

# Agenda

## Advisory Committee on Model Civil Jury Instructions

October 8, 2003  
4:00 to 6:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Council Room, Suite N31

Welcome and approval of minutes	John Young
Plain language writing workshop CLE Video tape Notice Written Materials Agenda Social on Saturday	John Young Tim Shea
Subcommittee reports Negligence Intentional Torts Fraud & Deceit Officers, Directors, Partners, Insiders Liability Professional Liability: Architects, Engineers Professional Liability: Medical Negligence Premises Liability Insurance Co. Obligations Contracts (Commercial) Contracts (Construction) Damages Preliminary and General Instructions Employment	Subcommittee Chairs
Deadline for first drafts	John Young
Instructions in areas w/ no Utah law	John Young

### Meeting Schedule

November 12  
December 10  
January 14  
February 11  
March 10  
April 14  
May 12  
June 9  
July 14  
August 11  
September 8  
October 13  
November 10  
December 8

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

July 9, 2003

4:10 p.m.

Present: John L. Young (chair), Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Phillip S. Ferguson, Tracy H. Fowler, Colin P. King, Paul M. Simmons, Matty Branch

Excused: Timothy M. Shea, Honorable William W. Barrett, Jr., Paul M. Belnap, Marianna Di Paolo

\_ 1. *Minutes.* Ms. Blanch moved that the minutes of the June 11, 2003, meeting be approved. Mr. Fowler 2d. The motion passed without opposition.

\_ 2. *Subcommittee Reports.*

a. *Damages Subcommittee.* Mr. Young reported that the damages subcommittee has met and made assignments.

b. *Employment Subcommittee.* Mr. Young reported that he had received an e-mail from Jathan Janove, the chair of the employment subcommittee, raising certain questions:

1) Should the subcommittee deal with civil rights issues in the employment context, or should they be left to the civil rights subcommittee?

2) Should the subcommittee draft instructions for breaches of employment contracts that do not involve termination, or should such instructions be left for the contracts subcommittee?

3) Should the subcommittee draft instructions regarding negligent hiring, retention and supervision, or should they be left for the negligence subcommittee?

4) Should the subcommittee draft instructions on defamation, qualified immunity and related issues, or should they left for the intentional tort subcommittee?

The committee agreed that the employment subcommittee should draft instructions in all of these areas specific to the employment setting but that the instructions would later have to be compared with more general instructions on the same topics and perhaps consolidated with or cross-referenced to the more general instructions. The committee thought that each set of instructions should be able to stand alone to the extent possible, even if there may be some overlap with other areas.

**Mr. Young will let Mr. Janove know the committee's response.**

c. *Negligence Subcommittee.* Mr. Carney reported that the negligence subcommittee had met and agreed that four instructions from the current MUJI should be discarded (including MUJI 3.3, 3.4, 3.18) and that two others (MUJI 3.21 and 3.22) should be moved to other sections. At their next meeting, they will address the general negligence instructions (MUJI 3.1 through 3.12), followed, in subsequent meetings, by discussion of the proximate cause and comparative fault instructions.

d. *Preliminary and General Instructions Subcommittee.* Mr. Dewsnup reported that the subcommittee had to cancel its meeting because Judge McIff was not able to attend. Mr. Dewsnup further reported that the subcommittee is using the Judge Mower/Judge McIff preliminary instructions as a starting point and does not think they need major work. Mr. Ferguson has invited Judge Henriod to serve on the subcommittee but has not yet heard back from him.

e. *Products Liability Subcommittee.* Mr. Fowler reported that the subcommittee has met twice and made assignments. It plans to discuss specific instructions at its next meeting.

f. *Contracts Subcommittee.* Mr. Young has spoken with Kent Scott, Michael Homer, George Hunt, Steve Dougherty and Bruce Badger, and they have all agreed to serve on the contracts subcommittee.

**Mr. Young will also ask Dave Zimmerman and Dave Slaughter to serve on the contracts subcommittee.**

g. *Civil Rights Subcommittee.* Mr. Young has not yet spoken with Al Larsen about forming this subcommittee.

h. *Eminent Domain/Condemnation.* Mr. Young reported that Bob Campbell and Steve Ward have agreed to serve on this subcommittee, but Peter Billings declined. The subcommittee needs more members.

i. *Fraud and Deceit.* Mr. Young reported that George Haley and Paul Drechsel have agreed to serve on this subcommittee. Mr. Haley will be asked to chair the subcommittee. Mr. Haley has recommended the following members: Fran Wikstrom, James Blanch, Perrin Love and Rod Snow. Steve Marsden and Jay Gurmankin were also suggested as possible committee members.

j. *Officers, Directors, Partners, Insiders Liability.* The committee agreed that instructions are needed in this area, which was reserved in MUJI. The following people were suggested as committee members: Tom Karrenberg, Scott Call, Bob Peterson, Peggy Tomsic, Jay Gurmankin and Carol Clawson.

k. *Federal Employer's Liability Act.* Mr. Young reported that he has spoken with Brent Hatch about whether instructions are needed in this area and is waiting to hear back from Mr. Hatch.

l. *Insurance Company's Obligations.* The committee had deferred formation of this subcommittee pending completion of the damages subcommittee's work, since Mr. Belnap and Mr. Humpherys would be the likely ones to head up this subcommittee, and they are serving on the damages subcommittee. Other suggestions for subcommittee members included David Olsen, Paul Matthews, Alan Sullivan and Michael Zimmerman.

