

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: FINAL REPORT OF THE  
JURY INNOVATIONS COMMITTEE**

**CASE NO. SC01-  
01226**

**REPLY TO COMMENTS SUBMITTED BY THE SUPREME  
COURT COMMITTEE ON STANDARD JURY INSTRUCTIONS  
IN CIVIL CASES ON THE JURY INNOVATIONS REPORT**

1. The Supreme Court's Jury Innovations Committee (Committee) submits this reply to comments filed by the Supreme Court Committee On Standard Jury Instructions in Civil Cases (SJICC) in relation to the Committee's final report. The Committee appreciates the comments submitted by the SJICC. The SJICC's extensive knowledge of the area of civil jury instructions was very helpful to our Committee, which benefitted from the assistance of the Chair of that committee, Ms. Sylvia Walbolt, who was an active member of the Jury Innovations Committee.

2. In the interest of brevity, we will respond only to those comments which question any of the recommendations of our Committee that have not already been responded to in our October 15, 2001 Reply. Also, the Committee will not respond to comments which merely note the necessity of additional or amended

instructions as many of the comments made by the SJICC specifically allude to the necessity of additional or amended instructions.

3. The purpose of the Pre-Voir Dire Judicial Statements as set forth in Recommendation Number 13, is to encourage citizen participation in the jury system and to increase juror interest in serving on the jury and to reduce the number of jurors requesting dismissal from service. We believe strongly that the interests of jurors providing their service can be significantly increased if the jurors are informed by the judge of the general nature of the case. For those jurors who believe that service on a jury is a “a waste of time” or “even boring,” our Committee was strongly convinced (unanimous vote) that jurors’ attitudes can be changed if they have an early snapshot and a more concrete understanding of what a particular case may involve. This should not in any way allow the judge to express any bias. While the recommendation on its face does grant the judge the authority to craft a statement, there is nothing to prohibit the judge from eliciting the assistance of the litigants. The goal of this recommendation is to engender the type of juror interest necessary to reduce significantly a reluctance to serve.

4. In relation to Questions by Jurors (Recommendation Number 16), our Committee would obviously agree with the members of the SJICC who favor allowing jurors to ask questions. The Committee would reiterate its position that from a policy standpoint, allowing jurors to ask questions (with appropriate judicial supervision to avoid legal problems) is an innovation whose time has arrived. The Committee further believes that the benefits *strongly outweigh* any potential harm.

5. The extensive comments by the SJICC regarding Simple and Clear Instructions (Recommendation Number 25) are certainly informative and worthy of consideration. While the Committee sees no reason to retract any of its recommendations, it can see that the establishment of a compromise between the competing goals of clarity and accuracy yields no simple solution. If the recommendation of the Committee can be further refined it would be to state that “instructions should be as simple and clear as possible while ensuring legal accuracy.” The recommendation was never intended to sacrifice accuracy at the altar of simplicity. The Committee was always mindful that the ultimate goal of the jury system is to achieve justice within appropriate legal parameters.

6. In relation to the issue of Preliminary Jury Instructions (Recommendation

Number 27), the Committee had no intention of authorizing the judge to make factual findings within the context of fashioning such instructions. The thrust of the recommendation was to provide the jury with an accurate setting within which to place evidence. Certainly, the Committee does not advocate giving the judge the right to make decisions on contested “definition of terms” or other controversial issues to which a stipulation is not agreed to.

7. The comments of the SJICC relating to Procedures for Jury Deliberations (Recommendation Number 29) contains a total misinterpretation of our Committee’s view. The gist of the recommendation is that the jury should receive instructions on the most efficient way to begin deliberations, that is, selection of the foreperson, structure discussion, method of deliberation, and other such matters. The Committee does not believe this is an unconstitutional invasion of the jury deliberation process, and the juror members of our Committee strongly supported this recommendation. On balance, our Committee felt that the development of procedures would help, rather than burden, the process.

8. In relation to Judicial Answers to Deliberating Jurors Questions

(Recommendation Number 32), the Committee does not favor abolishing the instruction that jurors rely upon its (collective memory). It merely believes that when possible, the trial judge should respond more directly to inquiries from jurors when legally appropriate. While the judge would be allowed to solicit the input of the litigants through counsel in determining the correct response, our Committee believes that the process should always be left within the discretion of the court.

9. Our Committee would merely reiterate its recommendation on Juror Impasse (Recommendation Number 34), that is, that the juror should be informed of the consequences of the impasse and encouraged in every legal manner to reach a decision. For example, if jurors need and request additional argument on a particular issue and the judge and the litigants agree, it should be encouraged and allowed. It is inconceivable to our Committee that there should be any concern that such assistance by the trial judge would cause the judge to become a seventh juror as suggested by the SJICC. In addition, the Committee would refer the Court to its discussion of the issue of Informal Communications Between Judge and Jury (Recommendation Number 42) contained in its previous reply. The last paragraph of the comments of the SJICC with respect to **Recommendation Number 34 Juror Impasse** clearly indicates that they can revise the standard instructions so

that a jury understands clearly that an impasse causes the case to be mistried and retried.

10. It appears that the SJICC has once again misinterpreted our Committee's recommendation (Recommendation Number 42). Our Committee's recommendation is as follows, "while it is permissible for judges to meet with jurors after a verdict is reached, the decision to do so should be left to the discretion of the judge."

11. The SJICC in their response to our Committee's Recommendations 41 and 43, seem to be questioning our Committee's commitment to "juror privacy issues." It is clear that our Committee throughout its deliberations strongly considered and addressed juror privacy issues as indicated by our concluding sentence in Recommendation 43 that "nothing in this recommendation shall be interpreted to interfere with the right of jurors to be left alone."

12. The Committee once again extends its appreciation to the Supreme Court for being allowed to reply to the very thoughtful comments submitted by the SJICC. The Committee believes that the concerns raised are not insurmountable and, if used in a constructive manner, may well improve the finished product of our Committee's labor.

Respectfully submitted,

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Chair, Jury Innovations Committee  
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## **CERTIFICATE**

I hereby certify that a copy of the foregoing reply of the Jury Innovations Committee to comments received was provided by U.S. Mail to: Sylvia H. Walbolt, Carlton Fields, Post Office Box 2861, St. Petersburg, Florida 33731-2861, the Honorable Chris W. Altenbernd, District Judge, Second District Court of Appeal, 801 East Twiggs Street, Suite 600, Tampa Florida 33602, Dwight Hines, Ph.D., Post Office Box 1431, Middleburg, Florida 32050; Paul Mendelson, Deputy Chief Assistant State Attorney, E.R. Graham Building, 1350 N.W. 12th Avenue, Miami, Florida 33136; The Honorable Robert K. Rouse, Jr., Chief Judge, Seventh Judicial Circuit, Volusia County Courthouse Annex, 125 East Orange Avenue, Suite 307, Daytona Beach, Florida 32114; The Honorable Frederick B. Tygart, Fourth Judicial Circuit, Duval County Courthouse, Jacksonville, Fl 32202, and Thomas P. Scarritt, Jr., Chair, Florida Bar Trial Lawyers Section, 1509 W. Swann Avenue # 280, Tampa, Florida 33606 on the 30th day of November, 2001.

I hereby certify that a copy of this document was printed in Times New Roman 14 point font.

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