesting to Mr. Alvear essentially that he work on his accent in order to be able to better communicate with the jury and witnesses. During the course of the trial, Judge Van Voorhis occasionally strained to understand Mr. Alvear because of the accent. For example, during the cross-examination of Officer Stephen Barruel, the witness was asked,

"That's right. That's standing up. That's not walking around, is it?" Judge Van Voorhis and Officer Barruel mistook the word "walking" as offensive slang meaning fornication. Officer Barruel, following a pregnant pause, asked, "I'm sorry, did you say 'walking'?" Mr. Alvear responded, "Yes." At which point, the Officer said, "I'm sorry, I thought you said . . . ". Furthermore, during the course of the trial, Mr. Alvear himself appeared to understand that the jury had trouble understanding him. For example, he stated to the jury, "My name is Esteban Alvear, in case you didn't understand the first time I said it." Although Judge Van Voorhis acknowledges that Mr. Alvear did not specifically request a critique of his performance, the Deputy District Attorney did ask Judge Van Voorhis for comments concerning legal skills. Judge Van Voorhis complimented both attorneys in the case, and made some other comments. During this conversation, Mr. Alvear and his client continued to sit in the courtroom, looking interested, which Judge Van Voorhis mistook as an implied invitation to continue to include them. The advice about his accent was prompted by what happened during the course of the trial and was intended to benefit Mr. Alvear as a member of the legal profession. In March, Judge Van Voorhis received a letter from the Public Defender's office about the matter, and responded with an apology.

2. Judge Van Voorhis does not know whether other people heard the remark to Mr. Alvear about his accent but people were in the courtroom when the discussion took place. The motion to disqualify Judge Van Voorhis in People v. Charles Joseph Nelson is a matter of public record and is therefore admitted. It is inadmissible hearsay and inappropriate for consideration in this case. Judge Van Voorhis was not allowed to direct the presentation of evidence at the hearing on the motion. The challenge for cause against Judge Van Voorhis was denied. The ruling and dicta in the ruling by Judge Joan Cartwright is inadmissible hearsay and inappropriate for consideration in this case.

In answering Paragraph A.4 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Judge Van Voorhis admits that he presided over the case of People v. Fred Brian McDonald, and that Deputy District Attorney Christine Meade represented the

People. Deputy District Attorney Meade represented the People in People v. Ward Hoye, Count Two, A.3. above.

2. Judge Van Voorhis admits saying the quoted statements attributed to him in the reporter's transcript of the trial of the People v. Fred Brian McDonald. On March 7, 2001, during an in limine motion hearing in People v. McDonald, defense counsel sought to exclude evidence of a no contest plea entered by the defendant in a theft case in Santa Cruz County. Judge Van Voorhis inquired of Deputy District Attorney Meade whether she intended to offer evidence of the past behavior. When Ms. Meade answered in the affirmative, the court instructed her to say "with precision" how she was going to prove the behavior. She said she would ask the defendant if he was convicted of the offense. Judge Van Voorhis eventually denied the defense in limine motion, but there was never any mention by the Deputy District Attorney that she intended to place before the jury the fact that the defendant was on probation in Santa Cruz County. A prosecutor is prohibited from inquiring into the status of a defendant as a probationer because some jurors might be inclined to hold a current probationer to a higher standard of behavior or to lower the burden of proof. During the course of the defendant's cross-examination, the following testimony was elicited:

Q.: Certainly. Were you convicted of embezzlement from Serano and Cohn on April 12, 1999?"

A.: Yes, ma'am.

Q.: You're currently on probation for that conviction; isn't that true?

A.: Yes, ma'am.

Q.: That conviction is that -- you're on probation in Santa Cruz?

At which point in time, Judge Van Voorhis became involved in the interrogation and asked:

THE COURT: Then, tell me, on what basis did you ask that question?

MS. MEADE: On the basis of having a certified copy of the terms –

THE COURT: But you know and I know that what I agreed you may do is prove the conviction.

And you remember me, many times, asking you in what form you intended to prove this conviction, and you never mentioned anything about asking him about probation; did you?

MS. MEADE: No, Your Honor.

THE COURT: And then you remember, in our conversation, I demanded that you be precise about that, and you still never mentioned that you were going to do this; did you?

MS. MEADE: No, Your Honor.

THE COURT: You see why I feel a little jilted now?

MS. MEADE: Yes, Your Honor.

THE COURT: And then I gave you an opportunity to show me any legal basis that you may have to do it, and you contended there is absolutely none.

So now I want to know what your motives are. Because they appear to be – to violate my rulings and to break California law in terms of what is permitted in a criminal courtroom, and I'm here to stop you.

