



SUPREME COURT  

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STATE OF ARIZONA



GOVERNOR'S OFFICE OF  
**HIGHWAY  
SAFETY**

# Trial and Error: Perfecting Your Jury Engagement Game



# Trial And Error: Perfecting Your Jury Engagement Game



**PLAY**

**Today's Lineup:**  
**Hon. David Cutchen, Gilbert Municipal Court Presiding Judge**  
**Hon. Lauren Ramirez, Gilbert Municipal Court Plain Ol' Judge**

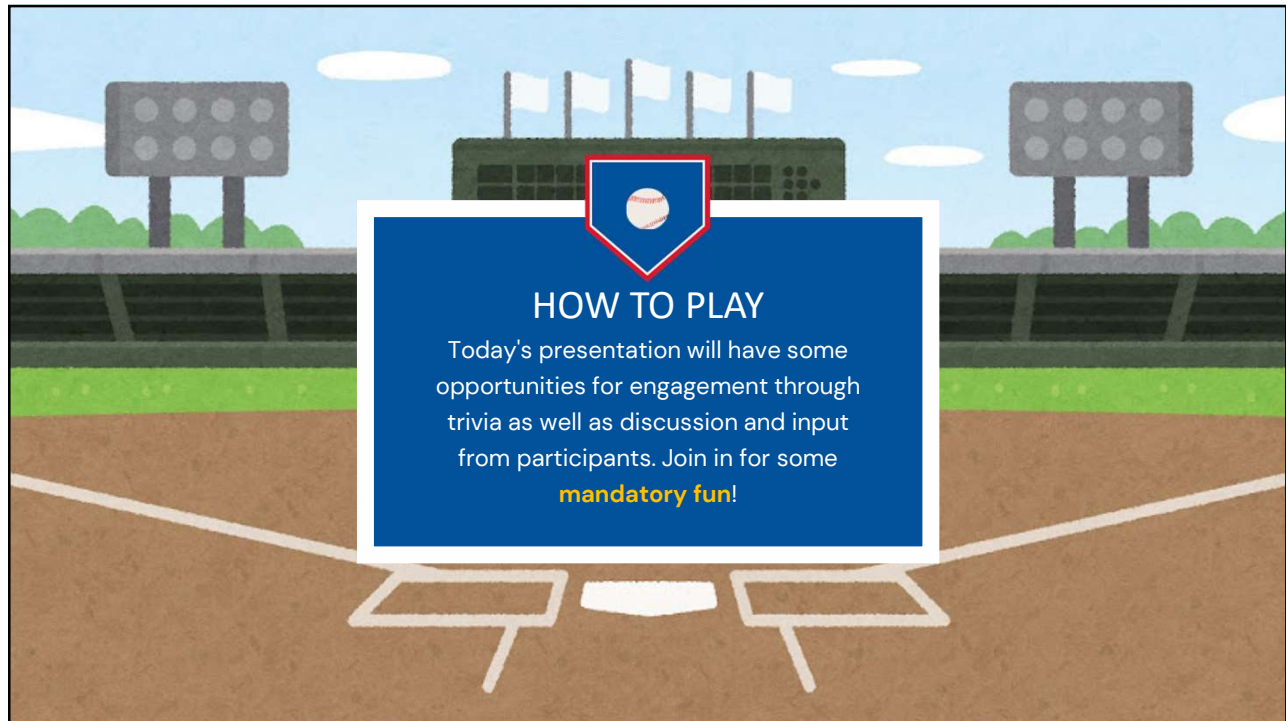
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## PLAYERS

			
Rising Stars	Celebrated Veterans	Big Name Play-Makers	The Entertainers

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# THE RULES OF ICE HOCKEY

Using the QR Code at your table,  
enter into Poll Everywhere all of  
the **hockey**  
**infractions/penalties** you can  
think of (if any)!



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<p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• <b>Boarding</b></li> <li>• <b>Charging</b></li> <li>• <b>Contact to the Head</b></li> <li>• <b>Cross-Checking</b></li> <li>• <b>Delay of Game</b></li> <li>• <b>Elbowing</b></li> <li>• <b>Slashing</b></li> <li>• <b>Roughing</b></li> <li>• <b>High-Sticking</b></li> <li>• <b>Kneeing</b></li> <li>• <b>Holding</b></li> <li>• <b>Interference</b></li> <li>• <b>Hooking</b></li> <li>• <b>Unsportsmanlike Conduct</b></li> <li>• <b>Tripping</b></li> <li>• <b>Icing</b></li> <li>• <b>Offsides</b></li> <li>• <b>Butt-Ending</b></li> <li>• <b>Checking from Behind</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Fighting</b></li> <li>• <b>Holding/Grasping the Facemask</b></li> <li>• <b>Pushing-off Opponent with Skate</b></li> <li>• <b>Leaving the Bench during an Altercation</b></li> <li>• <b>Spearing</b></li> <li>• <b>Slew footing</b></li> <li>• <b>Goalie interference</b></li> <li>• <b>Too many on the ice</b></li> <li>• <b>Deliberate goal displacement</b></li> <li>• <b>Playing with an illegal stick</b></li> <li>• <b>Playing with broken stick</b></li> <li>• <b>Use of electronic devices</b></li> </ul>	
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	<p><b>Mistakes happen – how do we recover?</b></p> <ul style="list-style-type: none"> <li>• Defendant was at trial facing charges of aggravated assault, resisting arrest, and criminal trespass</li> <li>• During the trial, the only admitted exhibits were the two body-worn camera videos of the incident and a redacted booking photo of Defendant.</li> <li>• When the jury went back to deliberate, one of the court clerks accidentally put in the jury room one of the marked – but not admitted exhibits – State’s Exhibit 1</li> </ul>
<p><b>State v. Mekeel</b></p> <p>Court of Appeals, Division 1 December 5, 2024</p>	

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- **State's Exhibit 1 - A 62-page binder created by the State that included:**

- Police reports with narratives from each officer involved,
- An evidence item report,
- A release questionnaire (aka Form IV),
- An unredacted booking photo of Defendant,
- A police department response to resistance report,
- An Arizona Department of Corrections summary report with a photo of Defendant along with her fingerprint card, and
- The sentencing minute entries of Defendant's two prior felony convictions



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- Judge lets the attorneys know and had a conversation with them on the record about what the court did.
- Estimates binder was only there for about 30 minutes.
- Judge had the clerk go back and ask jurors whether or not anyone had actually reviewed the exhibit.
- Judge said one of the jurors had indicated to the clerk that the juror had "kinda thumbed through it" but didn't really spend any time on it . . . it wasn't anything the juror would consider. . . They thought it was past stuff they didn't need to know.
- The defense attorney brought up the possibility of replacing the one juror with an alternate but said they were "fine" with it and didn't want to hold everything up and left that decision to the court.



## Result:

- They kept the juror who had perused the binder and the jury found Defendant **GUILTY** of aggravated assault, criminal trespass and resisting arrest.

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- On appeal, Mekeel **argued** the court should have ordered a new trial because “the jury received extrinsic evidence not properly admitted during the trial.”
- Mekeel also argued that the Judge should have taken more corrective action – questioning each of the jurors and conducting an evidentiary hearing.
- **BUT** – Mekeel did not object to how the court handled the issue, so she failed to preserve the claim on appeal.
- So, the Court of Appeals reviewed for fundamental error.

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- Court of Appeals finds: Fundamental error **DOES** exist.
- Mekeel was deprived of a right essential to her defense – a jury’s verdict “must be based upon the evidence developed at trial.”
- (Note: the conviction was **NOT OVERTURNED**, however, because Mekeel did not meet her burden in also showing that without the mistaken exhibit “a reasonable jury could have plausibly and intelligently returned a different verdict.”).



Note: this goal was overturned in PWHL championship game in 2024

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Interesting Part →



Even the greatest hockey players on the planet get some coaching.

But the Court tells us how it should have been handled:

- Once deliberation begins, all communications between jury and judge should be in writing
- Judge should have immediately notified the parties once the error was brought to the court's attention before conducting any investigation
- Court should discuss with the parties the necessary next steps, which could include
  1. Questioning of the clerk under oath by the Court and the parties;
  2. determining if any jurors saw the unadmitted exhibit, and if they did speak with them individually
  3. Determining what additional steps were warranted based on that information

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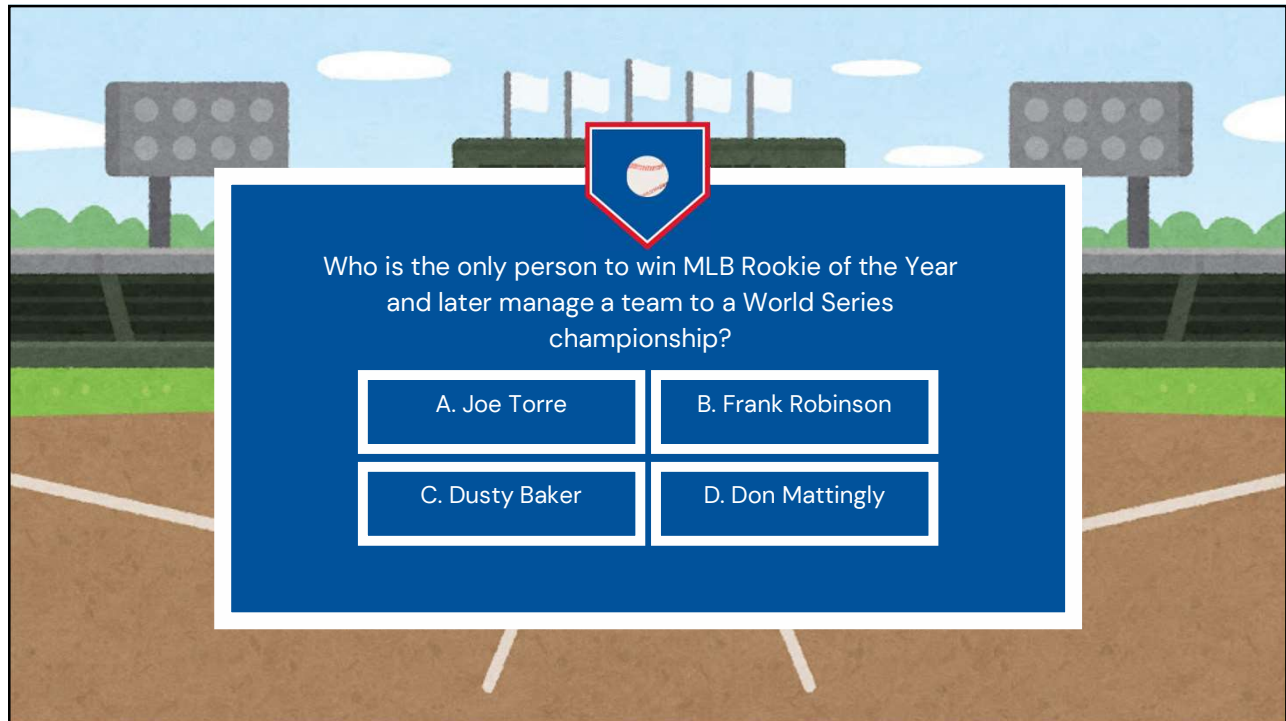


Someone has to make sure we are all doing the right thing.

