WAR STORIES

The Jury did what? [Odd things that juries do]

CRE 606 (b) -

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jurors' attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.

Committee Comment: Rule 606(b) has been amended to bring it into conformity with the 2006 amendments to the federal rule, providing that juror testimony may be used to prove that the verdict reported was the result of a mistake in entering the verdict on the verdict form.

Legal points: Courts generally inquire into the basis of a jury verdict only under very limited circumstances. The primary rule governing such inquiries is the Colorado Rules of Evidence 606(b), which aims to protect the secrecy and finality of jury deliberations. This rule strongly disfavors any juror testimony that seeks to impeach a verdict.This limits the court's ability to delve into the jury's thought processes.

There are, however, specific situations where a court might inquire into a jury verdict. These include:

1. Allegations of juror misconduct, particularly if it involves extraneous prejudicial information being introduced to the jury. In such cases, the court may hold an evidentiary hearing to determine the validity of these allegations.

2. Inconsistencies or errors in the verdict form, where the court needs to clarify whether the verdict was entered correctly.

However, even in these scenarios, the inquiry is highly restricted and does not extend to probing a juror's motivations or internal deliberative processes. The rule is designed to preserve the integrity of the jury's decision-making process, protect jurors from external pressures, and maintain the finality of verdicts.

Purpose. Purpose of this rule is to reinforce the finality of jury verdicts, to protect the sanctity of jury deliberations, and to safeguard the privacy of jurors; however, in cases where result of jury deliberations are substantially undermined due to fundamental flaws in deliberation process, courts must weigh these policies against overriding concern that parties to judicial process be assured of fair result. Ravin v. Gambrell By and Through Eddy, 788 P.2d 817 (Colo. 1990).

Section (b) of this rule has three fundamental purposes: To promote finality of verdicts, shield verdicts from impeachment, and protect jurors from harassment and coercion. Stewart v. Rice, 47 P.3d 316 (Colo. 2002). It does allow juror testimony on the question of whether extraneous prejudicial information was improperly brought to the jurors' attention. People v. Harlan, 109 P.3d 616 (Colo. 2005). It also precludes the use of jurors' post-verdict statements to the court to impeach the unanimous verdict.

Clerical error. This rule contains no exception for clerical error. Stewart v. Rice, 47 P.3d 316 (Colo. 2002). An exception to the rule that a trial court cannot reconvene a discharged jury applies when the jury has not yet dispersed, there is no evidence that the jury has been subjected to outside influences from the time of the initial discharge to the time of re-empanelment, and the jury remains under the de facto control of the court.

Ambiguous verdict. It was appropriate to modify a judgment that relied on an ambiguous verdict form based on the proceedings following the discharge of the jury because the foregoing requirements were met. Hanna v. State Farm Ins. Co., 169 P.3d 267 (Colo. App. 2007). Jury foreman's statements concerning a possible clerical mistake in filling out dollar amounts of verdict forms held not precluded by this rule. Kading v. Kading, 683 P.2d 373 (Colo. App. 1984).

Court violated rule by engaging in a detailed and lengthy conversation with the jury regarding its deliberative confusion. Where none of the rule's exceptions applied, the manner of the court's questioning of the jury that resulted in impermissible jury testimony that revealed the mental processes of the jurors was error. People v. Juarez, 271 P.3d 537 (Colo. App. 2011).

Extraneous information. Extraneous information encompasses any information that is not properly received into evidence or included in the court's instructions. Extraneous information is improper whether or not the court specifically warned against its use. People v. Harlan, 109 P.3d 616 (Colo. 2005). Two-part inquiry determines whether extraneous prejudicial information was improperly brought to the jurors' attention. First, the court decides whether extraneous information was

improperly before the jury, and then, second, based on the objective "typical juror" standard, the court determines whether use of the extraneous information posed a reasonable probability of prejudice to the defendant. This inquiry is a mixed question of law and fact. The appellate court defers to the trial court's findings of historical facts if supported by competent evidence and reviews the conclusions of law de novo. People v. Harlan, 109 P.3d 616 (Colo. 2005).

Jurors may rely on their professional and educational expertise to inform their deliberations so long as they do not bring in legal content or specific factual information learned from outside the record. Kendrick v. Pippin, 252 P.3d 1052 (Colo. 2011). Juror's pre-existing personal expertise or knowledge of a general nature does not constitute extraneous information. Juror may use his or her particular pre-existing knowledge of mathematics to analyze admitted evidence of relevant locations and distances and the speed of defendant's vehicle. Kendrick v. Pippin, 222 P.3d 391 (Colo. App. 2009), rev'd on other grounds, 252 P.3d 1052 (Colo. 2011).