MS. MEADE: I understand that, Your Honor. I have a certified copy of the conviction –

THE COURT: That's not what I'm talking about.

Shall you focus again on what you did? You asked him about his probationary status; didn't you?

MS. MEADE: Yes, Your Honor.

THE COURT: Well, you know you can't do that; don't you?

MS. MEADE: I do now, Your Honor.

THE COURT: Didn't you know it at the time of the question?

MS. MEADE: No, Your Honor. [RT 103:27-106:1]

After the defense counsel moved for a mistrial, Judge Van Voorhis addressed the jury:

I'm going to instruct the jury that probation has nothing to do with this case whatsoever. And, for whatever reason, the District Attorney launched off into that. It's not particularly prejudicial at this point, but it's not allowed under California law. If you can't disregard that question, and I don't think he made it to an answer, then I'll remove you from the jury. Is there anybody who can't disregard that? (A brief pause) I'm not seeing any hands. Your request is denied then. You need to be way more careful in my courtroom than you just were - -

MS. MEADE: Yes, Your Honor.

THE COURT: – or you could be in a lot of trouble.

MS. MEADE: Yes, Your Honor.

THE COURT: Abide by my rulings, or you'll tangle with me.

MS. MEADE: Yes, Your Honor.

THE COURT: Ask your next question.

In answering Paragraph A.5 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

Judge Van Voorhis admits that in January and February of 2001, he presided over the trial of People v. Karl Elze. Judge Van Voorhis denies that he demeaned Deputy

District Attorney Stacy Brock. Without intending to offer the results of a horizontal gaze nystagmus test, instead of just asking about whether the defendant had failed to follow directions, the Deputy District Attorney began to question Officer Lamberto Montano about "the first field sobriety test," already creating the inference that horizontal gaze nystagmus can indicate insobriety. The inability of the defendant to follow instructions was admissible, but not the nature of this particular test without expert testimony to establish its logical foundation for admissibility. The prosecutor admitted, "We won't be offering any results of it, Your Honor." If the results of the test were not to be introduced, the Court was required to insure that defendant had a fair trial, since the jury could improperly give some significance to a horizontal gaze nystagmus test or speculate about it. In order to remedy the unsupported inference created by Ms. Brock's improper presentation of evidence, Judge Van Voorhis said to Ms. Brock, "You could ask him about that in general, but you know that if you offer evidence of that, they are liable to think it means something. Tell them it doesn't mean anything." Ms. Brock told the jury, "This doesn't mean anything." Judge Van Voorhis said, "Yeah, so why bother with it?" Again, Ms. Brock offered no acceptable basis for admissibility, so Judge Van Voorhis prohibited evidence of the horizontal gaze nystagmus test entirely and the jury was polled to assure that they could disregard it.

In answering Paragraph A.6 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

Judge Van Voorhis admits saying the quoted statements attributed to him in the reporter's transcript of the trial. He denies that he told Deputy District Attorney Brock, "in a demeaning tone, to state that the evidence was relevant." The court repeatedly asked Ms. Brock whether the evidence was relevant in light of the fact that it represented character evidence. Ms. Brock was non-responsive. But suddenly the defense attorney interrupted, so Judge Van Voorhis had to redirect the question to Ms. Brock because she was entitled to an opportunity to state any further challenge to the character evidence introduced by the defendant. Judge Van Voorhis asked her again if it was relevant. It

was in answer to this question that Ms. Brock said, "Yes." Once she used the opportunity to speak and didn't raise other objections, such as Evidence Code Section 352, the court could move on without being in jeopardy of judicial error (and did move on immediately).

In answering Paragraph B of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

Judge Van Voorhis denies that he criticized court staff in a harsh and disparaging manner, and further denies that he failed to cooperate in the administration of court business as alleged.

In answering Paragraph B.1 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Judge Van Voorhis admits that clerk Kim Carmichael temporarily assisted him on July 13, 1999. Judge Van Voorhis does not recall "repeatedly" demanding that Ms. Carmichael provide him with files that were still being prepared by other employees in the clerk's office, but does acknowledge that he routinely directs his clerk provide him with files that are prepared by other employees in the clerk's office. Judge Van Voorhis denies that he waved and denies that he admonished Ms. Carmichael in a very loud voice as alleged.