## AZ Code of Judicial Conduct 2.12: Supervisory Duties

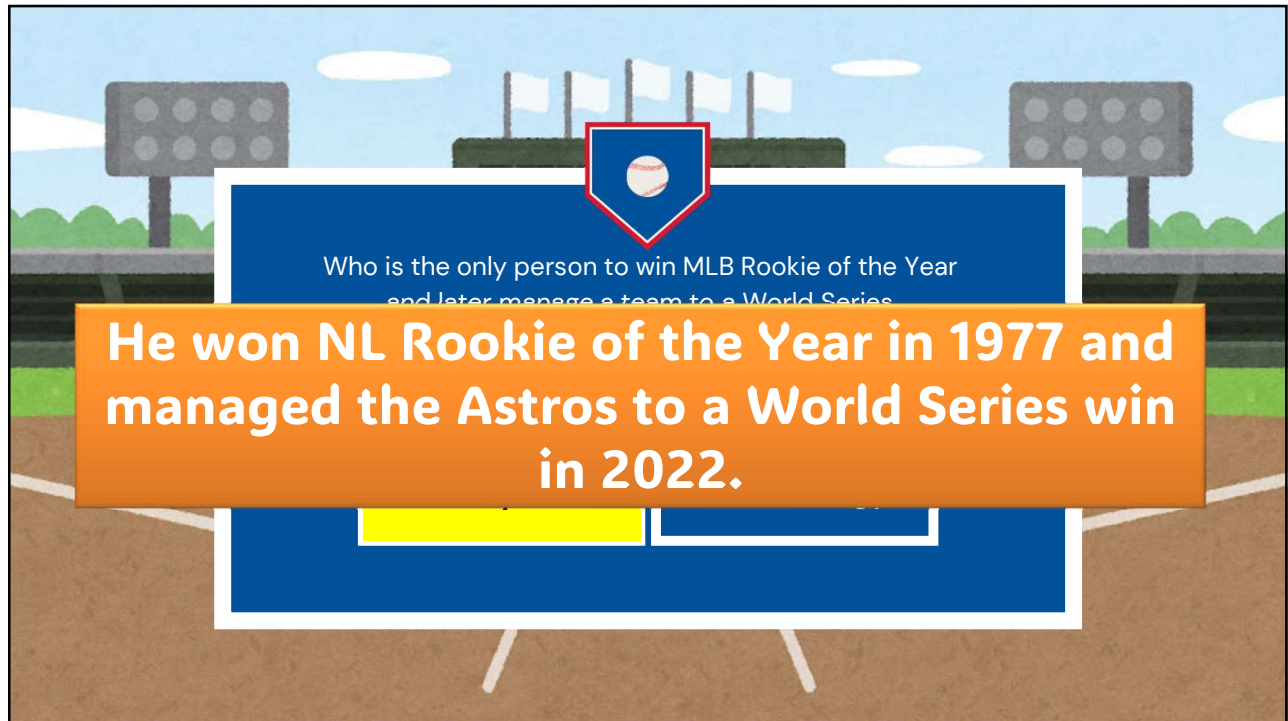
A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

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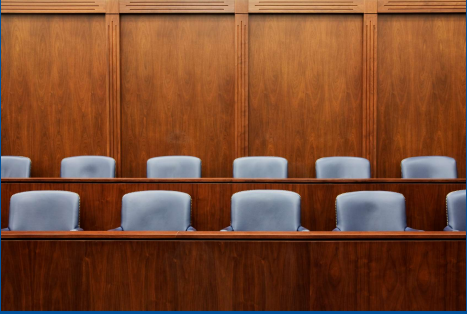
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- Defendant was on trial for sexual assault.
- Not a very large jury pool – the court and counsel repeatedly expressed concern during jury selection about whether they had enough people to empanel a jury
- During Voir Dire, Jurors 6 and 10 indicated they were sexual assault victims.
- Jurors 6 and 10 were brought in individually to discuss.



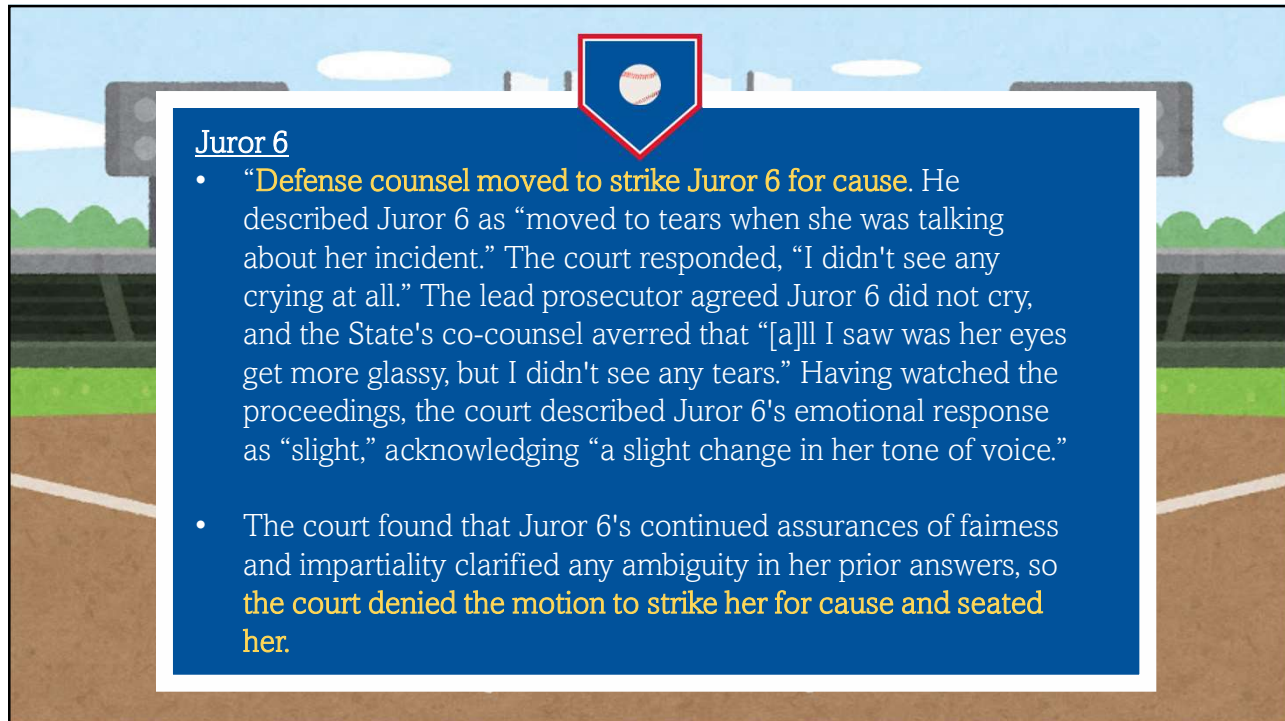
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Juror 6

- After expressing appreciation for Juror 6's candor, the court stated, **“I’ll ask you a question, and if the answer is the same, that’s perfectly fine. We just want you to be as honest as you can.”** The court then asked, **“[w]ould you be able to set aside that personal experience and not let that impact you?”** Juror 6 responded, “I think I might, yeah.” Searching for clarity, the court told Juror 6 that “mights and maybes are difficult for us. We need to have a little bit --.” Interrupting the court, Juror 6 interjected: “Yeah. Yeah. I feel pretty confident, yeah, that I would be able to be okay with that. Yeah. Like I said that was a long time ago and ... it was handled well by my parents and those involved.”

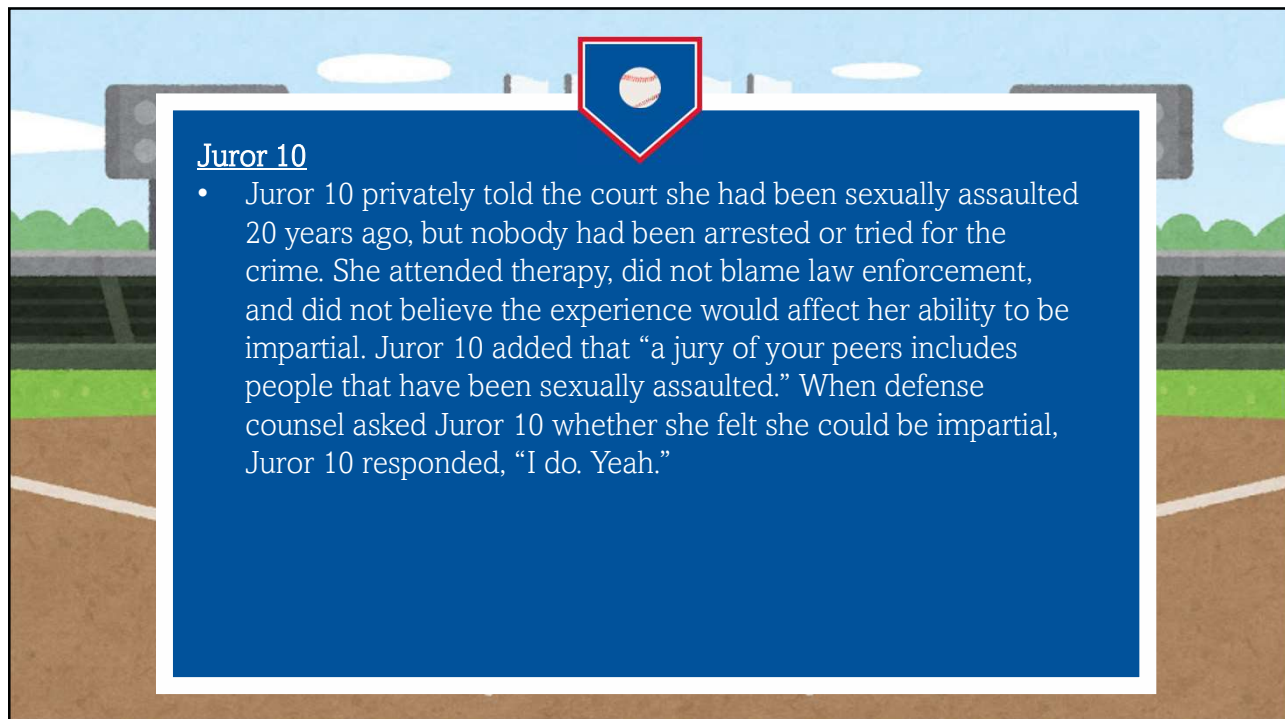
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Juror 6

- “**Defense counsel moved to strike Juror 6 for cause.** He described Juror 6 as “moved to tears when she was talking about her incident.” The court responded, “I didn't see any crying at all.” The lead prosecutor agreed Juror 6 did not cry, and the State's co-counsel averred that “[a]ll I saw was her eyes get more glassy, but I didn't see any tears.” Having watched the proceedings, the court described Juror 6's emotional response as “slight,” acknowledging “a slight change in her tone of voice.”
- The court found that Juror 6's continued assurances of fairness and impartiality clarified any ambiguity in her prior answers, so **the court denied the motion to strike her for cause and seated her.**

