

Ethics Presentation  
Prosecuting Attorneys Summer Conference  
Justice Harold D. Melton  
July 29, 2009

The essential key to prosecution: Judgment

- The ability to sort through waives of data and dynamics
- Still able to identify and focus on the bottom line

Either you have it or you don't

- Can improve over time
  - education
  - life experiences: good and bad

Requires strength of the inner person

- Judgment is no good if you don't use it

Why important: What is at stake

- Individual freedom
- Vindication of wrongs
- Public safety
- The Constitution

The Constitution: provides broad framework

- Seven Articles
- 27 Amendments
- Only handful impact criminal arena; Eg.
  - 4<sup>th</sup> Amendment: search and seizure;
  - 5<sup>th</sup> Amendment: bar against double jeopardy, right to be indicted, freedom from self-incrimination
  - 6<sup>th</sup> Amendment: right to speedy trial, trial by jury, right to counsel
- Legislatures fill in the general outline
- Courts add further detail and refinement
- Prosecutors fill in the rest, largely through use of discretion

Laws don't define the criminal justice system

- weren't intended to
- at the crudest, simply show how to avoid reversal
- what is good about our system stems largely directly from exercise of discretion
- is the opposite true
- Law lays down the minimum standard

Prosecutorial discretion:

- Witnesses to call
- Questions to ask

- Charges to pursue
- Plea to recommend
- Arguments to make
- Jury Strikes

Do your answers change if defense counsel is inept?

- Do you push harder or pull back?
- Do you risk ineffective assistance?

Goal: truth v. victory

Three different hats

- investigation: probing
  - Is this case “triable”?
  - What really happened?
- negotiation: quasi-adjudicative
  - What is the proper / agreeable / just result?
    - your community standards
    - your police officers
    - your District Attorney
    - your judge
    - your facts
    - your victims
    - your practice
    - your norms as a body of prosecutors
- prosecution: adversarial

Add to this: Specialty Courts – more cooperative than adversarial

- Drug Courts
- DUI Courts
- Day Reporting Centers

Prosecutors’ critical role:

- Seek justice
- Seek truth
- Not singlehandedly, but in context of overall system
- Safeguard the process
- If clean process, law and society accept statement of guilt as fact

Serious doubts remain

Sound judgment remains the key

## Recent trends and developments:

### Judges and Lawyers: “Can we all just get along.”

- Nejad v. State, Ct. App. 2009
  - Judge J.D. Smith: “worrisome trend”
  - Defense lawyers' willingness to testify to own incompetence
  - Possibilities
    - Lawyer generally good, but made honest isolated mistake
    - Lawyer generally good, but willingly built in error
    - Lawyer generally good, made no mistake but unwilling to defend performance
    - Lawyer generally deficient
  - Strategic?
  - Motion for New Trial is critical point to sure up
  
- Reciprocal discipline from Federal courts
  - In the Matter of Stubbs; In the Matter of Eichholz; In the Matter of Cruse (June 2009)
  - Federal or individual court sanctions are not subject to reciprocal discipline
  
- In re Jefferson, S. Ct. 2009:
  - Facial expressions, disrespectful tone to court
  - 8 improper statements cited
    - referred to court's instruction as “gross interference”
    - “I just find the court is biased in its view.”
    - “It seems to me like you made up your mind.”
  - Contempt: clear and present danger to orderly administration of justice
  - \$500 fine and 30 days in Glynn County jail.
  - Reversed:
    - Actual interference or intent to actually interference
    - Attorney new or should have known would interference
  - Key: court should **warn** and put on good and clear notice
  
- In re Hughes, Ct. App. 2009
  - COURT: Are the fathers here?
  - ATTY: In court, Your Honor?
  - COURT: Yes.
  - ATTY: No. But I'm –
  - COURT: Then the only ones that I can place the children with is with DFCS and then the-that expression, ma'am, just cost you \$100. You are removed from the court approved list. That is absolutely –
  - ...
  - ATTY: If I may, Your Honor, the only thing I did was bow my head to write down what you were saying.
  - COURT: No, ma'am. You did not. Now you have tested the Court's patience. I find you in willful contempt of this Court. You are fined \$1,000 and you are given 10 days in jail. Take her into custody.
  - Contempt: “she was giving sarcastic, unprofessional looks, body action that

showed her disgust for the Court's ruling and disrespect for the Court in its entirety.”

- 10 days in jail or \$1000, removed from court appointed attorneys list
  
- Reversed:
  - Not put on notice, court acted without warning
  - No opportunity to speak on own behalf
  
- Recent Georgia Supreme Court Argument
  - Play audio

#### Conclusion

- Prosecutors hold a sacred trust
  - Requires sound judgment
  - Strength in the inner person