#12 12/3/69

Memorandum 69-137

Subject: Study 12 - Taking Instructions to Jury Room in Civil Cases

BACKGROUND

The Commission was authorized to study this topic, upon request of the Commission, by the 1955 Legislature. A recommendation was submitted to the 1957 session but the Commission withdrew the recommendation to give further study to the procedural problems involved in providing the jury with a clean copy of the instructions.

The Commission prepared a tentative recommendation (March 25, 1969) (copy attached). The tentative recommendation provides that the court is permitted to send a copy of the complete instructions into the jury room in a civil trial and is required to do so upon request of any party. The procedure for providing the jury with a copy of the instructions is to be established by rules adopted by the Judicial Council.

A copy of the tentative recommendation was sent to the Judicial Council with a request for comments. The Judicial Council advised the Commission that it opposed the recommendation because it did not believe as a matter of policy that the instructions should be sent to the jury room. No reasons were given to explain this position. The Commission was advised informally that a majority of the State Bar Committee on Administration of Justice favored the tentative recommendation.

The Commission then decided to recommend that this topic be dropped from its agenda without any further recommendation. However, after reviewing additional materials and giving the matter further thought, the

Commission directed that the view of the presiding judges, California Trial Lawyers Association, and defense counsel should be obtained before a final decision is made as to the appropriate disposition of this topic.

SOURCES OF COMMENTS

Comments were received from the persons and organizations listed below. Unless otherwise indicated, the commentator is a judge. Whether the commentator generally favors or opposes the proposal also is indicated.

Exhibit I -- Richard B. Eaton, Shasta County (favors)

II -- Stanley Lawson, Monterey County (favors)

III -- William Zeff, Stanislaus County (favors)

IV -- Stanley Arnold, Lassen County (opposes)

V -- John Locke, Tulare County (favors)

VI -- Warren K. Taylor, Yolo County (favors)

VII -- J. E. Barr, Siskiyou County (opposes, but thinks court should have authority to send all the instructions on a particular point to the jury but only upon the request of the foreman)

VIII -- Robert E. Roberts, El Dorado County (favors)

IX -- Jerome H. Berenson, Ventura County (favors)

X -- Jean Morony, Butte County (favors if discretionary with court)

XI -- Charles S. Franich, Santa Cruz County (favors)

XII -- S. Thomas Bucciarelli, Riverside County (opposes)

XIII -- John B. Cechini, San Joaquin County (favors)

XIV -- Eli H. Levenson, San Diego County (favors if discretionary with judge)

XV -- John Neblett, Riverside County (opposes)

XVI -- Mervin E. Ferguson, Kern County (opposes)

XVII -- John G. Gabbert, Riverside County (no position, merely indicates problems involved)

XVIII -- Ross A. Carkeet, Tuolumne County (opposes)

XIX -- Ralph V. Devoto, Lake County (personal feeling of judge commenting that it should be allowed in certain cases, but reports, after discussing the matter with members of the local bar association, that an "overwhelming majority" oppose the recommendation. They would not oppose it if instructions were made available to jury pursuant to stipulation of all parties)

XX -- Thomas J. Cunningham, former judge--now General Counsel to the Regents of the University of California (same rule should apply to criminal and civil and giving copy to jury should be mandatory)

XXI -- Joseph G. Wilson. Marin County ("consensus is opposed")

XXII -- Raymond J. Sherwin, Solano (no firm agreement, we "lean towards" favoring)(interesting letter from foreman of jury attached)

XXIII -- CALIFORNIA TRIAL LAWYERS ASSOCIATION ("members of our committee are unanimous in opposing")

XXIV -- Margaret J. Morris, San Bernardino County ("slight preponderance" of judges disapproves)

If additional letters are received, we will bring them to your attention in a supplement to this memorandum.

GENERAL REACTION

We received responses from 21 counties. Three judges from Riverside County responded. In addition, the California Trial Lawyers Association responded. The Association of Defense Counsel did not respond.

California Trial Lawyers Association. The Law Revision Committee of the California Trial Lawyers Association is unanimous in strongly opposing the concept of sending the instructions to the jury room. See Exhibit XXIII. The reasons for this view are stated as follows:

> We all feel that there would be too great a tendency for individual jurors to seize upon particular instructions emphasizing one

over the other, possibly with some of the jurors, having a legal frame of mind, attempting to impress upon other jurors their legal ability. We all know that many of our lay friends are would-be lawyers. We feel such a procedure violates the principle emunciated in our Baji Instructions that instructions should be considered as a whole and that no individual instruction is to be singled out and given undue significance.

Furthermore, and somewhat akin to what has already been said, there is a danger that the jury would not deliberate as one body, but might be split up into segments, each asserting itself as a champion of a particular instruction or a group of instructions. Probably the best argument in favor of the proposition is that jurors cannot be expected to remember instructions as they are read to them by the judge. However, they can always come back and have the instructions re-read to them, and in this way, there is some control over the manner of re-reading and the number of instructions which are re-read to them.

Judges. The judges are about evenly divided on the desirability of sending the instructions to the jury room in civil cases. Ten judges favor providing the jury with a copy of the instructions. Some of the 10 merely "lean towards" favoring the idea. Two judges favor the idea if the practice is made discretionary with the court. One believes the practice should be allowed in "certain cases." Eight judges disapprove. Generally, the letters of disapproval indicate a strong conviction of the writer that sending the instructions to the jury room would not be a desirable practice.

The reasons given for approval, if any, are those stated in the tentative recommendation. In this connection, Judge Warren K. Taylor, Yolo County (Exhibit VI), remarks:

> It has been my custom in murder trials, where the instructions usually are complex and difficult to understand, to have my secretary type the instructions in finished form and to send them to the jury room. I have done this in several murder trials and I have found it to be a good procedure. The instructions have been returned to me well-thumbed, and it has been unnecessary to reinstruct or further instruct any such jury.

Since instructions in civil cases are becoming more complicated with the creation of new issues such as Witt vs Jackson, Strict Liability, etc., I think civil jury instructions also should go to the jury room and I heartily endorse your tentative recommendation.

The consensus of the Judges in Marin County is opposed to providing the jury with a copy of the instructions. Judge Wilson, writing for all the judges, states in Exhibit XXI:

> Our principal concern is the fear that if this procedure is followed juries will in large measure tend to become concerned with the applicable law and tend to neglect their primary function which is to weigh and shift the evidence and determine the facts.

Two judges with substantial experience as trial lawyers and as judges oppose the suggestion that the jury receive a copy of the instructions. One of these judges, Ross A. Carkeet, Tuolumne County (Exhibit XVIII), writes:

> As a member of the Bench and the Bar having twenty years experience in active trial work and almost thirteen years on the Bench, I must state that I am opposed to the concept of sending the instructions into the jury room in a civil case. As a matter of fact, while I am not aware of the statistics, I do believe that this practice is not followed in many counties even in criminal cases.
>
> It is true that jury instructions are inclined to be confusing, and that it is expecting too much of jurors to expect them to retain in their minds all of the law that is read to them by the Judge in the half hour or so of giving of instructions. On the other hand, they do have a right to come back into Court and request clarification or reiteration of instructions on certain points. This enables the Judge to control the re-examination of instructions and select those which are really needed to clarify the point and, if advisable, to explain, enlarge, clarify, or to give another instruction on the same point.
>
> While occasionally it does take additional time for a jury to be called back into Court for clarification or re-reading of instructions, it is the frank opinion of this writer that it will take a lot less time than it will for twelve jurors to attempt to agree on what the written instructions mean after they get closeted in the jury room and have an opportunity to take them apart and pass them around and read and argue among themselves as to what each individual instruction means. . . .

The other judge, S. Thomas Bucciarelli, Riverside County (Exhibit XII) writes:

> In spite of the excellent work of the Committee on Standard Jury Instructions, the very nature of the juridical concepts with which such instructions necessarily must deal, assures a substantial degree of confusion and uncertainty, in my opinion. Allowing the jurors to have written copies of the instructions available during their deliberations would do nothing to reduce the confusion. On the contrary, I feel that the jurors would very probably spend their time arguing semantics and philology, rather than reviewing the evidence, applying the law, and reaching a verdict.
>
> Furthermore, my experience leads me to expect that jurors would be very likely to place too much emphasis on one instruction, or even a portion of an instruction, and ignore the effect of the relevant qualifying or cautionary instructions.

