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ILLINOIS SYSTEM OF INSTRUCTING JURORS IN CIVIL CASES

PHILIP H. CORBOY

"The defense rests, your Honor."

"We have no rebuttal for the plaintiff, Judge."

"Alright, ladies and gentlemen, there will be a short recess while the court and counsel discuss some matters of importance before final arguments are heard."

A PROBLEM

COLLOQUY OF this nature most often precedes a hiatus of one, two, three or even four hours in a civil lawsuit as it exists in today's system of trial by jury. The "matters of importance" to be discussed by judge and lawyers is judicial jargon for the trial judge's examining, digesting, culling out, rejecting and sometimes revising the endeavors of partisan counsel to state the law as strongly as possible in behalf of their respective clients. It is the court's way of informing the jury that he is cognizant of Section 67 of the Illinois Civil Practice Act¹ which requires that the "court shall hold a conference with counsel to settle the instructions" that are to be given to the jury at the close of the case.

Negligence and statutory causes of action are the bases for most of the litigation submitted to juries in the Illinois Circuit and Superior Courts. Experienced judges and lawyers, although quite familiar with the law in these cases, have no easy time in preparing proper charges to the jury. Complexities of the Scaffolding Act,² third party prac-

¹ Ill. Rev. Stat. (1957) c. 110, § 67(3).

² Ill. Rev. Stat. (1957) c. 48, § 60.

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tice,³ damages under the new Dram Shop Act,⁴ presumptions of pecuniary losses in wrongful death actions⁵ are some of the newer problems which have become the subject of instructions. In addition to these, the court is habitually cajoled by counsel to read statements concerning preponderance of the evidence, due care, elements of damages, issues of the case and burden of proof.

Theoretically, of course, it is the judge that informs the jury of the law but because each case entails law unto itself which must be given to the jury in writing,⁶ the privilege of counsel to tender instructions⁷ has become by practice the rule rather than the exception. The provision that a party may not raise on appeal the court's failure to give an instruction unless he shall have tendered it⁸ has in effect placed upon counsel the burden of properly instructing the jury. As a corollary, our trial judges in the Circuit and Superior Courts do not often exercise their judicial right of instructing in other than the fashion requested by the parties, and one Appellate Court has gone so far as to hold that the primary duty of preparing proper instructions rests on counsel.⁹

The trial court is confronted with the sometimes insurmountable task of giving accurate statements of the law as prepared by counsel whose very efforts have been to state supposedly sterile legal propositions in language designedly helpful to his client's cause. That juries are often misguided by the court's uttering of partisan counsel's efforts to persuade the jury, rather than to instruct the jury, is a natural progeny of the practice prevailing in the trial courts of the state. The First District Appellate Court in *Randal v. DeKa*, fully appreciative of the origin of instructions, outlined rather succinctly the lawyer's responsibility in preparing instructions:

The warning contained in these decisions has not been heeded by many counsel who still seem to believe that in order to fulfill their duty to their client it is necessary that they overwhelm the trial court with a plethora of instructions peremptory in form. It would seem that many counsel have not as yet fully grasped the fact that the purpose of giving instructions is to enlighten the jury and not to create confusion.¹⁰

This responsibility of the lawyer as officer of the court is submitted to the severe pressures of his obligations as an advocate of his client's

³ Ill. Rev. Stat. (1957) c. 110, § 25.

⁴ Ill. Rev. Stat. (1957) c. 43, § 135.

⁵ Ill. Rev. Stat. (1957) c. 70, § 2.

⁹ *Scerrino v. Dunlap*, 14 Ill. App.2d 355, 144 N.E.2d 859 (1957).

¹⁰ 10 Ill. App.2d 10, 16, 134 N.E.2d 36, 40 (1956).

⁶ Ill. Rev. Stat. (1957) c. 110, § 67(1).

⁷ *Ibid.*, at § 67(3).

⁸ *Ibid.*

cause. cursory examination of the cases and the statistics involving judicial review of instructions indicates that more often than not the lawyer has drafted the instruction with the pen of the advocate rather than the quill of the officer of the court.

For many years plaintiffs' attorneys had been tendering for mastication by juries lengthy charges informing the twelve laymen of the "issues of the case" through the guise of an instruction in the language of the complaint. It was typical until recently to have a lengthy commentary read to the jury which elaborately informed them of the plaintiff's allegations of negligence, proximate cause and whatever other legal verbiage may have been placed in the complaint. These lengthy quotes from the complaint lent the office of the trial judge to the plaintiff to state his case to the jury. Frequent warnings by the Appellate Court went unheeded by lawyers representing plaintiffs until 1953, when the First District Appellate Court reversed a case in which an almost eight hundred word summary of the complaint had been given in behalf of the plaintiff.¹¹ The court held that this type of instruction was "unduly prolix" and that it emphasized plaintiff's charges of liability by placing in the court's mouth substantially the entire allegations of the complaint.

Almost invariably, lawyers representing defendants in tort and other civil actions request the court to instruct the jury that it should return a verdict in favor of the defendant if the evidence is evenly balanced.¹² As late as October, 1958, the First District Appellate Court specifically held that this is an advantage to which a defendant is not entitled and that there existed no error in the trial court's refusal to so inform a jury.¹³

These are but two examples of lawyers' attempts to have instructions improperly persuade the jury and to usurp the function of oral argument. The value, of course, of such premature argument is that it comes from the bench and is afforded an aura of importance and credibility that the court should never intend to convey. The courts, however, have not been at all reticent in indirectly criticizing the bar for the manner and method in which juries have come to be instructed. Confusingly worded and misleading instructions,¹⁴ the singling out of

¹¹ *Signa v. Alluri*, 351 Ill. App. 11, 113 N.E.2d 475 (1953).

¹² *Healy v. New York Central R. Co.*, 326 Ill. App. 556, 62 N.E.2d 707 (1945).

¹³ *Goertz v. Chicago Northwestern Ry. Co.*, 19 Ill. App.2d 261, 153 N.E.2d 486 (1958).

