

In the Supreme Court of Florida

In the matter of use by the
trial courts of the
Standard Jury Instructions
(Criminal Cases)

Case No.

_____ /

Supplemental Report (No. 2002-1) of the Committee on
Standard Jury Instructions (Criminal)

To the Chief Justice and Justices of
the Supreme Court of Florida:

This supplemental report regarding proposed amendments to the Florida Standard Jury Instructions in Criminal Cases is filed pursuant to Article V, section 2(a), Florida Constitution.

The committee submits the following proposed amendments to the jury instructions as printed by The Florida Bar under Florida Rule of Criminal Procedure 3.985:

- Proposal 1. A revised instruction on RICO offenses
- Proposal 2. A revised burglary instruction
- Proposal 3. A revised theft instruction
- Proposal 4. A revised definition of “consent” to be inserted in place of the current definition in all instructions for sexual battery
- Proposal 5. A new instruction for battery on an employee of a correctional facility
- Proposal 6. A revised instruction on submitting the case to the jury

March 22, 2002

Respectfully submitted,

Philip J. Padovano
Chair, Supreme Court Committee on

Standard Jury Instructions (Criminal Cases)

The proposed amendments are provided in Appendix A. Proposals 1 and 6 were published on page 9 of the April 15, 2001, issue of The Florida Bar News. The other proposed amendments were published on pages 12 and 13 of the October 1, 2001, issue. See Appendix B. No comments were received in response to either publication. With the exception of corrections to typographical errors and the addition of a comment at the end of Proposal 2, all amendments are submitted as published in the Bar News. Relevant excerpts from the committee's minutes are attached at Appendix C.

Explanation of Proposals

Proposal 1. A revised instruction on RICO offenses

This proposal modifies the RICO instruction to include the definition of the term "enterprise" adopted by the Court in *Gross v. State*, 765 So. 2d 39 (Fla. 2000). Note 7 of the opinion includes a specific request that the Committee formulate such an instruction. The proposal seeks to incorporate the new definition in the existing instruction, and it includes a comment with a reference to the Gross opinion. The Committee has included only the general RICO instruction here, but there are several other standard instructions for more specific kinds of RICO cases. Identical modifications should be made to all of the RICO instructions.

Proposal 2. A revised burglary instruction.

This proposal incorporates the amendments the Legislature made to the burglary statute following the Court's decision in *Delgado v. State*, 776 So. 2d 233 (Fla. 2000). Section 810.02(1)(b), Florida Statutes (2001) provides that if the offense was committed by a person who was invited to enter the building or structure, the state must prove that the person either (a) remained inside surreptitiously with the intent to commit an offense, (b) remained inside with intent to commit an offense after permission to remain had been withdrawn, or (b)

remained inside to commit or attempt to commit a forcible felony.

Because a burglary can now be proven in many different ways, the Committee believed that it was best to divide the definition of the elements into two major alternative parts. The first part would be given if the defendant is charged with entering without permission. In a such a case, it would not be necessary to detail all of the ways a burglary might be proven if the defendant was initially invited into the building or structure. The second part would be given if the defendant had permission to enter but later committed an offense under one of the circumstances listed in the statute. If the offense is charged in this way, the jury would not be told that a burglary could also be proven by showing that the defendant entered without permission.

Proposal 3. A revised theft instruction

This proposal modifies the theft instruction to include theft of cargo and theft of emergency medical equipment within the class of goods that can make the theft a more serious offense. These changes were made in the 2001 Legislative session. *See* § 812.014, Fla. Stat. (2001). The proposal includes the new introductory language that is used in all substantive offense instructions, and it also contains definitions of cargo, emergency medical equipment, and other related terms. In other respects, the instruction remains the same.

Proposal 4. A revised definition of “consent” to be inserted in place of the current definition in all instructions for sexual battery

This proposal makes one minor modification in all instructions for sexual battery offenses. The change was proposed by the Jacksonville Assault Advisory Council. The Council believed that the instruction would be more accurate if it included language indicating that a victim of sexual assault need not offer physical resistance to overcome a claim of consent. The Committee agreed. The proposed language relating to physical resistance is substantially the same as the language that is used to make the same point in the robbery instruction.

