

IADC NATIONAL JURY TRIAL INNOVATIONS PROJECT

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Georgia Jury Innovations

Regarding Jury Innovation Recommendations, Note: *The Blue Ribbon Commission on the Judiciary was created by order of the Supreme Court on March 1, 1999 for the express purpose of considering the “structure and organization of the courts as they relate to efficiency and effectiveness in the dispensation of justice.” One focus of the Commission’s efforts was enhancing the effectiveness and efficiency of juries. A report of the Commission’s results and recommendations was released on May 29, 2001.)*

1. Note Taking

Note-Taking

In Georgia, note-taking is discretionary with the trial judge.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Note-Taking: Blue Ribbon Commission Recommendation

The Judicial Council should propose uniform rules requiring that written instructions be provided to jurors for use in their deliberations. Amending the Uniform Rules to allow note-taking in every trial court should be coupled with jury instructions on the purpose, the taking and the effect of notes.

The process of taking notes serves as a useful memory aid for the evidence presented during trial and makes it easier for jurors to remain alert and maintain the focus of their attention on the evidence and arguments being presented. Studies of this widespread technique for improving comprehension and memory indicate that juries allowed to take notes are better informed about the evidence and the law during deliberations and that notes and note-taking are not disruptive, distracting, inaccurate, nor unfairly prejudicial to either side in civil or criminal cases.

Instructions concerning note-taking might include such directions and admonitions as: juror note-taking is permitted, but not required; note-taking should not distract the juror's attention from the trial proceedings; juror's notes are confidential; notes are for the private use of jurors and will not become an official document or part of the trial record; jurors should use their notes to refresh their memory of evidence presented at trial but notes should not be relied upon as definitive fact; notes have no greater weight than memory; in deliberations, note-aided and non-aided memory are of equal significance; and jurors should not be influenced by another juror's notes.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

2. Juror Handbooks/Notebooks

N/A

3. Juror Questions and Questioning of Witnesses

Juror Questions: Blue Ribbon Commission Recommendation

Uniform rules and jury instructions should be developed to allow and govern the taking of notes by jurors during trial and the asking of questions by jurors.

Allowing jurors to submit clarifying questions to a witness through the trial judge is especially appropriate for situations in which the witness testimony is particularly complex or confusing for the jury, but it is hard to justify not satisfying any juror who has a pertinent and relevant question. It seems intuitively obvious that juries are likely to render more informed decisions if jurors are permitted to actively participate by asking questions through the judge. The nature of juror questions often alerts the trial judge and the attorneys when the jurors have misunderstood an important point of evidence or testimony, thus giving them the opportunity to correct the misunderstanding with new witness testimony, closing arguments, or jury instructions on the issue. Permitting juror questions increases the probability that the jury will understand the witness testimony and give it appropriate weight. Finally, permitting juror questions helps keep the jury involved and engaged in the trial proceedings, increasing their ability to retain information and increasing their satisfaction with jury service.

Procedurally, written juror questions are screened by the judge, subject to objection by trial attorneys to scope and content, and the judge explains to the jury when evidentiary rules may prohibit certain questions from being asked and that the jury should attach no significance to the fact that some questions were not asked. The judge then reads to the witness those questions that have survived scrutiny. Experience shows that the vast majority of jury questions are serious, concise, and relevant. Giving official sanction to jury questions in the Uniform Rules will encourage this beneficial technique in jury trials; the rules of evidence and the judge's discretion will protect the integrity of the trial process.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

4. Juror Pay/Compensation

Juror Compensation

Georgia jurors are entitled to an expense allowance of not less than \$5 and not more than \$50 per diem, as set by the Grand Jury of the previous term.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Juror Compensation: Blue Ribbon Commission Recommendation

The Blue Ribbon Commission recommends that the Administrative Office of the Courts undertake further study to determine the extent of the financial burden jurors face and recommend legislation if relief is needed. There is substantial concern that a considerable number of individual jurors face real and serious financial hardship under this system of jury compensation, resulting in detrimental impacts on the entire system of jury service. Even public-spirited individuals may conclude that being required to serve at great financial hardship is unfair and, consequently, become more concerned with deciding a case quickly than with reaching a fair verdict. Ensuring that jurors do not suffer financial hardship makes jurors more receptive to their service. Further, more equitable systems of juror compensation decrease the need to grant exemptions and excuses based on financial hardship, thus improving the representativeness of the panels from which juries are selected.

