

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 FLORIDA
CHAPTER OF THE AMERICAN BOARD OF TRIAL
ADVOCATES COMMENTS REGARDING THE FINAL REPORT OF
THE JURY INNOVATIONS COMMITTEE**

1. The Supreme Court's Jury Innovations Committee (Committee) submits this reply to comments filed by the Florida Chapter of the American Board of Trial Advocate's (FLABOTA) in relation to the Committee's final report. The Committee appreciates the comments submitted by the FLABOTA. However, the Committee is concerned that many of the objections raised by FLABOTA are merely an attempt to preserve the status quo rather than promote jury reform. As the Court is aware, the Committee's charge was to review reforms and improvements both contained in the literature and, equally important, those that have been implemented in other states. We have spent considerable time and effort in this regard and have carefully weighed the implications of every reform advanced

in our final report. The objections raised by FLABOTA are contrary to the Committee's own collective experience and that of many lawyers and jurists throughout the United States.

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 and November 30, 2001 Replies. Further, the Committee will not respond to comments by FLABOTA which clearly indicate that they may not have understood the full recommendation and discussion text (or the attachments thereto) of the Committee, examples include their comments about the Juror Bill of Rights (Recommendation Number 36) and Americans with Disabilities Act (Recommendation Number 39).

3. In the interest of justice, the Committee's overriding intent in Recommendation Number 4, Statutory Exemptions, was to encourage citizen participation in jury service. Admittedly, the issue of felons serving on juries is within the purview of the Legislature. However, the Committee felt that the present system for the restoration of civil rights is cumbersome and acts to discourage felons from seeking restoration. Thus, we recommend that only those felons who

have not completed their entire sentence, including probation, parole, and community control be precluded from being eligible from jury service. The Committee would also refer the Court to Paragraph 4 of our October 15 Reply in which we discuss this issue.

4. With respect to the granting of hardship provisions, the Committee disagrees with FLABOTA's contention that local or appointed officials should not be permitted to grant hardship excusals because they may be subject to pressure to excuse certain members of the community. The Committee's recommendation is clear, in that, any excuses for hardship will be granted under the direction of the court hopefully by objective criteria established in an administrative order.

5. With respect to Expedited Trials (Recommendation Number 9) the Committee feels that, where appropriate, clients should be advised in writing by their counsel of the availability of an expedited trial. This provision will ensure that clients are properly noticed and would not impede the ability of counsel to advise their clients as to the advantages or disadvantages of such course of action. This provision would no more interfere with the attorney-client privilege than the present requirement that attorneys advise their clients of fees.

6. Consistent with the Committee's intent to encourage juror participation, we believe that brief Pre-Voir Dire Judicial Statements (Recommendation Number 13) are appropriate, in that, they may serve to help frame the case for the prospective juror, thus possibly diminishing the abstract nature of the case by potentially invoking their civic spirit and willingness to serve.

7. The Committee disagrees with FLABOTA's contention that Pre-Voir Opening Statements (Recommendation Number 14) could be subject to abuse and is unnecessary. Rather, we believe that jurors should be given as much information as legally permissible to assist in the jury selection process. This will help to better educate jurors about the case by identifying likely issues and suggesting questions that may be raised at trial.

8. The Committee disagrees with FLABOTA's statement that there is no need for a study of the use of Peremptory Challenges (Recommendation Number 15). We refer the Court to Paragraph 8 of our October 15 Reply. Further, no other issue before the Committee was more contentious than the use of peremptory challenges. The judicial/legal community is clearly split on this issue and there are

growing calls for its abolition. As way of compromise, the Committee felt that it was in the long-term best interest of the judicial system to study the issue.

9. FLABOTA disagrees with the Committee's recommendation on the Discussion of Evidence Prior to Deliberations (Recommendation Number 17). FLABOTA suggests that permitting discussions would "de-emphasize and work against the concept that jurors should keep an open mind until all of the evidence has been presented." The Committee suggests that FLABOTA misunderstands how adults process and assimilate information. The current passive model for processing information is antiquated and unrealistic. Further, it presupposes that jurors cannot withhold judgement or be fair until all evidence is presented. Adults learn and assimilate information by talking regularly to each other while the information is fresh in their minds. The Committee believes that the ability to discuss trial evidence prior to deliberations is an essential reform necessary to enable jurors to make competent decisions. The Committee's recommendation is very clear that jurors may only discuss the evidence in the jury room during recesses when all jurors are present and that they must reserve all judgment about the case until deliberations commence. Finally, according to the Center for Jury Studies of the National Center for State Courts, the discussion of evidence in civil

trials is permitted in Arizona, Colorado, and North Dakota. The practice is also used in Massachusetts and Washington D.C. and is discretionary in many other states.

10. The Committee disagrees with FLABOTA's objection to Interim Commentary (Recommendation Number 20). The intent of this recommendation is for counsel to be able to explain the case in manageable segments. Judges would be given the discretion to establish the parameters under which it would be permitted.

