

FOREWORD

Since 1959, the Wisconsin Jury Instructions project has produced over one thousand jury instructions to assist judges, lawyers, and, most importantly, jurors in understanding what the jury must decide at the conclusion of a trial. In 2020, the Jury Instructions project was transferred entirely to the Wisconsin Court System after 60 years as a cooperative effort between the Judicial Conference and the University of Wisconsin Law School. Publication and distribution of the Wisconsin Jury Instructions – Criminal is now managed by the Office of Judicial Education with the assistance of the Wisconsin State Law Library. Throughout its sixty-four years of existence, the Wisconsin jury instructions model has proven unique in its longevity, continuity, and orientation toward the trial judge. Despite several structural changes over the last six decades, these distinctive aspects have remained consistent, and the jury instructions model has continued without interruption.

The instructions provided in Wisconsin Jury Instructions – Criminal respond to a need for a comprehensive set of instructions to assist judges, juries, and lawyers in performing their role in criminal cases. All published jury instructions share the same objective to provide a careful blending of the substantive law and the collective wisdom and courtroom experiences of the Committee members.

This set of instructions has been enriched by valuable suggestions from the judges and lawyers who have used the instructions in preparing trials, as well as presenting cases to juries. The Committee hopes this set will continue to receive the same valuable scrutiny from those who use it. We are proud of this publication and hope those who use it find it valuable.

July 2023

**Bryce Pierson
Legal Advisor & Committee Reporter
Office of Judicial Education**

COMMITTEE HISTORY

Foundation of the Wisconsin Criminal Jury Instructions 1959-1962

The origins of the Wisconsin Criminal Jury Instructions Committee and the model it employs to produce jury instructions date back to 1959. In that year, the University of Wisconsin-Extension, Department of Law, in partnership with the Board of Criminal Court Judges, put together the first “institute” on criminal jury instructions. Initially organized as a general traffic court conference, the Board of Criminal Court Judges ultimately revised the subject matter of the institute to focus on jury instruction at the suggestion of Circuit Judge Gerald Boileau of Wausau¹. Judge Boileau’s recommendation stemmed partly from his involvement in creating the new Wisconsin Criminal Code that took effect in 1956.² During the development of the Criminal Code, it became evident to the drafters that reference work did not exist, which could assist Wisconsin judges and attorneys in preparing jury instructions. Concluding that the newly defined crimes required such instructions, the Board of Criminal Court Judges agreed with Judge Boileau. It then directed the institute to focus on drafting formal model instructions so that the bench would not have to rely on instructions informally passed from judge to judge.

The format of the “institute,” which established the committee model still in use today, is credited to University of Wisconsin law professor Frank J. Remington³. In a letter to Judge Boileau concerning his expert advice on the subject, Professor Remington advocated that judges take primary responsibility for the program. Expounding upon his position, Professor Remington explained, “I think this is right because the giving of instructions is uniquely a judicial function and one about which the judiciary has the most knowledge and experience.” The institute’s model, therefore, became oriented around trial judges and their instructional practices and policies.

Once the content and format of the institute were agreed upon, a conference date of June 10 and 11, 1959 was set. The primary objective of the meeting was to develop model instructions that would assist judges and trial attorneys in the submission of criminal cases to juries.⁴ To facilitate this task, the Committee requested that trial judges send in copies of instructions they regularly used.⁵ Additionally, the research staff presented proposed instructions, which the Committee analyzed, debated, and rewrote many times before the members attained unanimous approval. Although many conference attendees may have anticipated that their work would be complete once they addressed the new Criminal Code, this proved not to be the case.

After a second jury instructions conference in February of 1960, the attendees agreed that a regular committee was necessary to draft a complete set of criminal jury instructions. In response, the Board of Criminal Court Judges adopted a resolution that

called for the appointment of a five-member committee⁶ to collaborate with the University of Wisconsin Extension, Department of Law in preparing model jury instructions for criminal cases. The Jury Instructions Committee continued to meet regularly, and its existence was made permanent shortly before it completed the first edition of the model criminal jury instructions in 1962.⁷

Development of the Original Model Instructions

In the summer of 1962, the Committee published its inaugural edition of model jury instructions. The single-volume edition included both an introduction by Judge Boileau⁸ and a Preface by editor John H. Bowers⁹. The advice and expectations for how the instructions should be used provided in the original edition remain accurate today.

