

# ATTORNEY NOTES . . .

THE NEWSLETTER OF THE ASSOCIATION OF DEPUTY



DISTRICT ATTORNEYS OF LOS ANGELES COUNTY

SEPTEMBER 2007

VOLUME II, ISSUE 8

## WELL . . . NOW WHAT?

Proceedings in front of ERCOM are approaching an end, but many scenarios lay ahead. The outcome will decide unionization and may revive safety retirement campaign.

**The next meeting of ERCOM will be on September 24 at 1:00pm on the 3rd floor of the Board of Supervisors Building, (500 W. Temple St., LA), Room 374. ERCOM meetings are public THE ADDA IS ON THE AGENDA!**

By ADDA Newsletter Editor  
Steven Lopez

Officer Robert D. Steinberg found that, "[o]f all possible units, the greatest community of interest exists with a representation unit limited to DDAs." Hearing Officer Steinberg concluded his report by ruling, "[f]or the reasons set forth *infra*, the Hearing Officer agrees with the Petitioner and recommends a collective bargaining unit of DDAs grades I-IV be found appropriate." Los Angeles County Employee Relations Commission, CASE NO: CP 01-06, Hearing Officer's Report.

"The Hearing Officer's recommendation to recognize Los Angeles Deputy District Attorneys as a separate bargaining group is a welcomed development," said Steve Remige, President of the Association of Los Angeles Deputy Sheriffs (ALADS). "As President of ALADS, I am quite aware that the rank and file Deputy District Attorneys of the District Attorney's Office are dedicated advocates with a special perspective." "For too long the county has benefited from their service while ignoring their voices."

### WHAT WILL HAPPEN NEXT

On September 24, 2007, the full ERCOM Board will be presented with the Hearing Officer's report. The ERCOM Board will

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After a contentious hearing before a Hearing Officer appointed by the Employee Relations Commission (ERCOM) of Los Angeles County, the ADDA may finally have won an opportunity to form a bargaining unit comprised exclusively Deputy District Attorneys (DDAs) Grades I-IV. One August 10, 2007, ERCOM Hearing

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## DDA GREG DOHI APPOINTED TO THE BENCH

By DDA Shannon Presby, JSID

Gregory Dohi did his undergraduate work at a little known school somewhere in the Boston area (Harlow or Horvath or something). He went to law school at the University of California at Berkeley where he focused on Birkenstocks and candle making. He finally came to his senses in 1991 when he joined the Los Angeles County District Attorney's Office. Greg was initially assigned to East LA and Ct-13. In 1995 he joined the Hardcore Gang division. Greg worked gangs in Pasadena, Pomona, and Newton Division and as the leader of the Asian Gang Team. Greg was also assigned to the Major Crimes Division, High Tech Crimes and finally Training (the guy just couldn't keep a job).

In the next step on Greg's path of downward mobility, he has now been appointed as a Superior Court Judge. Everyone who had the pleasure to work with Greg knows how profoundly he will be missed. Greg's keen intellect, his tireless devotion to the pursuit of justice and his generous spirit made him an exemplary prosecutor, an invaluable resource and a good chum.<sup>1</sup> We will miss you Greg.

<sup>1</sup> Greg is a good friend but also, when placed in water, he attracts large schools of game fish – go figure.

**Yeah, that Greg Dohi. That's right. He's a Judge now!**



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## ERCOM. . . WHAT NOW?

have an opportunity to review the report, ask questions of the parties, hear any objections, and vote to determine whether the report will be accepted.

Thanks to the generous support of ALADS, Helen Schwab and Derald Brenneman, of the law firm of Green and Shinee, have represented the ADDA at the ERCOM Hearings. Ms. Schwab recently discussed with *Attorney Notes* the various scenarios that could unfold on September 24. Ms. Schwab noted that ERCOM enjoys great latitude in receiving conclusions of hearing officers. Historically, the Commission has valued the careful deliberations of its hearing officers and is loathe to discount their findings. But in nearly any given case, the full Commission could decide to uphold a hearing officer's conclusions or overrule them. Any party can file a challenge to a hearing officer's conclusions, and the opposing party in that situation can file a response. In regards to the ADDA's petition, after Hearing Officer Steinberg filed his recommendation to grant the ADDA's petition, the CAO's representatives lodged a lengthy written challenge with ERCOM. Schwab noted that Green & Shinee will be filing a written response to this challenge shortly.

