STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

Taking Instructions to the Jury Room

November 10, 1956

LETTER OF TRANSMITTAL

To His Excellency Goodwin J. Knight
Governor of California
and to the Members of the Legislature

The California Law Revision Commission was authorized by Resolution Chapter 207 of the Statutes of 1955 to make a study to determine whether the trial courts of this State should be authorized or required to give the jury a copy of the court's instructions to take into the jury room. The commission herewith submits its recommendation relating to this subject and the research study prepared by its staff.

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John R. McDonough, Jr.
Executive Secretary
November 10, 1956

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RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Taking Instructions to the Jury Room

Section 1137 of the Penal Code authorizes the jury in a criminal trial to take the written instructions of the court into the jury room. There is no similar provision for civil trials and it is not clear whether the court may give the jury a copy of the instructions in a civil case.

The commission recommends that the courts of this State be authorized, in all civil and criminal cases, to give the jury a copy of those instructions which were in writing and that they be required to do so upon the request of a juror or a party to the action. If this recommendation is accepted, the Legislature may wish, in addition, to require that all instructions given be in writing so that the jury will have all of the instructions in the jury room if it has any of them. The function of the 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. It is at least 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 commission has concluded, therefore, that in any case in which the trial judge, a juror, or a party to the action thinks it desirable, the jury should have a copy of the instructions in the jury room to which it can refer for a written statement of the issues in the case and the applicable law if it wishes to do so.

If this recommendation is accepted the question will arise, when a jury requests a copy of the instructions after it has begun its deliberations, whether the jurors must be conducted into court for this purpose and the instructions given them in the presence of the parties or counsel. This procedure is required in civil cases by Section 614 of the Code of Civil Procedure and in criminal cases by Section 1138 of the Penal Code when the jurors "desire to be informed of any point of law" after they retire for deliberation. The procedure would appear to have been designed for cases in which the jurors wish to be given new light upon the issues in the case through supplementary instructions by the court. The commission believes that this procedure should not be mandatory when the jury is simply to be handed a copy of the written instructions originally given by the court. Accordingly, the commission recommends that Section 614 of the Code of Civil Procedure and Section 1138 of the Penal Code be amended to make it clear that the procedure which they prescribe may but need not be followed in such cases.

The commission also recommends that, in accordance with the practice which has been adopted by the Legislative Counsel, any code sec-

tion otherwise being revised which contains a caption enacted as a part of the section also be revised to delete the caption.

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

An act to amend Sections 1137 and 1138 of the Penal Code and Section 614 of the Code of Civil Procedure and to add Section 1137.5 to the Penal Code and Section 612.5 to the Code of Civil Procedure, all relating to giving a copy of the court's instructions to the jury to take into the jury room.

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

SECTION 1. Section 1137 of the Penal Code is amended to read:

1137. ~~Papers the Jury May Take With Them.~~ Upon retiring for deliberation, the jury may take ~~with them~~ all papers ~~(~~except depositions~~)~~ which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the Court, to be taken from the person having them in possession. They may also take with them ~~the written instructions given and~~ notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

SEC. 2. Section 1137.5 is added to the Penal Code to read:

1137.5. After it has instructed the jury, the court may give the jury a copy of the written instructions given and the court shall do so upon the request of any party, made before the jury has retired to begin its deliberations, or upon the request of any juror, made at any time before verdict.

SEC. 3. Section 612.5 is added to the Code of Civil Procedure to read:

612.5. After it has instructed the jury, the court may give the jury a copy of the written instructions given and the court shall do so upon the request of any party, made before the jury has retired to begin its deliberations, or upon the request of any juror, made at any time before verdict.

SEC. 4. Section 614 of the Code of Civil Procedure is amended to read:

614. ~~May Come into Court for further Instructions.~~ After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required must be given in the presence of, or after notice to, the parties or counsel.

* Matter in italics would be added to the present law; matter in "strikeout" type would be omitted.

If, after the jury has retired for deliberation, any juror requests a copy of the written instructions given by the court, the jury may communicate the request to the court through the officer if the jury determines that it is not necessary to be conducted into court for this purpose and the court may send the instructions to the jury by the officer.

SEC. 5. Section 1138 of the Penal Code is amended to read:

1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called.

