

# **TIPS FOR THE BEGINNING PROSECUTOR**

**(SOME OF THE STUFF I WISH I'D KNOWN MY FIRST DAY ON THE JOB)**

by  
**Elliott Wilcox**

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## **PREFACE**

I graduated from law school on Saturday. On Sunday, I moved all of my stuff to a new town. Monday, I was standing in front of a judge and representing the State of Florida. By Friday, I was picking a jury and trying my first case. Like Socrates, the only thing I knew was that I knew nothing. This is a collection of some of the stuff I wish someone had told me that first day on the job.

## VOCABULARY LIST

(Please note, much of this list is specific to Florida)

**Capias.** An arrest warrant issued by the judge. Typically issued if a defendant fails to appear for a court hearing. (Judge: “The defendant has failed to appear for trial. Forfeit his bond and issue a capias for \$25,000.00”)

**Dewey.** [Doo-ee]. Slang for “D.U.I.,” or Driving Under the Influence.

**Drug court.** A drug diversion program designed to treat drug users rather than punish them. Defendants can have their charges dismissed if they successfully complete this program.

**Guidelines/Guidelines sentence.** The recommended sentence as determined by the Criminal Punishment Code. [FLORIDA RULE OF CRIMINAL PROCEDURE 3.992(a)]

**Mapping zone; mapping area.** In prostitution cases, defendants on probation are often ordered not to return to the “mapping zone,” a specific area known for its prostitution and drug dealing activity.

**Nelson hearing.** If a defendant asks to fire his court-appointed attorney due to irreconcilable differences or incompetence, the court must conduct a *Nelson* hearing. *Nelson v. State*, 274 So. 2d 256, 258-59 (Fla. 4th DCA 1973).

**Pen pack.** Penitentiary packet. These documents from the Department of Corrections are used to prove the defendant’s last release date from custody.

**Richardson hearing; Richardson inquiry.** Discovery violation hearing. If a party alleges a violation of the discovery rules, the court must conduct a *Richardson* inquiry. There are three parts to the inquiry: 1.) Was there a discovery violation? 2.) Was it willful or inadvertent? 3.) Was there any prejudice to the aggrieved party? *Richardson vs. State*, 246 So.2d 771 (Fla. 1971).

**Scoresheet.** A compilation of the defendant’s criminal history and the recommended sentence as determined by the Criminal Punishment Code. [FLORIDA RULE OF CRIMINAL PROCEDURE 3.992(a)]

**Standard first.** Shorthand for the standard conditions of a first-time D.U.I. offender’s sentence. Standard conditions include adjudication of guilt, 6 months probation, 50 hours of community service, enroll and complete the D.U.I. counterattack school, enroll and attend the victim awareness program, impound the vehicle for 10 days, and a 6 month driver’s license suspension.

**Williams rule evidence.** Similar fact evidence. When the State intends to prove identity or motive through similar fact evidence, it must formally notify the defense of its intention to introduce evidence of these prior acts or crimes. *Williams v. State*, 110 So. 2d 654, 663 (Fla. 1959), now codified at F.S.S. 90.404(2).

## SHORTHAND LANGUAGE

Here are some of the shorthand notes you will find written on your file folders:

**A.F.I.S.** Automated Fingerprint Identification Systems.

**ACS.** Alternative Community Service. Typically written as “100 ACS,” this means 100 hours of community service to be performed through the Alternative Community Service program.