As to whether a hearing officer's conclusions will be upheld, Ms. Schwab explained that the Commission could rule immediately – even by issuing a decision at the hearing – or the Commission could delay issuing a decision. Although there is no formal time limit on the Commission, usually it will wait no longer than a month before issuing its decision.

Ms. Schwab cautioned that the Commission has great latitude as to oral arguments, and is not even required to hear them. It may receive oral argument at its discretion. Traditionally in important petitions, such as in a group as large as the ADDA, the Commission will hear oral arguments. However, these oral arguments do not include public comment, only the representatives of the petitioner and respondent may address the Commission.

Ms. Schwab further explained that Commission decisions generally fit in one of three categories. If the Commission intends to approve a hearing officer's conclusion outright, only a short report will be filed. If the Commission plans to reject a hearing officer's conclusion, arrangements will be made for the Commission to file a more lengthy report explaining the reversal. If the Commission plans to make minor modifications to the recommendation, a report of moderate length will be filed. Once a written order is issued, it is final as to the Commission.

"Normally, a straightforward report, such as the one filed in the ADDA's petition, is accepted by the ERCOM commissioners," remarked Bob Hunt, General Counsel of SEIU (Service Employees International Union) Local 721. "This would be a difficult report to attack." "They consider it the important work product of a professional, barring some bizarre legal or factual point."

"ERCOM could take more time but probably not in this case," Hunt observed.

However, should ERCOM accept the Hearing Officer's findings, an election would not instantly occur. ERCOM would require a series of important planning meetings to determine election logistics. Representatives of the ADDA and the county would meet with ERCOM to determine the exact wording and distribution of ballots. However, neither the District Attorney's Office nor the ADDA would be required to pay for the election. As explained by Leslie Simon of the American Federation of State, County and Municipal Employees (AFSCME) and Joe Bader of the Union of American Physicians and Dentists, not only would ERCOM coordinate and conduct the election, ERCOM would also bear the costs.

## CAO'S ARGUMENTS SPURNED

Representatives of the Chief Administrative Officer (CAO) had advocated lumping DDAs into one bargaining group with Public Defenders (PD) and Alternate Public Defenders (APD). But Hearing Officer Steinberg found that lumping PDs and DDAs in the same group produced "an ultimate failure nonetheless." Resulting in both the DDAs and the DPDs being on the outside of the collective bargaining arena for the past two Decades."

Steve Remige added, "another important thing to keep in mind is that the ADDA has served the particular interests of rank and file Deputy District Attorneys for decades." "As the President of ALADS, an Association dedicated to the unique interests of District Attorney Investigators and Deputy Sheriffs, I know it's important to have a recognized organization that is empowered to go to bat for the unique interests of employees who work in law enforcement." "I and the other members of the ALADS Board look forward to working with the ADDA in the future as a fully recognized bargaining unit representative."

As noted in last month's ADDA Newsletter, Helen Schwab observed, "[t]his decision . . . benefits all County attorneys by preserving their freedom of self-organization. Added Bob Hunt of SEIU, "if ERCOM approves the Hearing Officer's recommendation, and DDAs subsequently vote to form a certified bargaining unit, SEIU might seek to organize DPDs and APDs into a separate bargaining unit for defense attorneys."

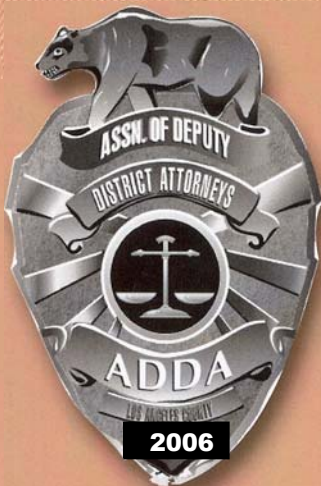
## A LONG AND CONTENTIOUS BATTLE COMES TO A CLOSE

The Hearing Officer's report has emerged from the ERCOM hearing as a beacon leading to the conclusion of a messy and bitter conflict between rank and file DDAs and members of the County's Administration.

