

Common Issues in Misdemeanor Jury Selection

Ventura County District Attorney's Office

November 7, 2016

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

**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA**

MCLE AGENDA

(COMMON ISSUES IN MISDEMEANOR JURY SELECTION)

(November 7, 2016)

(Ventura County District Attorney's Office)

Instructor: (William Charles Hughes, Chief Deputy District Attorney)

9:00 – 9:20	Theory of Jury Selection
9:20 – 10:00	Common Areas to Address in Misdemeanor Jury Selection
10:00 – 10:15	Break
10:15 – 10:30	Common Areas to Address in Misdemeanor Jury Selection
10:30 – 11:00	Jury Selection Practice

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

Title of Activity: Jury Selection in Misdemeanor Cases

Date(s) of Activity: November 7, 2016

Time of Activity: 9:00 - 11:00 am

Location of Activity: HOJ: MDB Conference Room Ventura, CA

Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
William C. Hughes, Chief Deputy District Attorney	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: Jury Selection in Misdemeanor Cases

Date(s) of Activity: November 7, 2016

Time of Activity: 9:00 - 11:00 am

Location of Activity (City, State): HOJ: MDB Conference Room Ventura, CA

Total California MCLE Credit Hours for the above activity are 2.00, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 2.00, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

* partial participation hours must be pro-rated