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SCMF-11-0000315

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Publication and Distribution  
of the  
Hawai'i Pattern Jury Instructions - Criminal

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ORDER APPROVING PUBLICATION AND DISTRIBUTION  
OF HAWAI'I PATTERN JURY INSTRUCTIONS - CRIMINAL  
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

Upon consideration of the recommendation of the Standing Committee on Pattern Criminal Jury Instructions to publish and distribute additional language for the Introduction to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED that the recommendation is approved by this court, and the language attached to this order shall be added to the Introduction Comment in the Preliminary Instructions (new material is underscored).

IT IS FINALLY ORDERED that this approval for publication and distribution is not and shall not be considered by this court

or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, February 17, 2021.

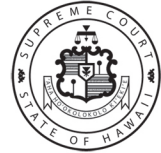
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins



## 1. PRELIMINARY INSTRUCTIONS

### INTRODUCTORY COMMENT

Preliminary instructions, while not a substitute for final instructions given after closing argument, can be helpful in orienting the jury toward that which is to come. "A court may," said the Court in *State v. Mata*, 71 Haw. 319, 330, 789 P.2d 1122 (1990), "to facilitate the jury's understanding of a case, make an appropriate and accurate general statement to the jury of what the case is all about."

The trial court should not, however, give "detailed instructions on the law in advance of trial." *State v. Mata*, 71 Haw. at 330. "[G]iving detailed instructions on the law with respect to the anticipated legal substantive issues to be raised at trial does not fit within the procedural framework contemplated by HRPP Rule 30." *State v. Mata*, 71 Haw. at 330. "Counsel had no opportunity to request the pre-trial instructions before they were given," observed the *State v. Mata* Court, "and there was no settlement procedure as is required by HRPP Rule 30(b)." *State v. Mata*, 71 Haw. at 330.

Judge Barrett Prettyman has observed:

What manner of mind can go back over a stream of conflicting statements of alleged facts, recall the intonations, the demeanor, or even the existence of the witnesses, and retrospectively fit all of these recollections into a pattern of evaluation and judgment given him for the first time after the events?

Prettyman, *Jury Instructions -- First or Last?*, 46 A.B.A.J. 1066, 1066 (1960), *quoted* in Manual of Model Criminal Jury Instructions for the Ninth Circuit at 1 (1989).

Finally, it has been suggested by the Office of Equality and Access to the Courts ("OEAC") that wherever in these Pattern Jury Instructions the use of pronouns is indicated, e.g., "he/she," that the court substitute instead the pronouns "they/their" as appropriate. The Committee believes that the trial court will always be in the best position to decide the appropriate course of action in this regard in any individual case. However, the Committee also considers it appropriate to inform all parties and the court of the OEAC suggestion on this matter.