¹⁴ *Harsh v. Illinois Terminal R. Co.*, 351 Ill. App. 272, 114 N.E.2d 901 (1953).

particular elements,¹⁵ argumentativeness,¹⁶ multiplicity of peremptory instructions,¹⁷ repetitiousness,¹⁸ excessiveness,¹⁹ the failure to quote an entire statute,²⁰ the restriction of sympathy to only one party,²¹ inapplicability of the sudden emergency doctrine²² and the assumption of evidentiary fact²³ have all felt the scorn of our appellate tribunals at one time or other. The pattern was set as long ago as 1877, when a Supreme Court judge held that an instruction should not be argumentative, equivocal or unintelligible to the jury.²⁴

The effects of improper jury instructions are of more than academic concern to the legal profession. In addition to the very probable injustice in the resultant verdicts in cases which have never traveled beyond the trial court, those cases which have been appealed have experienced an astonishingly high ratio of reversals requiring remandment and new trial in the lower courts. This facet of the problem, in a day when it takes increasingly longer and longer to reach trial, warrants examination if for no other reason than to seek some way to avoid new trials and the concomitant necessity of placing those cases which have been remanded on the already overburdened trial court dockets.

A committee of the Judicial Conference headed by Circuit Court Judge Robert F. Cotton conducted an examination of all opinions of all Appellate Courts of Illinois from 1930 until 1955. This survey disclosed that in no less than 700 cases in that twenty-five year period jury instructions had been one of the bases upon which the case was appealed. Of these, 503 were appealed by defendants who sought reversals of judgments in favor of plaintiffs; the remaining 197 were appealed by plaintiffs who claimed the jury had been improperly instructed by charges given in behalf of and most probably tendered by defendants; 266 or 38 per cent of all cases involving instructions were actually reversed as having included statements of law to the jury

¹⁵ *Hughes v. Medendrop*, 294 Ill. App. 424, 13 N.E.2d 1015 (1938).

¹⁶ *Wolczek v. Public Service Co. of Northern Illinois*, 342 Ill. 482, 174 N.E. 577 (1931).

¹⁷ Authority cited note 9, *supra*.

¹⁸ *Chism v. Decatur Newspapers, Inc.*, 340 Ill. App. 42, 91 N.E.2d 114 (1950).

¹⁹ *Stevenson v. Byrne*, 3 Ill. App.2d 43, 120 N.E.2d 377 (1954).

²⁰ *Stegal v. Carlson*, 6 Ill. App.2d 388, 128 N.E.2d 352 (1955).

²¹ *Keller v. Menconi*, 7 Ill. App.2d 250, 129 N.E.2d 341 (1955).

²² *Randal v. Deka*, 10 Ill. App.2d 10, 134 N.E.2d 36 (1956).

²³ Authority cited note 13, *supra*.

²⁴ *Moshier v. Kitchell & Arnold*, 87 Ill. 18 (1877).

which were prejudicially erroneous. No statistics were compiled concerning those cases in which the appellate courts criticized given instructions but declined to reverse. It is reasonable to assume, however, that in many of the 62 per cent or 434 cases which were affirmed, instructions were given which—although not prejudicially erroneous—were subject to criticism. The doctrines of harmless error²⁵ and that of reading the instructions as a whole²⁶ undoubtedly saved many of those cases from reversal.

Of the 503 cases appealed by defendants, the appellants were successful in reversing 166 or 33 percent of the cases in which it was contended that plaintiffs had been responsible for the giving of improper instructions. The 197 appeals by plaintiffs resulted in 50.3 per cent or 99 of the cases being reversed because of improper instructions tendered by defendant. Presumably because of the expense involved, it is a well known fact that plaintiffs suffering a not guilty verdict at the hands of the trial jury are less inclined to appeal than are defendants who have insurance companies or claim departments capable of assuming the financial cost of appeal. It would be purely speculative to hazard any estimate as to what the percentages would be if all cases tried were appealed and all instructions judicially reviewed. The near four out of ten reversals which we have for our analysis are sufficient commentary on the bar's ability to satisfy the courts' standards of properly informing the jury of the law. If it is accepted that the purpose of instructions is to give the jury information concerning the law of the case applicable to the facts, then the many opinions castigating lawyers for being remiss in their responsibility and the 38 per cent reversal of cases involving instructions tend to indicate that there is something glaringly imperfect in the existing method of instructing the jury and in the training, ability and attitude of court and counsel. That deficiencies exist is a fact which both the courts and the organized bar have been aware for no short time.

AN ATTEMPT TO SOLVE THE PROBLEM

The Judicial Conference to which Judge Cotton's committee reported on June 6, 1956, is composed of the judges of the Supreme Court, the Appellate Court and the Circuit and Superior Courts of

²⁵ *Bunton v. Illinois Central R. Co.*, 15 Ill. App. 2d 311, 146 N.E.2d 205 (1957); *Campbell v. Ragel*, 7 Ill. App.2d 301, 129 N.E.2d 451 (1955).

²⁶ *Thompson v. Weible*, 19 Ill. App.2d 422, 154 N.E.2d 71 (1958); *Hulke v. International Mfg. Co.*, 14 Ill. App.2d 5, 142 N.E.2d 717 (1957).

the state. It meets once a year and its function is to consider the business and the problems pertaining to the administration of justice in the state and to make recommendations for its improvement. The Conference is created pursuant to authority of Supreme Court Rule.²⁷

The survey so impressed the Conference that it recommended to the Supreme Court that the Court appoint a committee to study the problem of jury instructions. Acting on the resolution adopted by the Judicial Conference, the Justices of the Supreme Court consulted with the Illinois State Bar Association and the Chicago Bar Association for the purpose of appointing a committee to study the problem of jury instructions. Both of these bar organizations had several years experience in this endeavor. The Chicago Bar Association had promulgated a handbook of instructions in 1948,²⁸ and the Illinois State Bar Association's Section on Civil Practice and Procedure was at the very moment of the Judicial Conference's recommendation to the Supreme Court in the process of examining and editing 400 civil instructions.

In the early part of 1957, the Supreme Court appointed a committee from the bench, the bar and the law schools of the state to study the jury system and, in particular, the problem of jury instructions. By the order of appointment, the committee was required to advise the court from time to time of the committee's recommendations. The personnel of the committee included three law professors, five judges and nine lawyers actively engaged in the trial of civil litigation representing the attitudes of plaintiffs and defendants. On February 16, 1957, this committee commenced its work with a direction from the Chief Justice of the Illinois Supreme Court "to work upon the project of possible improvements in our system of jury instructions."

In attacking the problem of jury instructions, the committee found that the existing problems were not alone peculiar to Illinois. It developed that states from coast to coast had at one time or another been confronted with the difficulty of informing twelve laymen of the law applicable to the facts of the case they were to decide. In most of the jurisdictions, precious court hours were dissipated in the preparation of instructions which all too often were subject to upper court judicial criticism.

It was thought that instructions in simple, concise, easily understood layman's language which would be available to the bar and to the

²⁷ Supreme Court Rule 56.1 (1956), Ill. Rev. Stat. (1957) c. 110, § 101.56.1.

