Hale v. Burlington N. & Santa Fe Ry. Co. -- very instructive case on MAI and use of not-in-MAI instructions

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This case is very instructive on the MAI, and in particular the use of not-in-MAI instructions. A defense verdict is reversed because the defendant got the trial judge to instruct the jury on an abstract issue of law:

> Hale's appeal challenges not-in-MAI Instruction 9, a one-sentence submission given at BNSF's request, over Hale's objection, telling jurors that BNSF's train crew "had a right to assume that a vehicle approaching a crossing would stop before going upon the crossing."

The Court considers the "philosophy" of MAI principles and the fact that MAI is more than a mere collection of approved instructions.   With the institution of the MAI "[n]o longer could an instruction be given just because it stated a legal rule, principle, presumption, or inference, even if it did so fairly and accurately."

The not-in-MAI instruction at issue did not fit any over the accepted categories of MAI instructions (explanatory, definitions, verdict-directing/converse/affirmative defense, damage, or withdrawal/limiting instructions). Instruction 9 submitted a presumption and improperly argued BNSF's position.

If a not-in-Mai instruction is to be submitted, the ultimate test is not only whether the instruction follows the substantive law and can be readily understood. "It is

more complete and accurate to say that *if* a not-in-MAI instruction is *needed* to properly submit a case (not just *wanted* by a party seeking an edge), it must track applicable substantive law and be readily understood by the jury."

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