Judge Marvin E. Ferguson, Kern County (Exhibit XVI) writes:

> Our six judges do not believe that instructions should be taken into the jury room. It is feared that such a procedure would extend the time of a jury's deliberation and thus have an adverse effect on expediting trials, which appears to be one of the major problems of the day. More important, however, is the view that it would increase the tendency on the part of individual jurors toward arguing over the meaning of the law, rather than the facts of a case.
>
> The judges believe that the system presently followed of reinstructing the jury as many times as they like, in open court, with both counsel present, on any particular points about which the jury expresses confusion or lack of understanding insures adequate knowledge of legal principles involved. If any clarification of the wording used is desired, it can be cleared up by lawyers and the judge, who are persons presumably knowledgeable in the field of law.
>
> As one of our judges pointed out, in twenty years of trial practice and one year on the bench, he has not once had any juror request copies of the jury instructions. He added that he believed it would be a desirable step to conduct a survey of jurors who actually have served several times to determine if they deem it advisable to have the instructions in the jury room

Judge John Neblett, Riverside County (Exhibit XV) writes:

> I am not in favor of jury instructions being taken into the jury room. This procedure would add to the jury's confusion and could possibly lead to individual misinterpretation of points of law. A re-reading of the instructions by the Court in the presence of counsel,

when requested, is a far safer way to furnish a jury information as to applicable law rather than to give them a set of instructions which may have required an hour for the Court to read and would consume at least that much or more time (without any discussion or argument) for the jury to review. Upon a cursory reading, or to a layman, jury instructions frequently appear to conflict with each other, or, one contradicts another. Further, the Court frequently must make revisions and amendments in the instructions as proposed before same are given. This places an undue emphasis on the written instructions and it is difficult to eradicate stricken portions.

In the event a jury has questions or desires explanations, the Court is in a position to give additional or further instructions in the presence of counsel after conferring regarding same.

Reaction of one local bar association. Judge Ralph V. Devoto, Lake County (Exhibit XIX) writes:

> Before replying to your letter, however, I felt that I should get an expression from the members of the local Bar Association. By an overwhelming majority the members of the Bar Association opposed the recommendation in its present form. They particularly objected to the language that the instructions should be made available to the jury at the discretion of the Court or upon the request of any one party. They would have no objection if the proposed section provided that a copy of the Court's instructions be made available to the jury during its deliberations pursuant to stipulation of all parties.

Reaction of Thomas J. Cunningham. As previously noted, Mr. Cunningham, General Counsel to the Regents of the University of California, suggests that giving the jury a copy of the instructions should be mandatory in both civil and criminal cases. See Exhibit XX (attached).

PROCEDURAL PROBLEMS

Generally, the reaction to providing the procedure by rules adopted by the Judicial Council was favorable. Although a few writers expressed some concern over procedural matters, the opposition was based on policy rather than procedure.

Several judges who did not oppose the idea of sending the instructions to the jury room would restrict the practice to cases in which the court decides to use that procedure. Several judges suggested that the instructions should be provided upon the request of any juror (as well as any party or on the court's own initiative). One judge felt that the instructions should be provided only if the foreman so requests, not on the

court's own motion. The great majority of those favoring the practice, however, approved the tentative recommendation which provides for sending the instructions upon request of any party or on the court's own initiative.

DISPOSITION OF TOPIC

It is apparent that the tentative recommendation would be strongly opposed in the Legislature by the California Trial Lawyers Association. In view of the fact that the judges are about evenly divided on the desirability of sending instructions to the jury room, the best that could be hoped from the Judicial Council is that they would not oppose the recommendation; it is unlikely that the Judicial Council would support the recommendation because the judges who oppose it are much stronger in their opinion than the judges who favor it. We cannot be sure what position the State Bar would take. I suspect that trial lawyers generally will not support the tentative recommendation.

If the Commission decides to continue to work on this topic, it should consider the suggestion of one commentator that a poll be made of some jurors to determine their reaction to the problem. However, in view of the limited funds available to the Commission, the staff would suggest that such a poll not be made unless the Commission seriously plans to submit a recommendation on this subject.

Possibly we could have a notice published in the State Bar Journal stating that the Commission has a tentative recommendation on this subject and solicits the views of trial lawyers. It appears from the information we now have that it would be exceedingly unlikely that our tentative

recommendation would meet legislative approval.

If the Commission decides to drop this topic without making a recommendation, we should formulate a statement to the Legislature as to the reasons we recommend that the topic be dropped.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 69-137

EXHIBIT I

Chambers of the Superior Court
Shasta County
RICHARD B. EATON, JUDGE
Redding, California

October 9, 1969

John H. DeMoully, Executive Secretary
California Law Revision Committee
Stanford University
Stanford, California 94305

My dear Sir:

Your letter of October 10, 1969 pertaining to the delivery to the jury in civil cases, of the Judge's instructions, is at hand. My comments are as follows:

1. In all cases, civil and criminal, the jury should have access to the Judge's instructions in writing.

2. The instructions should be sent into the jury room at the request of either party or of any juror or on the Court's own initiative.

3. The mechanics of the procedure should be provided by Judicial Council Rules.

I can see no problems here except to the Judge who makes oral commentaries while reading his written instructions. This, of course, is a somewhat dangerous practice anyway.

Yours very truly,

RICHARD B. EATON
Judge of the Superior Court

RBE:g

Memo # 69-[illegible] EXHIBIT II

Superior Court

State of California

County of Monterey
Stanley Lawson, Judge

October 15, 1969

Courthouse
Salinas, California

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. Demoully
Executive Secretary

Gentlemen.

I have your letter of October 10, 1969, respecting the question whether a jury in a civil case should have a copy of the court's instructions to take into the jury room.

It is obvious to Judges that no jury can completely comprehend instructions. We realize that they are laymen and that the instructions as described in BAJI are written in the abstract. I feel that the answer resides within the instructions themselves. They should be simplified. They should be related to the evidence. While it is true that the constitution permits Judges to comment on the evidence, very few do so. Personally, I prefer the English system where the instructions are given verbally and are immediately related to the evidence. They are short, they are succinct, and they are intelligible.

Since apparently we aren't and shall never be permitted to give instructions to the jury that we can hope the jury will understand, the suggestion to permit the jury to have the written instructions to take to the jury room has a certain amount of merit. I would only point out that if this is permitted, all indication of who requested the particular instruction and all amendments in pen by the Judge should be eliminated. This no doubt will mean recopying certain instructions and providing an extra instrument to cover the matter of request and modification.

With respect to your second letter which concerns preferential settings, no statutory amendments seem required. Any calendar Judge can arrange for these priorities.

Very truly yours,

STANLEY LAWSON
Judge of the Superior Court

SL:jkl

Memo 69-137

EXHIBIT III

Superior Court of California

Stanislaus County

Modesto, California

WILLIAM ZEFF, JUDGE

October 9, 1969

California Law Revision Commission
School of Law
Stanford, California 94305

Attention: John H. DeMoully, Executive Secretary

Gentlemen:

Receipt of your communication dated October 10, 1969, together with enclosures, is acknowledged as having been actually received on October 9, 1969. The subject of your communication has been one of substantial interest to the writer for some time and while generally I believe that there is some risk of distorting a set of instructions by placing undue emphasis on portions of the instructions given, possibly out of context, it is my view that this risk is outweighed by the advantages to be obtained in permitting the jury the opportunity of carefully reading the instructions for themselves, rather than be obliged to rely upon a hearing of the instructions given by the court or, as is frequently the case, a re-reading by the court of instructions.

Generally, I would agree with the recommendation as made by the California Law Revision Commission in November, 1956, and the reasons which are set out in that recommendation; and in addition, I would agree with the recommendation of the present Law Revision Commission as set out on page 3 thereof, except that I believe that the rules should be established by statute and should not be such as are adopted from time to time by the Judicial Council. I am aware that this alternative was recommended to afford an opportunity of revision of the procedure as experience suggested the need for revision. However, I do not believe that the procedure would be so involved or so complicated that revision would be necessary.

To answer the questions presented in your letter specifically:

1) I believe that as a matter of policy, the jury in civil cases should be afforded a copy of the court's instructions to take with them into the jury room. However, it should be noted that such instructions should not appear on the stationery of either of counsel for the parties; and the reference to which party submitted the instruction should be deleted.

2) I believe that the written instructions should be provided to the jury either at the request of the parties or on the court's own initiative.

3) Has been answered above; but to repeat, I believe that the procedure should be provided by statute without the ambiguity of having to keep abreast of the Judicial Council Rules as adopted from time to time.

Hoping that this may be of some assistance,

Sincerely,

WZ:r

William Zeff, Judge

Memo 69-137

EXHIBIT IV

SUPERIOR COURT
LASSEN COUNTY
SUSANVILLE, CALIFORNIA

STANLEY ARNOLD, JUDGE

October 9, 1969.

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This is in reply to your request for an opinion as to the jury being authorized to take a written copy of the Court's Instructions into the jury room in civil as well as criminal cases.

(1) I am not in favor of the policy of giving the jury a copy of the Court's Instructions.

(2) In the event that legislation is passed regarding this subject, I would be in favor of such a provision only in certain cases at the discretion of the Court on its own initiative; and then

(3) Upon a procedure provided by court rule adopted by the Judicial Council.

Yours truly,

Stanley Arnold

SA/h

Memo 69-137 EXHIBIT V

JOHN LOCKE
Judge - Superior Court
Visalia, California

October 10, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Giving the Jury the Written Instructions to Take into the Jury Room.

Gentlemen:

After reading the literature that you sent under date of October 10, 1969, I favor the proposal. Previously I had been somewhat ambivalent on the subject for fear that the jury might single out one instruction and ignore other instructions that limit the first.

The only constructive suggestion that I can think of to make in this area is this: If it were possible to do so, not to reverse for failure to give an instruction unless one has been tendered by the complaining party.