²⁸ Chicago Bar Association (1948).

courts would go far in combating the two-pronged evil of wasted time and nonunderstandable statements of the law. Existing compilations,²⁹ although readily accessible to lawyers and judges, have done little to preserve time in either the lawyer's office or in the judge's chambers preparatory to the case going to the jury. Instructions taken from those collections, used unsparingly by the trial bar, have not been immune to condemnation in the appellate courts and quite obviously have done little to reduce the number of reversals in cases involving instructions. An examination of our sister states' attempts to solve the conundrum of giving easily understood statements satisfying substantive principles of the law which need not be recreated for each case seemed to be a logical starting point for the committee.

Problems associated with instructions are not of recent experience and as long ago as 1938, in the State of California, there was instituted a reform which resulted in the publication of a *Book of Approved Jury Instructions*.³⁰ This manual was the work product of California lawyers and judges who drafted and published a set of instructions palatable to practitioners and courts, which nevertheless properly informed laymen of the law. BAJI, as the California publication has come to be known, contains instructions which are built up in blocks so that portions can be added or taken away as each party prefers. Alternative words, phrases and even sentences are included for the choice of the users and for the purpose of making the instruction pertinent to the case at bar. Under the system that has developed from the use of BAJI, the entire group of instructions is placed in the files of the clerk of the court and each is given a number synonymous with that in the *Book of Approved Jury Instructions*. At the inception of trial, the respective lawyers inform the clerk of the instructions they wish tendered on behalf of their clients and at the same time opposing counsel is given the number of the instructions his adversary desires to give to the jury. Any legal statements which counsel regards as pertinent and material to the case not included in the charges, which have come to be regarded as "pattern" instructions, are tendered along with those chosen from the approved list. If unanticipated evidence develops during the trial which requires further instructions, the law-

²⁹ Hemphill, *Illinois Jury Instructions* (1951); Chicago Motor Club, *Jury Instructions, Automobile Cases* (5th Ed., 1950); Chicago Bar Association (1948); Klass, *Illinois Automobile Negligence Kit* (1937); McCarthy, *Illinois Instructions to Juries* (1932).

³⁰ California Jury Instructions (also known as *Book of Approved Jury Instructions*) (3d Ed., 1943).

yers may again repeat the process of choosing from among the "pattern" instructions or of supplying instructions drafted by themselves. Stereotyped allegiance to the publication is neither intended nor desired, but it is only the rare case involving a statement of law peculiar to it that requires counsel to go outside the printed volumes for his tendered statements of the law. Thus, though "pattern" instructions are available there is nothing stereotyped or inhibiting in this system.

Inherent in this practice is avoidance of the hectic drafting and re-drafting of tendered instructions. The most irritating, although perhaps not the most important, deficiency in our practice is the frantic search for additional instructions and the debate that inevitably follows their entrance into the case. In the interim, the jury sits idly by contemplating, it is presumed, elements completely ulterior to their fact finding responsibility.

The time saving and labor reducing factors in California, however, are accompanied by equally fascinating results inviting examination. The plan of instructing juries from a preordained codification of substantive and cautionary statements of law has received the approbation of the California upper courts. In *Temple v. DeMirjian*, the California Appellate Court said:

Unquestionably "California Jury Instructions" has saved much labor on the part of trial judges and it should be added that this work has saved considerable labor on the part of the justices of the reviewing courts of the state. We have found that the instructions prepared by the authors, which we have been called upon to review, contain accurate statements of pertinent principles of law presented in a manner fair to both sides of the litigation. By their use trial judges have been able to inform juries fairly and fully concerning the law applicable to the issues before them. The natural result is that now a smaller number of judgments are reversed because of erroneous instructions than in former times.³¹

Perusal of BAJI, now in its fifth edition, in two volumes, indicates that the instructions although sometimes quite lengthy are for the most part straightforward, clear, unequivocal statements of law. This clarity of prose is undoubtedly responsible for the acceptance of the instructions by members of the judiciary and of the legal profession, yet the true value of the California system lies not in its approval by lawyers and judges but in its effect upon upper court litigation growing out of allegedly erroneous instructions by the trial court. It is this aspect of the effectiveness of the California system which is no less than phenomenal. A recent survey of upper court California decisions has indicated that reversal occurs in a mere 7.1 per cent of those cases

³¹ 51 Cal. App.2d 559, 566, 125 P.2d 544, 548 (1942).

in which the appeal revolved upon questions of instructions! This is a far cry from the 38 per cent that exists in the State of Illinois.

The California system, without benefit of judicial conference sanction, has with modifications been placed in use in Arizona, Idaho, Utah, Nevada, Oregon and Washington. Similar methods have been created in Texas and Indiana. No statistics are available concerning the effect upon appeals in those jurisdictions, but practicing lawyers from those states have granted approbation to the systems that have placed at their disposal readily available instructions at the time of trial.

The courts of the State of Illinois should not be asked, of course, to follow blindly systems that have been used in sister states merely because they have been successful and acceptable in other jurisdictions. Differences in procedural and substantive law would prohibit indiscriminate adoption of methods prevailing in other states. Presumptions, transfer of the burden of proof, effect of violations of statutory responsibilities and many other elements of a lawsuit would be sufficiently different to render inadaptable instructions prepared for the use of lawyers in foreign jurisdictions. It is, however, advantageous to any group seeking guidance and assistance to investigate, interpret, analyze and criticize all systems and methods of instructing juries. The California approved instructions have been elaborately examined by the committee not because of their anticipated acceptance in Illinois but simply because they have met with success on appeal and have been overwhelmingly received by lawyers using the California system.

