MINNESOTA JUDICIAL TRAINING UPDATE

CRIMINAL PRE-TRIAL CHECKLIST

ATTACHED IS A CRIMINAL PRE-TRIAL CHECKLIST THAT JUDGES CAN USE TO DISCUSS PROCEDURAL, SUBSTANTIVE AND EVIDENTIARY ISSUES WITH ATTORNEYS IN CHAMBERS PRIOR TO COMMENCEMENT OF TRIAL.

1) Whether you handle the Pre-Trial Checklist in a formal or informal manner is a matter of personal style – as long as key rulings or decisions are, at some point, put on the record outside the hearing of the jury but in the presence of the defendant.

2) BENEFITS OF USING A PRE-TRIAL CHECKLIST:

a) Lets attorneys know that you are prepared and that you expect them to be prepared;
b) Establishes judicial control and your expectation that the trial will be conducted efficiently and fairly with minimal delays or disruptions;
c) Establishes judicial credibility, allows you to set the rules for trial and your expectations of the attorneys;
d) Identify potential problem areas so you can start preparing for them before they actually become problems;
e) Using the Checklist can reduce the risk of appeals or remands;

3) The attached Pre-Trial Checklist is part of a "CRIMINAL JURY TRIAL MANUAL" designed as a "Step By Step Guide – From Beginning of Trial Through the Return of Verdict". Copies are available on request.

Hon. Alan F. Pendleton, Anoka County District Court, Anoka, MN 55303; 763-422-7309

PRE-TRIAL CHECKLIST

NOTE: Attorneys for both sides should be prepared to discuss the following in chambers before trial. All rulings and decisions will be subsequently placed on the record outside the hearing of the jury but in the presence of the defendant. The Court may distribute copies of the following checklist to the attorneys prior to commencement of trial.

BEFORE TRIAL – IN CHAMBERS:

1. SCHEDULING:

a) Anticipated Length Of Trial;

b) Time Conflicts (Attorneys And Witnesses).

2. WITNESS LISTS:

a) Court Needs Master List To Read To Jurors;

b) Need For Interpreter (Defendant And/Or Witness).

i) CrimJig 2.05; Under oath, qualifications, equipment, logistics;
ii) See Bench Card from Mn Court Interpreter Program for issues to address.

3. SEQUESTRATION (WITNESS AND JURY):

a) Make Record Of Defendant's Request To Sequester Witnesses And/Or Jurors. Mn.R.Crim.Pro.26.03 Subd 8 (Witnesses); And 26.03 Subd 5 (3) (Jurors); MRE 615; Sequestration Is At Court's Discretion;

i) Attorneys' responsibility to notify and monitor their own witnesses (keep track of who is in the Courtroom);
ii) VIOLATIONS? Record must reflect that statements made in violation of a sequestration order were made in an attempt to influence the testimony of other

witnesses or that the statements did influence the testimony of other witnesses before the trial Court need even consider it as grounds for a new trial. Prejudice resulting from violation of a sequestration order must be shown. State v. Johnson, 324 N.W.2d 199, 201 (Minn. 1982); State v. Bergland, 202 N.W.2d 223 (1972).

b) **Case Agent Exception – Minn.Rule.Evid 615:** Investigators, Agents Or Experts Involved In The Case Essential To Advising Counsel During Trial May Be Present.

4. JURY INSTRUCTIONS – PRELIMINARY DISCUSSIONS:

a) CrimJig 1.01 Delete Phrase "Or Because Defendant Has Been Arrested";

i) In cases where defendant was never arrested.

b) Court's Preliminary Instructions Displayed On Display Monitors;

i) In cases where you have an Electronic Courtroom?

c) Anticipated Cautionary Instructions;

i) Cautionary Instructions are a significant factor in determining whether there should be a mistrial. State v. Robinson, 604 N.W.2d 355, 361 (Minn. 2000).

ii) Generally if defendant fails to request, cannot raise issue on appeal, Id. HOWEVER, failure to instruct could result in plain error and create an appeal issue.

iii) Better practice is for trial court sua sponte to give a cautionary instruction. See State v. Roman Nose, 667 N.W.2d 386 (Minn. 2003).

iv) See Training Update 11-2: 15 Most Common Cautionary Instructions.

d) Accomplice Testimony Instruction;

i) Accomplice instruction must be given in any criminal case where a witness against the defendant might reasonably be considered an accomplice because the credibility of an accomplice is inherently untrustworthy.

