

**Comments on Judicial and Prosecutorial Practices that Hinder  
Effective Defense Representation**

**Public Defenders**

Type of County	Question: Does any practice or policy of judges or prosecutors hinder effective defense representation in your county?
Metropolitan	"Judicial pressure through threat of enhanced sentence after trial."
Metropolitan	"Constant hassle re: expert appointments"
Metropolitan	"Trying to expedite preliminary hearings before counsel is ready"
Metropolitan	"Resistance to the filing of <i>Pitchess</i> [motions] and granting of them, discovery requests, esp. <i>Brady</i> . Good cause continuances, [not] enough money for good experts."
Metropolitan	"Lack of prompt discovery from DA, withholding of <i>Brady</i> evidence by DA, Inability to interview prosecution witnesses."
Metropolitan	"Time lines."
Metropolitan	"Late discovery without any court sanctions; late lab work (drug results); our D.A. files all strikes without using discretion; inexperienced D.A.'s; D.A. often refiles charges dismissed at preliminary hearing; overcharging."
Metropolitan	"Haphazard discovery, inefficient court and prosecutor design."
Metropolitan	"Judges participate in strongarm tactics to assist D.A. in pushing hard bargains by trying to limit judges who can settle cases."
Metropolitan	"Discovery in Gang and Sex cases NOT provided in timely manner."
Metropolitan	"Redaction of police reports and other discovery impediments"
Urban	"Late discovery"
Urban	"Time limitations unrealistic; imposed by judges."
Urban	<p>"Discovery (lack); meaningless settlement offers by D.A.; spineless judges who let D.A. &amp; cops run system; Never 17b a case or "not HTA" weak case, or grant 1118.1's, Not dismiss if D.A. doesn't have wits, <u>or</u> impose <u>any</u> sanctions on D.A. for discovery abuses. Never, ever, ever grant a defense motion (e.g. 995, severance). Never, ever, ever rule in defense favor on evidentiary issue <u>unless</u> it is meaningless to outcome of case. And my favorite, allow a "gang cop-expert" witness to say ANYTHING he wants with little or not foundation - it all comes in especially if it's highly prejudicial and is bound to convict the defendant. Need I go on? System is completely broken in my view, and there's no such thing as the evidence code or constitutional protections anymore. And, less I forget, the Probation Department is nothing more than an extension of D.A.'s office - always argue prison, prison, prison; always aggravated, consec. NEVER anything mitigating. DA's filing policies - everything is a felony (Petty theft is a burg or robbery; .01 gram of meth is a felony even if DEJ/Prop 36 eligible. Overcharge everything). Deal on next to nothing and deputy DA's have no discretion on the case they handle - always "office policy," can't do anything w/o approval from supervisor AND - neither courts nor D.A.'s take any action against cops who blatantly lie on stand - so they get away with anything and everything w/ impunity. In my view, whole criminal justice system is broken - we're creating an entire class of people who will never be able to reap the benefits of society, and who have no upward mobility whatsoever, creating worsening social problems. We put them in a hole so deep (fines, assessment, fees, terms of probation - for those "lucky" enough to get probation) they can never get out. And we force them to wear scarlet letter forever. The whole thing is a complex, convoluted mess."</p>
Urban	<p>"Prosecutors do not provide offers in a timely fashion even though they have no discretion to settle cases and most follow office policy. Judges favor prosecutors - even suggesting how to prosecute a case, giving continuances, putting pressure on defense attorneys but not on prosecutors. Defense attorneys are criticized for lack of ability to force defendants to plead while D.A.s who cannot make offers or settle cases without their supervisor's approval are given every courtesy. There is a general disdain by the judges towards criminal defendants and their counsel which is reflected in their choice of words, demeanor, body language and rulings."</p>
Urban	<p>"Lack of OR on minor drug cases. Drug DDA is on grant - will not plea bargain before being pushed to trial. Uses Drug Sales on all cases involving <u>any</u> amount larger than 0.1 gm. Most DDA's are inexperienced and cannot negotiate w/o approval of ADA or DA."</p>
Urban	"Lack of disposition at arraignment thus crowding calendar to the detriment of more serious cases."
Urban	"Video arraignments, lack of time to speak with clients."

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Urban	"Yes; no plea bargaining on day of trial. No time waivers for prelim. D.A. withholds police reports and guarantees they get a continuance by withholding."
Urban	"Lack of uniform/formalized settlement conferences."
Urban	"Punishing criminal defendant after jury trial."
Urban	"1.) Court calendar/schedules; 2.) D.A. not always forthcoming with discovery; 3.) Sealing of search warrants; 4.) D.A. withholding names and identifying information on alleged complaining witness and other witnesses."
Urban	"In misd. cases, judges try to "settle" cases w/o the appointment of counsel."
Urban	"Many times prosecutors do not provide full discovery before preliminary hearing."
Urban	"Judges will not impose discovery sanctions on prosecutors."
Urban	"Deputy DA have little discretion to settle cases. DA files most death eligible cases as death penalty cases. Most get LWOP or better, but never early in the process and frequently at trial."
Urban	"In general, prosecution-oriented rulings."
Urban	"Court rules and policies favor prosecution"
Rural	"Judge will not accept deals on date of trial."
Rural	"Yes, judge pushes cases through system at <u>rapid</u> speed."
Type of County	Other Comments
Metropolitan	"DA and police will not allow a truly independent agency. This was reenforced at a Public Safety group meeting this past Thursday."
Metropolitan	"Beware of measuring caseloads or comparing jurisdictions. Averaging caseloads is very complicated because justice systems vary in organization and PDO's respond to the organization. We use a more nuanced caseload/workload analysis recommended by CA Bar Commission on Delivery of Indigent Defense Services. Twenty felonies in my county work out to about 100 in SF because of DA charging and negotiating practices. A low caseload can be crushing if it involves a high workload!"
Urban	"I have been a public defender for over 30 years in three different counties. There is a great disparity in the quality of defender services throughout the state. I think that statewide minimum standards - with teeth - should be established and every county should be required to meet those standards. A move in that direction exists in dependency representation. Why not for criminal defense? An alternative would be fore the state to take over administration and funding for criminal defense services."
Urban	"The state needs to fully fund Drug Courts. One of the reasons I believe attorneys can (handle) high felony case loads in my county is many of them are P.C. 1000/ Prop. 36 cases that dispo early in the process, however Drug Cts. are not as effective as they should be because of the high number of cases. We need more courts dedicated to Drug Court."
Rural	"The amount of assigned cases is not the problem. The problem is the workload. Investigators are only provided for very serious cases, so the individual attorney is forced to do all investigation and witness interviews. The biggest problem is the lack of drug, alcohol, and mental health treatment. My drug abusing clients are placed in prison as opposed to treatment, creating a new generation of drug users and criminals in their children. Funds are most needed for mental health and substance abuse investigation and treatment."