This fight began in the legislative fireworks that occurred in Sacramento in 2002. Intense petitioning, lobbying and arm twisting by groups

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## ADDA ANNUAL AWARDS DINNER



TUESDAY, NOVEMBER 6, 2007  
LOS ANGELES OMNI HOTEL

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## ERCOM. . . WHAT NOW?

such as the ADDA finally convinced the Governor to sign into law AB2023, which permitted to California counties to extend enhanced retirement benefits (3% at 55- commonly called "safety retirement") to rank and file prosecutors and public defenders. Many counties acted wisely, and quickly recognized the valuable contributions by rank and file prosecutors and public defenders required that safety retirement plans be offered and implemented immediately.

Unfortunately, Los Angeles County was not one of those counties. Nonetheless, the ADDA worked quickly to try to get enhanced retirement benefits for LA county prosecutors. First, the ADDA formed a committee with rank and file PDs and APDs. After the ADDA learned that the effort could go no further unless an actuarial study was conducted on DA, PD and APD attorneys, the ADDA led committee collected contributions from rank and file lawyers in all three offices to conduct the study (that money remains protected in its own interest bearing bank account). With funding securely in place, the ADDA led committee needed only to access statistical data regarding these rank and file employees. However, county leaders decided that rank and file DDAs were not entitled to enhanced retirement benefits. Historically, the CAO routinely authorized the LACERA (our retirement association) to provide retirement data to any union requesting it. As a registered employee organization, though not a union, the ADDA believed the CAO would act reasonably and authorize disclosure of this data. Regrettably, ADDA representatives soon discovered that the county planned to stonewall and refuse disclosure of this valuable information. In essence, the CAO was able to overrule state law.

Since the County and the CAO refused to provide the ADDA with even the most basic information, the only option left to pursue safety retirement was unionization. As a represented group, the CAO would have to provide the ADDA with the required statistical information, and the CAO would be obligated to bargain in good faith. In addition, a union would permit the ADDA to bargain for better wages and change unfair work conditions.

Although they are the largest group of employees in the DA's office, DDAs remain one of the few classes of employees with-

out union protections. The District Attorney's website currently lists the office as having 2105 employees. The site notes that there are 1017 DDAs, 811 members of the support staff and 277 District Attorney Investigators (DAIs). Most of the support staff is represented by SEIU local 721, and most of the DAIs are represented by ALADS and PPOA.

In fact, developments within the DA's Office seemed to push the ADDA towards certification. For instance, in 2003 the Administration released the revised Personal Policies Handbook. As GOM 03-41 detailed, that handbook was a collaborative effort of "the Employee Relations Division, Human Resources Division, and the labor unions, Local 660, ALADS and PPOA. . . ." The ADDA, the major representative of the rank and file, was left out in the cold.

Additionally, the compensation of rank and file DDAs continued to drop in relation to other DA's offices in the state, as detailed in a January, 2007, article in *California Lawyer*. Overtures to meet with ADDA leadership during salary negotiations to discuss DDA compensation went unanswered. As salary negotiations were completed in 2006, DDAs received only the "general movement," meaning DDAs were only given the same raises that were automatically given to any unrepresented county employees. Psychiatrists represented by AFSCME bargained for 20% while dentists represented by AFSCME bargained for 21%. As reported in an earlier ATTORNEY NOTES, ALADS bargained for even better raises and massive longevity pay bumps that resulted in many top step DAIs and PD investigators being better paid than corresponding top step DDAs.

Additionally, many DDAs have objected to insufficient rank and file involvement in revisions to the promotion and evaluation processes. Other workplace issues, such as courthouse security and transfers, have heightened frustrations. Finally, legal developments, such as the

Supreme Court's ruling in *Garcetti et al v. Ceбалlos* (2006) 126 S.Ct. 1951, indicated that the courts would not recognize First Amendment protections for expressions made pursuant to a DDA's official duties. If DDAs desired employment protections or workplace improvements, they would need to certify and secure those protections and improvements through collective bargaining.

