

IN THE SUPREME COURT OF FLORIDA

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

**CASE NO. SC01-
01226**

**REPLY TO COMMENTS
ON JURY INNOVATIONS REPORT**

The Supreme Court's Jury Innovations Committee (Committee) submits this reply to comments filed in relation to the Committee's final report. These comments, for sake of brevity, are limited to criticisms of specific recommendations. The Committee appreciates that there were few objections and that for the most part, its recommendations was supported even by those who had some objection.

1. While not included as a comment in the court file, Circuit Judge Frederick B. Tygart, Fourth Judicial Circuit, submitted a letter to Chief Justice Wells, dated July 11, 2001, expressing concern about the establishment of a Juror's Bill of Rights (Recommendation Number 36). His concern was that the bill of rights could be interpreted as creating a cause of action for a juror. The Committee believes this concern is misplaced. While the recommendation does not use the

word, it was the intent of the Committee that the “rights” listed are aspirational in nature and not actionable by jurors. Such a conclusion is consistent with the fact that the Committee recommends that the bill of rights be adopted as a court rule or administrative order rather than as a statute (which would arguably be necessary to create a private cause of action). The Committee believes that the effect on court personnel subject to Supreme Court rules would clearly be beneficial. If such a rule is to be adopted by the Supreme Court, it would be appropriate to indicate the aspirational nature of the “rights” and their unenforcability in private civil actions.

2. Chief Judge Robert K. Rouse, Jr., Seventh Judicial Circuit, objects to the proposal that jurors in civil trials be permitted (and tacitly encouraged) to discuss the evidence during recesses. Judge Rouse believes that allowing such discussions to occur would result in piecemeal, ad hoc deliberations. The Committee respectfully disagrees and would argue that allowing such discussions, which could only occur when all jurors are together in the jury room, would have a positive educational effect when conducted pursuant to strict court instructions that no deliberations take place and that no decisions be made or conclusions reached. The Committee would point out that Judge Rouse states that most civil trials are concluded within three days. This recommendation does not place any minimum

time limits on trial length as a threshold for allowing pre-deliberation discussions.

The Committee believes that this should be left to the discretion of trial judges, who should be encouraged to use it in civil cases of sufficient length and complexity to justify its use.

3. The Committee would observe that perhaps no issue (with the possible exception of peremptory challenges) received more consideration than the issue of pre-deliberation jury discussions. The Committee even went to the length of having a final video conference with members of the Arizona bench and bar dealing primarily with this issue. Arizona has utilized this innovation for approximately six years in civil cases and the Supreme Court of Arizona is seriously considering its extension to criminal trials. The Arizona lawyers and judges who participated in the video conference reflected all areas including trial lawyers representing plaintiffs and defendants. They all agreed that this innovation is consistent with the adult learning model and allows jurors to assimilate knowledge in a systematic manner in complex cases. I would point out that our Committee, which is also composed of a cross section of judges and trial lawyers, as well as a representative of the educational community and former jurors, voted unanimously in favor of this proposal.

4. The Honorable Katherine Fernandez Rundle, State Attorney, Eleventh Judicial Circuit, expresses concerns over the Committee's recommendation dealing with the Juror Source List (Recommendation Number 3) and Statutory Exemptions (Recommendation Number 4). In relation to the source list, Ms. Rundle suggests a return to the status of the law prior to 1998, when only registered voters were allowed to serve as jurors. The Committee's disinclination to recommend a change in the source list was less an endorsement of the present drivers license list over the voters registration list than a recognition that this recent change was made by the Legislature after much consideration of issues clearly within the legislative prerogative. The essence of the Committee's recommendation is to improve the quality of the source list in relation to felony status, deceased persons, correct address, and other related matters. This approach appears to be consistent with a recent recommendation by staff to the Senate Committee on Judiciary.¹

5. The second criticism of the report made by Ms. Rundle relates to allowing felons who have completed their sentences, including probation, to serve as jurors even if their civil rights have not been restored. The recommendation is to

¹ See Analysis of the Jury Pool Selection Process, The Florida Senate Interim Project Report 2002-139 (October 2001).

remove felons who have completed their sentences from the list of statutory disqualifications. They could still be subject to challenges for cause (particularly in relation to persons under prosecution serving in criminal cases) and the use of peremptory challenges. It should, however, be noted that there should be less philosophical objections to the eligibility of felons serving as jurors in civil cases, where they would arguably have no inherent bias. The Committee would point out that the felons affected in this recommendation would in most cases be eligible for restoration of their civil rights. An alternate position would be to retain this disqualification from jury service in criminal cases as suggested by Ms. Rundle.

