

October 8, 2001

Honorable Thomas D. Hall  
Supreme Court Clerk of Court  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1925

Re: Florida Bar Trial Lawyers Section Comments on Jury Innovations  
Committee

Dear Mr. Hall:

The Florida Bar Trial Lawyers Section (hereinafter "Section") has accepted the invitation of the Florida Supreme Court to provide comments with respect to the Final Report of the Jury Innovations Committee (hereinafter "Report"). The Section, through its Executive Council, read and studied the Report, both as an entire group and by committee. Because the Report recommendations are so far-reaching, the Section chose to focus on those that it felt most significantly affected the jury and civil justice systems. We chose not to comment on the other recommendations, but please do not interpret our failure to comment as approval or disapproval.

First, the Section would like to compliment the committee members for their hard work and creativity in formulating their report. The amount of thoughtful research is obvious from the depth and breath of the Report, and the number of sources consulted.

For ease of reference, the Section's comments are keyed to the individually-numbered recommendations as follows:

**7. Standardized Juror Questionnaires.** The Section supports this recommendation and attaches two jury questionnaires for the court's consideration.

The first was developed by the Tampa Bay Chapter of the American Board of Trial Advocates (ABOTA), and the second is the work of the

National ABOTA organization. Both are helpful, though the Section believes that the latter questionnaire is more detailed and thus more beneficial.

**15. Peremptory Challenges.** The Section agrees that the current use of peremptory challenges should not be disturbed and questions the necessity of further study regarding the desirability of peremptory challenges. The removal of peremptory challenges would likely lengthen the jury selection process by increasing the number of challenges for cause, whether sustained or not. Any time savings will be lost. The Section agrees that trial lawyers are more intimately involved in their cases and are thus better able than judges to identify jurors who cannot fairly evaluate evidence. The Section doubts whether any viable study could be made that would provide useful information on the effect of eliminating peremptory challenges.

**17. Discussion of Evidence Prior to Deliberation.** While this recommendation initially holds some appeal, the Section is against it. The practice is likely to create more questions during the trial, and it gives an advantage to the party going first. Additionally, an alternate juror might get involved in the interim discussions, while not ultimately able to participate in the actual deliberations at the end of the trial. In summary, the Section sees too many practical problems in allowing this practice.

**19. Videotapes for Absent Jurors.** The Section strongly agrees that this procedure should not be adopted.

**20. Interim Commentary by Counsel.** The Section respectfully disagrees. There does not seem to be any net advantage to allowing daily summary, as it unduly focuses the jury on the commentary, rather than the evidence. It would also encourage juries to make up their minds before hearing all the evidence.

**21. Deposition Summaries.** Reading portions of depositions should be encouraged by trial judges, but the use of summaries is too problematic. Who will draft them? It is very unlikely that the parties will ever agree, and absent an agreement, the court could actually lose time as it has to resolve these issues.

**22. Abolishing 100-Mile Rule for Deposition Use.** The Section agrees that the reasons behind the 100-mile restriction on the use of depositions at trial are insufficient to maintain the rule, and thus the Section agrees with this recommendation.

**23. Juror Notebooks.** In light of the fact that jurors are now permitted to take notes, it is the feeling of the Section that it would be very beneficial for the jurors to have trial notebooks similar to the attorneys trying the case. These might contain individual copies of certain important exhibits to which the parties will be referring during the course of the trial. Additionally, a limited number of photographs could be included in the notebooks so the jury would not have to share one photograph either during the trial or during their deliberations. Finally, it would be helpful for a notebook to be organized in such a way that

sections were set aside for notes to be taken during the testimony of each of the witnesses. The Section would be privileged to be responsible for preparing a proposed notebook to be used throughout the state.

**29. Procedures for Jury Deliberations.** The Section believes that Florida Standard Jury Instructions 1.1, 7.1, and 7.2 fully address this issue.

**31. Final Instructions Before Closing Arguments.** The Section strongly encourages this procedure. Virtually all trial lawyers who have undergone it find it much more helpful than the current system. However, the court should be encouraged to give certain preliminary instructions, such as the credibility of witnesses and expert witnesses, at the beginning of the trial.

**32. Judicial Answers to Deliberating Jurors' Questions.** The Section agrees that courts should continue to be sensitive to jurors' questions, but urges caution to avoid over emphasizing certain evidence in the court's responses. Any procedure adopted by the court should ensure that no party is seen as attempting to hide anything from the jury.

**33. Read-back of Testimony.** The Section agrees, although it would point out that the development of juror notebooks and the allowance of juror note-taking should eliminate or at least reduce the need for read-back of testimony by the jury.

**36. Proposed Bill of Rights for Florida Jurors.** The Section had reservations that the creation of a proposed Bill of Rights might also create a cause of action with respect to the violation of those rights. Any proposal should clearly indicate that the "rights" being given are aspirational, and do not carry the weight of the law. With respect to the 12 individual rights proposed, the Section agrees with each of them except the last (#12). The Section does not believe that jurors should be told how they should conduct themselves in the analysis of evidence while they deliberate.

**42. Informal Communications Between the Judge and Jury.** The Section strongly disagrees. Judges should not communicate to jurors after they have rendered a verdict, except as to administrative matters, or juror misconduct.

We look forward to participating in the oral argument now scheduled for November 7, 2001.

Respectfully submitted,

Thomas P. Scarritt, Jr., Chair  
Florida Bar Trial Lawyers Section

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Enclosure

I hereby certify that a true copy of the foregoing was served by U.S. Mail this 8<sup>th</sup> day of October, 2001 to the Honorable Robert L. Shevin, Court Committee Chair, Third District Court of Appeal, 2001 S.W. 117<sup>th</sup> Avenue, Miami, Florida 33175-1716; and the Honorable Robert K. Rouse, Jr., Chief Judge, Volusia County Courthouse Annex, 125 East Orange Avenue, Suite 307, Daytona Beach, FL 32114.

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Thomas P. Scarritt, Jr.