If, after the jury has retired for deliberation, any juror requests a copy of the written instructions given by the court, the jury may communicate the request to the court through the officer if the jury determines that it is not necessary to be conducted into court for this purpose and the court may send the instructions to the jury by the officer.

A STUDY TO DETERMINE WHETHER THE JURY SHOULD BE GIVEN A COPY OF THE COURT'S INSTRUCTIONS TO TAKE INTO THE JURY ROOM *

Section 1137 of the California Penal Code, which lists the items which the jurors in a criminal trial may take to the jury room for use during their deliberations, provides in part, "They may also take with them the written instructions given ***." Section 612 of the Code of Civil Procedure, the corresponding section for civil trials, does not include the instructions among the items which may be taken to the jury room [1] and there is some indication in judicial decisions that the instructions should not be given to the jury in a civil case.[2] Whether there is any basis for a distinction between civil and criminal cases in this regard and, if not, what the rule for all cases should be is the subject of this study.

EXISTING LAW

Law of California

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.[3] In each of these cases the appellate court held that if the trial court did err in giving the instructions to the jury, the error was not prejudicial in the particular circumstances involved. Thus, no court has had to decide whether in some circumstances it would be reversible error to give the jury a copy of the instructions in a civil case. Nor has any court which has discussed the matter clearly said whether as a matter of practice the instructions should be given to the jury. The most explicit statement on the matter, which falls considerably short of an unequivocal pronouncement, is that of the District Court of Appeal in *Melikian* v. *Independent Paper Stock Co.*:

> The fact that the jury was permitted to take the instructions with them into the jury room, while not authorized by law, was at most an irregularity which under all the circumstances of the case will not warrant a reversal.[4]

Thus, the proper practice in civil cases is in doubt.

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* This study was made by the staff of the Law Revision Commission with the assistance of Mr. William H. Allen.

[1] Code of Civil Procedure Section 612 was amended in 1901, as a part of a revision of the Code of Civil Procedure, to provide that the written instructions must be given to the jury in civil cases. Cal. Stat. 1901, c. 102, § 111, p. 145. This attempt to revise the Code of Civil Procedure was held invalid for failure to comply with certain constitutional requirements as to form. Lewis v. Dunne, 134 Cal. 291, 66 Pac. 478 (1901).

[2] See note 3 *infra*.

[3] 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.* Nelson v. Southern Pacific Co., 8 Cal.2d 648, 67 P.2d 682 (1937).

[4] Melikian v. Independent Paper Stock Co., 8 Cal. App.2d 166, 168, 47 P.2d 539, 540 (1935).

Law of Other States

The available information concerning the law of other states on the question of whether the jury should or may be given a copy of the instructions is summarized in a table at the end of this report. One writer has said that "By express statute or practice in substantially all the states, the jury takes with it to the jury room the written charge or instructions of the court."[5] However, no direct authority has been found on this question as to civil cases in 24 states and as to criminal cases in 16 states. The matter is covered by statute, rule of court, or judicial decision in the other states. Most states which have spoken on the matter either require or permit the trial court to give the jury a copy of the instructions. Indeed, only in Indiana does the practice of sending the instructions to the jury appear to be clearly prohibited.[6] On the other hand, the court is required to give the instructions to the jury in civil cases in 12 states[7] and is permitted to do so in 11 others.[8] And the instructions must be given in some or all criminal cases in 11 states[9] and may be given in 20 others.[10]

No federal statute covers the point, nor do the Federal Rules of Civil Procedure or Criminal Procedure. However, in a recent criminal case, the Court of Appeals for the District of Columbia held that it was not error to permit the jury to take the instructions with them.[11]

POLICY CONSIDERATIONS

Much can be said, it is believed, for giving a copy of the instructions to the jury, either as a matter of routine or upon the request of a party or of the jury. The instructions are intended to guide the jury's deliberations. Yet, even in a relatively simple case they are usually lengthy and complex. It is hardly reasonable to suppose that the jury, composed as it is of persons unfamiliar with either law or legal language and having heard the instructions but once as given orally by the court, will be able to remember them in detail as it ponders the

