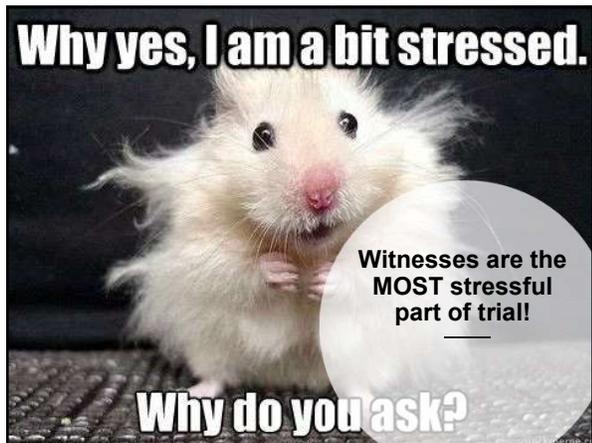
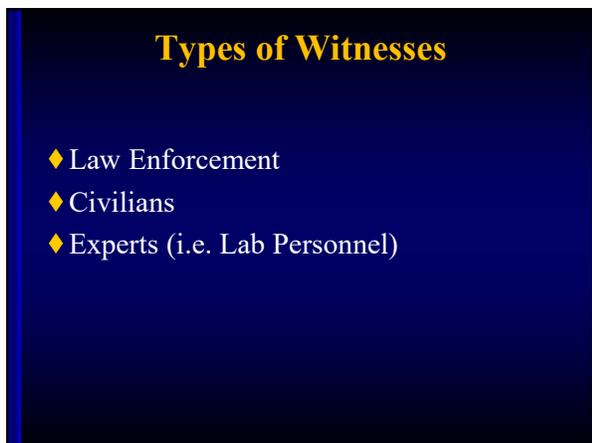




1



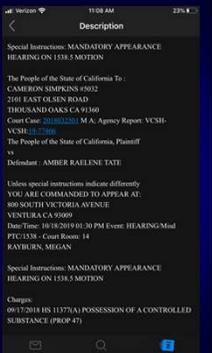
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3

Subpoena Process

- ◆ Governed by Penal Code Sections 1326-1332
- ◆ Law Enforcement
 - ◆ Electronic through VCIJIS (if in-county)
 - ◆ Their agency gives them notice
- ◆ Civilians
 - ◆ Mailed a subpoena, unless personal service is requested
- ◆ Experts (i.e. Lab Personnel)
 - ◆ Electronic through VCIJIS



The screenshot shows a subpoena for Amber Rallene Tate, defendant in a case against the People of the State of California. The subpoena is for a mandatory appearance hearing on 10/15/2019 at 10:30 PM in Court Room 14 at the Hayburn, Migan facility. The charges are related to possession of a controlled substance.

4

Witness Coordination Unit

- ◆ CAN:
 - ◆ Subpoena witnesses
 - ◆ Subpoena SDT docs
 - ◆ Contact witnesses, including officers, when they are late/do not show up
 - ◆ Schedule your witness lineup while in trial
 - ◆ TIP: Give your witness lineup to WC BEFORE 4:00 the day before you need them
- ◆ CANNOT:
 - ◆ Check 1538 boxes
 - ◆ Request personal service without a DDA's approval
 - ◆ Prep witnesses
 - ◆ Ask witnesses case-specific questions

5

Personal Service

- ◆ Request when:
 - ◆ Cannot locate a witness
 - ◆ Witness has not called in subpoena
 - ◆ Witness has stopped responding to WC
- ◆ How:
 - ◆ Check box in VCIJIS
 - ◆ Email WC
- ◆ Tip:
 - ◆ Try to call witness personally before requesting personal service, if witness has previously been cooperative

6

Personal Service (Cont'd)

- ◆ What to do on next court date:
 - ◆ If witness DOES show:
 - ◆ Have court order witness back for next court date OR to next courtroom
 - ◆ Needs to be on the record
 - ◆ You can either keep ordering them back every court date or place on call again

7

Personal Service (Cont'd)

- ◆ What to do on next court date:
 - ◆ If witness DOES NOT show:
 - ◆ 2 options:
 - ◆ Issue bench warrant
 - ◆ NEED PAPERWORK!
 - ◆ Issue AND HOLD warrant until next court date
 - ◆ Needs to be on the record

8

Personal Service (Cont'd)

- ◆ How to ask court to issue bench warrant:
 - ◆ Must have copy of subpoena and proof of service
 - ◆ Must have Witness Warrant Information Sheet filled out

9

**Witness Preparation –
When to Make Contact**

◆ LE Officers:

- ◆ Call/email 2-3 days prior to answering ready for motion/trial
- ◆ Call/email when assigned courtroom
- ◆ Have officer come in and prep with you either the day before or day of testimony
 - ◆ TIP: *Tell WC to give agency sub clerk your phone number for officers to contact you*
 - ◆ TIP: *VCIJIS does not list in-county trainings for LE*

10

**Witness Preparation -
When to Make Contact**

◆ Civilians:

- ◆ Call as soon as you are assigned the case
- ◆ Call when you plan on answering ready for trial
- ◆ Call when you are assigned a courtroom
- ◆ Come in and prep with you either the day before or day of testimony
 - ◆ TIP: *DO NOT give civilian witnesses your personal cell phone number*
 - ◆ TIP: *VCIJIS does not list civilians' unavailability*
 - ◆ TIP: *Make sure to have an investigator present when prepping witness on case-specific details*

