

**Prosecutorial Misconduct During Trial, Outline of Presentation**  
(Neil Auwarter, 7/15/09)

- A. Introducing or referring to false or inadmissible facts**
- false evidence
  - referring to fact absent a good faith belief they can be proved
  - inadmissible evidence
    - follow in limine rulings
    - questions designed to elicit inadmissible facts
    - must warn own witness if inadmissible testimony is "foreseeable"
    - violating privileges
    - Doyle* error: referring to defendant's post-arrest silence
- B. Inhibiting Defense From Presenting Evidence**
- threats to prosecute defense witness for perjury
  - arrest or other harassment of defense witness
  - concealment/failure to disclose benefits given to prosecution witness
- C. Other Trial Misconduct**
- asserting inconsistent factual theories
  - exceeding permissible scope of rebuttal
  - communicating with jurors
  - improper coaching of witnesses/suborning false testimony

**Prosecutorial Misconduct During Trial, Additional Authorities**

*People v. Daggett* (1990) 225 Cal.App.3d 751 [prosecutor misconduct to elicit expert testimony referring to another supposed victim of defendant's, in violation of in limine ruling]

*People v. Bell* (1989) 49 Cal.3d 502, 532 [prosecutor elicited testimony by expert referencing a hearsay statement defendant had possessed a gun the day before the crime]

*People v. Smithy* (1999) 20 Cal.4th 936, 957 [prosecutor elicited *from defense expert* improper opinion evidence regarding defendant's mental state]

*People v. Andrews* (1970) 14 Cal.App.3d 40, 46 [*Doyle* error where prosecutor asked arresting officer about defendant's post-arrest refusal to speak]

*United States v. Velarde-Gomez* (9th Cir., 2001) 269 F.3d 1023 [*Doyle* error where prosecutor elicited police testimony defendant did not "seem surprised" when arrested for drug possession]

*Anderson v. Charles* (1980) 447 U.S. 404, 408 [no *Doyle* error where defendant elects to speak to police, and at trial prosecutor points out defendant failed to mention a fact he later asserts at trial]

*People v. Woods* (2006) 146 Cal.App.4th 106, 120 [prosecutor violated defendant's Sixth Amendment right to present witnesses by harassing and arresting potential defense witness and by exerting leverage of witness's own criminal case]

*People v. Kasim* (1997) 56 Cal.App.4th 1360 [misconduct for prosecutor to fail to disclose benefits to witnesses]