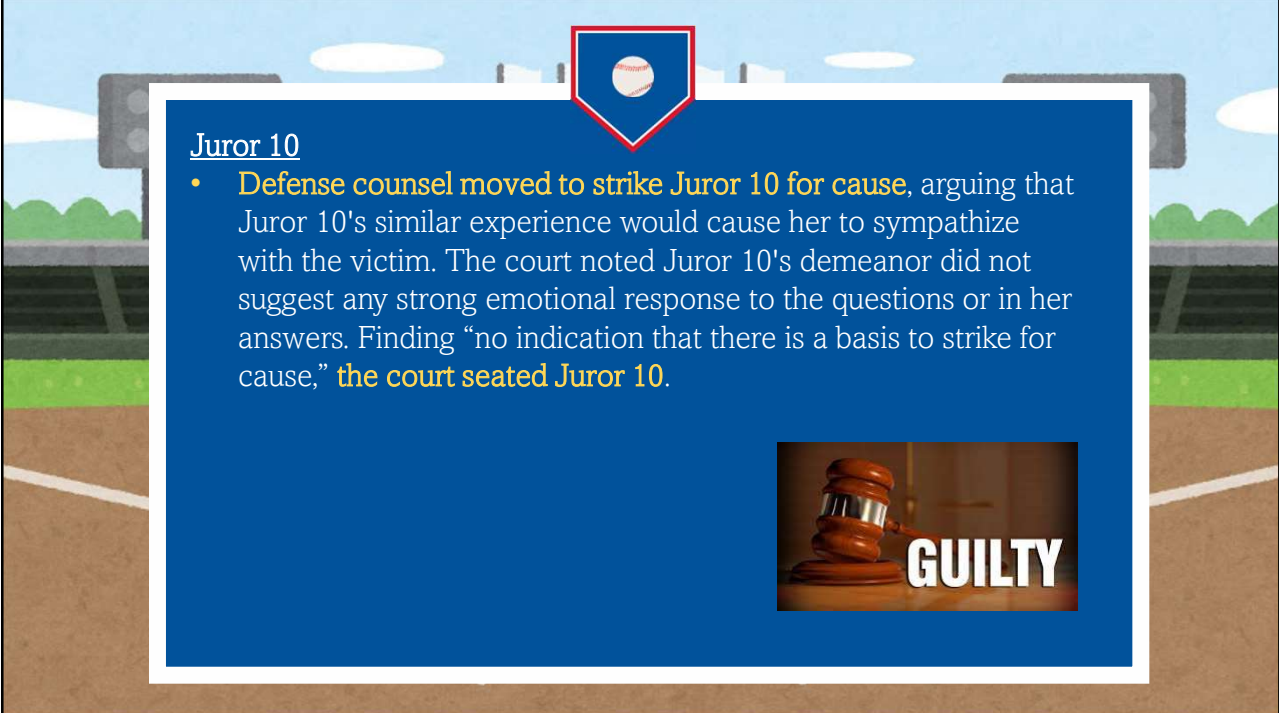
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Juror 10


- Juror 10 privately told the court she had been sexually assaulted 20 years ago, but nobody had been arrested or tried for the crime. She attended therapy, did not blame law enforcement, and did not believe the experience would affect her ability to be impartial. Juror 10 added that “a jury of your peers includes people that have been sexually assaulted.” When defense counsel asked Juror 10 whether she felt she could be impartial, Juror 10 responded, “I do. Yeah.”

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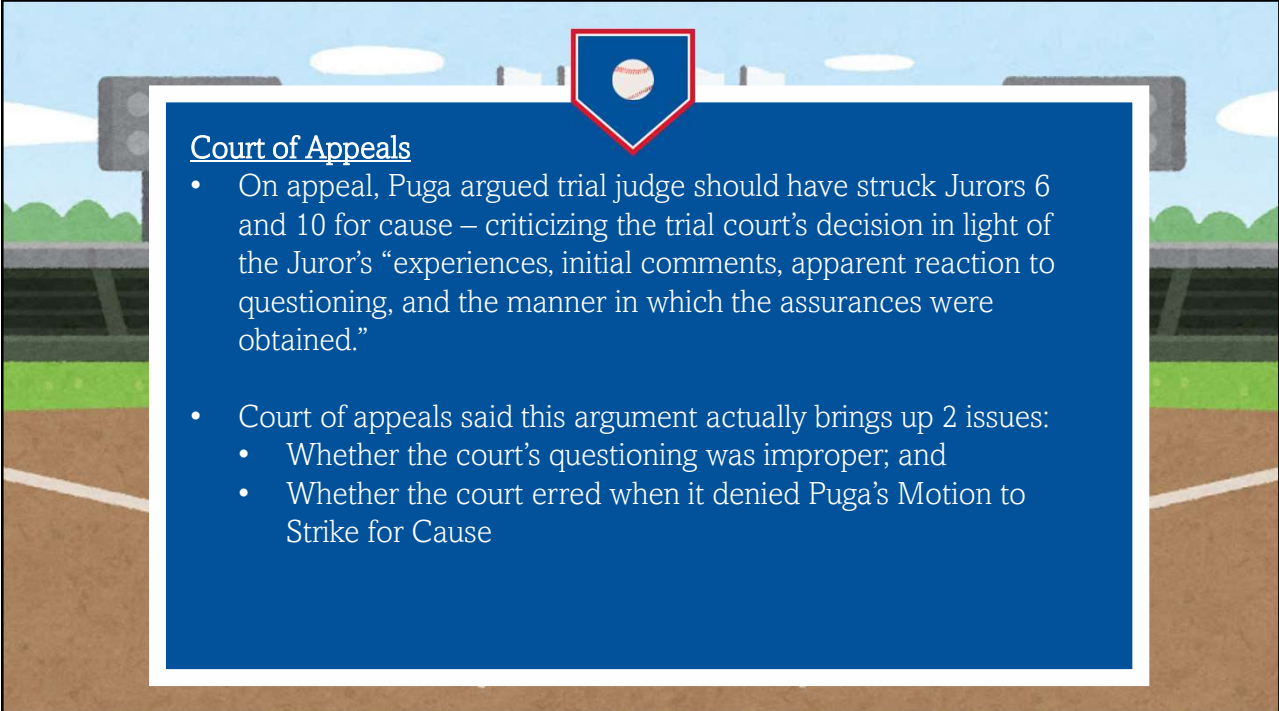


Juror 10

- **Defense counsel moved to strike Juror 10 for cause**, arguing that Juror 10's similar experience would cause her to sympathize with the victim. The court noted Juror 10's demeanor did not suggest any strong emotional response to the questions or in her answers. Finding “no indication that there is a basis to strike for cause,” **the court seated Juror 10.**



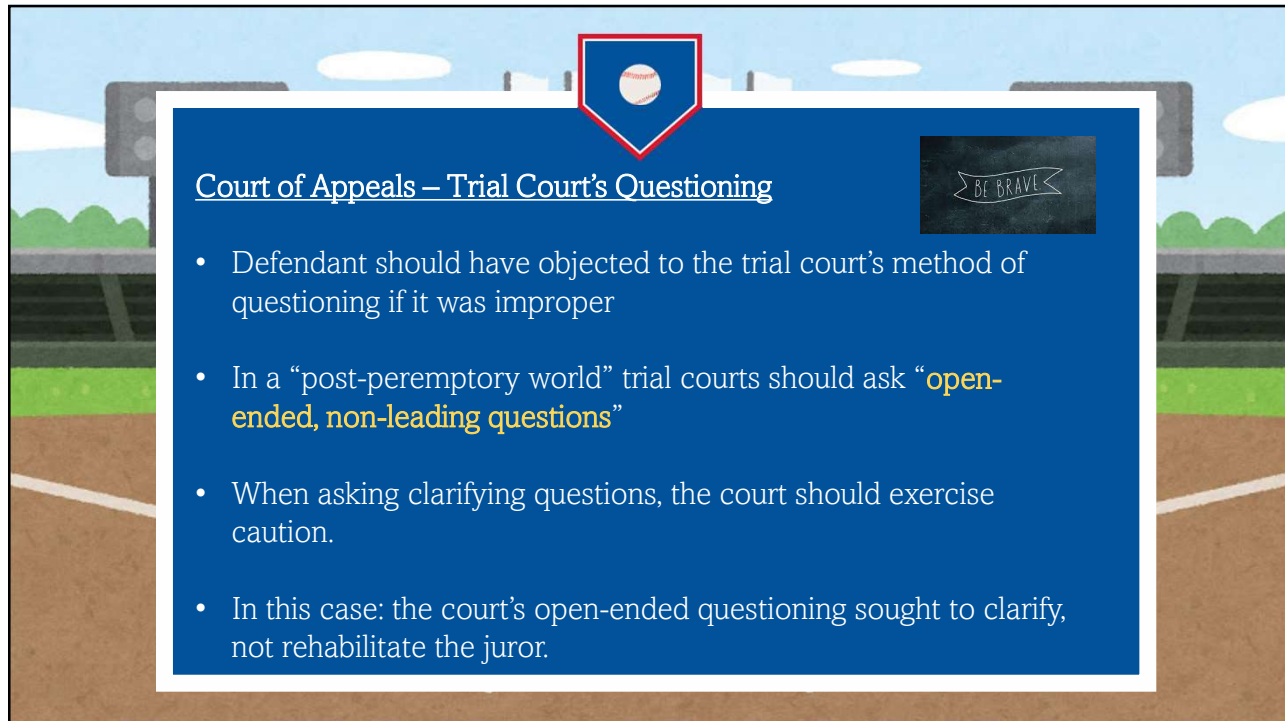
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Court of Appeals

- On appeal, Puga argued trial judge should have struck Jurors 6 and 10 for cause – criticizing the trial court’s decision in light of the Juror’s “experiences, initial comments, apparent reaction to questioning, and the manner in which the assurances were obtained.”
- Court of appeals said this argument actually brings up 2 issues:
  - Whether the court’s questioning was improper; and
  - Whether the court erred when it denied Puga’s Motion to Strike for Cause

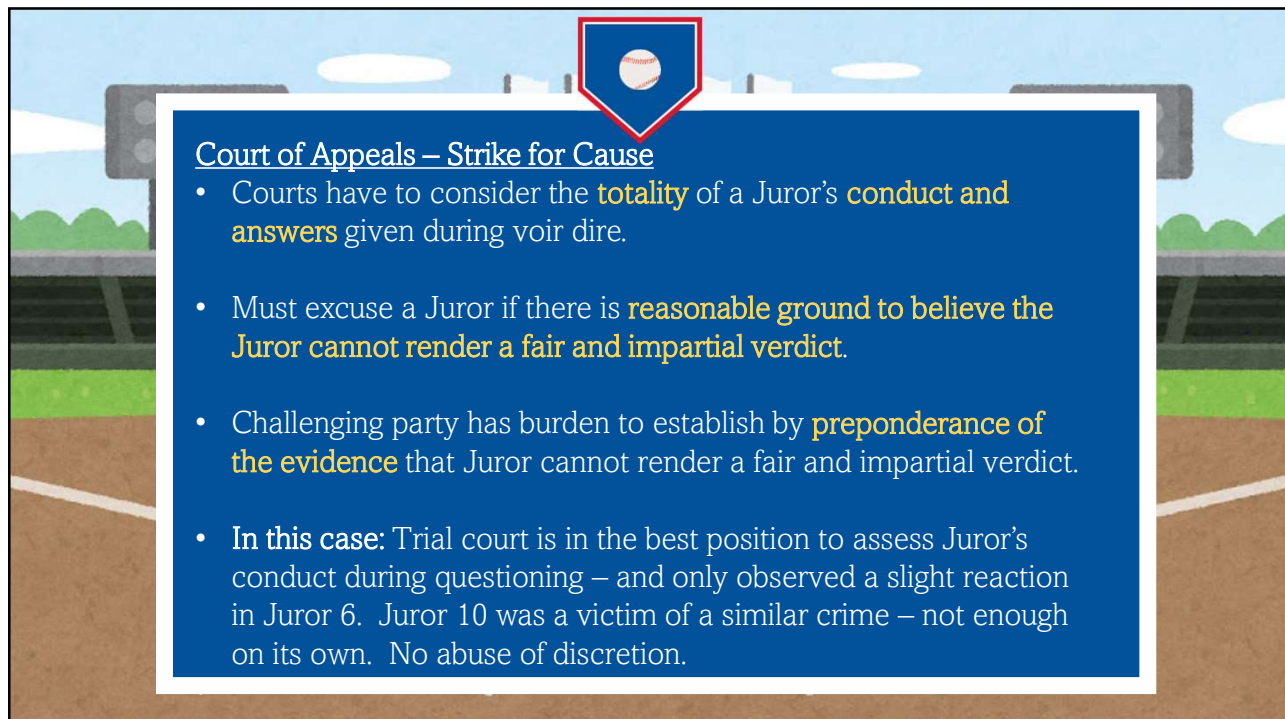
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**Court of Appeals – Trial Court’s Questioning**

- Defendant should have objected to the trial court’s method of questioning if it was improper
- In a “post-peremptory world” trial courts should ask “**open-ended, non-leading questions**”
- When asking clarifying questions, the court should exercise caution.
- In this case: the court’s open-ended questioning sought to clarify, not rehabilitate the juror.