Proposal 5. A new instruction for battery on an employee of a correctional facility

This proposal would provide an instruction for the newly-created offense of battery on a correctional officer. *See* §784.078, Fla. Stat. (2001). The elements track the language of the statute and other terms and definitions used in the proposed instruction are consistent with those that are used for the related offense of battery on a law enforcement officer.

Proposal 6. A revised instruction on submitting the case to the jury

This proposal includes minor changes to the existing instruction to make the language of the instruction gender neutral.

APPENDIX A
PROPOSED REVISIONS

Proposal 1. A revised instruction on RICO offenses

**RICO - CONDUCT OR PARTICIPATION IN AN ENTERPRISE
THROUGH A PATTERN OF RACKETEERING ACTIVITY**

F.S. § 895.03(3), Fla. Stat.

**To prove that the defendant unlawfully [conducted] [participated in]
Before you can find the defendant guilty of unlawfully [conducting]
[participating] in an enterprise, the State must prove the following two ~~three~~
elements beyond a reasonable doubt.**

Elements

**Defendant may
or may not be
“enterprise.” See
note below.**

- 1. (Defendant) was [employed by] [associated with]
an enterprise.**
- 2. (Defendant) [conducted] [participated in], directly
or indirectly, in such enterprise by engaging in at
least two of the following incidents. (~~Read~~
incidents alleged in information).**
- 3. Of those incidents in which (defendant) was
engaged at least two of them had the same or
similar [intents] [results] [accomplices] [victims]
[methods of commission] or were interrelated by
distinguishing characteristics and were not
isolated incidents.**

Define the crimes alleged as incidents.

Note to Judge:

***Instruct as to the five-year limitation period (F.S.
895.02(4)) if appropriate. See § 895.02(4), Fla. Stat.***

Note to Judge:

Define the crimes alleged as incidents.

Definitions

Give as applicable

~~F.S. 895.02(3)~~

Note to Judge

~~proprietorship, partnership, corporation, business trust, union chartered under the laws of Florida, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity, and includes lawful as well as unlawful enterprises, and governmental as well as other entities.~~

**“Enterprise”
means any
individual, sole**

An
“enterprise” is
an ongoing
organization,
formal or
informal, that
functions both as
a continuing unit
and has a
common purpose
of engaging in a
course of
conduct.

State v. Nishi, 521 So. 2d 252 (Fla. 3d DCA 1988) and
State v. Bowen, 413 So. 2d 798 (Fla. 1st DCA 1983);
rev. den. 424 So.2d 760.

Comment

The
definition of the
term
“enterprise” in
this instruction is
from the supreme
court’s opinion in
***Gross v. State*,**
765 So. 2d 39
(Fla. 2000). As
to the issue of
Whether an
individual can be
an enterprise, see

Proposal 2. A revised burglary instruction

BURGLARY

F.S. § 810.02, Fla. Stat.

Give this statement of the elements if the charge is unlawful entry:

To prove the charge Before you can find the defendant guilty of Bburglary, the State must prove the following three elements beyond a reasonable doubt:

Elements

1. (Defendant) [entered] [~~remained in~~] a [structure] [conveyance] **owned by or in the possession of** (person alleged).
2. (Defendant) **did not have the permission or consent of** (person alleged); **or anyone authorized to act for** [him][her]; **to** [enter] [~~remain in~~] the [structure] [conveyance] **at the** that time.
3. **At the time of** [entering][~~remaining in~~] the [structure][conveyance] (defendant) **had a fully-formed conscious intent to commit the offense of** (crime alleged) **in that** [structure][conveyance].

Give this statement of the elements if the charge is unlawfully remaining:

To prove the charge of burglary, the state must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **had permission or consent to enter a** [structure] [conveyance] **owned by or in the possession of** (person alleged).
2. (Defendant) **after entering the** [structure][conveyance] **remained therein;**

Give (a)(b) or (c) as applicable

(a) surreptitiously, and with the fully-formed conscious intent to commit the offense of (crime alleged).

(b) after permission to remain had been withdrawn, and with the fully-formed conscious intent to commit the offense of (crime alleged).