The Illinois group in its attempt to mitigate the problems has in a sense "started from scratch" in that the members of the committee have engaged in a complete basic review of the substantive law of Illinois. Any civil instructions would have to be drafted within that framework if they are to possess technical validity. Section 67 of the Illinois Civil Practice Act is the base from which any system must have its origin and must guide any improvement that may obtain. It is very important then to know exactly what entails an instruction "only as to the law of the case." Case decisions are quite helpful in this regard. Over sixty years ago, the First District Appellate Court held in *North Chicago Street RR. Co. v. Johnson* that "to instruct is to impart knowledge or information. An instruction as the word is used in the statute means communication of knowledge; knowledge imparted."³² In that case the trial court had given an instruction to the

³² 84 Ill. App. 670, 672 (1903).

jury followed by oral remarks indicating its withdrawal because he thought it improper. The statute as it then existed required written charges to the jury, and the lower court was reversed for giving an oral instruction. Without benefit of further decisions it would seem that words of a court indicating a change of mind on an instruction previously given would be regarded as an instruction and in contravention of the requirement that it be in writing. Contrary decisions were reached in two later cases³³ in which the courts held that to withdraw orally from consideration by the jury an instruction inadvertently given was not prohibited by the Practice Act. The court said in *Devine v. City of Chicago*:

What was said by the court in withdrawing the instruction in the case at bar was nothing the jury were called upon to consider in determining the issues in the case, and cannot be treated as a qualification, modification or explanation of a given instruction or a violation of section 74 of the Practice Act.³⁴

An oral statement to the jury by the judge to the effect that it would be improper for the jury to examine the location of an accident was held not to be an instruction as to the law of the case but was regarded only as a direction to the jury as to their conduct during adjournment.³⁵ Other oral statements by the court have been held not to be "instructions" and it is permissible to direct a jury orally to disregard the remarks of a witness,³⁶ to disregard remarks of counsel,³⁷ to disregard evidence produced on an item subsequently stricken from the pleadings,³⁸ to tell the purpose of admitting evidence,³⁹ and to advise the jury on the reasons for certain rulings on evidence.⁴⁰

In defining instructions according to their function, the Third District Appellate Court recently stated that:

[T]he object of instructions is to clearly inform the jury in a concise and comprehensive manner, what the issues are, the principles of law to be observed and the facts material to be proved to justify their verdict.⁴¹

³³ *Chicago & Eastern Ill. R. Co. v. Zapp*, 209 Ill. 339, 70 N.E. 623 (1904); *Devine v. Chicago*, 178 Ill. App. 39 (1913).

³⁴ 178 Ill. App. 39, 43 (1913).

³⁵ *Pioneer Construction v. Sunderland*, 188 Ill. 341, 58 N.E. 928 (1900).

³⁶ *Hayes v. Wagner*, 220 Ill. 256, 77 N.E. 211 (1906).

³⁷ *Ohio & Mississippi Ry. Co. v. Wangelin*, 152 Ill. 138, 38 N.E. 760 (1892).

³⁸ *Western Coal & Mining Co. v. Norvell*, 212 Ill. App. 218 (1918).

³⁹ *People v. Horn*, 309 Ill. 23, 140 N.E. 16 (1923).

⁴⁰ *South Park Commissioners v. Ayer*, 245 Ill. 402, 92 N.E. 294 (1910).

⁴¹ *Warnes v. Champaign County Seed Co.*, 5 Ill. App.2d 151, 156, 124 N.E.2d 695, 697 (1955).

The Illinois Supreme Court has said:

The sole function of instructions is to convey to the minds of the jury the correct principles of law applicable to the evidence submitted to it in order that, having determined the final state of facts from the evidence, the jury may, by the application of proper legal principles, arrive at a correct conclusion according to the law and the evidence.⁴²

“As to the law of the case” in Paragraph 67 of the Civil Practice Act seems quite explicit and modern day practitioners make no attempt to supply the court with facts or evidence upon which to comment to the jury during instructions. The courts were not always so restricted and at common law, the judge instructed orally, summed up the evidence and commented upon the evidence when he so desired.⁴³ The Illinois Constitution of 1818⁴⁴ provided “that the right of trial by jury shall remain inviolate.” The right guaranteed was the common law of England as modified by the courts of the United States at the time of the adoption of the Illinois Constitution.⁴⁵ Although there exists no Supreme Court case approving or disapproving the practice, if it existed, there was no impediment to the trial court’s commenting on the evidence until 1827, when the General Assembly passed an act concerning practice in courts of law which provided, “The Circuit Courts in charging the jury shall only instruct as to the law of the case.”⁴⁶ This section applied to both civil and criminal trials and remained a part of our statutory law until 1933, when the Practice Act was repealed in its entirety.⁴⁷ This new act included a provision that the court shall instruct only as to the law of the case and by its terms applied only to civil trials. Supreme Court Rule 27 adopted December 22, 1933, required that in criminal cases, the court shall give instructions to the jury in accordance with Section 67 of the Civil Practice Act. The present Illinois Supreme Court Rules also provide that in criminal cases instructions to the jury shall be tendered, settled and given in accordance with Section 67 of the Civil Practice Act.⁴⁸

In 1934, the Honorable Joseph B. David flaunted Rule 27 in a

⁴² *People v. Gambony*, 402 Ill. 74, 81, 83 N.E.2d 321, 325 (1949), cert. denied 337 U.S. 970 (1949).

⁴³ *Chambers v. People*, 105 Ill. 409 (1883). ⁴⁴ Ill. Const. Art. VIII, § 6 (1818).

⁴⁵ *People v. Callopy*, 358 Ill. 11, 192 N.E. 634 (1934); *People v. Bruner*, 343 Ill. 146, 175 N.E. 400 (1931).

⁴⁶ Ill. Gen. Laws (1827) no. 319. See also Ill. Rev. Stat. (1874) p. 781, § 52.

⁴⁷ Ill. Gen. Laws (1933) no. 785.

⁴⁸ Supreme Court Rule 25 (1956), Ill. Rev. Stat. (1957) c. 110, § 101.25.

criminal case and blithely instructed the jury orally. In addition to instructing the jury contrary to statute and the rules, this well known jurist reviewed and commented upon the evidence.⁴⁹ The guilty verdict was appealed by the defendant and the supreme court held that it had the power to restrict instructions in the trial court and that the power of the court to comment on the evidence was not an historically fundamental element of a jury trial guaranteed by the constitution but merely a detail or a method by which the right was exercised.

Earlier, in *People v. Kelly*, the court was very explicit when it said:

This court has repeatedly held that it is beyond the province of a trial court to express his opinion on the weight of the evidence or comment on the facts. This principle has been enunciated in an unbroken line of decisions of this court beginning with the case of *Bill v. People*.⁵⁰

The effect of these decisions is that a court by statute cannot express his opinion on the weight of the evidence or comment on the facts.

