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In Re: Jury Innovations

SC05-1091

>> ALL RISE PLEASE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE BUSINESS BEFORE
THIS COURT, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.,,

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.,,

>> GOOD MORNING FRIENDS AND
WELCOME TO THE CALENDAR FOR
WEDNESDAY, FEBRUARY 14.

TO GATHER A LITTLE MORE
STRUCTURE FOR THE PRESENTATIONS
THIS MORNING, THE COURT WILL
REMAIN SILENT, NOT ASK
QUESTIONS, WHILE YOU MAKE YOUR
PRESENTATIONS TO GIVE YOU THE
OPPORTUNITY, MANY OF YOU HAVE
TRAVELED A LONG WAY, SO THAT YOU
CAN BE SURE YOU HAVE THE
OPPORTUNITY TO SAY WHAT YOU WANT
TO SAY.

AT THE END, THE COURT WILL THEN
ASK QUESTIONS AS MAY BE
APPROPRIATE OR AS THEY DESIRE,
BUT WE WANT TO BE SURE THAT YOU
HAVE THE OPPORTUNITY TO TELL US
EXACTLY WHAT IT IS WE WANT TO
TALK ABOUT.

SO WITH THOSE GROUND RULES,
PLEASE UNDERSTAND THAT JUST
BECAUSE YOU DON'T GET A QUESTION
DURING YOUR TURN AT THE
MICROPHONE DOESN'T MEAN THERE'S
DISINTEREST OR LACK OF CONCERN,
BUT YOU WILL GET THAT IN A FEW
MOMENTS.

SO IF WE COULD GO AHEAD AND
PROCEED WITH AMENDMENTS TO THE

FLORIDA RULES OF CIVIL
PROCEDURE, THE JURY INNOVATIONS
COMMITTEE RECOMMENDATIONS,
MR. PARK, WOULD YOU LIKE TO
START PLEASE, SIR.

>> MAY IT PLEASE THE COURT, MY
NAME IS KEITH PARK, I'M CURRENT
CHAIR OF THE CIVIL PROCEDURES
RULES COMMITTEE, AND I'D LIKE TO
THANK THE COURT FOR ALLOWING ME
TO SPEAK ON BEHALF OF THE
COMMITTEE THIS MORNING.

THIS FIRST SESSION, WE'RE JUST
TALKING ABOUT THREE AREAS, THE
FIRST ONE IS THE QUESTIONS TO
JURORS, WHICH IS UNDER RULE
1.984, WHICH SEEMS TO BE A
LITTLE BIT CONTROVERSIAL,
ALTHOUGH THE COMMITTEE DID SOLVE
IT AS THEIR MARCHING ORDERS IS
WHAT THE COMMISSION CAME UP
WITH, THAT IS WE'RE TRYING TO
GET ENOUGH INFORMATION OUT THERE
TO GET TO THE MEAT OF THE MATTER
IF YOU WILL AND TRY AND CUT DOWN
ON THE BOARD IRE AND TRY AND
GIVE A LITTLE INFORMATION SO
THAT WE CAN BEGIN THE PROCESS A
LITTLE BETTER AND A LITTLE MORE
ECONOMICALLY.

IT WAS THOUGHT MORE OF A
JUDICIAL ECONOMY, JUDICIAL
EFFICIENCY SORT OF RULE AND
QUESTIONNAIRE AND THAT'S HOW IT
WAS APPROACHED.

THE OTHER TWO MATTERS ARE FAIRLY
STRAIGHTFORWARD.

QUESTIONS BY JURORS, WHICH IS
1.452, WHICH PRETTY MUCH
FOLLOWED THE STATUTE THAT HAD
BEEN OUT THERE, AND I -- THAT
WAS FAIRLY NON-CONTROVERSIAL AS
WELL.

THE JUROR NOTEBOOKS, THIS SEEMS
TO HAVE BEEN A PRACTICE THAT'S
BEEN GOING ON FOR SOME PERIOD OF
TIME WITH REGARD TO THE MORE
COMPLEX AND COMPLICATED
LITIGATION, SO THAT DIDN'T SERVE
AS MUCH OF A BAR EITHER WITH
REGARD TO TRYING TO GET THAT
TYPE OF RULE PASSED BY THE
COMMITTEE.

MOST OF THESE THINGS, I THINK

HALL OF THESE WERE THE QUESTIONS BY JURORS, I THINK THE VOTE ON THAT WAS 45-5, THE OTHERS WERE 35-0, AND 34-0 ON THE JUROR NOTEBOOKS.

SO MOST OF THESE THINGS PASSED WITHOUT MUCH IN THE WAY, ALTHOUGH THERE WAS A GOOD DEAL OF DISCUSSION AND I THINK FAIRLY WELL DONE FROM THE STANDPOINT OF WHAT THE SUBCOMMITTEES AND COMMITTEES DID.

IF THE COURT HAS ANY QUESTIONS, I WOULD BE HAPPY TO ENTERTAIN WHAT THOSE MIGHT BE.

>> WE'RE GOING TO DO THOSE AT THE END.

JUDGE BATEMAN.

>> MAY IT PLEASE THE COURT, JUDGE TOM BATEMAN, SECOND JUDICIAL CIRCUIT.

I'M HERE ON BEHALF OF THE CRIMINAL PROCEDURES RULES COMMITTEE.

THE CHAIR OF THE -- CURRENT CHAIR OF THE COMMITTEE ALSO. THE MAIN POINTS WE WANTED TO TALK ABOUT WAS THE JUROR QUESTIONS.

THAT WAS ONE OF THE MAJOR ISSUES THAT WAS ADDRESSED BY THE COMMITTEE.

NOW YOU HAVE TO REMEMBER, THIS WAS A FEW YEARS AGO NOW, AND THE COMMITTEE AT THAT TIME RECOMMENDED THAT NO RULE BE SUGGESTED.

WHEN THE REPORT FINALLY CAME OUT, THE OUT OF CYCLE REPORT, I WAS THE CHAIR OF THE COMMITTEE, OF THE CURRENT RULES COMMITTEE AT THAT TIME AND HAD MET WITH THE LIAISON JUSTICE AND THE CHIEF JUSTICE AND WE STARTED TALKING ABOUT THE RULES COMMITTEES PROVIDING MINORITY REPORT AS WELL.

AND SO MINORITY REPORT WAS ALSO SUBMITTED.

ANY RULES RECOMMENDED IN THAT REPORT.

THE RULE THAT'S BEEN RECOMMENDED BY THE MINORITY IS CONSISTENT WITH CASE LAUGH.

BOTH IN THE STATE OF FLORIDA,
WHICH IS SOMEWHERE AROUND 50
YEARS IN AGE, ALLOWING THE
REQUEST, BUT WE HAVEN'T HAD ANY
PROCEDURES IN PLACE TO KIND OF
CODIFY HOW IT SHOULD BE DONE.
JUDGE MINOR IN A CASE SUGGESTED
THE RULES COMMITTEE LOOK AT IT.
THE CASE OUT OF THE FIFTH
AFFIRMED BUT SUGGESTED THAT IT
SHOULD BE -- THE QUESTIONS
SHOULD BE DISCOURAGED, BUT NO
CASE HAS EVER BEEN REVERSED
BECAUSE OF A JUROR QUESTION, AND
MOST OF THE JUDGES THAT ARE
ALEADING AND SUGGESTIVE IT --
THAT ARE ALLOWING IT THESE DAYS,
DO A GOOD JOB OF SCREENING THE
QUESTIONS, ALLOWING THE
ATTORNEYS TO OBJECT AND THEN
ALLOWING THE ATTORNEYS TO FOLLOW
UP AND INSTRUCTING THE JURORS
THAT THE RULES OF EVIDENCE AND
RULES OF PROCEDURE APPLY TO THEM
AS WELL, AND IF THE QUESTIONS
AREN'T ASKED, THEY SHOULDN'T
HOLD IT AGAINST ANYONE, SO THERE
IS A RULE, THE COMMITTEE'S
OFFICIAL POSITION, BY THE
MAJORITY WAS NOT TO -- NOT TO
HAVE NO RULE AT ALL.
THAT 0 WOULD JUST LEAVE THE CASE
LAW OUT THERE.
AND I GUESS THEN YOU WOULD HAVE
TO MAKE A DECISION AS TO WHETHER
YOU WOULD WANT TO OVERTURN ALL
OF THAT POLICY.
IF YOU'RE NOT GOING TO ALLOW A
QUESTION.
AND THEN THE MINORITY
RECOMMENDED WHAT'S IN THE
PACKET.
THE OTHER ISSUES THAT ARE REALLY
FOR THE -- THAT I WANT TO TALK
ABOUT, THE JUROR NOTEBOOKS, THEY
RECOMMENDED NO RULE ON THAT.
THE MAJORITY RECOMMENDED NO
RULE.
THE WRITTEN INSTRUCTIONS, WE DID
SUBMIT A PROPOSED RULE ON THAT
MATTER, AT LEAST ONE SET OF
INSTRUCTIONS IN A PRINTED FORMAT
SHOULD GO BACK WITH THE JURY.
MOST OF US, MOST OF THE JUDGES

THAT ARE DOING -- USING WRITTEN AND PRINTED JURY INSTRUCTIONS ARE ACTUALLY GIVING A COPY TO EVERY JUROR.

I HAD BREAKFAST WITH JUDGE EATON THIS MORNING AND WE WERE TALKING ABOUT, VERY SIMILAR, WE GIVE THESE PRELIMINARY INSTRUCTIONS IN THE CRIMINAL CASES TO THE JURORS AS WELL SO THEY CAN READ ALONG AND FOLLOW ALONG BECAUSE WE KNOW ADULTS LEARN IN DIFFERENT WAYS AN ONE OF THOSE WAYS IS NOT ONLY BY HEARING THE WORDS BUT SEEING THE WORDS ON A PAGE.

SO WE HAVE RECOMMENDED A RULE -- RIGHT NOW THE RULE SAYS ONLY IN CAPITAL CASES, THE SET OF JURY INSTRUCTIONS HAS TO GO BACK TO THE JURY, BUT WE'VE RECOMMENDED THAT AT LEAST ONE SET OF INSTRUCTIONS GO BACK IN EVERYTHING.

THE OTHER ISSUE IS THE ABILITY OF THE JUDGE, THE DISCRETION OF THE JUDGE TO PROVIDE FOR THE JUDGE TO READ THE FINAL INSTRUCTION BEFORE CLOSING ARGUMENT.

THIS IS AN INNOVATION -- I WAS ON THE JURIES INNOVATION COMMITTEE AS WELL AND THIS WAS TALKED ABOUT NATIONALLY, WE TALKED ABOUT OTHER STATES AND OTHER COURTS AND OTHER JURY INNOVATION COMMITTEE MEMBERS FROM OTHER STATES.