(c) with the fully formed conscious intent to commit or attempt to commit the offense of (forcible felony alleged).

Define the crime or forcible felony alleged.

Note to Judge: Define the offense that was the object of the burglary.

Give whichever bracketed language applies

A person may be guilty of this offense [if he or she originally entered the premises at a time when they were open to the public, but remained there after he or she knew that the premises were closed to the public]

[or]

[if he or she entered into or remained in areas of the premises which he or she knew or should have known were not open to the public],

if he or she had the intent to commit the crime described in the charge.

F.S. §810.07, Fla. Stat.

Proof of the entering of a [structure] [conveyance] stealthily and without the consent of the owner or occupant may justify a finding that the entering was with the intent to commit a crime if, from all the surrounding facts and circumstances, you are convinced beyond a reasonable doubt that the intent existed.

The entry necessary need not be the whole body of the defendant. It is sufficient if the defendant extends any part of the body far enough into the [structure] [conveyance] to commit (crime alleged).

Proof of intent

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Even though an unlawful [entering] [remaining in] a [structure] [conveyance] is proved, if the evidence does not establish that it was done with the intent to commit (crime alleged), the defendant must be found not guilty.

Proof of possession of stolen property

Proof of unexplained possession by an accused of property recently stolen by means of a burglary may justify a conviction of burglary with intent to steal that property if the circumstances of the burglary and of the possession of the stolen property, when considered in the light of all evidence in the case, convince you beyond a reasonable doubt that the defendant committed the burglary.

Definitions; give as applicable F.S. §810.011(1), Fla. Stat.

“Structure” means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure.

F.S. §810.011(3), Fla. Stat.

“Conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car; and to enter a conveyance includes taking apart any portion of the conveyance.

Enhanced penalty; give if applicable

The punishment provided by law for the crime of burglary is greater if the burglary was committed under certain aggravating circumstances. Therefore, if you find the defendant guilty of burglary, you must then consider whether the State has further proved those circumstances.

With an assault

If you find that in the course of committing the burglary the defendant made an assault upon any person, you should find [him] [her] guilty of burglary

during which an assault has been committed. An assault is an intentional and unlawful threat either by word or act to do violence to another at a time when the defendant appeared to have the ability to carry out the threat and [his] [her] act created a well-founded fear in the other person that the violence was about to take place.

While armed

If you find that in the course of committing the burglary the defendant was armed or armed [himself] [herself] within the structure with explosives or a dangerous weapon, you should find [him] [her] guilty of burglary while armed.

Structure is a dwelling

If you find that while the defendant made no assault and was unarmed, the structure entered was a dwelling, you should find [him] [her] guilty of burglary of a dwelling.

Human being in structure or conveyance

If you find that while the defendant made no assault and was unarmed, there was a human being in the [structure] [conveyance] at the time [he] [she] [entered] [remained in] the [structure] [conveyance], you should find [him] [her] guilty of burglary of a [structure] [conveyance] with a human being in the [structure] [conveyance].

With no aggravating circumstances

If you find that the defendant committed the burglary without any aggravating circumstances, you should find [him] [her] guilty only of burglary.

F.S. §810.011(4), Fla. Stat.

An act is committed “in the course of committing” if it occurs in the attempt to commit the offense or in flight after the attempt or commission.

F.S. §790.001(5), Fla. Stat.

“Explosive” means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene or ammonium nitrate when combined with other ingredients to

form an explosive mixture, blasting caps, and detonators.

Note to Judge:

If necessary see exceptions set out in F.S. section 791.01 and chapter 552, Florida Statutes.

A “dangerous weapon” is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

“Dwelling” means a building [or conveyance] of any kind, including any attached porch, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it.

Therefore, if you find the defendant guilty of burglary, it will be necessary for you to state in your verdict whether the defendant (insert aggravating circumstances charged).

Comment

This instruction should be given for offenses committed after July 1, 2001. *See* § 810.02, Fla.Stat. (2001).

