

# **Expectations for DDAs** **&** **Preparing a Case for Trial**

**Birgit Fladager, District Attorney**  
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- Integrity, dedication, work ethic, advocate for public safety, & victims' rights
- Teamwork
- Partner in criminal justice system. But, our role is different from police, judges
- Ethics: Know the rules of professional conduct
- Professionalism: Duty to keep learning, always check the law, have your Penal Code. We are the real role models in the courthouse. More is expected of us than any other lawyer (civil lawyers, criminal defense attys, judges)—because of our duty, motivation and responsibility. Do NOT rely on the judges to know the law. So who does? YOU, and no one else. Examples ...
- Mission statement - What is it? What does it mean? (for you individually, and for the office)
- Role of a prosecutor: We play by the rules, don't skate the thin line, do the right thing for the right reason—which might mean NOT filing charges, or dismissing charges
- Power of a prosecutor: Incredible—and you have it. Decision to file criminal charges against someone. We don't rubberstamp law enforcement. Different standards for arrest vs. prosecution. We are the gatekeepers for the criminal justice system. We are accountable.
- The flip side: We are responsible for everything, but it may seem like we have to fight defense attys, judges, witnesses, cops, and even our victims.

Work hard, be proud, be humble, don't do this for the glory, don't do it for the safety, do it because it's right. You may get sued, you may have to move away from home for 6 months to a year on a change of venue. This is not an easy job. If you think it is, you're not working hard enough.

If you think you are being worked too hard, go find another job. You will NEVER be adequately compensated for when you work the hardest.

Caveat: This is (still) a small community, people are related and know each other, be careful of what you say, and where you say it. Confidentiality: no need to share with spouse, let alone friends.

Prosecutor = jury trials

That is a primary measure of your productivity and success (externally and internally, but not the whole picture). Don't be afraid of losing, but don't be afraid of going to trial. That's what sets you apart from most lawyers. We don't do this for the money, or the fame, and we are not paper pushers. We like being in court, mixing it up, and holding people accountable—including judges.

You do NOT have to settle cases. You do NOT have to get permission to go to jury trial. Trials are almost always to our advantage. You DO need to run settlement by more experienced prosecutors (your chief) until you are truly comfortable with what cases are worth.

Practical Requirements:

- ICJIS (DA, S/O, Probation and courts)
- CLETS/CLIPS, DMV, manual raps
- Briefbank, Autobrief, Westlaw
- How to issue/reject cases
- Relationships with police, deputies, etc.
- Confidence, humility, "fire in the belly", helping others

This job is NOT about what it can do for you, or what you can get out of it. Some people in this office may think this way—they would be wrong. The job is about doing justice for the benefit of our community and working cohesively and respectfully together as a professional team.

## Preparing a Case (for Trial)

Sources:

CDAA's Trial Tactics  
NDAA's Pretrial Tactics  
Foundational Questions

CDAA's trial advocacy courses  
NDAA's trial advocacy courses

Watching other people  
-A real and valid way to learn

Case Preparation:

Read the case file. Note your initial reactions (+ & -) and why. Trust your instincts. What are the strengths. What are the weaknesses. Make a list.  
How do you make the strengths stronger; how do you address weaknesses?

What did the police miss? They missed something. (how and why?) Potential defenses, mitigating factors, evidence. Note that WE are charged with knowing everything that LE knows= Discovery obligations

Is the case file complete? (probably not)

- Is the complaint/information/indictment correct? Review charges, priors, enhancements, sufficiency, notice? AMEND it!
- raps/P&P on all wits, DMV
- 911 call/dispatch printout (prior calls/reports?—who types up TX?)
- certified prior convictions requested/received (notification/waiver of rts, (Boykin/Tahl etc.)
- tape recordings/ transcripts—review them, do they need to be edited? (by you?)
- Prior testimony/statements
- Prior cases/police reports (may not have been filed)
- Jail records (property, visitors—in person conversations vs. phone calls)
- Medical records and doctors
- Diagrams (clear? Prepared ahead of time, everyone understands them? Who can lay the foundation?)
- Photos of scene. Evidence? Chain of custody?
- Prepare ahead of time for use in opening stmt.
- DOJ reports. (Might not be in case file... keep checking DOJ website)

Read the statute, read the jury instruction to make SURE you meet the elements (example)

Are necessary witnesses sub'd AND served? What do you do if they aren't?

Follow-up investigation: who does it (us or cops), who requests it, when, what do we do with it?

Discovery: It's OUR responsibility. Reciprocal discovery is not a total myth. (Prop 115 and PC 1054) Turn it over. Police reports, stmts by def, info that might be used to impeach wits (But....NOT raps on anyone but the def; make a list to provide instead)

Witness Preparation:

- Lead investigator (review reports)
- Witness Location (it's not magic)
- Witness Preparation (it's required)

PREPARE them, re-assure them, explain to them the rules for testifying and remind them, bring in witness services or VSU, what they can and cannot be told and why

-Hostile witnesses, uncooperative witnesses (critical skill in direct exam: NEVER a surprise)

-"Green-"ing a witness

Prepare for Voir Dire (What's an ideal juror? Or the worst? Ask others for ideas.)

Trial Notebook: examples (one for all purposes, or crafted for each trial)

Short trial: overview, charges, elements, witness order and summary of expected testimony, and expected issues/challenges from defense, contact info for all wits/officers, CALCRIMs

Trial Brief: For your OWN benefit, educating the judge and protecting the case

Prepare for Opening Statement (What's the theme of your case? How do you make them care and remember?)

Prepare for Direct (of each witness) (Telling a story in a conversational style)

Prepare for Cross (of each witness) (What is the POINT of XX?—Know it before you start)

Prepare for your rebuttal case (Anticipate, but don't be left holding the bag)

Prepare for Closing Argument and Rebuttal (The place for passion and argument)

Prepare for Jury Instructions

Ensure appropriate sentencing. Know the possible sentences, Rules of Court, victims' rights, and possible media interest. Closing out the file—means closing out ALL def's files—not just the one in your hands. Prepare for the next crime by the defendant. (Formal Sentencing statement—On any felony you took to trial; any felony where the dispo is open; might be appropriate in certain misdos).

**If you are competent, the Defense will NEVER out-think you**

Press Release (Educating the public, blowing our horn, staying within the professional rules)

Cases on appeal: misd vs. felony

You will be involved in misd appeals

The AG handles felony appeals, but you should be involved—you care more than they do.

NEVER turn in a file thinking that no one else will ever look at it. The cases are never done; as long as the def keeps committing new crimes, someone will pull your old file and look at it. You will be judged by how you've handled/organized/documented the case file. Make it a habit to be neat, thorough and organized.

Two other reasons:

- 1) Hand-offs happen
- 2) Appeals

Updated 2/10/17