



BOULDER COUNTY BAR ONLINE NEWSLETTER

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A P R I L 2 0 0 3

JUROR QUESTIONING IN CRIMINAL CASES

BY J. KEITH COLLINS

The United States Constitution and the American adversarial system guarantee a criminal defendant the right to a trial before an impartial jury.¹ Criticism of the American jury system has existed since its inception. However, modern media coverage brings high-profile cases into millions of homes, resulting in increased focus and criticism of the jury system.² In an effort to improve Colorado's criminal jury system, the Colorado Supreme Court adopted a new Rule of Procedure that allows jurors to submit written questions directed at witnesses. On February 19, 2003, Colorado Rule of Criminal Procedure 24(g) was adopted en banc in a 5-2 vote with Justice Martinez and Justice Rice voting against adoption.

Effective July 1, 2004, the rule states: "Jurors shall be allowed to submit written questions to the

court for the court to ask of witnesses during trial, in compliance with procedures established by the trial court. The trial court shall have the discretion to prohibit or limit questioning in a particular trial for reasons related to the severity of the charges, the presence of significant suppressed evidence or other good cause."³

The United States has utilized an adversarial justice system since the time of the American Revolution.⁴ The premise of the adversarial system is that lawyers on opposing sides argue their cases before a neutral and passive trier of fact.⁵ This system allows attorneys to "control the presentation of evidence and argument"⁶ and to attempt "to persuade the fact finder, whether judge or jury, that its presentation of the facts is more convincing than that of the opposing side."⁷ Procedural, ethical, and eviden-

(continued on page 3)

A CALL TO SERVE

BY SCOTT HOLWICK

We live in difficult times, as is evidenced daily by international, national and local events conveying stories of personal sorrow and distress that compete fiercely for our attention. While we are fortunate, indeed blessed, to live in a progressive and compassionate county within an affluent nation built on freedom and liberty, it is increasingly noticeable that many people living among us are suffering. As difficult as it may be to imagine that any single one of us could alleviate societal pain at the international or national level, surely we can use our position within this community to assist individuals who have been negatively affected by events far beyond their control.

Members of this legal community can help by making a new commitment to fulfill Rule 6.1 of the Colorado Rules of Professional Conduct. Rule 6.1 states that a lawyer *should aspire to render at least 50 hours of pro bono public legal services per year*, and that a *substantial majority of the fifty hours should be provided to persons of lim-*

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APRIL 2003 (Details for programs on page 6)



SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3 Longmt. Lrch Foundation	4 Intellectual Property	5
6	7	8 Employment	9 Real Estate	10	11 Bankruptcy	12
13	14	15	16 Bench/Bar Family Law	17	18	19
20	21	22 Business Law	23 Pro Bono Lunch	24 ADR Symposium	25	26
27	28	29	30 Tax, Estate	31		

PATRIOT AND HOMELAND SECURITY ACTS: HOW SAFE ARE WE?

A Panel Discussion on Constitutional Security and Privacy Issues

THURSDAY, APRIL 24, 2003 • 7:00 - 9:00 PM

CU Fleming Law Building, Lindsley Memorial Courtroom

Speakers: Professor Hiroshi Motomura, Federal Public Defender Bob Pepin, Larry Bell, and Jim Higgins, Dept. of Safety



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JUROR QUESTIONING IN CRIMINAL CASES *(continued from page 1)*

tiary rules safeguard the system and prohibit the fact finder from becoming actively involved in the collection and presentation of the evidence or making any final judgments before the conclusion of the evidence.⁸

Proponents argue that the change is necessary to improve the efficient functioning of the jury.⁹ Opponents of the new rule fear that allowing jurors to play an active role in criminal trials will endanger the due process and fundamental rights of the accused. This article will address the reasons supporting such a change in the system and discuss the concerns and issues that arise.

Advantages of Juror Questioning

Proponents argue that allowing jurors to question witnesses will assist in the truth-finding process. Social science supports the proposi-

tion that jurors learn more by engagement "rather than passively trying to absorb information."¹⁰ Supporting this idea, Justice Rebecca Love Kourlis, chair of the Colorado Supreme Court's committee on jury issues, stated that "adults learn by asking questions, they make better decisions."

