

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

April 15, 2003

3:00 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Andrew G. Deiss for Elliott J. Williams, Paul M. Simmons, Honorable David L. Mower, Matty Branch

Excused: Honorable William W. Barrett, Jr., Colin P. King

1. *Welcome and Introductions.* Mr. Young welcomed the members of the committee and introduced Judge Mower and Ms. Branch, who were there to observe. Judge Mower chairs the committee that will be preparing the model criminal jury instructions.

2. *Purpose.* Mr. Young reviewed the advisory committee's charge from the Utah Supreme Court--to develop plain language jury instructions that juries can easily understand and to update the model instructions to reflect changes in the substantive law. Mr. Shea noted that the committee will need to balance clarity and accuracy.

3. *Audience.* Dr. Di Paolo asked who our intended audience was. Mr. Deiss thought that jurors nationally average about a sixth- or seventh-grade education. Other committee members thought that the target audience (Utah jurors) would be more educated.

**Mr. Shea will check with the federal district court to see if it has data on juror demographics in Utah.**

**Mr. Young will check with the Bureau of Economic Research for demographic information.**

4. *Training.* Mr. Carney circulated two articles on jury instructions and juror comprehension taken from the Internet, one written by Joseph Kimble. Judge Mower suggested that the committee review principles of writing in plain English. It was suggested that the model jury instruction committees (civil and criminal) receive training in writing jury instructions in plain English.

**Mr. Carney will obtain Appendix A to the Federal Judicial Center's Model Criminal Jury Instructions, which contains suggestions for drafting understandable jury instructions.**

**Mr. Carney will also look at other Internet resources on writing clear jury instructions.**

**Dr. Di Paolo will review the sources cited in footnote 2 of the Kimble article.**

**Dr. Di Paolo will also ask some of her colleagues involved in *Forensic Linguistics* (an on-line journal) for suggestions of sources or people who could help train the committees in writing jury instructions in plain English.**

**Committee members should get suggestions for potential speakers to Mr. Shea and Mr. Carney as soon as possible.**

**Mr. Carney will check with the Litigation Section of the Utah State Bar to see if it will help fund training for the jury instruction committees.**

5. *History.* Mr. Carney reviewed the history of the Model Utah Jury Instructions (MUJI) promulgated by the Litigation Section of the Utah State Bar. Mr. Dewsnup reviewed the work of the committee on jury service.

6. *Status of Current MUJI and Lexis-Nexis Pre-publishing Contract.* Mr. Shea reported that Lexis-Nexis, the successor to Michie Company, the publisher of MUJI, is interested in preparing a supplement to MUJI and has offered free editorial services in exchange for being the first publisher to receive drafts of the committee's work.

7. *Introduction to Model Jury Instructions.* Mr. Shea reported that the Utah Supreme Court is interested in approving the new model jury instructions while reserving the right to review them in the context of a particular case. Mr. Shea presented a draft introduction to the new MUJI for discussion. Mr. Humpherys suggested that the new instructions be given a different name to distinguish them from the original MUJI. Mr. Carney suggested that the court may not want to approve the new instructions since they may deal with areas in which Utah law is not clear. Mr. Dewsnup suggested that the committee adopt some version of the draft introduction as its mission statement.

8. *Committee Meeting Schedule.* The committee agreed to meet the second Wednesday of each month from 4:00 to 6:00 p.m. in the Judicial Council Room on the fifth floor of the Matheson Courthouse.

9. *Priorities.* Mr. Young suggested that the committee set priorities for categories of jury instructions based on (a) those most frequently used, and (b) those most in need of updating. The first category includes (i) preliminary and general instructions, (ii) special verdict forms; and (iii) general negligence instructions. Instructions in the second category include those regarding (i) employment law, (ii) insurance company obligations, (iii) damages (including punitive damages), and (iv) products liability. Mr. Carney asked whether the instructions should

incorporate the Restatement (Third) of Torts: Products Liability. Mr. Humpherys questioned whether there should be a separate subcommittee on verdict forms or whether the subcommittees for each substantive area should prepare their own verdict forms. Mr. Dewsnup raised the question of whether more contract cases are tried to juries than tort cases.

**Mr. Shea will obtain statistics on the types of cases that go to trial and those that are tried to juries.**

10. *Subcommittees.* The following subcommittees were proposed:

*Employment Law:* Jathan Janove, Bob Wilde, Steven Baeder and Erik Strindberg have already been serving on an employment law subcommittee, under the direction of Mr. Young. Mr. Humpherys suggested that Karra Porter also be added to the subcommittee. Mr. Humpherys was then excused.

*Preliminary and General Instructions:* Judge Barrett, Ralph Dewsnup, Phil Ferguson, Judge Mower or Judge McIff.

*Negligence:* Frank Carney, Peter Collins, Vicky Kidman, David Lambert or Leslie Slaugh, John Lund, Doug Mortensen, Bill Stegall, Steve Sullivan.

*Products Liability:* Tracy Fowler (chair), Juli Blanch, Colin King, Paul Simmons.

*Damages:* Paul Belnap, Rich Humpherys.

Ms. Blanch suggested that each subcommittee have a judicial liaison. The final membership of the subcommittees was deferred till the next meeting.

11. *Format.* Mr. Carney suggested that the instructions be available in a loose-leaf binder to which sections could be added over time. Mr. Young indicated that Lexis-Nexis would also like the instructions in a loose-leaf format. Mr. Shea indicated that the instructions would eventually be available on the courts' website. Mr. Carney suggested that the case citations supporting the instructions be hyperlinked to the cases.

**Mr. Shea will check with Lexis-Nexis about the possibility of hyperlinking.**

12. *Law School Intern Assistance.* Mr. Shea noted that law students may be interested in doing legal research for the committee or subcommittees. The committee debated the relative merits of using law student interns as opposed to associate attorneys or relying on Lexis-Nexis's proffered editorial assistance.

Minutes  
April 15, 2003  
Page 4

The meeting concluded at 5:00 p.m.

*Next Meeting:* May 14, at 4:00 p.m. Agenda items for the next meeting should be sent to Mr. Young or Mr. Shea before May 7.