Very truly yours,

John Locke

Memo 69-137

EXHIBIT VI

Superior Court of California

County of Yolo

DEPARTMENT NO. ONE
WARREN K. TAYLOR, JUDGE

October 14, 1969

COURT HOUSE
WOODLAND, CALIFORNIA

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attn: John H. DeMoully, Executive Secretary

Gentlemen:

Reference is made to your letter of October 10, 1969.

You have inquired whether, as a matter of policy, the jury in civil cases should have a copy of the court's instructions to take with it into the jury room. I believe the jury should have a copy of the court's instructions in all cases.

Your second inquiry was whether the written instructions should be provided to the jury only if a party so requests, or whether the court should be authorized to use the procedure on its own initiative. I believe the court should be authorized to use the procedure on its own initiative. The Judge is responsible for the proper conduct of the trial and if he thinks the jury should take the instructions with it, that should be enough. He should not be required to elicit the cooperation of one of the lawyers.

Your third inquiry was whether the procedure should be provided by court rule adopted by the Judicial Council or should be specified by statute. I have no objection to a court rule being adopted by the Judicial Council, but a simple statute, comparable to Penal Code Section 1137, ought to be satisfactory.

It has been my custom in murder trials, where the instructions usually are complex and difficult to understand, to have my secretary type the instructions in finished form and to send them to the jury room. I have done this in several murder trials and I have found it to be a good procedure. The instructions have been returned to me well-thumbed, and it has been unnecessary to reinstruct or further instruct any such jury.

Since instructions in civil cases are becoming more complicated with the creation of new issues such as Witt vs Jackson, Strict Liability, etc., I think civil jury instructions also should go to the jury room and I heartily endorse your tentative recommendation.

Very sincerely yours,

Warren C. Taylor
Judge of the Superior Court

WKT:s

cc: Honorable James C. McDermott

Memo 69-137

EXHIBIT VII

Chambers Superior Court
Siskiyou County
J. E. BARR, JUDGE
Yreka, California
96097

October 15, 1969

John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This in reply to your letter of October 12 regarding taking of jury instructions into the jury. I think this would be helpful provided some selectivity were used.

When the jury reports they are held up on a point, the court should have authority to send all the instructions on that subject to the jury, but only at the request of the foreman. I don't think the Court should send in instructions of its own motion.

I think it would be confusing to send in all the instructions as this would be more likely to hang juries up on points they had already resolved than to be helpful.

My secretary has pointed out that there could be some complaint from the opposing counsel of overemphasis if this were done and I think this would be true if it were done except at the foreman's request.

Very truly yours,

J. E. BARR
JUDGE

JEB:ph

Memo 69-137

EXHIBIT VIII

CHAMBERS OF
THE SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF EL DORADO
COURTHOUSE
PLACERVILLE, CALIFORNIA

ROBERT E. ROBERTS
JUDGE

October 16, 1969

Mr. John H. DeMoully, Executive Secretary,
California Law Revision Commission,
School of Law,
Stanford University,
Stanford, California. 94305

In re: Jury Instructions

Dear Mr. DeMoully:

The El Dorado County Superior Court would be in favor of the proposed legislation concerning taking a written copy of the Court's instructions into the jury room. It would seem that there should be a request from one of the parties, and/or authority to the Court on its own motion to submit the instructions to the jury while deliberating.

Wide latitude should be given the Judicial Council in setting up procedures to achieve the purpose of the statute.

Very truly yours,

Robert E. Roberts

Judge of the Superior Court

Memo 69-137

EXHIBIT IX

CHAMBERS OF

The Superior Court

VENTURA, CALIFORNIA 93001

JEROME H. BERENSON, PRESIDING JUDGE

October 21, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attn: Mr. John H. DeMoully
Executive Secretary

Gentlemen:

This will respond to your letter of October 10, 1969 concerning whether a jury should be permitted to have a copy of the court's instructions during its deliberations in a civil as well as a criminal case. In answer to your questions my views are as follows:

(1) I do not believe there is any rational basis for making a distinction between civil and criminal cases and therefore, as a matter of policy, I would conclude that a jury in a civil case should be permitted to have a copy of the court's instructions during its deliberations.

(2) Assuming the soundness of the policy which would make no distinction between civil and criminal cases, supra, I am of the view that in any case in which the trial judge, a juror, or a party to the action believes it desirable and necessary consistent with the legislative enactment and the procedure to be followed the court should permit the jury to take a copy of the court's instructions to the jury room or deliver a copy to the juryroom if after commencement of deliberations a juror or jurors should deem it desirable or necessary that such copy be provided the jury. As I examine the recommendations of the California Law Revision Commission after its study in 1956 it seems that the foregoing was the judgment then made. This differs, however, from the recommendation of the present Commission because the proposed enactment would, if I read it correctly, make such instructions available to the jury only upon the request of a party or at the discretion of the court. It does not provide for making such instructions available at the request of a juror.

It seems to me that in many instances the purpose for the rule would be more strongly supported by consideration for making the instructions available at the request of a juror during deliberations then through the exercise of discretion by the court or upon the request of a party. The juror or jurors would appear to be in a better position to judge the desirability or necessity for their having a copy of the instructions to aid and assist them during the course of their deliberations.

In order to ensure that the jury understands its rights in this regard the statute or procedure to be followed should provide that the court advise the jury before it retires of its right to request a copy of the court's instructions.

(3) In order to provide greater flexibility in the procedure to be followed from time to time as experience dictates I feel that the mechanics of the procedure should be provided by court rule adopted by the Judicial Council rather than by the statute itself.

Very truly yours,

JEROME H. BERENSON
Presiding Judge of the
Superior Court

JHB:mr

Memo 69-137

EXHIBIT X

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF BUTTE
JEAN MORONY, JUDGE
OROVILLE

October 22, 1969

Mr. John H. DeMoully,
Executive Secretary,
California Law Revision Commission,
Stanford University,
Stanford, California 94305

Dear Mr. DeMoully:

Thank you for furnishing me with the tentative recommendation of the California Law Commission relating to taking instructions into the jury room in civil cases. My comments are as follows:

1. It is my belief that this should be purely a discretionary matter left with the Court. I believe that it would be helpful if in both civil as well as criminal cases the trial judge would be given the statutory authority to send the instructions into the jury room if, in his discretion, he believed that there was a meritorious reason for doing so.

2. The advisability of making it mandatory that jury instructions be sent into the jury room in civil cases appears to be very questionable. Likewise, I question the advisability of making it mandatory upon the court in any case where either party so requests it. There are many complex cases in which I feel that it would be better for the jury to return to the courtroom and have the Court entertain their inquiries and answer their questions than to send the instructions into the jury room in a most complex case for interpretation by one or more jurors who may or may not proceed properly.

3. The mechanics of procedure are always so changeable from year to year that it would seem more flexible to have such mechanics of the procedure provided by court rule adopted by the Judicial Council rather than being specified by any statute.

I wish to thank you for your courtesy in giving me an opportunity to express these comments and I am glad that this matter is being finalized by the Commission.

Very truly yours,

JM/mw

Memo 69-137

EXHIBIT XI

CHAMBERS OF
The Superior Court
SANTA CRUZ, CALIFORNIA

DEPARTMENT TWO
CHARLES S. FRANICH
JUDGE

October 27, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

Your letter of October 20th asked for comments on instructions being taken into the jury room in civil as well as criminal trials.

I can think of no serious objection to this procedure. However, I believe we should redouble our efforts to simplify jury instructions. I am entirely in sympathy with Judge Friedman's letter.

I am opposed to the concept that a judge should not explain jury instructions. Some are so abstract that many attorneys don't fully appreciate what they mean. Conversations with jurors have convinced me that simple illustrations are exceedingly helpful to jurors.

I would recommend that the instructions be provided at the request of either party or by direction of the court. The procedural mechanics should be by court rule. One headache would be that all instructions corrected by the judge would have to be retyped before being given to the jury.

Very truly yours,

Charles S. Franich

CHARLES S. FRANICH
Presiding Judge

CSF:jh

Memo 69-137

EXHIBIT XII

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE

COUNTY OF RIVERSIDE

CHAMBERS OF
S. THOMAS BUCCIARELLI
JUDGE OF THE SUPERIOR COURT

October 28, 1969

COURT HOUSE
RIVERSIDE, CALIFORNIA

Mr. John H. DeMoully
Executive Secretary,
California Law Revision Commission
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

Judge Leo A. Deegan, the Presiding Judge of our court, has sent me a copy of your October 10, 1969, letter, in which you invite comments with respect to the tentative recommendation of the Commission, relating to taking instructions into the jury room in civil cases.

I feel that, as a matter of policy, jurors should not be permitted to take a written copy of the court's instructions into the jury room. This is a problem to which I have given considerable thought during the 20 years that I was a trial lawyer, and the almost 13 years that I have sat on the Superior Court Bench. In spite of the excellent work of the Committee on Standard Jury Instructions, the very nature of the juridical concepts with which such instructions necessarily must deal, assures a substantial degreee of confusion and uncertainty, in my opinion. Allowing the jurors to have written copies of the instructions available during their deliberations would do nothing to reduce the confusion. On the contrary, I feel that the jurors would very probably spend their time arguing semantics and philology, rather than reviewing the evidence, applying the law, and reaching a verdict.