Possible advantages of juror questioning include the following: having a more active, focused and involved jury that feels a great sense of responsibility and participation in the pursuits of the truth; helping jurors resolve questions they may have about the facts or the law;¹¹ increasing public credibility for juries;¹² serving as a check on the power of judges and attorneys;¹³ and assisting attorneys in structuring their cases to address issues troubling the jury.¹⁴

Proponents of juror questioning argue that questions will help rebuild the public's faith in the jury system.¹⁵ Research shows that jurors who are allowed to question witnesses are generally more satisfied with the trial process.¹⁶ Political and social science shows that satisfied jurors are more likely to perceive the system as fair and just, thereby enhancing the public image of the system.¹⁷ Additionally, advocates of juror questioning claim the process will increase the effectiveness of the lawyering in a trial. Active participation by jurors during a trial gives attorneys insight into the jurors' thought processes. This allows attorneys to alter their strategies to accommodate the perceptions and concerns of the jury.¹⁸

However, the primary reason argued in support of juror questioning is

(continued on page 4)

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proudly announce the publication of their latest article

NEW SAFE HARBOR FOR REVERSE LIKE-KIND EXCHANGES

in the January 2003 edition of THE CPA JOURNAL

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JUROR QUESTIONING IN CRIMINAL CASES *(continued from page 3)*

that it assists in the achievement of the ultimate goal of any trial; finding the truth.¹⁹ Under this view, "juror questioning of witnesses allows the jury to have a better understanding of the evidence and, thus, arrive at a better- informed verdict."²⁰ This "would enable jurors to clear up the trivial confusions that sometimes impede the search for truth."²¹

Arguably, this would allow for a more focused and efficient trial resulting in fewer hung juries. The argument recognizes that jurors are supposed to comprehend in a matter of hours what attorneys spend months studying. Therefore, allowing jurors to question witnesses facilitates jurors' understanding of the evidence and

issues presented.²² The Colorado Supreme Court agrees with this reasoning, as evinced by the adoption of this rule. Colorado has now joined the "currently popular movement to downplay longstanding adversarial principles in favor of an intensified focus on truth-finding."²³

Disadvantages of Juror Questioning

Those opposed to juror questioning argue that the cost of the search for truth should not be the fundamental rights of the accused. Justice Black said it best when he wrote: "A criminal trial is in part a search for truth. But it is also a system designed to protect "freedom" by insuring that no one is criminally

punished unless the State has first succeeded in the admittedly difficult task of convincing a jury that the defendant is guilty. Due process and those individual rights that are fundamental to our quality of life co-exist with, and at times override, the truth finding function."²⁴

Evidentiary rules and procedures have been enacted to help the defense offset the resources and power of the state. "All of these rights are designed to shield the defendant against the State power. None are designed to make convictions easier and taken together they clearly indicate that in our system the entire burden of proving criminal activity rests on the State."²⁵ A defendant "has an absolute, unqualified right to compel the State to investigate its own case, find its own witnesses, prove its own facts, and convince the jury through its own resources."²⁶

Opponents argue that in some instances allowing jurors to question witnesses will assist the state in proving its case. An example would be a juror question that highlights an element the state has overlooked or failed to prove. Theoretically, this would provide the state the opportunity to correct its mistake or oversight and eliminate an opportunity for the defense to prevail that would otherwise normally exist. While the truth may prevail in this example, it is not because the state proved the defendants guilt, but solely because a juror became a de facto agent of the state. In practice, juror questioning is a means for the state to double-check its case. By assuming an active adversarial and inquisitorial stance, the juror assists the state in meeting

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BOULDER COUNTY MOCK TRIALS 2003



The Adams/Broomfield and Boulder County Bar Associations and Magistrate David Juarez would like to extend their thanks and congratulations for a successful Regional High School Mock Trial competition. Ten teams competed at the Broomfield and Adams County Justice Centers from February 19 to Saturday, February 22 to determine the Adams/Broomfield and Boulder County representatives to this year's state competition in March. The Bar Associations congratulate Boulder High School, Monarch High School and Broomfield High School and wish them well as they advance to the State Tournament. Thank you to Chief District Judge Harlan Bockman for his support of this program and to the Judges who let us use their courtrooms; to Laurie Shera and the administration staff for helping to coordinate the function, and to the Adams and

