

VOIR DIRE IN NGI CASES: Navigating a Sticky Thicket



1
3/13/2018

AGENDA

- Overview of Voir Dire basics
- Special NGI trial issues that affect Voir Dire
- Areas of inquiry during NGI Voir Dire
- Q&A

2
3/13/2018

THE PURPOSE OF VOIR DIRE

- To discover bias or prejudice with regard to the circumstances of the particular case

OR

- To discover bias or prejudice with regard to the parties before the court (CCP §223)

3
3/13/2018

CHALLENGE FOR CAUSE

(A) General disqualification--that the juror is disqualified from serving in the action on trial.

(B) **Implied bias**--as, when the existence of the facts as ascertained, in judgment of law disqualifies the juror.

(C) **Actual bias**--the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party. (CCP§225)

4
3/13/2018

SCOPE OF VOIR DIRE

- The trial judge shall permit liberal and probing examination calculated to discover bias or prejudice (CCP§ 222.5(b)1)
- However, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law will be deemed improper. (CCP§ 222.5(b)3)
- Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause. (CCP §223(d))

5
3/13/2018

NGI TRIAL

THE BIFURCATED BEAST

6
3/13/2018

PROCEED WITH CAUTION

- ONLY ONE VOIR DIRE, THOUGH THERE ARE “TWO” TRIALS
- CANNOT ELICIT TESTIMONY FROM NGI (PC 1027) CLINICAL EXPERTS DURING GUILT PHASE
- CANNOT USE COMPETENCY (PC 1369) CLINICIAN FOR NGI PHASE
- BURDEN OF PROOF CHANGES/ SHIFTS BETWEEN PHASES

7
3/13/2018

PROCEED WITH CAUTION

- ONLY ONE VOIR DIRE, THOUGH THERE ARE “TWO” TRIALS
 - *People v. Wein* (1958) 50 Cal 2nd 383;
 - *People v. Stanley* (1995) 10 Cal. 4th 796

8
3/13/2018

PROCEED WITH CAUTION

- CANNOT ELICIT TESTIMONY FROM NGI (PC 1027) CLINICAL EXPERTS DURING GUILT PHASE

– *People v. Williams* (1988) 197 C.A.3d 1320

9
3/13/2018

PROCEED WITH CAUTION

- CANNOT USE COMPETENCY (PC 1369) CLINICIAN FOR NGI PHASE

– *People v. Jantz* (2006) 137 C.A.4th 1283
– *In re Hernandez* (2006) 143 C.A.4th 459

10
3/13/2018

THREADING THE NEEDLE

FINDING THE SAFE SPACE
(BIAS, PREJUDICE &
FOLLOWING THE LAW)

11
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- PRESUMPTION OF SANITY
 - Attitudes of juror about this concept (is it fair? What do they think of the rule?)
 - Commitment to follow rule whether they agree w/ it or not

12
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- BURDEN OF PROOF
 - 2 BURDENS
 - BURDEN SHIFTS

13
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- SYMPATHY OR PITY FOR
DEFENDANT DUE TO MENTAL
ILLNESS
 - Pre-emptive strike against pity play from
defense

14
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- WEIGHING EXPERT TESTIMONY
 - How do they make decisions?
 - Likely conflicting evidence/opinions
 - Can they follow expert testimony?
 - Do they have any opinions about experts?
 - Leading to whether they will give more or less weight to an experts opinion.
 - Will they defer their judgment to expert?

15
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- CONFLICT BETWEEN EXPERT & LEGAL STANDARD
 - Experts may assess using different standard than law. If they hear a different standard from expert, follow the law.
 - Can they commit to do that

16
3/13/2018

BIAS, PREJUDICE & FOLLOWING THE LAW

- PC 1026 INQUIRIES
 - NGI = @ time of the commission of the offense
 - Attitude about this rule
 - Accept this rule
 - Follow this rule

17
3/13/2018

AREAS FOR CAUTION

- FACT DRIVEN INQUIRIES
 - Even if appropriate could open Pandora's box.
- STATEMENTS OF DEFENDANT TO EXPERTS
 - If not very carefully phrased could invite big trouble on appeal

18
3/13/2018



Q&A

L. D. Louis
Deputy District Attorney
Alameda County
l.d.louis@acgov.org
510-272-6272

19
3/13/2018

20
3/13/2018