

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 01-1226

IN RE:

FINAL REPORT OF JURY
INNOVATIONS COMMITTEE

**FLORIDA CHAPTER OF THE AMERICAN BOARD
OF TRIAL ADVOCATES' MOTION TO PROVIDE
WRITTEN COMMENTS REGARDING
FINAL REPORT OF JURY INNOVATIONS COMMITTEE**

The Florida Chapter of the American Board of Trial Advocates ("FLABOTA") files this motion and in support states as follows:

1. The American Board of Trial Advocates is a national, invitations only, trial lawyers organization with chapters throughout the United States. Requirement for membership includes 20 trial trials to conclusion. The organization is made up equally of lawyers practicing equally in the defense and plaintiff ranks.
2. The state of Florida has a separate, state-wide organization called "FLABOTA" or "Florida ABOTA."
3. FLABOTA appointed a committee to undertake an evaluation of the Final Report of the Jury Innovations Committee. Attached as Exhibit A is the result of that evaluation.
4. The FLABOTA feels that this input will be helpful to the Court in its determination with respect to the recommendations of the Jury Innovations Committee.

WHEREFORE, FLABOTA respectfully requests that this court permit the filing of the attached evaluation of the Jury Innovation Committee's recommendations for use as the Court may deem appropriate.

FLORIDA CHAPTER OF THE AMERICAN
BOARD OF TRIAL ADVOCATES

By:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail on this _____ day of December, 2001, to the following:

The Honorable Robert L. Shevin
Third District, State of Florida
2001 S.W. 117th Avenue
Miami, FL 33175-1176

The Honorable Robert K. Rouse, Jr.
Chief Judge
Courthouse Annex
125 East Orange Avenue, Suite 307
Daytona Beach FL 32114-4400

Attorney

EXHIBIT A

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FLABOTA COMMITTEE REPORT

Review of Executive Summary of the Jury Innovations Committee,
Judicial Management Council of the Supreme Court of Florida

This committee undertook an evaluation of the Executive Summary of the Jury Innovations Committee, Judicial Management Council of the Florida Supreme Court.

The following numbered paragraphs correspond to the numbered paragraphs in the “Summary of Recommendations,” which begin on page seven.

1. **Standard Panel Sizes.** The committee agrees with the recommendations, except to the extent the recommendation suggests a reduction in peremptory challenges. The committee strongly feels that the number of peremptory challenges should be maintained at current levels. Peremptory challenges play an essential roll in securing a balanced and impartial jury.
2. **Summons Enforcement, Non-Compliant Jurors, and Postponements.** Agree with recommendations as stated.
3. **Juror Source List.** Agree with recommendations as stated.
4. **Statutory Exemptions.** Our committee felt that only those felons who have had their civil rights restored to them should be permitted to serve as jurors. Anyone who is a two-time felon should be excluded from jury duty. As to the issue of hardship, the committee felt that it is important that only the trial judge should make the determination as to who should be granted hardship status or released from jury duty. Other court officials should not assume this function. Local or appointed officials would be subject to pressure to excuse prominent members of the community or those who are active politically from jury duty.
5. **Juror Orientation.** Agree with recommendations as stated.

6. **Citizen Education Campaigns.** Agree with recommendations as stated.
7. **Standardized Juror Questionnaires.** Agree with recommendations as stated.
8. **Jury Size.** Agree with recommendations as stated.
9. **Expedited Trials.** The use of expedited trials in appropriate cases is a useful tool. However, attorneys should not be required by court rule to notify their clients of this option in writing. Attorney-client relationships and communication between a lawyer and his client should be determined by the lawyer and not mandated by court rule.
10. **Professional Jurors.** Agree with 10, except committee was unsure as to exactly what is being suggested by “court assisted arbitration panels.” Would these be panels selected by the parties who would conduct mini-trials and hear testimony and make recommendations to the court or would they act somewhat in the nature of a mediation panel attempting to settle the lawsuits? Regardless of what is intended, such arbitration panels should not be used without the concurrence of the parties.
11. **Anonymous Juries.** Agree with recommendations as stated.
12. **Alternate Jurors.** Agree with recommendations as stated, but do not see the need for there to be any study to be made of the situation.
13. **Pre-Voir Dire Judicial Statements.** This is already accommodated in the current rules and practice. Frequently, judges read the statement of the facts that have been stipulated to by the parties. Judges often require their pretrial orders to have a joint statement to be read to the jury. To the extent it was intended, the court should not comment on the potential facts of the case beyond what has been approved by the parties.
14. **Pre-Voir Dire Opening.** There is no need for two opening statements. A pre-voir dire opening statement could be subject to abuse and is unnecessary. If one is permitted, it should be in writing and approved by the court.
15. **Peremptory Challenges.** There is no need for a comprehensive study of the use of peremptory challenges. The use of peremptory challenges is a necessary and important component of all jury trials. It helps and insure the fair and impartial selection of jury panels. No benefit is to be gained by such a study. Questioning peremptory challenges appears to be an attempt by those who are suspicious of jury trial and would erode that fundamental right.
16. **Questions by Jurors.** Agree with recommendations as stated, so long as the judge consults with the lawyers representing both sides prior to submitting jury questions to witnesses. This discussion should be out of the hearing of jurors and lawyers should be able to put on their record their objections to the questions that the court is going to ask before they are posed to the witness.
17. **Discussions of Evidence Prior to Deliberations.** This is not a helpful or beneficial suggestion. Any discussions that potential jurors would have concerning the evidence necessarily involve

a discussion of the merits of the case. This would de-emphasize and work against the concept that jurors should keep an open mind until all of the evidence has been presented. It strikes at the essential fairness of the process. There is no corresponding benefit to permitting such discussions to occur.