Continuity of publication has been a trademark of the criminal jury instructions model since the original edition was published in 1962. In 1966, the Committee produced its first preliminary supplement to the original edition that updated material and added new instructions. The Committee also completed additional supplements to the 1962 edition in 1967, 1971, 1974, and 1976. These supplements expanded the Committee's original work from one to three volumes and completed the development of the first edition. Following the publication of the 1976 supplement, the Committee's production rate briefly declined due to funding difficulties. However, the University of Wisconsin was able to obtain temporary federal funding through the Wisconsin Council on Criminal Justice, which allowed for the hiring of additional staff to assist the Committee in completing its first substantial revision to the criminal jury instructions in 1980. This new edition increased the page size from the original 6 by 9 to 8 1/2 by 11, and became the basis from which all future supplements were added. Supplementation of the 1980 edition has continued frequently, with each new supplement designated as "Release No. _____." In 1986, supplemental Release No. 15 expanded the Committee's work to four volumes. As of July 2020, 58 supplements have been added to the 1980 revised edition.

Court Reorganization and Publication Incorporation into the Wisconsin Court System

In 1978, the Wisconsin court system was reorganized, and the old statutory boards, including the Board of Criminal Court Judges, were abolished. The Criminal Jury Instructions Committee was reconstituted as a standing committee of the Wisconsin Judicial Conference, and membership was increased to eleven judges. In 1986, the University of Wisconsin-Extension, Department of Law, was integrated with the University of Wisconsin Law School as the Office of Continuing Education and Outreach. That office was renamed Continuing Education and External Affairs in 2016. In 2021, the University of Wisconsin transitioned its publication responsibilities to the Wisconsin Court

System's Office of Judicial Education. That same year, in partnership with the Wisconsin State Law Library, the Office of Judicial Education converted the production of supplemental releases from physical copies to an all-digital format. The entire set of Wisconsin Jury Instructions-Criminal is now available at no cost to the user in Word and PDF format at <https://wilawlibrary.gov/jury>

Characteristics of the Wis JI-Criminal Model

Several characteristics of the criminal jury instructions model add significantly to the product's strength and value. First and foremost is the model's orientation toward the trial judge. As the giving of instructions is exclusively a judicial function, a primary focus of the Committee is to assist colleagues on the trial bench who may handle a wide variety of cases. A common point of reference for the Committee when discussing a new or amended instruction is the hypothetical judge faced with a criminal trial issue after rotating from a civil or family law caseload.

Another important aspect of the model's orientation toward the trial judge is the Committee's make-up. The eleven voting members of the Committee are judges¹⁰, and only they can approve proposed instructions or amendments. Additionally, the Committee's ability to approve and publish model instructions is done without any additional endorsement by the Judicial Conference or the Supreme Court. A direct result of this arrangement is that trial judges are allowed to use model instructions as guides instead of directives. When necessary, a trial judge may depart from the exact language of the instruction if it does not fit the facts of the case or when they believe an improvement to the instruction can be made. This is opposed to a model, like that implemented in Missouri, in which instructions are approved by order of the state supreme court and must be given without change.

Finally, another unique aspect of the criminal jury instructions model is its association with the notion of "law in action." This concept examines the role of law, not just as it exists statutorily or in case law, but as it is actually applied in the courtroom. The incorporation of this concept into the jury instructions model can be drawn back to the original partnership with the University of Wisconsin Law School and its pursuit of the Wisconsin Idea¹¹. Utilizing the assistance of experts like Professor Frank J. Remington and Assistant Attorney General William A. Platz, early versions of the Wisconsin jury instructions committees provided an all-inclusive perspective of the law. Over the years, the committees have sought to continue this practice by recruiting member judges from across the state and support from non-voting advisors and law school faculty. Although the University of Wisconsin is no longer part of the jury instructions model, the committees and the Wisconsin Court System still strive to achieve the objectives embodied in the "law in action" concept.

How to Use the Model Jury Instructions¹²

Unlike instructions drafted for the purpose of a particular case, each instruction was, necessarily, drafted to cover the particular rule of law involved without reference to a specific fact situation. While the general instructions may frequently be used without change, instructions on the substantive offenses may often have to be modified to fit the needs of the particular case. The user, therefore, should consider each instruction a model to be examined carefully before use for the purpose of determining what modifications are necessitated by the facts of the particular case. In addition, the effect of the instructions upon each other must be considered.

It is suggested that the comment and the footnotes be read fully and carefully before the instruction is used, in order that the user be informed of any conditions prerequisite to its use, alternative material for particular cases, and of other cautionary information. Words and phrases which are to be used alternatively appear in parenthesis and italics. Words and phrases which are not appropriate for every case, but which should be given in some situations, are in brackets. Editorial directions which alert the user to alternatives or to the need to insert material or other instructions are found in brackets in the body of the instruction or in the comment.