Broomfield County Sheriff's Offices for security. Special thanks to District Attorney Bob Grant, Judges Tom Ensor, John Popovich, Chris Melonakis, Kathy Delgado, Jeff Romeo, Barbara Koehler, Dianna Marquez, and Brian Bowen; Dean Dan Vigil; Don Quick, Craig Johnson, Cyndi Ciancio, Mike Heinz, Norm Campbell, Hal Warren, Steve Bernard and Adam Gollin for presiding over the trials. Thanks also go to Brian McCoy, James Colgan, Mike Grills, Pat Furman, Jordan Fox, Kristy Martinez, Irving Kelsey, Richard Ott, Esteban Martinez, Steve Barnes, Howard Bartlett, Mark Scarr, Brice Steele, Yvette Rodriguez-Werner, Bill Delisio, Barbara Courneau, Howard Reinstein, Julia Riley, Sharon Holbrook, Sarah Boensch, Darla Benford, Jay Tiftickjian, Karrie Anderson, Nathan Andersohn, Margaret Hansen, Lori Beck, Marie Walton, Jennifer Sullivan, Derrick

Kiernan-Johnson, Andrew Newelle, Kent Spangler, Chris Griffin, Chris Friedman, Eric Jonsen, Stefan Fredricksmeier, Eric Cansler, Lois Gray and Lori Hughs for serving as scoring panelists. Special thanks to Gary Filosa and Jim Peters for serving with very short notice. Additional special recognition goes out to Judge Randall J. Davis of the Broomfield Courthouse for hosting the trials there, presiding over a trial and providing support services. We would also like to recognize Carol Warner (in Broomfield) and Donna Gerace (in Brighton) for helping the trials start smoothly and for assisting the volunteer judges. Many Bar Association members served as volunteer coaches and consultants, and their contributions were invaluable to the schools' performances. Thank you all very much and congratulations on a successful tournament.



CALENDAR OF EVENTS



Pre-registration is required for all BCBA CLE programs. Please send a check to the Bar office at least 3 days in advance. You will be charged for your lunch if you make a reservation and do not call to cancel prior to the CLE meeting. BCBA CLE's cost \$15 per credit hour for members and \$18 for non-members unless otherwise noted. CLE credit is \$10 per hour for members of the Young Lawyer Section practicing 3 years or less. Materials are \$5 without CLE credit.

April 3, 2003

10:30 a.m. Board of Directors Meeting
The Raintree, Longmont
Longmont Lawyers' Lunch
12 Noon at the Raintree
Lunch \$20 and Free CLE
Speaker: Judge David Archuleta

Speakers: Magistrates Lisa Hamilton
Fieldman and Norma Sierra
12 Noon Brown Bag Lunch
Boulder County Justice Center
Courtroom D
CLE \$15

April 30, 2003

Tax, Estate Planning and Probate
Medicaid Update
Speaker: Rick Romeo
The Academy, 970 Aurora, Boulder
(Use 10th Street Entrance)
CLE \$15, Buffet Lunch \$13

**Boulder County Bar Foundation
Annual Meeting and Dinner**
6 PM, Boulder Country Club

April 4, 2003

**Intellectual Property
& Business Law Sections**
Sweepstakes, Contests and
Promotions: Not Just a Game
Roslyn Kitchen, Esq.
12 Noon at Hutchinson, Black & Cook
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)

April 16, 2003
Family Law Section
Estate Planning, Divorce and Death:
What the Family Lawyer Must Know
About Wills, Trusts, Spousal
Protections and More
Speaker: Robert Phillips
12 Noon Brown Bag Lunch
Boulder County Justice Center
Courtroom N (Jury Assembly Room)
CLE \$15

May 2, 2003

**Intellectual Property
and Business Law Sections**
The Basic Basics of Franchising
Michael Katz, Esq.
12 Noon at Faegre & Benson, LLP
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)

April 22, 2003

Business Law Section
Case Law Update for the
Business Attorney
Speaker: Professor Mark Loewenstein
12 Noon at Dolan's Restaurant, Boulder
CLE \$15, Lunch \$13

May 7, 2003

Past Presidents Dinner
6 PM at Le Chantecler Restaurant
Niwot

April 8, 2003

Employment Law Section
Corporate E-mail Deletion
and Retention Policies
George J. Sawicki
Senior Corporate Counsel, StorageTek
12 Noon at Caplan & Earnest, LLC
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)

April 23, 2003

Pro Bono Luncheon
12 Noon at Trios Grille, Boulder
See page 11 for details

May 8, 2003

ADR Section
Dialogue with the Judges: Domestic
Boulder Public Library
12 Noon to 2, Boulder Creek Room
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)