[5] BUSCH, LAW AND TACTICS IN JURY TRIALS 1080 (1949). For the views of other textwriters on the matter see ABBOTT, CIVIL JURY TRIALS 782 (4th ed., Wermuth, 1922) (judge may allow jury to take); 2 BISHOP, CRIMINAL PROCEDURE § 982a (2d ed., Underhill, 1913) (by permission of the court, the jury may take); 1 BLASHFELD, INSTRUCTIONS TO JURIES § 214 (2d ed. 1916) (by statute in many states the jury may or must take); BRANSON, INSTRUCTIONS TO JURIES § 78 (2d ed. 1925) (instructions must be taken); 1 SACKETT, INSTRUCTIONS § 213 (3d ed., Brickwood, 1908) (instructions as a general rule allowed to be taken); 2 THOMPSON, TRIALS § 2583 (2d ed., Early, 1912) (absent contrary statute, instructions may be taken in discretion of court).

[6] See Cols. (1) and (4) in Tabular Summary of Law of Other States, p. C-15 *infra*. The law of Georgia is unclear but may prohibit the practice. See Gholston v. Gholston, 31 Ga. 625, 638 (1860); Chattahoochee Brick Co. v. Sullivan, 86 Ga. 50, 67, 12 S.E. 216, 221 (1890).

[7] See Col. (2) in Tabular Summary of Law of Other States, p. C-15 *infra*.

[8] See Col. (3) in *id.*

[9] See Col. (5) in *id.*

[10] See Col. (6) in *id.*

[11] Carrado v. United States, 210 F.2d 712, 722-23 (D.C. Cir. 1953), *cert. denied sub nom.* Williams v. United States, 347 U.S. 1013 (1954), Manfredonia v. United States, 347 U.S. 1020 (1954), Smith v. United States, 349 U.S. 932 (1955). The court relied upon its own dictum in Copeland v. United States, 152 F.2d 769, 770 (D.C. Cir. 1945), *cert. denied*, 328 U.S. 841 (1946). See also Haupt v. United States, 330 U.S. 631, 643 (1947) (giving copy of court's charge to jury not reversible error); Outlaw v. United States, 81 F.2d 805 (5th Cir.), *cert. denied*, 298 U.S. 665 (1936) (giving instructions to jury out of presence of counsel held error but not sufficiently prejudicial to require reversal); Garst v. United States, 180 Fed. 339, 345 (4th Cir. 1910) (held not error to refuse to give jury copy of written instructions drawn by defendant when court's charge as given orally included other instructions). *But cf.* Fillippon v. Albion Vein Slate Co., 250 U.S. 76 (1919) (error to send additional instructions to jury out of presence of counsel at least when instruction is erroneous).

matters committed to it for decision. Thus, it would seem to be altogether fitting, if not indeed essential, that the jury have a copy of the instructions at hand with which to refresh its recollection as to the issues in the case and the law applicable thereto if it wishes to do so.

This view of the matter was taken by the United States Court of Appeals for the District of Columbia in *Copeland* v. *United States*,[12] in which it said:

> [W]e think it is frequently desirable that instructions which have been reduced to writing be not only read to the jury but also handed over to the jury. This course is required in some states, and is widely practiced. United States courts are free to follow it. We see no good reason why the members of a jury should always be required to debate and rely upon their several recollections of what a judge said when proof of what he said is readily available.[13]

This view has also been taken by the courts of several states. Thus, in *Valley National Bank* v. *Witter* [14] the Supreme Court of Arizona said:

> [W]e think it was not only permissible but commendable for the court to * * * [permit the jury to have the instructions]. The purpose of the instructions is to advise the jury as to the law, and at all times in considering its verdict a jury should keep them in mind. We can think of no better method of enabling it to do this than to have the written instructions of the court always before it.[15]

The Wisconsin Supreme Court took the same view in *Wood* v. *Aldrich*: [16]

> And the only result of allowing them [the jury] to examine it [the court's charge] for themselves would seem to be, that they would know more thoroughly its precise terms than they could if compelled to trust entirely to recollection after hearing it read once. This can work no prejudice to either party.[17]

Another reason for permitting the jury to have a copy of the instructions was suggested by the Supreme Court of Illinois in addressing itself to a related question in *Chicago Union Traction Co.* v. *Hanthorn*: [18]