18. **Note-Taking by Jurors.** Agree with recommendations as stated.
19. **Videotapes for Absent Jurors.** Agree with recommendations as stated.
20. **Interim Commentary.** This is not a helpful concept. This would merely give counsel and opportunity to make an additional argument to the jury. This should not be permitted for the same reason that the court does not allow speaking objections to questions. Interim commentary by counsel would come before the jury has heard all of the evidence and would encourage jurors to prejudge the case.
21. **Deposition Summaries.** What is referred to by “deposition summaries is not clear. The current rules are adequate with respect to the use of depositions. If this means reading selected portions of the depositions, that is already permitted under current rules. If this means summarizing the content and characterizing the testimony, this should not be permitted.
22. **Expanding the Use of Depositions in Civil Cases (100 Mile Requirement).** The current 100-mile requirement should be maintained. It is important to encourage the appearance of live witnesses at trial. Triers of fact need to be able to view the witnesses and evaluate their demeanor. Anything that encourages trials by depositions should be discouraged. If the 100-mile requirement is reduced, it should be limited to those witnesses that are located outside of the county where the trial is to take place. As a practical matter, it is difficult for the court to compel the attendance of a witness who has been subpoenaed beyond the boundaries of the county where the trial is held.
23. **Juror Notebooks.** Subject to abuse. Summary of the evidence or summary of the legal issues involved, potentially could do violence to the normal jury trial process. The testimony of witnesses is often different than deposition testimony, once they get on the stand. Many issues that the parties feel will be prominent at the beginning of the trial change during the course of the trial.
24. **Computer-Aides Presentations.** Agree with recommendations as stated.
25. **Simple and Clear Instructions.** Agree with recommendations as stated.
26. **Written Jury Instructions.** Agree with recommendations as stated.
27. **Preliminary Jury Instructions.** The committee feels that preliminary jury instructions are inappropriate at the beginning of a trial. What the parties anticipate that the witnesses are going to say and what the evidence is going to reveal can vary dramatically as the trial unfolds. Many anticipated potential jury instructions will be discarded or radically modified before they go to a jury at the end of a trial. If there are technical terms that are going to be used during the course of the trial, giving the jury a definition of those terms may be helpful, provided that counsel for both parties participate in developing whatever is going to be submitted to the jury.

28. **Interim Instructions.** Interim instructions suffer from the same problems as do preliminary jury instructions. They should not be mandated and, if there is going to be an authorization, should be discretionary and only after consultation with the attorneys representing all parties.

29. **Procedures for Jury Deliberations.** The committee is unsure of the reference to the “American Judicature Society’s publication entitled ‘Behind Closed Doors.’” However, the committee feels that standard jury instructions appear to already address these concerns.

30. **Juror Comfort During Deliberations.** Agree with recommendations as stated.

31. **Final Instructions Before Closing Arguments.** There are no fundamental benefits to giving instructions before closing arguments. The trial judge should consult with the parties and determine which way would be best, considering the nature of the case involved.

32. **Judicial Answers to Deliberating Jurors’ Questions.** Agree with recommendations as stated, with the caveat that the response should not include any comment on the evidence. Number 32 should read, “Trial judges should be as responsible as possible without offering any comments on the evidence and fully answer deliberating jurors questions, consistent with the applicable case law.” It is appropriate for the judge to ask the jurors to rely on their “collective memory.” Recollection of the evidence and evaluating it is the fundamental job of the jurors. Encouraging them to rely on their recollection of the evidence is appropriate.

33. **Read-Back of Testimony.** Agree with recommendations as stated.

34. **Juror Impasse.** Agree with recommendations as stated.

35. **Less than Unanimous Verdicts.** Agree with recommendations as stated.

36. **Juror Bill of Rights.** The suggestion of a juror’s bill of rights does not tell what would be in such a bill of rights.

37. **Juror Parking.** Agree with recommendations as stated.

38. **Juror Time Management.** Agree with recommendations as stated.

39. **Americans with Disabilities Act (ADA).** This recommendation was not clear. If a citizen has a problem hearing, understanding, or functioning without the assistance of special devices or third-party interaction, then they should be excused from jury duty. Efforts to accommodate the ADA could have a very disruptive effect on the jury trial procedures.

40. **Place Cards and/or Seating Charts.** Agree with recommendations as stated.

41. **Post-Verdict Discussions.** Agree with recommendations as stated.

42.

Informal Communications Between the Judge and Jury. Agree with recommendations as stated.

43. **Post-Verdict Interviews by Attorneys and Researchers.** Agree with recommendations as stated, but is concerned with “researchers” interviewing jurors. Researchers would most likely be employed by the losing side in an attempt to gain information that could be used to attempt to overturn the decision of the jury or to disqualify the panel.

44. **Juror Pay.** Agree with recommendations as stated.

45. **Employer Ordinance/Law.** Agree with recommendations as stated.

46. **Private Remuneration for Jury Duty.** Agree with recommendations as stated, only with the concurrence of the parties.

47. **Juror Stress/Debriefing Sessions.** This is unnecessary.

48. **Juror Privacy.** Agree with recommendations as stated.