Although Illinois Statutes for many years have restricted instructions to contain only the law of the case, there has never been nor is there now any statutory or constitutional annulment of the court's common law power to summarize the evidence. Chief Justice Cartwright recognized this in 1916, when he wrote:

[T]hat limitation upon the common law [instructing only as to the law of the case] did not, however, prevent the judge from stating to the jury the testimony with its legal effect and bearing upon the issues and indicating its particular application to the case under the rules of law. The court might still sum up the evidence according to the established practice.⁵¹

That at least some trial courts have undertaken to sum up the evidence, even though improperly, is evident in the ancient Supreme Court case of *Evans v. George*:

In the last instruction of the series, the court undertook to give the jury a summary of the principal facts, which they were to consider in their deliberations on their verdict. It directed their attention only to facts favorable to defendants, and left out of view all that tended to illustrate plaintiff's theory of the case. It is the duty of the jury to consider all the facts, and when the court assumes to direct their attention to the facts, it should refer them to all the facts, so as to present the case fairly for both parties. Otherwise, the jury might understand the facts stated in the instructions are the only ones necessary to be considered in deliberating on their verdict.⁵²

The practice of summarizing, however, has fallen into disuse not because of any legal obstacle but because of the difficulty in drawing

⁴⁹ *People v. Callopy*, 358 Ill. 11, 192 N.E. 634 (1934).

⁵⁰ 347 Ill. 221, 223, 179 N.E. 898, 899 (1932).

⁵¹ 10 Ill. L. Rev. 537, 538 (1916).

⁵² 80 Ill. 51, 54 (1875).

an instruction summarizing all of the facts. As the supreme court has stated in *Martin v. Johnson*, "It is utterly impracticable to embody all the facts of a case in an instruction."⁵³ The requirement that all instructions be in writing would entail too lengthy a document. Contemporary instructions which attempt to state the theory of the party's case and which resort to a summarization of the facts have been held erroneous when all of the facts have not been placed in the summary.⁵⁴ Hence, the practical effect of Section 67 of the Illinois Civil Practice Act requiring the court to instruct only as to the law and in writing is to prevent the court from expressing an opinion as to the facts, weight of evidence and credibility of witnesses and to deter him from summarizing the evidence for the jury.

In arriving at a proper definition of instructions and in conforming instructions to existing case and statutory law, the Illinois Supreme Court Committee on Jury Instructions concluded that instructions with utility are not simply directions to the venire with reference to their duties or responsibilities, nor are instructions explanations to the jury of court procedures. Instructions, it was decided, are nothing more nor less than statements of the applicable law to the evidence and descriptions of the issues to be decided by the jury under the law and the evidence.

Having thus determined the framework in which improvement could be sought, the drafters were next confronted with the job of fabricating instructions within the confines of the definition. Like jurors, the members of the committee were required to accept the existing law as it was—not as they liked it or as they would have preferred it. It was necessary then that any attempt to improve or create a system, if it were to be accepted by active practitioners and courts, would have to be within the periphery of existing substantive law. Any attempt to change that law in the drafting of instructions could but lead to rejection of any product and oblivion for any callow system that may be suggested. The Illinois Supreme Court Committee on Jury Instructions has no inherent powers nor any alleged delegated responsibilities to suggest changes in the substantive law. It has accepted its responsibility in the light of existing statutes and decisions and has sought to adapt them into a system of instructions that will obviate or at least reduce criticisms by upper courts.

That an accomplishment of this measure has its obstacles needs no

⁵³ 89 Ill. 537 (1878).

⁵⁴ *Allied Mills, Inc. v Miller*, 9 Ill. App.2d 87, 132 N.E.2d 425 (1956).

elaboration. A measure of success, however, can be anticipated in the manner and approach that this committee has designed for itself. To the original seventeen-man committee have been added five associate members, each of whom serves a subcommittee of three members. The chairman and reporter represent the additional two men initially appointed by the Supreme Court. Since the organizational meeting on February 16, 1957, members have met two days each month in the Board of Governors Room of the American Bar Association on the University of Chicago campus. The procedure is not unlike the work pattern of the Chicago Bar Association and Illinois Bar Association Joint Committee on the Civil Practice Act in that a considerable amount of work is accomplished between monthly meetings by the subcommittees.

Prior to each monthly two-day meeting, a steering committee of three meets with the Chairman, Mr. Gerald C. Snyder, for two hours. All matters of policy which may have arisen are considered with a view to making recommendations to the full committee. The agenda of the meeting is reviewed with specific assignments allocated to the five subcommittees. As to the instructions themselves, the reporter prepares original drafts of instructions in areas assigned by the full committee. These drafts are reviewed by the steering committee before they are assigned to each of the subcommittees. A critique of each of these instructions is first manifest at the subcommittee level wherein the benefit of all of the law on the subject has been available through briefs, law review articles, case decisions, statutes and ordinances supplied in theory by the associate members but in practice by all members of the respective subcommittees.

The chairman and the two members of each subcommittee analyze, examine and reconstruct these instructions usually on Friday afternoon and evenings and between monthly meetings. Their finished work product is then delivered to the reporter for re-evaluation by the full committee at the following month's meeting. Saturdays are usually spent by the entire committee, reporter and chairman again reviewing, examining, altering or otherwise treating the instructions of the various subcommittees. Thus, each instruction which is hoped to become a part of a system is the work product not of one man nor of one subcommittee but of twenty-two men who have lived with each statement of the law for hour upon hour before a tentative draft

is formulated and given to the reporter for reproduction. This draft is then supplied to all members of the committee for future reference. When sufficient tentative drafts accumulate, the full committee meets on both Friday and Saturday for final pre-publication determination.

Considering that instructions which have long been tendered by active trial lawyers have met with upper court disapproval not only of their use but of their content, it may with no little reason be asked "what is the format of this new method which the bar will be asked to accept?" "What is different from those which we have used so long?" "What improvement can we expect?" "What are the gains that might be enjoyed?"

The answers to these questions have their genesis in the very case decisions which deplore prevailing methods of instructing juries. Obviously, argumentative, misleading, incomplete, repetitious instructions have no place in any system worthy of the approval of lawyers. If improvement is to be obtained and if a recognized system is to be developed, certain fundamental standards must govern the drafting of all instructions to be submitted not only to the supreme court but to the organized trial bar which will use them.

It is well recognized under the present lack of system that the province of instructing juries has relegated the role of the court to a mere reading agent. The dignity of the judiciary apparently remains in chambers as the court is compelled to utter an argument for one side and then, if opposing counsel has been reasonably adept, to mouth persuasion for the other. Justice can be better served, the court more respected, and the instructions more easily heeded and followed if the judge assumes his rightful leading place in the hierarchy of the courtroom. This can be attained if he transmits the applicable law to the twelve lay jurors in such a way that he informs them of the law in a straightforward, studied manner and if he emphasizes the jury's responsibility in applying the law. The committee's awareness of this ideal was responsible for the creation of certain standards to govern the drafting of each instruction. These rules formulated early in the career of this attempt to bring systematic convenience to the art and method of informing juries of the law are: (1) the instruction should be conversational; (2) the instruction should be understandable; (3) the instruction should be unslanted; and (4) the instruction should be accurate in its statement of the law.