ii) The instruction must be given regardless of whether the defendant requests it. State v. Lee, 683 N.W.2d 309 (Minn. 2004).

e) Anticipated "Lesser-Included Offense" Instruction;

i) May be reversible error to fail to instruct on a lesser-included offense. State v. Dahlin, 695 N.W.2d 588 (Minn 2005);

ii) Three-Part Analysis:

(1) Lesser offense is included in charged offense;

(2) Rationale basis to acquit on charged offense;

(3) Rationale basis to convict on lesser offense.

iii) Defendant must request it or it is waived, except for homicide;

iv) Court cannot make credibility determinations or weigh the evidence. Must view evidence in light most favorable to party requesting the lesser offense;

v) Failure to instruct – Reversible Error.

5. CHARGES AND ARRAIGNMENT:

a) Confirm Charges And Verify Statutory Citations – Any Amendments;

b) Confirm Defendant Previously Arraigned And Pled "Not Guilty"

6. STIPULATIONS AND/OR ADMISSIONS:

a) Testimonial – Stipulated facts agreed to by both parties to be read to the jury, perhaps to avoid the necessity of calling a certain witness;

b) **Evidentiary** – Such as stipulation to element of the offense; For example: prior conviction for enhancement purposes. See Update 11-5: Common Judicial Mistake is Failure to Obtain Defendant's Personal Waiver;

c) Foundation - Chain of Custody, etc.

7. JEOPARDY ATTACHES ONCE JURY IS SWORN:

a) **Trial Will Go Forward Even If Defendant Is Late Or Fails To Appear.** Mn.R.Crim.Pro. 26.03 Subd 1 (2).

8. DEFENDANT'S RIGHT NOT TO TESTIFY - PROPER RECORD:

a) The Decision To Testify Or Not Testify Should Be On The Record And Must Come Expressly From The Defendant, Not Defense Counsel, However:

i) State v. Walen, 563 N.W.2d 742 (Minn 1997): on the record colloquy with defendant who does not testify is NOT legally required (if no record made the presumption is that waiver was voluntary and intelligent – but in a post-conviction proceeding defendant can rebut that presumption). **RECOMMENDATION**: Putting waiver on record will save court and defense a lot of time at any post-conviction proceeding;

b) **Don't Give CrimJig 3.17 Unless Defendant (Not Defense Counsel) Personally Requests The Instruction.** Make a Clear Record of Defendant's Decision.

9. DISCOVERY ISSUES:

a) **Both Parties in Compliance And Nothing Pending.** See Mn.Rule.Crim.Pro. 9.01 And 9.02.

10. AFFIRMATIVE DEFENSES:

a) Is Defendant Raising Any Defense Other Than Not Guilty (e.g. Alibi, Self-Defense, Mental Illness, Entrapment, Intoxication, etc. Rule 9.02 (5);

b) Make A Clear Record, Especially In Misdemeanor Cases Since Rule 9.01 & 9.02 Apply Only To Gross Misdemeanor And Felony Cases;

c) Burden Of Proof v. Burden Of Initial Production.

i) For example: Entrapment, once defense is raised, defendant has initial burden of proving by a preponderance of the evidence inducement by government agents to commit the crime charged, whereupon the burden rests on the state to prove beyond a reasonable doubt predisposition by defendant to commit the offense.

11. SECURITY/CUSTODY ISSUES (IF DEFENDANT IN CUSTODY):

a) Defendant Must Not Be In Jail Clothing;

b) Defendant Must Not Be In Restraints Without A Public Hearing And Proper Findings; Minn Rule of Crim Pro 26.03, Subd.1 (2) 2 & 2 (c) dictates that restraints will not be used "unless the trial judge has found (on the record outside the presence of the jury) such restraint reasonably necessary to maintain order or security. The decision is within the discretion of the Court and will not be overturned absent an abuse of discretion The nonexclusive list of factors to be considered in making the decision of whether to restrain the defendant include the following:

(1) the seriousness of the charge; (2) the defendant's temperament and character; (3) the defendant's age and physical attributes; (4) the defendant's past record; (5) the defendant's prior escapes or attempted escapes; (6) threats made by the defendant to cause a disturbance; (7) the size and mood of the audience; (8) the nature and security of the courtroom; and (9) any less restrictive available alternatives.
State v. Chambers, 589 N.W.2d 466, 475 (Minn.1999); State v. Shoen, 578 N.W.2d 708, 713 (Minn. 1998); Judges Bench Book 1102.05; State v. Jones, 678 N.W.2d 1, (2004): Warning: the serious nature of the charges, the presumptive sentence of life in prison, and that this was the least restrictive means available WERE NOT sufficient findings.

c) **Cautionary Instruction (If Restraints Visible):** Rule 26.03, subd. 2d;
   i) "The Restraints Must Not Be Considered In Reaching The Verdict."

d) Use of Metal Detector, Wand, Etc.