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**Court of Appeals – Strike for Cause**

- Courts have to consider the **totality** of a Juror’s **conduct and answers** given during voir dire.
- Must excuse a Juror if there is **reasonable ground to believe the Juror cannot render a fair and impartial verdict.**
- Challenging party has burden to establish by **preponderance of the evidence** that Juror cannot render a fair and impartial verdict.
- **In this case:** Trial court is in the best position to assess Juror’s conduct during questioning – and only observed a slight reaction in Juror 6. Juror 10 was a victim of a similar crime – not enough on its own. No abuse of discretion.

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## Question Two:



In hockey, when a “**too many men on the ice**” penalty is called, what unusual action can sometimes happen immediately before the whistle is blown?



A) The offending team's coach is forced to sit in the penalty box

B) The referee stops play right away, regardless of puck possession


C) The offending player may try to jump off the ice to avoid the penalty

D) The captain must skate to the referee to admit the error

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**Question Two:**



**C) The offending player may try to jump off the ice to avoid the penalty**

When too many men are on the ice, sometimes a player who realizes the mistake will quickly jump off the ice before the whistle is blown to avoid their team being penalized. If the player successfully leaves the ice in time, the team may avoid the penalty. However, if the referee spots the infraction first, the penalty is still called. It's a fast, tactical move that can sometimes save a team from going short-handed.

In hockey, "jumping off the ice" is a tactical action taken immediately before the whistle is blown?

D) The captain must skate to the referee to admit the error

... right away, ... session

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# State v. Armendaris

Court of Appeals, Division 1  
March 13, 2025

## How many jurors is too many?


- Armendaris was convicted of Luring a Minor for Sexual Exploitation (C3F) and Attempted Sexual Conduct with a Minor (C1M).
- Armendaris moved for a 12-person jury. Superior Court denied that and sat an 8-person jury.
- Defendant was convicted and appealed.

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- Armendaris argued the **Sixth Amendment** required him to be tried to a 12-person jury.
- The Sixth Amendment guarantees right to speedy trial and public trial by an impartial jury. Applies to states through Fourteenth Amendment.
- **SCOTUS** ruled Sixth Amendment does **NOT** require 12-person jury. *Williams v. Florida*, 399 U.S. 78 (1970).
- In **1972**, Arizona voters amended our **State Constitution** to permit fewer than 12 jurors in criminal cases when the maximum permitted sentence is less than 30 years.
- In **2009**, the **Arizona Supreme Court** concluded that Arizona's jury law (12 for 30+ years/death and 8 in other Superior Court criminal cases) is in line with Sixth Amendment requirements. *See State v. Soliz*, 223 Ariz. 116 (2009).



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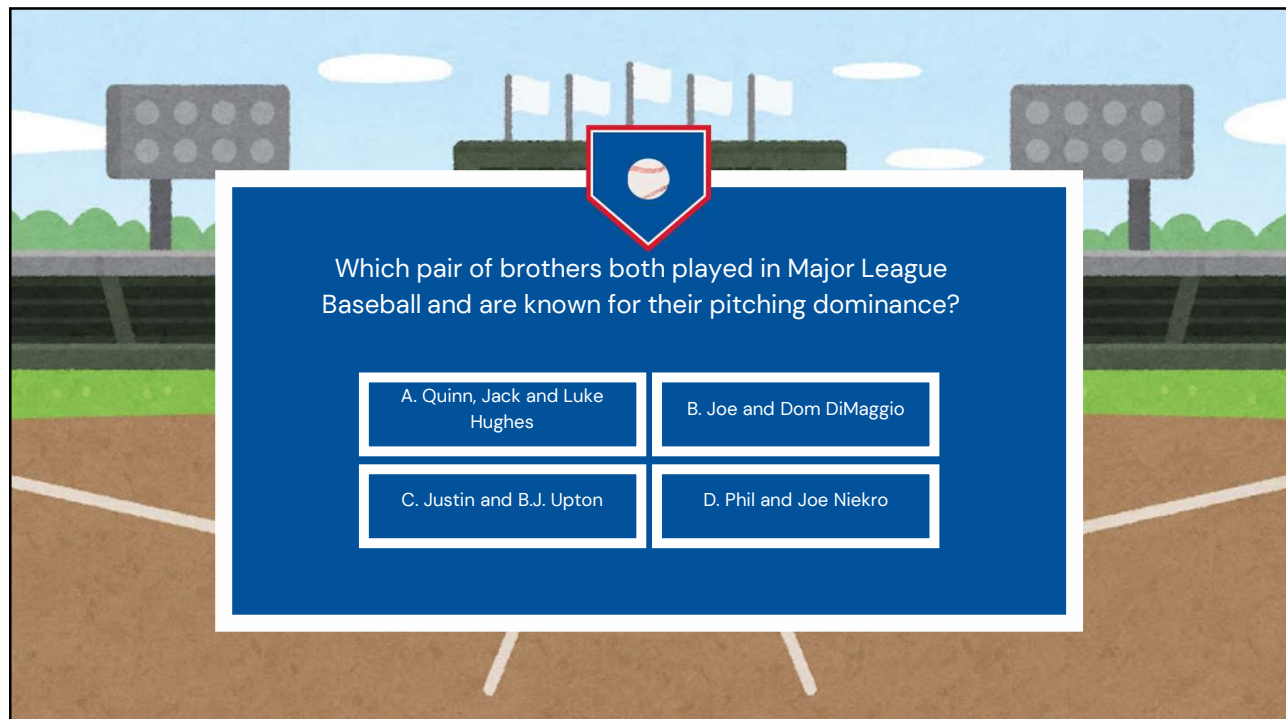
- Armendaris argued that in *Ramos v. Louisiana*, 590 U.S. 83 (2020), SCOTUS overruled their prior decision in *Williams* (not unanimous). 
- Armendaris also argued for a “trial by an impartial jury” under common law and at the time the Sixth Amendment was adopted.
- AZ Court of Appeals Division 1 points out:
  - Arizona courts must follow SCOTUS precedent.
  - In *Ramos*, SCOTUS held that jury verdicts must be unanimous in a criminal case. They did not overturn *Williams*.
  - Because Armendaris faced no more than 8.75 years in prison for Count 1 and no more than 6 months jail for Count 2, which is less than 30 years, he was not entitled to a 12-person jury.





**Conviction and Sentence Affirmed.**

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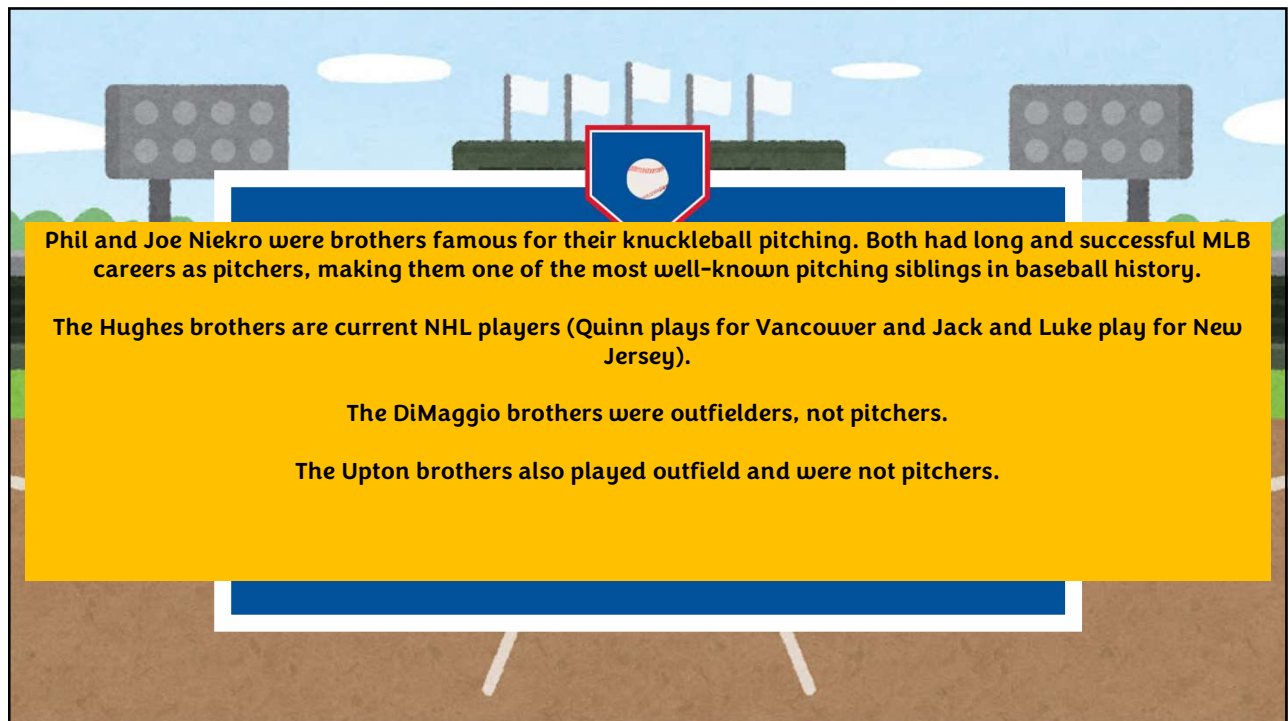


Which pair of brothers both played in Major League Baseball and are known for their pitching dominance?

A. Quinn, Jack and Luke Hughes	B. Joe and Dom DiMaggio
C. Justin and B.J. Upton	D. Phil and Joe Niekro

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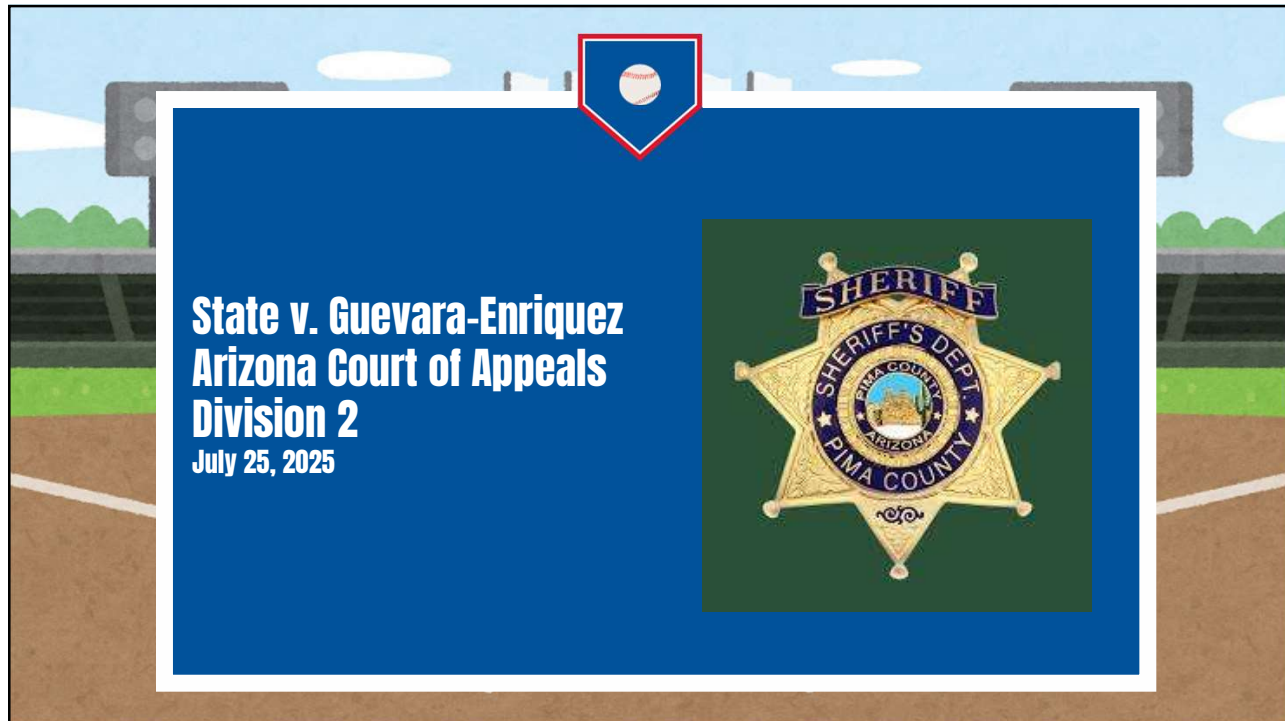
Phil and Joe Niekro were brothers famous for their knuckleball pitching. Both had long and successful MLB careers as pitchers, making them one of the most well-known pitching siblings in baseball history.