AND THIS IS -- AND YOU MAY RECALL, AND I DON'T KNOW IF YOU'LL REMEMBER, BUT JUDGE CHE VON WAS HERE TO DO THE PRESENTATION AND I SAT AT COUNSEL TABLE WITH HIM, THE JURORS AT THE TIME -- SPEAK ABOUT THIS VERY ISSUE AND SPEAK TO YOU AND SAID UNTIL YOU'VE DONE THIS, YOU DON'T REALIZE THIS, IT REALLY IS GOOD, BECAUSE THE JUDGE IS GIVING THE INSTRUCTIONS TO THE JURY AND IT GIVES THE LAWYERS SOME CONTEXT NOW FOR THEIR FINAL ARGUMENT AND THEY HAVE THE INSTRUCTIONS RIGHT

THERE.

SO THE COMMITTEE RECOMMENDED THAT CONSISTENT WITH THE I THINK THE CRIMINAL COURTS STEERING COMMITTEE RECOMMENDED A RULE AND THE COMMITTEE IS -- HAS SAID NO RULE, BUT IT WAS A VERY CLOSE ONE AND AGAIN A MINORITY REPORT WAS WRITTEN, AND A RULE WAS SUGGESTED, CONSISTENT WITH THE FACT THAT THE JUDGE SHOULD HAVE SOME DISCRETION IN THAT AREA, SO UNLESS THERE'S OTHER QUESTIONS AT THIS POINT, I'LL SIT DOWN.

>> THANK YOU.

GOOD MORNING.

>> I WAS THE CHAIR OF THE STANDARD JURY INSTRUCTIONS I'M HERE ON BEHALF OF THE STANDARD JURY INSTRUCTIONS CIVIL AND I'LL BE VERY BRIEF IN THIS FIRST PART, BECAUSE WE'RE TALKING ABOUT QUESTIONS BY JURORS AND NOTE TAKING, WHICH ARE I THINK A BIT LESS CONTROVERSIAL IN THE CIVIL AREA AND HAVE BEEN DONE FOR A LONG TIME.

THE QUESTIONS BY JURORS, AS LONG AS IT'S DONE IN A CONTROLLED FASHION, AND IT'S A JUDICIAL TRAINING ISSUE, WHICH WE TAKE UP, IT'S TAUGHT IN THE TRIAL PRACTICES COURT, WE HAVE ADDITIONAL COURSES ON HOW CAN YOU GET QUESTIONS FROM JURORS AND SCREEN THEM WITHOUT THE OTHER JURORS KNOWING WHAT THE QUESTION IS, AND AS LONG AS WE DO IT PROPERLY, THERE ARE SAFEGUARDS IF PLACE, AND I THINK EVERYBODY IS IN FAVOR OF IT.

LAWYERS DO WANT TO KNOW WHAT JURORS ARE THINKING DURING THE COURSE OF THE TRIAL AND IT HELPS THEM WITH THAT.

IT ALSO GIVES THE JURORS AN INVESTMENT IN THE PROCESS AND THEY'RE GOING TO BE TALKING ABOUT THIS STUFF BACK IN THE JURY ROOM ANYWAY, SO YOU MIGHT AS WELL GET THEM TO ASK THE QUESTIONS IN THE COURSE OF THE CASE AND SCREEN OUT THE ONES AND EVEN EDUCATE WITH THE PROCESS,

AS LONG AS YOU DO IT WITHOUT
AD-LIBBING, AND WE TEACH JUDGES
TO DO THAT.

WE HAVE COURSES THAT ADDRESS
THESE VERY THINGS TO MAKE SURE
WE HAVE SAFE GAWRPDZ.

SO -- SAFEGUARDS.

SO QUESTIONS, IT WAS DONE WHEN I
WAS A LAWYER, I'VE DONE IT FOR
MY FIVE YEARS AS A JUDGE, I WAS
TAUGHT TO DO IT IN JUDICIAL
COLLEGE, SO WE DO ALLOW JUROR
QUESTIONS.

NOT TAKING BY JURORS FOR LONGER
TRIALS, ACCORDING TO THE
STATUTE, IS MANDATORY AND FOR
SHORTER TRIALS, IT'S NOT, AND
DIFFERENT JUDGES DO DIFFERENT
THINGS.

MY PERSONAL THING IS, IF NEITHER
LAWYER WANTS IT AND IT'S A SHORT
TRIAL, WE DON'T ALLOW THE JURORS
TO TAKE NOTES UNLESS THEY ASK TO
TAKE NOTES.

IF THEY ASK TO TAKE NOTES, WE
LET THEM DO IT.

THAT'S MY COURTROOM AND THERE'S
A WHOLE GAMUT ON THE WAY THIS IS
DONE.

I THINK THE QUESTION FOR YOU AND
THE RECOMMENDATION FROM THE
INNOVATIONS COMMITTEE IS WHETHER
YOU'RE GOING TO ALLOW NOTE
TAKING IN ALL CASES OR HAVE IT
DONE IN ALL CASES, RATHER THAN
JUST HAVING THE LONGER CASES,
AND I THINK YOU'LL GET DIFFERENT
PREFERENCES ON PEOPLE, BUT IT'S
HARD TO IMAGINE WHAT THE
DOWNSIDE IS OF LETTING JURORS
TAKE NOTES, WHEN THE JUDGES TAKE
NOTES AND THE LAWYERS TAKE
NOTES, AND THE JURORS ARE NOT
ALLOWED TO TAKE NOTES, EVEN IF
IT'S A ONE OR TWO DAY TRIAL, AND
THE COMMITTEE SUPPORTS ALLOW
NOTE TAKING AND IT WILL BE UP TO
YOU TO TELL US WHETHER IT'S
GOING TO BE.

RIGHT NOW WE HAVE TWO STANDARD
INSTRUCTIONS ALREADY IN PLACE.
ONE OF THEM NOTE TAKING
PERMITTED AND ONE NOTE TAKING
NOT PERMITTED, WHICH SORT OF

EXPLAINS TO THEM WHY YOU DON'T HAVE THE NOTE TAKING, BUT AGAIN, IT'S A MATTER OF JUDICIAL EDUCATION AND IT'S SOMETHING -- IT'S NOT CONTROVERSIAL BECAUSE IT'S BEEN DONE FOR A WHILE.

>> THANK YOU.

>> OK.

MR. CERVONE.

>> BILL CERVONE FOR THE CRIMINAL INSTRUCTIONS COMMITTEE.

WHAT I WOULD LIKE TO MENTION BRIEFLY IS THE MOST

CONTROVERSIAL PROPOSAL CAME BEFORE OUR COMMITTEE, WHICH WAS THE SUBJECT OF JURY QUESTIONS.

THE COMMITTEE DEBATED THAT EXTENSIVELY, BUT THE VOTE WAS BACK AND FORTH AND VERY CLOSE AND ULTIMATELY THE COMMITTEE ELECTED NOT TO ENDORSE THAT.

THE PRIMARY CONCERNS IMD SUMMARIZE AS BEING TWOFOLD.

FIRST, A REAL FEAR THAT IN THE CRIMINAL CONTEXT AT LEAST THIS WOULD ENCOURAGE JURORS TO BE DISTRACTED AND TO START FOCUSING -- FOCUSING AT LEAST IN THEIR OWN MINDS IF NOT

COLLECTIVELY WHEN THEY'RE OUT OF OUR CONTROL ON DELIBERATIVE PROCESSES THAT SHOULD NOT BE HAPPENING YET.

SECONDLY AND EQUALLY PROBLEMATIC TO THE COMMITTEE WAS THE CONCEPT THAT A JURY QUESTION COULD SERVE THE PURPOSE OF CURING A DEFECT IN THE STATE'S PRESENTATION.

I CAN TELL YOU FOR EXAMPLE FROM EXPERIENCE AS A VERY YOUNG PROSECUTOR IN A COUNTY COURT CASE, I FAILED TO ASK THE VENUE QUESTION AND OBVIOUSLY A GOA AS A!!!!!!!!!!!!ULTED.

HAD A JUROR COME FORWARD WITH THAT QUESTION, THE RESULT WOULD HAVE BEEN VERY DIFFERENT.

THE RESULT WAS ALSO AN ANCILLARY RESULT IN THAT REGARD ABOUT THE FACT THAT JURY QUESTIONS COULD INTERFERE WITH THE TRIAL STRATEGY FOR COUNSEL FOR EITHER THE STATE OR THE DEFENDANT HAD CHOSEN TO MAKE IN TERMS OF WHAT

THEIR PRESENTATIONS WERE.
ALTHOUGH THAT WAS NOT AS SERIOUS
A CONCERN TO US AS THE FACT OR
THE POSSIBILITY OF A DEFECT IN
THE STATE'S PRESENTATION BEING
INADVERTENTLY CURED TO THE
DETRIMENT OF THE DEFENDANT BY A
JUROR INVOLVEMENT.
AS TO NOTE TAKING, IMD!!!!!!! I WOULD LIKE
TO BRIEFLY COMMENT THAT OUR
THOUGHT IS THAT MOST CRIMINAL
TRIALS ARE VERY BRIEF AND NOT
VERY COMPLEX AND THAT FOR THAT
REASON, WE WOULD PREFER OR
SUGGEST THAT IT BE A PER MISSIVE
POLICY WITH THE JUDGE WHEN THE
MATTERS COULD BE PRESENTED, OR
ARE AS COMPLEX ENOUGH THAT THE
VALUE OF JURORS TAKING NOTES
OUTWEIGHS THE POSSIBILITY OF
DISTRACTION, SO FORTH AND SO ON.
THANK YOU VERY MUCH.

>> THANK YOU.

I GUESS -- MS. GIDINGS, WERE YOU
GOING TO SPEAK THIS MORNING?

NO.

OM.

-- OK.

[INAUDIBLE]

OK.

MR. UFFERMAN.

>> MAY IT PLEASE THE COURT,
MICHAEL UFFERMAN.

I'M HERE THIS MORNING WITH PAULA
SAUNDERS ON BEHALF OF THE
FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS.

IMD LIKE TO ADDRESS THE COURT
REGARDING RECOMMENDATION 16,
WHETHER OR NOT JUROR QUESTIONS
SHOULD BE PERMITTED IN CRIMINAL
CASES.

WE'RE STRONGLY OPPOSED TO THIS
RECOMMENDATION.

THE PROBLEMS WITH JUROR
QUESTIONS IN CRM THAT WILL CASES
WERE BEST DESCRIBED BY THE
MINNESOTA SUPREME COURT IN THE
COSTELLO OPINION.

THE MINNESOTA SUPREME COURT
EXPLAINED THAT JUROR QUESTIONS
CAN IMPACT JUROR IMPARTIALITY
AND RELIEVE THE PROSECUTION OF
ITS BURDEN OF PROOF.

