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April 1, 2008

Memo to the SCAC

Re: Plain language revisions to Rule 226a and other rules

To summarize what we have done, the PJC Oversight Committee tested juror comprehension of one set of pattern jury charges and found that our instructions need some work. Oversight started with Rule 226a and attempted to make those instructions more understandable. In addition we polled the district judges via email to see if they thought the instructions needed to be plainer and found a lot of support for that. We presented a draft of the rule to the SCAC on 10/19/07. There was some resistance to any change at all and I asked Justice Hecht if this was something that the Supreme Court wanted us to continue working on, in light of the opposition. He indicated that the Supreme Court wanted us to continue working on the issue.

On 10/19/07, we discussed only the items that were new or that we considered a significant change rather than going line by line.

The following is a summary of what took place at the last meeting:

1. SCAC recommended that we rework the section on bias or prejudice-our committee is still working on this.
2. SCAC recommended that we delete contempt at the first part of the instructions but keep it in the second half-Florida's instruction attached for reconsideration, p. 7.
3. SCAC recommended a rewrite and emphasis on cell phone and internet usage-new draft attached, p. 8-12

4. SCAC recommended a change to preponderance of the evidence to include the more likely than not standard-new draft attached, p. 13.
5. SCAC agrees that the signature page is still confusing-our committee is still working on this.

The following are new items that we did not discuss last time that I would like to discuss this time and then go back to the new drafts. I have attached the previous drafts of the new items.

1. Juror note taking, p.3.
2. Interpreter instruction, p.4.
3. Jury panel oath and juror oath, p.5
4. Direct and indirect evidence, p.6

Once we have discussed all of the new concepts, we will return with a final plain language draft for review.

Proposed New 226a(V) /PJC 100.11
Optional Instructions on Jurors' Note-Taking

During the trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use and may be taken back into the jury room and consulted during deliberations. Do not take your notes out of the courtroom. Do not share your notes with other jurors. Do not rely on another juror's notes.

Proposed New 226a(VI)/PJC 100.13 Instruction

Instructions to the jury on language interpreters

Note: The Committee decided not to include an instruction that requires a juror to inform the judge if the juror disagrees with the official interpretation.

During this trial, one or more witnesses or documents may be introduced in another language and interpreted into English. The interpreter has been certified by the State of Texas and has sworn to truly and wholly interpret into English the evidence given in this case. You may have special knowledge of the language being interpreted. But do not rely on your special knowledge and do not tell any other jurors any of your special knowledge. The official testimony of the witness or document is the English interpretation, and you must rely on the official interpretation personally and in your discussions with other jurors. Do not tell any of the other jurors if your own interpretation differs from the official interpretation.

Proposed Texas Rule of Civil Procedure 226
Jury panel's oath

Before the parties or their lawyers begin asking questions of those on the jury panel, the judge, or someone acting under the judge's direction, must swear in the panel members in substance as follows:

Do you swear or affirm that you will truthfully answer all questions asked of you concerning your qualifications as a juror, so help you God?

Current version of the oath:

You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God?

Proposed Texas Rule of Civil Procedure 236
Juror's oath

The judge, or someone acting under the judge's direction, must swear in the jurors in substance as follows:

Do you swear or affirm that you will render a true verdict, according to the law and the evidence, so help you God?

Current version of the oath:

You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in the charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.

Current version of circumstantial evidence:

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Proposed PJC 100.8
Direct and indirect evidence

During this trial, you may have heard two kinds of evidence. They are direct evidence and indirect evidence.

Direct evidence means a fact was proved by a document, by an item, or by testimony from a witness who heard or saw the fact directly.

Indirect evidence means the circumstances reasonably suggest the fact. Indirect evidence means that based on the evidence, you can conclude the fact is true. Indirect evidence is also called "circumstantial evidence."

For example, suppose a witness was outside and saw that it was raining. The witness could testify that it was raining, and this would be direct evidence. Now suppose the witness was inside a building and the witness testified that people walked into the building with wet umbrellas. This could prove by indirect evidence that it was raining outside.

A fact may be proved by direct evidence or by indirect evidence or by both.

April 1, 2008 Draft to review for reconsideration of Criminal penalties

Florida 1.0 PRELIMINARY VOIR DIRE INSTRUCTION

The attorneys and I will now ask you questions to help us select jurors for this case. We want to know if some personal experience or special knowledge might influence your decision. We also want to know if your personal opinions might affect your decision. Please understand that these questions are not meant to embarrass you or to pry into your personal affairs. People often have strong feelings that they may be reluctant to disclose, but you have sworn in this case to answer all questions truthfully and completely and you must do so. If you do not understand a question, raise your hand or ask for an explanation. Remaining silent when you have information to disclose is as much a violation of your oath as making a false statement. A violation of your oath to tell the whole truth would be very serious and could result in civil and criminal penalties against you.

Admonitory Instruction Subcommittee
PJC Oversight Committee

Report to Supreme Court Advisory Committee
On Plain Language Rewrite of Admonitory Instructions

Draft of March 2, 2008

On use of cell phones, electronic communication, investigation

Proposed Texas Rule of Civil Procedure 226a(II) (PJC 100.2)
Instructions for the jury after it has been selected

Members of the Jury [*or* Ladies and Gentlemen]: You have been chosen to serve on this jury. Because of the oath you have taken and your selection for the jury, you become active participants in our justice system.

