

**ORIGINAL**

IN THE SUPREME COURT OF FLORIDA

SC00-906

IN RE: Standard Jury Instructions- Criminal Cases (200-1)

**FILED**  
THOMAS D. HALL  
JUN 30 2000  
CLERK, SUPREME COURT  
BY *[Signature]*

*7-20-00  
w/participate  
in o.c.*

Undersigned counsel, on her own behalf, respectfully files these comments on the Proposed Instruction on Reasonable Doubt as published in the June 1, 2000 Florida Bar News and states the following:

1. In my view, the Standard Jury Instruction on Reasonable Doubt is not a model of clarity for jurors and amendments should be considered by the court.

2. After reviewing the proposed change submitted by the Florida Committee on Standard Jury Instruction in Criminal Cases and their Comment explaining how they arrived at the language which they proposed, I reviewed the case of Victor v. Nebraska, 511 U.S. 1, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994) which rejected the petitioners' contentions that due process was violated by the pattern jury instructions defining "reasonable doubt" given in both of their cases. Although the majority of the United States Supreme Court found the instructions given in those cases "taken as a whole, ... correctly conveyed the concept of reasonable doubt," and there is no reasonable likelihood that the jurors understood the instructions to allow convictions based on proof insufficient to meet the Winship standard, their reviewing task is different from being in the position to amend an existing reasonable doubt instruction.

3. I found Justice Ginsburg's concurring opinion to be quite persuasive and would recommend that this Court consider the definition of reasonable doubt as proposed by the Federal Judicial Center. That instruction reads:

“The government [State] has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government’s [State’s] proof must be more powerful than that. It must be beyond a reasonable doubt.

“Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.” Federal Judicial Center, Pattern Jury Instructions 17-18 (1987)(instruction 21).

4. In the alternative, my main concern about the new proposed instruction is that it leaves out the following language in the existing instruction:

*[O]n the other hand, if , after carefully considering, comparing and weighing all the evidence, there is not **an abiding conviction of guilt, or, if having a conviction, it is one which is not stable but one which wavers and vacillates then the charges is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.***

WHEREFORE, undersigned counsel respectfully requests that this Honorable Court consider using the Federal Judicial Center’s proposed instruction on reasonable doubt or add the language quoted above to the Proposed Instruction on Reasonable Doubt submitted by the Committee on Standard Jury Instructions in Criminal Cases.

Respectfully submitted,



**IVY R. GINSBERG, P.A.**

Florida Bar No. 0612316

The White Building, Suite 200

One N.E. 2<sup>nd</sup> Avenue

Miami, Florida 33132

(305) 373-9955