12. USE OF WEAPONS/HAZARDOUS EXHIBITS DURING TRIAL:

a) Review "Anoka County Weapons/Hazardous Exhibits In The Courtroom Policy";

b) Must Notify Bailiff Before Bringing Weapon/Hazardous Exhibits Into Courtroom;

i) Note: Discuss the logistics of getting weapons into the courtroom, how to present and display them, how to check them for safety, the standard cautionary instruction, ESTABLISH GENERAL EXPECTATIONS.

13. WITNESS INCRIMINATION ISSUES:

a) Need For 5th Amendment Advisory;

i) For example: Potential uncharged co-defendant; recanting domestic abuse victim; accomplice; etc. Give advisory & consider appointing counsel to advise;

b) Have Witness Orally Waive and Sign Written Waiver of 5th Amendment;

c) Granting of Prosecutorial Immunity;

i) A device whereby prosecutor may give up the right to prosecute an individual in exchange for the right to compel that individual to testify against others. COMMON MISUNDERSTANDING: The prosecution offers immunity to a witness but only the Court can grant immunity. M.S 609.09;

ii) A witness may be held in contempt for failing to answer in accordance with an order granting immunity. The Court may then commit the person to jail, impose a fine or both, all at the discretion of the Court. M.S. 588.04 & 609.09, Subd 1.

14. OPENING STATEMENT:

a) Defense Attorney: Give It After The State Or Reserve It;

b) Signs Not To Enter During Opening And Closing – Any Objection.

15. EXHIBITS:

a) Premark Exhibits (State 1 To _____; Defense _____ To _____);

b) Have Attorneys Provide Exhibit Lists To Court And Opposing Counsel; Have All Exhibits Been Examined By Opposing Counsel;

c) Stipulations and/or Objections Regarding Foundation;

i) Foundation Objection – Be Prepared To State Where Foundation Is Lacking,

ii) Requests To Voir Dire Witness To Lay Foundation For Objection;

(a) Enforcement: Court will intervene Sua Sponte if attorney exceeds scope;

d) Use Of Technology During Trial (PowerPoint, Overhead Projector, DVD, Audio Playback, etc;

e) Location During Trial and After Admission (Offer, Receive, Give To Court);

i) After Use, Put Exhibit Away;

ii) Once Received, Exhibit Is Under Control Of Court Clerk.

16. COMPETENCY OF CHILD WITNESSES – SAMPLE QUESTIONS:

a) Examination May Be In Chambers; On The Record; Defendant Present; Kentucky v. Stincer, 482 U.S. 730 (1987); MS 595.02, Subd 4;

(1) Name, How old are you?
(2) When is your birthday; What do you remember about it?
(3) Do you go to school; what school; what grade; teacher's name; favorite class?
(4) Can you read; What do you read?
(5) Do you watch TV; What type of shows do you watch?
(6) Watch TV shows with Judges and lawyers; know what judges and lawyers do?
(7) Ever see people in those shows raise their hands and promise to tell the truth?
(8) Know what it means to tell the truth; Explain (e.g. I am a boy/girl – truth or lie)?
(9) Know what it means to tell a lie; Explain (e.g. You are a boy/girl – truth or lie)?
(10) Have you ever told a lie before; Did you get into trouble?
(11) What happens if you tell a lie at home, at school, to policeman, in court?
(12) Do you think it is ever ok to lie?
(13) Purpose of oath to tell the truth?
(14) If I ask you to tell the truth will you do that?
(15) With your promise to tell the truth, that means not to hide anything, understand?
(16) You have to tell everything you remember when asked a question, understand?
(17) **NOTE**: make a record of the child's conduct, not just what is said.