> This whole doctrine of the qualification of one instruction in a series by another instruction in the same series, or as to the curing of a slightly defective instruction by another instruction which is not defective, is without value or force if the jury have not the right among themselves to read and compare the instructions to see whether or not any one instruction of a series is qualified or

[12] 152 F.2d 769 (D.C. Cir. 1945), *cert. denied*, 328 U.S. 841 (1946).
[13] *Id.* at 770 (dictum). The court relied upon this dictum as the basis for decision in Carrado v. United States, 210 F.2d 712, 722-23 (D.C. Cir. 1953), *cert. denied sub nom.* Williams v. United States, 347 U.S. 1018 (1954), Manfredonia v. United States, 347 U.S. 1020 (1954), Smith v. United States, 349 U.S. 932 (1955).
[14] 58 Ariz. 491, 121 P.2d 414 (1942).
[15] *Id.* at 504, 121 P.2d at 420. To the same effect, see State v. Bennington, 44 Kan. 583, 584, 25 Pac. 91, 92 (1890); State v. Stover, 64 W. Va. 668, 671, 63 S.E. 315, 316 (1908) (dictum).
[16] 25 Wis. 695 (1870).
[17] *Id.* at 696.
[18] 211 Ill. 367, 71 N.E. 1022 (1904).

> cured in its defective character by another instruction in the series.[19]

What, then, can be said on the other side? In *Smith* v. *McMillen*,[20] the Supreme Court of Indiana justified refusing to permit the jurors to have a copy of the instructions on the ground that

> The jury take the law from the Court through the ear. By so doing, they generally stand upon equality, because none but men with hearing ears are competent jurors. * * * But if * * * the Court sends the written instructions to the jury, inasmuch as jurors are not upon equality in their ability to read and interpret writing, it puts it in the power of sharp ones on the jury to read, and become the interpreters for the Court, and mislead their less skillful fellow-jurors.[21]

The force of this argument is considerably weakened, insofar as it is based on a lack of capacity on the part of jurors to read at all by the substantial decrease in the illiteracy rate since 1862 when the *Smith* case was decided.[22] But it does not follow that all jurors who can read generally can also read jury instructions understandingly, involving as they do not only a special vocabulary but also sentences considerably more complex in structure than students of the art of writing consider "readable" to the average person.[23] Even today, therefore, there may be some ground for concern that if the jury is given a copy of the instructions the "sharp ones on the jury" will "become the interpreters for the Court and mislead their less skillful fellow-jurors."[24] On the other hand, it is doubtful that jurors can hear and understand instructions any better than they can read and understand them.

There may be some danger that if the jurors are given a copy of the instructions they may seize upon one or two of them and ignore the rest, thus getting an inaccurate impression of the applicable law. There may also be some possibility that the deliberations of the jury will be shifted from the issues of fact to a series of disputes over the meaning of particular words or phrases in the instructions. Thus, the position may be taken that if the jury are in doubt about the content or meaning of some or all of the instructions which were given they should return to the courtroom and receive further instructions from the judge in the presence of counsel for the parties.[25] However, no such difficulties as those suggested here appear to have developed in criminal cases in this State in which juries have been given the court's instructions pursuant to Penal Code Section 1137 or in other states in which the instructions are given to the jury when it retires to begin its deliberations.

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[19] *Id.* at 373, 71 N.E. at 1024.
[20] 19 Ind. 391 (1862).
[21] *Ibid.*
[22] Between 1870 and 1930 illiteracy among persons 10 years of age and over decreased from 20 percent to 4.3 percent. See U.S. Dept. of Commerce Abstract of the 15th Census 275 (1933). The Census Bureau stopped taking illiteracy figures in 1930 but estimated that in 1950 the rate of illiteracy was 3.2 percent in persons over 14. See 2 U.S. Dept. of Commerce Census of Population: 1950, Pt. 2, p. 47 (1953).
[23] FLESCH, THE ART OF PLAIN TALK (1946); Littler, *Reader Rights in Legal Writing*, 25 CAL. B.J. 51 (1950). See the comments of jurors on the difficulty of understanding instructions, even when they are available to be read, in Hulen, *"Twelve Good Men and True": The Forgotten Men of the Courtroom*, 38 A.B.A.J. 813, 814 (1952).
[24] Smith v. McMillen, 19 Ind. 391 (1862).
[25] See CAL. CODE CIV. PROC. § 614; CAL. PEN. CODE § 1138.