Use of dictionary by a juror to obtain a definition of the crime with which the defendant was charged was improper and constituted misconduct. Wiser v. People, 732 P.2d 1139 (Colo. 1987). Juror's use of the internet to obtain information about a drug prescribed to the defendant was improper and constituted misconduct. People v. Wadle, 77 P.3d 764 (Colo. App. 2003), aff'd on other grounds, 97 P.3d 932 (Colo. 2004). Inquiry by juror about source of jury instructions to friend who was a legal secretary was misconduct which had potential for distorting the deliberations of the jury. Wiser v. People, 732 P.2d 1139 (Colo. 1987).

Juror affidavit. A jury verdict may not be impeached by affidavit except in very limited circumstances involving external influence improperly bearing upon the jury. People v. Graham, 678 P.2d 1043 (Colo. App. 1983), cert. denied, 467 U.S. 1216, 104 S. Ct. 2660, 81 L. Ed. 2d 366 (1984). Section (b) bars a court from considering juror affidavits if they do not address matters within the two stated exceptions: Extraneous prejudicial information improperly brought to the juror's attention or improper outside influence exerted upon a juror. Stewart v. Rice, 47 P.3d 316 (Colo. 2002); People v. Richardson, 184 P.3d 755 (Colo. 2008). Juror's affidavit about her physical condition and her position as holding out alone against other jurors cannot be received under this rule. Gambrell By and Through Eddy v. Ravin, 764 P.2d 362 (Colo. App. 1988), aff'd, 788 P.2d 817 (Colo. 1990). Juror's affidavit and testimony about her physical condition and its effect on her ability to hold out against the other jurors' yelling constituted an improper inquiry into her thought processes and emotions and was, therefore, inadmissible. People v. Ferrero, 874 P.2d 468 (Colo. App. 1993).

Trial court erred by failing to strike affidavit of juror in which he stated he dissented from the jury's award because he thought the award inadequate. Neil v. Espinoza, 747 P.2d 1257 (Colo. 1987).

Juror's affidavits concerning mental processes in determining the amount of the verdict, including specific statements that the damages awarded were to pay for the plaintiff's attorney fees were not admissible and could not be used to impeach the jury award. Munoz v. State Farm Mut. Auto. Ins. Co., 968 P.2d 126 (Colo. App. 1998). Trial court properly considered affidavit alleging coercion against a juror and hearing testimony from juror who asserted the misconduct. People v. Collins, 730 P.2d 293 (Colo. 1986). Court may only consider evidence of objective circumstances and overt coercive acts by other members of jury and may not consider the effect this conduct had on the minds of the jurors. People v. Rudnick, 878 P.2d 16 (Colo. App. 1993).

When juror was questioned about whether the verdict in favor of defendant as reported by a written special verdict was her verdict and juror responded "no", judge should have declared a mistrial or directed the jurors to deliberate further; by engaging in extended questioning as to why the juror had said the verdict was not hers, the court and counsel improperly delved into the deliberations and mental processes of the jurors and risked unduly influencing the juror to conform to the signed verdict. Simpson v. Stjernholm, 985 P.2d 31 (Colo. App. 1998).

Evidentiary hearing on jury misconduct. In order to constitute grounds for setting aside a verdict because of any unauthorized or improper communication with the jury, it is incumbent upon defendant to show that he was prejudiced thereby. The determination of whether prejudice has occurred is a matter within the sound discretion of the trial court. People v. Heller, 698 P.2d 1357 (Colo. App. 1984), rev'd on other grounds, 712 P.2d 1023 (Colo. 1986); People v. Garcia, 752 P.2d 570 (Colo. 1988).

VOIR DIRE

THE LAW OF VOIR DIRE IN COLORADO

I. GENERAL RULES

C.R.C.P. 47 – JURORS

(a)(2) - When prospective jurors have reported to the courtroom, the judge shall explain to them in plain and clear language:

(I) The grounds for challenge for cause;

(II) Each juror's duty to volunteer information that would constitute a disqualification or give rise to a challenge for cause;

(III) The identities of the parties and their counsel;

(IV) The nature of the case, utilizing the parties' CJI(3d) Instruction 2:1 or, alternatively, a joint statement of factual information intended to provide a relevant context for the prospective jurors to respond to questions asked of them. Alternatively, at the request of counsel and in the discretion of the judge, counsel may present such information through brief non-argumentative statements.

