

***MINUTES***

Advisory Committee on Model Civil Jury Instructions

May 14, 2003

4:00 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Colin P. King, Paul M. Simmons, Matty Branch

Excused: Honorable William W. Barrett, Jr., Juli Blanch, L. Rich Humpherys, Elliott J. Williams

1. *Minutes.* Mr. Ferguson moved that the minutes of the April 15, 2003, meeting be approved. Mr. Dewsnup 2d. The motion passed without opposition.

2. *Lexis-Nexis Update.* Mr. Young and Mr. Shea reviewed the status of negotiations with Lexis-Nexis. The Utah State Bar, which published MUJI, would like to terminate its contract with Lexis-Nexis or assign the contract to the Administrative Office of the Courts (AOC). Lexis-Nexis is reluctant to terminate the contract without having some arrangement for publication of the new model jury instructions. It would like to be the first publisher to receive drafts of the committee's work.

**Mr. Shea will determine what rights the AOC can contract to give to Lexis-Nexis.**

3. *Statistics.*

a. *Education Level.* Mr. Young distributed statistics he obtained from the University of Utah showing that 87.7% of the people in Utah age 25 and over have at least a high school education. The committee discussed how this fact could affect the drafting of jury instructions. Mr. Shea reported that the federal district court did not have statistics on the education level of jurors in federal court.

b. *Jury Trials.* Mr. Shea distributed statistics showing the number of civil jury trials in 2002 by case type. He noted that some of the statistics are questionable (such as the statistic for divorce cases and other cases that do not involve juries). After debating the accuracy of the statistics, the committee concluded that it did not need more accurate data. The committee also concluded that contract cases should be included in the top priority of cases for which jury instructions are needed, based on the relative numbers of contract cases and tort cases that go to trial.

4. *Plain Language Drafting Information.* The committee discussed articles on drafting jury instructions in plain language that Mr. Shea and Mr. Carney had distributed before

the meeting. Mr. Carney had also provided before the meeting a list of resources on plain language in jury instructions.

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

5. *Plain Language Workshop.* The committee discussed ideas for a workshop on drafting jury instructions in plain English. The committee envisions an all-day seminar to which all committee and subcommittee members would be invited. Dr. Di Paolo suggested Bethany Dumas, chair of the Linguistics Program at the University of Tennessee, as a guest speaker. Professor Dumas has taught at the National Institute for Trial Advocacy (NITA) and is writing a book on writing effective jury instructions. Mr. Carney suggested that we talk to people who have been to her NITA seminar for their recommendation.

**Mr. Shea will forward to the committee members the information Dr. Di Paolo sent him on Professor Dumas and will obtain additional information on Professor Dumas.**

Dr. Di Paolo recommended Peter Tiersma of Loyola as a second choice. Mr. Dewsnup recommended that the seminar be held soon so that committee and subcommittee members will become excited about their assignments and know how to write clearer jury instructions. The committee agreed that it would be difficult to hold the seminar in July or August because of summer vacation schedules. Mr. King suggested that we try to schedule the seminar for the latter part of June if Professor Dumas or Professor Tiersma is available; otherwise, we will try to schedule the seminar for September. The committee authorized Mr. Young and Mr. Shea to make the necessary arrangements for the seminar. Dr. Di Paolo offered to help arrange for the speaker. Mr. Shea noted that the Matheson Courthouse has conference rooms on the first floor that could be used for the seminar, or the committee could rent space at the Law & Justice Center. Mr. Carney suggested that, if the seminar is held at the Law & Justice Center, the committee make separate arrangements for food. Mr. Shea estimated that, if the seminar is held at the courthouse, the cost would be about \$1,400 plus the speaker's honorarium.

**Mr. Young and Mr. Shea will check on the availability of Professors Dumas and Tiersma and determine how much they charge for a one-day seminar.**

**Mr. Young and Mr. Carney will try to get the Litigation Section of the Bar to contribute money for the seminar.**

6. *Communications.* Mr. Shea asked whether the committee would like a committee bulletin board on the Internet to communicate better. The committee members decided they would be more likely to read e-mails than to access a bulletin board. Anyone having information for the whole committee may e-mail it to Mr. Shea, and he will see that it is forwarded to all committee members.

7. *Subcommittees.* The committee agreed that each subcommittee should prepare its own separate special verdict forms. Then the committee or an editor could edit them to make sure they are uniform. Mr. Young emphasized that the members of the subcommittees are not chosen to advocate for or against a certain point of view but should try to reach a consensus on what the law is in a given area. Mr. Carney suggested that the subcommittees meet before the next committee meeting, which is scheduled for June 11.

a. *Contracts.* Mr. Young proposed that the subcommittee on contracts be broken down further into general contracts, Uniform Commercial Code, construction law and, possibly, debt collection. The following names were suggested for the contract subcommittees: Richard Carling, Mark Olson, Larry Peterson, Bruce Richards, David J. Bird, David Schofield, Kent Scott, Clark Fetzer, and Doug Short.

**Mr. Young will make recommendations at the next meeting for the contracts subcommittees.**

b. *Employment Law.* Mr. Young reported that Karra Porter of Christensen & Jensen, Nan Bassett of Kipp & Christian, and Stan Preston of Snow, Christensen & Martineau have all expressed an interest in being on the employment law subcommittee. Mr. Young has given their names to Jathan Janove, the committee chair. Mr. Dewsnup suggested that, if the subcommittee needed more members, it could invite Janet Hughie Smith of Ray, Quinney & Nebeker. The committee agreed that the optimal size of the subcommittees is no more than eight members.

c. *Preliminary and General Instructions.* Mr. Dewsnup was selected to chair this subcommittee. Committee members include Judge Berrett and Mr. Ferguson. It was suggested that another judge or two be invited to participate on the subcommittee. The following judges were suggested: David Mower, Kay McIff, Randall Skanchy, Robert Hilder, Michael Lyon, Tom Kay, Fred Howard, Gary Stott and James Taylor. Concerns were expressed about whether some of these judges would have the time to devote to the project.

d. *Negligence.* Mr. Carney chairs this subcommittee. The other members are Warren Driggs, Gary Johnson, Victoria Kidman, John Lund and Peter Summerill.

e. *Products Liability.* Mr. Fowler chairs this subcommittee. The other members are Ms. Blanch, Mr. King, Mr. Simmons, Gordon Roberts, Matthew Moscon and Doug Cannon. It was suggested that Bryon Benevento also be invited to join the subcommittee.

f. *Damages.* This subcommittee is to draft the instructions for damages generally; its work is not limited to punitive damage instructions. Mr. Belnap was selected to chair this subcommittee. The members include Mr. Humpherys and Andrew Morse. Mr. Ferguson reported that Mr. Humpherys had talked to Bob Campbell about being on the subcommittee. The committee agreed that Mr. Campbell would be better suited for the condemnation subcommittee.

**Mr. Ferguson will talk to Mr. Humpherys, who will let Mr. Campbell know that his services are needed more on the condemnation subcommittee.**

Other names suggested for the damages subcommittee were Jeremy Hoffman, Shawn McGarry, Leslie Slaugh, Steve Horvat and Bob Henderson. Some members of the committee thought that Mr. Henderson may not be interested.

8. *Next Meeting.* The next meeting will be Wednesday, June 11, at 4:00 p.m. One of the agenda items will be to identify the next areas of priorities for jury instructions (including condemnation).

The meeting concluded at 6:00 p.m.