Furthermore, my experience leads me to expect that jurors would be very likely to place too much emphasis on one instruction, or even a portion of an instruction, and ignore the effect of the relevant qualifying or cautionary instructions.

In addition, in these days, when trial judges must conduct instruction-settling conferences under the stress of serious time limitations, I would anticipate considerable difficulty in providing the jury with a "clean copy", without a substantial waste of time.

Also, the predilection of jurors to tamper with exhibits is well known to most of us, and if the original instructions are given to the jurors, it is highly probable that they would not be returned to the court in their pristine condition, or even that some of them might not be returned at all.

For the foregoing reasons, I am opposed to the Commission's recommendation. It is my feeling that if the trial judge reads the instructions in a clear voice, with meaningful delivery, the effect upon the jury will be more likely to produce a just and proper verdict than if the written instructions are sent into the jury room.

Sincerely,

A. Thomas Fraschilla

STB:nb

cc: Judge Deegan

Memo 69-13

EXHIBIT XIII

CHAMBERS OF
The Superior Court
THIRD FLOOR, COUNTY COURTHOUSE
STOCKTON, CALIFORNIA 95202
JOHN B. CECHINI, JUDGE

TELEPHONE
(209) 944-2355

October 30, 1969

California Law Enforcement Commission
School of Law
Stanford University
Stanford, California

Re: Taking of Jury Instructions Into Jury Room in Civil Suits

Attn: John H. DeMoully

Dear Mr. Demoully:

In view of the ever increasing complexity of much of our civil litigation, I firmly believe that by permitting the Jury to take a copy of the Court's instructions into the Jury Room during their deliberation, we will not only expedite the reaching of a verdict but we will also enable the Jurors to more intelligently apply the appropriate principles of law.

It is my personal feeling that it is almost asking the impossible to expect a Juror to absorb all the pertinent principles of law during a sometimes long and monotonous reading by the Court - and then expecting him to recall and properly apply same during their deliberations of so many other phases of the case.

There is no doubt in our mind that the revision being recommended by your Commission is urgently needed.

Very truly yours,

JOHN B. CECHINI
Judge of the Superior Court

JBC:ja

Memo 69-137

EXHIBIT XIV

The Superior Court

OF THE

State of California

COURTHOUSE - SAN DIEGO 92101

CHAMBERS OF
ELI H. LEVENSON
JUDGE OF THE SUPERIOR COURT

November 6, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: John H. DeMoully
Executive Secretary

Dear Sir:

At the request of Judge Verne O. Warner, Presiding Judge of the Superior Court, San Diego County, the following comments are set forth in accordance with your letter of October 10, 1969.

This court has always interpreted §1137 of the Penal Code as requiring the court to send the written instructions to the jury room only if requested. Experience has shown, in a great number of criminal cases over which this court has presided, that the jurors prefer to have the court either reread or give further instructions on matters that are not clear rather than take the written instructions to the jury room.

As to civil cases, the experience has been somewhat different. In only one or two cases has the jury requested the written instructions. Since there is little or no experience upon which to rely, it would seem that the written instructions in the jury room might tend toward unnecessary and prolonged discussion on matters of law rather than fact, and thus, as to the tentative recommendation, it is suggested that the procedure of providing the jury with written instructions in civil cases be within the sound discretion of the court.

As to the mechanics of the procedure, there appears to be little difference as to whether the matter is governed by statute or court rule. The court rule might be more flexible than the statutory provision in the matter of modification or repeal.

Very truly yours,

ELI H. LEVENSON

EHL:aa

Memo 69-137

EXHIBIT IV

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE
COUNTY OF RIVERSIDE

October 30, 1969

CHAMBERS OF
JOHN NEBLETT
JUDGE OF THE SUPERIOR COURT

COURT HOUSE
RIVERSIDE, CALIFORNIA

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen: Attention: John H. DeMoully
Executive Secretary

Your letter of October 10, 1969, addressed to Judge Leo A. Deegan has been referred by him to me for comment.

I am not in favor of jury instructions being taken into the jury room. This procedure would add to the jury's confusion and could possibly lead to individual misinterpretation of points of law. A re-reading of the instructions by the Court in the presence of counsel, when requested, is a far safer way to furnish a jury information as to applicable law rather than to give them a set of instructions which may have required an hour for the Court to read and would consume at least that much or more time (without any discussion or argument) for the jury to review. Upon a cursory reading, or to a layman, jury instructions frequently appear to conflict with each other, or, one contradicts another. Further, the Court frequently must make revisions and amendments in the instructions as proposed before same are given. This places an undue emphasis on the written instructions and it is difficult to eradicate stricken portions.

In the event a jury has questions or desires explanations, the Court is in a position to give additional or further instructions in the presence of counsel after conferring regarding same.

Very truly yours,

John Neblett.

JN:dm
cc-Judge Leo A. Deegan

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE
COUNTY OF RIVERSIDE

CHAMBERS OF
JOHN NEBLETT
JUDGE OF THE SUPERIOR COURT

COURT HOUSE
RIVERSIDE, CALIFORNIA

November 6, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commmssion
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

In reply to your letter of November 3 I am enclosing a stipulation form used in civil actions by our court. You will note in the third paragraph of this stipulation that the court may, in the absence of the parties and counsel, read any jury instruction or instructions previously given. Any additional instructions than those originally given would require the presence of counsel.

The attorney, whose problem you described in your letter, apparently made a careless waiver. His problem would not be obviated by sending the instructions into the jury room. If additional instructions are requested by the jury they would not be in the set originally taken by them into the jury room. Necessarily the jury would have to be returned to the court for the purpose of giving these additional instructions.

I don't feel it an undue burden upon trial attorneys that they remain available for situations that may arise during jury deliberations. This does not mean that they necessarily have to remain in the courtroom or courthouse but at least available for conference and attendance at any phase of the trial. The attorney overlooks the necessity of the judge and court attaches remaining readily available when needed.

Our stipulation contemplates that the attorneys are within call in the event other than the original instructions are to be read or given to a jury to which a case has been submitted. We have encountered no problems in the use of this procedure in my recollection. I have had requests for further or additional explanation or instructions when a member of the

jury took down in shorthand the instructions as I gave them and sought an explanation or further instructions because of seeming conflict. This will occur if the instructions are sent into the jury room and the attorney will still have to be available.

Yours very truly,

John Neblett

JN:jh
Encl.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

_____ Plaintiff(s)	Case No. _____
vs	STIPULATION re JURY INSTRUCTIONS, VERDICT and STAY OF EXECUTION
_____ Defendant(s)	

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel, that:

1. The Court's admonition to the jury, after once having been given, shall be deemed to have been given just prior to every recess, adjournment, or continuance of the trial;

2. All jurors and the alternate(s), if any, are present at all necessary times, unless their absence is expressly brought to the attention of the Court;

3. After the jury has been instructed, if the jury shall so request, the Court may have the jury brought back into the courtroom and:
   a. again read to the jury any instruction(s) previously given;
   b. direct the official reporter to read to the jury any portion of the testimony given in the trial;
   c. ascertain whether or not a verdict is probable; and
all or any of these things may be done in the absence of the parties and/or their respective counsel;

4. The verdict may be received by the Court in the absence of the parties and/or their respective counsel, but if the verdict is so received, the jury shall be polled;

5. After the matter has been submitted to the jury, if the jury has not reached a verdict by the normal adjournment time, or such other time as the Court shall determine, the jury may be permitted to separate, and to return on the ensuing court day to resume their deliberations;

6. In the absence of the trial judge, the verdict may be received by any other Judge of this Court;

7. In the event of a verdict in favor of any plaintiff or cross-complainant, the Court shall have authority to issue a stay of execution, to be effective until 10 days after the determination of a motion for a new trial, provided that such motion is timely made; and

8. Upon the Judgment becoming final, the Court may, without further notice, order any and all exhibits/identifications returned to the party/person entitled thereto.

Dated: _____

_____
Attorney for Plaintiff

APPROVED AND SO ORDERED:

_____
Attorney for Defendant

_____
Judge of the Superior Court

November 3, 1969

Hon. John Neblett
The Superior Court
County of Riverside
Riverside, California

Dear Judge Neblett:

We very much appreciate receiving your thoughtful letter concerning whether instructions should be taken into the jury room in civil cases.

As you pointed out in your letter, the system presently followed permits the reinstruction of the jury in the presence of counsel when requested. The complaint we have had concerning this procedure comes from trial lawyers who feel that the existing procedure requires a considerable waste of time on their part if they wish to protect their interests. They must remain available so that they can be present in case the jury wishes to be further instructed. One attorney, who waived his right to be present when the jury was instructed, found that the instructions given in his absence did not protect the interests of his client fairly; it was necessary for him to appeal to the court of appeal to have the verdict for his opponent reversed and a new trial granted. He advises us that he will never take a chance on having the jury instructed in his absence again. At the same time, he is greatly concerned at the increased cost of litigation if trial attorneys must remain available on the chance that the jury will request that the instructions be reread to them. He would much prefer giving the jury the instructions and taking his chances. It would be helpful to have your reaction to this practical criticism of the existing procedure.

