

## Wis JI-Criminal 140

David Schultz <deschult@wisc.edu>  
To: Attorney Michael Cicchini <mdc@cicchinilaw.com>

Thu, Jun 29, 2017 at 11:19 AM

Dear Attorney Cecchini,

I write on behalf of the Wisconsin Criminal Jury Instructions Committee in response to your letter to members of the Committee regarding Wis JI-Criminal 140. I have served as the reporter for the group since 1976.

First, an explanation for our belated response. Normally, I respond promptly on the committee's behalf to all inquiries and requests that we receive. In this instance, we had to cancel several meetings – June 2016 and February and April 2017 – that interrupted the committee's consideration of the issue you [and others] have raised. Cancelling meetings like this was unprecedented in my 40 years with the committee but was made necessary by my being unavailable. ~~\_\_\_\_\_~~. Given that there are six meetings a year, cancelling three within ten months was significant.

As to the merits of the issue, the committee has discussed the “search for truth” on several occasions over the years, going back to 1987 when it was raised by a trial judge. The committee discussed your inquiry at meetings held in July, October, and December, 2016, and also included the issue as part of presentations to the Criminal Law and Sentencing Institute [a judicial education program] in May 2016 and 2017. In December 2016, the committee decided not to change the text of JI 140, but to add an alternative to a footnote as a possible model for judges who decided to depart from the published text. That decision was reaffirmed at the most recent meeting on June 1. [As noted above, the February and April meetings were cancelled.] The committee's reasoning and the alternative language is reflected in footnote 5 in the attached version of JI 140 that will be published in the next supplement to the published volumes.

If you have questions about this, or about anything else related to the Wisconsin Criminal Jury Instructions, I would be happy to discuss them with you.

Best regards,

David E. Schultz

Professor of Law Emeritus  
Reporter, Wisconsin Criminal Jury

Instructions Committee