The book itself may be cited as “Wis JI-Criminal” and each instruction by adding the appropriate number . . . It is suggested, however, that these instructions be referred to by their citations only when the user requests that the instruction be given verbatim. If the attorney modifies one of these instructions, it is requested that he or she point out the nature of the change and the reason therefore.

INQUIRIES AND SUGGESTIONS

Inquiries and suggestions from judges and lawyers are among the most important sources of new business for the Committee. It is always informative to receive questions and recommendations from those the Committee is trying to serve. Individuals are encouraged to contact the reporter by phone, mail, or e-mail or consult with any Committee member. Copies of approved but not published material are available from the reporter, as are working drafts.

For information on the status of the Committee's drafting of new or revised instructions, please contact:

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**The Criminal Jury Instructions Committee
Current Members and Advisors as of 2023**

Judges

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Scott Horne
Michael Moran
Nicholas McNamara
Thomas Walsh
Patricia Baker
Michelle Havas
Ralph Ramirez
Laura Crivello
Mark Sanders
Scott Blader

Barron Co.
La Crosse Co.
Marathon Co.
Dane Co.
Brown Co.
Portage Co.
Milwaukee Co.
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Advisory Members

Christine Remington
Katie York
David Schultz

Wis. Dept. of Justice
Wis. State Public Defender
Prof. Emeritus, Univ. of Wis. Law School

Reporter

Bryce Pierson

Wis. Office of Judicial Edu.

The Criminal Jury Instructions Committee Members and Advisors

Judges

Gerald Boileau	Marathon Co.	1960-1975 Chair
William Gramling	Waukesha Co.	1960-1976
Milton Meister	Washington Co.	1960-1978
Herbert Steffes	Milwaukee Co.	1960-1975
Clarence Whiffen	Racine Co.	1960-1961
Henry Gergen	Dodge Co.	1961-1990 Chair
Ervin Zastrow	Walworth Co.	1965-1976 Chair
James Levi	Portage Co.	1965-1984 Chair
John Buchen	Sheboygan Co.	1974-1989
James Seering	Sauk Co.	1974-1989
Edwin Dahlberg	Rock Co.	1975-1998 Chair
Hugh O'Connell	Milwaukee Co.	1976-1983
John Bartholomew	St. Croix Co.	1976-1989
Robert Stoltz	Washington Co.	1977-1978
Ronald Keberle	Marathon Co.	1979-1992
Robert Landry	Milwaukee Co.	1979-1991
Michael Torphy	Dane Co.	1979-1992
Donald Steinmetz	Milwaukee Co.	1979-1980
Fred Fink	Wood Co.	1980-1985
Patrick Madden	Milwaukee Co.	1983-1994
Richard Becker	Washington Co.	1984-1994
Fred Fleishauer	Portage Co.	1986-1996
Raymond Gieringer	Adams Co.	1988-1991
Mark Gempeler	Waukesha Co.	1988-1998
Gregory Peterson	Eau Claire Co.	1990-2002 Chair
William Carver	Winnebago Co.	1990-2000
Victor Manian	Milwaukee Co.	1991-2003 Chair
James Eaton	Barron Co.	1991-2001
Angela Bartell	Dane Co.	1992-2002
Michael Fisher	Kenosha Co.	1992-2002

James Schwalbach	Washington Co.	1994-1997
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Edward Zappen	Wood Co.	1996-2006 Chair
John DiMotto	Milwaukee Co.	1997-2007 Chair
Kitty Brennan	Milwaukee Co.	1998-2008
James Daley	Rock Co.	1998-2008 Chair
Donald Zuidmulder	Brown Co.	1998-2008
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Scott Needham	St. Croix Co.	2001-2011 Chair
Don Hassin	Waukesha Co.	2002-2012 Chair
Steve Ebert	Dane Co.	2002-2007
Annette Ziegler	Washington Co.	2002-2007
John Franke	Milwaukee Co.	2003-2008
Thomas Flugaur	Portage Co.	2006-2016 Chair
Jeffrey Kremers	Milwaukee Co.	2007-2017 Chair
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Rory Cameron	Chippewa Co.	2008-2016
Mel Flanagan	Milwaukee Co.	2008-2016
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Guy Reynolds	Sauk Co.	2011-2018
William Hanrahan	Dane Co.	2015-2020
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William Domina	Waukesha Co.	2012-2022 Chair
Frederick Rosa	Milwaukee Co.	2017-2022
Mitch Metropulos	Outagamie Co.	2013-2023 Chair
Jane Carroll	Milwaukee Co.	2018-2023

