



LITIGATION SECTION

THE STATE BAR OF CALIFORNIA

August 10, 2001

Hon. James D. Ward
Vice Chair, Judicial Council Task Force on Jury Instructions
California Court of Appeal, Fourth Appellate District
3389 Twelfth Street
Riverside, CA 92501

Re: Judicial Council Task Force, Civil Jury Instructions, Second Set

Dear Justice Ward:

On behalf of the Litigation Section of the State Bar, this letter and its attachments provide comments on the Second Set of Civil Jury Instructions prepared by the California Judicial Council's Task Force on Jury Instructions. This Second Set was released for public comment in April 2001, with comments due by August 15, 2001.

As background, somewhat less than a year ago the Executive Committee of the Litigation Section of the State Bar decided that it would establish a Committee on Jury Instructions to respond to the Judicial Council Task Force's request for additional input from practicing lawyers. As part of the preparation for establishing the Committee on Jury Instructions, I met in February 2001 with Starr Babcock, Special Assistant to the State Bar's Executive Director, and Lyn Hinegardner, a Judicial Council staff attorney working on the civil portion of the jury instruction project. They provided guidance as to how the State Bar might best assist the Task Force in obtaining additional input.

We then established a committee composed of experienced litigators who had expressed interest in working on this project and providing input. We invited lawyers who could help assure that the committee was balanced in representing different practice areas, backgrounds and points of views. Some committee members practice in large firms, and some in smaller firms. Some committee members specialize in representing plaintiffs, and some in representing defendants in various types of civil litigation.

We are grateful that you attended our first committee meeting. You gave us important background information regarding the Task Force's work and the then soon-to-be-released Second Set. Following the release of the Second Set, we had an organizational meeting at which we established subgroups based on interests and expertise. The subgroups addressed the separate sections covered by the Second Set of proposed jury instructions. Later, we had an additional full committee meeting with another Task Force member, Edith Matthai, who provided us with further background information on the work of the Task Force.

Following the initial organizational meetings on April 25 and May 16, the sub-group members had numerous conferences and e-mail exchanges. These occurred between full committee meetings. The full committee met on June 11, June 28, July 17, July 19 and July 24. During those meetings, the reports of the various subgroups were studied and debated. After each meeting, the subgroups reworked their reports in light of comments received. We then compiled the reports of the subgroups as approved by the full Committee. These then were presented to the Litigation Section Executive Committee for its approval.

On Saturday, July 28, 2001, the Executive Committee of the Litigation Section further discussed, debated and approved as modified the report of the Committee on Jury Instructions, which is attached.

Overall, the members of the Committee on Jury Instructions enthusiastically endorse and encourage the work of the Task Force in preparing new jury instructions that meet the goal set by the Judicial Council. In our view, the proposed instructions "accurately state the law and are more easily understandable to jurors." In particular, the members believe that the proposed jury instructions generally are a significant improvement over earlier sets of standard jury instructions, including the BAJI jury instructions that are commonly used in California today.

The comments in the attached report are not as extensive as the length of the report might make them appear. The report has been prepared to provide appropriate context to the proposed changes by repeating as much as necessary of the original Task Force language and then using interlineation and shading to identify proposed deletions and insertions. Following each proposed change, the report includes a section entitled "*State Bar Committee Comments on Proposed Changes*," which explains the reason for any proposed change. In some sections, the Committee members were unable to reach a consensus regarding a proposed change. In those sections, the report identifies the differing points of view of the Committee members so the Task Force can consider the competing comments. The report does not propose any change for many sections of the Second Set.

One section of the Second Set, the Railroad Crossing section, merits separate mention. Pursuant to our efforts to reach specialists in various practice areas, we received a comprehensive submission from the National Association of Railroad Trial Counsel, an association that specializes in representing defendants in railroad crossing accidents. Because this is a type of litigation with which members of our Committee have limited familiarity and, thus, an area in which we were unsure of our own ability to achieve objectivity and balance, we encouraged the National Association of Railroad Trial Counsel to submit its comments directly to the Task Force. (We understand that already has occurred.) We have made efforts to obtain, but have not yet received, input from lawyers who represent plaintiffs injured in railroad crossing accidents. Those lawyers have been encouraged to provide input directly to the Task Force as part of the comment process.

On behalf of the Committee on Jury Instructions, we applaud the difficult, but exciting, work of the entire Task Force and its staff attorneys in improving the clarity of the jury instructions. We also thank you and Edith Matthai for generously providing us with your time and guidance.

Very truly yours,

Richard L. Seabolt

cc: Jerome Sapiro, Jr., Litigation Section Chair
Executive Committee of the Litigation Section
Committee on Jury Instructions (list attached)

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