

# Common Issues in Misdemeanor Jury Selection

## Ventura County District Attorney's Office

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### 1. Statutory Law of Jury Selection.

- Read/skim CCP sections 190 – 237
- “Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.” (CCP section 223)
- Challenges for cause (CCP 225):
  - o General disqualification – don't meet the requirements for jury service (CCP 228)
  - o Implied bias – Juror has some connection to or interest in the case or bias re a party (CCP 229)
  - o Actual bias – Juror cannot act with entire impartiality and without prejudice to the rights of a party (CCP 225)

### 2. Theory of Jury Selection – “Jury Deselection”

- Three I's of jury selection
  - o Identify (jurors you don't want)
  - o Inform (jurors about the law & your case)
  - o Impression (you leave on the jury of yourself)
- **“Identify” is first priority** – allow the wrong juror & you'll lose/hang
  - o **You must get them talking!!**
  - o **If you do all the talking, you won't learn who to kick**
  - o I look for jurors with a stake in an orderly society
    - Long-term jobs
    - Long-term marriages
    - Jurors with adult kids with good jobs/education
    - Jurors with young kids
- **“Inform”**
  - o Introduce your theme
  - o Expose jurors to potential problem areas of your case
    - Word your question so a response ID's a juror you don't want
    - If they won't go with you, you've ID'd a juror to excuse
  - o Expose jurors to the law, particularly novel areas of the law
    - Word your question so a response ID's a juror you don't want
    - If they disagree with the law, you've ID'd a juror to excuse

- **“Impression”**
  - o Trust, Confidence, Professionalism

### 3. Planning for Jury Selection

- Identify potential problem areas for your case
- Identify potential problematic jurors
  - o Those opposed to your theory/theme
  - o Those opposed to your legal position
- Identify legal doctrines you’ll want to discuss
- Plan to weave your theme into questions
- Plan your questions for each area identified above

### 4. One Way to Do It

- **3 Categories**
  - o Jurors I know I don’t want (3)
  - o Jurors who will be acceptable (2)
  - o Jurors I’m undecided about (2-3)
- **Theme** – Introduce your theme of the case to the jury / define the terminology
  - o Good Samaritan laws vs. defense of others
- **Memorize the names**
- **Questioning**
  - o Powerful language first question
  - o Broad questions to the group – raise your hand
  - o Craft questions to expose bad jurors, not good jurors
  - o Follow-ups with people who came to light during prior questioning
  - o Communicate to other jurors why someone is unsuitable

### 5. Common Weaknesses, Defenses, Biases in Misdemeanor Trials

- **DUI**
  - o Low number
  - o Scientific accuracy / distrust science
  - o No bad driving
  - o Satisfactory FSTs
  - o DUI v Drunk
  - o Never had a drink
  - o Refusal / no chemical test
  - o Tell by looking
  - o Poor police memory of events
  - o Failure to record events
  - o Bias against police

- Inconsistent statements
  - One witness is enough
  - Circumstantial evidence
  - Snuck a peek at the defendant
- 11550
    - Prior drug use but not UI
    - Scientific accuracy / distrust science
    - Drugs should be legalized
    - Tell by looking
    - Mixed drugs w/ conflicting symptoms
    - Incomplete / insufficient investigation
    - Poor police memory of events
    - Failure to record events
    - Bias against police
    - Inconsistent statements
    - One witness is enough
    - Circumstantial evidence
    - Snuck a peek at the defendant
- 148
    - Excessive force / Lawful performance of duties
    - Delaying vs. resisting
    - Contempt of cop / oppressive government
    - Poor police memory of events
    - Failure to record events
    - Bias against police
    - Inconsistent statements
    - One witness is enough
    - Snuck a peek at the defendant
    - Inadequate investigation
- Petty theft
    - Intent vs. Accident - He just forgot to pay
    - Minimal value
    - Unprofessional / incomplete investigation by LPO
    - Sympathy for the deft
    - Incomplete / insufficient investigation by cops
    - Failure to record events
    - Poor memories of events
    - Inconsistent statements
    - One witness is enough
    - Circumstantial evidence vs. reading minds
    - Snuck a peek at the defendant

- Miscellaneous minor crimes
  - o Why should we care?
  - o Should we proceed if the victim doesn't really want prosecution?
  - o Is the crime too minor to have a trial?
  - o What would happen if we simply stopped enforcing that law?
  - o What would happen if defendants knew we wouldn't go to trial on small cases?
  - o What option do we have if a defendant chooses to exercise his or her Constitutional right to a trial?
  - o Sympathetic or attractive defendant
  - o No legal requirement of scientific evidence
  - o Trusting the process and judging case based on what you're presented

### Sample Voir Dire

- Hypothetical .08/.09 DUI, based on speeding traffic stop
  - o Good afternoon / good morning, Intro self
  - o True or false, people should be allowed to drink as much as they want and still drive a car, as long as they feel they're safe?
  - o Never had a drink
    - Feel that people should not be allowed to drink alcohol?
  - o Seen people who've had too much to drink
    - How tell
    - Didn't give a chemical test
    - Anyone say not possible to tell if someone's had too much to drink without chemical test?
    - Safe to drive?
    - Did you see them drive?
    - Knew they were unsafe
      - Did they think they were safe?
      - Even if made it home, would that mean they were safe?
  - o DUI laws too strict
  - o DUI v. .08
  - o One witness is enough
  - o Don't trust science, scientific instruments
  - o Circumstantial evidence
  - o Require evidence that a person was weaving down the road
  - o Snuck a peek at defendant
  - o Thank you,
  - o Your honor, I have nothing further