The Hughes brothers are current NHL players (Quinn plays for Vancouver and Jack and Luke play for New Jersey).

The DiMaggio brothers were outfielders, not pitchers.

The Upton brothers also played outfield and were not pitchers.

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## State v. Guevara-Enriquez

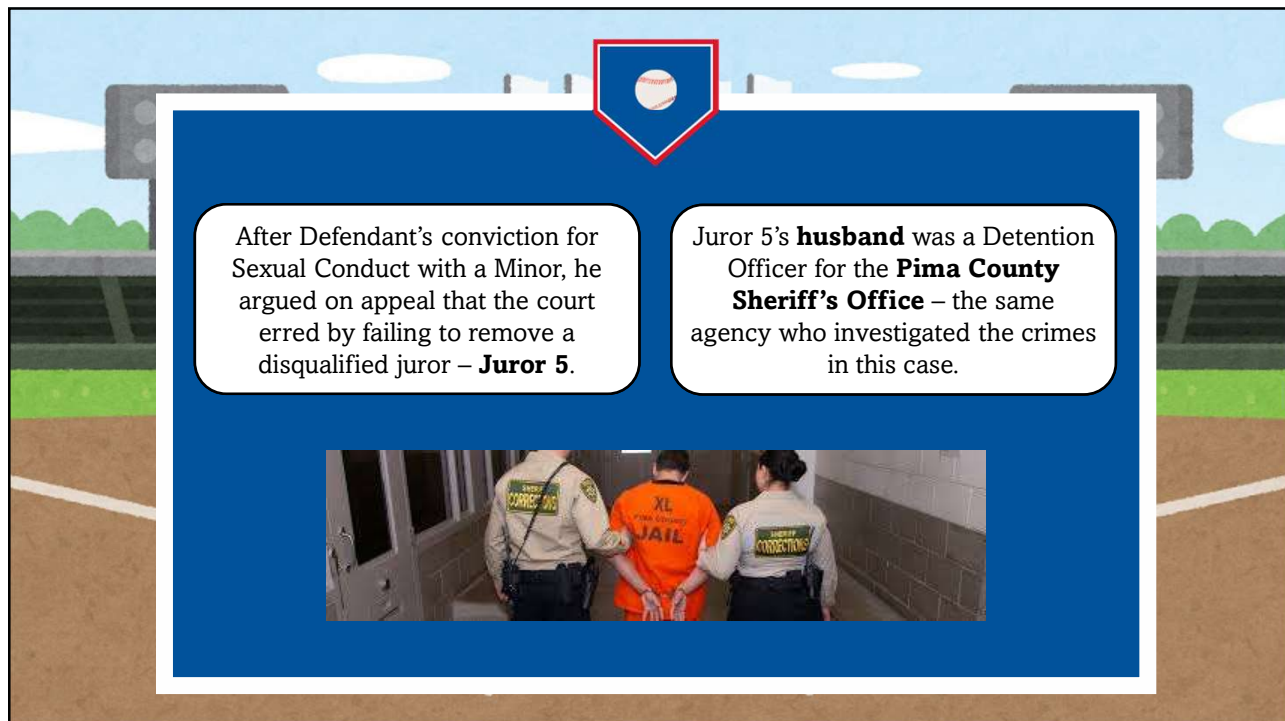
### Arizona Court of Appeals

#### Division 2

July 25, 2025




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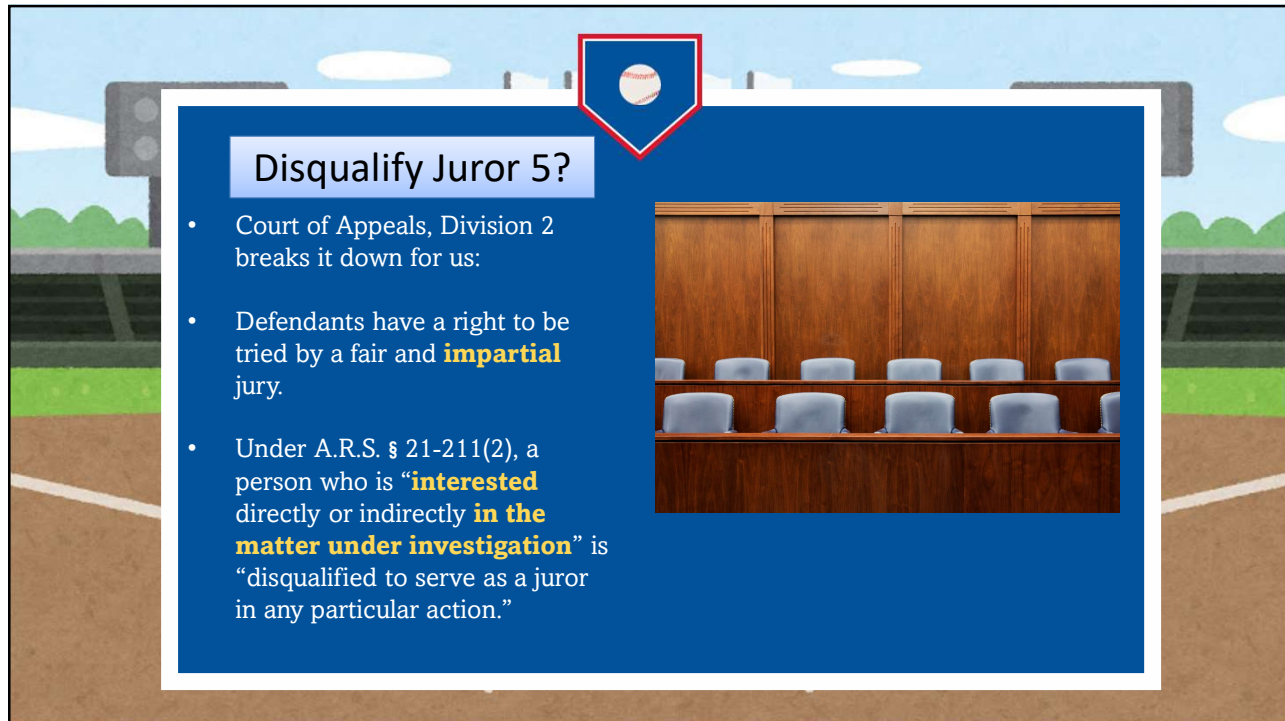


After Defendant's conviction for Sexual Conduct with a Minor, he argued on appeal that the court erred by failing to remove a disqualified juror – **Juror 5**.

Juror 5's **husband** was a Detention Officer for the **Pima County Sheriff's Office** – the same agency who investigated the crimes in this case.

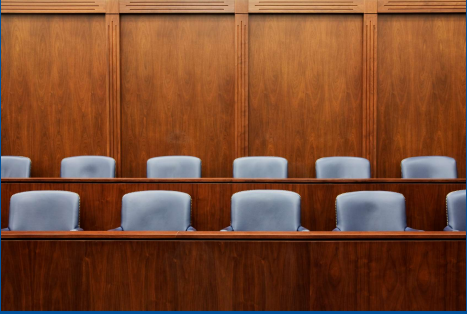


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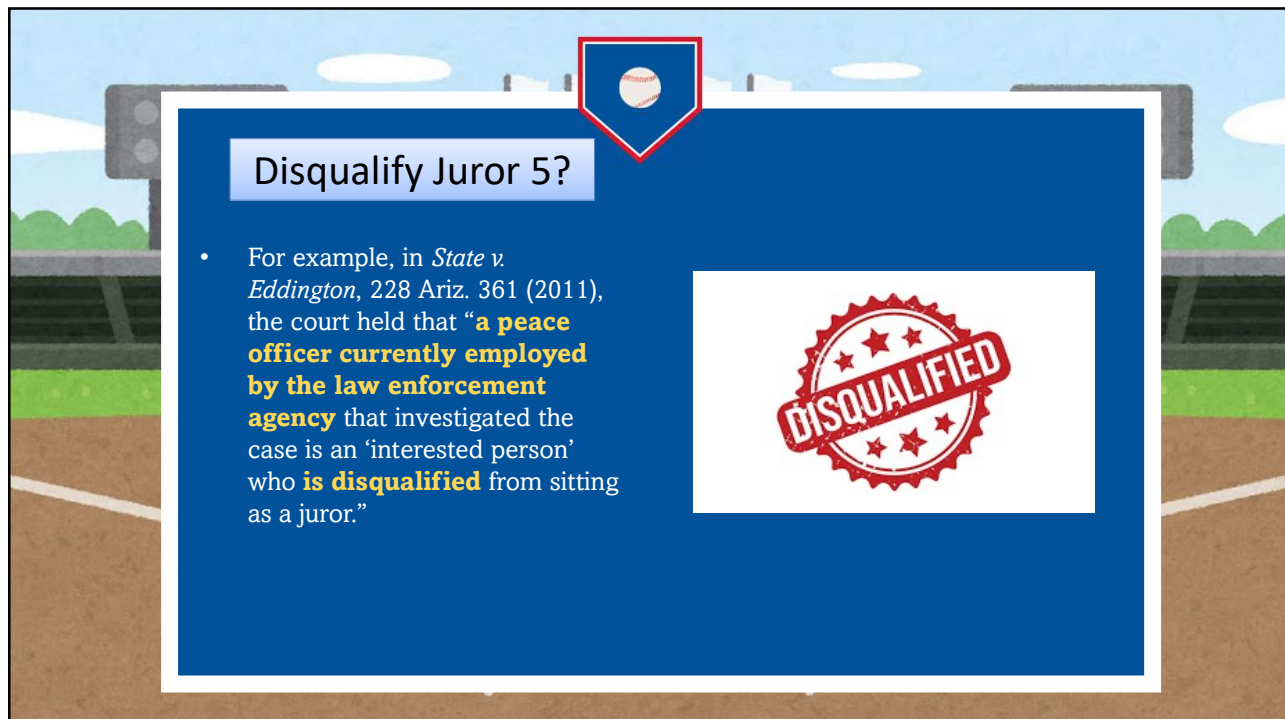


## Disqualify Juror 5?

- Court of Appeals, Division 2 breaks it down for us:
- Defendants have a right to be tried by a fair and **impartial** jury.
- Under A.R.S. § 21-211(2), a person who is “**interested** directly or indirectly **in the matter under investigation**” is “disqualified to serve as a juror in any particular action.”