(V) General legal principles applicable to the case, including burdens of proof, definitions of preponderance and other pertinent evidentiary standards and other matters that jurors will be required to consider and apply in deciding the issues.

(3) ….[T]he judge shall ask prospective jurors questions concerning their qualifications to serve as jurors. The parties or their counsel shall be permitted to ask the prospective jurors additional questions. In the discretion of the judge, juror questionnaires, posterboards and other methods may be used. The judge may limit the time available to the parties or their counsel for juror examination based on the needs of the case.

(5) …Jurors shall be told that they may not discuss the case with anyone until the trial is over with one exception: jurors may discuss the evidence among themselves in the jury room when all jurors are present.

(d) (6) Having formed or expressed an unqualified opinion or belief as to the merits of the action;

(7) The existence of a state of mind in the juror evincing enmity against or bias to either party.

(h) Peremptory Challenges. Each side shall be entitled to four peremptory challenges, and if there is more than one party to a side they must join in such challenges. Additional peremptory challenges in such number as the court may see fit may be allowed to parties appearing in the action either under Rule 14 or Rule 24 if the trial court in its discretion determines that the ends of justice so require.

(u) Juror Questions. Jurors shall be allowed to submit written questions to the court for the court to ask of witnesses during trial, in compliance with procedure established by the trial court.

The Number of Jurors (C.R.S. 13-71-103): A jury in civil cases shall consist of six persons, unless the parties agree to a smaller number, which shall not be less than three.

Jury Questionnaires (C.R.S. §13-71-115): Lists the questions that must be included on a jury questionnaire.

Irregularity in Selecting, Summoning, and Managing Jurors (C.R.S. §13-71-140): The court shall not call a mistrial or set aside a verdict based on allegations of any irregularity in selecting, summoning, and managing jurors, or limiting the length of any term of jury service, or based on any other defect in any procedure performed under this article unless the moving party objects to such irregularity or defect as soon as possible after its discovery and demonstrates specific injury or prejudice.

II. THE PURPOSE OF VOIR DIRE:

The only proper purpose of voir dire examination is to enable counsel to determine whether any prospective jurors are possessed of beliefs which would cause them to be biased or prejudiced in such manner as to prevent a party from obtaining a fair and impartial trial. *People v. Alexander*, 797 P.2d 1250 (Colo. 1990).

III. USING VOIR DIRE TO "EDUCATE" THE JURY:

Counsel may not use voir dire for the purpose of instructing or educating the jury. *People v. Collins,* 730 P.2d 293 (Colo. 1986).

IV. THE NLMBER OF PREEMPTORY CHALLENGES:

--The general rule is that multiple litigants, designated as co-plaintiffs or co-defendants, are together entitled to one set of preemptory challenges, regardless of whether their interests are essentially common or generally antagonistic. *Morgan County Dept. of Social Services v. J.A.C.,* 791 P.2d 1157 (Colo.App. 1989). Improper

allocation of preemptory challenges is reversible error, even in the absence of showing of actual prejudice.

V. THE STANDARD OF REVIEW (CHALLENGES FOR CAUSE)

The trial court has broad discretion in deciding whether to grant or deny a challenge for cause and its decision will be set aside only when the record discloses a clear abuse of discretion. *People v. Christopher*, 896 P.2d 876 (Colo. 1995). It is the trial court's prerogative to give considerable weight to a potential juror's statement that he or she could fairly and impartially serve on the case. *People v. Robinson*, 874 P.2d 453 (Colo.App. 1993).

VI. THE RIGHT TO QUESTION POTENTIAL JUROR RE: ANTICIPATED

EVIDENCE

Where trial court finally decided to permit the late endorsement of the surveillance movie and to admit it into evidence was held to be an abuse of the trial court's discretion. Party faced difficult choice of possibly addressing evidence thus waiving any objection to the later admission of the evidence or waiting until the trial court had ruled on the issue of admissibility, thus preserving the objection but denying any meaningful opportunity to present contrary evidence.*Lascano v. Vowell*, 940 P.2d 977 (Colo.App. 1996) (surveillance film).

