

California Criminal Law (3d Ed.), V.5, 671, 964; *People v. Phillips* (1979) 90 Cal.App.3d 356; *People v. Guillebeau* (1980) 107 Cal.App.3d 531

The two phases *may* be tried by separate juries at the discretion of the court. *Penal Code sec. 1026(a)*; *People v. Williams* (1988) 44 Cal.3d 883, 952. Further, the parties may *waive* the right to a bifurcated trial. *People v. Kelly* (1973) 10 Cal.3d 565, 568

c. Sanity Cases - Voir Dire Ideas and Topics

- i. "There might be two phases to this trial. The first is to determine whether a crime was committed, and who committed it. The second, if that is proved, will be to determine whether the defendant was **LEGALLY INSANE** at the time he committed the crimes proven in the first phase."
- ii. "In that second phase, you will be given an actual definition of **LEGAL** insanity.
 - a. Will you promise to follow that legal definition?
 - b. When you see and hear the instructions by the court, you'll see there is a difference between someone who has a **MENTAL ILLNESS** and someone who is **LEGALLY INSANE**, and not responsible for their actions. Do you understand why? Can you follow that instruction?
- iii. "In that second phase, I have no burden of proof. The defense cannot just claim I failed to prove anything in that phase. They have to prove that the defendant was **NOT GUILTY** by reason of **INSANITY**."
- iv. "We talked earlier about doctors, do you all agree that all medicine is not an exact science? Especially true for behavioral sciences? Psychology and psychiatry?"
- v. "Do you believe it is possible to fool a doctor? Will you sort through the evidence? Compare the evidentiary facts and the medical testimony to the facts of this case to determine the truth?"
- vi. "I am the DDA. Most people's expectation is for the DDA to prove the case. Do you feel that way? In this phase of the case, I have

no burden. The defendant has already been convicted of That has been proven. It is the defense who must prove the defendant is not **legally responsible** by reason of insanity. Any problem with that? Is it fair that tie goes to the runner and that's me?"

- vii. "What about the narrowness of the issue? Did the defendant know his actions were wrong on the date of the crime? Not delusional, suicidal etc... That's not contested. Can you sort out those two things? To the extent that they are relevant to the issue, they can be considered, but that is not the question that gets answered. Just did he know his act was wrong?"
- viii. "Are there any types of evidence that you absolutely would require or discount before being able to judge this case?"

d. Sanity Cases - Cross Examination Ideas and Topics

- i. Pick a style that's comfortable for you
- ii. Decide which areas you wish to attack:
 - 1. Clarify their opinion and the standard;
 - 2. Make them pick which prong they are talking about, i.e. saying the defendant is legally insane;
 - 3. Attack the basis of the opinion.
- iii. Decide whether you want to illicit defendants version to them, if so compare to his original statement. (It will be different), or you can keep it out.
- iv. Keep testing the witness/ expert on the source of his info (hint: it's the defendant or the defense attorney)
- v. Use the DSM (especially/only the preamble), it is not to be used for forensic exam....
- vi. Use the MMPI test to expose the simplicity of manipulations and malingering.
- vii. Pinpoint when the insanity started and ended
- viii. ***Detail all the sane moves the defendant made and confront the witness with those decisions and actions***