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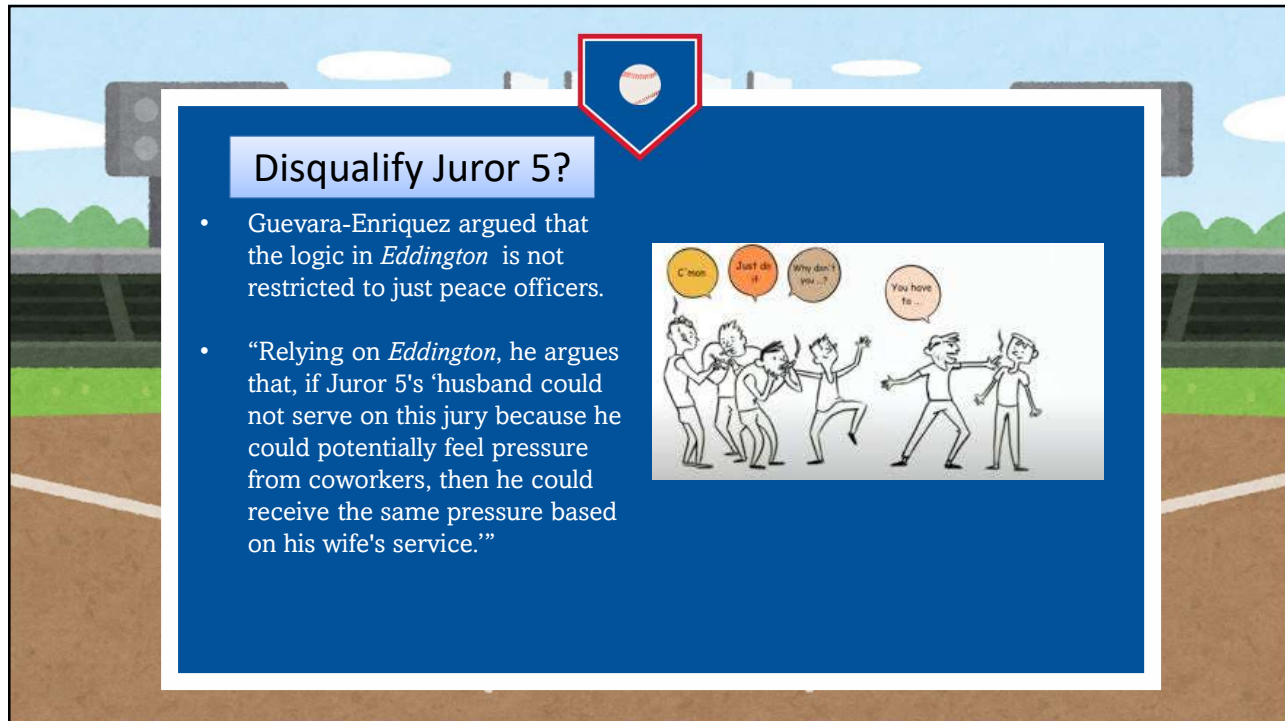


## Disqualify Juror 5?

- For example, in *State v. Eddington*, 228 Ariz. 361 (2011), the court held that “**a peace officer currently employed by the law enforcement agency** that investigated the case is an ‘interested person’ who **is disqualified** from sitting as a juror.”




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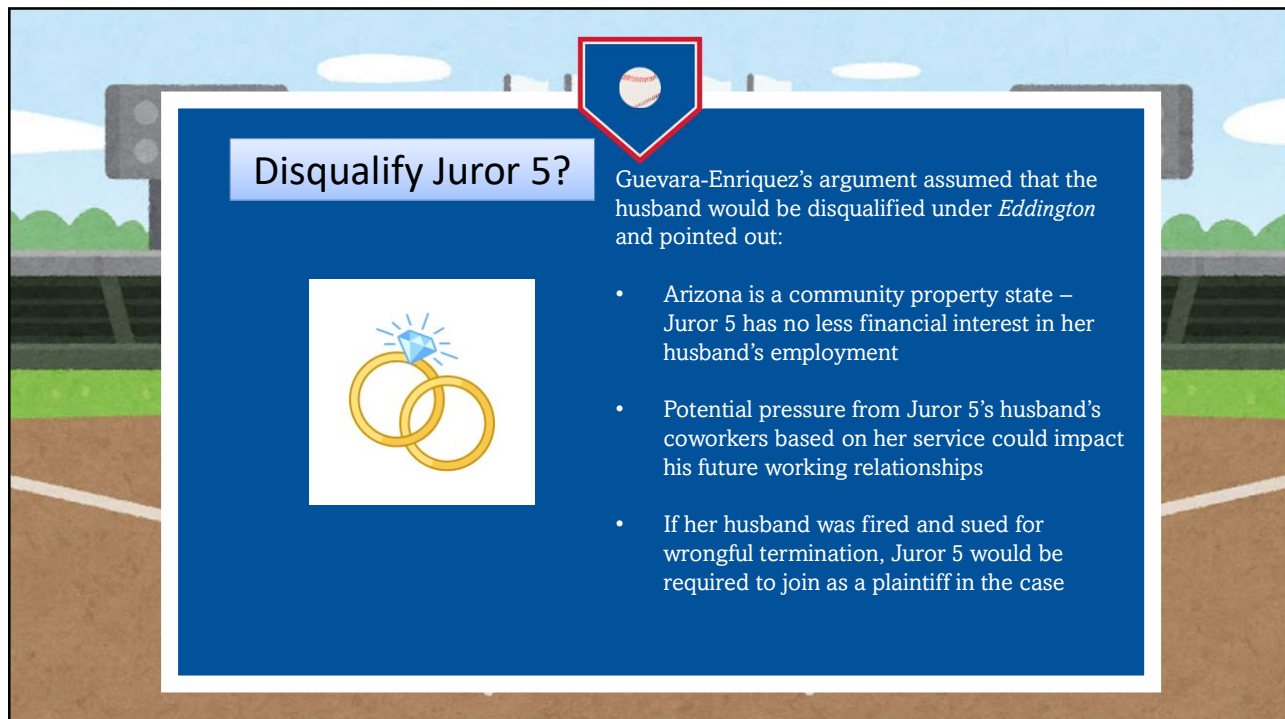


### Disqualify Juror 5?

- Guevara-Enriquez argued that the logic in *Eddington* is not restricted to just peace officers.
- “Relying on *Eddington*, he argues that, if Juror 5’s husband could not serve on this jury because he could potentially feel pressure from coworkers, then he could receive the same pressure based on his wife’s service.”




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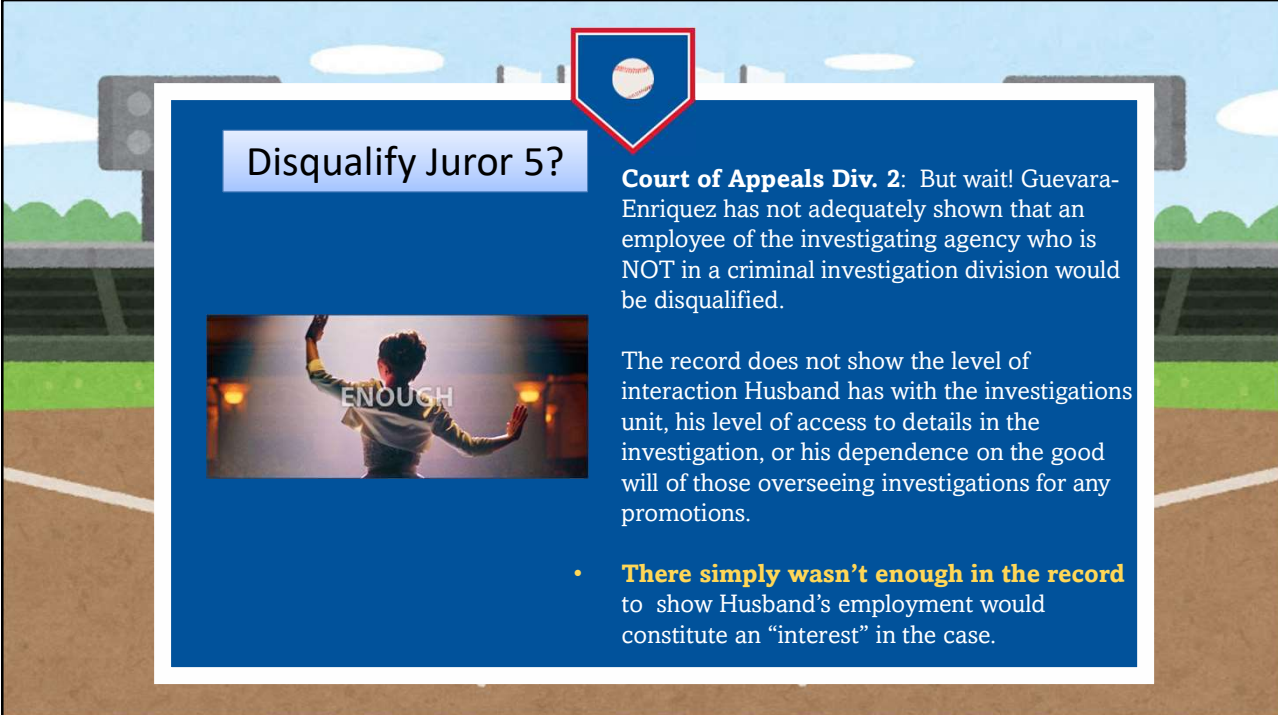
### Disqualify Juror 5?

Guevara-Enriquez’s argument assumed that the husband would be disqualified under *Eddington* and pointed out:


- Arizona is a community property state – Juror 5 has no less financial interest in her husband’s employment
- Potential pressure from Juror 5’s husband’s coworkers based on her service could impact his future working relationships
- If her husband was fired and sued for wrongful termination, Juror 5 would be required to join as a plaintiff in the case



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## Disqualify Juror 5?

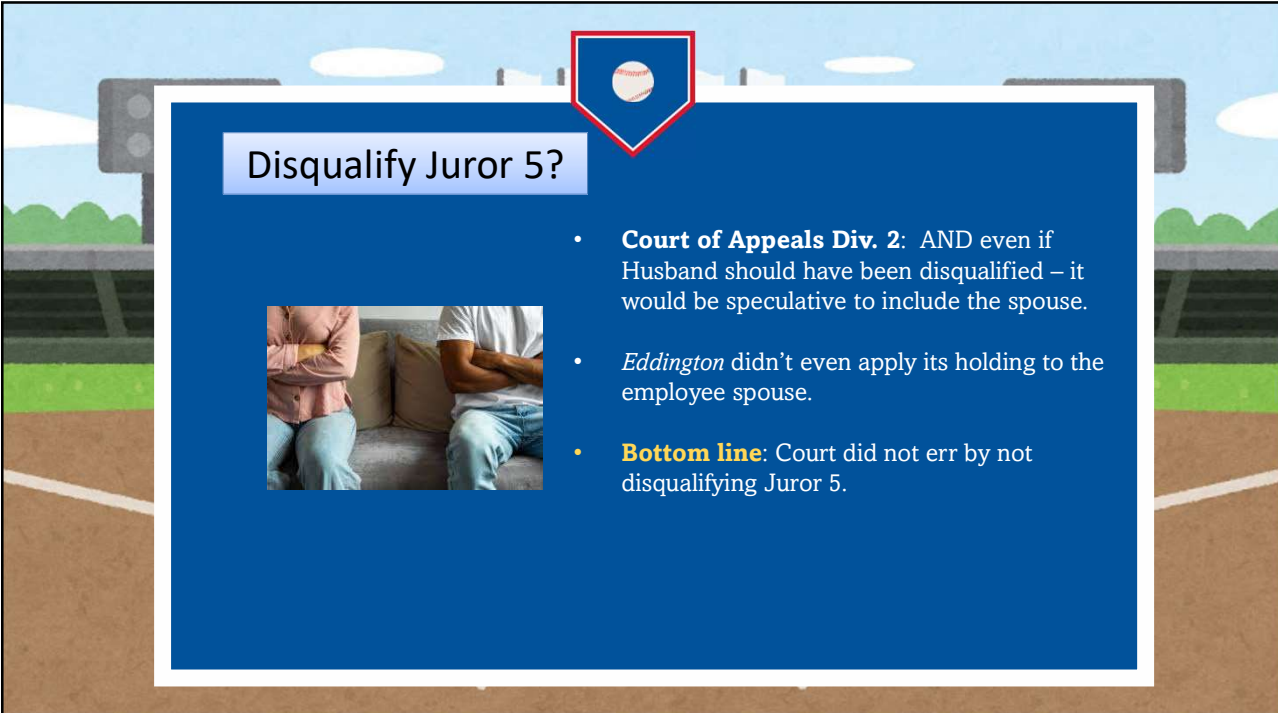


**Court of Appeals Div. 2:** But wait! Guevara-Enriquez has not adequately shown that an employee of the investigating agency who is NOT in a criminal investigation division would be disqualified.


