



Office of the District Attorney

825 Fifth Street, Fourth Floor

Eureka, CA 95501

TEL 707.445.7411

FAX 707.445.7416

districtattorney@co.humboldt.ca.us

Victim Witness Program

825 Fifth Street, Fifth Floor

Eureka, CA 95501

TEL 707.445.7417

FAX 707.445.7490

Maggie Fleming

District Attorney

MY WORD- TRANSPARENCY

April 28, 2022

The campaign for District Attorney has raised the issue of transparency in the District Attorney's Office, specifically with regard to criminal trials. I'd like to share my perspective.

To start, I consider it hard to argue that a public process could have a significant transparency problem: any member of the public or media can attend any trial.

I offer press releases on criminal trials resulting in felony convictions to let the community and prospective criminals know that the justice system can hold people accountable. I also seek to give recognition to the people responsible for achieving justice, particularly citizens willing to testify.

Like the vast majority of District Attorneys in California, I have chosen not to provide press releases on felony trials that end in not guilty verdicts. I think people found not guilty should have the right to make the decisions about whether there should be further publicity of the fact they were accused in the first place.

A second reason for not publicizing details of not guilty verdicts concerns victims. Because our Office pursues charges only against people almost certainly guilty in fact, many trials with not guilty outcomes involve truthful victims who had their testimony discounted by a jury. Additional coverage of that fact needlessly disrespects those victims.

I have also not emphasized conviction rates for a few reasons. First, excessive emphasis on conviction rates actually works against prosecutors' mission to achieve justice. For example, in the interest of public safety, our Office takes seriously crimes that set the stage for fatalities, such as drunk driving offenses and illegal carrying of weapons. Given the need for unanimous verdicts and the fact some jurors don't take these crimes seriously, we are destined to lose some of these cases. However, Humboldt's history of people being killed by drunk drivers and concealed weapons makes clear that taking those cases to trial remains the right thing to do.

I also do not emphasize conviction rates because I recognize many factors influence trial outcomes, such as prosecutors' experience, the type of crime, judicial decisions about evidence, witness availability and reliability, and inscrutable characteristics of individual jurors. Did the jury find a defendant guilty because of the performance of the prosecutor, in spite of it, or something in between? Only observation of the trial could answer that.

Variable definitions of conviction rates also contribute to their over-interpretation. Should hung juries be included in the calculations? What if a jury convicts a defendant of one or more misdemeanors when felonies were charged? I personally don't count such outcomes as convictions, but others take the alternative view.

As opposed to simply doing what best serves justice, excessive focus on wins and losses could lead prosecutors to only take "slam dunk" cases to trial and accept weak plea deals on everything else. Prosecutors must be willing to take cases they might lose to trial, because jury trials - not plea deals - are the foundation of the criminal justice system. Defense attorneys can use the motto, "Just win," but ethical prosecutors must focus on achieving justice.

While I don't think conviction rates deserve detailed scrutiny, I think most would agree that conviction rates below 50% for an office or an individual would create cause for concern. Our Office's overall conviction rate during my time as DA - which began with an understaffed office short on experience - has been 65% overall and 75% with hung juries excluded. As one might expect, our conviction rate on homicides has been higher (94%). Not surprisingly, as our team of prosecutors has gained experience and people unsuited to be prosecutors have left, conviction rates have increased. Of the 12 people who have completed 8 or more trials during my time as DA, only one person has a conviction rate below 50%, and they are no longer in the Office.

While criminal trials can't create significant transparency issues because they're public, the same can't be said for other important actions by prosecutors. For those not directly involved, plea deals that serve justice and those that only serve to lessen the workload of the court system are impossible to distinguish. The extent and professionalism of prosecutors' interactions with witnesses, victims, judges and opposing attorneys are vitally important, but also invisible to the public. The criminal justice system requires dedicated and trustworthy District Attorneys. But this issue isn't addressed by more coverage of already-public trial details that harm victims, nor by emphasizing conviction rates at the expense of justice and public safety.