REGARDING JUROR IMPARTIALITY,
THE MINNESOTA SUPREME COURT
EXPLAINED THAT IN ORDER TO ASK A
QUESTION, A JUROR MUST RESPOND
TO A PERCEIVED LAW IN THE
PRESENTATION OF EVIDENCE.
AND IN ORDER TO RESPOND TO THAT
PERCEIVE LAW OR FORM OF
HYPOTHESIS, FORM OF QUESTIONS,
THE JUROR IS REQUIRED TO
CONSIDER THE CASE, FORM A
CONCLUSION ABOUT THE EVIDENCE IN
THE CASE PRIOR TO THE CONCLUSION
OF ALL THE SYSTEM AND EVIDENCE
BEING PRESENTED.

THIS IS COMPLETELY CONTRARY TO
INSTRUCTION 2.1, THAT INSTRUCTS
JURORS THAT THEY SHOULD NOT FORM
ANY OPINION UNTIL THE CONCLUSION
OF THE CASE.

BUT PERHAPS MORE IMPORTANTLY,
THE SECOND CONCERN THAT THE
MINNESOTA SUPREME COURT WAS
FOCUSED ON WAS WHETHER OR NOT
JUROR QUESTIONS CAN RELIEVE THE
PROSECUTION OF ITS BURDEN OF
PROOF.

I'D OFFER THE COURT THE
FOLLOWING EXAMPLE.

SUPPOSE A DEFENDANT IS CHARGED
WITH POSSESSION OF CHILD
PORNOGRAPHY.

THE PICTURES ARE COIN TANNED ON
A DISC.

-- ARE CONTAINED ON A DISC, A
ZIP DISC.

THE ZIP DISC, ZIP DRIVE AND
LAPTOP ARE ALL FOUND BY LAW
ENFORCEMENT OFFICIALS.

THERE'S NO QUESTION THAT THE
LAPTOP BELONGS TO THE DEFENDANT,
BUT THERE'S NOTHING ON THE ZIP
DISC ITSELF THAT WOULD LINK THE
DEFENDANT TO THE DISC.

THE STATE DURING THE TRIAL MAY
CALL A COMPUTER EXPERT AND THE
COMPUTER EXPERT IS NOT SURE
WHETHER OR NOT THE PICTURES HAD
EVER BEEN VIEWED ON THAT
PARTICULAR LAPTOP.

THE STATE NEVERTHELESS ARGUES
THAT THE DEFENDANT IS GUILTY
BECAUSE THE LAPTOP WAS FOUND IN
PROXIMITY TO THE DISC.

AT THE CONCLUSION OF THE COMPUTER EXPERT'S TESTIMONY, THE JUROR FOR THE FIRST TIME ASKED THE QUESTION, IS THERE ANY SOFTWARE OR IS THERE ANY ZIP DISC DRIVER ON THE LAPTOP, THAT WOULD ALLOW THAT ZIP DISC DRIVE TO BE USED WITH THE LAPTOP? THE JUROR OBVIOUSLY KNOWS A LITTLE BIT ABOUT COMPUTERS, PERHAPS MORE THAN THE PROSECUTOR KNOWS, BECAUSE THE PROSECUTOR DIDN'T ASK THIS QUESTION.

THE JUDGE ALLOWS THAT PARTICULAR QUESTION TO BE ASKED TO THE COMPUTER EXPERT AND THE COMPUTER EXPERT LOOKS AT THE LAPTOP AND SAYS, YES, IN FACT THERE IS SOFTWARE, THERE IS A ZIP DISC DRIVE ON THIS LAPTOP THAT WOULD ALLOW THIS ZIP DISC DRIVER TO BE USED WITH THE LAPTOP.

IN THAT SITUATION, IT'S ITS JUROR'S QUESTION, NO,!!!!!!! NOT THE PROSECUTOR'S QUESTION THAT WOULD MEET THE STATE'S BURDEN OF PROOF.

IN A CRIMINAL CASE, IT IS THE STATE AND THE STATE ALONE THAT HAS THE BURDEN OF PROOF.

IT WOULD BE A VIOLATION OF THE CRIMINAL DEFENDANT'S DUE PROCESS RIGHTS FOR A JURORS' QUESTION TO RELIEVE THE PROSECUTION OF THAT BURDEN OF PROOF.

BUT I WOULD ALSO SUGGEST THAT A JUROR'S QUESTION CAN IMPLICITLY RELIEVE THE PROSECUTION OF ITS BURDEN OF PROOF.

SUPPOSE A SITUATION WHERE A JUROR DOES NOT REALLY ASK A QUESTION, BUT INSTEAD WRITES DOWN A COMMENT, TO THE EFFECT, DI NOT UNDERSTAND THAT LAST WITNESS'S TESTIMONY, I COULDN'T TELL WHETHER THE VICTIM OR THE DEFENDANT WAS THE AGGRESSOR IN THE FIGHT.

IN THIS SITUATION, WITH THIS TYPE OF COMMENT, THE PROSECUTOR IS GIVEN A WINDOW INTO THE MIND OF THE JUROR.

AND THE PROSECUTOR IS ABLE TO SEE ANY WEAKNESSS THAT MIGHT BE

IN THE -- MIGHT EXIST IN THE STATE'S CASE AND THE PROSECUTOR IS AFFORDED AN OPPORTUNITY TO CORRECT THOSE WITNESSES PRIOR TO THE CONCLUSION OF THE CASE.

BASED ON THESE KIRNS, THE SUPREME COURT OF MINNESOTA IN THE COSTELLO FOUND THAT THE QUESTIONS SHOULD NOT BE ALLOWED IN CRIMINAL CASES AND WELTD ASK THIS COURT TO ADOPT THE REASONING OF THE MINNESOTA SUPREME COURT.

I WOULD ALSO MAKE POINTS, BOTH THE CRIMINAL PROCEDURES RULE AND THE STANDARD COMMITTEE CIVIL INSTRUCTIONS CASES HAVE REJECTED RULE 16.

THEY HAVE DEFENSE ATTORNEYS AND PROSECUTORS, BOTH SIDES OF THE AISLE IN THIS SITUATION, HAVE CONSIDERED THE PROPOSAL AND HAVE REJECTED IT.

THEY WOULD NOT WANT JUROR QUESTIONS IF CRIMINAL KISS CASES.

SECOND, ALTHOUGH THE LEGISLATOR HAS PASSED A STATUTE ALLOWING JUROR QUESTIONS IN CIVIL CASES, THE LEGISLATURE HAS NOT PASSED A STATUTE THAT WOULD ALLOW JUROR QUESTIONS IN CRIMINAL CASES.

THIRD, I AGREE WITH THE PREVIOUS COMMENTS THAT JUROR QUESTIONS CAN BE A DISTRACTION IN A CRIMINAL CASE.

INSTEAD OF LISTENING TO THE EVIDENCE, A JUROR IS FOCUSED ON THE NEXT QUESTION THAT HE OR SHE MIGHT WRITE.

FOURTH, I SUBMIT THAT THERE IS NO CLEAR PRECEDENT FROM THIS COURT ON THE ISSUE.

50 YEARS AGO, IN THE FERRARI OPINION, THE COURT CONSIDERED A JUROR HANDBOOK THAT STATED AMONG OTHER THINGS THAT JURORS SHOULD NOT ASK QUESTIONS IN CRIMINAL CASES.

THE COURT COMMENTED ON THAT HANDBOOK AT THE END OF THE FERRARI OPINION AND SAID WE THINK UPON APPROPRIATE OCCASIONS A TRIER OF FACT MIGHT BE

COMPLETELY JUSTIFIED IN PROPOUNDING A QUESTION, BUT IN FERRARI, THERE WAS NO INDICATION THAT THE JURORS ASKED ANY QUESTIONS AND MORE IMPORTANTLY, THERE'S NO INDICATION THAT THE ISSUES THAT WERE CONSIDERED BY THE MINNESOTA SUPREME COURT WERE CONSIDERED BY THIS COURT 5 TO YEARS AGO.

SO I SUBMIT THAT THE LANGUAGE IN FERRARI IS NOT CONTROLLING ON THIS ISSUE BEFORE THE COURT TODAY.

AND I WOULD NOTE THAT IN 1994, THE FOURTH D.C.A. SPECIFICALLY STATED IN THE OPINION, THAT JUROR QUESTIONS SHOULD BE STRONGLY DISCOURAGED.

BUT DESPITE THE HOLDINGS, SOME TRIAL COURTS THROUGHOUT THE STATE HAVE STILL ACTIVELY ENCOURAGED JURORS TO ASK QUESTIONS IN CRIMINAL CASES.

AND FINALLY FROM A PURE EFFICIENCY STANDPOINT, JUROR QUESTIONS IN CRIMINAL CASES SHOULD BE PROHIBITED, SIMPLY BECAUSE OF THE LENGTH OF TIME THAT IT WILL TAKE TO ALLOW JUROR QUESTIONS TO BE ASKED.

ONE OF THE BIGGEST CHALLENGES FACING THIS COURT IS EFFICIENT USE OF RESOURCES, THE LACK OF AVAILABLE JUDGES, AND CRIMINAL DOCKET OVERFLOW.

THE JURY QUESTION PROCEDURE INVOLVES JURORS WRITING DOWN QUESTIONS, COMMITTING THOSE QUESTIONS TO THE BAILIFF, THE JUDGE READING THE QUESTIONS, THE PARTIES COMING TO THE BENCH AND GOING TO SIDEBAR, DISCUSSING THE QUESTIONS, MAYBE OBJECTING TO THE QUESTIONS, MAYBE EVEN REWRITING SOME OF THE QUESTIONS, THEN EITHER THE JUDGE OR I'VE SEEN IN SOME CASES WHERE THE ATTORNEYS ARE ACTUALLY ALLOWED TO ASK THE QUESTIONS, THE JURORS ASKING QUESTIONS TO THE WITNESS, AND THEN USUALLY THE COURT WOULD ALLOW SOME TYPE OF FOLLOWUP OF THE JURY'S QUESTIONS, THAT ALL TAKES A LOT OF TIME.

AND IN A CRIMINAL CASE, IF YOU HAVE SEVERAL WITNESSES, IT COULD ADD A COUPLE OF HOURS TO THE TRIAL.

PERHAPS THE STRONGEST ARGUMENT IN SUPPORT OF JURY QUESTIONS IS THAT JURY QUESTIONS ENHANCE THE ULTIMATE GOAL OF FINDING THE TRUTH.

IN THE MORRISON CASE, DETECTIVE COURT OF CRIMINAL APPEALS REJECTED THAT ARGUMENT AND STATED THAT DUE PROCESS AND THOSE INDIVIDUAL RIGHTS THAT ARE FUNDAMENTAL TO OUR QUALITY OF LIFE, CO-EXIST WITH AND AT TIMES OVERRIDE THE TRUTH FINDING FUNCTIONS.

IN A CRIMINAL TRIAL, THE TRUTH FINDING GOAL MUST BE BALANCED DWENS A DEFENDANT -- AGAINST A DEFENDANT'S CRIMINAL RIGHTS. THE BEST EXAMPLE OF THIS IS THE DEFENDANT'S RIGHT TO REMAIN SILENT.

