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## **My Word**

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Recent public discussion of ongoing criminal investigations and cases has raised a variety of issues. As District Attorney, I cannot address the specifics of individual cases because doing so could harm ongoing investigations and future prosecutions—our criminal justice system works when jurors get their information about the specifics of cases in court. However, I would like to offer some general information that I hope will be useful.

People formally accused of crimes by the District Attorney's Office undergo arraignment, where they are informed of the charges against them and are asked to enter a plea. In California, defendants have a right to a preliminary hearing within 10 court days of arraignment. The purpose of a preliminary hearing is to determine if, in the opinion of a neutral fact finder (a judge), available evidence provides probable cause to believe the accused has committed a felony. Both the prosecution and the defense may call witnesses at preliminary hearings. A judge must find "probable cause" at a preliminary hearing for a felony case to proceed to trial.

Preliminary examinations can be brief in some cases with clear and uncontroverted evidence of the defendant's guilt. However, in other cases, preliminary hearings play a critical role in clarifying available evidence, testing the credibility of witnesses, and identifying issues with achieving the much higher burden of convincing 12 jurors of guilt "beyond a reasonable doubt," at trial. This can result in lengthy preliminary hearings involving many witnesses. All District Attorneys recognize this point and commonly take this approach to preliminary hearings in their most serious cases. Testimony under oath and other evidence that emerges at preliminary hearings may not match information available when a person is charged. The lack of a "probable cause" determination in a preliminary hearing after presentation of all available evidence is not a strategic failure, but rather an indication that currently available evidence would not support a guilty verdict at trial.

Presenting a few witnesses to obtain a specific outcome at a preliminary hearing can endanger justice in situations where all the evidence does not support a “probable cause” conclusion – and is therefore far short of “beyond a reasonable doubt.” The approach can rapidly lead to a not-guilty verdict at trial, because in cases where a defendant does not waive the right to a speedy trial, the trial must proceed within 60 days after the preliminary hearing. The prosecution has an opportunity to re-file a case after failing to obtain a “probable cause” determination if further investigation brings new evidence to light. However, no such opportunity exists after a not-guilty verdict at trial. People can’t be tried twice for the same crime.

In addition to preliminary hearings, criminal grand juries can be used to determine if someone should be required to stand trial. Because prosecutors present information to criminal grand juries in the absence of the defendant, defense attorneys, or judges, it is their duty to present to grand juries all relevant evidence, including any credible evidence that favors the accused. The prosecutor also must inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records.

Criminal grand juries differ from preliminary hearings in that their proceedings are not public, and the testimony of witnesses before grand juries cannot be used at trial if the witness becomes unavailable. In Humboldt County and other counties that do not maintain standing criminal grand juries, criminal grand juries are not an option in time-sensitive cases because of the 4 to 6 weeks needed to assemble the jury. Criminal grand juries have rarely been used in Humboldt County. They may be appropriate in rare circumstances, such as when the public nature of a preliminary hearing would threaten the safety of victims or witnesses.

In preliminary hearings, criminal grand juries, and in all aspects of their work, prosecutors have the obligation to seek justice. The actions of ethical, effective prosecutors are never guided by unsupported belief or personal agendas. Humboldt County can be assured that the District Attorney’s Office is applying knowledge, skill and ability, informed by my 28 years of experience as a prosecutor, to do all of our work fairly and effectively.