CONVERSATIONAL

Many of the instructions in vogue have no preliminary introduction of any semblance other than "The court instructs the jury" or "The jury are further instructed" which precede statements of law some ten or twelve times during the court's charge to the jurors. Stilted, mechanical repetition of this type cannot but antagonize the most responsible of veniremen. Despite the attitudes of some persons whose interests are foreign to the jury system, the law, as we know, assumes that jurors will do their duty.⁵⁵ How difficult must be their job and how diminished must be their respect for court and law when they are forced to listen to a half hour's rendition in language completely different from that used in the execution of the ordinary yet important affairs of life of the average juror.

Use of the second person, talking in terms of "you do this," employment of words that the ordinary person uses in ordinary speech and avoidance of legalisms like "whereas" and "aforesaid" should result in a favorable reaction on the part of the jury. Though the court must preserve his authority throughout his disclosure of the law, a conversational attitude on his part should do much to create a rapport between court and jury at that juncture of the trial. If that rapport can be effected by conversing *about the law with the jury* rather than stating legalisms in abstract terms *to* the jury, the conversational instruction should be adopted by and remembered by jurors in their deliberations.

UNDERSTANDABLE

The advent of the automobile has been responsible for the Illinois Guest Law.⁵⁶ A guest in a motor vehicle who has filed a lawsuit based upon a cause of action arising out of conduct by the driver or operator of the vehicle resulting in injury to the guest must prove wilful and wanton misconduct before he can recover. The instruction most often tendered by plaintiffs is, to say the least, difficult for lawyers to understand.⁵⁷ Comprehension by jurors, all of whom should lack legal training, is a result that even the most optimistic defendants of the status quo would have difficulty in accepting.

⁵⁵ Hall v. Chicago Northwestern Ry. Co., 5 Ill.2d 135, 125 N.E.2d 77 (1955).

⁵⁶ Ill. Rev. Stat. (1957) c. 95 ½, § 9-201.

⁵⁷ Chicago Motor Club, Jury Instructions, Automobile Cases (5th Ed., 1950), Instruction No. 10.2.

The “burden of proof” instructions that are given in each case⁵⁸ often lack complete understanding in the legal profession and, again, misapprehension among the laity cannot be totally unexpected. Attempts to modify this responsibility have been met with judicial chagrin.⁵⁹ Yet at the close of the evidence, the court is faced with the problem of communicating to the jury a yardstick by which they can determine if that party with the burden has satisfied it. That the jury should be fully aware of the nature of the burden of proof was pointed out by Judge Jerome Frank in *Larson v. Jo Ann Cab Corp.*:

But no matter what the difficulties may be of rendering many of the legal rules intelligible to the jury, surely the most important part of the judge’s charge relative to the facts—i.e., that of dealing with the burden of proof—ought to be so worded that jurors can comprehend it.⁶⁰

Plaintiffs’ counsel in actions seeking damages for personal injuries have faithfully followed an 1878 decision which suggested that it was the province of the jury to determine the damages that plaintiff should recover, *if any*.⁶¹ The court held that an instruction which did not restrict the jury to the evidence was improper. This attachment has forced juries to hear the prepositional phrase, *if any*, no less than ten times interspersed throughout the typical damage instruction.⁶² How lacking in sense must a jury conclude is a statement of law that refers to “the nature and the extent of the injury, if any” after it has heard three days of medical testimony concerning the plaintiff’s amputated leg or broken arm. Can a juror be expected to understand the legal nicety that requires an element in issue not to be assumed? True, the general phraseology of today’s damage requires the “if any” diminution by the court to be repeated numerous times throughout the body of the charge. This does not preclude, however, a complete new approach in which the jury could be told that whether or not any of the elements of damage exist is not assumed but rather is for the jury to decide.

These are but a few of the areas in which single instructions may lack complete understanding by jurors. This evil can be mitigated by the use of short sentences and short words, by giving the reason behind the rule, and by indicating when a move from one subject to

⁵⁸ Authority cited note 9, *supra*.

⁶⁰ 209 F.2d 929, 935 (C.A.2d, 1954).

⁵⁹ *Ibid*.

⁶¹ *Martin v. Johnson*, 89 Ill. 537 (1878).

⁶² *Krichbaum v. Chicago City Ry. Co.*, 207 Ill. App. 44 (1917).

another has been made. Circumlocution should certainly be avoided. There should be no need to say "in the event that" when "if" will do.

There is yet another method by which jurors can be misled. There are literally hundreds of instructions in common use today which when standing alone are good, solid, sound, understandable statements of the law. These are usually referred to as "stock instructions." The complexion of an understandable statement can be completely changed by the presence of an equally comprehensible statement with but slight variations. Twelve laymen must be particularly irked and misled when they are told in one statement that the number of witnesses is not important⁶³ and in another that the number of witnesses should be taken into consideration.⁶⁴ What credence should they give a party's testimony when they are initially told that he is entitled to testify and should be judged by the standards applied to others⁶⁵ and are then informed that his position as a party should be taken into consideration in determining his credibility?⁶⁶ What should a jury do when they are told that an aggravation of a pre-existing injury is compensable⁶⁷ but that if they find "the plaintiff has now or has had any other disability resulting from conditions which existed in the plaintiff before the accident," he cannot recover?⁶⁸

Collating all instructions on a given point of law and compressing all to which either party is entitled into one recommended instruction on the subject is the method that has been applied in the committee's quest for a system of instructions which will avoid misleading the jury by way of ostensible conflict. The contraction of two or more instructions, of course, must be accomplished in line with the sentence structure and use of words previously discussed making the end product both conversational and understandable.

UNSLANTED

"But, judge, you just 'okayed' defendant's instruction, how about giving a plaintiff's instruction on this same point?"

This type of complaint or request often emanates from either side while the jury awaits final arguments after the promised short recess

⁶³ Deering v. Barzak, 227 Ill. 71, 81 N.E. 1 (1907).

⁶⁴ Walsh v. Chicago Ry. Co., 294 Ill. 586, 128 N.E. 647 (1920).

⁶⁵ Simon v. Chicago, 279 Ill. App. 80 (1935).

⁶⁶ Chicago City Ry. Co. v. Tuohy, 196 Ill. 410, 63 N.E. 997 (1902).