BASED ON OUR FEDERAL CONSTITUTION, THE RIGHT OF A DEFENDANT TO REMAIN SILENT OBVIOUSLY TRUMPS THE JURY'S RIGHT TO HEAR FROM ALL OF THE WITNESSES IN ORDER TO FIND THE TRUTH.

>> IF YOU COULD KIND OF BRING IT TO A CONCLUSION HERE.

WE'VE GIVEN YOU SOME LEEWAY, BUT YOU'VE GOT A MAJOR POINTS, HIT IT.

>> EACH OF THE ACTORS HAVE A ROLE, THE JURY'S ROLE IS TO BE A NEUTRAL AND DETACHED DECISION MAKER, NOT AN ACTIVE -- NOT A BUNCH OF ACTIVE INTERROGATORS. EVERYONE WOULD AGREE THAT IT WOULD BE IMPROPER FOR THE JURY TO DECIDE THE APPLICABLE LAW TO A CASE.

THAT'S THE ROLE RESERVED FOR THE JUDGE.

LIKEWISE, IT'S IMPROPER TO ALLOW THE JURY TO ASK QUESTIONS OF WITNESSES.

THAT'S A PATROL THAT'S RESERVED EXCLUSIVELY FOR THE ATTORNEYS.

THANK YOU.

>> THANK YOU.
JUDGE EATON?

>>
>> GOOD MORNING.
I'M ROY EATON, AND I CHAIR YOUR
CRIMINAL STEERING COMMITTEE.
I WANT TO ADDRESS FOUR SEPARATE
AREAS QUICKLY THIS MORNING.
FIRST I'D LIKE TO HAVE AN
OBSERVATION AND THAT IS THAT
THIS JURY IN VOW!!!!!!!!!!!!!! INNOVATION STUFF IS
NOT VERY INNOVATIVE.
MOST OF THESE THINGS ON THE LIST
HAVE BEEN HAPPENING AROUND THE
STATE FOR YEARS.
FOR EXAMPLE, THE JURY QUESTION
PROBLEM, I'VE BEEN ALLOWING
JURIES TO ASK QUESTIONS FOR 19
YEARS.
I'VE NEVER HAD A SITUATION WHERE
A JUROR ASKED A QUESTION THAT
FILLED IN THE GAP AND MADE THE
PROSECUTION'S CASE AND I NEVER
HAD ONE THAT TOOK OUT.
GENERALLY, YOU'LL HAVE A
QUESTION OR TWO IN A CASE AND
OFTENTIMES, THEY'RE VERY
INTELLIGENT QUESTIONS.
RECENTLY I TRIED A CASE
INVOLVING AN AUTOMOBILE ACCIDENT99!!!!!!!!!!!!!!
ACCIDENT.
A MAN SHRAWTSER CASE AND A
LOT -- MANSLAUGHTER CASE AND A
LOT HAD TO DO WITH
RECONSTRUCTION AND THE ANGLES
AND DISTANCES AND THAT SORT OF
THING WERE VERY COMPLEX AND A
JUROR ASKED A QUESTION OF ONE OF
THE EXPERTS ABOUT HOW HE ARRIVED
AT HIS MATHEMATICS, AND IT WAS A
VERY INTELLIGENT QUESTION AND IT
CLEARED UP SOMETHING THAT WAS
QUITE FRANKLY IN MY MIND, SO I
DON'T THINK THAT THIS IS A
PROBLEM THAT NEEDS TO BE
ADDRESSED LIKE THE SUPREME COURT
OF MINNESOTA.
I THINK MAYBE IN MINNESOTA, IT'S
A PROBLEM, BUT IT CERTAINLY
HASN'T BEEN A PROBLEM IN FLORIDA
TO MY KNOWLEDGE.
JURY INSTRUCTIONS BEFORE FINAL
ARGUMENT.
I'M -- THE STEER COMMITTEE ASKED

THE COURT TO GIVE THE TRIAL JUDGES DISCRETION TO DO THAT. I PERSONALLY HAVE NEVER DONE IT, BUT I'VE TALKED TO A LOT OF JUDGES WHO HAVE, AND IT CHANGES THE WHOLE APPROACH TO FINAL ARGUMENT.

IT REQUIRES THE LAWYERS TO FOCUS ON THE ISSUES INSTEAD OF FOCUSING ON WHAT THE JURY INSTRUCTIONS ARE GOING TO BE.

I DON'T KNOW HOW MANY TIMES I'VE SEEN THEM, YOU KNOW, PUT THE JURY INSTRUCTION UP ON THE BIG SCREEN IN MY COURTROOM, AND SAY, NOW JUDGE EATON IS GOING TO INSTRUCT YOU AS FOLLOWS.

WELL, IF I'VE ALREADY INSTRUCTED THEM, THEN THEY CAN GET AWAY FROM THAT HAND FOCUS ON WHAT THE ISSUES ARE, SO I!!!! I THINK IT'S A GOOD IDEA AND I'D LIKE TO TRY IT -- I WOULD LIKE TO TRY IT QUITE FRANKLY.

I HAVE BEEN GIVING JURIES THE COPIES OF INSTRUCTIONS THE WHOLE TIME I'M ON THE BENCH.

I GIVE THEM A SET OF PRELIMINARY INSTRUCTIONS THAT GIVES THEM THE ELEMENTS OF THE OFFENSES, THE REASONABLE DOUBT INSTRUCTION AND THE CREDIBILITY OF WITNESSES INSTRUCTION.

AND I LET THEM KEEP THOSE DURING THE COURSE OF THE TRIAL SO THEY CAN REFER TO THEM AND THAT WAY THE JURY KNOWS WHAT TO LISTEN TO, BECAUSE THEY KNOW WHAT THE ELEMENTS OF THE OFFENSE ARE.

AND AT THE END OF THE TRIAL, I ALSO GIVE THEM A COMPLETE SET OF INSTRUCTIONS, EACH JUROR.

AND AS A RESULT, WE HAVE VERY FEW QUESTIONS THAT COME BACK FROM JURORS, BECAUSE THEY'VE GOT THE SET OF INSTRUCTIONS AND THEY CAN RE-READ THEM, AND SO WE DON'T GET QUESTIONS OF, YOU KNOW, WHAT WAS SOMETHING ABOUT WHAT ELEMENT OF THE OFFENSE WAS THIS OR THAT, BECAUSE THEY'VE GOT IT AND THEY'VE GOT IT THERE WITH THEM.

THE COMPLAINT THAT I HAVE HEARD

ABOUT THIS PROBLEM IS THAT THE DEFENSE LAWYERS DON'T WANT THE PROSECUTION TO GET THE FINAL WORD IN THESE CASES.

BUT THE CRIMINAL COURT STEERING COMMITTEE'S RECOMMENDATION IS THAT THOSE FINAL INSTRUCTIONS INVOLVING RULES FOR DELIBERATION AND THE CAUTIONARY INSTRUCTION AND THE COMMITTING THE CASE TO THE JURY INSTRUCTION OUGHT TO BE GIVEN AFTER THE ARGUMENTS ARE COMPLETED, AND THAT WAY THE COURT HAS THE FINAL WORD AND NOT THE LAWYERS.

WELL IN JUROR NOTE TAKING, I HAVE BEEN ALLOWING JURORS TO TAKE NOTES EVER SINCE I'VE BEEN ON THE BENCH.

QUITE FRANKLY, UNTIL RECENTLY, I DIDN'T EVEN THINK THAT IT WAS NECESSARY TO GIVE THEM AN INSTRUCTION ABOUT NOTE TAKING. I THOUGHT IT WAS KIND OF AN INSULT TO THEIR INTELLIGENCE TO TELL THEM THAT YOUR NOTES MAY NOT BE QUITE AS GOOD AS THE RECORD.

BUT THERE IS AN INSTRUCTION OUT THERE THAT HAS BEEN PROPOSED AND I'VE TRIED USING IT A COUPLE WEEKS AGO AND SEEMS TO WORK PRETTY WELL, ALTHOUGH I'M NOT SO SURE THAT THE JURORS NEED AN INSTRUCTION ABOUT NOTE TAKING. IT'S PRETTY COMMON SENSE.

IN ANY EVENT, THE ONLY FINAL THING I'D LIKE TO SAY IS I CAN'T BE HERE TOMORROW AND I KNOW THE ISSUE OF OPENING AND CLOSING FINAL ARGUMENTS IS GOING TO COME UP TOMORROW AND THE STEER COMMITTEE HAS COMMITTED A REPORT, IT'S DATED APRIL 29, AND IT'S -- IT WAS ON THE LETTER THAT WE SENT TO YOU, AND IT COVERS THAT ISSUE AS WELL AS THE ISSUE ABOUT THE FINAL ARGUMENT.

>> JUDGE, THANK YOU VERY MUCH. ACCORDING TO MY NOTES, THAT CONCLUDES THE DIRECT PRESENTATIONS, UNLESS THERE'S SOMEONE WHO DID NOT REGISTER. AND IF I MAY, LET ME START JUST

THE GENERAL QUESTIONING AND THEN WE'RE GOING TO OPEN THIS UP TO QUESTIONS FROM ALL OF US. WITH REGARD TO THOSE THINGS, SUCH AS JUROR QUESTIONS, QUESTIONNAIRES, AND NOTE TAKING, THOSE TYPES OF THINGS, I WOULD POSE THE GENERAL QUESTION TO ALL OF YOU, COULD YOU RESPOND TO WHETHER THIS IS AN AREA THAT SHOULD HAVE MANDATORY, UNIFORM RULES OR ARE THESE AREAS ONES THAT SHOULD BE PERMITTED BUT LEFT TO THE DISCRETION OF THE INDIVIDUAL JUDGES FOR IMPLEMENTATION IN EACH COURTROOM AS THAT JUDGE SEES FIT? SOMEONE CARE TO START WITH THAT, JUDGE BATEMAN, ONE OF THE JUDGES WANT TO START WITH THIS?

>> I'LL TRY.

IT SEEMS TO ME THAT -- I WANT TO BE CAREFUL WHAT I SAY BECAUSE THERE ARE I DON'T KNOW HOW MANY JUDGES IN HERE AND WE PROBABLY WOULD ALL DO IT DIFFERENTLY.

>> JUDGE BATEMAN, YOU'RE WITH FRIENDS AND WE UNDER!!!!!!!!!!!!!! UNDERSTAND.

>> THERE MIGHT BE SOME DIFFERENCES IN THE WAY WE MAKE A PRESENTATION OR SOMETHING LIKE THAT.

I THINK, IN MY EXPERIENCE, THAT A FRAMEWORK IN A RULE IS GOOD. FOR EXAMPLE, THE QUESTION THAT THE MINORITY SUGGESTED, THE RULE THAT THE MINORITY SUGGESTED, IT'S DISCRETIONARY, BUT IF YOU ALLOW IT, THESE ARE THE THINGS YOU MAKE SURE YOU COVER AND YOU HAVE TO TALK WITH THE JURORS AHEAD OF TIME ABOUT IT, BUT THEN I DON'T THINK THAT THE ACTUAL WAY THAT IT'S DONE NEEDS TO BE CODIFIED, SO I THINK THAT SHOULD BE LEFT UP TO THE INDIVIDUAL JUDGE IN THE COURTROOM.