11

**Witness Preparation –
When to Make Contact**

◆ Lab Personnel:

- ◆ Call when you plan on answering ready for trial
- ◆ Call when you are assigned a courtroom
- ◆ Call 20 minutes before you need them
 - ◆ TIP: *Lab personnel do not need to be subpoenaed mandatory*
 - ◆ TIP: *Best number to reach them is 654-2370*
 - ◆ TIP: *Watch out for Friday afternoons – many people in the lab do not work on Friday and/or work a shorter shift*

12

Witness Preparation – Common Discovery Issues

- ◆ An officer tells you something that is not in his/her report
- ◆ An officer mentions evidence that you do not have in your possession
- ◆ An officer comments on his/her feelings about the case
- ◆ A civilian provides details not contained in prior statements
- ◆ Lab expert provides alternative opinion if/when hypo is changed

WHEN IN DOUBT → DISCOVER!*

*But run it by your supervisor first if you are unsure

13

Witness Preparation – The Role of Victim Advocates

- ◆ Help with communicating/scheduling
- ◆ Coordinate transportation of witnesses
- ◆ Help with general witness preparation
- ◆ Provide emotional support in and out of courtroom
- ◆ Help guide witnesses to social services
- ◆ Victim advocates do not:
 - ◆ Replace the need for investigators to sit in during witness preparation
 - ◆ Strategize with you about how to prove your case

14

Witness Unavailability – 1050 Motions

- ◆ Penal Code Sections 1050 & 1382 govern when the court can continue a trial beyond the statutory timeframe
 - ◆ Court must find “good cause”
 - ◆ Court uses its discretionary powers
 - ◆ Court must state its finding on the record and the justification for the length of continuance
- ◆ 1050 motion
 - ◆ Requesting party must file and serve motion 2 court days prior to hearing
 - ◆ UNLESS court also finds good cause for failure to comply

15

GAME TIME

16

You have received a handoff trial on day 8 of 10. The complaint alleges three counts:

- 1) 11550 – being under the influence of a controlled substance;
- 2) 242 – battery; and
- 3) 148 – resisting a peace officer.

What do you do in the following scenarios?

17

You call your arresting officer prior to announcing ready for trial (good for you!). During your conversation, you learn that this officer was not the one to collect the urine. The officer who collected it is not under subpoena and you will need her testimony.

What do you do?

What if this officer is with OXP or VPD?

18

Also during your conversation with your officer, he informs you that he will not be available to testify for the next week. Even though his availability was open in VCIJIS, he is attending an in-county training.

What do you do?

What if his Sergeant calls you and says the officer cannot attend because they have already paid for his training?

19

You were sent out to trial today and spend the whole day in jury selection. Thankfully, you remembered at lunch to send witness coordination your lineup for the next day. When you go back to your office, a voicemail is waiting for you. It's from the victim for the battery count. She says that she is not going to come tomorrow to testify. She is busy. Also, she wants the charges dropped because this case is "dumb".

What do you do?

20

You call the witness back (on your work phone). She answers and you explain to her that you need her testimony for trial. You also explain to her that she is under a court order to come to court. She says that she cannot afford to miss work and wants you to pay for her missed shift. She also wants you to pay for her Uber to the courthouse because she does not have a vehicle. Finally, she has three kids under the age of 6 and the only way she can come is if she brings them.

What do you do?

***According to our Legal Policies Manual, Section E(1) – we do not pay witness fees or mileage**

21

The next day, you finish jury selection, the judge pre-instructs, both sides give their opening statements, and you start your case-in-chief. You put the arresting officer on the stand first. Unfortunately, he did not meet you at the office early that morning to prepare. When he is testifying, it is clear that he did not review his report or his body worn camera. You know he is testifying inconsistently with both his report and BWC.

What do you do?

22

You take a mid-morning break for the arresting officer to read his report and watch BWC. During the break, he tells you “we really need to win this case or the defendant will sue us.”

What do you do?

23

After the mid-morning break, the arresting officer continues with his testimony. He mentions the fact that he was dispatched to the area where the defendant was because of a 911 call. You did not know there was a 911 call and do not have the audio.

What do you do?

24

You finish with the arresting officer and the officer who obtained the urine sample (thankfully, she agreed to accept a short-notice subpoena!). Your next witness is the victim of the battery. She agreed to be outside the courtroom at 2:30, but it is 2:45 and she is still not there.

What do you do?

25

Miraculously, a DAI was able to locate the victim and transport her to court. When you get to the courtroom in the morning, she is sitting by the door with her three kids. You notice that she is speaking with the jurors, but you did not hear what they were talking about.

What do you do?

26

The judge denies the defense's request for a mistrial. The victim testifies and denies that anything happened on the date of the incident.

What do you do?

27

Defense puts on a surprise witness who testifies that she saw the whole incident between the cops, the victim, and the defendant. The witness testifies that it was the cops who caused everything. You need a civilian rebuttal witness who also observed the events to debunk this ridiculous testimony. She is not under subpoena.

What do you do?

28

**Congratulations!!
You made it to Verdict!**

29

Witness Coordination
DDA Megan Rayburn



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