RECOMMENDATION

It is recommended that the jury be given a copy of the court's instructions in both civil and criminal cases. There does not seem to be any rational basis for continuing the present at least formal distinction between civil and criminal cases in this regard. The advantage of having available to the trier of fact in all cases a statement of the issues to be decided and of the controlling legal principles would seem to outweigh the risk, if any, that in some cases the jury might be confused by the language of the instructions or misled by the "sharp ones" in their number or that in others they may be distracted from the main job at hand. The fact that most states which have spoken on the matter have decided that the instructions either must or may be given to the jury in either civil or criminal cases, or both, reinforces this conclusion.

If this basic recommendation be accepted, there are two matters which require consideration:

1. Should the statute be mandatory or permissive? The analysis made above might suggest that the court should be required to give the instructions to the jury in all cases.[26] On the other hand, it is arguable that there is no strong reason for doing so unless either the jury or one of the parties requests it. A rule requiring the court to give instructions to the jury if requested to do so by the jury or by a party would parallel the present rule in criminal cases insofar as it would make it mandatory to give the jury the instructions at its request, but would go beyond the present rule insofar as it gives the parties the power to require the court to give the instructions to the jury.[27]

2. What procedure should be followed in sending the instructions to the jury after it has begun its deliberations? The few California cases which touch the subject at hand indicate that the jury is apt to discover its need for the instructions after it has begun its deliberations.[28] If the jurors then request that the instructions be sent into them, may the court do so without complying with Code of Civil Procedure Section 614 which provides in relevant part:

> After the jury have retired for deliberation, * * * if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required must be given in the presence of, or after notice to, the parties or counsel.

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[26] If the court should be required to give the jury a copy of the instructions in all cases, it is believed that the statute should be directory only in cases in which neither the parties nor the jury bring the matter to the court's attention so that an oversight by the trial court would not be reversible error.

[27] Mr. Justice McKinstry, concurring in People v. Cochran, 61 Cal. 548, 552 at 554 (1882), said: "It is not the absolute right of the prosecution or defense to have the * * * instructions sent with the jury, unless the jury demand it." This language has been quoted with approval. See, *e.g.*, People v. Dunlop, 27 Cal. App. 460, 470, 150 Pac. 389, 393 (1915). It was early stated by way of dictum that it is error to permit the jury to take with them instructions the court refused to give. People v. Cummings, 57 Cal. 88, 90 (1880). On the other hand, it has been held not to be prejudicial error to let the jury see in what respects the court has modified requested instructions. People v. Gray, 52 Cal. App.2d 620, 650-51, 127 P.2d 72, 88-89 (1942); People v. Stephens, 29 Cal. App. 616, 157 Pac. 570 (1916). It was held not error for the judge, at a juror's request, to have a code section copied and let it be taken to the jury; he need not have all the instructions reduced to writing and handed to the jury. People v. Zari, 54 Cal. App. 133, 201 Pac. 345 (1921).

[28] See note 3 *supra*.

There is some indication that for a court to send the instructions directly to the jury in the jury room, without the knowledge or consent of counsel, would violate this section.[29] Moreover, in *Nelson* v. *Southern Pacific*,[30] the Supreme Court indicated that Section 614 is to be given a strict interpretation, saying:

> Any other method of communication [by the court to the jury] is held to go to the substance of the right of trial by jury and because of its nature is deemed to be prejudicial except in very exceptional circumstances.[31]

The principle of Section 614 and the strict view concerning it would seem, however, to be logically applicable only to cases in which the jury requests and is given further enlightenment in the form of supplementary instructions on a point of law and perhaps also to cases in which the court reads to the jury again a particular instruction already given. In these cases counsel ought to be present in order to be certain that the jury is given an adequate and accurate analysis of the law involved on the point in which they are interested. But when a court is asked merely to send the jury a written copy of all of the instructions which it has previously given orally, it would seem to be merely empty formalism to require that jury, court, and counsel be assembled to watch the clerk hand a copy of the instructions to the jury foreman. Hence, it is recommended that, unless the courts are to be required to give the instructions to the jury in all cases, in which event the question is unlikely to arise, Code of Civil Procedure Section 614 and its Penal Code counterpart, Section 1138, be amended to dispense with the formality for which they provide when all of the instructions are sent to the jury after it has retired.