AND IT DEPENDS ON THE FACTS OF THE CASE AND THERE MAY BE SOME CASES YOU'RE NOT GOING TO ALLOW QUESTIONS.

YOU'VE AGREED WITH THE LAWYERS YOU'RE NOT GOING TO ALLOW QUESTIONS.

>> YOU'RE TOUCHING ON SOMETHING THAT REALLY WASN'T DISCUSSED DURING THE PRESENTATIONS. AT LEAST CERTAINLY NOT DISCUSSED EXTENSIVELY.

SOMETHING LIKE A JUROR QUESTIONNAIRE, SHOULDN'T SOMETHING LIKE THAT IN TERMS OF THE DETERMINATION OF THE INFORMATION THAT IS IN COURT, THE LAWYERS, PARTIES TO THE CASE, HAVE ABOUT A PROSPECTIVE JUROR, ISN'T THAT SOMETHING THAT SHOULD BE STANDARDIZED AROUND THE STATE, IN OTHER WORDS, ISN'T THAT SORT OF A FUNDAMENTAL KIND OF THING THAT WE ALL OUGHT TO BE ABLE TO COME TO SOME KIND OF AN AGREEMENT ON, THAT -- IN BALANCING IT THING ABOUT BEING INTRUSIVE OVER -- WITH THE FACT THAT THIS IS INFORMATION THAT'S GOING TO COME OUT ANYWAY, AND YOU KNOW, AND NEEDS TO BE THERE, AND HAVING THE MOST EFFICIENT WAY, ISN'T THAT AN EXAMPLE OF SOMETHING THAT PROBABLY SHOULD BE STANDARDIZED AROUND THE STATE?

>> I THINK THAT IS ONE AREA THAT IS AMENABLE TO BEING STANDARDIZED IN THE JUROR QUESTIONNAIRE.

THEN YOU HAVE THE ISSUE OF HOW IT'S DONE IN THE INDIVIDUAL CIRCUIT.

FOR EXAMPLE, SOME CIRCUITS HAVE JURORS COMING IN EVERY DAY. YOU SEND OUT THE JUROR QUESTIONNAIRE WITH THE SUMMONS WAY AHEAD OF TIME OR DO YOU WAIT UNTIL THEY GET INTO THE COURTHOUSE AND THEN DO YOU WAIT UNTIL THEY'RE A PANEL, WHETHER IT'S A CIVIL OR A CRIMINAL CASE. THERE'S A LOT OF THAT KIND OF THING THAT WOULD HAVE TO BE -- THERE HAS TO BE SOME DISCRETION THERE IN THE INDIVIDUAL CIRCUIT BUT THE QUESTIONNAIRE ITSELF I THINK, QUESTION.

>> AND WE HAVE, IN THE PRESENT RULES --

>> CIVIL RULES.

>> THE CIVIL RULES, A QUESTIONNAIRE, AND WHY IS IT THAT POSITION TO COVER ALL KINDS OF CASES WITHOUT BECOMING TOO DETAILED, WHICH WOULD -- SEEMS TO ME THAT YOU GET TOO MUCH DETAIL AND THE JURORS ARE GOING TO REBEL AGAINST IT AND YOU'RE GOING TO CREATE MORE PROBLEMS PERHAPS POST VERDICT THAN YOU ARE SOLVED.

>> AND YOU HAVE A POINT. IN FACT, A CRIMINAL RULES COMMITTEE, WHICH I KNOW SOMETHING ABOUT ACTUALLY USED THE CIVIL FORM TO CREATE ITS RECOMMENDED FORM AS WELL. SO WE WENT WITH THAT FORM. UNDERSTAND CIVIL RULES MIGHT BE -- OR SOMEBODY IS PRESENTING A MUCH BROADER AND I THINK THOSE ARE THE ISSUES THAT YOU HAVE TO BE CONCERNED ABOUT.

THE BASIC INFORMATION YOU'RE GOING TO GET FROM EVERY JUROR IS SOMETHING THEY CAN FILL OUT. I THINK YOU RUN INTO A LONGER QUESTIONNAIRE, YOU RUN INTO PROBLEMS PEOPLE CAN'T READ, YOU HAVE TO HAVE PEOPLE ASK THE QUESTIONS AND WRITE THEM DOWN FOR THEM.

THERE'S A LOT OF ISSUES THAT COULD COME UP AND WHAT DO YOU DO WITH THOSE FORMS AFTERWARDS? DO YOU DESTROY THOSE FORMS 70 A LOT OF PERSONAL INFORMATION ON THEM.

SHOULD THEY BE DESTROYED, DO THEY GO IN THE COURT FILE? THERE'S A LOT OF QUESTIONS THAT IT RAISES.

A SIMPLE, BASIC INFORMATION WHERE THEY LIVE IN THE COUNTY, IF THEY'VE EVER SERVED ON A JURY BEFORE, EMPLOYMENT, EDUCATION, THOSE KINDS OF THINGS ARE IMPORTANT TO KNOW.

>> CERTAINLY.

[INAUDIBLE]

>> I'D LIKE TO GIVE YOU MY TAKE ON THE QUESTIONNAIRES.

WHAT HAPPENS ON MONDAY MORNING, IF I HAVE A CAPITAL CASE, SAY

PENDING, IS WE SEGREGATE FROM THE JURY POOL 60 PEOPLE. AND IF I'M GOING TO USE JURY QUESTIONNAIRES, WHAT THEY DO IS THEY FILL OUT THE QUESTIONNAIRES AT THAT TIME, THEN THE CLERK HAS TO MAKE COPIES OF THE QUESTIONNAIRES AND GIVE THEM TO THE LAWYERS AND NOW THEY'VE GOT A STACK OF 60 QUESTIONNAIRES AND OF COURSE I CALL THE JURORS' NAMES BLINDLY, SO WE DON'T KNOW IN WHAT ORDER THEY ARE, SO THE LAWYERS ARE THUMBING THROUGH THE QUESTIONNAIRES, ALL RIGHT. BY THE TIME WE GET THE COPIES MADE, IT'S NEARLY NOON AND NOW I WASTED MOST OF THE MORNING WITH JURORS FILLING OUT QUESTIONNAIRES. AND OF A LUNCH WHEN THE JURORS START --

[INAUDIBLE]

>> NO, THEY FILL IT OUT DOWN STAIRS IN THE JURY LOUNGE.

[INAUDIBLE]

>> NO, IT'S NOT STANDARD. WE DON'T HAVE A STANDARD CRIMINAL JURY QUESTIONNAIRE.

[.

[INAUDIBLE]

>> YES, BUT THEY FILL IT OUT DOWN STAIRS IN THE JURY ASSEMBLY, BUT IT TAKES TIME TO FILL OUT THESE QUESTIONNAIRES, BECAUSE THE LAWYERS WANT THESE QUESTIONNAIRES TO BE VERY, VERY COMPLETE. SO THEY GET UP TO THE COURTROOM AND RIGHT AFTER LUNCH WE START VOYEUR -- VOIR DIRE AND YOU KNOW WHAT, THEY ASK THE JURORS THE SAME QUESTIONS ON THE QUESTIONNAIRE. SO WE DON'T OF SAVE ANY TIME, WE DON'T SAVE ANYTHING. SO I'VE TOLD THEM RECENTLY WHEN THEY WANTED TO DO A QUESTIONNAIRE, I SAID NASTY FINE -- THAT'S FINE, BUT YOU CAN'T ASK ANY QUESTION THAT THE JURORS HAVE ALREADY ANSWERED AND THEN ALL OF A SUDDEN THEY SAID JUDGE, WE DON'T THINK WE WANT

THE QUESTIONNAIRES, SO IT REALLY IS A LOGISTICAL PROBLEM IN MANY CASES.

>> ANY OTHER QUESTIONS OF JUDGE EATON ON THE QUESTIONNAIRES?

OK.

>> ONE POINT ON THE QUESTIONNAIRES, WE USED STANDARD FOR CIVIL AND CRIMINAL, WE HAVE A VANILLA SET, EVERYBODY FILLS THEM OUT DOWN STAIRS, BUT IF SOME CASES WE TEACH IN JUDICIAL COLLEGE, YOU MAY HAVE A SPECIAL CASE THAT HAS SENSITIVE ISSUES THAT MAY BE COMPLICATED, AND RATHER THAN INDIVIDUAL VOIR DIRE, YOU USE THE QUESTIONNAIRE TO SCREEN JURORS, SO THERE MAY BE A CALL FOR A QUESTIONNAIRE OR DISCRETION ON THE PART OF THE JUDGE FOR A WRITTEN QUESTIONNAIRE, BECAUSE THEN THAT'S DONE PRIVATELY BY THE JURORS, AN YOU'RE NOT ASKING THE QUESTIONS OPENLY AND YOU DON'T HAVE TO TAKE THEM BACK TO THE JURY ROOM.

[INAUDIBLE]

>> YOU'RE ABSOLUTELY RIGHT, IT'S GOING TO RAISE A LOT OF QUESTIONS IN THEIR MIND, IT'S GOING TO BE INTRUSIVE, YOU DON'T NEED IT IN MOST CASES, SO I DON'T THINK THAT IT'S NECESSARY TO ASK THESE LENGTHY THINGS. OUR QUESTIONNAIRE IS ONE SHEET AND ABOUT 8 OR 10 QUESTIONS ON IT.

>> WAS THERE SOMETHING WRONG WITH THE QUESTIONNAIRE THAT'S ACTUALLY IN THE BOOK UNDER THE CIVIL RULES?

>> ABSOLUTELY NOT.

>> AND SO WAS THERE ANY DISCUSSION ABOUT WHY WE WERE ADDING THESE OTHER QUESTIONS, BECAUSE SOME OF THEM SEEM -- I DON'T EVEN KNOW WHAT THE PURPOSE OF THEM WOULD BE, TO EVEN ASK THOSE QUESTIONS.

>> I BETTER LET MR. PARK ANSWER THAT.

I SHOULD HAVE SAD DOWN.

[INAUDIBLE]

[INAUDIBLE]

>> I'M JUST CONCERNED, --

[INAUDIBLE]

>> I THINK ALL THOSE THINGS WERE CONSIDERED AND IT'S A BALANCING ACT.

WHEN IT'S ALL PUT INTO PERSPECTIVE.

THE TIME THE INTRUSIVENESS, TRYING TO OF IS A THE I GUESS JUDICIAL ECONOMY, HOPEFULLY YOU HAVE LAWYERS DOING THEIR JOB WHERE THEY'RE NOT WASTING TIME ON VOIR DIRE ASKING THE SAME QUESTIONS AGAIN.