April 9, 2003

Real Estate Law Section
Fundamentals of Title Insurance
Speaker: Diane Davies
12 Noon at Dolan's Restaurant
CLE \$15, Lunch \$13

April 24, 2003

ADR Section
Dialogue with the Judges: Civil
12 Noon at Hutchinson, Black & Cook
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)

May 9, 2003

Natural Resources Section
Current Issues of Interest in Region VIII
Speaker: Robert Ward
Regional Counsel, EPA
Dolan's Restaurant, Boulder
CLE \$15, Lunch \$13

April 11, 2003

Collaborative Law Meeting
12 Noon at the Boulder Justice Center
Courtroom E

April 24, 2003

Patriot Act Symposium
Speakers: Hiroshi Motomura,
Bob Pepin, Larry Bell, Jim Higgins
7:00 - 9:00 PM
CU Fleming Law Building
Lindsley Memorial Courtroom
Free CLE for Attorneys - 1 gen., 1 eth.

April 16, 2003

Bench/Bar Committee
Contempt Citation in Civil Cases

May 13, 2003

Employment Law Section
Executive Compensation and
Employment Agreements
Speaker: John Greer
12 Noon at Caplan & Earnest, LLC
CLE \$15, Boxed Lunch \$10
(turkey, veggie or beef)



LAWYER ANNOUNCEMENTS



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CHRISTINE A. (Christie) COATES

is pleased to announce the relocation of her office.

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303.443.8524

Fax (new) 303.443.0119

e-mail: coatesc@aol.com

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LAWYER ANNOUNCEMENTS



WANTED!

INTERESTED VOLUNTEERS FOR THE BOARD OF DIRECTORS OF THE BOULDER COUNTY BAR ASSOCIATION

There are three Board of Director positions open beginning July 2003. Two are three-year positions and one Secretary/Treasurer position is available. The Secretary/Treasurer position is a one-year position followed by one year as president-elect and one year as BCBA President.

Please send a letter of interest to the Bar office by April 25, 2003. The Nominating Committee will convene on May 8 to meet the candidates and make a final decision. The 2003 Nominating Committee is made up of the current BCBA Board of Directors and three at-large members; Wendy Stevens, Alex Garlin and Dan Vigil.

Please call Christine at the bar office if you would like further information. Thank you!

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He has been teaching Spanish courses for court personnel and attorneys for the past 11 years through the 20th J.D. and CU School of Law.

The course will begin on May 6, 2003 and will meet Tuesday and Thursday nights from 5:30-6:30 pm. at 1942 Broadway in the 3rd floor planning room. \$200 instructor fee and \$50 for 15 General CLE Credits.

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A CALL TO SERVE *(continued from page 1)*

ited means or organizations whose programs are designed primarily to address the needs of persons of limited means. A large number of attorneys in our community are already extremely committed to providing such services. In 2002, for instance, volunteer attorneys accepted 542 pro bono client referrals from Boulder County Legal Services and the pro se clinic. Many other nonprofit legal providers experienced similar levels of generosity from a core group of caring volunteers.

Unfortunately, the need for pro bono legal services continues to be much greater than the amount of time that volunteer attorneys provide. In large part this derives from significant decreases in funding of nonprofit organizations by state and local governments as revenue streams evaporate. Many private and foundation donors to local nonprofit organizations, seeing their investment portfolios devalued, have reduced their grants. Simultaneously, many social service providers have had their department budgets slashed and their staffs reduced, further impacting both the number of clients that can be served and the quality of service that can be offered. The catastrophic combination of outcomes stemming from the national, state and local economic downturn, combined with the restructuring of social priorities, has created a crisis within Boulder County that can be at least partially assuaged by voluntary assistance by the legal community. For those attorneys that have not provided pro bono service in the past, the options to participate are much greater than one might imag-

ine. Both local and nationwide legal service providers welcome the opportunity to refer cases to volunteer attorneys and many will provide training for those attorneys working in an area of law outside of their specialty. Both Boulder County Legal Services and the Boulder County AIDS Project refer cases to local attorneys. National non-profit organizations are increasingly interested in assistance at the local level due to the tumultuous upheaval in civil, human and immigrant rights. The increase in the numbers of uninsured and underinsured persons has created a tremendous need for assistance in benefits advocacy. Legal service providers need to serve clients dealing with housing evictions, foreclosures and personal bankruptcies as the economy continues to lag. Colorado is home to more than 16,000 nonprofit organizations, many of which are underfunded and under-staffed.

