

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

Certified Criminal Defense Specialists

Type of County	Question: If you could change any judicial or prosecutorial practice or policy that hinders your ability to effectively defend your client at trial, what would you change? Why? How would you change it?
Urban	"1.) Services and funding for investigators and experts is in short supply. 2.) Attorneys who handle cases need more training."
Urban	"Former D.A.'s, now judges, who forget they are no longer advocates."
Urban	"D.A.'s offices need to know when peace officers have significant credibility issues and provide that information as part of discovery."
Urban	"Insist on timely discovery from D.A."
Urban	"More judges and less haste."
Urban	"Turn over discovery in timely manner and faster approval of expert witness/investigator fees enables better presentation at trial. Have a flow of court days allocated for trial rather than all day Monday, half Tuesday, Thursday, maybe get Friday - too cut up."
Urban	"Judicial enforcement of complete and thorough discovery from prosecutors early in the case."
Urban	"Better training for all counsel, both D.A. and defense - more training for judges, especially the many new judges with <u>no</u> criminal trial experience."
Urban	"Require judicial council voir dire questionnaire to be used in <u>ALL</u> cases."
Urban	"Police narcotics unit arresting one rock sale or possession for sale. Waste of resources and money prosecuting drug users who sell one rock to support their habit. Prop 36 partly solves problem but no money for needed treatment programs."
Urban	"1.) <u>Discovery</u> is always late and so is background info on witnesses. The discovery scheme is a hinderance to effective investigations by the defense. This <u>must</u> be improved. 2.) If D.A. chooses to proceed by preliminary hearing the eye-witnesses <u>must</u> be presented. This is <u>so</u> wrong."
Urban	<u>Judicial</u> : Provide better balance of court efficiency and/vs.. due process concerns. Should give attorney's reasonable time during trial. <u>Prosecutorial</u> : Timely discovery."
Urban	"Immunity agreements. Jailhouse snitches. Informants. Create false testimony. Eliminate."
Urban	"Admitting acts of poor misconduct (e.g. 1101(6) or 1108 E.C. evidence) without any real analysis or consideration of its prejudicial effect."
Urban	"Overcharging that makes it too risky for trial. An adequate sentence range could be achieved by reduced charges/stricken enhancements. §17 motion at preliminary hearing, 995s; discuss with D.A.s."
Urban	"Restore a meaningful preliminary hearing. The present system is of no value."
Urban	"Need early and often free-flowing prosecutorial discovery and access. They don't file reasonably, return calls, investigate or otherwise try to fairly resolve cases. They're militant and non-communicative, when cases settle, it's often after a whole lot of defense's work, and at the last minute."

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Urban	"Best settlement offer usually on eve of trial."
Urban	"Need to disclose all discovery and seek out <i>Brady</i> evidence more vigorously and at an earlier point than just before TMCs or trial."
Urban	"1.) Give customized, pinpoint defense instructions. 2.) Require D.A. to certify in writing the actual sources/inquiries made in discharging discovery obligations. 3.) Disallow prejudicial multimedia openings and closings."
N/A	"Failure to deal with discovery issues."
Metropolitan	"Better pay for court appointed lawyers <u>and</u> investigators. Top people would then apply and devote adequate time to their cases."
Metropolitan	"Impose penalties for prosecutor's failure to promptly turn over <i>Brady</i> material."
Metropolitan	"1.) Require critical fact witnesses to testify at preliminary hearing by eliminating P.C. § 872(b) except to prove the corpus of the crime. This would allow both sides to more accurately evaluate the case, assist in effecting plea bargains, and allow better trial preparation. 2.) Eliminate the actual presumption in PC 1275(c) and the de facto presumption in all other cases that bail schedules create the appropriate bail and unusual circumstances must be shown to go below the schedule. The schedule is arbitrary and has no bearing on a particular defendant's circumstances."
Metropolitan	"D.A. - Generally, D.A.'s don't get complete discovery UNTIL trial! Would want D.A. to have to pass on to defense sooner."
Metropolitan	"The sentencing laws (too harsh) and harsh sentencing by the courts. Having the case rushed along by the court."
Metropolitan	"Need meaningful pre-trial conference with <u>qualified</u> judge's participation and D.A. <u>with</u> authority present."
Metropolitan	"Allow broader use of cross exam of prosecution witnesses and more open-minded approach to mental defect defenses by bench. Issue of competency and use of attorney experts in that issue is not recognized, sufficiently by bench with excessive reliance on mental health "experts" and not on what attorney expert <u>or</u> defendant's attorney has to say regarding cooperation element of competency. Better education of Bench and Bar!"
Metropolitan	"1.) D must itemize discovery; 2.) Demand specifics esp. bench notes and <i>Brady</i> type; 3.) File motions; 4.) Too much "making nice" without reciprocal respect."
Metropolitan	"Not having jurors use their names in trial and jury selection."
Metropolitan	"Quicker and fuller defense discovery and courts preventing D.A.'s witnesses to testify, if D.A. fails to give prompt discovery."
Metropolitan	"Stop <u>presuming</u> that lying cops are to be believed, in the face of 35 years worth of watching them lie and frequently get away with it."
Metropolitan	"Open file - some uniformity within the county - each branch court depositions are different."