Advisory Members

	Wis. Dept. Of Justice	Wis. State Public Defender	
William Platz	1960-1975	Richard Martin	1993-1995

Bill Gansner	1976-1979
Edward Marion	1979-1980
Marjorie Moeller	1980-1981
Kirbie Knutson/	1981-1986
Chris Heikenen	
David Becker	1987-2010
Barbara Oswald	2010-2011
Gary Freyberg	2011-2017
Annie Jay	2017-2022

Randall Paulson	1996-2001
Charles Vetzner	2001-2007

Univ. of Wis. Law School

Frank J. Remington	1960-1996
Walter Dickey	1995-1997

Reporters

Arnon Allen	1960-1961
John Bowers	1961-1976
Adv. Member	1976-1994
George Frederick	1963-1966
Donald Bruns	1972-1975
David Schultz	1976- 2019

Copy Editors

Barbara Muckler	1966-1978
Roger Bruesewitz	1978-2001

Comment

This introduction was approved in August 2021. It expanded upon the 2018 introduction and incorporated a new format.

1. When the first edition was published in 1962, it was dedicated to the Committee's first chair, Circuit Judge Gerald Boileau from Wausau. The dedication reads as follows:

DEDICATION

The following resolution was unanimously passed by the Wisconsin Board of Criminal Court Judges at its annual meeting in June of 1961:

WHEREAS, the Hon. Gerald J. Boileau has been the only Chairman of the Board's Committee on Criminal Jury Instructions, and;

WHEREAS, the monumental work of this Committee, which will ultimately lead to the publication of model instructions for the use of this State, is due largely to the untiring and dynamic leadership of the Hon. Gerald J. Boileau, and;

WHEREAS, the Hon. Gerald J. Boileau has in the past made significant contributions to the advancement of his profession in that he has been Chairman of the Wisconsin Board of Circuit Judges, Chairman of the Wisconsin Board of Criminal Court Judges, a member of the Judicial Council of this State for many years, and Chairman of the Criminal Code Advisory Committee which drafted the new Criminal Code in its final version;

Be it therefore, resolved, that when Wisconsin Jury Instructions – Criminal is published, it be dedicated to the Hon. Gerald J. Boileau in recognition of his interest, his advice, and his time so freely given to his profession.

2. Several of the original members had strong ties to the development of the 1956 Criminal Code. The original judge members were:

- Hon. Gerald J. Boileau, Wausau, Chairman
- Hon. Herbert J. Steffes, Milwaukee

- Hon. William E. Gramling, Waukesha
- Hon. Milton L. Meister, West Bend
- Hon. Clarence Whiffen, Racine
- Hon. Charles Larson, Port Washington (ex officio)
- Hon. Howard DuRocher (ex officio)
- Hon. Henry Gergen, Beaver Dam [replaced Judge Whiffen in 1961]

Assistant Attorney General Bill Platz and Professor Frank Remington, who served as advisors to the criminal jury instructions effort, also had leading roles in developing the Criminal Code.

3. The original advisory members were two outstanding criminal law experts: Professor Frank J. Remington and Assistant Attorney General William A. Platz. In speaking about them, the 1966 foreword stated: "The Committee could have found no better qualified individuals than William Platz and Frank Remington for technical advisors. Suffice it to say that the aid of these two men has been invaluable."

Frank Remington's efforts were recognized in the foreword to the 1966 supplement:

Frank Remington has such impressive credentials in the field of criminal law that we need not spell them out here. He was one of the principal researchers on the massive revision of the Wisconsin Criminal Code. As a member of the Law School faculty since 1949, he has been specializing in the study of criminal law. He has brought nationwide distinction to the Law School as a center for research and teaching in criminal law and the administration of criminal justice.

William Platz's contributions were further described in an in memoriam tribute published in 1980:

William A. Platz had no peer in the field of criminal law. For nearly four decades, he was counsel to every district attorney and every law enforcement officer in the State of Wisconsin, always available and willing, cheerfully, to give advice. And no more knowledgeable, trustworthy help was available anywhere.

He possessed not just a singular knowledge and devotion to the justice system but a keen wit and fine sense of humor as well. His wit and wisdom forever remain with all who knew this fine outstanding man.

