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Response

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Response

It has been a privilege to be involved in an academic discourse with Professor Capra. To put it simply, his suggestion for amending Federal Rule of Evidence 704 would solve the conundrum the current version of the Rule poses for both prosecutors and expert witnesses outside of the mental health profession. It would certainly obviate the need to skirt around the ultimate issue testimony that juries most assuredly would want to hear in a case similar to that of Defendant X. A recent case out of the Third Circuit highlights the need for vigilance by prosecutors to steer clear of asking the ultimate question in narcotics possession cases¹ up and until such time as Federal Rule of Evidence 704(b) is revoked or revised.

DANA R. HASSIN

1. *United States v. Watson*, 260 F.3d 301 (3d Cir. 2001) (reversing a conviction based upon improper expert testimony that the appellant's "mental state was to distribute the cocaine base rather than to use the narcotics personally"). Inasmuch as I attempted to provide a working script of permissible questions and answers, this case offers scripts for three separate instances of crossing the impermissible threshold established by Rule 704(b).