Proposal 3. A revised theft instruction

THEFT
§812.014, Fla. Stat. F.S. 812.014

To prove the crime Before you can find the defendant guilty of Ttheft, the State must prove the following two elements beyond a reasonable doubt:

Elements

- 1. (Defendant) knowingly and unlawfully [obtained] [used] [endeavored to obtain] [endeavored to use] the (property alleged) of (victim).**
- 2. [He] [She] did so with intent to, either temporarily or permanently,

[deprive (victim) of [his] [her] right to the property or any benefit from it.]

[appropriate the property of (victim) to [his] [her] own use or to the use of any person not entitled to it.]**

Degrees; give if property is of monetary value up to extent of charge
If you find the defendant guilty of theft, you must determine by your verdict whether:

- a. [The value of the property taken was \$100,000 or more.]**
- b. [The property taken was cargo valued at \$50,000 or more that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.]**
- c. [The property taken was cargo valued at less than \$50,000 that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.]**
- d. [The property taken was emergency medical equipment valued at \$300 or more that was taken from a licenced facility or from an emergency**

medical aircraft or vehicle.]

eb. [The value of the property taken was \$20,000 or more but less than \$100,000.]

fe. [The value of the property taken was \$300 or more but less than \$20,000.]

gd. [The value of the property taken was less than \$300.]

Give if applicable

he. [The property was [a will, codicil, or other testamentary instrument.] [a firearm.] [a motor vehicle.] [a commercially farmed animal.] [an aquaculture species raised at a permitted aquaculture facility.] [a fire extinguisher.] [2000 or more pieces of fruit.] [taken from a posted construction site.]]

Inferences; give if applicable. F.S. §812.022(1), Fla. Stat.

Proof that a person presented false identification not current in respect to name, address, place of employment or other material aspect in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that the property was obtained or is now used with unlawful intent to commit theft.

Inferences; give if applicable F.S. §812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, give rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

Definitions; give if applicable.

§812.012(1), Fla. Stat.

“Cargo means partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel,

warehouse, freight station, freight consolidation facility, or air navigation facility.

§401.23(5), Fla. Stat.

“Emergency medical equipment” means mechanical or electronic apparatus used to provide emergency service and care or to treat medical emergencies.

§395.002(10), Fla. Stat.

“Emergency service and care” means medical screening, examination, and evaluation by a physician, or other medically appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if it does, the care, treatment or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of facility.

§395.002(17), Fla. Stat.

“Licensed facility” means a hospital, ambulatory surgical center, or mobile surgical facility licensed by the Florida Agency for Health Care Administration. See Chapter 395, Florida Statutes.

§812.014(2)(b)3, Fla. Stat.

“Emergency medical aircraft or vehicle” means any aircraft, ambulance or other vehicle used as an emergency medical service vehicle that has been issued a permit in accordance with Florida law.

F.S. §812.012(32), Fla. Stat.

“Obtains or uses” means any manner of:

- (a) Taking or exercising control over property.**
- (b) Making any unauthorized use, disposition, or transfer of property.**
- (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise.**

- (d) 1. **Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, deception; or**
2. **Other conduct similar in nature.**

“Endeavor” means to attempt or try.

F.S. §812.012(43), Fla. Stat.

“Property” means anything of value, and includes:

real property, including things growing on, affixed to and found in land;

tangible or intangible personal property, including rights, privileges, interests and claims; and

services.

F.S. §812.012(65), Fla. Stat.

“Services” means anything of value resulting from a person’s physical or mental labor or skill, or from the use, possession or presence of property, and includes:

repairs or improvements to property;

professional services;

private, public or government communication, transportation, power, water or sanitation services;

lodging accommodations; and

admissions to places of exhibition or entertainment.

It is error to inform the jury of a prior conviction. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. The historical fact of a previous conviction shall be determined by the judge, and shall thereby fix the degree of the crime. State of Florida v. Harris, 356 So.2d 315 (Fla. 1978).

F.S. §812.012(109), Fla. Stat.

“Value” means:

The market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft or promissory note, the value is the amount due or collectible.

In the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation, the value is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing an advantage over those who do not know of or use the trade secret.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than \$300.

Amounts of value of separate properties, involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be totaled in determining the grade

of the offense.

Proposal 4. A revised definition of “consent” to be inserted in place of the current definition in all instructions for sexual battery

“Consent” means intelligent, knowing and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender.