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Metropolitan	"A better balance on the bench. The bench is dominated by former prosecutors. The prosecutors need to seek alternatives to draconian prison sentences on narcotics offenses."
Metropolitan	"Make judges understand that private attorneys have many other things to manage in a practice. Time is needed to prepare!"
Metropolitan	"Enforce more rigorous discovery/ <i>Brady</i> rules against prosecutors."
Metropolitan	"Need to have open discovery similar to New York. Require that police offices must maintain their memo book entries and original notes."
Metropolitan	"Judges should have political courage to make unpopular but constitutionally correct decisions. Too many judges rubberstamp D.A.'s."
Metropolitan	"Need jury consultants. Need <u>much</u> larger investigator/expert budget."
Metropolitan	"More attorney Voir Dire. The judges set the tone that extends through to verdict. Cursory Voir Dire reveals nothing; educates not at all - promotes "group think." Current V.D. a waste of time and encourages selection based on appearance or other superficial criteria."
Metropolitan	"Set up an independent body to authorize funds for sources for indigent defendants. Having the judge be the one to allow/refuse funds for indigent services. The fees/rates that investigators are authorized make it very difficult to get competent investigation done in my court appointed cases."
Metropolitan	"Put ethics teeth into <i>Brady</i> obligations. D.A.'s rarely are disciplined by State Bar or D.A., California offices in even in the most egregious cases of withholding evidence."
Metropolitan	"Wow. Where do I start?"
Metropolitan	"This question would take hours to answer."
Metropolitan	"1.) Give judges power/authority to strike gun enhancements like "strikes." (Otherwise D.A.'s are the <u>judge</u> .) 2.) Have more consistency from courthouse to courthouse."
Metropolitan	"Creation of a panel of defense investigators who have access to resources for locating, interviewing and serving witnesses. D.As seem to have no problem with lost or uncooperative witnesses. I on the other hand, have had difficulty with investigators using databases to locate them...in order to serve them."
Metropolitan	"Courts that speed up <u>prosecution!</u> "
Metropolitan	"Open up voire dire. Judges save a couple of hours but you can't get a feel for the jurors and hence, you can't provide an adequate jury to your client."
Metropolitan	"A statewide trial scheduling priority rule, so that all counsel provide their trial calendars when trials are scheduled - scheduling conflict are resolved by the judges assigned to the conflicting cases (Alabama has this rule.)"

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Metropolitan	"Rush to move cases, regardless of time needed to prepare. While <u>most</u> courts and prosecutors accept time needed for DNA evaluations, few see similar need for time to run <i>Pitchess</i> or 1538.5 motions, <u>less</u> to provide their witnesses for interviews. 60 days after filing information is <u>not enough</u> time for strike cases."
Metropolitan	"Limited discovery rights, denial of proper subpoenas, limited Voir Dire."
Metropolitan	"Adequate time to prepare cases may result in dispo or more effective trial. More understanding on part of judges."
Metropolitan	"1.) Deals should be made by judges, not D.A.s. 2.) Motions should be decided before trial, not on date of trial. 3.) Status conference should be scheduled to discuss issues 1-2 weeks before trial. 4.) Discovery should be completed 1-2 weeks before trial."
Metropolitan	"More patience and understanding from the bench that competent representation is not always equivalent to a speedy trial."
Metropolitan	"Pressure from judges to expedite cases. Prosecutors who need to win at all costs."
Metropolitan	"I can not point to a specific area, but generally <u>bad</u> offers made before trial generally hinder the process."
Metropolitan	"1.) I would require non-115 preliminary hearing where the defense is entitled to call witnesses for discovery purposes, or, alternative, adopt the "Florida System" which permits both sides to <u>depose</u> witnesses pre-trial. 2.) I would bar judges from making us speed-date potential jurors by giving us a ludicrous amount of time (e.g., 15 or 30 minutes) to examine the entire panel."
Metropolitan	"Stop the prosecution from using victim witness advocates and/or its own lawyers to discourage victims and witnesses from speaking with defense investigators - witnesses would be made available for brief, <u>videotaped</u> interviews with defense investigators. The current practice of telling witnesses they do not have to talk with defense is used to discourage and thwart defense investigation."
Metropolitan	"D.A. - package deals, discovery non-compliance - prosecutorial coercion of witnesses. Judiciary pretrial detention - unreasonable bails - JAPE - judicially approved prosecutorial extortion."
Metropolitan	"1.) Judiciary needs to become more involved in case management and ease resolution. 2.) Public Defender and contract attorneys announcing ready for trial on multiple cases with expected duration of several months."
Metropolitan	"1.) I began when victims/witnesses were called at P.H. We should return to that system. It taught lawyers how to question witnesses and helped to weed out weak cases. 2.) Judges in Riverside are absolutely weak and will not weed out weak cases at P.H. or in 1118.1 motions. D.A. in Riverside has complete and 100% control of judicial and executive branches."
Metropolitan	"Bring back the prelim."
Metropolitan	"Equal access to duty judge for bail considerations."

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Metropolitan	"Overcharging by D.A. Lack of judicial independence."
Metropolitan	"Jury instructions need to be focused and state all elements - clarity of law between CALCRIM and CALJIC would help."
Metropolitan	"Eliminate the centralized decision-making process in the prosecutor's office. Appoint judges who believe in the Bill of Rights."
Metropolitan	"Give more latitude to attorneys on Voire Dire."
Metropolitan	"I would require that the Deputy D.A. who has the case be allowed to be fully responsible without having experienced D.A. have to set the approval of the resolution by a supervisor who has only a passing knowledge of the case. Unfortunately the trial deputy can use this as an excuse to not take responsibility."
Metropolitan	"Requiring the defense to preview the questions to be asked of witness. Hold prosecutors to high standard for admission <u>TRUE</u> Rebuttal. Make the trial <u>fair</u> by being honest about the presumption of guilt."