VII. RESTRICTIONS ON VOIR DIRE

Restrictions on the scope of voir dire are within the discretion of the trial court, and the imposition of such restrictions will not be overturned absent an abuse of discretion. *People v. Rudnick,* 878 P.2d 16 (Colo.App. 1993). The court, in the interest of judicial economy, may reasonably limit the time available for voir dire examination so long as it is conducted in a manner that will facilitate the intelligent exercise of challenges for cause and preemptory challenges. *People v. Rodriguez*, 786 P.2d 472 (Colo.App. 1989).

Court abuses discretion in allowing challenge for cause of attorney juror in civil case. *Faucett v. Hamill*, 815 P.2d 989 (Colo. App. 1991).

VIII. BIAS

Actual Bias is a set of mind that prevents a juror from deciding a case impartially and without prejudice to a substantial right of one of the parties. Implied Bias is a bias attributable in law to a prospective juror regardless of actual impartiality. *People v. Macrander,* 828 P.2d 234 (Colo. 1992).

In medical malpractice case, trial court properly granted challenges for cause where three jurors had expressed negative feelings toward members of the medical profession. *Blades v. DaFoe,* 704 P.2d 317 (Colo. 1985).

IX. JUROR MISCONDUCT:

Failure of juror to answer material questions truthfully, if discovered during a trial, may justify the removal of the juror or may justify a mistrial. If "lack of candor" is not discovered until after trial, it may justify the granting of a new trial. *People v. Borrelli,* 624 P.2d 900 (Colo. App. 1980).

Court, who had been alerted to possibility of juror sleeping during trial, and who watched juror and who questioned juror and determined that juror was awake and simply listening with eyes closed, did not abuse discretion in denying defendant's challenge for cause. Hanes v. People, 598 P.2d 131 (Colo. 1979).

X. APPLICATION OF COLORADO RULES FOR JURY SELECTION IN FEDERAL COURT

The content of voir dire in federal courts is controlled by F.R.C.P. 47(a), and is not subject to the dictates of any contrary state law. *Smith v. Vicorp, Inc.*, 107 F.3d 816 (10th Cir. 2/24/97).

XI. MISCELLANEOUS

Limitations on Questioning. While counsel has the opportunity to question jurors, the trial judge retains the authority to limit the extent and nature of this questioning. The limitations can be based on the relevance, repetitiveness, length, or propriety of the questions.

Specific Provisions and Examples. Questions that cover the same subject matter already addressed by the court, interpretation of laws, or those aimed merely at establishing rapport are improper. *People v. Reaud,* 821 P.2d 870 (1991).

EXPECT THE UNEXPECTED [NOBODY COULD PREPARE FOR THAT!]

Mistrial. A mistrial can be justified under various circumstances where the fairness and integrity of the trial process are compromised. These include:

1. "Manifest Necessity and Public Justice." A mistrial may be declared when the circumstances amount to manifest necessity or when the continuation of the trial would not serve the ends of public justice. This includes situations where the prejudice is too substantial to be remedied by other means.

2. Jury Deadlock. If the jury is unable to reach a unanimous verdict, and the trial court determines that meaningful progress toward a verdict has ceased, this can justify a mistrial.

3. Prejudicial Conduct. Instances where prejudicial conduct has occurred, making it unjust to proceed with the trial, can also justify a mistrial. This includes scenarios where the trial would interfere with or retard the administration of honest, fair, even-handed justice.

4. Public Health Crisis. A fair jury pool cannot be safely assembled due to a public health crisis or limitations brought about by such a crisis.

The decision to declare a mistrial rests within the discretion of the trial court and is typically supported by specific findings or circumstances that substantiate the need for such a drastic remedy.

Although this list is not definitive, Colorado courts generally have upheld declarations of mistrial only in these or similar situations: 1) attorney misconduct can be a valid basis for declaring a mistrial; 2) jury deadlock; 3) sudden hospitalization of principal eyewitness; and lack of candor on the part of one of the jurors during voir dire;

COMMENTS ATTACKING THE OPPOSING PARTY, COUNSEL, OR THE OPPONENT'S THEORY OF THE CASE.

- De Anza Santa Cruz Mobile Estates Homeowners Ass'n v. De Anza Santa Cruz Mobile Estates, 114 Cal. Rptr. 2d 708 (Cal. Ct. App. 2001) (concluding that comments during closing argument relying on defendants' "reprehensible" and "strong arm" conduct during litigation in asking the jury to award punitive damages improperly inflamed the jurors and infected the entire trial and undermined the integrity of the punitive damages award).