17. PROSECUTORIAL MISCONDUCT:

a) **See Training Update 10-14:** Attorney Handout on "Prosecutorial Misconduct"; Discuss Guidelines and Potential Problem Areas;

b) **Supreme Court Quote:** "Reducing The Incidence Of Prosecutorial Misconduct Is A Shared Obligation And Trial Courts Have A Duty To Intervene And Caution The Prosecutor, Even In The Absence Of Objection". State v. Ramey, 721 N.W.2d 294 (Minn. 2007).

18. MOTIONS IN LIMINE AND OTHER TRIAL EVIDENTIARY ISSUES:

a) IMPEACHMENT - PRIOR CONVICTIONS: Rule 609 - prove by other than certified copies of court records. See State v.Griffen, 336 N.W.2d 519 (Minn. 1983); Bench Book #1511.06; need for cautionary instruction. State v. Bissell, 368 N.W.2d 281 (Minn. 1985); State v. Jones, 271 N.W.2d 534 (Minn. 1978);

i) See Minnesota Judicial Training Update 11-14: Impeachment – Prior Felony Conviction; (Re: Use of Unspecified Felonies);

ii) State v. Jones 5-Factor Analysis:

(1) Impeachment value of the prior conviction;

(2) Date of conviction and defendant's subsequent history;

(3) Similarity of prior conviction with the charged crime;

(4) The importance of the defendant's testimony; and

(5) The centrality of the credibility issue.

b) SPREIGL EVIDENCE: Other crimes\bad acts, Mn Rule of Crim Pro 7.01 and Mn.Rule.Evid 404b; Judges Bench Book #1401.03; State v. Ness, 707 N.W.2d 676, 685-86 (Minn. 2006); Note: prior acts of domestic abuse, see MS 634.20.

Spreigl Evidence: Another term for evidence referred to in Minn. R. Evid. 404(b): Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The Supreme Court (State v. Ness) Has Developed a Five-Step Process to Determine Whether to Admit Other-Acts Evidence. The 5 Steps Are:

(1) The State Must Give Notice Of Its Intent To Admit The Evidence;
The notice requirement has been incorporated into Minn. R.Crim. P. 7.02;

(2) The State Must Clearly Indicate What The Evidence Will Be Offered To Prove;
Proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, See Rule of Crim Pro 404b;

(3) There Must Be Clear And Convincing Evidence That The Defendant Participated In The Prior Act;
A defendant's participation in a Spreigl incident may be considered clear and convincing when it is highly probable that the facts sought to be admitted are truthful. State v. Kennedy, 585 N.W.2d 385 at 389 (Minn. 1998);

(4) The Evidence Must Be Relevant And Material To The State's Case;
District Court must identify the precise disputed fact to which Spreigl evidence would be relevant. Angus v. State, 695 N.W.2d 109, 120. This entails isolating the consequential fact for which the evidence is offered, and then determining the relationship of the offered evidence to that fact and the relationship of the consequential fact to the disputed issues in the case;

(5) The Probative Value Of The Evidence Must Not Be Outweighed By Its Potential Prejudice;
The prosecution's need for other-acts evidence should be addressed in balancing probative value against potential prejudice, not as an independent necessity requirement, which has become a shibboleth. Henceforth, Courts should address the need for *Spreigl* evidence in the context of balancing the probative value of the evidence against its potential for unfair prejudice. Ness at 690.

Note: Proving Spreigl: Admission of other-crimes evidence through:

a) Live testimony;
b) Factual admissions in a guilty plea;
c) Stipulation of the parties; State v. Wright, 719 N.W.2d 910 (Minn. 2006);

Note: There used to be an independent "necessity" requirement for the admission of *Spreigl* evidence, focusing on the relative strength of the state's case. In State v. Ness, 707 N.W.2d 676, 685-86 (Minn. 2006) the Court eliminated this as a separate requirement and instead requires Courts to address the state's need in the overall balancing test;

Note: If admission of evidence of other crimes/misconduct is a close call, it should be excluded. Ness at 686;

Supreme Court Caution: The District Court should not simply take the prosecution's stated purposes for the admission of other-acts evidence at face value. Instead, the Court "should follow the clear wording of Rule 404(b) and look to the real purpose for which the evidence is offered," and ensure that the purpose is one of the permitted exceptions to the rule's general exclusion of other-acts evidence. State v. Frisinger, 484 N.W.2d 27, 32 (Minn. 1992). Only after such an examination is completed should the Court balance the probative value of the evidence against its potential to be unfairly prejudicial. State v. Ness at 686.