⁶⁷ Behles v. Chicago Transit Authority, 346 Ill. App. 220, 104 N.E.2d 635 (1952).

⁶⁸ Hays v. Penn. R. Co., 19 Ill. App.2d 368, 374, 153 N.E.2d 737, 739 (1958).

while court and counsel discuss "some matters of importance." Examination of the statute governing the giving of instructions,⁶⁹ and extensive investigation of case law discloses no authority for the existence of "plaintiff's" or "defendant's" instructions. There is no vested interest in having the court give a statement of law which in any way makes it apparent that it belongs to one side or the other. It is true that each party is entitled to an instruction on his theory of the case⁷⁰ but it is equally well settled that the court need not give more than one statement as to the law applicable to the facts and that once he has given an instruction which adequately covers a subject, he need not give others covering the same subject.⁷¹ The difficulties of having the court state the law which may be favorable to one party without in some measure sounding partisan is recognized. This is much different from a partisan argument contained in a tendered instruction upon the basis that it expresses the party's "theory of the case."

We have seen that it is the province of an instruction to state the law applicable to the case and further to describe properly the issues to the jury. It has specifically been held that the trial court is obligated to define the issues for the jury.⁷² Trouble has been encountered when an instruction seeking to spell out the issues, in the guise of language of the complaint or thinly camouflaged as a "theory of the case" has degenerated into nothing less than slanted partisan argument. The decisions are not at all harmonious as to how issues can be sent to the jury without being slanted in favor of the party authoring the instruction. In an earlier era, the jury could take pleadings to the jury room and then find the issues by referring to the pleadings.⁷³ When pleadings were no longer permitted to be reviewed in the sanctity of the jury's deliberation it was held error to refer the jury to charges in the complaint in the absence of further instructions pointing out what was charged.⁷⁴ Thereafter, instructions on the issues were composed of quotes from the pleadings but this, too, suffered a setback in *Signa v. Alluri*.⁷⁵ In that case the court held that the court should

⁶⁹ Ill. Rev. Stat. (1957) c. 110, § 67.

⁷⁰ *Hocker v. O'Klock*, 16 Ill. App.2d 414, 148 N.E.2d 618 (1958); *Pittman v. Duggan*, 336 Ill. App. 502, 84 N.E.2d 701 (1949).

⁷¹ *Williams v. Walsh*, 341 Ill. App. 543, 95 N.E.2d 743 (1950).

⁷² Authority cited note 13, *supra*.

⁷³ *West Chicago St. R. Co. v. Buckley*, 200 Ill. 260, 65 N.E. 708 (1902); *City of East Dubuque v. Burhyte*, 73 Ill. 553, 50 N.E. 1077 (1898).

⁷⁴ *Krieger v. Aurora E. & C. R. Co.*, 242 Ill. 544, 90 N.E. 266 (1909).

⁷⁵ 351 Ill. App. 11, 113 N.E.2d 475 (1953).

inform the jury in a clear and concise manner of the issues raised by the pleadings and that this could be accomplished by a summary of the pleadings succinctly stated without repetition and without undue emphasis.

An articulate instruction which spells out the charges made in the complaint and which portrays just as fairly and as lengthily the defenses alleged in the answer (including any affirmative defenses or counterclaims) will convey to the jury not only the issues but in a sense the respective theories as created by the issues.

Slanted, argumentative statements containing facts and language which are consistent with the theory only of the party tendering the instruction have no part in any proper system of informing a jury. It is this concept that has prodded the committee in attempting to create non-partisan, fair, unslanted instructions not only in the fields that have been mentioned but in all others. To render an instruction unbiased, yet to satisfy the rights of the litigants in properly stating the law is by standards of today's instructions no easy task. To include such instructions in an acceptable system is the goal of those recommending that instructions be unslanted.

ACCURATE

Accuracy in the knowledge of the law is perhaps the least concern of practicing trial lawyers upon whom devolves the responsibility of drafting and submitting instructions. Their knowledge of the law pertaining to the types of cases prevailing on the dockets is quite extensive. Principles of negligence, due care, proximate cause, damages, burdens of proof, violations of statutes, to mention a few, are well known and easily digestible by advocates and courts at the trial stage of litigation. The real problem seems to exist not in the inability to state the law accurately but rather when to state that which is applicable in an accurate fashion. Abstract propositions of law having no relationship to the facts have often been discouraged by the courts.⁷⁶ In those cases in which statutes or ordinances are pertinent to the facts, many problems of accuracy have been found. In open intersection cases with a technical right-of-way to the advantage of one party or the other, it is absolutely necessary that an instruction in the language of the Motor Vehicle Act be qualified.⁷⁷ Pedestrians in

⁷⁶ *Pearman v. Morris*, 15 Ill. App.2d 486, 146 N.E.2d 589 (1957).

⁷⁷ *Leonard v. Murphy*, 13 Ill. App.2d 39, 140 N.E.2d 537 (1957).

crosswalks, however, are entitled to a bold verbatim statement of the statute conferring their right-of-way,⁷⁸ and even if they are in the middle of the block their rights cannot be diminished by an incomplete quotation of the statute.⁷⁹

While there are some early Illinois cases indicating that violation of a statute or ordinance is negligence as a matter of law,⁸⁰ the rule followed in all of the recent decisions is that violations are only prima facie evidence of negligence.⁸¹ Yet, if a jury is told that a failure to comply with an ordinance is "prima facie" negligence, that instruction must fall because it ". . . is doubtful whether the ordinary juror would understand the legal meaning of the term . . ."⁸²

Statutes or ordinances having a definite relationship to the facts though copied properly from the books in which they are printed must be hesitantly and cautiously employed. Their applicability is just one test of whether the law flowing from them is accurately stated. The variances in their use require not only a knowledge of the law but a knowledge of when and how the law should be stated to the jury. Accuracy in this respect, if our appellate decisions are to be any guide, is not always enjoyed even by lawyers appearing regularly in court.

Legislation is not the only field in which accuracy often is lacking in the court's statement to the jury as supplied by the lawyers. The intricate area of assumptions when contained in instructions often leaves much to be desired in the way of accuracy and in many instances should never be included. Although it is not error for the court to assume in an instruction that which is established on one side and not denied or contraverted on the other, it is imperative that any material fact that is in issue not be assumed.⁸³ Hence, it is reversible error to assume negligence in a proximate cause instruction which lends the right-of-way to a plaintiff when these very elements are in issue.⁸⁴ Any lawyer drafting an instruction which supposedly con-

⁷⁸ Reese v. Buhle, 16 Ill. App.2d 13, 147 N.E.2d 431 (1957).

