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Pattern Jury Instructions

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PATTERN JURY INSTRUCTIONS

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Of the myriad of problems that confront a trial judge, none presents more of an enigma to him than his duty to give instructions to a jury. Experience may bring greater facility and confidence; however, it is extremely rare that instructions given in even the same type case covers all of the issues in another case. Preparation of jury instructions is a never ending, tedious, time consuming responsibility of the trial judge.

> He must deliver instructions which will be both acceptable to an appellate court and understandable by the average juror. Since error in instructing the jury often has been cited as the single most frequent cause for reversal, the judge's choice of words at this point is crucial. To insure against reversal, an overly cautious judge will often deliver his instructions in such a manner and form that, although the instructions accurately state the applicable law, they are heard by the jury as nothing more than a string of meaningless legal abstractions.[1]

Preparation of charges is the business and responsibility of the trial judge. He must charge the jury on what the law is.[2] It must be full, fair and not unduly repetitious, or show partiality to either party.[3] It is his duty to instruct as to every controlling, material, substantial and vital issue in the case.[4]

> It is the responsibility of the trial judge to take high sounding and general pronouncements of law and translate them into the language of the layman. Drafting language that is tuned to all twelve jurors is not an easy business. . . . There is a wide gulf between the law the average jury can absorb in the few minutes available to the court and the law necessary to decide the same.[5]

There is an impelling necessity of comprehension by the jury. The verdict is the purpose of the trial and there is a presumption that the jurors follow the charge of the court.[6]

> It is proper that instructions should be given in such a way as that *the*

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1. J. ALFINI AND H. HARLEY, PATTERN JURY INSTRUCTIONS 17 (Am. Judicature Soc. 1972).
2. Barnes v. Thomas, 72 Ga. App. 827, 831, 35 S.E. 2d 364, 367 (1945) *quoting* Cammon v. State, 59 Ga. App. 759, 762, 2 S.E.2d 205, 207 (1939).
3. Atlantic Coastline R. R. v. Coxwell, 93 Ga. App. 159, 91 S.E.2d 135 (1955).
4. Berger v. Plantation Pipe Line Co., 121 Ga. App. 362, 364, 173 S.E.2d 741, 743 (1970); American Family Life Insurance Co. v. Glenn, 109 Ga. App. 122, 126, 135 S.E.2d 442, 445 (1964).
5. Clarkston, *Pattern Charges to the Jury*, 8 GA. BAR J. 59, 63 (1971).
6. Cook v. State, 134 Ga. App. 357, 359, 214 S.E.2d 423, 425 (1975).

> *jury should understand the court.* (Emphasis by the court.) There can be no rule but this. When this is done, no error can be committed. And when a proposition is distinctly read to the Jury, and they are informed that it is the law, we cannot assume that the proposition is not understood by them. *The contrary is the inference.* (Emphasis added.) At the same time, no one need be informed that in presenting a legal proposition to the minds of unprofessional men, the utmost plainness and painstaking in its elucidation are desirable, and for the most part necessary; and the obligation of the Court is not fully discharged unless its application to the case is clearly made.[7]

Furthermore

> It is . . . the duty of the Court, to charge them as to the law— a duty from which he cannot escape. Not only so; but it is equally and necessarily his duty so to give the law in charge to the Jury, as that they shall understand his instructions. . . . For obvious reasons, it has been with the Courts, and it ought ever so to be, a matter of painstaking, to make their instructions plain and perspicuous.[8]

It is a duty that cannot be evaded, as one Georgia trial judge sought to do in his remarks to a jury:

> Gentlemen of the jury—the law having made the jury the judges of the law as well as the fact, I would prefer to decline charging you altogether; for it seems inconcsistent that I should propound the law when you are at liberty to disregard the Court. Yet, so it is, while it is my duty to give you in charge the law, you are at liberty to abide, or not, by the Court's exposition of the same.[9]