**ADJ.** Adjudicated guilty.

**ARN.** Arraignment.

**ARR.** Arrest.

**ARRN.** Arraignment.

**APD.** Assistant Public Defender.

**ASA.** Assistant State Attorney (that’s you.)

**B/F.** Black female.

**B/M.** Black male.

**Batt.LEO.** Battery on a Law Enforcement Officer. See also, BLEO.

**BLEO.** Battery on a Law Enforcement Officer. See also, Batt.LEO.

**C.O.** Corrections officer

**C/S.** Community service. (Usually written as “50 C/S” – 50 hours of community service)

**CTS.** Credit for Time Served.

**D (or Δ) .** Defendant.

**DCF.** Department of Children and Families.

**DNS.** Do Not Subpoena.

**DOB.** Date of Birth.

**DOC.** Department of Corrections (prison).

**DOC.** Determination of Counsel hearing.

**DRE.** Drug recognition expert

**DUI.** Driving Under the Influence of drugs or alcohol [F.S.S. 316.93]

**DUS.** Driving Under Suspension. [F.S.S. 322.34]

**DV.** Domestic Violence.

**DWLR.** Driving While License Revoked. [F.S.S. 322.34]

**DWLS.** Driving While License Suspended. [F.S.S. 322.34]

**FI.** First degree felony, punishable by 30 years imprisonment or \$15,000.00 fine.

**FI – PBL.** 1<sup>st</sup> degree felony, punishable by life imprisonment.

**F2.** Second degree felony, punishable by 15 years imprisonment or \$10,000.00 fine.

**F3.** Third degree felony, punishable by 5 years imprisonment or \$5000.00 fine.

**F.C.I.C.** Florida Crime Information Center. The Florida version of the N.C.I.C.

**FD.** Fire Department.

**FDLE.** Florida Department of Law Enforcement.

**F.P.A.A.** Florida Prosecuting Attorneys Association.

**FTA.** Failure to Appear.

**G.** Guilty plea.

**G/Adj.** Pled guilty, adjudicated guilty.

**H/F.** Hispanic female.

**H/M.** Hispanic male.

**HFO.** Habitual Felony Offender.

**HVFO.** Habitual Violent Felony Offender.

**LEO.** Law Enforcement Officer.

**L/M.** Left message. (ex. “Called Joe Smith, l/m re: plea or trial?”)

**LVS.** Low Volume Sample (from DUI cases with an intoxilyzer result)

**M.O.** *Modus Operandi*. Method of Operation.

**MI** \_\_\_\_\_. Shorthand for Motion hearing. Examples: **M/Limine** (Motion in Limine), **M/Suppress** (Motion to suppress).

**MI.** First degree misdemeanor. Maximum 1 year jail or \$1000.00 fine.

**M2.** Second degree misdemeanor. Maximum 60 days jail, 6 months probation, or \$500.00 fine.

**MHH.** Mental Health Hearing.

**MTD.** Motion to Dismiss.

**MTS.** Motion to Suppress.

**N.C.D.A.** National College of District Attorneys

**N.C.I.C.** National Crime Information Center. A nationwide criminal history search.

**NC (or NIC).** “No Contest” or “Nolo Contendre.”

**NVDL.** No Valid Driver’s License. [F.S.S. 322.03]

**PC.** Probable cause.

**PD.** Police Department. (ex. NYPD: New York Police Department)

**PD.** Public Defender.

**PO.** Probation Officer.

**Poss. MJ<20g.** Possession of marijuana (less than 20 grams). [F.S.S. 893.13(6)(b)]

**PRR.** Prison Releasee Reoffender.

**PTC.** Pre-Trial Conference.

**PTD.** Pre-Trial Diversion. This is a program sponsored by the State Attorneys Office. Upon successful completion of the program, the defendant’s charges are dismissed.

**PTI.** Pre-Trial Intervention. This program is similar to PTD but is sponsored by the court. Jurisdiction is limited by the legislature to certain drug offenses.

**PBL.** Punishable By Life.

**RWOV.** Resisting an Officer Without Violence. [F.S.S. 843.02]

**S✓.** Status check.

**S.O.** Sheriff’s office (ex. PBSO: Palm Beach Sheriff’s Office)

**SOP.** Sex Offender Probation.

**SIP.** Supervised Probation.

**SSN.** Social Security Number.

**T.** Trial date.

**TGOA.** To Get Own Attorney (sometimes pronounced “TOGA”)

**V.** Victim.

**VA.** Victim Advocate.

**VIN.** Vehicle Identification Number.

**VIM.** Voice mail.

**VOP.** Violation of Probation.

**VPH.** Violation of probation hearing.

**VT.** Victim.

**W.** Witness.

**WIF.** White female.

**WIM.** White male.

I’m sure there are other abbreviations that I missed. If you would please email me any additional shorthand language used in your office, I will include it in the next update. Please send your suggestions to [TrialTips@TrialTheater.com](mailto:TrialTips@TrialTheater.com).