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[29] Day v. General Petroleum Co., 32 Cal. App.2d 220, 89 P.2d 718 (1939); *cf.* Nelson v. Southern Pacific Co., 8 Cal.2d 648, 67 P.2d 682 (1937).

[30] *Ibid.*

[31] *Id.* at 655, 67 P.2d at 686.

TABULAR SUMMARY OF LAW OF OTHER STATES

STATE	Civil			Criminal			AUTHORITY
	(1) Prohibited	(2) Required	(3) Permitted	(4) Prohibited	(5) Required	(6) Permitted	
Alabama	–	x	–	–	x	–	ALA. CODE tit. 7, § 273 (1940) (both civil and criminal); Hart v. State, 21 Ala. App. 621, 111 So. 47 (1926).
Arizona	–	–	x	–	–	x	Valley Natnl. Bank v. Witter, 58 Ariz. 491, 121 P.2d 414 (1942) (civil); ARIZ. CODE ANN. § 44-1906 (Rule Crim. Proc. § 327) (1939) (criminal) (if any are taken all must be taken).
Arkansas	–	–	x	–	–	x	Missouri Pac. R.R. v. Watt, 186 Ark. 86, 52 S.W.2d 634 (1932) (by implication) (civil); Rutledge v. State, 262 S.W.2d 650 (Ark. 1953) (criminal).
California	–	–	–	–	–	x	CAL. PEN. CODE § 1137 (criminal).
Colorado	–	x	–	–	–	x	COLO. REV. STAT. ANN., rule 51 (1953) (civil); COLO. REV. STAT. ANN. § 39-7-19 (1953) (criminal).
Connecticut	–	–	–	–	–	–	
Delaware	–	–	–	–	x (capital cases)	–	DEL. CODE ANN., Vol. 13, Super. Ct. Rule—Crim. 30(b) (1953).
Florida	–	–	–	–	–	x	FLA. STAT. § 919.04 (1953), Brown v. State 152 Fla. 508, 12 So.2d 292 (1943) (criminal).
Georgia	–	–	–	–	–	–	See note 6 *supra*.
Idaho	–	x	–	–	–	x	IDAHO CODE ANN. § 10-206 (1948) (unless party objects), Hilbert v. Spokane R.R., 20 Ida. 54, 116 Pac. 1116 (1911) (civil); IDAHO CODE ANN. § 19-2203 (1948) (criminal).
Illinois	–	x	–	–	x	–	ILL. ANN. STAT. c. 110, §§ 67 (civil), 101.25 (Sup. Ct. Rule 25) (criminal) (Smith-Hurd, 1956).
Indiana	x	–	–	x	–	–	Smith v. McMillen, 19 Ind. 391 (1862) (civil); Jones v. Austin, 26 Ind. App. 399, 405-8, 59 N.E. 1082, 1085 (1901) (civil); Hall v. State, 8 Ind. 439 (1856) (criminal).
Iowa	–	–	–	–	–	–	
Kansas	–	–	x	–	–	x	Moyer v. Dolese Bros. Co., 162 Kan. 484, 489, 178 P.2d 270, 274 (1947) (by implication) (civil); State v. Bundy, 71 Kan. 779, 784, 81 Pac. 459, 461 (1905) (criminal).
Kentucky	–	–	–	–	–	–	
Louisiana	–	–	–	–	–	x	State v. Strachner, 190 La. 457, 182 So. 571 (1938) (criminal).

