

***MINUTES***

Advisory Committee on Model Civil Jury Instructions

June 11, 2003

4:15 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Colin P. King, Paul M. Simmons, Honorable David L. Mower, Matty Branch

Excused: Honorable William W. Barrett, Jr., Ralph L. Dewsnup

1. *Minutes.* Mr. Carney moved that the minutes of the May 14, 2003, meeting be approved. Mr. Fowler 2d. The motion passed without opposition.

2. *Subcommittee Reports.*

a. *Negligence Subcommittee.* Mr. Carney reported that the negligence subcommittee had met on Monday and will continue to meet the second Monday of each month. The subcommittee consists of Mr. Carney (chair), David West, Victoria Kidman, John Lund, Warren Driggs and Gary Johnson. They plan to go through section 3 of MUJI, decide which instructions need to be deleted, which need to be revised or moved, and what instructions need to be added. The following areas were assigned to the negligence subcommittee: tort law/special doctrine (section 4 of MUJI), motor vehicles (section 5), railroad crossings (section 8), common carriers (section 9), and negligent infliction of emotional distress (covered in section 22).

b. *Preliminary and General Instructions Subcommittee.* Mr. Ferguson reported that the subcommittee has not met yet. They intend to conference Judge McIff in by telephone. It was suggested that Judge Henriod also be invited to serve on the subcommittee.

c. *Products Liability Subcommittee.* Mr. Fowler reported that the subcommittee met last week, discussed philosophy, made assignments and plans to meet again the first week in July.

d. *Damages Subcommittee.* Mr. Belnap circulated a list of the subcommittee members. They are Mr. Belnap, Mr. Humpherys, Stephen P. Horvat, Leslie W. Slauch, Shawn McGarry, Jeremy M. Hoffman and Andrew M. Morse. Mr. Belnap asked about the scope of the subcommittee's assignment. It was agreed that the subcommittee would prepare instructions that apply generally to damages but that damage instructions specific to some unique areas of the law (such as employment, UCC, medical malpractice and condemnation) would be drafted by the subcommittees assigned to those areas and cross-

referenced with the general damage instructions. Each subcommittee will also prepare its own special verdict forms.

e. *Employment Subcommittee.* Mr. Young reported that he had spoken with Jathan Janove, the chair of the employment subcommittee. The committee has added some members but has tried to maintain a balance between attorneys who represent primarily management and those who represent primarily employees.

f. *Contracts Subcommittee.* The following names were suggested for the contracts subcommittee: Kent Scott, Michael Homer, David Slaughter, Ted Barnes, Craig Adamson, Bruce Badger and Dave Zimmerman. Mr. Young reported that he had talked to Richard Carling about serving on the subcommittee, but Mr. Carling was too busy and would recommended another attorney in his office.

**Mr. Young will work with the contracts subcommittee to complete its formation.**

3. *Other Subcommittees.* Mr. Young reviewed the list of other substantive areas covered by MUJI. The committee recommended the following people to serve on the subcommittees:

a. *Tort Law/Special Doctrine.* This area was assigned to the negligence subcommittee.

b. *Motor Vehicles.* This area was assigned to the negligence subcommittee.

c. *Medical Negligence.* Ralph Dewsnup, Frank Carney, Elliott Williams, Curtis Drake, Charles Thronson and Dave Williams.

d. *Other Professional Negligence.* Matt Lalli, Mike Skolnick, Dick Burbidge, Rick Hincks, Tim Houpt, Rex Madsen, Craig Mariger, Craig Coburn, Craig Adamson or Eric Lee, Bob Peterson, Tom Karrenberg, Scott Call, Gary Bendinger, Steve Marsden.

e. *Railroad Crossings.* This area was assigned to the negligence subcommittee.

f. *Common Carriers.* This area was assigned to the negligence subcommittee.

g. *Intentional Torts (Defamation, Slander, Malicious Prosecution, False Arrest, Abuse of Process, Battery)*. David Scofield; Bob Anderson.

h. *Owners, Occupiers, Lessors of Land (Premises Liability)*. Jeff Eisenberg, David Cutt, Gordon Strachan, Wendy Faber, Steve Morgan, Joe Minnock, Dave Richards.

i. *Federal Employer's Liability Act*. Brent Hatch, Scott Savage, Clair Williams, Cheri Gochberg. Some committee members questioned whether instructions on FELA were needed in model state jury instructions.

**Mr. Young will check with Messrs. Hatch and Savage to see if they think the new model jury instructions should include FELA instructions.**

j. *Civil Rights (Section 1983 Actions)*. Al Larson, Karra Porter, Steve Dougherty, Kathy Collard.

**Mr. Young will check with Mr. Larson to see who is representing plaintiffs in civil rights actions.**

k. *Eminent Domain/Condemnation*. Bob Campbell, Steve Ward (Attorney General's office), David Olsen, Peter Billings.

l. *Fraud and Deceit*. Mike Hansen, Steve Dougherty, Jay Gurmankin, George Haley, Paul Drecksell, Bruce Maak. The committee questioned whether fraud and deceit should be a separate subcommittee or whether it should be assigned to the intentional tort subcommittee.

m. *Business Torts/Interference with Contracts*. This area was assigned to the intentional tort subcommittee.

n. *Officers, Directors, Partners, Insiders Liability*. This area was reserved in MUJI.