## WHERE DO I STAND, WHAT DO I SAY?

### BOND HEARINGS

**What should I do in advance?** Notify victims of the date, time, and location of the bond hearing. Also notify any witnesses who will testify at the hearing. Prepare a list of the defendant's prior arrests and convictions, prior failures to appear for court hearings. In more serious cases, prepare a responsive motion outlining the reasons why the defendant is a risk to the community or a flight risk.

**Where do I stand?** Some judges will allow you to remain at the counsel table, but you will be more persuasive if you stand at the lectern and address your comments to the judge. If there are two lecterns, you should stand at the appropriate lectern when questioning witnesses or addressing the court.

**Order of events.** The clerk calls the case. The judge asks who represents each of the parties. Stand to address the court, and say, "[YOUR NAME] for the State." The Court will ask for testimony. The defense has the burden if they're seeking to lower the bond; the State has the burden when seeking pre-trial detention. Typically these motions are filed by the defense, so they will go first. After each witness testifies, the State has an opportunity to cross-examine. Remember, you can't ask the defendant about any prior convictions or the facts of this pending case (unless their testimony opens the door to that material). At the conclusion of the defense's testimony, the State has an opportunity to present testimonial evidence. You may also proffer the defendant's prior criminal history or any failures to appear.

**Typical issues:** Whether the defendant poses a flight risk or a danger to the community. Here are some of the factors the judge should consider:

- Source of funding for the bond (will the defendant put up his own money, or will someone else?)
- Defendant's ties to the community
- Nature and circumstances of the pending offense
- Weight of the evidence against the defendant
- Potential penalty of the pending offense
- Prior criminal history
- Prior failures to appear for court
- Defendant's family ties and ties to the community
- Length of residence in the community
- Employment history
- Mental condition or drug addiction
- Previous flight to avoid prosecution
- Nature and probability of danger to the community
- Whether the defendant was already on conditional release when this offense was committed

## WHERE DO I STAND, WHAT DO I SAY?

# DETERMINATION OF COUNSEL

**What should I do in advance?** Bring your file and a pen.

**Where do I stand?** You can usually remain seated at the counsel table.

**Order of events.** The clerk calls the case. The judge asks the defendant if he has retained an attorney. If not, the judge inquires about the defendant's finances. If the defendant qualifies, the court will appoint an attorney. The prosecutor typically doesn't have to say anything during this hearing.

## WHERE DO I STAND, WHAT DO I SAY?

# MOTIONS TO WITHDRAW

**What should I do in advance?** Bring your file and a pen.

**Where do I stand?** You can usually remain seated at the counsel table.

**Order of events.** The clerk calls the case. The judge asks the defendant if he agrees to the motion. If the defendant agrees, the court next asks if he has retained an attorney. If not, the judge inquires about the defendant's finances. If the defendant qualifies, the court will appoint an attorney. The prosecutor typically doesn't have to say anything.

## WHERE DO I STAND, WHAT DO I SAY?

# ARRAIGNMENTS

**What should I do in advance?** Most cases are not resolved at arraignment, so you only need to bring your files and a pen to write down the trial dates. If you think the case could be resolved at this early date, prepare a scoresheet or an early plea offer.

**Where do I stand?** Usually you can remain seated at the counsel table. If you make a plea offer or have any issues to address with the court, you can stand at the table to address the court.

**Order of events.** The clerk calls the case. The judge tells the defendant what charges have been filed against him, appoints an attorney if the defendant is indigent, and then notifies the defendant of the pre-trial and trial dates. If you want to present an early plea offer, this is the appropriate time to place the offer on the record.

## WHERE DO I STAND, WHAT DO I SAY?

### MOTIONS TO SUPPRESS

**What should I do in advance?** Read the motion. Identify any issues in the motion. If appropriate, prepare a responsive motion. Send courtesy copies (with attached case law) to the court and opposing counsel. If you're bringing case law to the hearing, bring three copies (you, defense counsel, and the judge). If you highlight any portions of the cases you're handing to the judge, highlight the same portions on the copy you hand to opposing counsel. List any witnesses you will need for the motion. Subpoena the witnesses for the hearing date.