No doubt there is a concern that a more equitable juror compensation schedule would be more costly to the taxpayer. That concern does not take into account, however, that there is a real cost associated with having citizens take time away from their employment to serve as jurors. Under-compensating jurors does not make that cost go away; it simply shifts the cost from the public to the individual juror. The Blue Ribbon Commission concluded that it is more equitable to spread the actual cost of jury service to a broader base rather than to have it fall on jurors individually. Some states require by statute that employers with a minimum number of employees continue to compensate employees who are summonsed for jury service. **An alternative system worth consideration is to give employers tax incentives for paying employees their normal salary, or at least to prevent employers from penalizing employees who serve as jurors.** The drawbacks of placing responsibility on employers to avoid financial hardship to jurors, however, are that it does not address the problem of hardship faced by self-employed jurors, and that ultimately it is just another shifting of the cost for this public service to another private payer. One alternative solution to this problem might be the creation of a pool of resources on which trial judges could draw in case of significant financial hardship to individual jurors serving in their courts.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

5. Alternate Jurors

The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the

same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror may be discharged. However, if the court deems it advisable, it may direct that one or more of the alternate jurors be kept in the custody of one or more court officers, separate and apart from the regular jurors, until the jury has agreed upon a verdict. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

Ga. Code Ann., § 9-11-47(b)

6. Discussions pre-deliberation

N/A

7. Deliberation

N/A

8. Length of Service

Length of Service (One-Day One Trial): Blue Ribbon Commission Recommendation

The courts should adopt the one-day one trial system wherever practicable.

Under the one-day one trial system the court calls prospective jurors to serve for a period of only one day. If selected as a juror on that day, the person serves until the case is completed; if not selected, the prospective juror has fulfilled the obligation of service until called again, generally more than one year later. Some courts require prospective jurors to be available - that is, to call in and listen to a recording to see whether they must report for jury service the next day - for several days or weeks. Once that person has been summonsed for jury service, however, his or her obligation ends at the completion of one day or one trial.

The advantages of this system of jury service are several. Jury service limited to the longer of one day or one trial reduces the hardship associated with jury service and, as a consequence, reduces the need for exemptions or excuses from service. The reduced number of people excused increases the representativeness and inclusiveness of the jury pool. Because this system requires courts to summons a greater number of prospective jurors, more persons have the educational experience of serving on a jury or, at least, undergoing juror orientation, which is generally a positive experience. While there are marginally increased administrative costs in postage and forms and in more frequent juror orientations, the Commission believes the multiple advantages of one-day / one-trial jury service make it advisable to adopt this system in all judicial circuits where the population and jury pool are sufficient.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

9. Length of Time Restrictions on Trials

N/A

10. Judge's Responses to Jury Questions

N/A

11. Jury Size

Jury Size

The parties may by written stipulation, filed of record, stipulate that the jury shall consist of any number less than that fixed by statute.

Ga. Code Ann., § 9-11-47(a):

Jury Size: Blue Ribbon Commission Recommendation

All civil juries should be composed of six persons, rather than twelve.

The traditional twelve-person size of the jury has been the subject of proposals for change both in Georgia and nationwide. The Federal Constitution's Seventh Amendment guarantee of the right to jury trial in civil suits has been held to be satisfied by a six-person jury. The United States Supreme Court has said that the reduction in the number of persons on a civil jury to six does not prevent the jury fulfilling its purpose "to assure a fair and equitable resolution of factual disputes." Challenges to six-person civil juries on state constitutional grounds have been resolved upon the same reasoning, that "there is nothing in the Constitution that requires a jury of twelve.

The Georgia Council of Superior Court Judges has recognized the benefits of six-person juries in the past and has made proposals for their use in our state while other groups have convinced other states of the benefits of smaller juries. One might surmise that the general acceptance of alternative dispute resolution techniques has made the public more receptive to changes in the traditional concept of jury trials. The chief benefits of a smaller jury include a reduction in the time required for jury selection and a reduction in the size of jury panels. The question is whether these efficiency benefits justify the potential loss in representation of a cross-section of the community and a possible reduction in the certainty that the jury's verdict represents the true preponderance of the evidence on contested fact issues. There is considerable doubt that community representation is significantly weakened by the use of six-person juries and several studies have shown that six-person juries and twelve-person juries reach similar results.

The Blue Ribbon Commission has concluded that any potential losses of certainty or community representation in civil trials are of insufficient weight to justify continuing the present expenditure of judicial resources

and juror resources inherent in the twelve-person jury. The six-person jury is currently used in Georgia for the trial of misdemeanors in all courts. Surely the loss of liberty at stake in those cases is of equal seriousness to the monetary stakes in civil litigation, and the certainty with which six-person juries make their decisions should be sufficient to satisfy the requirements of civil justice.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

12. Number of Jurors Needed to Return a Verdict

N/A

13. Juror Admonition

N/A

14. Jury Nullification

N/A

15. The Use of Plain English

N/A

16. Absence of the Jury

N/A

17. Jury Instructions

Written Jury Instructions

Many Georgia courts are now providing written copies of the instructions for jurors.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Written Jury Instructions: Blue Ribbon Commission Recommendation

The Judicial Council should propose uniform rules requiring that written instructions be provided to jurors for use in their deliberations.