In recognition of the wasted time and duplication of effort traditionally involved in preparing instructions "from scratch," Judge William J. Palmer, Los Angeles County Superior Court, in the early 1930's initiated pattern jury instructions. Other states followed. In 1970, the Georgia Council of Superior Court Judges initiated a survey of this trial function and consumated a contract on July 14, 1972 with the Judicial Council of Georgia, on a LEAA grant to undertake this task. The work substantially began in 1973 when a panel of active superior court judges[10] undertook to produce handbooks, civil and criminal, of pattern charges. The aim of the panel,

7. Long v. State, 12 Ga. 293, 329 (1852).
8. Colquitt v. Thomas, 8 Ga. 258, 271 (1850).
9. Stokes v. State, 18 Ga. 17, 29 (1855).
10. Chief Justice (Emeritus) Bond Almond, Consultant
Marcus B. Calhoun, Southern Circuit, Chairman
Jeptha Tanksley, Atlanta Circuit, Vice Chairman (Civil)
Luther C. Hames, Jr., Cobb Circuit, Vice Chairman (Criminal)
Harold Banke, Clayton Circuit (Criminal)
Reid Merritt, Gwinett Circuit (Criminal)
James B. O'Conner, Oconee Circuit (Civil)
Paul W. Painter, Lookout Mt. Circuit (Civil)

at the outset, was:

1. To assist the trial judge.
2. To write in a simple style, readily understandable by a jury; and
3. To improve the administration of justice.[11]

The committee's view is well expressed by Judge James B. O'Conner, Oconee Circuit, quoted in part:

> The art of charging a jury is one of the most refined duties of a trial judge. Irrespective of the study given the issues and the law in a particular case, or of how accurate and complete his charge material may be, the trial judge in each case has the unique task of objectively and clearly explaining to the jury the issues of fact in the case and the applicable law which governs the facts they find to be true. This must be done in such a manner that no harmful error is committed in stating or failing to state the issues and the law, should be done in simple straightforward and understandable language for the layman.[12]

At the outset, each superior court judge was urged to "in-put" to the committee copies of his jury instructions, and from this pool of assembled instructions, an effort was made to establish the validity of each instruction, to select from those on the same topic the instruction demonstrating the most brevity and clarity, and to edit the instruction to lay language.

Each pattern instruction adopted was subjected by the committee to the following tests:[13]

1. Is it a correct statement of the Georgia Law?
2. Is it a complete statement?
3. Is it concise?
4. Is it stated in language the average juror can understand?

In the past, individually, trial judges have assembled copies of their instructions and those of their colleagues and have "tailored" them to fit the particular case, relying on an appellate holding that the charge was not error. In some instances, to be reviewed by an appellate court, an enumeration of error must have been made which would indicate faultiness in the instructions, but not harm. Thus, if present, the fault is preserved. No deliberate attempt was made to make the instruction more precise and understandable. To some extent, these instructions were barely more than "passable."

Another approach by trial judges was to give, only in quotation, codifications of statutes, prompted by the premise that "it is never error to charge

11. Clarkston, *Supra* n.5, p. 60.

12. JUDGE'S COMMITTEE ON PATTERN JURY INSTRUCTIONS, GEORGIA PATTERN JURY INSTRUCTIONS, CRIMINAL, preface, 1974 (unpublished).

13. These tests were formulated by the committee.

in the language of the code." The inherent weakness of this method is that even though scholarly lawyers and appellate judges differ as to the specific meaning of a code section, this method requires the lay jury to make a finding of its meaning.

As stated by the Georgia Supreme Court in *Boyd v. State*:

> Generalities, in charging, is worse than useless. Instead of assisting, it but too often misleads the Jury. Read from the Alcoran or the Talmud, but not from a law book which does not apply to the particular case made by the pleadings and proof, and which the Jury has to try.[14]

It was considered by the committee that in criminal cases there was a repetition of "basic" or "general principles" in each criminal charge, *i.e.*, presumption of innocence, credibility of witnesses, etc., which amounted to as much as seventy-five percent of the usual charge. The same observation was applicable to civil charges to a lesser extent. The first effort was directed to editing and revising a general criminal charge, covering these issues:[15]

1. Formation of issues to be determined.
2. Burden of proof-presumption of innocence.
3. Jury's duty:
   a. Credibility of witnesses
   b. Consideration of evidence
4. Special Charges (See Appendix A)
5. Elements of the Offense-Statute
6. Lesser Crimes Included
7. Forms of verdicts