I am writing to you to get your reaction on this further point because your thoughtful letter indicates that you have given the matter considerable thought.

Sincerely,

John H. DeMoully
Executive Secretary

JHD:aj

Memo 69-137

EXHIBIT XVI

MARVIN E. FERGUSON
Judge

THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF KERN
Bakersfield, California-93301

October 29, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMoully
Executive Secretary

Gentlemen:

Pursuant to the request contained in your letter of October 10, 1969 concerning jury instructions, I have met with the other judges of our court to get a consensus of opinion. Our six judges do not believe that instructions should be taken into the jury room. It is feared that such a procedure would extend the time of a jury's deliberation and thus have an adverse effect on expediting trials, which appears to be one of the major problems of the day. More important, however, is the view that it would increase the tendency on the part of individual jurors toward arguing over the meaning of the law, rather than the facts of a case.

The judges believe that the system presently followed of reinstructing the jury as many times as they like, in open court, with both counsel present, on any particular points about which the jury expresses confusion or lack of understanding insures adequate knowledge of legal principles involved. If any clarification of the wording used is desired, it can be cleared up by lawyers and the judge, who are persons presumably knowledgeable in the field of law.

As one of our judges pointed out, in twenty years of trial practice and one year on the bench, he has not once had any juror request copies of the jury instructions. He added that he believed it would be a desirable step to conduct a survey of jurors who actually have served several times to determine if they deem it advisable to have the instructions in the jury room.

In the event the recommendations of the Commission are adopted, it is suggested as a practical matter that the rule require the delivery of a number of copies to the jurors and also, of course, that there be no indication on the instructions themselves as to which side requested them.

Very truly yours,

Marvin E. Ferguson

MEF:gw

76.30

October 31, 1969

Hon. Marvin E. Ferguson
The Superior Court
County of Kern
Bakersfield, California 93301

Dear Judge Ferguson:

We very much appreciate receiving your thoughtful letter concerning whether instructions should be taken into the jury room in civil cases.

As you pointed out in your letter, the system presently followed permits the reinstruction of the jury whenever necessary, in open court, with both counsel present. The complaint we have had concerning this procedure comes from trial lawyers who feel that the existing procedure requires a considerable waste of time on their part if they wish to protect their interests. They must remain available so that they can be present in case the jury wishes to be further instructed. One attorney, who waived his right to be present when the jury was instructed, found that the instructions given in his absence did not protect the interests of his client fairly; it was necessary for him to appeal to the court of appeal to have the verdict for his opponent reversed and a new trial granted. He advises us that he will never take a chance on having a jury instructed in his absence again. At the same time, he is greatly concerned at the increased cost of litigation if trial attorneys must remain available on the chance that the jury will request that the instructions be reread to them. He would much prefer giving the jury the instructions and taking his chances. It would be helpful to have your reaction to this practical criticism of the existing procedure.

I am writing to you to get your reaction on this further point because your thoughtful letter indicates that your judges have given the matter considerable thought.

Sincerely,

John H. DeMoully
Executive Secretary

JHD:aj

MARVIN E. FERGUSON
Judge

THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF KERN
Bakersfield, California-93301

November 4, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMoully
Executive Secretary

Dear Mr. DeMoully:

The practical problem raised in your letter of October 31, 1969 is not one that causes us much difficulty. Counsel usually return to their offices during the deliberations of the jury and are on call should their presence be required. The time involved in returning for reinstructing is minor, in our view, when compared with the other problems created by engaging in the practice of permitting the jury to take the instructions into the jury room. However, we appreciate the time element may create a more substantial problem in the larger metropolitan areas. Still, when weighed against the time consumption and other problems created by a jury being bogged down in arguing the law, rather than the facts of a particular case, we deem it insignificant.

Judges on our bench who have had considerable civil trial experience doubt whether the additional time that may be consumed by the attorney in returning for reinstruction involves any substantial additional charges to the client. As pointed out by one judge, it certainly would not do so in a contingent fee case, and since the usual arrangements in all other cases are on a per diem rather than an hourly basis during trial, there should be no additional charge by the attorney for such services.

I believe I can speak for all of the judges when I state that certainly no attorney who is properly representing his client should stipulate the judge should be permitted to give instructions in his absence.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

Hoping this is the information you desire, I remain,

Very truly yours,

Marvin E. Ferguson

MEF:gw

Memo 69-137

EXHIBIT XVII

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE
COUNTY OF RIVERSIDE

November 3, 1969

CHAMBERS OF
JOHN G. GABBERT
JUDGE OF THE SUPERIOR COURT

COURT HOUSE
RIVERSIDE, CALIFORNIA

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Gentlemen: Re: Civil Instructions to Jury

If instructions for use in the jury room are given to the jury, some format should be followed whereby the instructions do not indicate on their face which party or attorney submitted the instructions to the Court.

I have had jurors in criminal cases, where instructions were given to them ask," Why were most of the instructions those of the District Attorney and so few those of the defense?"

In criminal cases when the instructions are to be given the jury, I photostat the body of the instruction omitting the heading which shows that it is a requested People's or Defendant's instruction and omit the name of the attorney. Otherwise, I feel that jurors may consciously or unconsciously "count up" the instructions given and draw an inference that the Judge may "lean" one way or the other in the case. This might be especially true where, as in criminal practice today, most instructions are those submitted by the District Attorney.

If sterile instructions are not used, at the very least a special instruction should be given properly cautioning the jury as to the immateriality of considering an instruction as having been submitted to the Court by any particular party and calling attention to the fact that the instructions as those of the Court alone. However, such an instruction is a difficult one to draw. Any such cautionary instruction might well parallel the well-known story of the mother, who on leaving the children alone, told them that they shouldn't put any beans in their ears while she was out. The results were predictable.

The preparation of instructions for jury use poses mechanical reproduction and secretarial problems in order to avoid instruction sheets that are not interlineated by the Court's handwritten additions or subtractions and that do not contain the identity of the party and counsel submitting the instruction.

Any instructions given to the jury should be so "keyed" that Court and counsel would clearly know who requested them. The sheets given to the jury should not contain any statement that an instruction was requested by any certain litigant. Such a system should be uniform throughout the State and incorporated in the Court Rules.

Sincerely yours,

John G. Gabbert.

JGG:dm
cc-Judge Leo A. Deegan

Memo 69-137

EXHIBIT XVIII

THE SUPERIOR COURT
TUOLUMNE COUNTY
SONORA, CALIF. 95370
533-7751

CHAMBERS OF
ROBB A. DARKEY, JUDGE

MAILING ADDRESS
P. O. BOX 545

November 3rd, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Subject: Jury Instructions-Civil Cases

Dear Mr. DeMoully:

I received your letter of October 10th, 1969, and the tentative recommendation of the Commission authorizing the taking of a written copy of the Court's instructions into the jury room in civil cases (as well as criminal).

As a member of the Bench and the Bar having twenty years experience in active trial work and almost thirteen years on the Bench, I must state that I am opposed to the concept of sending the instructions into the jury room in a civil case. As a matter of fact, while I am not aware of the statistics, I do believe that this practice is not followed in many counties even in criminal cases.

It is true that jury instructions are inclined to be confusing, and that it is expecting too much of jurors to expect them to retain in their minds all of the law that is read to them by the Judge in the half hour or so of giving of instructions. On the other hand, they do have a right to come back into Court and request clarification or reiteration of instructions on certain points. This enables the Judge to control the re-examination of instructions and select those which are really needed to clarify the point and, if adviseable, to explain, enlarge, clarify, or to give another instruction on the same point.

While occasionally it does take additional time for a jury to be called back into Court for clarification or re-reading of instructions, it is the frank opinion of this writer that it will take a lot less time then it will for twelve jurors to attempt to agree on what the written instructions mean after they get closeted in the jury room and have an opportunity to take them apart and

pass them around and read and argue among themselves as to what each individual instruction means. In discussing your letter with another Judge, he commented: If we're going to go this far, why not just hand the jury twelve copies of the instructions at the conclusion of the trial and let them deliberate. Why should the Judge even read the instructions? While this is far fetched, and I do not concur in such rash statement, I can understand why some Judges might feel that way.

Since you wished an expression of viewpoint from those engaged in the active trial work, I am passing this along to you as being unalterably opposed to the sending in of jury instructions in civil cases.

Thanking you for your consideration of these comments, I remain

Very truly yours,

Ross A. Carkeet

RAC/ED

Memo 69-137

EXHIBIT XIX

Superior Court

CALIFORNIA

November 1, 1968

California Law Revision Commission
School of Law
Stanford University
Stanford, CA 94305

Attention: John H. DeMoully
Executive Secretary

Gentlemen:

After reviewing the background material furnished in connection with the Commission's tentative recommendation that the jury in a civil case should be authorized to take a written copy of the Court's instructions into the jury room, I came to the conclusion that, as recommended, Section 612.5 should be enacted and added to the Code of Civil Procedure.

