

The Ethics of Justice in the District Attorney's Office

Judge Dolores Carr

SUMMARY:

This position paper addresses some serious ethical issues in the Santa Clara County District Attorney's Office that were revealed in a series of articles printed in the *San Jose Mercury News* called "Tainted Trials, Stolen Justice."

The [First Installment](#) of this position paper provides background on the ethical problems identified by the *San Jose Mercury News* and introduces the role of office management in creating them.

The [Second Installment](#) identifies two flawed management practices that contribute to the problems: an over-emphasis on winning as a criterion for promotion, and micromanagement.

The [Third Installment](#) explores the nature and consequences of two additional flawed management practices that contribute to the problem: a disregard of built-in checks and balances within the criminal justice system, and failing to recognize confirmatory bias in approaching cases.

As an accompaniment to this general piece on ethics, I have written a Briefing Paper intended primarily for professionals in the District Attorney's Office. This paper outlines certain principles and policies that I would put in place following my election to the Office. I invite prosecutors, investigators, and other professionals who work in the Office to review this paper by clicking on the link, [Management Policies](#).)

INSTALLMENT FOUR:

Proposals for Change

The proposals contained in the fourth and final installment of this paper will address the problems I have enumerated in previous installments. I want to re-emphasize that I have not intended this series to be a personal attack on the current District Attorney or his managers. Further, it is not intended to diminish the many contributions made by the three candidates who are running against me.

1. A Focus on Management Policy

As I stated in the first installment of this paper, I know from my fifteen years in the Office and my six years observing the Office from the Superior Court bench that the vast majority

of District Attorneys are dedicated and ethical prosecutors.

This paper has not been about individuals but about an approach. When the *San Jose Mercury News* published its series on the criminal justice system in our county, it revealed a problem with approach that current management has failed to address adequately. Reactions to the series stating that senior managers are ethical miss the point. This is not about a relatively few individual failures in prosecutorial ethics. Rather, it is about a failure of management—a consistent failure of senior managers—to create a culture that encourages and rewards ethical behavior.

More than three years ago, *Mercury News* reporters first presented claims of unethical conduct to top management in the Office. Yet the series, which appeared just a few months ago, includes accounts of ethical lapses that occurred within the six months prior to its publication. The *Mercury News* reports that top management has failed *for years* to act on complaints from defense lawyers and judges about unethical conduct by line prosecutors.

Top management has not taken the necessary steps to change the culture. They appear unable or unwilling to do so. This election provides the county's voters with an opportunity to change the culture created by Office leadership at a time when there is also a natural changing of the guard.

I am the only person running who is not currently part of that leadership. I offer the following proposals to change the culture.

A. Proposal 1: Eliminate Incentives which Encourage Unethical Behavior

Prosecutors who believe that winning is the sole route to promotion and desirable assignments are more likely to cut ethical corners. Under my leadership, the District Attorney's Office will maintain a trial culture without focusing so heavily on the won-loss records of our attorneys. My managers will teach skills and evaluate prosecutors rigorously. Results will still matter, but if we emphasize good technique and sound judgment, the results will follow.

B. Proposal 2: Eliminate Micromanagement

We will replace micromanagement with the management style that made this Office great--balancing mentoring with monitoring. The key to good personnel management is to encourage discretion while emphasizing accountability. This means that younger attorneys will be encouraged to make their own decisions, but experienced trial attorneys who are managing them will review their work carefully to evaluate their judgment. Good judgment will once again become a prized commodity.

C. Proposal 3: Honor Built-In Checks and Balances

Our criminal justice system has been designed with built-in checks and balances to guard

against unethical behavior. The Office needs leadership that fosters respect of these safeguards. As the new District Attorney, I would seek to do so through training.

Training to Communicate Expectations. Training is a critical component of management. In addition to imparting skills, it is a means by which management communicates its expectations to staff. (One important reason that the training videotape incident discussed in Part II of this series is so troubling to me is the message it conveys.)

Training to Avoid Confirmatory Bias. I will ensure that Office training is updated and revised to include additional education on ethics and confirmatory bias. Training will focus on teaching prosecutors how to win cases while still respecting the checks and balances in the criminal justice system. We will remain aggressive while respecting ethical boundaries.

D. Proposal 4: Appoint an Ethics Officer

The Los Angeles County District Attorney's Office has a full-time lawyer who serves as the office specialist on ethical issues. That attorney provides training and advice to prosecutors facing thorny issues of criminal procedure and evidence. Our Office is large enough to keep an ethics specialist busy, and I will create that position.

E. Proposal 5: Being Receptive to Complaints from other Stakeholders in the System

Other stakeholders in the criminal justice system include judges, police, and defense attorneys. As the agency which charges people with crimes, it is critical for the DA to provide leadership among stakeholders at each stage of the process. A large part of providing leadership is being accessible and responsive.

Being Accessible to other Stakeholders. Without access, there can be no effective dialog. Without dialog, there will be mistrust and misunderstanding. I will set up a mechanism for receiving and dealing with complaints, and encourage those who have complaints to forward them to me.

Being Responsive to Complaints. If we see a pattern of well-founded complaints about a prosecutor, we will investigate. Reports of unethical behavior will be scrutinized closely. Prosecutors who cannot respect our criminal justice system will be disciplined accordingly, regardless of the time and expense required to do so.

2. Conclusion

Ethical behavior is a product of good management policies. Management policies in the District Attorney's Office have made it harder to combat unethical behavior in the Office. Furthermore, it has contributed to an appearance that the Office believes in "winning at all costs."

I am committed to altering management philosophy to ensure that we win cases ethically.