Written instructions have been found to reduce the number of questions by the jury about their instructions during deliberations, while serving to remind jurors to consider all aspects of the legal claims or offenses, and as a means of structuring the deliberative process. Written instructions also reduce the likelihood of disputes among jurors regarding the content and application of instructions. It has been found that written instructions result in reduced deliberation time and in greater juror confidence in their verdict. Logistically, this procedural device can be accomplished by having trial attorneys draft two sets of recommended instructions, one with relevant citations for the judge and one without citations for the jury. In the alternative, a judge may tape record the verbal jury charge and provide jurors with the tape recording. Audio recording of instructions is

less logistically cumbersome for courts with limited resources and may help jurors who have difficulty with written text, but tape recordings are more cumbersome to use for the jurors and they produce fewer benefits than do written instructions.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

18. Child-Care for Jurors

N/A

19. Jury Room

N/A

20. Accommodation

N/A

21. Juror's Bill of Rights

N/A

22. Materials Permitted in Possession of the Jury

N/A

23. Various Rules

Juror Orientation

Many Georgia circuits routinely use videotaped orientation programs, such as those prepared by the Council for Superior Court Judges.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Jury Questionnaires

Different courts within the state use markedly different questionnaires. Some are very extensive and ask jurors about specific experiences with types of cases for the purpose of assisting attorneys in conducting voir dire.

24. Various Recommendations

Juror Orientation: Blue Ribbon Commission Recommendation

It is important that the jurors be addressed in person by at least one judge during the time of their service. Since many jurors may never leave the jury assembly room, the personal presence of a judge at the beginning of the process makes those jurors more willing to accept that their presence is, indeed, important to the court's ability to administer justice. For those jurors who are seated for the trial of a case, the judge's personal appearance in the orientation program lends credibility and gravity to the proceedings from the outset. Judges should also try to talk to jurors when they are dismissed at the end of the jury trial week and take the

opportunity to make contact with jurors, consistent with the Supreme Court guidelines.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Increasing Juror Pools: Blue Ribbon Recommendation

The General Assembly should revise the "Motor Voter Jury Statute" to require that necessary information be provided to the Jury Commissioners.

The expansion of the jury pool through the "Motor Voter Jury Statute" in 1999 apparently has had some unintended impacts. The lists received by Jury Commissioners from the Department of Public Safety lack some necessary information. The process of integrating names from the drivers' license lists into the jury pool have increased the costs of revising jury boxes to an unnecessary degree due to the lack of important information on the driver's license lists. The Administrative Office of the Courts and the Council of Superior Court Clerks are working on draft legislation which would amend the statute to remedy the deficiencies of information while retaining the positive benefits to the jury pool intended by the General Assembly. The Blue Ribbon Commission recommends that the General Assembly reconsider this aspect of the statute governing jury list compilation and maintenance and revise it as may be necessary to ensure that essential information be provided to Jury Commissioners.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Jury Questionnaires: Blue Ribbon Commission Recommendation

Short juror questionnaire forms should be sent out, with a return envelope, along with the jury summons in courts throughout the state.

The experience of some Georgia counties is that forms sent out with self-addressed, stamped envelopes, are returned by 90% of the jurors. The use of short questionnaire forms is beneficial in that it shortens voir dire and provides the clerk with correct address information. Currently, the use of such forms is discretionary with the court; the Commission recommends that every court adopt the use of short jury questionnaires to be sent along with the jury summons.

<http://www2.state.ga.us/courts/supreme/Blueribbon.htm>

Other Recommendations

Additional procedural innovations - such as giving the jury preliminary substantive instructions before trial, giving specific instruction on deliberation procedures, and the use of mini-opening statements prior to voir dire - are currently under study by the Pilot Project of the State Bar of Georgia's Court Futures Committee.

The Blue Ribbon Commission makes these three recommendations in making the courts more user friendly:

- That the State Bar and the Supreme Court provide recognition for judges, clerks, and courts that are outstanding in their outreach efforts to inform the public about the judicial system.
- That judges and judicial staff should seek to make courthouses and courts more service oriented in their dealings with litigants, lawyers, witnesses, victims, jurors and the general public.
- That judges and judicial staff seek to be proactive in educating and informing the public about the work and processes of the courts.

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