**Where do I stand?** You can usually stand at counsel table until you call witnesses. Witnesses should be examined and cross-examined from the lectern. You should stand at the lectern to address the court during your argument.

**Order of events.** The clerk calls the case. The judge asks who represents each of the parties. Stand to address the court, and say, "[YOUR NAME] for the State." If you haven't provided copies of your response motion or caselaw to the court and opposing counsel, now is the appropriate time. The court may or may not ask for a preliminary statement from the attorneys to outline the issues. If you concede that the defendant has standing to contest the stop, search, or seizure, then you will present evidence first. If you don't concede, the defense must present evidence to establish standing. After standing has been established, the State presents evidence. The defense may cross-examine, and also has the opportunity to present evidence of its own. After all of the evidence has been presented, the court will ask for arguments. The moving party argues first, and may also be allowed a brief rebuttal argument. The court may or may not rule immediately. If the judge issues a ruling from the bench, you may want to offer to draft a proposed written order.

## WHERE DO I STAND, WHAT DO I SAY?

### PRE-TRIAL CONFERENCES/CALENDAR CALLS

**What should I do in advance?** Look through each of the files that are set for trial. Determine whether you are ready for trial or if you will need to request a continuance. Make a note of any witness conflicts (unserved subpoenas or missing witnesses, witnesses with travel plans or other conflicts). Know how many witnesses you will need to call and know how long you expect the trial to last. Send out any final plea offers so defense counsel has the opportunity to convey them to their clients before the pre-trial hearing.

**Where do I stand?** You can usually remain seated at the counsel table. If you need to address the court, you can stand at the table.

**Order of events.** The clerk calls each case. The judge asks the attorneys if they are ready for trial. If you have any conflicts (personal scheduling or witness conflicts), tell the judge at this time. If you have any pre-trial issues that need to be resolved, they should be addressed at this time. If you will require the services of an interpreter during trial or will need to have a witness transported from the jail, tell the court at this time. Place your final plea offer on the record. If you are withdrawing the offer, clearly state so in the defendant's presence.

## HOW TO: PREPARE A CASEFILE

If you will invest an extra five to fifteen minutes with each file when you first examine it, you will save yourself several hours of wasted effort down the road. Here is a short list of what can be accomplished when you open your file:

- Contact your victim
- List your witnesses
- List your evidence
- Task your officers and labs for follow-up investigation
- Create a plea offer
- Formulate trial strategies

### THE IMPORTANCE OF PREPARATION

*If I had eight hours to chop down a tree, I'd spend six sharpening my axe.*

- ABRAHAM LINCOLN

## HOW TO PREPARE A CASEFILE: CONTACT YOUR VICTIM

The best time to contact your victim is when you first open the file. Don't rely on a victim advocate to contact the victim, and don't contact the victim by letter or email or fax. Call the victim personally as soon as you've finished reading through the case file. Here are some of the issues you can discuss with a victim on that phone call:

- "How would you like to see the case resolved?" Explain the minimum and maximum applicable sentences, and what you expect the judge would do before and after trial. Be candid with them about any weaknesses in the case (for example: failures in the identification; self-defense issues; or the difficulties of believing a victim with 23 felony convictions) when discussing potential plea offers.
- "Do you want the defendant to go to prison, or would probation be more appropriate?"
- "Does he need to receive alcohol, drug, or mental health counseling?"
- "Do you want to have contact with the defendant?"
- "Does the defendant owe you any restitution?"
- While you have them on the phone, tell them that depositions will be set and that they are expected to attend. Tell them when the current trial period will start and how long they should expect to remain on standby for trial.
- "Would you like to come to court and tell the judge what sentence you think the defendant should receive? Or do you want to rely upon me to make that representation?"
- Are they planning to move or will their lease expire before the trial period begins? If you sense that their residence may be unstable (examples: college student, domestic violence victim, hotel or boarding room resident), ask for a friend's or family member's number. Also give them your phone number and tell them to call you if they move.