The record does not show the level of interaction Husband has with the investigations unit, his level of access to details in the investigation, or his dependence on the good will of those overseeing investigations for any promotions.

- **There simply wasn't enough in the record** to show Husband's employment would constitute an "interest" in the case.

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## Disqualify Juror 5?



- **Court of Appeals Div. 2:** AND even if Husband should have been disqualified – it would be speculative to include the spouse.
- *Eddington* didn't even apply its holding to the employee spouse.
- **Bottom line:** Court did not err by not disqualifying Juror 5.

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## Question Three:

**Wayne Gretzky** is widely regarded as one of the greatest hockey players of all time. Which NHL team did he *first* play for?



A) Los Angeles Kings

B) Edmonton Oilers

C) St. Louis Blues

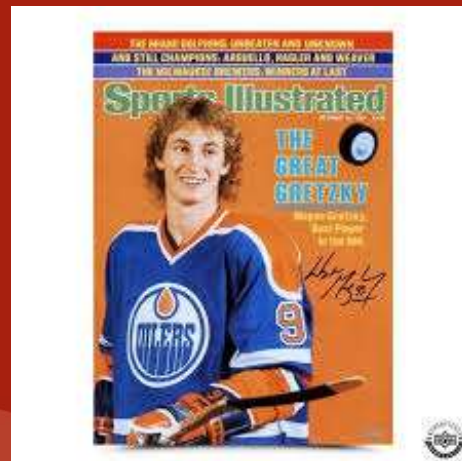
D) New York Rangers

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### B) Edmonton Oilers

Wayne Gretzky began his NHL career with the **Edmonton Oilers** in 1979, when the team joined the NHL from the WHA (World Hockey Association). He played with the Oilers until 1988, leading them to four Stanley Cup championships. In 1988, Gretzky was traded to the **Los Angeles Kings**, a move that significantly boosted the popularity of hockey in Southern California. He played for the Kings until 1996. After that, he briefly played for the **St. Louis Blues** during the 1995–96 season, before finishing his career with the **New York Rangers**, where he played from 1996 until his retirement in 1999.



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# Established Jury Case Law

Reviewing some of the classics...



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## • Determining Jury Trial Eligibility

- There is a statutory right; or
- Derendal Test:
  - The charged crime has a **common law antecedent**; or
  - The charged crime is a **“serious”** offense.

*Derendal v. Griffith*, 209 Ariz. 416 (2005)

**Note:** Court ruled in *Derendal* that “moral quality” no longer a determining factor



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## • Determining Jury Trial Eligibility

- Crimes that are jury eligible because they have a **common law antecedent**:
  - Reckless Driving;
  - Shoplifting;
  - Indecent Exposure;
  - Resisting Arrest;
  - Unlawful Imprisonment;
  - Theft;
  - Causing Death by Moving Violation



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## • Determining Jury Trial Eligibility

- Misdemeanors are presumed to be NOT “serious.” However, some misdemeanor crimes have been classified as such.
- Crimes are “**serious**” if the consequences are so severe it is akin to the loss of liberty that occurs when one is in prison.
  - Ex. Crimes where sex offender registration is possible (like Chapter 14 offenses and where Allegation of Sexual Motivation has been filed). *Fushek v. State*, 218 Ariz. 285 (2008).
  - A.R.S. 13-707(B) – up to 1 year jail for C1M?



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## • Determining Jury Trial Eligibility

- Misdemeanor crimes/consequences that are **NOT “serious”** under established case law:
  - Interfering with Judicial Proceedings
  - Assault
  - Possession of Drug Paraphernalia
  - Trespass
  - Obstructing Highway or Thoroughfare
  - Domestic Violence\*



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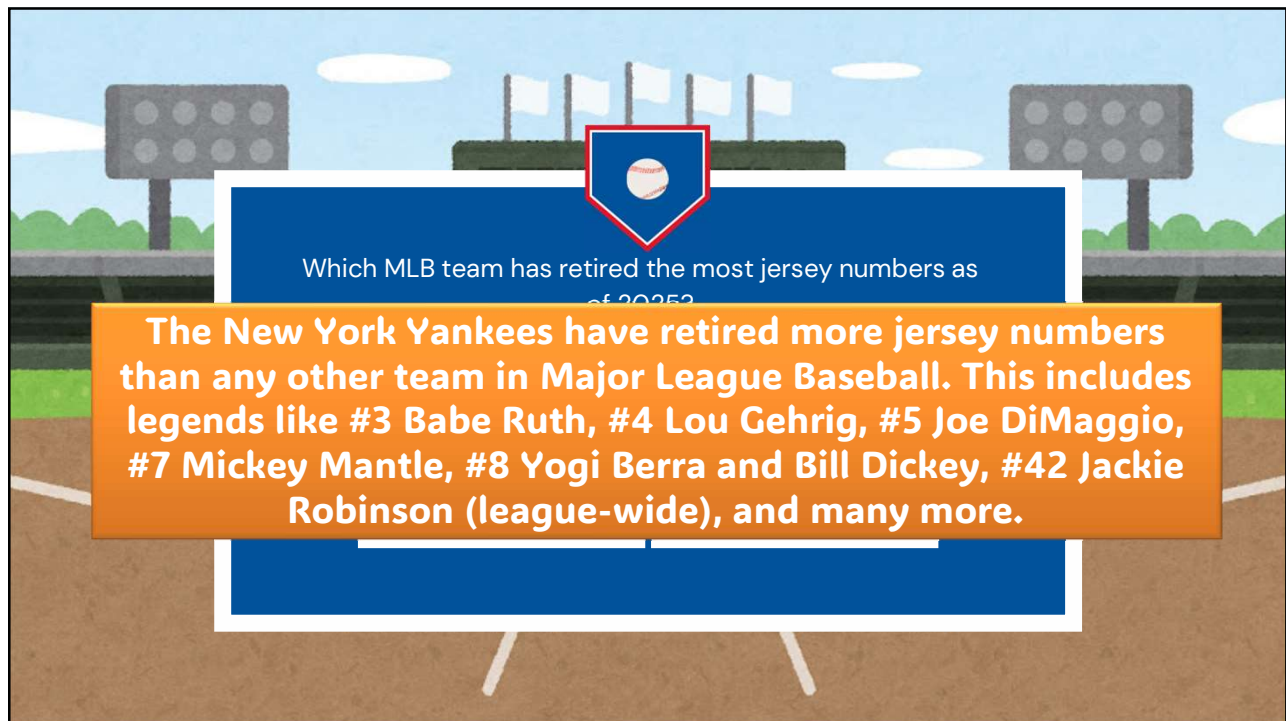
A stylized illustration of a baseball field with green grass, brown dirt, and stadium lights. In the center, there is a blue overlay with a white border. At the top of the overlay is a red and white baseball icon. Below the icon is the question: "Which MLB team has retired the most jersey numbers as of 2025?". Below the question are four white buttons with blue borders, each containing an answer option: A. New York Yankees, B. Boston Red Sox, C. Los Angeles Dodgers, and D. St. Louis Cardinals.

Which MLB team has retired the most jersey numbers as of 2025?

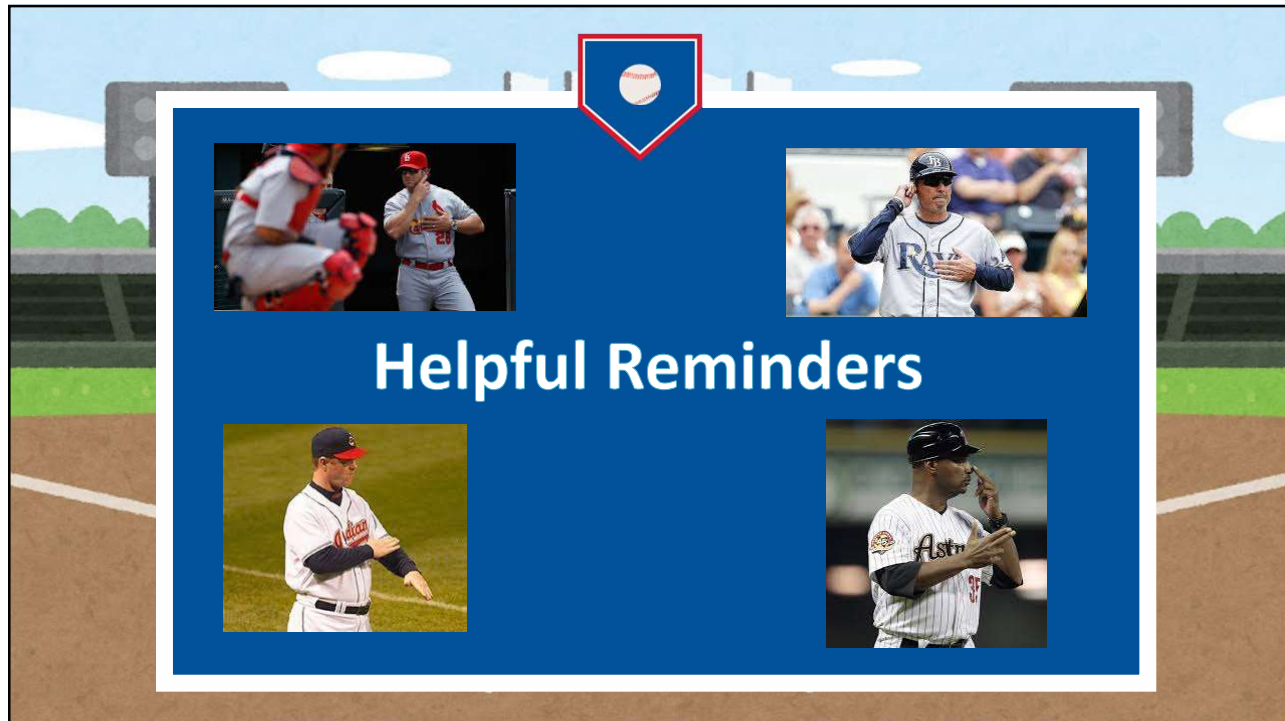
A. New York Yankees	B. Boston Red Sox
C. Los Angeles Dodgers	D. St. Louis Cardinals