6. Dwight Hines, Ph. D., expresses concerns over the low response rate of persons summoned for jury duty. This was a major concern for the Committee, in response to which the Committee calls for increased summons enforcement (Recommendation Number 2), improvements in the accuracy of the source list (Recommendation Number 3), and citizen education campaigns (Recommendation Number 6). Dr. Hines' comment regarding the variation in computer systems used around the state (controlled by section 40.225, Florida Statutes) was not a matter of discussion before the Committee. However, it seems clear that the Committee would have favored any improvement designed to achieve randomness in the jury

selection process. Finally, the Committee did not discuss the issuance of certificates of service to jurors, but would have no objection thereto if there were no fiscal constraints.

7. Mr. Thomas Scarritt, representing The Florida Bar Trial Lawyers Section (Section), objects to the recommendations regarding peremptory challenges (Recommendation Number 15), pre-deliberation discussions (Recommendation Number 17), interim commentary by counsel (Recommendation Number 20), deposition summaries (Recommendation Number 21), procedures for deliberations (Recommendation Number 29), and informal communications between judge and jury (Recommendation Number 42). The only objection raised by the Section in relation to the Juror Bill of Rights is the inclusion of the twelfth suggested right dealing with pre-deliberation discussions. The Committee would refer the Court to its previous discussion in relation to Recommendation Number 17, but would like to respond to the other comments.

8. Perhaps no issue was more controversial than this issue, which was originally framed, for discussion purposes, as the reduction or elimination of peremptory challenges. After extensive discussion and numerous tie votes and

otherwise very close votes, the Committee decided the best approach would be to recommend a study of the ramifications of any change. Those in favor of the status quo believe the use of peremptory challenges serves as a necessary device to ensure unbiased, fair and impartial jurors; those opposed believe that the appropriate use of cause challenges (perhaps as redefined) should be sufficient. The Committee is aware that present fiscal concerns of the state may make the availability of funds for such a study unfeasible. However, it would recommend caution in proceeding with any substantial revision in relation to the court rules dealing with peremptory challenges without the benefit of more objective information.

9. The Section next objects to authorizing judges to allow attorneys the opportunity for brief interim commentary (perhaps on a daily basis) in cases of three or more days duration. The Section believes that this procedure unduly focuses the jury on the commentary rather than the testimony and encourages the jury to make a decision before all the evidence has been heard. The Committee would argue that such commentaries, which would be available to both sides, should increase juror comprehension by allowing the lawyers to place the evidence in context and keep the jurors totally focused on the evidence. As indicated in the

report, such commentary should be provided only after appropriate instructions from the court.

10. The Committee would respectfully disagree with the Section's comments regarding deposition summaries. The Committee believes such summaries may serve a useful purpose, particularly in civil cases, where they could save jury time and aid in comprehension. The Court should note that the use of such summaries in criminal cases should only occur by stipulation. In civil cases the court would resolve any potential conflicts between that plaintiff and defendant. In all cases, the Committee recommends that summaries only be used at the discretion of the trial judge, who could make a determination of efficacy on a case-by-case basis.

11. The Committee disagrees that the procedures for jury deliberations are adequately laid out in the Florida Standard Jury Instructions dealing with the preliminary instruction, prejudice and sympathy, election of the foreman, and verdict forms. The Committee proposal deals with more specific matters, such as how the jury should use the instructions during deliberations, how to organize deliberations, and what assistance, if any, the jury can ask of the court. The essence

of the proposal is that jurors should at least be informed of the most efficient manner to conduct its deliberations.

12. In relation to the Section's objection to the recommendations relating to informal contact between the judge and jury, the Committee does not necessarily disagree. The meeting envisioned by the Committee, which would be in the discretion of the judge, would essentially be limited to administrative matters. What may have created confusion is the third sentence of the first paragraph of the commentary, which states that such meeting should be an opportunity for jurors to express any concerns regarding the law or its application. In the view of the Committee, however, the judge would be permitted to answer only general questions about the trial process.

In conclusion, while the Committee agrees that the comments submitted are worthy of consideration, we strongly believe that the Committee's recommendations should be adopted as submitted.

Respectfully submitted,

Judge Robert Shevin
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CERTIFICATE

I hereby certify that a copy of the foregoing Motion of the Jury Innovations Committee to file a reply to comments received was provided by U.S. Mail to: 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 ____ of October, 2001.

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

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