FOR INSTANCE, ONE OF THE QUESTIONS IS, THAT I HATE ASKING, IN VOIR DIRE IS, YOU KNOW, CAN YOU GIVE ME A LITTLE BACKGROUND ON YOUR EDUCATION. SOMETIMES THAT CAN BE AN EMBARRASSING KIND OF QUESTION, IT MIGHT BE IMPORTANT FOR WHATEVER CASE IS INVOLVED IN AND SOME OF THESE QUESTIONS YOU KIND OF HATE TO PUT OUT THERE ON THE FLOOR.

I'M NOT SAYING ALL THOSE QUESTIONS ARE LIKE THAT, AND I CERTAINLY UNDERSTAND THAT PERSPECTIVE, AND IT WAS BROUGHT UP.

AND I DON'T THINK IT'S HANDLED THE SAME IN HALL CIRCUITS EITHER ABOUT HOW AND WHEN THEY GET THESE.

I RECALL FILLING ONE OUT WHEN I WAS CALLED TO JURY DUTY THAT WAS A LITTLE MORE EXTENSIVE THAN OUR STANDARD ONE AND WE WERE SITTING THERE FILLING THEM OUT, AND I WAS KIND OF CURIOUS ABOUT IT BECAUSE IT HAD MORE QUESTIONS THAN I WAS USED TO, BUT YOU DID IT, AND YOU DID YOUR JOB, AND YOU FILLED THOSE THINGS OUT AND ACCORDING TO WHAT THE -- AND I THINK WE TOOK TO HEART WHAT THE JURY INNOVATION RECOMMENDATION WAS, BECAUSE THEY'RE SAYING, WELL, YOU'RE GOING TO PUT A LITTLE MORE THOUGHTFULNESS INTO IT, YOU'RE GOING TO HAVE THE INFORMATION THAT YOU NEED AND

WITH ALL DUE RESPECT TO JUDGE BLANT WHO WROTE THE THINGS HE HAD TO SAY, I THINK THOSE THINGS THAT WE'RE TALKING ABOUT WITH REGARD TO THE POTENTIAL JUDICIAL ECONOMY, AND YOU KNOW, WE CAN'T I GUESS PUT UP A RULE FOR -- TRY TO INVENT RULES FOR BAD JUDGES AND BAD LAWYERS THAT ARE ARE GOING TO WASTE OUR TIME DOING THESE THINGS, BUT THE THOUGHT PROCESS WAS JUDICIAL ECONOMY AND WILL SAVE SOMETHING HERE BY DOING THIS.

[INAUDIBLE]

>> I THINK THAT GETS TO BE A REAL PROBLEM.

IT HAPPENS IN VOIR DIRE IN ANY EVENT IN SOME INSTANCES, IN SOME WAY WHERE SOMEBODY HAS FOLLOWUP QUESTIONS.

WE ALL TRY TO AVOID GETTING PEOPLE ANGRY BY CONTINUING TO ASK THEM THE SAME QUESTIONS. I MEAN, IT'S NOT SMART AS A LAWYER, YOU KNOW, WHEN THEY KNOW THEY'VE ALREADY GOT THE INFORMATION I'M GOING TO GO UP AND START ASKING THEM THE SAME QUESTION.

>> LET ME ASK YOU A QUESTION, IN A CIVIL INDICATES, WHAT DOES IT MATTER IF YOU'RE A FRIEND OR RELATIVE OF LAW ENFORCEMENT OR BEEN A VICTIM OF A CRIME OR CHARGED WITH COMMITTEE A CRIME? WHY SHOULD THAT BE IN EVERY QUESTIONNAIRE GIVEN IN A CIVIL JURY CASE?

>> WELL WITH THE ONES THAT WE HAVE NOW AND I'LL COMMENT ON THAT IN A MINUTE, BUT THE QUESTIONNAIRE WE HAVE RIGHT NOW TALKS ABOUT PERSONAL INJURY AND WITH YOU'RE SERVING ON A CIVIL CASE, THAT MIGHT NOT BE, YOU KNOW, SAY A CONTRACT CASE, IT MIGHT NOT HAVE ANYTHING TO DO WITH THAT PARTICULAR ACTION EITHER, BUT NONETHELESS THE QUESTION IS THERE.

I'M NOT SURE HOW YOU CONSTRUCT SOMETHING THAT IS GOING TO BE BROAD ENOUGH TO COVER

EVERYTHING, YET NARROW ENOUGH NOT TO, YOU KNOW, BEAR ON OTHER SUBJECTS.

>> WELL IF YOU HAVE A PERSONAL INJURY CASE, WHY WOULD YOU NEED TO KNOW IF THEY'RE A RELATIVE OR FRIEND OF LAW ENFORCEMENT?

>> I JUST NEVER HEARD IT ASKED IN A CIVIL CASE BEFORE.

>> THAT'S A GOOD QUESTION.

I'VE LOOKED AT SOME OF THOSE AND WHEN WE WERE GOING THROUGH THOSE, PEOPLE IT THE SAME KINDS OF QUESTIONS WITH REGARD TO SOME OF THESE QUESTIONS, WHETHER OR NOT WE SHOULD HAVE EACH ONE OF THESE, AND I GUESS THE BROAD SPECTRUM OF IT ALL WAS, THIS IS WHAT THE PRODUCT IS, YOU KNOW, HOW MUCH DO YOU WANT TO PAIR DOWN ON THIS HAND HOW MUCH DO YOU NOT, AND THAT WAS THE PRODUCT THAT WE GENERATED, AND, YOU KNOW, UNDER ALL CIRCUMSTANCES, YOU KNOW, IT'S PRETTY DIFFICULT -- WELL, IT'S PRETTY DIFFICULT TO IMAGINE ANY CASE IN WHICH ALL OF THESE QUESTIONS ARE GOING TO BE RELEVANT EVERY TIME. IT'S NOT GOING TO HAPPEN PROBABLY.

BUT NONETHELESS, WE TRY TO PUT TOGETHER THE BEST FORM WE COULD THAT WAS AS BROAD AS WE COULD MAKE IT AND STILL YOU KNOW, KEEP IT WITHIN THE CONTEXT OF WHAT OUR CHARGE WAS.

>> WHAT WAS YOUR OPINION REGARDING DESTRUCTION, WHAT HAPPENS TO THESE EXTENSIVE QUESTIONNAIRES?

>> WELL, THAT'S AN INTERESTING QUESTION BECAUSE I DON'T KNOW THAT AND I ASKED THAT QUESTION BEFORE OF WHAT HAPPENS, AND FROM WHAT I UNDERSTAND WHAT OCCURS, IS THAT THE -- NUMBER ONE, THE BAILIFF PICKS UP OUR COPIES WHEN WE HAVE THEM, WE DON'T KEEP THE ONES THAT AREN'T -- THAT THE JURORS AREN'T THERE ANYMORE. THE ONES THAT ARE GONE, THEY COLLECT THAT INFORMATION.

I THINK IT GOES BACK TO THE CLERK.

I'M NOT SURE WHAT THE CLERK DOES WITH IT.

THE ONES THAT ARE ON THE JURY I ASSUME STAY WITH THE COURT FILE.

>> JUSTICE WELLS HAS SOME QUESTIONS ON THIS!!!!!!!!!!!!!! A DIFFERENT TOPIC.

>> REALLY, I THINK JUDGE EATON, SINCE YOU SAY THAT YOU HAVE BEEN USING -- HAVING JURORS QUESTIONS IN CRIMINAL CASES OVER THE YEARS, DO YOU THINK THAT WE NEED TO HAVE A UNIFORM RULE AS TO JUROR QUESTIONS AND INSTRUCTION AS HAS BEEN PROPOSED HERE?

>> NO.

>> OR DO YOU THINK JUST LEAVE IT TO THE DISCRETION OF EACH JUDGE?

>> ABSOLUTELY.

I DON'T THINK WE NEED A RULE FOR THAT.

[INAUDIBLE]

L!!

>> THERE ARE A WIDE VARIETY OF THINGS THAT I DO THAT I DO DIFFERENTLY THAN MY COLLEAGUES DO AND THERE ARE A WIDE VARIETY OF THINGS THAT THEY -- YOU KNOW, AND YOU CAN GO INTO COURTROOMS AROUND THE STATE AND YOU'LL SEE THAT DIFFERENT JUDGES HANDLE THINGS DIFFERENT WAYS, AND WE DON'T HAVE A RULE FOR EVERY ONE OF THOSE LITTLE THINGS.

[INAUDIBLE]

>> NO, IT STARTED WHEN YOU BECAME A LAWYER.

[INAUDIBLE]

>> WELL A PROPOSED JURY INSTRUCTION HAS BEEN SUBMITTED.

>> OK.

THAT WAS BASIC.

>> IN FACT, I HAVE BEEN USING THAT INSTRUCTION RECENTLY AND IT'S BETTER THAN THE INSTRUCTION I WAS GIVING THEM, BUT I DON'T KNOW THAT YOU NEED TO HAVE A RULE.

>> LET ME ASK, PERHAPS JUDGE BATEMAN ON THE -- AND BOTH OF YOU ON THE NOTE TAKING BY JURORS.

PART OF WHAT HAS BEEN

RECOMMENDED HERE WOULD HAVE THE JUROR NOTES DESTROYED BY THE BAILIFF.

AFTER THE DELIBERATION.

AND SINCE YOU'VE ALLOWED NO NOTE TAKING, HAS THERE BEEN A PROBLEM WITH THE DESTRUCTION OF THE NOTE OR ANYBODY RAISE THAT TO YOUR KNOWLEDGE?

>> NO.

I DESTROY THEM.

I HAVE THE COURT DEPUTY DESTROY THEM.

>> AND THERE ISN'T -- WELL, THERE ISN'T -- I DON'T REMEMBER THERE BEING AN APPELLATE ISSUE, BUT IT SEEMS TO ME IT'S CONCEIVABLE THERE COULD BE.

[INAUDIBLE]

>> I UNDERSTAND THAT.

>> AND I DO MINE PERSONALLY.

>> AT ONE TIME IN OUR LEGAL HISTORY, THERE WAS A PROBLEM WITH LAWYERS RUNNING IN LOOKING FOR QUOTIENT VERDICTS AND THOSE TYPE OF THING.

>> WE DESTROY THEM IMMEDIATELY AFTER THE TRIAL.

[INAUDIBLE]

>> YES.

>> I DON'T.

I ASK THEM NOT TO TAKE NOTES DURING OPENING STATEMENTS, BECAUSE IT'S NOT EVIDENCE.

AND I WANT THEM TO LISTEN. DURING CLOSING ARGUMENTS HOWEVER, I DO SAY TO THEM, THEY'RE PERMITTED TO DO IT, BUT I DON'T ENCOURAGE THEM BECAUSE I WANT THEM TO GIVE THE LAWYERS THEIR ATTENTION AND IF THEY'RE PAYING TOO MUCH ATTENTION TO TAKING NOTES, I STOP IT.

>> I DON'T TELL THEM THEY CAN'T TAKE PHOTOGRAPHS DURING OPENING STATEMENTS ALTHOUGH I'VE NOTICED OVER THE YEARS THEY DON'T BECAUSE THEY'RE LISTENING.