Legal services professionals who are uncomfortable with or lack the resources to provide pro bono legal services can help out in other ways—as citizen volunteers with nonprofit organizations, on the boards of directors of nonprofit organizations or on boards and commissions of local, county or state government agencies. This year the first national Pro Bono Partner Award was presented to a law firm, a pharmaceutical manufacturer and an immigrant and human rights center partnership. Although the award's aim is to enhance the participation of in-house counsel in pro bono service, the partnership between law firm, corporation and non-profit is a creative model that can provide additional resources and energy to solve

non-legal community issues. Attorneys should bear in mind, however, that while anyone can serve in a non-legal volunteer role, only a lawyer can offer legal advice.

On February 24, 100 state legislators gathered for a rare joint session overlooking the state's budget woes. It was reported that 72,000 jobs have been lost in Colorado since December 2000 and that jobs continue to be lost at a rate of 3.2 percent a year; that, after the state legislature attempts to balance the 2003-04 budget with a revenue shortfall of more than \$800 million during this session, it will have to offset a similar projected revenue shortfall in the 2004-05 budget and that, despite the legislature's best efforts to counter the state's current fiscal crisis, it has not yet considered the potential impact of other looming risks to the economy, such as escalating oil prices, declining consumer confidence, drought and

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JUROR QUESTIONING IN CRIMINAL CASES *(continued from page 4)*

its burden. The result is that the jury no longer acts as a neutral party focused on holding the state to its burden, but is engaged in the presentation of the case, adding to the abundant resources of the state.

Another concern is that jurors will become preoccupied with forming their own questions rather than listening to testimony.²⁷ Additionally, this practice will increase the likelihood jurors will engage in premature deliberations.²⁸ "To allow juror participation in the presentation of evidence encourages jurors to depart from their role as passive listeners. . . Such participation inevitably leads the inquirer to draw conclusions or settle on a given legal theory before the parties have completed their presentations, and before the court has instructed the jury on the law of the case."²⁹ The judge, jury, and advocates each play a single function in trial to insure the fairest and most efficient resolution to a dispute.³⁰ Allowing juror questioning threatens this basic premise of the adversary system.

The practice of juror questioning also raises logistical concerns. At the conclusion of questioning by attorneys, jurors submit their written questions to the court. The court must allow time for jurors to write their questions and hand them to the bailiff. The bailiff then hands the questions to the judge to read. Presumably, the judge would then call counsel to the bench. Objections and arguments would follow, taking place outside the presence of the jury. After ruling on the objections, the judge would then read the questions to the witness and have the witness answer. At the conclusion of

the juror questions, each side could ask follow-up questions. This process would continue with every witness presented at trial. Inevitably it would lengthen the time it takes to try a case. In a state under economic stress, where state employees are forced to take unpaid furlough, the practice of juror questioning would unduly burden the system and further clog the already overburdened trial dockets.

Despite the concerted efforts of all those opposed to juror questioning the Colorado Supreme Court has chosen to go forward with the practice. The adoption of this rule marks only the beginning of the debate. The commencement of this new phase will spark an explosion of legal battles in Colorado. Only through trial and error will the true costs and consequences of juror questioning be realized.

J. Keith Collins, who co-chairs the Criminal Law Section, recently left the Boulder District Attorney's office to start his own criminal defense practice. He may be contacted at:

*Law Office of J. Keith Collins
4450 Arapahoe Ave, Suite 100
Boulder, CO 80303
Tele. 303.444.9292
Fax. 303.447.0200
Law.office@attbi.com*

Footnotes

1. *U.S. Const. amend. VI* ("In all criminal prosecutions, the accused shall enjoy the right to a speed and public trial, by an impartial jury."); Stephan Landsman, *A Brief Survey of the Development of the Adversary System*, 44 Ohio St. L.J. 713, 713 (1983).
2. Judging Juries, *USA Today*, June 16, 1997, at 18A. "The Rodney King verdict sparked riots in Los Angeles and demands for mixed juries in all cases. The hung jury in the Menendez brothers' first murder trial led to calls for less than unanimous verdicts. And the "not guilty" verdict in the O.J. Simpson case has led some critics to call for scrapping the jury system altogether.
3. Colorado Rules of Criminal Procedure, Rule 24(g), effective July 1, 2004.
4. Landsman, *supra* note 1, at 713.
5. Nancy Amour Combs, Comment, *Understanding Kaye*

