

# CITY ATTORNEY UPDATE

MAY 2, 2012

## PUTTING THE FACTS ON THE TABLE

By Jan Goldsmith

As an elected official, I have no problem if people disagree with decisions I make in my role as City Attorney. But I cannot let stand implications in the media and blogosphere that somehow this office makes prosecutorial decisions based on attitudes toward sexual orientation.

I stand behind my prosecutor's actions in the case of the protesters who are accused of blocking access to a government office during a protest on same-sex marriage. If one were to read the court record, it becomes clear that our lawyers' only motive was to obtain a fair and impartial jury and see that the law was upheld.

Here are two myths propagated yesterday and the real facts:

### MYTH

*The City Attorney's Office systematically excluded prospective jurors on the basis of their sexual orientation.*

### FACT

Although I was not present in the courtroom, I am responsible for the decisions of all 137 lawyers in my office. So, in light of this serious allegation, I have reviewed the transcript and trial materials, as well as questioned the legal team who were in the courtroom.

Prospective jurors were not asked their sexual orientation. Two volunteered that information. Both were dismissed, but the judge had a problem with only one of the dismissals.

This was a case where a protest allegedly got out of hand and a public office was blocked. This juror had participated in protests on similar issues in the past. Our prosecutor dismissed the juror on that basis, not his sexual orientation. These are judgment calls exercised by trial lawyers every day.

I do not believe that jurors should be dismissed based upon their sexual orientation.

## **MYTH**

*The City Attorney is wasting the taxpayers' money and the court's time by pressing forward with this case.*

## **FACT**

Our office issues more than 18,000 criminal cases annually. Protest cases are among the more challenging of our cases for a variety of reasons. We all feel strongly that people have a right to protest and should not be criminally prosecuted for doing so. Where crimes are committed, absent violence, they are low-level misdemeanors.

Some within the judicial system question why a prosecutor's office would move forward and spend time and money on protest cases.

Protesting, of course, is not a crime. We prosecute protest cases only where we receive police reports and our issuing deputies determine there is sufficient evidence presented in those reports to prove that a crime has been committed.

The First Amendment requires that we not discriminate in prosecution based upon the message or the cause. If we refuse to prosecute protest cases for one group where there is otherwise sufficient evidence, we would need to do that for all protest groups, regardless of their cause.

As a result, the word would certainly get out and the worst groups you can think of may feel there is a green light to block whatever they want to block, whether it be traffic, buildings or offices. We prosecute protest cases, in part, to deter future criminal behavior.

During this past year, protest cases have become more prominent due to the Occupy movement. District Attorneys and City Attorneys across the country have had to develop policies on how to handle these cases.

The difficulty of these protest cases is compounded by public impression that prosecution of a protestor somehow means that the prosecutor is opposed to the underlying cause. Most City Attorney's offices have struggled with this problem, including [Los Angeles City Attorney Carmen Trutanich](#).

Our office has developed a policy that we have been following. We don't want to make these cases into something bigger than they are, but we want to hold violators accountable, provide some deterrent and ensure that protest groups are all treated the same.