

June 28, 1995

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED ELIMINATION OF THE CITY ATTORNEY'S CRIMINAL PROSECUTION
DIVISION

Over the past two weeks, the City Manager has begun discussions with the District Attorney's Office regarding the elimination of the City Attorney's Criminal Prosecution Division. The City Manager has not invited us to participate in these discussions. We have, however, been seeking information from the District Attorney and we have begun to independently evaluate this issue.

It is our strong recommendation that you decline to act on this issue at the present time. We base this recommendation on four grounds. First, based on preliminary research, we question the legality of such unilateral action by the City Council. Second, the initial review of this issue by the District Attorney's Office has been only preliminary and cursory. Far more study is need to understand the numbers the District Attorney is using and the financial numbers the City Manager has provided to them for comparison purposes. Third, by making such a decision, the City Council would surrender all control over the prosecution of all types of misdemeanor criminal offenses in the City of San Diego to the Board of Supervisors. Such a decision deserves extended study and deliberation. Fourth, such a decision would ignore the present budget woes of the District Attorney that threaten criminal prosecution at the misdemeanor level all together.

First, we question the legality of a City Council action to abrogate the San Diego City Charter mandate for the City Attorney to conduct all misdemeanor criminal prosecution in the City of San Diego. San Diego City Charter sections 40 and 40.1 give the elected City Attorney the power to prosecute all Municipal Code and state law misdemeanor violations in the City of San Diego.

Charter section 40 states in part: "It shall be the City Attorney's duty . . . to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law." Section 40 clearly gives the power to prosecute municipal code offenses to the City Attorney alone. We question the legal authority of the District

Attorney to prosecute any code violations without a Charter amendment stripping the City Attorney of this power. Charter section 40, however, when read in conjunction with section 40.1, also mandates that the City Attorney prosecute state law misdemeanors.

Charter section 40.1 gives the City Attorney concurrent jurisdiction with the District Attorney for the prosecution of misdemeanor offenses in the City of San Diego. Section 40.1 states: "The City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors." This section had no effect on the District Attorney's jurisdiction but dictated the responsibilities of the City Attorney as the City's prosecutor.

It is our opinion that the voters of San Diego, with the passage of this section in 1953, conveyed a mandate on the City Attorney to prosecute misdemeanors in the City of San Diego. The language "shall" in Section 40.1 leaves little room for discretion. We view Section 40.1 as a Charter mandate for the City Attorney to exercise jurisdiction over misdemeanor prosecution irrespective of the state law jurisdiction of the District Attorney. Thus, section 40.1 complements section 40 and "requires" the City Attorney "by law" to prosecute state misdemeanors.

California Government Code section 72193 authorizes charter cities to promulgate charter authority for the City Attorney to prosecute misdemeanor offenses. The legislature has determined that charter cities, if authorized by the voters, can convey such power on the City Attorney. We view Charter sections 40 and 40.1 as just such a lawful mandate. It is our preliminary opinion that removal of this responsibility would require voter approval for a Charter amendment.

The authority of a City Attorney to prosecute misdemeanors is not unique to San Diego. Most major cities in America and many jurisdictions in California have given a similar mandate to their City Attorneys. In California, cities such as Los Angeles, Long Beach, Pasadena, San Jose, Inglewood, Redondo Beach, Anaheim, and others prosecute their own misdemeanor offenses. Nationally, cities such as Seattle, Dallas, Minneapolis, St. Paul, Phoenix, Tucson, Albuquerque, Reno, Las Vegas, and many others have City Attorneys prosecuting misdemeanors.

Indeed, the trend in California and across the country is to shift more resources to City Attorneys for misdemeanor prosecutions as District Attorney's Offices become overwhelmed with three strikes cases and other felonies. As a recent example, the San Francisco City Attorney, who has historically not prosecuted misdemeanors, has recently begun handling juvenile criminal cases because the District Attorney has shifted more resources toward three strikes cases. These trends should be studied closely before moving forward to save an unknown amount of

money.

Second, the District Attorney's review of this issue has been only cursory and preliminary. Far more study is necessary to be sure we are comparing "apples to apples" in evaluating this issue. The District Attorney's misdemeanor operation in Vista is the basis for their estimate. The population of the North County Judicial District is approximately 700,000 people. This jurisdiction is little more than half the size of the City of San Diego. The Vista branch of the District Attorney's Office is half the size of the City Attorney's Criminal Division and maintains no centralized, specialized prosecution units such as those in the City Attorney's Office.

After discussions this week with the District Attorney's Office, we believe that they do not yet have an accurate sense of how misdemeanors are handled in the City. The staff preparing the District Attorney's proposal spent less than two hours in the City Attorney's Office and spent no time talking to judges and other court personnel.

In addition, the District Attorney's draft numbers anticipate reductions in the Code Enforcement, Consumer and Environmental Protection, and Child Abuse/Domestic Violence Units. The proposal projects savings by simply eliminating currently staffed positions. We have seen no justification for saying that merging of the offices will mean less need for prosecutors and support staff in these vital areas.

Further, the draft numbers are artificially low because the District Attorney has budgeted misdemeanor prosecutors at a significantly lower salary than that used for all other budgeting purposes in the District Attorney's Office. The District Attorney's Office has not given us these numbers, but they have told us that most of the prosecutors are budgeted at a DA I or DA II level while other prosecutors in the officer are budgeted at a DA III or DA V level.

While the District Attorney's present draft proposal contains an estimated savings of \$1.3 million, we believe this number would be dramatically lower if the current service levels were maintained. We have been told that the City Manager asked for a \$2.0 million savings in order to make this transfer feasible. Indeed, the District Attorney's proposal attempts to reach this goal through the use of inaccurate City Attorney Salary Plan information provided by the Financial Management Department of the City of San Diego.

