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and that means that specific danger. And then if you turn to page 85 of the jury instructions...did he give you the comments?

SENATOR MOORE: He gave me page 85.

SENATOR ASHFORD: Okay, you've got to look at the comments in the authorities and if you do that, what you will find is it says, under the case of Shuster v. Baumfalk which is 429 NW 2nd, 1988 case, the doctrine of assumption of risk applies only when the danger is known under risk...

SENATOR MOORE: Okay, Senator Ashford on my...on my time, give me in 30 seconds or less what the difference is between the Will amendment and the Schellpeper amendment as it reads.

SENATOR ASHFORD: I was just handed the Schellpeper amendment but, clearly, where it is deficient is that it does not make clear that the assumption of risk is an affirmative defense, number one; and that, number two, that it doesn't expand current law to say that the individual is not aware of a specific, a specific danger. That's the law.

SENATOR MOORE: Well, tell...you're going back to the language that you attorneys speak, and my wife, but specific, give me a better example.

SENATOR ASHFORD: Be careful. A better example.

SENATOR MOORE: I walk along, I see some ice...

SENATOR ASHFORD: I will give you a good example.

SENATOR MOORE: ...I have to know that I'm going to fall? I have to know that I'm going to break my neck?

SENATOR ASHFORD: No, I'll tell you what that is normally. That's normally a question of contributory negligence, not an assumption of risk question.

SENATOR MOORE: Okay, let's deal...

SENATOR ASHFORD: Can I...

SENATOR MOORE: ...with the amendment on tobacco products, about smoking, and let's deal with it that way.