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PRO BONO PAGE



Thirty-seven cases were referred in February. Thank you to the following attorneys:

Norm Aaronson
Bill Benjamin
George Berg
Christopher Blakemore
Susan Bryant
Carmen Danielson
James England
Mark Fischer
Kim Gent
David Hughes
Chuck Kline
George Johnson
David Lee
Kathleen Morgan
Clinton Nash
Robert Pierce
Karen Radakovich
Sharon Svendsen
MaryAnn Strobridge
Scott Tippet
Mike Woodford
Students of Norm Aaronson's
CULAPD

Pro Se Program volunteers

Christine Coates
Bev Nelson
Georgianna Scott
Scott Tippet

Boulder County AIDS Project

Thank you to the following attorney who accepted pro bono referrals for the Boulder County AIDS Project in February:

Paul Bierbaum

Pro Bono Corner

BCLS has a variety of volunteers willing to assist with pro bono work. Currently we have an attorney who recently passed the Bar and is looking for experience, 2 attorneys awaiting word on bar results and a professor at CU with an interest in legal writing and research willing to work on cases with pro bono attorneys. Call Sue @ 303.449.2197 if you need assistance with pro bono cases.

Annual Pro Bono Luncheon

April 23, 2003



12 Noon - 2 PM
\$24 per person

Trios Grille
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BCBA Professionalism Committee On-Call Schedule

April 1	Chuck Saxton	776.6911
April 14	Helen Stone	442.0802
April 21	Trip DeMuth	546.1300
April 28	Pat Murphy	449.3891
May 5	Mark Langston	440.9684

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Scott Holwick is the co-chair of the Young Lawyer Section and an attorney with Faegre & Benson, LLP.

(footnotes continued from page 10)

Scholer: *The Autonomous Citizen, the Managed Subject and Role of the Lawyer*, 82 Cal. L. Rev. 663, 683 (1994).
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7. Hyongsoon Kim, Note, *Adversarialism Defended: Daubert and the Judge's Role in Evaluating Expert Evidence*, 34 Column J.L. & Soc. Probs. 223, 226 (2001).

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9. Shari Seidman Diamond & Neil Vedmar, *Jury Room Ruminations on Forbidden Topics*, 87 Va. L. Rev. 1857, at 1860 (2001); See also J. Clark Kelso, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, 47 Hastings L. J. 1433 at 1508.

10. Krupp, *supra* note 12, at 12 (discussing the more active role jurors are allowed to play in the Massachusetts courts and noting that juror questioning is "perhaps the most controversial" aspect of that more active role).

11. Peter B. Krupp, *When Jurors Speak: A practical Guide to Jurors Questioning Witnesses in Massachusetts*, Boston B.J., Sept./Oct 2001, at 12.

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17. Acker, *supra* note 15, at 563.

18. Ellyn C. Acker, *Standardized Procedures for Juror Interrogation of Witnesses*, 1990 U. Chi. Legal F. 557, 561 (1990).

19. Kara Lundy, Comment, *Juror Questioning of Witnesses: Questioning the United States Criminal Justice System*, 85 Minn. L. Rev. 2008, 2012 (2001) Proponents of juror questions of witnesses also argue that truth finding is the ultimate goal of criminal trials.

20. Cano, *supra* note 3, at 1033.

21. Steven Goode et al., *Texas Practice: Guide to the Texas Rules of Evidence Civil and Criminal § 611.1 n28* (2d ed. 1993).

22. *Id.* At 1033-1035.

23. *Morrison v. State*, 845 S.W. 2d 822, 884 (1993). Citing Judge Benavides dissent

24. *Williams v. Florida*, 399 U.S. 78, 113-114, 90 S. Ct. 1893, 1912, 26 L.Ed.2d 446 (1970).

25. *Id.* at 886, quoting Justice Black

26. *Id.*

27. *United States v. Brockman*, 183 F.3d 891, 899 (8th Cir.99)

28. Lundy, *supra* note 19, at 2015.

29. *Morrison*, *supra* note 23, at 887.

30. Stephen Landsman, *The Adversary System, a Description and Defense*, 1984

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