Possible Purposes For "Other-Acts" Evidence And Case Law Guidance

1. Motive

Motive concerns external facts that create a desire in someone to do something, whereas intent is a state of mind in which an act is done consciously, with purpose. Minn Stat. § 609.02, subd. 9(3) (2004)(defining criminal intent). Often times the state will conflate the issue of motive, which is not an element of the crime, with intent, which clearly is an element.

2. Intent

Other-acts evidence may help to prove the element of intent, State v. Hennuksela, 452 N.W.2d 668, 679 (Minn. 1990), but the admission of such evidence under this exception requires an analysis of the kind of intent required and the extent to which it is a disputed issue in the case.

3. Common Scheme Or Plan

In determining whether a bad act is admissible under the common scheme or plan exception, it must have a marked similarity in modus operandi to the charged offense. State v. Ness, at 668.

4. Questions About Remoteness Of Prior Bad Act

The District Court, when confronted with an arguably stale *Spreigl* incident, should employ a balancing process as to time, place, and modus operandi: the more distant the *Spreigl* act is in terms of time, the greater the similarities as to place and modus operandi must be to retain relevance. State v. Washington, 693 N.W.2d, 195, 201 (2005).

(C) HEARSAY: (Rule 803 & 804) **AND AUTHENTICATION ISSUES** (Rule 901 & 902):

1. **Admissibility of out-of-court statements under Crawford v. Washington, 124 S. Ct. 1354 (2004);** See Minnesota Judicial Training Update 10-8;

2. **Admissibility of out-of-court statements under the Residual Hearsay Exception Rule.** See Judicial Training Update 10-12: Minn. R. of Evid. 807.

(D) CHARACTER EVIDENCE: (Rule 404 to 407 & 608)

(E) EXPERTS AND LAY WITNESS OPINIONS: (Rule 7.01 and 7.02)

(F) RULE 403: Overly Prejudicial Analysis

(G) OTHER UNUSUAL EVIDENTIARY ISSUES:

APPENDICES: MINNESOTA JUDICIAL TRAINING UPDATES:

TRIAL AND EVIDENTIARY ISSUES:

Update10-6: Courtroom Closure: Full or Partial Exclusions
Update 10-8: Determining Admissibility of Hearsay (Crawford vs. Washington)
Update 10-10: Jury Selection 'Batson' Challenge
Update 10-12: Residual Hearsay Exception Rule: Minn. R. Of Evid. 807
Update 10-13 Battered Woman Syndrome
Update 10-14: Prosecutorial Misconduct
Update 11-1: Motion for Judgment of Acquittal – Ten Basic Facts
Update 11-2: Cautionary Jury Instructions During Trial
Update 11-3: Judicial Guidelines for Voir Dire
Update 11-4: Criminal Voir Dire Questions Asked By The Court
Update 11-14: Impeachment – Prior Felony Conviction
Update 11-16: Defendants Pre-Miranda Silence: Admissible or Not Admissible.

19) VOIR DIRE PROCEDURES AND GUIDELINES:

Attorneys should be familiar with the Minnesota Supreme Court Jury Task Force "Final Report" issued on Dec. 20, 2001 including Appendix E of that report, *"Voir Dire: A Trial Judge's View," Hon. Gordon Shumaker.*

A) Method Of Selection; Number Of Jurors And Selection of Alternates;

1) Rule 26.02 subd 4(3); 3 options: preferred method; alternative method; 1st degree murder; Alternate is generally the last juror selected**;**

2) Number of peremptory strikes (State gets 3; Defense gets 5).
i. Life imprisonment cases: Rule 26.02 subd 6: State = 9; Defense = 15.

3) MULTIPLE DEFENDANTS (Rule 26.02, subd 6) get a total of 5 unless the Court increases that number and then allows defendants to exercise them separately or jointly, which has the net result of reducing the number of peremptories per defendant but increases the number available to the prosecution (if you increase the total defense number you must also increase the prosecution number).

B) Challenge for Cause Procedure, See Judicial Training Update 11-3:

1) Has bias or prejudice been shown? Rule 26.02, subd 5(1), willing & able to be neutral, open-minded and fair; able to set aside impressions and opinions;
i. State v. Logan, 535 N.W.2d 320 (Minn. 1995), district court erred by denying challenge for cause "because the juror did not swear that he could set aside any opinion he might hold and decide the case on the evidence but only that he would try?