2. Judge Van Voorhis denies that he angrily threw a group of court files onto Ms. Carmichael's desk, or a table near where she was seated. Judge Van Voorhis has no recollection of any discussion with Ms. Carmichael regarding changing the calendar in the hallway, and has no recollection of requesting that she bring defendants into Judge Van Voorhis' courtroom from an adjacent courtroom, and based upon such recollection, denies the allegation. Judge Van Voorhis can neither admit nor deny what Ms. Carmichael reported to her supervisor, but acknowledges that on August 4, 1999, he met with presiding Judge Mark Simons, however the incident referenced herein was not the subject of any discussion. What Judge Van Voorhis did discuss with Judge Simons and also with Ms. Carmichael was that on July 13, 1999, Ms. Carmichael made a serious error in the performance of her duties as a clerk in connection with ascertaining what matters were

then pending in the Walnut Creek branch court. Judge Van Voorhis then reported to the presiding judge the status of his branch court based upon erroneous information that had been given to him by Ms. Carmichael. When the error was disclosed by Ms. Carmichael, Judge Van Voorhis explained to her what effect the error had on the operation of the court system, and that as a result of her error, erroneous information had been supplied to the presiding judge regarding the availability of courts in the Walnut Creek Branch of the Contra Costa County Superior Court. Judge Van Voorhis denies that he was being rude or angry during the course of this explanation, but does acknowledge that Ms. Carmichael suddenly began to have tears in her eyes, and the conversation was immediately concluded. Judge Van Voorhis acknowledges that Ms. Carmichael was reassigned, but it was much later after July 13, 1999.

3. Judge Van Voorhis admits that he met with Judge Mark B. Simons on August 4, 1999, but the conversation never involved the details of the matters set forth in this charge.

In answering Paragraph B.2 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Judge Van Voorhis admits that he was temporarily assisted by courtroom clerk Pat Van Horn on April 19, 2000, while he presided over the case of People v. William Homeyer, and further admits that after closing instructions to the jury, Ms. Van Horn orally and on the record, administered the oath of office to the bailiff to take charge to the jurors. Judge Van Voorhis denies that he criticized Ms. Van Horn for "wasting 20 seconds of your time by swearing in the bailiff on the record." Judge Van Voorhis admits that he expressed his desire to Ms. Van Horn to dispose of cases in a timely manner and that he stated an opinion that it is unnecessary to swear in the bailiff on the record. It is Judge Van Voorhis' express desire to dispose of cases in a timely manner. He is of the opinion that it is not legally necessary to swear in the bailiff on the record. Judge Van Voorhis denies that he instructed Ms. Van Horn to swear in the bailiff quietly without placing the oath on the record. The conversation between Judge Van Voorhis and Ms. Van Horn was

during a recess while they were seated in their respective positions in the courtroom. Other people were also in the courtroom. Judge Van Voorhis denies that he was visibly angry when he spoke with Ms. Van Horn on April 19, 2000.

2. Judge Van Voorhis acknowledges Ms. Van Horn filed a written complaint with the court, and admits that he received a copy of the complaint on May 10, 2001. However, her complaint is clearly in error, in that it stated the event occurred in front of the jurors, the bailiff and a courtroom full of people. The bailiff had already taken charge of the jury, had removed them from the courtroom before any discussions with Ms. Van Horn occurred.

In answering Paragraph B.3 of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

1. Other than the allegation, "You then chastised Deputy Brown, stating in an angry and belittling tone, words to the effect . . . ", Judge Van Voorhis admits the allegations contained in Count Two, B.3. Judge Van Voorhis denies chastising Deputy Brown, nor stating in angry and belittling tones the words quoted. Judge Van Voorhis maintains a very large criminal calendar that requires adherence to courtroom protocol and guidelines in order to insure the orderly administration of justice. As of December 26, 2000, the established procedures followed by the Sheriff's Department for supplying defendants to Department 24 required that in the early morning, a member of the Sheriff's Department, specifically the security deputy, would have the responsibility to cross-check the names on the calendar for Department 24 supplied by the clerk's office with the names of the anticipated defendants being transported to court in order to assure that there was a match and to alert the Judge either verbally or in writing if there was not a match as to any name. Over the years, a concerted effort had been made to get the Sheriff's Office to coordinate their production of incarcerated defendants with court-ordered appearances. The established procedure has two distinct advantages. First, it avoids the public embarrassment and humiliation of the judge having a file without a defendant or having a defendant without a file, which could give the public the impression

that the judge was uninformed, ineffective, inefficient, and incompetent. Second, notifying the judge of the problem also gives the judge the opportunity to assess the situation and to make decisions about the best way to respond to that situation. The judge is in the best position to evaluate, for example, whether the defendant should be transported on an expedited basis, or whether to postpone the hearing to another day. Usually, that determination needs to be made as soon as possible in the morning in order to have the most options available and to minimize the inconvenience to those affected, potentially jurors, lawyers, witnesses, court staff and Sheriff's Department personnel. Deputy Brown did not follow the established procedure on December 26, 2000. When the Deputy Public Defender asked about his client, Deputy Brown improperly announced that an in-custody defendant on the court's calendar was not coming to court. The statements made by Judge Van Voorhis were directed to the issue presented--the need for the Deputy to learn and follow the well-established procedures that were already in place.