This sounds like a ton of work, doesn't it? Actually, most of your phone calls will last less than five minutes. But look at the benefits you receive by investing that small amount of time:

- **The victim cooperates with the prosecution.** They've had personal contact with the prosecutor, have had an opportunity to air any gripes or grievances, and have been reminded that the case is still pending.
- **The victim agrees with the plea offer.** They don't have any unrealistic expectations about what will happen to the defendant, and they've had the opportunity to make a recommendation. (On domestic cases where the victim wants to drop the charges, she'll usually agree that the defendant has some type of anger or alcohol problem. If you tell her that you could place the defendant on probation and make him seek help for the problem, she may cooperate and agree to a probationary offer).
- **The victim knows what to expect about the trial process.** They know if depositions will be set and when the trial period will begin.
- **The victim's rights have been protected.** Victims are guaranteed several rights under the Florida Constitution, and we have an obligation to make sure those rights are protected.
- **The victim gets input on the sentence.** You have documented your file with the victim's input so that you can fashion a plea offer or make appropriate sentencing recommendations to the judge.
- **Anyone can pick up your file.** You can take a vacation, wake up late, get a flat tire, or be sick. You can be promoted or moved to a different division. Your file is well documented, so if you can't be in court, one of your trial partners can pick up the file and, in a few moments time, represent the victim's interests as well as you would.
- **Restitution hearings avoided.** You know how much restitution is needed. There's no need to schedule a restitution hearing, delay the sentencing, or send out letters to the victim – you simply enter the agreed order.
- **Your file is documented (“C.Y.A.”)** If the victim says that you didn't do what they wanted with a case, which of these situations would you prefer to be in?
  - (1) Showing your supervisor the notes you took (including a recommended plea disposition) from your phone call with the victim, or
  - (2) Having a vague memory that the victim “probably” didn't object to probation on your aggravated stalking case?

If you're like me, your memory fades as soon as the case is closed – those notes will remain in the file forever.

***Aren't all of those benefits worth a few moments of your time?*** If you absolutely cannot get in touch with the victim by phone, mail them a letter and ask them to call you. It is imperative you contact the victim before making a plea offer. Sometimes they won't call you back, but at least you made the (documented) effort to contact them.

## HOW TO PREPARE A CASEFILE: LIST YOUR WITNESSES

When a subpoena comes back un-served, how much time do you waste looking through your file to determine why this witness was listed? Or, how much time does your investigator waste looking for and locating the witness, only to have you later determine that the witness wasn't necessary for trial?

This simple tip will save you several hours of time, and will also save your successor prosecutor several hours of time when you get promoted:

***Every time you list a witness, describe what they did.***

It's that simple.

Every time you work up a case, you will have to read through the entire file to uncover all of the witnesses. Since you're going to have to read the file cover to cover, wouldn't you prefer to do it only once?

Whenever you see a new witness identified, write down their name, all of their phone numbers and addresses, and then list their involvement. You can also list whether or not they should be subpoenaed ("Sub?") and the order in which you want to call your witnesses. Here's an example:

#	Sub?	Name/address	Involvement	Served?
1	YES	Mick Mowz <b>Home</b> 300 Universal Lane Orlando, FL 32801 (407) 836-2400 <b>Work</b> Mick's Pawn, Gun, & Liquor Store 4401 South Orange Blossom Tr. Orlando, FL 32807 (407) 555-1212	<b>Victim.</b> Returned to discover that his car had been broken into.  <b>Needs Mandarin Chinese interpreter.</b>	
2	YES	Ofc. John Jones (Orlando PD)	Wrote report. Saw defendant breaking into car and pulling out stereo. Victim of resisting and battery on LEO. Shot him twice with the taser, then ordered the K-9 to gnaw his leg off.	
3	YES	Ofc. Thomas McMicMacMickityMack (Orlando PD)	Backup officer. Arrived and saw defendant hitting Ofc. Jones with a whiffle ball bat.	
4	YES	Ofc. Jamie Williams (Orlando PD)	Backup officer. Set out road flares and directed traffic.	★ No
5	NO	K-9 "Benji" (Orlando PD)	Dog. Bit defendant on the leg.	
6	NO	Roderick Jones (Transient – No phone)	Defendant's passenger. Ran from the scene, tasered by Ofc. Jones.	