Before replying to your letter, however, I felt that I should get an expression from the members of the local Bar Association. By an overwhelming majority the members of the Bar Association opposed the recommendation in its present form. They particularly objected to the language that the instructions should be made available to the jury at the discretion of the Court or upon the request of any one party. They would have no objection if the proposed section provided that a copy of the Court's instructions be made available to the jury during its deliberations pursuant to stipulation of all parties.

I have no personal feelings about the matter one way or the other, although I do feel that in certain cases it would be advantageous to all parties to permit the jury to have the instructions before them during their deliberations.

Very truly yours,

Ralph V. Devoto
Judge of the Superior Court

RVD/fl

Memo 60-137 EXHIBIT XX

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

OFFICE OF THE GENERAL COUNSEL

THOMAS J. CUNNINGHAM
GENERAL COUNSEL

ASSOCIATE COUNSEL
JOHN B. LANDON
JOHN P. SPARROW
MARK OWENS, JR.

ASSISTANT COUNSEL
MILTON H. GORDON
DONALD L. REIDHAAR
GEORGE L. MARCHAND
ROMULUS B. FORTWOOD
JAMES E. HOLST
WARREN S. LEVIN
ALETHA R. TITMUS
WILLIAM H. MCKENZIE

590 UNIVERSITY HALL
2200 UNIVERSITY AVENUE
BERKELEY, CALIFORNIA 94720
(415) 642-2832

November 10, 1969

John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This will acknowledge your letter of October 14th wherein you indicated the Law Revision Commission would appreciate my comments on the tentative recommendations relating to the taking of instructions into the jury room in civil cases.

My thoughts in the matter are as follows. I agree the same rule should apply in both civil and criminal cases but that the giving of a copy of the written instructions to the jury upon its adjournment for deliberation should be mandatory.

My reason for making it mandatory is the same as that set forth in the letter of Miss Sara Jane Long under date of June 25, 1969, in your background material. She properly points out that Penal Code section 1137 authorizes the court to deliver the instructions to the jury room upon request but that the request is seldom made because the jurors are not aware of its provisions.

Before I resigned from the Bench to accept my present position, I tried hundreds of criminal as well as civil cases, and only once was I ever requested in a criminal case to send the written instructions into the

jury room and, in my opinion, for the very reason stated above.

While your optional provision is a step in the right direction, unless made mandatory it is not going to accomplish what your Commission desires. Should you determine to make it optional in both types of cases, the Penal Code and the Code of Civil Procedure should be amended to direct the judge, upon the conclusion of his reading the jury instructions, to inform the jurors they may request the instructions. With such an admonishment, I think the result would be that the instructions would be requested in most cases. Thus, again, it would be best to make it mandatory in the first instance. Section 614 of the Code of Civil Procedure should remain in effect or be slightly modified to conform to the other changes.

I congratulate your Commission for the excellent work it is doing.

Sincerely,

Thomas J. Cunningham

Memo 69-137

EXHIBIT XXI

CHAMBERS OF

Judge of the Superior Court

MARIN COUNTY

CALIFORNIA

JOSEPH G. WILSON

JUDGE

DEPARTMENT NO 2

TELEPHONE 453 0100

SAN RAFAEL, CALIFORNIA

November 12, 1969

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This is in reply to your letter of October 10, 1969, requesting comments concerning the tentative recommendation of the Commission with respect to taking instructions into the Jury Room in civil cases. This matter has been discussed with all of the Judges of the Superior Court in this County, and, while the strength of opinion varies to some degree among individual Judges, I think it would be fair to say that the consensus is opposed to the recommendation. Our principal concern is the fear that if this procedure is followed juries will in large measure tend to become concerned with the applicable law and tend to neglect their primary function which is to weigh and sift the evidence and determine the facts.

We understand from the material submitted with the Commission's tentative recommendation that it is believed this has not occurred in other areas where the recommended practice has been followed. However, we think it possible that this may have occurred without individual members of the jury being aware it was happening and of course there is never any trained observer present during the deliberating sessions of the jury to actually evaluate the deliberative process, under particular circumstances.

We recognize the problems set forth in the material forwarded with the recommendation and we appreciate that they are real problems to the citizens serving on a jury. However, we

are reluctant to endorse any procedure which would require that written instructions be taken into the Jury Room in civil as well as criminal cases. It is not the practice in this County to have written instructions taken into the Jury Room in criminal cases, even though this is presently permitted by statute. We feel that, at most, any proposed Court rule or legislation in this area should leave the question of whether written instructions are to be taken into the Jury Room to the discretion of the Trial Judge.

We recognize that these comments are somewhat adverse to the Commission's proposed recommendation, but we hope they will be of assistance to you in your further study of the matter.

Very truly yours,

JOSEPH C. WILSON

JGW/jby

Memo 69-137

EXHIBIT XXII

Superior Court of the State of California
County of Solano
Fairfield, California 94533

Chambers of
RAYMOND J. SHERWIN
Judge of Superior Court
(707) 425-3194

November 10, 1969

California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Attention: John H. DeMoully, Executive Secretary

Dear Professor DeMoully:

This refers to your letter of October 10, 1969, concerning whether juries in civil cases should be authorized to take a written copy of the court's instructions into the jury room.

We have talked about this from time to time but never reached any firm agreement. My impression is, however, that we lean towards authorizing juries to be given the written instructions.

I thought you might be interested in the enclosed copy of an unsolictied letter which Judge Healy received.

Cordially,

RAYMOND J. SHERWIN

RJS/mmg

cc: Honorable Thomas N. Healy
Honorable Ellis R. Randall

Enclosure

EXHIBIT XXII cont

5 Hillside Lane
Vacaville, Calif.
Oct. 29, 1969

Dear Judge Healy:

You may recall that I was foreman of the jury in the case McMurphy versus Wells tried in your court last week. I am concerned about some of the circumstances involved in this case. I know nothing about the propriety of any comments I might make, and you can be sure that I offer them in the hope that they may be of some value.

1. If the jury had been supplied with a typed copy of your instructions regarding the possible verdicts, I do not feel our deliberation could have lasted more than one hour.

2. I frantically took incomplete notes during your charge, but when we went into deliberation, there were three or four divergent opinions as to how we should operate. I finally convinced them that my notes stated definitely that we should decide concerning the negligence of the hotel. One felt that such old hotels should be torn down and therefore the hotel was negligent. One was sure the window was stuck and therefore the hotel was negligent. One felt that the poor devil should at least get hospital expenses back regardless --therefore the hotel was negligent. Two felt that the desk clerk neglected to shut off the heat when the alarm sounded, therefore the hotel was negligent. Seven felt that steam radiators by nature are hot enough to cause burns and there was no negligence unless it were shown that the heating system was defective.

3. I then managed to get a vote on the question: Was the plaintiff negligent and did his negligence contribute to his accident? 10 agreed that Mr. McMurphy was negligent and that his negligence contributed to his accident. My notes indicated that this was sufficient for a verdict in favor of the defendant. There was immediate protest and new statutes were quickly formulated. For example, one insisted that we now had to determine which negligence was preponderant. I decided that the best course was to supply this information to you for verification. I expected you to advise us that if 10 agreed on contributory negligence that we were obligated to return a verdict in favor of the defendant. You will recall that you asked if we wondered whether or not a 10 to 2 vote was enough. You then reread the charge and I again tried to write down the part on which we disagreed. When you read it a third time I was able to fill in the missing words and told you that I thought our problem was solved. We immediately reached a 11 to 1 verdict.

4. If it is proper, a copy of a complicated charge should be supplied to the jury. The average person cannot assimilate all the instructions when read in a normal manner.

5. If proper, I feel all jurors in the box should be supplied pencil and paper so notes can be taken. One juror demanded to have read back to her the testimony regarding "a statement Mr. Lewis made yesterday". Repeated and courteous questioning revealed that she did not have the slightest idea of the subject matter or any fact connected with her problem.

6. You instructed us that Mr. McMurphy's deposition was just as good evidence as if it had been given from the witness chair in the courtroom. Both lawyers read at length from this deposition and yet we were denied access to the deposition because it had not been offered in evidence. I must assume this was an error on the part of one or both lawyers if they felt it would help their argument.

7. The defense lawyer did not ask the medical doctors a very obvious question which might have cleared up a lot of questions in the juror's minds. The wound was green on Jan. 3. Would a burn suffered on Jan. 2 turn green in one day? If not, would a burn suffered on Dec. 31 turn green by Jan. 3? If a definite no to the first question and a definite yes to the second question were given, it would have been evident that the plaintiff was telling a falsehood and had been negligent. My problem is, "What can a juror do, if anything, in such a situation? Can a juror ask a witness a question?"

8. One juror on our panel has no business ever serving on any type of jury. She is incapable of listening to your instructions; incapable of reasoning or orderly thinking. Her typical contributions were a) "You can't tell me the hotel didn't know he had been burned," b) "you can't tell me the window wasn't stuck," c) "I'm sorry, I have an open mind, but you'll never get me to change my mind," and d) "I don't care whose fault it was, he should at least get his hospital expenses back"; e) "he is being persecuted because he drinks. I don't drink but if I came out of a bar and fell down, people would say I was drunk and that isn't fair!". When she realized the sentiment was opposed to hers, she accused a lady juror of calling her an "invalid" when in fact nothing had been said to her by anybody to which she could take exception.

