

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS
MEETING MINUTES**

Via Webex
March 9, 2022 – 12:15 p.m. to 1:15 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Jennifer Andrus	Linguist / Communications		•	
Sharla Dunroe	Defense Counsel	•		STAFF: Michael Drechsel
Sandi Johnson	Prosecutor		•	
Janet Lawrence	Defense Counsel	•		
<i>vacant</i>	Defense Counsel	---	---	
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Debra Nelson	Defense Counsel	•		
Stephen Nelson	Prosecutor	•		
Richard Pehrson	Prosecutor		•	
Hon. Teresa Welch	District Court Judge		•	
<i>vacant</i>	Criminal Law Professor	---	---	
Hon. Linda Jones	<i>Emeritus</i>	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the February 2, 2022 meeting.
Mr. Nelson moved to approve the draft minutes; Judge McCullagh seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) CR216 – JURY DELIBERATIONS:

The committee considered the proposed revisions to current instruction CR216. Judge McCullagh explained that the jury unanimity language in CR216 seems to be too hidden within the other language in the instruction such that it does not clearly accomplish one of its primary intended purposes. Judge Jones explained that her effort on CR216 (as included in the meeting materials) was to rewrite CR216, replacing the current rule in its entirety. In particular, she noted concern with the current language that states, "Try to reach unanimous agreement, but only if you can..." Judge Jones noted that language has been revised in her proposed draft. The committee turned its attention to the specific language in the proposed draft. The committee made careful review of the current language in CR216 and compared it with the language proposed in the draft. Ms. Lawrence noted her approval of having the unanimity language moved to the first sentence in the instruction. The

committee members agreed with that assessment. Judge McCullagh asked about the language in the second sentence of the second paragraph, "...you may not speculate," wondering why that language was included in this new version. Judge Jones noted that it would be appropriate to not include that language, as it may convey to the jury that they jury cannot draw reasonable inferences from the evidence presented at trial. The committee agreed that language should be removed from the draft.

After further opportunity for discussion and review, Judge McCullagh made a motion to adopt the new proposed language to take the place of current CR216; Mr. Nelson seconded the motion. The committee then voted unanimously in favor of the motion approving the following changes to CR216:

CR216 JURY UNANIMITY AND DELIBERATIONS.

~~In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.~~

~~Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.~~

~~Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.~~

~~Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." That is, you must be unanimous in your verdict for each count charged.~~

~~To help you in reaching unanimous agreement, I recommend that you not commit yourselves to a particular verdict before discussing all the evidence. In addition, you may not use methods of chance, such as drawing straws or flipping a coin. Rather, in the jury room, consider the evidence and speak your minds with each other. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with.~~

~~In the end, your vote must be your own. A unanimous verdict must reflect the individual, careful, and conscientious judgment of each juror as to whether the defendant is guilty or not guilty.~~

REFERENCES

Utah Const. Art. I, § 10.

Utah R. Crim. P. 21(b).

Utah R. Civ. P. 59(a)(2).

Burroughs v. United States, 365 F.2d 431, 434 (10th Cir. 1966).

State v. Lactod, 761 P.2d 23, 30-31 (Utah Ct. App. 1988).
75 Am. Jur.2d Trial §§ 1647, 1753, 1781.
State v. Hummel, 2017 UT 19
State v. Alires, 2019 UT App 206
State v. Case, 2020 UT App 81
State v. Whytock, 2020 UT App 107

COMMITTEE NOTES

Utah's courts have directed that, under certain circumstances, juries must be instructed on something more than simply being unanimous as to the verdict. In cases where different acts and mental states can satisfy the same element, practitioners should add or amend proposed jury instructions and verdict forms to address unanimity concerns.

Utah's appellate courts have tried to distinguish between elements of a crime—on which a jury must be unanimous—and theories of a crime—on which a jury does not have to be unanimous. The line between elements and theories, however, is not clearly defined in the case law. Thus, the nature of the additional required instruction will vary depending upon the crimes charged and the facts and circumstances of a particular case. ~~For these reasons, the Committee has not adopted any specific model unanimity instructions beyond the general instruction in CR216 and CR218. Rather, the Committee encourages the parties to refer to case law on the matter. Refer to CR430 and CR431 for model instructions regarding specific jury unanimity requirements in particular types of cases.~~

Amended Dates

Instruction last revised – ~~11/01/2017~~03/09/2022
~~Committee note added – 08/05/2020~~

Judge Blanch proposed that he would review the committee's recent jury unanimity work with Judge Harris to get an informal sense of whether these new instructions might be sufficient to adequately address the issues that have been raised in so many recent appellate decisions. Judge Blanch asked that these instructions (CR216, CR430, and CR431) be on the next meeting agenda so he can provide feedback on how that conversation proceeds. Judge McCullagh noted that once the committee has these instructions completely finalized, he will conduct a training for justice court judges on these specific instructions. Judge Blanch noted that these instructions appear to be a solid improvement over what has previously been available in MUJI on the unanimity issue, but that lawyers and judges will still need to carefully review the case law and consider how best to articulate the unanimity requirement within the instructions for each unique case so that it is clear which instructions relate to which charge.

The committee then determined that the changes to the committee note in CR216 should also be made to the committee note in CR218. In addition, the committee agreed that the entire committee note from CR216 should be included in CR219. Judge McCullagh made the motion, seconded by Ms. Dunroe. The motion was unanimously approved.

(3) ADJOURN

Before adjourning, Judge Blanch asked that staff make a review of bills that passed during the 2022 general session and bring to the committee in May any instructions that may need revision based upon those bills.

The meeting adjourned at approximately 1:00 p.m. The next meeting will be held on April 6, 2022, starting at 12:00 noon.