- DeAngelis v. Harrison, 628 A.2d 77 (Del. 1993) (finding reversible error where defense counsel argued that the plaintiff was exaggerating her injuries and compared the plaintiff winning the case to her winning a lottery ticket).

- Chin v. Caiaffa, 42 So. 3d 300 (Fla. 3d DCA 2010) (finding reversible error where plaintiff attacked character of every person associated with defense, including counsel; painted defense as "frivolous" and as designed to "add [ ] insult to injury;" accused defense counsel of "try[ing] to fool you," and stating "[w]e all make mistakes. But you make a bigger one when you don't admit it; and you make a bigger one to try to avoid responsibility. And you make a bigger one when you call in witnesses that don't tell the truth. Anything to win. Anything to save the day.").

- Johnnides v. Amoco Oil Co., 778 So. 2d 443 (Fla. 3d DCA 2001) (reversing for a new trial where counsel attacked opposing counsel for trying to "confuse" and "mislead" jury, suggested other side prevented jury from hearing evidence, directed jury not to be "fooled" by counsel's arguments, vouched for truthfulness of own case, and accused plaintiff of hiring expert to come up with "scientific gobble-dee-cock that confuses the jury.").

- Rodriguez v. N.Y.C. Hous. Auth., 209 A.D.2d 260 (N.Y. App. Div. 1994) (finding reversible error where plaintiff's counsel called one defense witness a "yahoo," called employees of the defendant "forgers," and argued that the defendant's medical expert was not to be believed because he was compensated for his testimony).

- Berkowitz v. Marriott Corp., 163 A.D.2d 52 (N.Y. App. Div. 1990) (finding reversible error because plaintiff's counsel repeatedly depicted the defense's experts as "hired guns" brought in to "fluff up the case and fill up some time" and accused them of having a previous relationship with defendant's counsel).

- Fehrenbach v. O'Malley, 164 Ohio App. 3d 80 (Ohio Ct. App. 2005) (holding that defense counsel's calling the plaintiff's parents shameful parents using their child's illness and medical complications to collect a $2,000,000 paycheck then saying "[this trial] is not an ATM machine" warranted reversal.

References to counsel's own experience and personal belief.

- Closing arguments must not include expressions of personal opinion, personal knowledge, or inflammatory comments as they violate ethical standards (Domingo-Gomez v. People, 125 P.3d 1043 (2005).

Comments asking the jury to serve as the conscience of the community.

- Court explicitly stated that prosecutors should not ask the jury to consider the wishes of the community or to send a message to the community in reaching a verdict, indicating that such statements can be seen as improper. *People v. Marko*, 434 P.3d 618 (2015).

Comments in violation of the "Golden Rule."

- An attorney generally should not argue using the "Golden Rule" approach during trial proceedings. This argument, which asks jurors to place themselves in the victim's position, is considered improper as it encourages the jury to decide the case based on personal interest and emotion rather than on a rational assessment of the evidence. *People v. Munsey*, 232 P.3d 113 (2009)) Specifically, such arguments have been repeatedly identified as inappropriate in both civil and criminal cases. *People v. Rodriguez,* 794 P.2d 965 (1990)

Comments on lack of evidence or failure to call a witness.

- While it is generally permissible to comment on a witness's absence in a civil case, the legality and appropriateness of such comments depend on several factors, including the reasons behind the absence and the way these comments are presented in court. For example, in Swartwood v. Burlington Northern, Inc., the court noted that a reference to the defendant's failure to call an expert witness was not inherently prejudicial and did not necessitate a new trial, especially since the defendant addressed these comments during their closing arguments *Swartwood v. Burlington Northern, Inc.,* 669 P.2d 1051 (1983).

Otherwise highly inflammatory comments.

- Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006) (condemning comments comparing tobacco industry to Holocaust and slavery).

- Allstate Ins. Co. v. Marotta, No. 4D11-2574, 2013 WL 2420451 (Fla. 4th DCA June 5, 2013) (finding reversible error when plaintiff's counsel argued "Allstate denied the undisputed medical evidence. . . . I ask you, is that what it means to be in good hands?," stated that Allstate's doctors were "enlisted as part of an effort to manufacture a defense," and urged the jury to "make Allstate repent.").