I doubt if you are still reading at this point, but I can tell you in all honesty, my jury experience is frustrating and depressing. I hope that I will not be called again. Perhaps this is for the best since I find it difficult to see how such a case ever reaches the trial stage. It is obvious that I am ignorant of the law since I did not feel that the plaintiff's lawyer even attempted to prove negligence on the part of the hotel.

I hope this rambling letter may be of some interest or value to you. At least I feel better!

Sincerely,

/s/ Robert M. Stephenson

Memo 69-137

EXHIBIT XXIII

CALIFORNIA TRIAL LAWYERS ASSOCIATION

"dedicated to the improvement of the fair administration of justice"

GUARANTEE BUILDING
Third Floor
1020 12TH STREET
SACRAMENTO, CALIFORNIA 95814
PHONE (AREA 916) 442-6902

JAMES L. FRAYI
Executive Director

Nov. 12, 1969

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMoully,
Executive Secretary

Dear Mr. DeMoully:

The writer, Elmer Low, Thomas F. Mortimer, and Kenneth Knapp, of Los Angeles, and Thomas Eckhardt, of San Bernardino, have been appointed by Mr. Ned Good, President of California Trial Lawyers Association, to that organization's Law Revision Committee.

We have conferred somewhat hastily, but do have some comments with respect to the Statute on Res Ipsa Loquitur and Jury Instructions in the Jury Room.

With respect to Res Ipsa Loquitur, we can see that the proposed Statute is a correct statement of the law. However, we have two suggestions to make.

First of all, there are other worthwhile instructions (such as appear in Baji) on the subject of Res Ipsa Loquitur, and some recognition of that fact should be provided for in proposed Evidence Code Sec. 646.

Secondly, we are rather chary of the use of the expression, "only if". Such an expression is argumentative, and sometimes, to a person in the plaintiff's position, it seems to impose a rather heavy burden.

Therefore, the first paragraph of Subparagraph (c) of Section 646 might be modified so as to insert, after the words, "upon request shall," the words, "in addition to any other proper instructions on the subject". Subparagraph (c) (1) is unobjectionable and is more or less in accord with one of the instructions in Baji.

We would then suggest that Subparagraph (c)(2) be changed in some fashion so as to eliminate the expression "only if", and possibly as follows:

> "However, in order to draw such an inference, the jury must find that it is more probable than not that the occurrence was caused by some negligent conduct on the part of the defendant."

With respect to the second subject which we have been asked to comment upon, that is, the taking of jury instructions into the Jury Room, let me state that while some of the literature seems to indicate that such a procedure has been approved of in a number of states, the members of our committee are unanimous in opposing such a proposition for the State of California.

We all feel that there would be too great a tendency for individual jurors to seize upon particular instructions emphasizing one over the other, possibly with some of the jurors, having a legal frame of mind, attempting to impress upon other jurors their legal ability. We all know that many of our lay friends are would-be lawyers. We feel such a procedure violates the principle enunciated in our Baji Instructions that instructions should be considered as a whole and that no individual instruction is to be singled out and given undue significance.

Furthermore, and somewhat akin to what has already been said, there is a danger that the jury would not deliberate as one body, but might be split up into segments, each asserting itself as a champion of a particular instruction or a group of instructions. Probably the best argument in favor of the proposition is that jurors cannot be expected to remember instructions as they are read to them by the judge. However, they can always come back and have the instructions re-read to them, and in this way, there is some control over the manner of re-reading and the number of instructions which are re-read to them.

Our committee is strongly opposed to the proposition that jury instructions should be permitted in the Jury Room.

We thank you for the opportunity of expressing our views on these subjects.

Yours very truly,

CALIFORNIA TRIAL LAWYERS ASSOCIATION LAW REVISION COMMITTEE,

By _____
WILLIAM P. CAMUSI

WPC-p

C.C. to Mr. Ned Good, President, California Trial Lawyers Association, 727 West 7th St., Los Angeles, Calif.

C.C. to Mr. James L. Frayne, Executive Director, California Trial Lawyers Association, 1020 12th Street, Sacramento, California 95814

C.C. to Mr. Kenneth L. Knapp, 1250 Wilshire Blvd., Los Angeles, California 90017

C.C. to Mr. Elmer Low, 315 West 9th St., Los Angeles, Calif.90015

C.C. to Mr. Thomas F. Mortimer, 3540 Wilshire Blvd., Los Angeles, California 90005

C.C. to Mr. Thomas M. Eckhardt, 344 West 2nd Street, San Bernardino, California 92401

Memo 69-137

EXHIBIT XXIV

CHAMBERS OF

The Superior Court

SAN BERNARDINO, CALIFORNIA 92401
MARGARET J. MORRIS, JUDGE
DEPARTMENT NINE

November 28, 1969

John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

Re: Jury Instructions in Civil Cases

In connection with your letter of October 10, 1969, requesting our views on the above recommendation, I have taken a survey among the eleven Judges of our court, and find that they are fairly evenly divided with a slight preponderance in favor of disapproval of the recommendation.

Primary reasons for disapproval are:

1. A jury would devote too much time to arguing about instructions; and

2. Would create more confusion and invite erroneous interpretations by the jurors.

Among those favoring the recommendation, it was the consensus that the question of whether the instructions were to be provided should be for the court to determine on its own initiative.

I hope that the above will be helpful to you in your study.

Very truly yours,

Margaret J. Morris

MARGARET J. MORRIS
Presiding Judge

MJM:mh

ES
AES

#12 March 25, 1969

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

TAKING INSTRUCTIONS INTO THE JURY ROOM IN CIVIL CASES

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NOTE: COMMENTS OF INTERESTED PERSONS AND ORGANIZATIONS MUST BE IN THE HANDS OF THE COMMISSION NOT LATER THAN JUNE 2, 1969, IN ORDER THAT THEY MAY BE CONSIDERED BEFORE THE COMMISSION'S RECOMMENDATION ON THIS SUBJECT IS SENT TO THE PRINTER.

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

LETTER OF TRANSMITTAL

The California Law Revision Commission was authorized by Resolution Chapter 207 of the Statutes of 1955 to make a study to determine whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.

The Commission published a recommendation and study on this subject in November 1956. See Recommendation and Study Relating to Taking Instructions to the Jury Room, 1 Cal. L. Revision Comm'n Reports at C-1 (1957). A bill was introduced at the 1957 session of the Legislature to effectuate that recommendation. However, the Commission determined not to seek enactment of the bill because it concluded that further study was needed of the procedural problems involved in making a copy of the court's instructions available to the jury in the jury room. This recommendation takes into account the problems that caused the Commission to withdraw its previous recommendation.

12 March 25, 1969

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

TAKING INSTRUCTIONS INTO THE JURY ROOM IN CIVIL CASES

Section 1137 of the Penal Code authorizes the jury in a criminal trial to take a copy of the jury instructions to the jury room. There is no similar provision for civil trials and it is uncertain whether a copy of the instructions may be taken to the jury room in a civil trial.[1] Apparently, because of this uncertainty, it is not the practice to make a copy of the instructions available to the jury during its deliberations in a civil case.[2]

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1 See Cunningham, Should Instructions Go Into the Jury Room?, 33 Cal. S.B.J. 278 (1957); 2 Witkin, California Procedure Trials § 73 (1954).

In several civil cases it has been contended that the trial court may not give the jury a copy of the instructions because there is no statute authorizing it to do so. Day v. General Petroleum Corp., 32 Cal. App.2d 220, 89 P.2d 718 (1939); Melikian v. Independent Paper Stock Co., 8 Cal. App.2d 166, 47 P.2d 539 (1935); Fererira v. Silvey, 38 Cal. App. 346, 176 Pac. 371 (1918). Cf. Granone v. Los Angeles County, 231 Cal. App.2d 629, 42 Cal. Rptr. 34 (1965); Shelton v. Burke, 167 Cal. App.2d 507, 334 P.2d 616 (1959). In each of these cases the appellate court held that if the trial court did err in sending a copy of the instructions into the jury room, the error was not prejudicial in the particular circumstances involved. Dicta in one case indicates that the practice of providing the jury with a copy of the instructions is permissible if the parties expressly consent. Fererira v. Silvey, supra.

2 Holbrook, A Survey of Metropolitan Trial Courts Los Angeles Area 304 (1956).

The function of instructions is to guide the jury's deliberations. In most cases the instructions are lengthy and complex, particularly when considered from the point of view of a lay jury composed of persons unfamiliar with either law or legal language.[3] It is doubtful that the jury, having heard the instructions once as given orally by the court, can remember them in detail after retiring to the jury room. The availability of a copy of the instructions in the jury room would permit the jury to refer to the instructions for a written statement of the issues in the case and the applicable law if it wishes to do so.