**Mr. Young will check with Tom Karrenberg to see if instructions in this area are needed and, if so, who he would recommend to serve on the subcommittee.**

o. *Insurance Company's Obligations*. Discussion on this area was deferred.

p. *Emotional Distress.* The committee assigned intentional infliction of emotional distress to the intentional tort subcommittee and negligent infliction of emotional distress to the negligence subcommittee.

q. *Will Contest.* Charles Bennett, Rick Johnson, Kent Alderman.

r. *Vicarious Responsibility/Partnership/Joint Venture/Parent/Guardian.* Rick Van Wagoner, Jon Dibble. It was suggested that this area could be subsumed in the more general area of agency.

**Mr. Young will check with Mr. Dibble to see if he thinks a separate section is needed for vicarious responsibility and, if so, who he thinks should serve on the subcommittee.**

s. *Electricity and Other Ultrahazardous Activities.* Mr. King suggested that a subcommittee be assigned to draft instructions on ultrahazardous activities and power companies. He further suggested that Rick Rose serve on the subcommittee.

Mr. Carney suggested that the committee had overlooked a valuable resource--law professors at the S.J. Quinney and J. Reuben Clark schools of law. He suggested that the committee send a letter to the dean of each law school listing the subcommittees and inviting faculty members to participate in the areas of their expertise.

Mr. Young indicated that he would like to involve trial judges in the subcommittees. Judge Mower suggested that Mr. Young solicit the help of trial judges at the annual judicial conference in September.

**Committee members should consider what other areas need to be covered by jury instructions.**

**Mr. Carney will circulate a link to the web page for the California Civil Jury Instructions (BAJI) so that members can compare the categories of instructions included there with the categories in MUJI.**

Mr. Young indicated that he would like all the subcommittees in place by October 25 so that all the members can be invited to attend the workshop on that date.

4. *Writing Workshop.* Mr. Young reported that Bethany Dumas of the University of Tennessee will provide training on writing jury instructions in plain English at an all-day seminar on Saturday, October 25. She does not expect a stipend but is willing to come if her expenses are paid. Mr. Carney suggested that she stay at the Grand America or Hotel Monaco. The Litigation

Section of the Bar will fund up to \$3,000 of the conference expenses. The civil and criminal instruction committees and subcommittees will be invited to attend the seminar. Dr. Di Paolo will check with Dr. Dumas to see if she would like to do anything with the University of Utah's Department of Linguistics while she is in Utah. If she does, the university may be willing to pick up a share of Dr. Dumas's expenses. Ms. Blanch suggested that the committee host Dr. Dumas at a dinner the night before the conference (Friday, October 24).

**Mr. Shea and Dr. Di Paolo will coordinate arrangements with Dr. Dumas.**

**Mr. Shea will look into the possibility of obtaining CLE credit for the conference attendees.**

Mr. Young recommended that the subcommittees have most of their substantive work done by October 25, so that they can then concentrate on putting the instructions into plain language after the workshop. Dr. Di Paolo indicated that she is willing to answer any questions regarding the plain language resources provided to the committee in the interim.

5. *Lexis-Nexis Update.* Mr. Shea reported that Lexis-Nexis will retain its contract with the Bar to republish MUJI as it sees fit. It will also send a letter to the Bar stating that this project will not violate the noninterference clause of its contract with the Bar. The Bar will allow this committee to use noncopyrighted material from MUJI. The committee will allow Lexis to use its product as Lexis sees fit. Once instructions are available on the court's web page, any publisher who wants to use them may. Mr. Shea reported that he has not yet received any letters from Lexis stating the terms of our agreements with Lexis.

**Mr. Shea and Mr. Young will follow up with Lexis-Nexis.**

6. *Other Matters.*

a. *Philosophy.* Mr. Carney emphasized that the subcommittees should try very hard to agree on instructions that are a fair statement of the law. He indicated that the committee does a disservice to the court if it presents two sets of instructions, one favored by the plaintiffs' bar and one by the defense bar.

b. *Audience.* Judge Mower encouraged the committee to consider its audience--jurors, and not the supreme court. Mr. Carney suggested that instructions also need to be written for the supreme court, with a possible appeal in mind. It was suggested that the two audiences are not necessarily incompatible, that instructions can accurately state the law and still be stated clearly enough for jurors to understand them easily.

c. *Name.* Mr. Carney suggested that the new jury instructions be given a name with an easily referenced acronym, such as Form Utah Jury Instructions (FUJI), Pattern Utah Jury Instructions (PUJI), or simply Utah Jury Instructions (UJI).

d. *Format.* Judge Mower urged the jury instructions provide hyperlinks in the table of contents, to comments and cross-references and to case citations and authorities.

7. *Next Meeting.* The next meeting will be Wednesday, July 9, at 4:00 p.m.

The meeting concluded at 5:35 p.m.