In 2005 the ADDA circulated and submitted signature cards calling for a certified bargaining group comprised of DDAs. (These cards were printed on blue paper and called "blue cards")

Once again, county leadership chose to obstruct ADDA efforts, and objected to a DDA only bargaining group. The CAO demanded that any bargaining unit be forced to include DPDs and DAPDs. However, the history of collective bargaining on behalf of DDAs demonstrated that when DDAs were forced to be in the same bargaining unit as DPDs, the unit collapsed due to infighting. The matter was heard by the Employee Relations Commission (ERCOM), and referred to a hearing officer for an administrative hearing, fact finding and recommendation. The CAO's representative then delayed the hearing for more than a year, claiming unavailability.

Hearing Officer Steinberg began hearing the matter on March 29, 2007. On that date, witnesses for the ADDA testified as to the ADDA's appropriateness as a bargaining unit representing exclusively DDAs. But the CAO launched a counterattack. On April 16 the CAO presented a day of testimony to dispute points raised by the ADDA. Both sides submitted briefs on June 15. On August 9, 2007, Hearing Officer Steinberg issued his ruling and recommendation that the commission find a unit of DDAs, grades I-IV constitutes an appropriate for collective bargaining.

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**The Newsletter of the  
Association of  
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## **ATTORNEY NOTES . . .**

### **SAVE THE DATE**

#### **September**

September 18-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC

September 24-26. Prosecuting Physical & Sexual Abuse of Children Seminar. Sheraton Pasadena Hotel, Pasadena. California District Attorneys Association. Register online at [www.cdaa.org](http://www.cdaa.org) or by faxing this form to (916) 443-2886, Phone CDAA at (916) 443-2017 • PHONE REGISTRATIONS NOT ACCEPTED.

#### **October**

October 16-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC

October 20-Saturday Seminar, 8:30am to 12:30 p.m., Board of Supervisors Hearing Room, Kenneth Hahn Hall of Administration, 500 W. Temple St.,

October 22-24-Evidence Seminar (North). Sheraton Fisherman's Wharf Hotel, San Francisco. California District Attorneys Association. Register online at [www.cdaa.org](http://www.cdaa.org) or by faxing this form to (916) 443-2886, Phone CDAA at (916) 443-2017 • PHONE REGISTRATIONS NOT ACCEPTED.

#### **November**

November 1-2. SFSTs & DUI Prosecutions Workshop CDAA Training Center, Sacramento. California District Attorneys Association. Register online at [www.cdaa.org/training/index.asp](http://www.cdaa.org/training/index.asp) or register by faxing this form to: CDAA • [www.cdaa.org](http://www.cdaa.org) • (916) 443-2017 • Fax (916) 443-2886 PHONE REGISTRATIONS NOT ACCEPTED.

#### **November 6.(Tuesday), THE ADDA AWARDS DINNER.**

**The Bunker Hill Room  
at The Omni Los Angeles  
Hotel at California  
Plaza  
251 S. Figueroa, Los  
Angeles. For  
Directions call  
(213) 617-3300.**

November 14-16. **Adult Sexual Assault Prosecution Seminar.** Evidence Seminar (North). Sheraton Mission Valley, San Diego. California District Attorneys Association. Register online at [www.cdaa.org](http://www.cdaa.org) or by faxing this form to (916) 443-2886, Phone CDAA at (916) 443-2017 • PHONE REGISTRATIONS NOT ACCEPTED.

November 17-Saturday Seminar, 8:30am to 12:30 p.m., Board of Supervisors Hearing Room, Kenneth Hahn Hall of Administration, 500 W. Temple St.,

November 20-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC

#### **December**

December 3-5. Juvenile Justice Seminar. Sheraton Park Hotel at the Anaheim Resort, Anaheim. California District Attorneys Association. Register online at [www.cdaa.org](http://www.cdaa.org) or by faxing this form to (916) 443-2886, Phone CDAA at (916) 443-2017 • PHONE REGISTRATIONS NOT ACCEPTED.

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