

# WHAT'S THE VERDICT?

Welcome to the 7th issue of a monthly column written by noted Criminal Defense Attorney Cameron K. Bowman. This month, Bowman will answer questions that have been asked by readers of the column.

## **1. What's the difference between a Felony and a Misdemeanor?**

A misdemeanor is a criminal offense where the maximum punishment is a year in the County Jail. In other words you cannot be sent to a State Prison like San Quentin for a misdemeanor. Examples of misdemeanors are crimes like DUIs and Petty Theft. A felony on the other hand is a more serious offense that is punishable either by up to a year in the County Jail or by a State Prison sentence. Examples are crimes like Assault with a Deadly Weapon, Robbery, and Burglary.

## **2. If I was arrested for a felony, does that mean I will face felony charges in court?**

When you are arrested, the police make a preliminary determination about what crimes you have committed. They make a decision as to whether there is "probable cause" to arrest you. One of the most common mistakes that people make is assuming that these charges are what they will face in court. A prosecutor makes an independent decision on what charges to file, irrespective of what the arrest was for. For example, in many domestic violence cases, the police will arrest for a Felony domestic violence. After many of these arrests, prosecutors file misdemeanor offenses, rather than felonies, especially after an immediate pre-filing intervention by our law firm. It is important to get legal advice as soon as you are arrested rather than adopting a "wait and see" approach.

## **3. What's the difference between "Jail" and "Prison"?**

You hear TV commentators and other so called legal "experts" constantly misuse these two terms. A person serving a sentence in a County Facility (Elmwood for example) is in "Jail". A person who is serving a sentence at San Quentin or another State Prison facility is in "Prison". That's why the legal slang for a Jail sentence is a "local" sentence. The legal slang for a Prison sentence is "State" time.

## **4. Is there any way to clear up an old arrest warrant? I failed to appear at a court date years ago and I still worry about it.**

Clearing up an old arrest or bench warrant can be done only one way: by appearing in front of the court that issued the warrant. As long as the warrant is in the system, the person can be arrested for it in any state, in any contact with the police or government agency, and even coming into the United States at the airport. Immediate action to clear up the warrant is the best way to approach this legal problem. I highly recommend hiring a lawyer to place your old case "back on calendar" in front of the judge who issued the warrant. It has been my experience that voluntarily coming into the court and taking a "pro-active" approach may often prevent later jail time.

## **5. If you ask an undercover cop directly, do they have to admit they are really a cop? Otherwise, it is entrapment right?**

This is one of my favorite "myths". Somehow this rumor started years ago that if you ask a police officer directly if they are a cop they have admit it. This rumor is particularly popular with sex workers and drug dealers who think they are "safe" by asking their clients first, "you are not a cop right?" In fact, it is perfectly legal for the police to protect their identity by lying about who they are. This is of course for their safety when they work undercover.

However, it is important to realize that this rule has been expanded to the point where it is now perfectly legal for the police to lie to you when they interview or interrogate you. Police officers will often claim to have fingerprints, DNA evidence or videotapes they don't have when they interview someone. And it is completely legal for them to lie to your face when they ask you questions. That's why I always tell clients to say only "I want my lawyer" when they are questioned by the police. And remember, if they ask you what lawyer you can always say "that guy in the Metro!"

Questions for future articles, comments or other story ideas can be sent to [cameronkbowman@yahoo.com](mailto:cameronkbowman@yahoo.com)

Cameron K. Bowman is a criminal defense attorney with over 16 years of experience in the criminal justice system. Bowman is a former Deputy District Attorney and in 1998 was named "Trial Attorney of the Year" by the Santa Clara County District Attorney's Office. In his career, Bowman has personally tried over 100 cases to a jury.

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