Proposal 5. A new instruction for battery on an employee of a correctional facility

BATTERY ON FACILITY EMPLOYEE

§784.078, Fla. Stat.

To prove the crime of Battery on a Facility Employee, the State must prove the following five elements beyond a reasonable doubt:

- 4. Defendant was detained in a facility.**
- 2. (Defendant) intentionally touched or struck or attempted to touch or strike (victim) against [his] [her] will by throwing, tossing, or expelling blood, saliva, masticated food, seminal fluid, urine, or feces at (victim).**
- 3. (Defendant) intended to harass, annoy, threaten, or alarm (victim).**
- 4. (Victim) was a facility employee.**
- 5. (Defendant) knew (victim) or had reason to know that (victim) was a facility employee.**

A facility is any state correctional institution, private correctional facility, county, municipal, or regional jail or other detention facility of local government, or any secure facility operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

An employee is any person [employed by or performing contractual services for a public or private entity operating a facility] [or] [employed by or performing contractual services for the corporation operating the prison enhancement programs or the correctional work programs] [or] [who is a parole examiner with the Florida Parole Commission].

Lesser Included Offenses

Category One: None

Category Two: Battery, §784.031(1)(a), Fla. Stat.
Assault, §784.011, Fla. Stat.

Proposal 6. A revised instruction on submitting the case to the jury.

2.09 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreman: foreperson ~~The foreman who will~~ presides over your deliberations, like a chairman of a meeting. It is the foreman's foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case: and to ~~The foreman will~~ bring the verdict back to the courtroom when you return. ~~Either a man or a woman may be foreman of a jury.~~

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.

APPENDIX B
The Florida Bar *News* PUBLICATIONS

APPENDIX C
MINUTES EXCERPTS

December 10, 1999
CRIMINAL JURY INSTRUCTIONS COMMITTEE
Tampa Airport Marriott Hotel

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IV. Aggravated Child Abuse. Judge Padovano explained that a judge of the First DCA asked him about the definition of maliciously used in the aggravated child abuse instruction. That definition is similar to the definition used elsewhere in the instructions, but *State v. Gaylord*, 356 So.2d 313 (Fla. 1978) provides a different definition in an opinion upholding the constitutionality of the statute. Judge Padovano stated that the draft of a revised instruction in the agenda material replaces the current definition with the *Gaylord* definition. He also noted that, while making the change, he discovered statutory changes from the 1996 Legislature that had never been incorporated into the instruction. His draft also attempted to bring the instruction up to date. After a short discussion, it was decided that Mr. Phillips would review the instruction and prepare a report for the next meeting.

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July 14, 2000
CRIMINAL JURY INSTRUCTIONS COMMITTEE
Tampa Airport Marriott Hotel

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II. Aggravated Child Abuse.

Mr. Phillips reviewed his proposed changes to the child abuse instructions. He explained that one problem with the existing instruction is that it defines "maliciously" using the definition as a legal term rather than the common definition. Two opinions have stated that the common definition of maliciously applies, and his draft uses that definition. *State v. Gaylord*, 356 So.2d 313 (Fla. 1978) and *Young v. State*, 753 So.2d 725 (Fla. 1st DCA 2000) (holding that the common or "in fact"

definition must be given). See also *Slocum v. State*, 757 So.2d 1246 Fla. 4th DCA 2000). He further explained the history of changes made to the child abuse statutes and that the instruction has never been changed to incorporate the statutory changes. The committee discussed the draft of aggravated child abuse and made some suggestions that Mr. Phillips agreed to incorporate into another draft for publication. Among the changes agreed on were the addition of a comment, the addition of the lesser included chart, and the removal of the last phrase ("with due regard to ...culture") of the definition of mental injury. That change is to be made throughout his draft of instructions.