>> WE'RE RAPIDLY RUNNING OUT OF TIME.

>> WE NEED TO THINK IN TERMS OF THE FACT THAT IF SOME JUDGES ARE GOING TO BE ALLOWING QUESTIONS, OTHERS ARE NOT, THINK ABOUT

JURORS WHO ARE GOING TO COME BACK AGAIN, THEY'VE BEEN ALLOWED BY ONE JUDGE TO ASK QUESTIONS, ONE OF THE REASONS YOU DO THAT IS BECAUSE THEY FEEL DISENFRANCHISED IF THEY DON'T. NOW ONE JUDGE HAS LET THEM ASK QUESTIONS AND ANOTHER ONE IS SAYING NO, SO THEY'RE GOING -- [INAUDIBLE]

>> WE'RE GOING TO HAVE SOME FINAL QUICK QUESTIONS, JUSTICE BELL HAD A QUESTION.

>> MR. UFFERMAN, REAL QUICK, DO YOU AGREE THAT IN A CRIMINAL CASE, IF A JUDGE IS THE TRIER OF FACT, THE JURY HAS BEEN WAIVED, THE JUDGE CAN ASK THE QUESTION AND IT'S NO ABUSE OF DISCRETION, IT WOULD NOT BE APPEALABLE AND IT'S DONE QUITE OFTEN.

>> UNLESS THE JUDGE ASKED THE QUESTION, THAT SOMEHOW CAUSED THE STATE TO MEET ITS BURDEN OF PROOF AND IN THAT SCENARIO, I WOULD THINK IT WOULD BE IMPERMISSIBLE.

>> WELL, DOESN'T THE JUDGE HAVE THE DISCRETION AT THE END OF THE CASE TO ALLOW THE STATE TO REOPEN THE CASE IF THE STATE SAYS JUDGE MAY WE REOPEN THE CASE TO FILL THE GAP?

>> YES, THERE IS THAT DISCRETION, AND AGAIN, I THINK A JUDGE'S QUESTION IN MY EXPERIENCE HAS BEEN THAT THE JUDGE WOULD CLARIFY A WITNESS'S ANSWER, AN ANSWER THAT'S ALREADY BEEN GIVEN AND JUST WOULD CLARIFY IT FURTHER, WOULDN'T GO INTO A NEW SUBJECT AREA AND JURORS' QUESTIONS OFTENTIMES GO INTO A NEW SUBJECT AREA THAT MAY NOT HAVE BEEN ADDRESSED BY THE WITNESSES.

>> BUT DOESN'T THAT EXISTING PROCESS FILTER THAT AND ALLOW THE ATTORNEYS TO BE ABLE TO ARGUE THOSE ISSUES?

>> CERTAINLY SOME JUDGES WON'T -- VERY LIBERAL AT GRANTING -- SUSTAINING OBJECTIONS TO PARTICULAR

QUESTIONS, OTHERS JUDGES MAY NOT AND OTHER JUDGES MAY ALLOW JUROR QUESTIONS IF THERE'S ANY -- YOU CAN HAVE A DIFFERENCE BETWEEN DIFFERENT COURTROOMS, BETWEEN WHAT QUESTIONS ARE ALLOWED AND WHICH ONES ARE ARE NOT AND YOU HAVE THE POSSIBILITY, YOU HAD IT IN MINNESOTA, I'VE SEEN IT IN CASES I'VE REVIEWED, WHERE A MISSING QUESTION HAS NOT BEEN ANSWERED YET, COULD PROVIDE THE STATE WITH THE BURDEN OF PROOF THAT GETS THEM OVER THE HUMP.

>> JUSTICE QUINN.

>> I WANT SOME INFORMATION FROM ANYONE WHO HAS ACTUALLY LED JURORS TO TAKE NOTES AND JURORS HAVE JURORS NOTEBOOKS.

IT SEEMS TO ME THAT WITH THE TWO THINGS, THE NOTE TAKING GOING ON, AND A BOOK THAT THEY CAN ACTUALLY GO THROUGH, YOU DON'T FIND THAT AT ALL DISTRACTING TO THE JURORS?

THAT THEY HAVE THESE TWO THINGS -- OTHER THINGS THAT THEY ARE FOCUSING ON, IN ADDITION TO TRYING TO HEAR THE TESTIMONY COMING FROM THE STAND?

>> I JUST FINISHED A TRIAL A WEEK LONG MEDICAL MALPRACTICE TRIAL SEVERAL WEEKS AGO AND WE HAD A TRIAL NOTEBOOK THAT HAD THE EXHIBITS AND SO WHEN THE LAWYERS WERE REFERRING TO THE EXHIBITS, EACH JUROR HAD A COPY OF THAT EXHIBIT, MEDICAL RECORDS AND THINGS LIKE THAT.

>> WHO PAYS FOR THE NOTEBOOKS?

>> THE PARTIES PAY FOR THE NOTEBOOKS.

EACH HAD THEIR OWN DEFENSE AND A --

[INAUDIBLE]

SOME OF THE JURORS IN THAT CASE TOOK NOTES AND A LOT DID NOT. NO QUESTIONS WERE ASKED IN THE TRIAL, AND MY EXPERIENCE HAS BEEN, THAT VERY FEW QUESTIONS ARE ASKED AND WHEN THEY ARE, THEY'RE VERY WELL SCREENED AND I WAS GOING TO SAY, IN MY EXPERIENCE, IF IT'S

OBJECTIONABLE AND THERE'S AN OBJECTION, I DON'T ALLOW THE QUESTION.

>> JUSTICE PARIENTE, ONE LAST QUESTION.

[INAUDIBLE]

[INAUDIBLE]

>> WE TAUGHT THIS LAST YEAR. WE HAVE THREE WAYS WE DID IT. BUT THE ONLY WAY TO DO IT IN COMPLIANCE WITH THE STATUTE IS THE WAY JUDGE FREEMAN DOES IT, HE GIVES EVERYBODY A SHEET OF PAPER AFTER EVERY WITNESS AND YOU EITHER WRITE NO QUESTION OR YOU WRITE THE QUESTION DOWN, THEN BECAUSE -- BECAUSE IF YOU'RE IN THE COURTROOM AND THE JUROR IS WRITING THE QUESTION AND NOBODY ELSE IS WRITING THE QUESTION, THEN YOU KNOW WHO IT IS ANYWAY.

I THINK THAT MOST OF THE JUDGES THAT HANDLE THIS, ALLOW JURORS TO RAISE THEIR HAND, LET THE JUROR ASK THE QUESTION, YOU KNOW WHO THE JUROR IS AT THAT POINT, SO DOES -- THE WAY WE TEACH TO DO IT IS AND WE HAVE A CLIP BOARD AND THERE'S A SHEET, THE BAILIFF TAKES IT OVER TO ANY JURORS THAT HAVE QUESTIONS, YOU HAVE MORE THAN ONE, THEY WRITE THE QUESTION DOWN, AND THEN I'VE GOT A PLACE ON THERE, IF A LAWYER OBJECTS, I TAKE IT OVER TO THE SIDEBAR AND SHOW IT TO THE LAWYERS.

THE JURY CANNOT SEE WHO'S OBJECTING AND WHO'S NOT, BECAUSE THEY EITHER CHECK NO OBJECTION OR OBJECTION.

IF WE HAVE TO HAVE ANY DISCUSSION, IT'S DONE AT SIDEBAR SO THE JUROR DOESN'T KNOW WHO'S TRYING TO EXCLUDE THE QUESTION. IF IT'S OBJECTIONABLE AND FRANKLY THE LAWYERS AGREE ON MOST OF THESE THINGS, AND IT'S VERY SELDOM --

>> WHAT ABOUT --

[INAUDIBLE]

>> WELL,!! -- YEAH, I DON'T KNOW IF THAT'S A PROCEDURAL THING OR A

SUBSTANTIVE THING.

I DO DID IN EVERY CASE AND I'M
IN COMPLIANCE WITH THE STATUTE.
ANY JUDGE WHO DOES NOT ALLOW
QUESTIONS IN A CIVIL CASE I
THINK IS --

[INAUDIBLE]

>> THAINDZ.

I DON'T HAVE A POSITION ONE WAY
OR ANOTHER ON THAT.

I GUESS THE RULES COMMITTEE
MIGHT HAVE THAT.

I'M IN FAVOR OF LETTING THEM
HAVE THE QUESTION.

I CAN'T IMAGINE WHY WE WOULD GO
BACK TO THINGS IN CIVIL.

>> LET ME ADREE THAT REAL
QUICKLY, -- ADDRESS THAT REAL
QUICKLY, BECAUSE I UNDERSTAND
THE APPARENT INCONSISTENCY, AND
IT'S NOT APPARENT IT'S A REAL
INCONSISTENCY.

AT THE TIME IT WAS DONE AND IT
WAS BEING DISCUSSED, IT FELT --
THE PREVAILING VIEW WAS IT
SHOULD BE PERMITTED.

THE OTHER SIDE OF THAT COIN IS
I'VE NEVER BEEN INVOLVED NOR
DOES ANYBODY ELSE EVER KNOW OF A
JUDGE RECUSING TO ALLOW A
QUESTION BEING ASKED.

I THINK CONSISTENCY IS
IMPORTANT, AND I THINK THE COURT
SHOULD BE CONSISTENT.

I'LL LEAVE IT AT THAT.

>> THANK YOU.

HAVE WE ADDRESSED THE
RECOMMENDATIONS 26, 31, 32, 33,
34, AND 41?

WE HAVE NOT.

>> I WANT TO BE SURE THAT EVERY
ONE IS COVERED, BECAUSE THEY
WERE DIVIDED INTO TWO CASES AND
IF YOU HAVE ADDITIONAL COMMENTS,
WE'RE GOING TO PERMIT YOU TO
HAVE THOSE.

>> I FORGOT, HAPPY VALENTINE'S
DAY.

>> THANK YOU.