TABULAR SUMMARY OF LAW OF OTHER STATES—Continued

STATE	Civil			Criminal			AUTHORITY
	(1) Prohibited	(2) Required	(3) Permitted	(4) Prohibited	(5) Required	(6) Permitted	
Maine	–	–	–	–	–	–	
Maryland	–	–	–	–	–	–	
Massachusetts	–	–	–	–	–	–	
Michigan	–	–	x	–	–	–	Behrendt v. Wilcox, 277 Mich. 232, 269 N.W. 155 (1936) (requested by jury) (civil).
Minnesota	–	–	–	–	–	–	
Mississippi	–	–	x	–	–	x	MISS. CODE ANN. § 1530 (1942) (both).
Missouri	–	x	–	–	–	–	MO. REV. STAT. § 510.300 (1949) (civil).
Montana	–	–	x	–	–	x	Hammond v. Foster, 4 Mont. 421, 433, 1 Pac. 757, 759 (1882) (if any are given all must be given) (civil); MONT. REV. CODE ANN. § 94-7303 (1947) (criminal).
Nebraska	–	–	–	–	x	–	NEB. REV. STAT. § 29-2016 (1948) (criminal).
Nevada	–	–	–	–	–	x	NEV. COMP. LAWS § 11004 (1929) (criminal).
New Hampshire	–	–	–	–	–	–	
New Jersey	–	–	–	–	–	–	
New Mexico	–	x	–	–	x	–	N. MEX. STAT. ANN. §§ 21-1-1, rule 51(c) (upon request of either party) (civil); 41-11-12 (upon request of either party) (criminal) (1953).
New York	–	–	–	–	–	x	People v. Monat, 200 N.Y. 308, 93 N.E. 982 (1911) (semble: part of charge given to jury at its request and without objection by parties) (criminal).
No. Carolina	–	x	–	–	x	–	N.C. GEN. STAT. ANN. § 1-182 (if instructions are in writing and if requested by either party) (1951) (both).
No. Dakota	–	x	–	–	–	x	N.D. REV. CODE vol. 3, §§ 28.1411 (if in writing) (civil), 29-2131 (if in writing) (criminal) (1943).
Ohio	–	x	–	–	x	–	OHIO REV. CODE ANN. §§ 2315.01 (written instructions) (civil), 2945.10 (written instructions) (criminal) (Page, 1954).
Oklahoma	–	–	x	–	–	x	Lowenstein v. Holmes, 40 Okla. 33, 37, 135 Pac. 727, 729 (1913) (civil); OKLA. STAT. tit. 22, § 893 (1951) (criminal).

TABULAR SUMMARY OF LAW OF OTHER STATES—Continued

STATE	Civil			Criminal			AUTHORITY
	(1) Prohibited	(2) Required	(3) Permitted	(4) Prohibited	(5) Required	(6) Permitted	
Oregon	–	x	–	–	x	–	ORE. REV. STAT. §§ 17.255 (if requested by party) (civil), 136.330 (if requested by party) (criminal) (1955).
Pennsylvania	–	–	–	–	–	–	
Rhode Island	–	–	–	–	–	–	
So. Carolina	–	–	–	–	–	–	
So. Dakota	–	x	–	–	–	x	S.D. CODE §§ 33.1317 (civil), 34.3654 (criminal) (1939).
Tennessee	–	–	–	–	x (felonies)	–	TENN. CODE ANN. § 40-2516 (1955) (criminal).
Texas	–	–	x	–	–	x	TEX. STAT., Rule Civ. Proc. 281 (civil); CODE CRIM. PROC. art. 665 (criminal) (Vernon, 1948).
Utah	–	–	x	–	–	x	UTAH CODE ANN., Rule Civ. Proc. 47 (m) (civil), § 77-32-2 (criminal) (1953).
Virginia	–	–	–	–	–	x	Bowles v. Commonwealth, 103 Va. 816, 48 S.E. 527 (1904) (dictum) (criminal).
Washington	–	x	–	–	x	–	Wash. Rules Plead., Proc. & Prac., Rule 8, 34A Wash.2d 74 (1951) (both).
West Virginia	–	–	x	–	–	x	Wiseman v. Ryan, 116 W. Va. 525, 182 S.E. 670 (1935) (civil); State v. Stover, 64 W. Va. 668, 671, 63 S.E. 315, 316 (1908) (dictum) (criminal).
Wyoming	–	–	–	–	x	–	WYO. COMP. STAT. ANN. § 10-1301 (written instructions) (criminal).
Wisconsin	–	–	x	–	–	x	Wood v. Aldrich, 25 Wis. 695 (1870) (civil); Loew v. State, 60 Wis. 559, 19 N.W. 437 (1884) (dictum) (criminal).
Totals	1	12	11	1	11	20	

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