2. Judge Van Voorhis admits that his remarks were addressed to Deputy Brown in open court, and that she reported the events to her supervisor.

In answering Paragraph C of Count Two, Judge Van Voorhis admits, denies and alleges as follows:

Judge Van Voorhis admits that he presided over the trial of People v. Jonathan Sowande in August 2000, and admits that he commented on the form of a written request for clarification submitted on behalf of the jury by the jury for person, without appearing improperly disparaging. The comments attributed to Judge Van Voorhis in the reporter's transcript are accurate. During the jury's deliberation, in People v. Sowande, a written question was presented to the court by the jury that was responded to by the court in writing following argument by counsel. The jury also requested the read-back of certain testimony and before the read-back, presented the court with another question, as follows: "Could the intent of the defendant, the act of reaching for the keys to start the car be considered driving under the influence of alcohol?" Following the read-back of the testimony and while the jury was deliberating again, the court and counsel struggled with

the interpretation of the question. When the court asked counsel what the answer to the question should be, the following dialogue took place:

THE COURT: So the answer to the question is no.

MR. O'CONNOR: I would say the answer is circumstantial evidence is to be considered by the jury for whatever purposes it desires.

THE COURT: It could have that effect. I mean, it's not evidence that they can't consider. We should clarify that.

MS. SHAHEEN: Your Honor, as I've understood the District Attorney, that would blatantly misstate the law. They can consider circumstantial evidence, but the question was not what evidence can they consider of the intent to drive.

THE COURT: Maybe you should look at the question again.

. . .

MS. SHAHEEN: But I'm restating part of the question only to answer the question.

They're asking "Could the intent of the defendant be considered driving under the influence of alcohol?" The clear answer is no, the intent itself cannot be considered driving under the influence of alcohol. Simply to have the intent to drive a car when you're drunk is not driving under the influence, you need actual driving. And I think the question should be answered, and I feel a legal answer is no.

THE COURT: If that's what they meant by the question.

MS. SHAHEEN: Then if the Court has a question about what their intent was in asking, maybe he can bring them back

out there and ask them that. But that's what their question says and to presume that the question doesn't mean what it says it means and rather means something more favorable to the prosecution is objectionable. I think what the prosecutor was suggesting . . .

THE COURT: Why do you think the question should be interpreted the way you interpreted it?

MR. O'CONNOR: I think the answer they're asking, can the intent of somebody, i.e., trying to start the car, be used as evidence?

THE COURT: That isn't what they actually phrased the question like.

. . .

THE COURT: I really don't think that's what they asked, and if they asked me that question, I'll tell them that. But I really don't think that's what they asked, although their question is not very coherent . . .

Although the parties had stipulated that written responses were satisfactory for earlier questions, the defense attorney insisted that the jurors be brought back into court and told the answer to this question. Judge Van Voorhis recognized the jury was struggling with a decision in the case and had already indicated there was a possible problem with unanimity in the verdict. Anticipating that further questions would be presented to the court from the jury, and because of the uncertainty as to the meaning of the question presented, Judge Van Voorhis requested the jury to be very specific when presenting a written question to the Court. Judge Van Voorhis denies that he intended to demean the jury rather than merely stressing to them the importance of precise questions that would eliminate uncertainty. Judge Van Voorhis admits that his remarks to the jury

were made in open court and on the record. Judge Van Voorhis admits that two jurors wrote letters of complaint to him regarding the incident at issue.

The contents of this answer are verified as true and correct, under penalty of perjury. Signed in Walnut Creek, California.

Dated: January 2, 2002

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Attorneys for Defendant
Judge Bruce Van Voorhis

VERIFICATION

I, BRUCE VAN VOORHIS, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: _____

_____
BRUCE VAN VOORHIS

JAM.10105375

were made in open court and on the record. Judge Van Voorhis admits that two jurors wrote letters of complaint to him regarding the incident at issue.

The contents of this answer are verified as true and correct, under penalty of perjury. Signed in Walnut Creek, California.

Dated: January 2, 2002

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Attorneys for Defendant
Judge Bruce Van Voorhis

VERIFICATION

I, BRUCE VAN VOORHIS, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 1/2/2002 Bruce Van Voorhis

BRUCE VAN VOORHIS

JAM.10105375