In most states, the court is authorized or required to provide the jury with a copy of the instructions.[4]

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3 A survey of the subjective opinions of over one thousand jurors found that nearly one-half of the jurors said that there was disagreement among the members of the jury as to the meaning of the instructions. Holbrook, A Survey of Metropolitan Trial Courts Los Angeles Area 304 (1956).

4 See Appendix to this recommendation. See also 5 Busch, Law and Tactics in Jury Trials § 723, p. 711 (1963).

For these reasons, the Commission recommends that the court be permitted to send a copy of the instructions into the jury room in a civil trial and be required to do so upon request of any party. The procedure for providing the jury with a copy of the instructions should be established by rules adopted by the Judicial Council.[5] This would permit revision of the procedure from time to time as experience under the rules demonstrates a need for revision and would facilitate the development of alternative procedures if the situation in particular counties requires a different procedure in those counties.

Enactment of the legislation recommended by the Commission would reflect a legislative decision that the taking of instructions into the jury room in civil cases is a desirable practice.[6] Nevertheless, because the drafting of satisfactory rules may require the solving of unanticipated

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5 The procedure for presenting proposed instructions to the court and for giving instructions to the jury is outlined in Sections 607a, 608, and 609 of the Code of Civil Procedure. The form of proposed jury instructions is governed by the California Rules of Court. See Superior Court Rule 229; Municipal Court Rule 517.

6 Revision of the law relating to the taking of jury instructions into the jury room is not a new idea. As early as 1901, the California Legislature amended Section 612 of the Code of Civil Procedure to provide that the jury must take all instructions with them into the jury room. Cal. Stats. 1901, Ch. 102, § 111, p. 145. The bill containing the amendment was declared unconstitutional for technical reasons. Lewis v. Dunne, 134 Cal. 291, 66 Pac. 478 (1901). In 1956 the California Law Revision Commission recommended that the law be revised to permit the instructions to be taken to the jury room. See Recommendation and Study Relating to Taking Instructions to the Jury Room, 1 Cal. L. Revision Comm'n Reports at C-1 (1957). The bill introduced to effectuate this recommendation was withdrawn in order to permit further study of the procedural problem of providing the jury with a clean copy of the instructions.

procedural problems, the statutory provision for furnishing the jury with a copy of the instructions should not become operative until the rules become effective.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Section 612.5 to the Code of Civil Procedure, relating to jury instructions.

The people of the State of California do enact as follows:

Code of Civil Procedure Section 612.5 (added)

Section 1. Section 612.5 is added to the Code of Civil Procedure, to read:

612.5. (a) At the discretion of the court or upon request of any party, a copy of the court's instructions to the jury in a civil action or proceeding shall be made available to the jury during its deliberations. In furnishing the jury with a copy of the instructions, the court shall follow the procedure established by rules adopted by the Judicial Council.

(b) The Judicial Council shall adopt rules governing the procedure to be followed under this section. Subdivision (a) does not become operative until such rules become effective.

Comment. Although it will not be clear whether a copy of the court's instructions may be taken into the jury room in a civil trial until subdivision (a) of Section 612.5 becomes operative, such practice normally would not result in prejudicial error. See Shelton v. Burke, 167 Cal. App.2d 507, 334 P.2d 616 (1959); Recommendation of the California Law Revision Commission Relating to Taking Instructions Into the Jury Room in Civil Cases, n. 1, supra, cf. Penal Code § 1137.

TABULAR SUMMARY OF LAW

TAKING INSTRUCTIONS TO THE JURY ROOM

STATE	Civil (1) Prohibited	Civil (2) Required	Civil (3) Permitted	Criminal (4) Prohibited	Criminal (5) Required	Criminal (6) Permitted	AUTHORITY
Ala.		X			X		Ala. Code tit 7, § 273 (civil & criminal); Hart v. State, 21 Ala. App. 621
Alas.	-	-	-	-	-	-	
Ariz.			X			X	Valley Nat'l Bank v. Witter, 58 Ariz. 491 (civil); Rule Crim. Proc. 280 (if any are taken all must be taken)
Ark.		X				X	Ark. Stat. Ann. § 27-1732 (civil); Ark. Stat. Ann. § 43-2138 (criminal)
Calif.	-	-	-			X	Cal. Penal Code § 1137
Colo.		X			X		Rule Civ. Proc. 51; Rule Crim. Proc. 30
Conn.	-	-	-	-	-	-	
Dela	-	-	-	-	-	-	
Fla.	-	-	-			X	Rule Crim. Proc. 1.400
Ga.			X	-	-	-	Chattahoochee Brick Co. v. Sullivan, 86 Ga. 50
Ha.	-	-	-	-	-	-	
Idaho		X				X	Idaho Code Ann. § 10-206 (civil); Idaho Code Ann. § 19-2203 (criminal)
Ill.		X			X		Ill. Stat. Ann. Ch. 110, § 67 (civil); Ill. Stat. Ann. Ch. 110A, § 451 (criminal)
Ind.	X			X			Smith v. McMillen, 19 Ind. 391; Jones v. Austin, 26 Ind. App. 399, 405-08 (civil); Hall v. State, 8 Ind. 439 (criminal). But see 33 Ind. L. J. 96 (1957).
Iowa			X			X	Rule Civ. Proc. 198, Iowa Code § 784.1 (criminal)
Kan.			X			X	Clark v. Brady, 126 Kan. 59 (civil); State v. Bennington, 44 Kan. 583

STATE	Civil (1) Prohibited	Civil (2) Required	Civil (3) Permitted	Criminal (4) Prohibited	Criminal (5) Required	Criminal (6) Permitted	AUTHORITY
Ky.	-	-	-	-	-	-	
La.	-	-	-			X	State v. Strachner, 190 La. 457 (criminal)
Me.	-	-	-	-	-	-	
Md.			X			X	Rule Civ. Proc. 558, Rule Crim. Proc. 757
Mass.	-	-	-	-	-	-	
Mich.			X	-	-	-	Behrendt v. Wilcox, 277 Mich. 232 (requested by jury)
Minn.	-	-	-	-	-	-	
Miss.			X			X	Miss. Code Ann. § 1530 (both)
Mo.		X				X	Mo. Rev. Stat. § 510.300; Rule Civ. Proc. 70.01 (civil); State v. Colson, 325 Mo. 510 (criminal)
Mont.			X	-	-	-	Hammond v. Foster, 4 Mont. 421, 433 (if any are given all must be given)
Neb.	-	-	-		X		Langworthy v. Connelly, 14 Neb. 340 (by implication); Neb. Rev. Stat. § 29-2016
Nev.			X			X	Rule Civ. Proc. 51; Nev. Comp. Laws § 175.441 (criminal
N.H.	-	-	-	-	-	-	
N.J.	-	-	-	-	-	-	
N.M.		X			X		N.M. Stat. Ann. §§ 21-8-23 (civil), 41-11-12 (criminal) (upon request of either party); Rule Civ. Proc. 51a
N.Y.	-	-	-			X	People v. Monat, 200 N.Y. 308 (semble: part of charge given to jury at its request and without objection by parties)
N.C.		X			X		N.C. Gen. Stat. Ann. § 1-182 (if instructions are in writing and if requested by either party)(both)
N.D.		X				X	N.D. Rev. Code 29-2204; Rule Civ. Proc. 51a (civil); N.D. Rev. Code § 29-2131(if in writing)(criminal)
Ohio		X			X		Ohio Rev. Code Ann. §§ 2315.01 (civil); 2945.10 (criminal)

STATE	Civil (1) Prohibited	Civil (2) Required	Civil (3) Permitted	Criminal (4) Prohibited	Criminal (5) Required	Criminal (6) Permitted	AUTHORITY
Okla.			X			X	Lowenstein v. Holmes, 40 Okla 33, 37 (civil); Okla. Stat. tit. 22, § 893 (criminal)
Ore.		X			X		Ore. Rev. Stat. §§ 17.255 (civil), 136.330 (criminal
Pa.	-	-	-	-	-	-	
R.I.	-	-	-	-	-	-	
S.C.	-	-	-	-	-	-	
S.D.		X				X	S.D. Code §§ 33.1317 (civil), 34.3654 (criminal)
Tenn.	-	-	-		X (felonies)		Tenn. Code Ann. § 40-2516
Tex.			X			X	Rule Civ. Proc. 36.18; Rule Crim. Proc. 671
Utah			X			X	Rule Civ. Proc. 47(m); Utah Code Ann.§ 77-32-2 (criminal)
Vt.	-	-	-	-	-	-	
Va.	-	-	-			X	Bowles v. Commonwealth, 103 Va. 816 (dictum)
Wash.		X				X	Rule Civ. Proc. 51; State v. Hart, 175 P.2d 944 (criminal)
W. Va.			X			X	Rule Civ. Proc. 51 (consent of all parties); State v. Stover, 64 W. Va. 668, 671 (dictum)(crimina
Wisc.			X			X	Wood v. Aldrich, 25 Wisc. 695 (civil); Loew v. State 60 Wisc. 559 (dictum)(criminal)
Wyo.	-	-	-		X		Wyo. Stat. Ann. § 7-228
TOTALS	1	13	14	1	10	22	