

Winning Isn't **E**verything:
Rewarding Prosecutors **F**or **P**ursuing Justice
Not Just **O**btaining **C**onvictions

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WINNING CONVICTIONS ISN'T OUR PRIMARY GOAL

- The primary goal of any sound, ethical prosecutor is not to win cases and obtain convictions. Rather, the primary goal of a good prosecutor is, and always shall be, to do justice!
- While obtaining convictions (i.e., winning cases) is often a by-product of doing justice, there can be no justice if, in the process of obtaining the conviction, a prosecutor does not conduct himself ethically, legally, and professionally according to the laws and constitution which he has sworn to uphold.

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

- *“The [prosecutor’s]...interest therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done....It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”*

Robert Jackson
U.S. Supreme Court Justice

- “ The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have a person investigated... While a prosecutor at his best is one of the most beneficent forces in our society, when he acts out of malice or other base motives, he is one of the worst.” *31 J.Crim.L.&Criminology 3 (1940)*

Wrongful Convictions*

(within control of prosecutors)

- ① 1. Mistaken Identification and Suggestive Identification Procedures.
- ② 2. Police Misconduct
- ③ 3. Prosecutorial Misconduct
- ④ 4. False Confessions
- ⑤ 5. Unreliable Informants
- ⑥ 6. Faulty Scientific Evidence

*Cited by the American Bar Association

What Does “Doing Justice” Really Mean?

- Exercising sound, independent judgment and discretion in charging only those individuals, where the evidence establishing guilt is obtained legally and lawfully according to one’s laws and constitution.
- Resisting political or other pressure to do anything contrary to one’s oath as a prosecutor.
- Remedying any injustice when a prosecutor discovers new evidence that casts into doubt the validity of a person’s prior conviction.

Ceballos v. Garcetti

547 U.S. 410 (2006)

- In 2000, Los Angeles Deputy District Attorney Richard Ceballos uncovered evidence that several Los Angeles deputy sheriffs had falsified the probable cause used to obtain a search warrant in a narcotics case.
- Ceballos refused to prosecute the case or amend his report on his finding despite threats from his supervisors. Ceballos' supervisors subsequently retaliated and effectively demoted him.
- The US Supreme Court in a 5-4 ruling held that public employees like Ceballos were not protected by the First Amendment when they speak out about corruption, fraud or waste in government.

Important to Recognize Prosecutors Who Pursue Justice

- Dismissal of a case/reversal of a conviction should not be treated the same as a LOSS.
- Dismissal of a case/reversal of a conviction should actually be treated as a WIN.
 - Why ?
 - Because it inspires faith and confidence in your respective system of justice by the public you have sworn to serve and by upholding the law of the land.

REWARDING PROSECUTORS WHO PURSUE JUSTICE WILL
HAVE AN POSITIVE DOMINO EFFECT ON OTHER
PROSECUTORS

- Retaliating against a prosecutor has a chilling effect on other prosecutors.
- However, if prosecutors are “rewarded” for pursuing justice not just winning convictions, then other prosecutors will follow suit without fear of reprisal or condemnation.

Equally Important is to Punish Prosecutors Who Forsake Their Ethical and Legal Duties

- It is important to reward prosecutors who abide by their legal duties and professional ethics.
- It is equally as important to “punish” those prosecutors who exhibit a “win at all costs” mentality and who deliberately cast aside their ethical and professional responsibilities.

Disclaimer

The views and opinions expressed in this presentation are those solely of the speaker. They do not necessarily reflect the views and opinions of the Los Angeles District Attorney's Office or the University of California at Irvine School of Law.

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