2) What procedure should attorneys follow? State Challenge in open court or approach bench; rehabilitation?

C) Batson Challenge, See Judicial Training Update 10-10:

1) THE BATSON RULE: Neither the state nor the defendant may make peremptory challenges that are racially motivated. Purported racial discrimination in jury selection violates defendant's and juror's right to equal protection of the laws.

2) CAUTION: If the Court erroneously denies a defendant's Batson challenge, defendant is automatically entitled to a new trial! Although federal law does not require automatic reversal, MN has adopted a more restrictive rule mandating 'automatic reversal'. State v. Campbell, 772 N.W.2d 858 (Mn App. 2009).

D) Use of Jury Questionnaire, Rule 26.02 subd. 2(3):

1) On request or on courts own initiative may order use of questionnaire as a supplement to Voir Dire. Rule 26.02 subd 2(3); Ct must approve it; Keep it simple and short; Discuss Procedure and preliminary instruction to jury. See Judge Pendleton's Jury Trial Manual; Use For: Pre-Trial Publicity; Juror Privacy Issues; Juror Security or Safety Issues; To Streamline Jury Selection.

E) **Voir Dire Questions To Be Asked By Court,** See Training Update 11-4:

1) Task Force Recommends Judges Be More Proactive In Asking Initial Questions To The Jury Panel;

2) Juror Privacy: for sensitive or embarrassing questions, the Court may respect a juror's privacy considerations and exclude the public from Voir Dire (See Rule 26.02 subd. 4 (4) (b) & Rule 26.03 subd. (6), BUT defendant must be present unless his presence is waived; follow procedure and make proper record;

3) Review questions the attorneys would like the Court to ask.

F) **Supreme Court Guidelines For Voir Dire and Attorney Handout of Improper Voir Dire Examples,** See Judicial Training Update 11-3:

1) Review Judicial Guidelines; Analyze Attorney Questions; Use Attorney Handout;

2) Stress the Judicial Golden Rule! "Attorneys Are Entitled To Receive Information From Potential Jurors; Attorneys Are Not Entitled To Give Information About The Facts or the Law."

G) Time Limits:

1) Time limits during Voir Dire are authorized by law but should be used carefully. Supreme Court Task Force Report, Rec. #14;

2) 5 Steps To Follow: 1) Establish An Actual Need; 2) Give Several Warnings; 3) Set Reasonable Time Limits; 4) Grant Reasonable Extensions; 5) Avoid Inappropriate Judicial Comments in Presence of Jury.

20) TRIAL GROUND RULES:

a) **TRIAL SCHEDULE**: Start at 9:00am; lunch noon to 1:30; end at 4:30 or 5:00; one mid-morning and one mid-afternoon break (15 to 20 minutes). Motions and hearings outside presence of jurors at 8:30, 1:00pm or 4:30pm;

b) **STANDING AND SITTING:** Stand when the jury enters and leaves (and when sworn); Sit for questioning and objections;

c) **OPENING STATEMENTS:** Defense opening statement – give after State's opening or reserve until after State rests? Obtain prior Court approval of any exhibits to be used. State the facts to be proved. Do not argue.

d) **OBJECTIONS:** Do not use speaking objections; State the objection, the legal basis for it and wait for a ruling. No further argument unless requested by the Court. Foundation objection – be prepared to state (if asked) where foundation is lacking;

e) **QUESTIONING WITNESSES:** Do not testify (but leading questions for preliminary or non-contested facts permissible). Do not instruct the witnesses how to answer the question. Do not editorialize or repeat the answers. Do not use 1st names of witnesses;

f) **APPROACHING WITNESSES:** One request to approach your own witness is sufficient. If witness is hostile, ask each time. Do not loiter by witness;

g) **CLOSING ARGUMENTS:** Be professional: Remember, the capacity of the mind is limited by the seat's ability to endure;

h) **BENCH CONFERENCES - KEEP TO A MINIMUM:** Bench conferences only if necessary (use of white noise); all bench conferences will be recorded real time (if possible) otherwise a record will be made at the next break. Anticipate and raise potential problems ahead of time (see Motions In Limine section).

DECORUM. The Court will require full compliance with the General Rules of Practice for the District Courts. See Title I, Rule 2. Court Decorum, Conduct of Judges and Lawyers.

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