The Financial Management Department has told the District Attorney that the Criminal Division will experience a \$1,000,000 "over run" in Fiscal Year 1995-96 due to our Salary Plan implemented in November 1994. This has no basis in reality. As the Council is aware, the estimated cost for the Salary Plan in the City Attorney's current budget proposal is \$400,000 in Fiscal Year 1995-96. The Criminal Division portion of this plan will be approximately \$200,000.

We estimate, at this preliminary stage, that the actual savings to the City of San Diego from eliminating the criminal prosecution effort

of the City Attorney's Office would be less than \$1,000,000 and could be \$-0- if current levels of service were maintained by the District Attorney. Irrespective of the legality issues discussed above, we do not believe the City Council should proceed with such a move without extensive deliberation on the actual cost savings.

Third, by making a decision of this magnitude, the City Council would surrender all control over the prosecution of misdemeanor offenses in the City of San Diego. Such a decision deserves extensive study. Since the mid-1800's, the City Attorney has prosecuted criminal cases in the City of San Diego. The City Council has always played an integral role in working with the City Attorney and the Police Department in directing law enforcement resources.

In recent years, driving under the influence arrest sweeps, targeted code enforcement efforts, prostitution enforcement details, domestic violence offender arrest sweeps, and other specialized efforts by the Police Department and the City Attorney's Office have had significant results. At every juncture, the City Attorney's Criminal Prosecution Division has played a vital role. The City Council and the City Attorney have worked on many such issues together over the last 100 years.

The proposal by the Manager to abdicate the criminal prosecution role of the City Attorney would eliminate any such specialized work. If the entire misdemeanor effort is turned over to the District Attorney, the decision-making for all misdemeanor work in the City will shift from the City Council to the Board of Supervisors. If, as the Manager anticipates, the City were to write a check for misdemeanor prosecution services to the County of San Diego, these monies would go into the General Fund of the County of San Diego. The Board of Supervisors and the District Attorney would control the use of these monies.

A few years ago, the City Council negotiated an agreement with the County of San Diego to handle animal control matters for the City of San Diego. It took two years to iron out the details of this agreement. Yet questions still remain related to the services under this agreement. No matter how much we love animals, surely crime victims and the citizens of San Diego deserve better than a rush forward to eliminate the City Attorney's Criminal Division. It would be ill-advised, without extensive study, for the City Council to surrender its authority over misdemeanor prosecution to save an unknown amount of money while sacrificing all control over the provision of such services.

It would be a dramatic change in direction for the Council to abdicate such authority at this time. For years now, we have worked to increase the City's involvement in misdemeanor law enforcement. The City Council authorized the building of the City jail to allow the Police Department and the City Attorney to aggressively pursue misdemeanor offenders because the County refused to make misdemeanor arrest and prosecution a priority.

The City of San Diego has invested millions of dollars in the misdemeanor law enforcement effort. This effort is consistent with efforts across California and the country to invest more, not less, resources in early intervention at the misdemeanor level of criminal prosecution. Now, the Manager proposes to abandon this responsibility and effort. Such a shift in policy would sacrifice far more than Council control. It would herald the end of years of effort toward more aggressive misdemeanor law enforcement.

Fourth, we are gravely concerned about the current financial problems of the District Attorney and the Board of Supervisors. This coupled with the lower priority that misdemeanors receive in a District Attorney's Office gives us many issues to investigate related to this proposal.

The District Attorney's Office, as an institution, does not prioritize misdemeanors as they do other cases. This is a reality that we must acknowledge without in any way denigrating the work of the District Attorney. Felony cases, three strikes cases, death penalty litigation, and other serious cases understandably top the priority list in a District Attorney's Office. Misdemeanors are never at the top of the list.

The City Attorney, on the other hand, makes misdemeanor prosecution his highest priority. Consistently over the years, City Attorney John Witt has worked to invest more and more resources into misdemeanor prosecution. Early intervention at the misdemeanor level is the City Attorney's clarion call in order to prevent felony offenses all together.

The District Attorney does not publicly release statistics on the effectiveness of misdemeanor prosecution, so it is difficult to compare our comprehensive statistics with their handling of misdemeanors. They do not keep statistics which breakdown the types of misdemeanors they prosecute so it is difficult to assess the priorities of the District Attorney within their misdemeanor prosecution effort. But it can be noted that the City Attorney has developed nationally recognized misdemeanor units in Code Enforcement, Consumer and Environmental Protection, Appellate, and Child Abuse/Domestic Violence. While the District Attorney has a national reputation for felony work in many areas, the District Attorney's Office does not have nationally recognized misdemeanor units. Why? Because misdemeanor prosecution is not as high a priority in a District Attorney's Office.

We believe that, by the very nature of the Manager's proposal, there would be little accountability for the Board of Supervisors or the District Attorney. This is not to question their potential sincerity at the present time. But the District Attorney is projecting a short-fall of millions of dollars in the effort to prosecute three strikes cases.

Why would misdemeanor prosecution be more important than handling three strikes cases? How could misdemeanor prosecution not be made to

yield to more pressing priorities in a District Attorney's Office? Even at the present time in Vista, misdemeanor and felony prosecutors are made available for whatever pressing matters the office faces. Why would the District Attorney, in particular circumstances, not be willing use misdemeanor prosecutors for felony cases when the need arose? These questions must be answered definitively before the City Council pursues the Manager's proposal any further.

Respectfully submitted,
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City Attorney

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