The following pattern instruction is an illustration of the committee's revision for use in either a civil or criminal case:

> Special Charge 2.
>
> EXPERT WITNESS
>
> To assist you in determination of an issue in this case or to understand evidence in connection therewith, the law permits witnesses who have special training, knowledge and experience to give their opinions based upon their knowledge of particular matters. You determine the weight which you will give such opinion and then either accept or reject it and determine the issue in the light of your own experience.[16]

The pattern instructions have not been submitted to the appellate courts of Georgia for approval in order to forestall the development of a new range

14. 17 Ga. 194, 201-02 (1855).

15. These issues resulted from committee discussion and represent a consensus of committee thought on the matter.

16. A partial listing of special charges formulated by the committee is contained in Appendix A.

of appealable error—whether or not the instructions, as given, substantially comply with "mandatory" or "prescribed" instructions. The appellate courts have been furnished with copies of the handbooks, and already some instructions have been approved in principle.

In *Payne v. State*,[17] pattern charges on presumption of innocence and reasonable doubt were approved.

In *Patterson v. State*, in a footnote, the following statement is made by the supreme court:

> All seven Justices of this court approve the following charge on "alibi" based upon Special Charge 6, Pattern Jury Instructions—Criminal, prepared by Committee on Pattern Jury Instruction, Council of Superior Court Judges of Georgia: "Now, the defendant in this case contends that he was not present at the scene of the offense at the time of its commission. In that connection I charge you that alibi as a defense involves the impossibility of the accused's presence at the scene of the offense at the time of its commission. Presence of the defendant at the scene of the crime(s) alleged or his involvement as a co-conspirator is an essential element of the crime(s) set forth in this indictment, and the burden of proof as to such issue rests upon the State as I have instructed you already. Any evidence in the nature of an alibi should be considered by the jury in connection with all other facts in the case, and if, in doing so, the jury should entertain a reasonable doubt as to the guilt of the accused, they should acquit."[18]

Great emphasis has been laid by the committee upon the fact that no suggested charge can cover every situation. It is the responsibility of the trial judge to mold his instructions to the jury to fit the particular case before him. *The pattern instructions are suggestions only.*

There must be a continuous revision of the pattern charges if they are to retain their utility. For example, within six months from the initial publication of the criminal handbook, it was necessary to completely revise the charge on insanity. In view of recent appellate decisions, a revision on the instruction relating to evidentiary presumption of recent possession of stolen goods and a warning note must be entered relative to the charge on circumstantial evidence.

It has required many hours on the part of the committee members to prepare an instruction upon any principle—the charge on insanity (criminal), required over ten days and five re-writings, before it was acceptable.

In using the instructions, it has been noted that the time required for the complete instructions to the jury in a case has been considerably shortened. There is no scientific finding as to the attention span of jurors, but it must stand on the footing of a sermon in church—that after a sermon has lasted for more than twenty-five minutes, the pastor has lost his audience.

17. 233 Ga. 294, 309-10, 210 S.E.2d 775, 785-86 (1974).

18. 233 Ga. 724, 730 n. 2, 213 S.E.2d 612, 617 n. 2 *1975*.

The handbooks are in loose-leaf binders. When and if they are to be distributed to the bar must be determined.

The members of the committee gave their time for this work and it was accepted in lieu of matching funds on the part of the State. While service on the committee has been arduous, there is satisfaction that each member has been able to make a contribution to his colleagues and has improved the administration of justice. That is ample pay—their only compensation.

APPENDIX A

1. Affirmative Defense
2. Expert Witnesses
3. Impeachment of Witness
4. Conspiracy
5. Confession or Incriminatory Statement
6. Alibi
7. Criminal Acts and Mental Status
8. Instructions to Alternate Juror
9. Drunkeness and other Special Defenses
10. Removal of Effect of Ruling-Prejudice
11. Lessor Offense
12. Conduct While Deliberating
13. Flight

14a. Circumstantial Evidence, General

14. Special Charge on Circumstantial Evidence
15. Jury View
16. Intent
17. Identity
18. Parties to Crime