★ *Whenever a witness subpoena is returned un-served, make a note in the "Served?" box so that you will instantly know what testimony you may be missing for trial*

Here are some of the benefits you'll reap by doing this extra bit of effort:

- **Instant turnaround on un-served subpoenas.** If the subpoena for Ofc. Williams returns un-served, you don't have to look through your entire file to determine whether or not your case will survive without his testimony. You can instantly decide whether or not to send an investigator to look for him.
- **Reduced pre-trial conference preparation time.** You'll be able to instantly look at every file and tell whether your witnesses have been served or not. If they haven't been served, you'll know whether you still have a case or whether you need to request a continuance in hopes of locating the witness. You also have an instant summary of any special needs you'll have at trial, such as the need for an interpreter, out of county travel arrangements, or time scheduling issues.
- **Improved trial preparation.** You don't have to re-read the entire file before trial – you can instantly see which witnesses are required and what order you want to place them in.
- **Easier to pick up someone else's trial or to give your case away.** Other prosecutors are more willing to pick up your cases when they don't have to re-create the entire file from scratch.

## HOW TO PREPARE A CASEFILE: LIST YOUR EVIDENCE

You can successfully avoid *Richardson* hearings by doing a meticulous job of listing your witnesses and evidence. I always use a discovery sheet to list EVERYTHING that we have in evidence.

The few extra moments I spend here have saved me hours and hours of hearing time. When the defense attorney says, "Your honor, I never knew about this evidence," I can end the *Richardson* hearing abruptly by responding, "Judge, if the court will refer to the State's discovery sheet (a copy of which was provided to both the clerk of court and Mr. Defense), you will notice that I specifically listed Dr. Sminson's report."

Photos, citations, breathalyzer records, pace clock records, written statements of witnesses, oral statements of the defendant... write ALL of it down on the witness sheet. As you're reading through the file, simply write down every piece of evidence you see listed or referenced. If there is additional evidence not contained in the file (fingerprints that will be tested, DNA that will be ordered, radar certification and logs, etc.) then make a note of that as well.

Now you're covered for any contingency. Even if the photocopier eats a few reports, or you fail to send them over (such as when a defendant receives 1/10<sup>th</sup> of the discovery that his co-defendant received), you can point to the list and say, "They received this, so they were on notice that we had all of this evidence. If they chose not to follow-up, that's a lack of due diligence on their behalf, not a discovery violation by the State."

**HOW TO PREPARE A CASEFILE:****REQUEST FOLLOW UP INVESTIGATION**

While you're listing all of your evidence, you'll quickly discover whether any of it is missing. If the police report says he took photographs, but they're not in your file, follow up and order them. You may need to think about what evidence is missing (drug analysis, fingerprint comparisons, DNA analysis) and order that as well. Some of these things take a while to generate. If you do it now, you won't have to panic at trial.

**HOW TO PREPARE A CASEFILE:****CREATE A PLEA OFFER**

Make an offer at the beginning, because you won't have a better understanding of your case until the day of trial. You've just read the file and talked with the victim – everything is fresh in your head. If you wait until you walk into the courtroom to create your plea offer, you may miss an important element that you wanted to offer (example: drug treatment, a certain number of community service hours per month, restitution, etc.)

Another thing I like to do with the plea is offer an incentive to plea the case early. Most of my plea offers are similar to these:

**STATE'S PLEA OFFER:****24 months prison**

(16 months prison if pled on  
or before the pre-trial conference)

**STATE'S PLEA OFFER:****Plea to Count I (1<sup>st</sup> Degree Murder)  
and Count II: Burglary of Dwelling**

(Plea to 2<sup>nd</sup> Degree Murder and  
dismiss Count II if pled on or  
before the pre-trial conference)

I also include a note to the defense attorney telling them that I may be seeking enhanced sentencing sanctions, or that additional charges may be warranted and I will amend the information to reflect those charges before trial. (For example, a case is charged as "Count 2: Petit theft" but he has two prior convictions. I tell the defense attorney that I will be amending the charge after the pre-trial conference to the felony charge of "Petit theft – 2 prior convictions.") Just be careful not to make any threats in your plea offer – you don't want to argue about claims of vindictive prosecution.

