

CONCURRING OPINION OF ACOBA, J.

I concur in the opinion, except I believe the proposed safeguards with respect to a jury view must be mandatory rather than discretionary. I fear the discretionary terms with which this court directs that views are to be undertaken will only spawn in the future, further appeals on whether some, or all, of the safeguards should have been undertaken, or that other steps obviously necessary were required. In my view, the salutary approach would be to require the steps recommended be followed in order to promote uniformity and consistency in our trial courts; a course that I believe in the long run and in the great number of cases will promote the administration of justice.

We have mandated similar procedures before. See Tachibana v. State, 79 Hawai'i 226, 236, 900 P.2d 1293, 1303 (1995) ("[I]n order to protect the right to testify under the Hawai'i Constitution, trial courts must advise criminal defendants of their right to testify and must obtain an on-the-record waiver of that right in every case in which the defendant does not testify."). Where we have not, as in urging the trial courts to appropriately advise defendants in jury trial waivers, see State v. Freeman, 93 Hawai'i 63, 69, 996 P.2d 268, 274 (2000) (holding that trial courts should inform defendants that "(1) twelve members of the community compose a jury, (2) . . . defendant[s] may take part in jury selection, (3) . . . jury verdict[s] must be unanimous, and (4) the court alone decides

guilt or innocence if . . . defendant[s] waive[] a jury trial"), the appellate courts and the parties have had to continually revisit the problem. See State v. Bush, No. 24808 (Haw. Oct. 11, 2002) (SDO) (Acoba, J., dissenting) ("This court has advised the trial courts to engage in a colloquy to aid in ensuring voluntary waivers of the right to jury trial." (Brackets, internal marks and quotations omitted.)); State v. Kaupe, No. 22725 (Haw. May 10, 2001) (SDO) ("This court has rejected the proposition that a jury waiver can never be voluntary and knowing if a trial court fails to engage a defendant in a specific colloquy." (Quotation marks omitted.)); State v. Valdez, 98 Hawai'i 77, 79, 42 P.3d 654, 656 (App. 2002) (vacating the judgment and urging that the trial court should, in open court, directly inform the defendant that "(1) twelve members of the community compose a jury, (2) the defendant may take part in jury selection, (3) a jury verdict must be unanimous, and (4) the court alone decides guilt or innocence if the defendant waives a jury trial." (citations omitted)). The mandatory requirements would still be subject to harmless error analysis as is a violation of the defendant's right to be present at a view. Thus, mandating that the safeguards be followed would not detract from our ultimate review.