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Judges And Judiciary

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Public criticism of judges undermines justice

Publicly criticizing individual judges, as seen in the case of San Francisco District Attorney Brooke Jenkins, harms judicial independence, fuels adversarial tensions, and creates a fear-driven atmosphere, hindering constructive justice reform.



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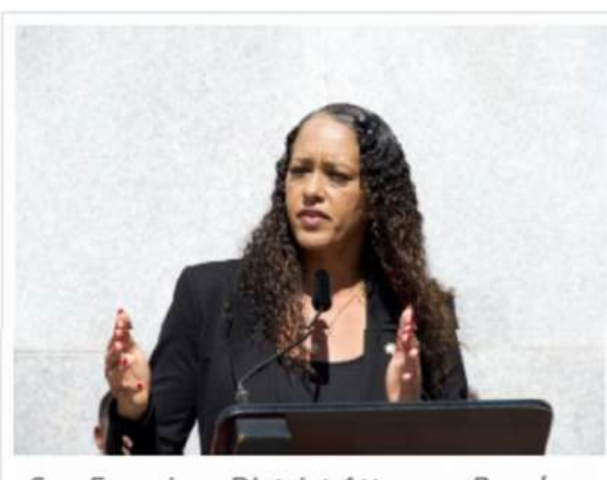


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Eugene is a retired judge of the Santa Clara County Superior Court, where for 20 years he presided over cases in the criminal, civil, probate, family and delinquency divisions of the court. He has presided over an adult domestic violence court and in 1999 presided over the first juvenile domestic violence and family violence court in the United States.

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San Francisco District Attorney Brooke Jenkins

The continual calling out of judges by name for criticism, whether by local elected officials, including the county district attorney or by the President is not supportive of the goal of improving criminal court outcomes, and is indeed harmful and potentially dangerous to judges.

The judiciary is often perceived as an impenetrable institution, detached from public sentiment, leading many to advocate for a system that fosters meaningful engagement between the courts and the communities they serve.

Such a system may be worth exploring, provided that judicial independence is not undermined as a result.

Judicial impartiality is fundamental to the rule of law. While judges must avoid even the appearance of bias, they remain integral members of their communities. In California, where trial judges stand for election, the judicial code of ethics recognizes the necessity of balance - allowing judges to remain visible and engaged with the public while maintaining neutrality.

Recent comments by San Francisco District Attorney Brooke Jenkins, as reported by the San Francisco Chronicle on Feb. 11, and more recent occasions, raise concerns about preserving this balance. Jenkins has publicly criticized judges by name, accusing one of allowing criminals to treat the courthouse as a revolving door and another of disregarding the clear will of the voters by issuing misdemeanor sentences to a defendant with prior felony convictions.

While Jenkins has every right under the First Amendment to express her concerns - and, as the city's chief prosecutor, bears a heightened responsibility to advocate for public safety - targeting judges by name is neither productive nor appropriate. Such rhetoric shifts the discourse from substantive legal debate to personal critique, fostering a culture that threatens judicial independence.

Like many, we are frustrated with certain aspects of Proposition 47 and are concerned with lenient prosecutions in San Francisco. Responding to public dissatisfaction, it is understandable that Jenkins would address these issues. However, her repeated and public condemnation of individual judges - on at least four occasions - suggests a deliberate strategy aimed at exerting pressure on the judiciary.

Beyond being counterproductive, this strategy is potentially dangerous. Publicly calling out judges can subject them to increased scrutiny and personal risk, particularly in today's highly charged social climate. History has demonstrated the real dangers that inflammatory rhetoric can pose to members of the judiciary.

Public frustration over crime and sentencing is valid, and the election of Jenkins signaled a demand for stricter enforcement. However, legitimate avenues exist to challenge judicial decisions, including peremptory challenges under California Code of Civil Procedure section 170.6, elections, and recall efforts.

Sentencing decisions can also be appealed. However, in the case of San Francisco, the sentences that are the subject of public criticism appear to be legal, just not consequential enough for the DA, Police, and the public.

Prosecutors should consider conducting formal sentencing hearings in appropriate cases. Probation officers are the court's experts and can offer suggestions in individual cases. which the judge is free to accept or not.

Another possibility is more frequent use of formal bail hearings, in cases where defendants have multiple failures to appear or have committed new offenses when they are released without the need for bail.

Rather than fostering an atmosphere of fear and public rebuke, a more constructive approach would be to establish structured forums - facilitated by local bar associations or the California Judges Association - where judges can engage with the public in moderated discussions.

Legal perspectives evolve as a consequence of evolving societal attitudes. In 1850, cattle rustling was a capital offense in California; today, even more serious crimes do not warrant such a penalty. The shifting landscape of prosecutorial discretion under successive district attorneys further illustrates these changes.

If San Francisco is undergoing a cultural shift in its approach to criminal justice, the change must be discussed constructively, not by public condemnation. We support Jenkins' right to advocate for public safety. However, singling out judges by name threatens judicial independence and risks inviting undue political pressure on the courts.

Criticism, when constructive, can serve as a valuable tool for reflection and improvement. Judges, like all professionals, should remain open to feedback. However, an environment of intimidation will not lead to better justice - it will lead to fear-based decision-making, ultimately weakening the integrity of our legal system.

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