4. The Committee's principal objectives were:

1. To prepare instructions that would accurately and concisely state the law in a way that would be meaningful and helpful to the jury.
2. To make readily available such instructions as a trial judge would likely need in the trial of a criminal case to a jury.
3. To revise instructions that had been in general use prior to the enactment of the Criminal Code of Wisconsin, which became effective July 1, 1956, and to make such changes therein as seemed to be advisable as a result of such enactment; and, generally, to relate the instructions to the new Criminal Code.
4. To make certain that all such instructions were in conformity with the decisions of the Wisconsin Supreme Court.

Introduction To The 1962 Edition – Judge Gerald Boileau, Chairman Committee on Jury Instructions – Criminal

5. Foremost among the judges who supplied copies of instructions regularly used to the institute was Judge Herbery Steffes of Milwaukee. Prior to the formation of the Wisconsin Criminal Jury Instructions Committee, Judge Steffes had served as an informal “instruction bank,” and much of his work product can be found in the instructions today.

6. See Comment 2. Non-voting advisors also included Professor Gordon Baldwin and Professor William B. Smith.

7. The Board unanimously adopted the following resolution on February 15, 1962:

RESOLVED, that the jury instructions in criminal cases, which have been prepared by the committee appointed for that purpose, are hereby approved, but without certification of said instructions’ freedom from error; be it further

RESOLVED, that said committee is hereby made a permanent committee to prepare additional instructions for use in criminal cases and to amend or correct any previously approved instructions whenever such committee deems such action to be appropriate

8. INTRODUCTION TO THE 1962 EDITION:

The Wisconsin Board of Criminal Court Judges, realizing that no ready reference work was available to assist the bench and the bar of the State of Wisconsin in the preparation of jury instructions in criminal cases, authorized and directed our committee, consisting of five trial judges, to study the problem and submit to the Board such suggested instructions as, in the committee’s opinion, would assist judges and trial lawyers in the submission of criminal cases to juries.

Prof. Frank J. Remington, of the University of Wisconsin Law School, and Mr. William Platz, Assistant Attorney General of Wisconsin, graciously accepted our invitation to become unofficial members of the committee and have made substantial contributions to what success we have achieved. The University of Wisconsin Extension Law Department, under the direction of William Bradford Smith, has provided research assistants and has paid all expenses necessarily incurred in the preparation of these instructions.

The committee has met on an average of once a month for the past three years, such meetings lasting from one to three days. All members, both official and unofficial, have been most regular in their attendance at these meetings. These were the committee's objectives:

1. To prepare instructions that would accurately and concisely state the law in a way that would be meaningful and helpful to the jury.
2. To make readily available such instructions as a trial judge would likely need in the trial of a criminal case to a jury.
3. To revise instructions that had been in general use prior to the enactment of the Criminal Code of Wisconsin, which became effective July 1, 1956, and to make such changes therein as seemed to be advisable as a result of such enactment; and, generally, to relate the instructions to the new Criminal Code.
4. To make certain that all such instructions were in conformity with the decisions of the Wisconsin Supreme Court.

In the progress of our work the research staff presented proposed drafts. These drafts were prepared after a study of all available material. At our meetings, the committee analyzed every instruction minutely, giving thorough consideration to every word and phrase in the prepared draft and to all available authorities and precedents which seemed to be pertinent. Many instructions were corrected and rewritten many times. Finally, each instruction had the unanimous approval of the committee. Certainly, we make no claim that these instructions are free from error. We propose to continue our work as a permanent committee, adding new instructions from time to time, and correcting previously approved instructions when errors are called to our attention. We invite suggestions from the bench and the bar. We hope this work will, to some extent at least, achieve its objectives.

Gerald J. Boileau, Chairman
Committee on Jury Instructions Criminal

9. John H. Bowers was the original editor/reporter for the publication. The Introduction to the 1980 Edition recognized his contributions:

The Committee has been fortunate to have the services of John H. Bowers, Attorney at Law, Madison, and former Deputy Attorney General, State of Wisconsin, as reporter and editor from 1961 through 1976. During that time John was responsible for most of the reporting and drafting chores. His services over the years have been of the greatest importance.

10. The Judicial Conference increased Committee membership to eleven judges to expand and update the Special Materials at a quicker rate.

11. The Wisconsin Idea is often described as being based on the principle that "the boundaries of the University are the boundaries of the State." It also has a second aspect which recognizes that University faculty and staff who participate in activities like the jury instructions projects use the experience to enrich

their teaching, research, and service responsibilities.

12. Much of the language provided in the “How to Use” section comes from the Preface to the 1962 edition of Wisconsin Jury Instructions-Criminal authored by Editor John H. Bowers. The advice and expectations for how the instructions should be used provided by Mr. Bowers in the original edition remain accurate today.