

January 6, 2003

Honorable Walter L. Murphy  
Chief Justice  
New Hampshire Superior Court  
17 Chenell Drive, Suite One  
Concord, NH 03301

DRAFT

Dear Judge Murphy:

Judge Smukler has informed the Bar Association's Criminal Jury Instructions Drafting Committee that several superior court judges have asked for access to the work of the committee to date. The committee is pleased to assist the superior court by complying with this request subject to several important caveats.

The draft instructions that the committee has completed most of its work on have not been reviewed or approved by the Bar's Task Force on Criminal Jury Instructions, which oversees the Drafting Committee. Therefore, these drafts represent no more than the work-in-progress of the committee. They do not carry the imprimatur of the New Hampshire Bar Association.

Moreover, although the members of the committee include representatives from the Public Defenders Office and various prosecutors offices, neither these drafts nor, when it is issued, the Bar sanctioned final product of the committee, should be regarded as reflecting the official positions of the Public Defenders Office or the state's prosecutors. The committee has endeavored to ensure that these draft instructions are balanced, comprehensible, and accurate statements of law. They are intended to serve as model instructions applicable in the spectrum of criminal cases that may arise under New Hampshire Law. Litigants in individual cases may legitimately disagree with the committee's view of the law, or, based on the facts of a particular case, may legitimately believe that one or more instructions should be modified. Such positions should be given due consideration notwithstanding the committee's viewpoint. Of course, to the extent that the New Hampshire Supreme Court has not sanctioned these instructions, they do not have the force or effect of law.

The committee's position on the most appropriate format for model jury instructions has evolved over the course of its work. Given the scope of the committee's charge, it elected to complete its substantive work before addressing matters of form. Once its substantive work is complete, the committee intends to review all of its draft instructions for format uniformity. Consequently, the structure of these draft instructions is not uniform. If these drafts are used as the basis for a jury charge, care should be taken that the charge is structured in a uniform manner.

Finally, the committee asks that this letter be incorporated as a preface to all copies of its draft instructions that are circulated.

The drafting committee hopes that these draft criminal jury instructions will be of assistance to the superior court and practitioners. The committee encourages that written comments be submitted as it continues its work. Please direct written comments to Denice DeStefano at the Bar Center, 112 Pleasant St., Concord, NH 03301 or electronically to [ddestefano@nhbar.org](mailto:ddestefano@nhbar.org)

Sincerely,  
Robert H. Temple, for  
Criminal Jury Instructions  
Drafting Committee