Another tip is to prepare your guidelines scoresheet before you make your plea offer. It's embarrassing to recommend a plea offer of 24 months imprisonment, and then later find out the defendant scores 198.7 months prison because of his prior criminal history. It's easier to prepare the scoresheet in your office when this is the only case you're thinking about, rather than waiting until you are in court and have sixteen cases pleading out at once.

Listing all of his priors on the scoresheet will also remind you to order any out-of-county certified convictions you may need for trial. It's much easier to order them now rather than waiting until two days before trial and hoping they'll be FedEx'd to your office in time.

**HOW TO PREPARE A CASEFILE:****FORMULATE TRIAL STRATEGIES**

The first time you read the file, ideas are going to jump out at you. Defenses, cross-examination ideas, themes, motions in limine to file, expected motions to suppress, the need to request a bond revocation – all of these will jump out at you when you pick up the file. It is important that you capture those impressions.

Write down the buzzwords that jump out at you or the conflicts in the testimony. I've created memorable themes and closing arguments because of quick notes I jotted in the case journal when I first picked up the file. It's been said that the faintest pencil mark is better than the sharpest memory – write down those first impressions to ensure you incorporate them into your trial. Here is a format you can modify to help you evaluate your cases:

	<b>Positive</b>	<b>Negative</b>
<b>Facts</b>		
<b>Law</b>		
<b>Possible themes:</b>		
<b>Memorable facts:</b>		
<b>Possible defenses:</b>		

## PARTING TIPS

Here are some of the philosophies that have shaped the way I prosecute cases:

**Understand your role.** Your job is to prove the charges and then **recommend** a sentence. It's the **judge's** job to sentence. If you don't like the sentence, don't lose your cool. I used to do that. Trust me, your blood pressure won't react well. If it's warranted, document the sentence for the media or start preparing your campaign to run for the bench, but don't get angry. It won't change anything. You did *your* job, and that's all you can control.

**Don't argue with opposing counsel.** Your job is to prove the case, not to argue with the other attorney. This is a job. It's not personal. If you make it personal, you will lose your objectivity and your effectiveness. If a defense attorney tells you that he'll kick you around the courtroom and that your case stinks, don't lower yourself to that level. It's better to say, "You know, you may be right," and then let your actions, rather than your mouth, do the talking.

**Do what you think is right.** Your job is to seek justice. One of the best parts of being a prosecutor is that we get to seek justice. We don't have to win at all costs – we get to do what is right. Sometimes that means seeking the death penalty, sometimes it means prosecuting a person who is well-respected in the community, and sometimes it means dropping charges against a truly evil individual. Do what is right, even if people get upset. I can't count the number of times a defense attorney has told me, "Your predecessor told me he'd give me a (nolle prosequere/reckless driving/misdemeanor/better deal) on this case." My response is almost always the same. "That was a great offer. I wish you had taken that deal when he extended it. I can't speak for how [previous attorney] evaluated this case, but I have to stand by my personal judgment on this case. I can't sign my name to that offer, because I don't think that's a fair resolution to this case." Always do what you think is just. You will sleep well when you do.

**Spend time with happy people.** You deal with despair and misery every day. You spend time with people who have been injured, raped, beaten, killed, or worse. You also spend a significant part of your day with the people who caused all of that pain. If you don't spend time with people outside of this profession, you'll go nuts. The people we deal with in the courtroom every day represent a very small percentage of our community. Most people are good hearted, hard working individuals. Remind yourself of that on a daily basis. Get involved with a service organization, a social group, a sports group, a Toastmasters club, a place of worship, whatever. Spend time with good people, and you won't get burnt out at work.

Best wishes for success in your next trial,

A handwritten signature in black ink, appearing to be the name "Ed" followed by a stylized flourish that ends in a horizontal line with an arrowhead pointing to the right.

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