[hand out the written instructions]

You have received a set of written instructions. I am going to read them with you now. Some of them you have heard before, and some are new.

1. It is your duty to listen to and consider the evidence and to determine fact issues that I will submit to you at the end of trial.
2. Turn off all mobile phones and electronic devices, and keep them turned off during all court proceedings and jury deliberations. Do not communicate with anyone electronically during court proceedings and jury deliberations. I will give you a telephone number where others may contact you in case of an emergency. Do not record or photograph any part of these court proceedings, as it is prohibited by law.
3. Please remember what I said about not mingling with those involved in this case, not accepting favors from those involved with this case, and not discussing the case with anyone. We ask you not to mingle or accept favors to avoid looking like you are friendly with one side of the case. We ask you not to discuss the case with others because we do not want you to be influenced by something other than the evidence presented in court.

Comment [AWA1]: Jane Bland
comment ????

Comment [AWA2]: Discussed at
length SCAC 10/18/07

4. Please do not talk about the case with anyone during the trial. You will discuss this case with other jurors only after I have given you the final instructions and sent you to the jury room to reach a verdict. This will be after you have heard all the evidence, all my instructions, and all the lawyers' arguments. We ask you not to discuss the case with your fellow jurors until the end of the case so that you do not form opinions about the case before you have heard everything.
5. Please do not investigate or research this case on your own. Do not use the Internet to learn about any aspect of this case. Do not inspect places or items from this case unless they are presented as evidence in court. Do not let anyone do those things for you. This rule is very important because we cannot have a trial based on evidence not presented in open court. Your conclusions about this case must be based only on what you see and hear in this courtroom. All the evidence must be presented in open court so the parties and their lawyers can test it and object to it. For example:
 - Do not try to get information about the case from outside this courtroom.
 - Do not go to places mentioned in the case to inspect the places for yourself.
 - Do not look things up on the Internet, in law books, dictionaries, or public records.

These rules are very important. If a juror does any of these things, tell that person to stop and report it to me immediately.

6. Do not tell other jurors your own experiences or other people's experiences. For example, you may have special knowledge of something in the case, such as business, technical, or professional information. You may even have expert knowledge or opinions, or you may know what happened in this case or another similar case. But keep it to yourself. Telling other jurors about it is wrong because it means the jury will be considering things that are not presented in court.
7. Do not consider attorneys' fees unless I tell you to. Do not guess about attorneys' fees.
8. Do not consider insurance or who might be covered by insurance unless I tell you to. Do not guess about who might or might not be covered by insurance.

Do you understand these instructions? If you do not, please tell me now.

After you have heard all the evidence, I will give you instructions to follow as you make your decision. The instructions also will have questions for you to answer. You will not be asked which side should win, so do not be concerned about that. Instead, you will need to answer the specific questions I give you.

As I have said before, if you do not follow these instructions, I may have to order a new trial and start this process over again.

Please keep these instructions and review them as we go through this case. If anyone does not follow these instructions, tell me.

Proposed Texas Rule of Civil Procedure 226a(III) (PJC 100.3)
General Instructions to the jury before answering the questions and reaching a verdict

Members of the Jury [*or* Ladies & Gentlemen]: You are about to go to the jury room to reach a verdict. This means you will answer the questions I will give you.

Remember: You are to make up your own minds about the facts. You are the only judges of the credibility of the witnesses and the weight to give their testimony. But on matters of the law, you must follow the instructions I have given you before and those I will give you now. Please remember what I said about not discussing the case until you are in the jury room.

In just a moment I will be giving you a set of questions. Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on what was presented in court and on the law I explain to you. Please remember what I have said about not sharing your own special knowledge or experiences. This case must be decided only on the facts presented in court and on the law I give you.
3. Please remember to turn off your mobile phones and other electronic devices during deliberations. Although you may use them during breaks in deliberations, do not ever use them to research the facts of this case or look up something that you do not understand in my instructions to you. Remember that you have promised not to investigate or research this case on your own at any time during these proceedings.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. If you have a question about the instructions, you may write down your question and give it to the bailiff, who will give it to me.
6. All the questions and answers are important. No one should say that any question or answer is not important.
7.

Proposed PJC 100.6
Instructions if permitted to separate

During this trial, you will be allowed to separate from each other in the evening.

I remind you of the rules I explained before: Do not discuss this case with anyone, even your spouse or friend. Do not allow anyone to discuss the case with you or in front of you. If anyone tries to discuss the case with you, tell me. Also remember that you have promised not to investigate or research this case on your own, on the Internet or otherwise, at any time during these proceedings.

Oversight Subcommittee draft on Preponderance
Draft of March 24, 2008

The following is the definition of preponderance of the evidence that we discussed. I have put the definition in the current boilerplate language of the charge to show the context. I have bracketed the sentence that we agree merits further discussion.

Answer “Yes” or “No” to all questions unless otherwise indicated. A “Yes” answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a “Yes” answer, then answer “No.” The term “preponderance of the evidence” means the greater weight of the credible evidence admitted in this case. [A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily constitute a preponderance of the evidence.] For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than “Yes” or “No,” your answer must be based on a preponderance of the evidence unless you are otherwise instructed.