Mr. Phillips discussed his proposed "aggravated child neglect instruction." Although the statute labels the offense only as "neglect," it provides that neglect with "great bodily harm ..." is a second degree felony and that otherwise neglect is a third degree felony. For shorthand purposes, he labeled the second degree felony offense as aggravated neglect. He noted that the distinction between the two degrees of neglect could be handled in several other ways, e.g., treating the greater offense as an enhanced penalty. After lengthy discussion, it was decided that the second degree offense should be handled as a penalty enhancer. Judge Padovano agreed to revise the instruction as discussed by the committee. He will send it to Mr. Phillips for review. They will approve a final draft for publication in the Bar News. If any committee members find fault with that draft, they should submit comments following the News publication.

January 12, 2001
CRIMINAL JURY INSTRUCTIONS COMMITTEE
Tampa Airport Marriott Hotel

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V. Child Abuse.

Mr. Phillips reviewed the abuse proposals that were published in the September 15, 2000, Bar News. Norman Wolfinger filed comments to the proposal that the committee discussed. The committee first decided that "[great bodily harm]

[permanent disability] or [permanent disfigurement]” need to be added to the first line of the abuse and neglect instructions as applicable.

A lengthy discussion was had concerning the definition of physical injury. It was suggested that no definition for physical injury is needed even though “mental injury” still would be defined. Also discussed was whether to define “serious physical injury.” After discussion, it was decided that no definition for either physical injury or serious physical injury will be provided. The committee vote on this issue was 9 to 2.

The committee next reviewed the comment of Paula Saunders. Her suggestion that a more stringent definition of malicious punishment is needed was rejected without dissent because neither the statute nor case law supports Ms. Sanders position.

With the above changes, the instructions are ready to submit to the court.

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June 15, 2001
CRIMINAL JURY INSTRUCTIONS COMMITTEE
Tampa Airport Marriott Hotel

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II. New Legislation. The committee reviewed new legislation that was referred to the committee by the supreme court's Committee for Review and Notification of Criminal and Juvenile Legislation. The following actions were taken:

A. Computer pornography and computer viruses (SB 144) — The committee determined that no new instructions are needed.

B. Property crimes (SB 1282) — Mr. Phillips agreed to work on a cargo theft instruction and on theft of emergency medical equipment. The committee also agreed that a separate instruction should be created for retail theft, which Judge Padovano agreed to work on. Ms. Luten noted that the law on bad checks was amended. After discussion, the committee decided that the instruction is still accurate.

C. Correctional facilities (SB 1318) — It was decided that new and amended instructions are needed because of SB 1318. Mr. Schaub agreed to work on those instructions. The assault on law enforcement instructions and the Jimmy Ryce Act instructions were noted in particular as needing amendments.

D. Burglary (HB 953) — This law attempts to overrule the *Delgado* opinion. The committee discussed whether it should discontinue work on a revised instruction based on *Delgado*. After discussion, it was decided that the revised instruction is still needed for burglaries that occurred before the effective date of the repeal of *Delgado*.

E. Hydrocodone (SB 232) — After discussion, it was decided that various drug instructions need to be amended based on this law. Ms. Finnell agreed to work on this assignment.

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August 17, 2001
CRIMINAL JURY INSTRUCTIONS COMMITTEE
Tampa Airport Marriott Hotel

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II. Property Crimes - Cargo Theft - Theft of Emergency Medical Equipment.

The committee reviewed Mr. Phillip's draft incorporating cargo theft and theft of emergency medical equipment into the theft instruction. After discussion and minor revisions to the draft, the proposed revision of the theft instruction was approved for publishing in the Bar News requesting comments. See page 6 of the appendix for a copy of the instruction as approved.

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IV. Correctional Facilities.

Mr. Schaub discussed his draft of an instruction for battery on facility employee. After discussion, the committee approved the draft with a few modifications. It is to be published in the Bar News for comment. See page 5 of the appendix for a copy of the instruction as approved.

V. Burglary - Pre-Delgado "Remaining in" Cases.

The committee considered Ms. Luten's proposed instructions. After discussion, the committee approved the proposed revision of the burglary instruction. It is to be published in the Bar News for comment. See page 1 of the appendix for a copy of the instruction as approved.

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VIII. Sexual Battery - Proposed Changes to Definition of Consent.

The committee reviewed Judge Padovano's proposed change for the sexual battery instruction. It was agreed that the proposed change should be made. The change is to be published in the Bar News for comment. See page 12 of the appendix for the amended wording.

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