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**Helpful Reminders**

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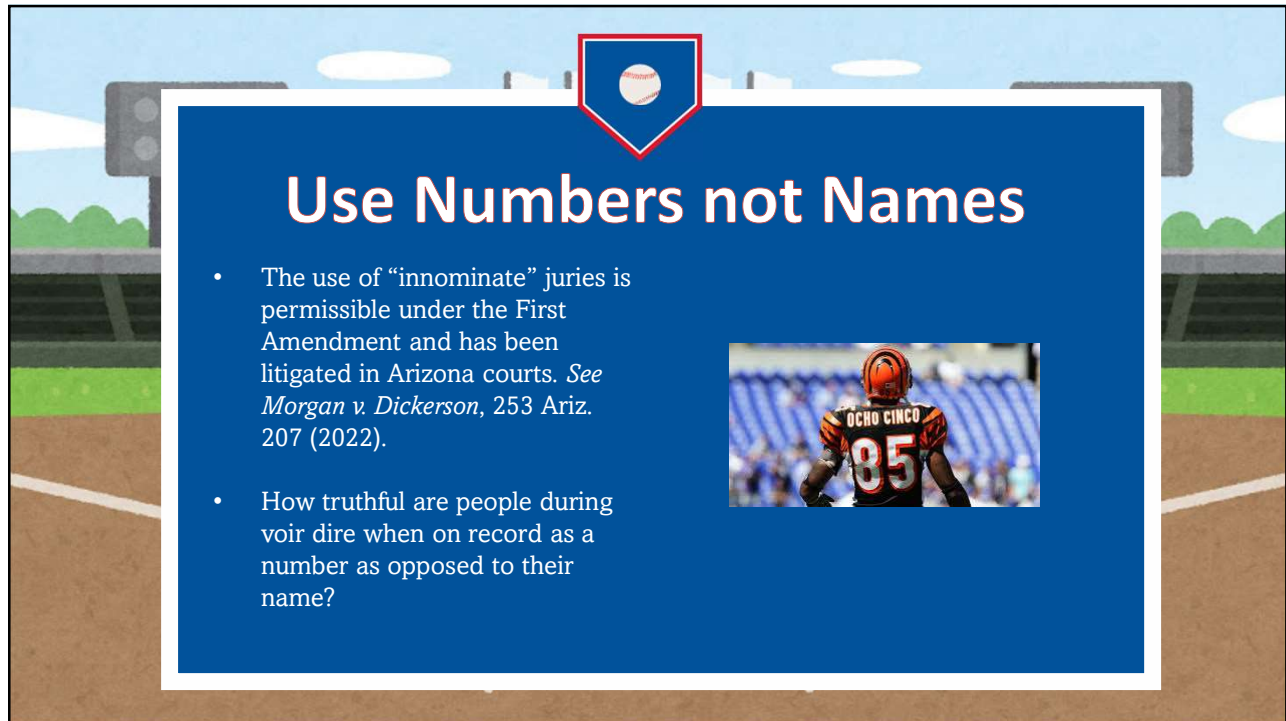


**Let them tell their story!**

**NARRATOR'S VOICE**


Comment to Rule 18.5(f). When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and **use open-ended questions that elicit prospective jurors' views narratively**. The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law.

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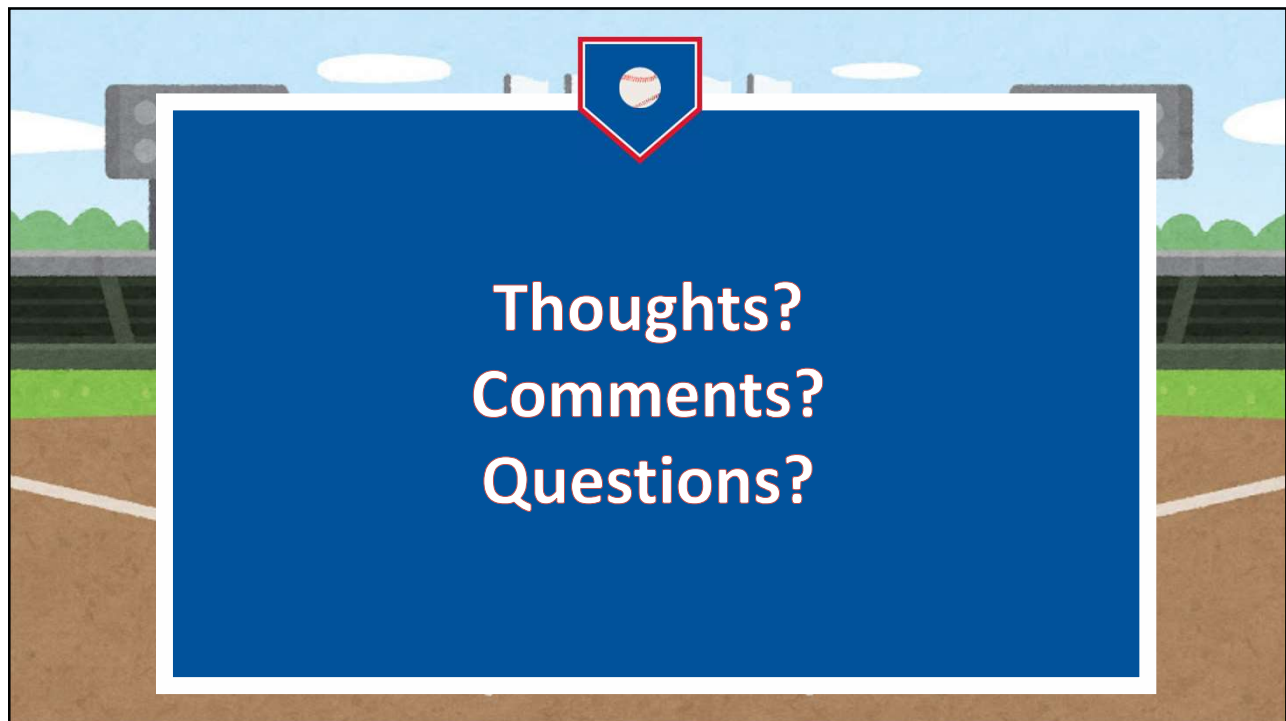


## Use Numbers not Names

- The use of “innominate” juries is permissible under the First Amendment and has been litigated in Arizona courts. *See Morgan v. Dickerson*, 253 Ariz. 207 (2022).
- How truthful are people during voir dire when on record as a number as opposed to their name?

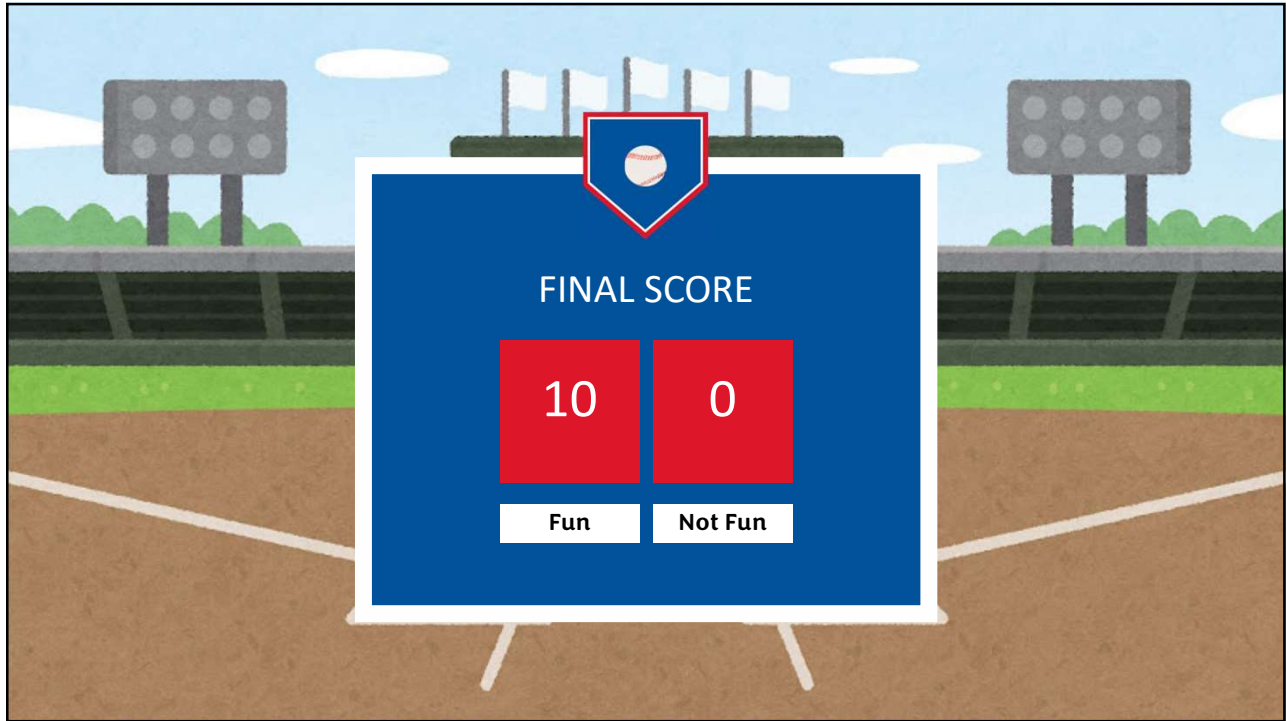


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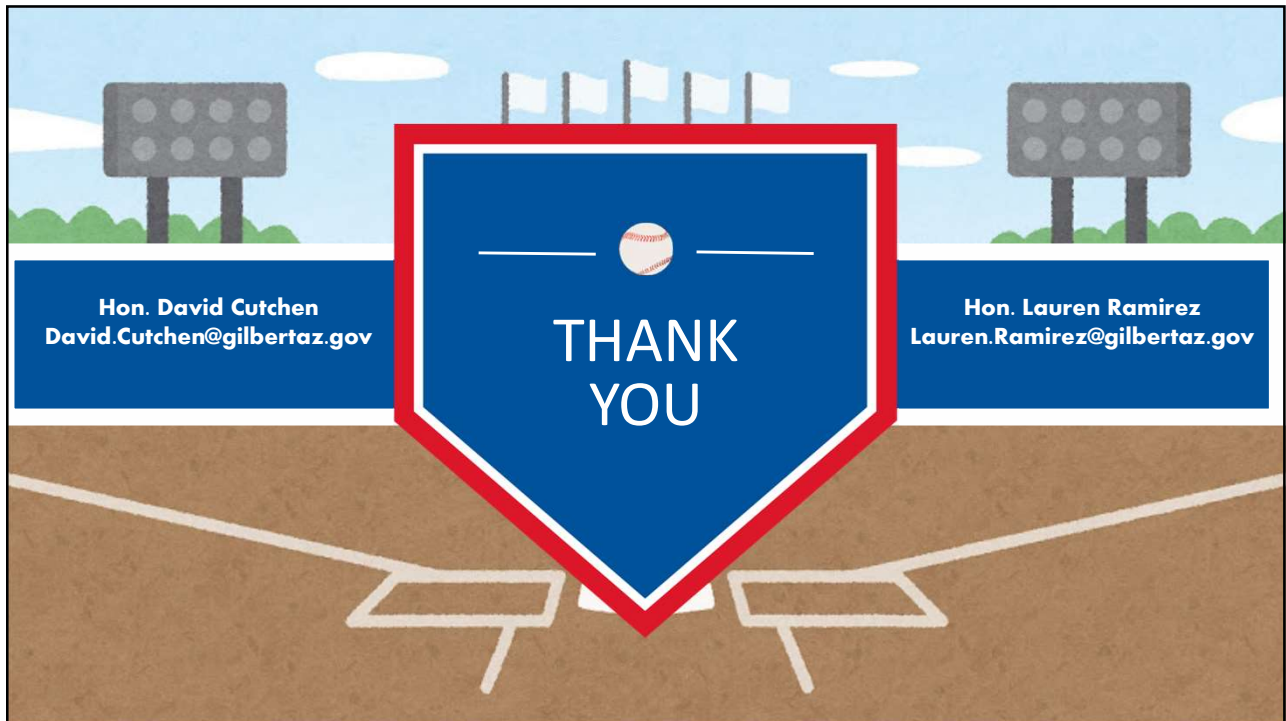


## Thoughts? Comments? Questions?

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