

**The Ethics of Justice in the
District Attorney's Office**
Judge Dolores Carr

INSTALLMENT ONE:

When Justice Suffers: The Culture of Winning at All Costs

"The prosecutor may prosecute with earnestness and vigor – indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones."

Berger v. United States (1935) 295 U.S. 78.

1. Introduction

I announced my candidacy on August 15, 2005, five months before the San Jose Mercury News published its landmark series on the Santa Clara County criminal justice system. In my announcement speech, I described my vision of what the District Attorney's Office should be, and decried a "win at all costs" culture in the Office. The following quote is from my announcement statement:

"All stakeholders in our criminal justice system—the District Attorney's Office, law enforcement agencies, public and private criminal defense lawyers, and the courts—share a responsibility to ensure that justice is served. With the power to charge and prosecute people for crimes, the District Attorney has primary responsibility.

"The DA must strive to bring only legitimate cases into the system. It must take a leadership rather than an adversarial role with other stakeholder agencies—working with law enforcement to establish strong evidentiary chains and strong legal protocols, supporting defense efforts to promote truth and fairness, and preparing assiduously for cases that are brought to court.

"Above all, the DA's Office must understand that justice is not a win-at-all-costs proposition, and that it has an ethical obligation to seek truth—not simply convictions."

The Mercury News series included many specific allegations that reflect my concerns. It also prompted some of the other candidates for District Attorney to belatedly express concern about this issue.

It is easy for candidates to suggest that unethical behavior has no place in the administration of criminal justice. It is much more difficult to probe deeper—to think about the root causes of such behavior and suggest ways to fix things without

sacrificing public safety.

This position paper does just that. It explores root causes and proposes changes that will help the Office achieve a "trial culture" that is open and honest—one that allows prosecutors to be aggressive in seeking to convict the guilty without compromising the principles of fairness and justice.

2. The Mercury News Has Identified a Serious Problem

Because I know only those specifics that have been printed in the newspaper, I cannot make informed judgments about individual cases cited in the Mercury News articles that detailed problems in Santa Clara County's criminal justice system. Furthermore, it is difficult when reading any media investigative report to separate fact from misunderstanding, particularly when those citing the facts may lack the specialized knowledge and perspective needed to place allegations into the proper context.

However, many of the factual allegations which appeared in the articles are very serious. Whether or not each reported instance of unethical conduct is completely accurate is irrelevant. Where the fair administration of justice is concerned, I feel strongly that even the appearance that the Office condones unethical behavior is significantly damaging to the system, and to public confidence in the system. This points to a much more important issue.

3. A Problem Caused by Management

The professional culture in every office flows from management. What sort of culture exists inside an office that allows a pattern of unethical behavior to continue over time? Ultimately, a pattern of such behavior suggests a problem with management.

Does behavior inside the office suggest a management problem in this case? I contend that it does. Let's look at some specific examples cited by the Mercury News.

I believe there is a problem when:

- ♣ The Mercury News can cite a number of instances where senior management appears to have failed to heed complaints from defense lawyers and judges (including court rulings), that certain prosecutors were repeatedly failing to comply with discovery rules.
- ♣ The Mercury News can cite a recent case where a senior prosecutor suppressed a police expert's opinion which was clearly exculpatory. That evidence came to light only after the police department complained to top management about the prosecutor's conduct.

While any profession can have its bad apples, I know from my 15 years in the District Attorney's Office that the vast majority of prosecutors are dedicated and ethical. I also know that, in any large prosecutor's office or law firm, it is often possible to find behavior which crosses the line.

However, even one bad apple in the DA's Office can put an innocent person in prison. Because of this, I strongly believe that instances of unethical behavior must be dealt with whenever they occur—and that special attention must be given to identifying and changing the root causes of such behavior. In this case, the Mercury News has hit a nerve. The root cause of ethics problems in the DA's Office is flawed management.

The next installment of this paper will explore the nature and consequences of flawed management practices in the District Attorney's Office.

(Note: 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 which 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](#).)