Mr. Young reported that he has not yet contacted potential members of the other subcommittees.

**Mr. Young will try to complete the rest of the subcommittees by the next meeting.**

**Committee members who have suggestions for subcommittee assignments should let Mr. Young know as soon as possible.**

\_ 3. *Alternative Instructions.* Mr. Fowler raised an issue that came up in the products liability subcommittee meeting, namely, the extent to which subcommittees should draft instructions on issues for which there is no clear Utah law. The committee agreed that the subcommittees should try to provide as complete instructions as possible and to agree on instructions where possible, but where there is no controlling Utah law the subcommittees may have to offer alternative instructions.

**Ms. Branch was asked to raise the issue with the court and seek its guidance.**

\_ 4. *Lexis-Nexis.* Mr. Young reported that there had been no change in the negotiations with Lexis-Nexis.

\_ 5. *Writing Workshop.* Mr. Young reminded everyone of the writing workshop planned for Saturday, October 25, with Bethany Dumas of the University of Tennessee. All subcommittee members should be invited to attend. Committee members should let Mr. Young know if they are interested in attending a dinner with Dr. Dumas the night before.

\_ 6. *California Jury Instructions.* The committee reviewed some of the draft California jury instructions that purport to have been written in plain English. The instructions do not appear to be as comprehensive as MUJI. Mr. Carney had earlier circulated a link to the draft instructions on the Internet.

\_ 7. *Next Meeting.* The next meeting will be Wednesday, August 13, at 4:00 p.m.

The meeting concluded at 5:05 p.m.

## WRITING PLAIN-LANGUAGE JURY INSTRUCTIONS

**Saturday, October 25, 2003**

**8:30 a.m. to 1:00 p.m.**

Approved for 4.8 hours general CLE credit  
(Approval Pending)

Law & Justice Center  
645 South 200 East

Professor Bethany K. Dumas, B.A., M.A., Ph.D., J.D.  
Department of English, University of Tennessee

8:30	Registration and Continental Breakfast
9:00	Overview: Anglo-American jury instructions
9:30	Comprehensibility Issues, 1979-2003
10:00	Problems with Definitions
10:30	Problems with Presumptions (problems/examples)
12:00	Principles for rewriting instructions: a. Satisfy constitutional requirements. b. Satisfy jurisdictional requirements. c. Acknowledge the relationship between law and fact. d. State jurors' responsibilities clearly and unambiguously in such a way that instructions do not undermine crucial presumptions and burdens. e. Consider full context.
1:00	Adjourn

Sponsored by the Litigation Section of the Utah State  
Bar and the Administrative Office of the Courts

Light refreshments provided

# Draft

## WRITING PLAIN-LANGUAGE JURY INSTRUCTIONS

Professor Bethany K. Dumas, B.A., M.A., Ph.D., J.D.  
Department of English, University of Tennessee

### **Recommended Background Reading (by the presenter)**

“U S Pattern Jury Instructions: Problems and Proposals.” *Forensic Linguistics: The International Journal of Language and the Law* 7.1 (2000), 76-98.  
“Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues.” *Tennessee Law Review* 67.3 (Spring 2000), 701-742. [Special Symposium Issue: “Communicating with Juries”—it contains other articles of interest].  
“Reasonable Doubt about Reasonable Doubt: Assessing Jury Instruction Adequacy in a Capital Case.” Ch. 15 of *Language in The Legal Process*, ed. J. Cotterill. Basingstoke and NY Palgrave Macmillan Press, 2002, 246-259.

### **Recommended Background Reading (Reference)**

Abbott, Walter F., and John Batt, eds. 1999. *A Handbook of Jury Research*. ALI-ABA. [See especially Lieberman, Joel D., and Bruce D. Sales, “The Effectiveness of Jury Instructions,” pp. 18-1 – 18-73.]  
*Report of the Tennessee Bar Association Commission on Jury Reform* (written by the presenter and other members of the Tennessee Bar Association Jury Reform Commission, 1998-99). 1999. Nashville, Tennessee: Tennessee Bar Association. [Available at <http://www.tba.org/news/juryreform.html>]

### **Workshop Material — available on 10.25.03 (NITA Chapters and other items)**

Overview: Anglo-American Jury Instructions  
NITA Chapter I.B.

Comprehensibility Issues, 1979-2003  
NITA Chapter III.

Problems with Definitions  
NITA Chapter V.

Problems with Presumptions (problems/examples)  
Affidavit and other documents in re *Beach v. Lipham* (cite TBA)

Principles for Rewriting Instructions  
NITA Chapter V.

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