⁷⁹ Randal v. Deka, 10 Ill. App.2d 10, 134 N.E.2d 36 (1956); Parkin v. Rigdon, 1 Ill. App.2d 586, 118 N.E.2d 342 (1954).

⁸⁰ Lake Shore & M.S.R. Co. v. Parker, 131 Ill. 557, 23 N.E. 237 (1890); Terre Haute & I. R. Co. v. Voelker, 129 Ill. 540, 22 N.E. 20 (1889).

⁸¹ Ney v. Yellow Cab Co., 2 Ill.2d 74, 117 N.E.2d 74 (1954).

⁸² Johnson v. Prendergast, 308 Ill. 255, 264, 139 N.E. 407, 410 (1923).

⁸³ Clark v. Public Service Co., 278 Ill. App. 426 (1934).

⁸⁴ Buglio v. Cummings, 317 Ill. App. 73, 45 N.E.2d 542 (1942).

tains facts in evidence over which there is no dispute undertakes the task at his peril and it is in this category in which reversal is most often invited.

The entire province of jury instructions should be analyzed with a view toward correcting those statements of law which are inaccurate because not quite enough or just a little bit too much has been said. A system of jury instructions that will assist practicing lawyers containing accurate propositions of law and also presenting an analysis of when, where, how and why a certain proposition should be given to a jury can be an invaluable aid.

A SYSTEM NOT A COLLECTION

Accompanying each of the committee's instructions in final form will be liberal citation of authorities. Reference will be made to pertinent statutes and decisions. These will be followed by a commentary reproducing as fully as possible the reasons underlying the recommendation of the instruction. Users of the instruction will have not only the benefit of its origin in law but also the bases for the form in which it has been drafted.

There are many well defined proper instructions which have no place in a given lawsuit. The most striking example is the typical "unavoidable accident" instruction which is often tendered in personal injury actions. The law is well settled in Illinois that this instruction is erroneous where there is any evidence tending to prove that the plaintiff's injury was coupled with negligence.⁸⁵ It is in a very limited area of factual situations in which an instruction of this type is proper. The possibilities of prejudice and error are quite apparent in the defining of "unavoidable accident." This is an example of an otherwise good instruction being inapplicable in certain cases. There are many others. To cover those situations in which it might be anticipated that an instruction could be misused, caveats will be appended to instructions where necessary. There will be outlined any circumstance in which the instruction is likely to be inapplicable and a warning that its employment invites reversal. Perhaps of more importance is that definitive statements will be supplied indicating instructions with which that under consideration should be accompanied. The suggested instruction can then be regarded as not only proper in content but also in association. A cross reference system by number and title

⁸⁵ Authority cited note 54, *supra*.

will be the mechanical device included in the caveat that will seek to insure accurate association of the respective suggested instructions.

Exhaustive research predated existing collections of instructions which have long been employed in the trial courts of the state. The supreme court's appointment of a committee to work upon a project of improvements in our system of jury instructions should not be interpreted as criticism or disparagement of either the men who have collated instructions from existing case law or of the organizations which have sponsored the publications. Case law, however, provides more censure than commendation of instructions now in use. There are decisions, of course, specifically approving properly worded instructions which invite continued use in the trial of lawsuits. That which is being attempted, however, is not simply a recodification of instructions previously acceptable to the courts. What the committee hopes to attain is an all inclusive set of civil instructions which accurately, clearly, simply and fairly state established principles of law understandable to the "twelve men good and true" and acceptable to bench and bar.

The Supreme Court Committee on Jury Instructions has now worked for over two years on this project. At its completion, the instructions will be submitted to the Supreme Court with the recommendation that they be published in a bound volume imprinted with, if not the imprimatur of the highest court of our state, at least, a recognition that the results have been created under its auspices. The dignity thus lent to the instructions can be the background for a truly efficient Illinois system of instructing jurors.

It will be further recommended that the numbered instructions on printed forms be placed in the various court clerks' offices making them accessible to advocates and judges participating in civil litigation. This is not the only feature that will be borrowed from California's pioneering in the field of "pattern" instructions. Inherent in the recommended system will be the building block method of fabricating a complete charge to the jury. Many types of instructions lend themselves quite well to this device, i.e., a basic instruction concerning a given subject which can be "built up" by additional sentences or paragraphs as demanded by the evidence. The damage instruction in a civil lawsuit is most typical. The elements of the nature and extent of the injury, disability, permanency, pain and suffering, medical and hospital expenses and loss of earnings are susceptible of proof in some cases but one or more of the elements may be lacking in any given

lawsuit. The elements to be considered by the jury depend upon the status of the evidence. If there is no proof of one of the elements of damages, then that factor should not be given to the jury, and the instruction can be appropriately reduced. Conversely, there are further elements that may be added via the building block system.

The cross-indexing and the referral of one instruction to another in the printed text can also be regarded as a building block method in that one instruction or set of instructions can be and should be added to others included in the system.

This system will not only make practice easier for the lawyer but will also be helpful to the judge who may require prior to conclusion of the case that he be supplied with those instructions which the lawyers intend to tender. Being readily available to the court from the clerk, there would be no trial time wasted, and the caveats and discussions accompanying each instruction printed in the published volume would supply the court with sufficient legal bases for refusing or giving an instruction. It would further aid the judge in deciding what other instructions, also available to him, should accompany those proffered by counsel.

The publication of a book containing instructions, legal commentaries and suggested groupings of charges cannot in any way guarantee error-free statements to the jury. Neither the supreme court nor any appointees of it can prejudge or pre-approve any set of instructions. Endorsment of the publication by the highest court of our state will not in any way prevent judicial review of instructions contained in that volume. It will still be the responsibility of lawyers to prepare proper statements of the law and the issues which are applicable to the case. Excessive peremptories, inapplicable doctrines and repetitiousness are vices which no system can even mitigate without self-discipline on the part of lawyers who have long been accustomed to preparing partisan instructions with little or no respect for the real function of the court's charge. The value of such a system must, of course, meet the severe requirements, tests and criticisms of those to whom it will be made available. The problems suggested and discussed herein are only some of the more obvious difficulties confronting lawyers and judges of our state. If system can come to this facet of trial practice in Illinois, alleviation of some of these problems and difficulties can reasonably be anticipated. If that system is acceptable to lawyers, trial courts and appellate tribunals, it should greatly aid in the administration of justice in jury trials in the State of Illinois.