>> WITH REGARD -- A COUPLE OF
THESE ARE NOT I GUESS
PARTICULARLY CONTROVERSIAL.
THE FIRST ONE IS RECOMMENDATION
26, WRITTEN JURY INSTRUCTIONS,

WHICH ALREADY UNDER 1.470, IT SAID WHEN PRACTICABLE, I CAN'T REMEMBER THE LIMITING LANGUAGE, AND BASICALLY, IT SHOULD BE YEAH, IT'S DONE, AND PART OF THAT LANGUAGE WAS CHANGED. I DON'T THINK THERE'S ANY CONTROVERSY ABOUT THE FACT THAT THE JURY OUGHT TO GET THE WRITTEN JURY INSTRUCTIONS. I CAN'T IMAGINE THAT. THERE IS A QUESTION ABOUT WHEN, BECAUSE SOMETIMES WHEN YOU'RE CHARGING THEM, YOU MIGHT NOT HAVE ALL THE COPIES MADE UP AT THAT POINT IN TIME, SO THAT'S KIND OF IFFY AND TIMINGWISE HOW IT SHOULD BE AND WE'RE GOING ALONG WITH THAT RECOMMENDATION. THE FINAL INSTRUCTION BEFORE CLOSING ARGUMENT. WE AGREE WITH THAT. THE CONTROVERSY IN THIS BUN GOES BACK TO THE SHALL vs. MAY AGAIN. IN THIS INSTANCE THE COMMITTEE USED WORD "SHALL." I WASN'T ONE OF THOSE PEOPLE IN FAVOR OF THAT KIND OF LANGUAGE JUST BECAUSE YOU DON'T KNOW WHAT THE DIFFERENCE CIRCUMSTANCES MIGHT BE, BUT THERE WERE A COUPLE OF STEPS THAT WE LOOKED AT THAT HAD SIMILAR RULES THAT USE THE WORD "SHALL." I THINK PEOPLE LIKE THAT ON THE COMMITTEE. IN THE PAST, YOU KNOW, OVERWHELMINGLY IT -- IT PASSED OVERWHELMINGLY 34-1. THAT CAUSE IMMEDIATE TO HAVE SOME PROBLEMS. AND I THINK IT'S SOMETHING THE COURT NEEDS TO CONSIDER IT -- AS WELL THAT THE WHOLE PERMISSIVE SHALL VERSUS MAY. THE OTHER ONE ADDRESSED RECOMMENDATION 33 THE READ BACK TESTIMONY, WE STRUGGLED WITH THIS ONE. NUMBER ONE I THINK THE WAY

THE COMMISSION HAD WORDED IT
THERE WAS A
PRETKEPL -- PRESUMPTION
THERE WOULD BE READ BACK
THEN YOU HAVE TO COME BACK
WITH WAYS IT WOULDN'T.
I THINK THE SUBCOMMITTEE AND
THE COMMITTEE STRUGGLED WITH
TRYING TO FIGURE THAT OUT
UNDER WHAT CIRCUMSTANCES AND
THE VARYING CIRCUITS, YOU
KNOW HOW THEY ARE RECORDING
THIS OVER A LENGTHY TRIAL.
HOW WOULD YOU GO ABOUT DOING
THIS.

AND IT SEEM LIKE IT WAS
SOMETHING THAT WASN'T BROKE.
SO FROM THAT ASPECT OF IT WE
COULDN'T QUITE FIGURE OUT
HOW WE WILL COME UP WITH THE
LIMITING LANGUAGE ABOUT WHEN
YOU DON'T USE IT OR WHEN YOU
DO IT -- USE IT TO THE
SATISFACTION OF EVERYONE.
AND IT LOOKED LIKE IT WAS A
DESTINE FOR BUILT IN SOME
SORT OF APPEAL WITH RESPECT
TO IF YOU DIDN'T DOT YOURIs
AND CROSS YOUR Ts WITH HOW
YOU WOULD SET THAT UP.
THAT'S THE REASON THAT THE
COMMITTEE PASSED ON THAT.

>> OKAY.

>> THANK YOU.

>> JUDGE BATEMAN DID YOU
FINISH ALL OF YOUR?

>> THE CRIMINAL RULES
COMMITTEE -- HAS A LOT OF
DISCUSSION ABOUT THIS.

IN THE SUBCOMMITTEE A RULE
WAS RECOMMENDED THAT
SAID -- BECAUSE THERE
ALREADY IS A RULE 410 THAT
DOES EXIST THAT SAID THE
COURT MAY GIVE ADDITIONAL
INSTRUCTIONS.

BUT WHAT THE SUBCOMMITTEE
RECOMMEND -- RECOMMENDED WAS
AFTER CONSIDERATION OF ANY
REQUEST THE COURT MAY DO IT
IF THE COURT DENIES A
REQUEST, TO HAVE THE
TESTIMONY READ TOO THE
INJURY THE COURT SHOULD

ARTICULATE WHY THAT IS THE
CASE THIS WAS DEFEATED BY A
VOTE OF 9-14.

14-9.

BUT THOSE THAT WERE IN FAVOR
OF IT SUGGESTED THAT THE
LANGUAGE THAT WAS PROPOSED
BY THE SUBCOMMITTEE IS
CONSISTENT WITH THIS COURT'S
CASE IN STATE vs.S LEWIS
WHICH SAYS IT WAS
PERMISSIBLE TO INFORM THE
JUROR -- JURY ABOUT THE
PROCEDURES.

THE COMMITTEE DIDN'T
RECOMMEND THE RULE, BUT WE
DID RECOGNIZE THAT THERE
WAS -- THERE MAY BE
SOME -- THAT AT LEAST ONE OF
THE COURT CASE OUT THERE
SAYING IT WAS PERMISSIBLE.

>> IN OTHER WORDS THE
COMMITTEE WOULD JUST KEEP
WHAT WE'VE GOT.

>> YES.

JUDGE ARTIGLIERE.

THE STANDARD COURT COMMITTEE
WANTS STANDARD.

THEY WANT THAT AVAILABLE TO
DO.

FINAL INSTRUCTION BEFORE
CLOSING WE SUPPORT THAT.

AND WE ESPECIALLY
THING -- THINK THAT WRITTEN
JURY INSTRUCTIONS ARE
IMPORTANT IF YOU ALLOW FINAL
ARGUMENT BEFORE A CLOSING.
BECAUSE THEN YOU COMPLETELY
ALLEVIATE THE ARGUMENT OF
THE LAWYER HAVING THE LAST
WORD.

YOU GIVE THE
WRITTENING -- INSTRUCTION AS
WELL AS ADDITIONAL
INSTRUCTION AFTERWARD.

>> YOU WOULD DO THAT ON A
DISCRETIONARY BASIS;
CORRECT?

>> I WOULD DO IT ON A
DISCRETIONARY

DISCRETIONARY -- DISCRETIONARY
BASIS WITH THE JUDGE.

I THINK I WOULD SAY YOU
SHOULD STRONGLY ENCOURAGE

IT.

IT'S SOMETHING WE TEACH
BECAUSE THE SOONER THEY GET
IT THE MORE THE JURY GETS
THAT AT TILE.

LIKE JUDGE ETAN AND JUDGE
BAY -- BATEMAN I GIVE AS
MANY AT THE BEGINNING OF THE
TRIAL NOT JUST AT CLOSING
ARGUMENT.

WE TEACH THAT IT MAY BE A
JUDICIAL EDUCATION THING.

AS FAR AS ANSWERS TO
DELIBERATING QUESTIONS AND
READ BACK OF TESTIMONY OUR
COMMITTEES WILL EVIEW SOME
LANGUAGE.

IT'S NOT A -- ESTABLISHING
STANDARDS FOR WHEN YOU
WOULDN'T AND WOULDN'T DO IT.
IT GIVES MORE FLEXIBILITY.

WE TALK ABOUT THE SAME
THINGS I THINK YOU WOULD
CONSIDER LIKE THE LENGTH OF
THE TESTIMONY AND HOW HARD
IT WOULD BE TO GET THE COPY
AND HOW YOU WILL GIVE IT TO
THE JURY AND SO FORTH.

AS FAR AS POST VERDICT
DISCUSSIONS OR CONCERNS,
THAT'S A MATTER THAT'S
ALREADY HANDLED IN YOUR
APPROVED INSTRUCTION 7.4 AND
MOST JUDGES NOW ARE -- WERE
TAUGHT TO GIVE THEM A
WRITTEN COPY OF IT.

SO THAT THEY'VE GOT -- THEY
KNOW WHO THEY CAN TALK TO
AND NOT TALK AND THEY CAN
ACTUALLY REFER TO IT IF
SOMEONE CALLS THEM UP AND
THEY SAY THE JUDGE TOLD ME I
DIDN'T HAVE TO ANSWER THIS.
THE MOST IMPORTANT THING TO
TO YOU ABOUT IS JUROR
IMPASSE.

OUR COMMITTEE OPPOSES THE
INVOLVEMENT IN THE JUDGE IN
TRYING TO COERCE OR COAX,
EVEN COAX A VERDICT OUT OF
THE JURY.

THERE'S A LONG NUMBER OF
CASES THAT WOULD REALLY
PREVENT US FROM DOING THAT.

THAT'S A VERY TOUCHY AREA.
WE HAVE, HOWEVER, RECENTLY
AND WE SUBMITTED TO YOU A
NEW VERSION IN PLAIN ENGLISH
WHICH WE HOPE WILL BE A
BETTER 7.3 ALLEN KIND OF
CHARGE INSTRUCTION WHICH IS
IN YOUR MATERIALS.

WE SUBMIT THAT.
WE KIND OF NEED TO KNOW
WHETHER YOU WANT US TO GO TO
THE PUBLIC ROUTE ON THAT OR
WHETHER IT'S OKAY TO GO
THROUGH THIS PROCESS ON IT.
WE HAVE SUBMITTED TO YOU AND
IT'S BEEN SENT OUT.

OKAY.
THANK YOU VERY MUCH.
JUDGE ETAN, ANY FINAL
COMMENTS ON ANY OF THESE?
>> WE ARE GIVING YOU UP AND
DOWN WITH THE NEW KNEES.
I HOPE WE HAVEN'T IMPOSED ON
YOU TOO MUCH.

GOOD, GOOD, GOOD.
IN CONCLUSION ON BEHALF OF
THE ENTIRE COURT, LET ME
THANK ALL OF YOU FOR YOUR
HARD WORK AND EFFORTS ON
THIS.

YOU KNOW, AS WE LOOK OUT WE
SEE THE FACES THAT WE KNOW
DO THE HARD WORK.

AND WE THANK ALL OF YOU.
WE KNOW WHO WE CAN
COUNT -- COUNT ON AND THE
PEOPLE OF FLORIDA ARE
ENDEBTED TO YOUR.

EACH DAY YOU TRY TO MAKE
THIS A BETTER SYSTEM.
THAT'S WHAT THIS IS ALL
ABOUT.

YOU'VE COME FROM YOUR
PRACTICES AND COURTROOMS AND
COME FROM ALL OVER THE SAID.
WE GREATLY APPRECIATE
EVERYTHING THAT YOU DO FOR
IT -- FOR US.

WE WILL CONCLUDE THE FIRST
CASE.

AND MOVE TO THE SECOND.
AND MOVE TO OUR SECOND CASE.
OR THE THIRD CASE I GUESS IS
WHAT IT WILL BE.

THANK YOU VERY MUCH.
THE NEXT CASE ON OUR
CALENDAR THIS MORNING IS
SPEEDWAY SUPERAMERICA vs.
DUPONT.
THEY DID SIGN IN,
MR. MARSHAL; CORRECT?
>> COUNSEL FOR THE THIRD
CASE DID SIGN IN.
WE WILL TAKE A SHORT BREAK.
SHORTLY CREST AND SEE IF YOU
CAN LOCATE COUNSEL ON THE
THIRD CASE.
PLEASE.