11. FLABOTA also objects to the use of Deposition Summaries (Recommendation Number 21). The Committee believes that deposition summaries should only be permitted where appropriate as determined by the trial judge. The Committee also envisions them as the collective work product of both sides which is then approved by the court. They should be permitted in civil trials only.

12. In relation to Expanding the Use of Depositions in Civil Cases (100 Mile Requirement), (Recommendation Number 22), the Committee disagrees with

FLABOTA's contention that the current rule should be maintained. The present rule is antiquated and only serves to inconvenience prospective witnesses. The Committee's commitment to improving the jury system also applies to other players, in this instance, witnesses. The prevalence of videotaping precludes the necessity for witnesses to appear in person. However, in our discussion we note that nothing in our recommendation would preclude an opposing party from calling a deposed witness if the party believes that the in-person testimony of that witness is necessary.

13. The Committee disagrees with FLABOTA's contention that Juror Notebooks (Recommendation Number 23) are subject to abuse. As we indicated in the final report, juror notebooks would be controlled by the court. In addition, the categories of documented information to be placed in such notebooks could be identified by the court and attorneys. Examples of materials that may be included in juror notebooks are preliminary jury instructions, short statements of claims and defenses, witness lists and photographs of key witnesses, a copy of important exhibits, a glossary of technical terms, a seating chart of all participants, and final jury instructions (replacing preliminary instructions). These notebooks would be secured during overnight recesses. Jurors would be allowed to take the notebooks

with them to the jury room during recesses and for deliberations. FLABOTA's assertion that the juror notebooks would contain summaries of either the evidence or legal issues involved is misplaced since the inclusion of such matters would clearly be inappropriate.

14. With respect to FLABOTA's objections to Preliminary Jury Instructions (Recommendation Number 27) and Interim Instructions (Recommendation Number 28), the Committee refers the Court to Paragraph 6 of our November 30 Reply. In addition, the Committee refers the Court to the report's discussion text wherein we note that the research indicates that the more jurors are informed in advance about the substantive issues in a case the better their recall, understanding, and ability to organize and apply instructions to this information. Research also indicates that, along with this increased comprehension comes greater juror satisfaction and increased opportunity for a just result. As one commentator has observed, not giving pre-instructions is like telling jurors to watch a baseball game and decide who won without telling them the rules until the end of the game.

15. In relation to FLABOTA's concern about Procedures for Jury Deliberations (Recommendation Number 29), the Committee refers the Court to

Paragraph 7 of our November 30 Reply.

16. The Committee disagrees with FLABOTA's objection to Final Instructions Before Closing Arguments (Recommendation Number 31). Section 40.50(5), Florida Statutes, currently permits judges to give final instructions to the jury before closing arguments. In addition, states that have adopted this reform have concluded that jurors will be in a better position to listen to closing arguments by counsel with a discerning ear, integrating the evidence with the standards of law explained to them before, rather than after, arguments. The Committee has listed several other advantages to this recommendation in the report and has also outlined procedural steps that should be adhered to when issuing final instructions before closing arguments.

17. FLABOTA suggests that a caveat be provided to Recommendation Number 32, Judicial Answers to Deliberating Jurors' Questions, with a specific suggestion that judges should not offer any comments on the evidence. The Committee agrees with this proposition and would argue that it is consistent with the recommendation.

18 The Committee disagrees with FLABOTA's suggestion that trial judges should only advise jurors that they should rely on their "collective memory" when deliberating on the evidence. The Committee further suggests that asking jurors to only rely on their "collective memory" does not advance the cause of justice. The Committee refers the Court to Paragraph 8 of our November 30 Reply. In addition, the Committee suggests that Florida's appellate courts are inundated with cases that demonstrate time and again that trial judges are less than forthcoming in assisting jurors with respect to either their questions or requests for information. The Committee suggests that judges should respond more directly to jurors questions. Almost all questions posed by the jury deserve the courtesy of a responsive answer. The jury's function is to reach an accurate and fair result based on evidence and instructions of law. If juror confusion is cleared up, an accurate and fair verdict is more likely. Jurors will not have to guess at the answer in reaching their verdict.

19. The Committee concludes by noting that it appears that many of the issues raised by FLABOTA may be the result of their misunderstanding of either the recommendation, the discussion text, or the relevant attachments. The Committee would also restate its earlier concern that FLABOTA's comments in

particular, and for that matter, all of the other comments that the Supreme Court has received, are primarily designed to preserve and protect the status quo. There is no acknowledgment that the current passive learning model employed in Florida's trial courts does not reflect the way adults process or learn information.

Respectfully submitted,

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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: Joseph P. Milton, President, Florida Chapter of the American Board of Trial Advocates, 815 S. Main Street, Suite 200, Jacksonville, FL 32207, 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 ___ day of December, 2001.

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

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