- Chin v. Caiaffa, 42 So. 3d 300 (Fla. 3d DCA 2010) (stating that it is improper to argue that, despite admitting liability, defendant was not contrite and never apologized for the accident).

- Fasani v. Kowlaski, 43 So. 3d 805 (Fla. 3d DCA 2010) (ordering a new trial where plaintiff's counsel compared plaintiff's brain injury to a ripped Picasso painting, asked the jury "how much money would you take for me to hit you in the head with a baseball bat as hard as I can?," and told the jury they needed to punish the defendant corporation for being "arrogant and greedy" in "wanting a pretty elevator" and "kicking [the plaintiff] out on the street like a dog" after he was injured).

- Carnival Corp. v. Pajares, 972 So. 2d 973 (Fla. 3d DCA 2007) (finding that comments during closing argument asking the jury to place a monetary value on plaintiff's life by comparing a $20 million Van Gogh painting to employee's life, which was created by the greatest creator there is, was highly improper).

- Chesapeake & Ohio Railway Co. v. Shirley's Administratrix, 291 S.W. 395 (Ky. 1926) (holding that it was improper for an attorney to state: "You killed their Santa Claus [pointing to defendant's counsel]. In the name of God, I ask you to fill their stockings on Christmas Eve night, and I ask it for Jesus' sake.").

ETHICAL CONSIDERATIONS IN OPENING STATEMENTS

Opening statement is not specifically mentioned in the Model Rules of Professional Conduct, but there are a number of provisions that we must bear in mind when preparing our opening statements:

Rule 3.3: A lawyer shall not "make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;"

Rule 3.4(e) : in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;

In the civil arena, however, it is far more common to find that challenges to statements or conduct during opening statement are "excused" under the harmless error doctrine. If the error does not undermine the fairness or validity of the trial, a new trial is not required.

However, there is a line that cannot be crossed without consequences. As former United States Chief Justice Burger explained, "An opening statement has a narrow purpose and scope. It is to state what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and

testimony to the whole; it is not an occasion for argument. To make statements which will not or cannot be supported by proof is, if it relates to significant elements of the case, professional misconduct. Moreover, it is fundamentally unfair to an opposing party to allow an attorney, with the standing and prestige inherent in being an officer of the court, to present to the jury statements not susceptible of proof but intended to influence the jury in reaching a verdict."

THE LAW OF CLOSING ARGUMENT IN COLORADO

Whether to Permit Closing Argument Is Within the Court's Discretion. *Belmont Electric Service, Inc. v. Dohm,* 516 P.2d 130 (Colo. App. 1973). The Scope of Closing Argument Is also Within the Discretion of the Trial Court. *Rennels v. Marble Products Inc.*, 486 P.2d 1058 (Colo. 1971).

It Is Within the Court's Discretion to Determine when an Argument Is Inflammatory. *Gaddy v. Cirbo,* 293 P.2d 961 (1956).

It Is Permissible to Comment on Facts that Are Matters of Common Public Knowledge. *People v. Strozzi,* 712 P.2d 1100 (Colo. App. 1985).

Golden Rule: In Closing You Cannot Invite the Jurors to Imagine Themselves in the Place of the Victim or Litigant. *People v. Rodriguez,* 794 P.2d 965 (Colo. 1990).

Failure to Contemporaneously Object to Inappropriate Argument Will Usuallv Be

Deemed a Waiver of the Obiection Absent Plain Error. *Combined Communications Corp., Inc. v. Public Service,* 865 P.2d 893 (Colo. App. 1993).

Errors During Closing Argument Can Usuallv Be Remedied by a Timely Instruction from the Court that the Arguments of Counsel Are Not Evidence. *People v. Lankford,* 524 P.2d 1382 (Colo. App. 1974).

Counsel Mav Not Insert His or Her Personal Beliefs. *Combined Communications Corp., Inc. v. Public Service,* 865 P.2d 893 (Colo. App. 1993).

Arguing that a Judgement Would Come Out of Your Client's Pocket when Client Has Insurance Is Inproper. *Cook Inv. Co. v. Seven-Eleven Coffee Shop*, 841 P.2d 333 (Colo. App. 1992).

Behavior at Defense Table Is Not Evidence to Be Commented on *Milan v. Aims Jr. College District - People v. Constant,* 623 P.2d 65, aff'd, 645 P.2d 843 (Colo. App. 1982).