

DISHONESTY ON VOIR DIRE (updated September 2010)

I. UNITED STATES SUPREME COURT

***Williams v. Taylor,*
529 U.S. 420, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000).**

Remand for evidentiary hearing regarding allegations that juror who served in capital murder trial concealed information on voir dire about her relationship with a prosecution witness, as well as her connection with the prosecutor, and that prosecutor was aware of the concealment but stood mute. (The district court ultimately found that the juror had withheld information on voir dire intentionally to mislead the trial court, despite the juror's denial of the accusation. Habeas relief was therefore granted and the Fourth Circuit affirmed. See *Williams v. Netherland*, 181 F.Supp.2d 604 (E.D.Va. 2002), *aff'd*, 2002 WL 1357162 (4th Cir. 2002) (unpublished).)

II. UNITED STATES COURTS OF APPEALS

***Conaway v. Polk,*
453 F.3d 567 (4th Cir. 2006).**

In capital habeas case, remand for evidentiary hearing on juror bias claim based upon allegations that a juror was a relative of an accomplice who cooperated with the prosecution and testified against petitioner and the juror concealed his relationship despite repeated questions about familiarity with the parties, witnesses or other participants in the case. Declarations were submitted reflecting that the juror had declared a bias, that petitioner should die if convicted, thus an evidentiary hearing should have been held. (On remand, a hearing was held and the district court found that the juror failed to answer honestly material questions during voir dire when he denied knowing any witnesses other than the Sheriff, denied that any family members had dealing with the District Attorney's office, and denied any reason that would keep him from being fair and impartial. Habeas relief granted. *Conaway v. Polk*, 2008 WL 4790107 (M.D.N.C. Oct. 24, 2008).)

***Sanders v. Lamarque,*
357 F.3d 943 (9th Cir. 2004).**

The state trial court committed constitutional error when it dismissed the lone holdout juror in response to the prosecution's assertion that it would have exercised a peremptory challenge against the juror had it been aware of information that was revealed by the juror at an *in camera* hearing conducted during jury deliberations. The record showed that any failure by the prosecution to discover this information was due to its own lack of diligence and not any concealment or deliberate withholding of information by the juror. Further, the information did

not support a finding of implied bias.

Williams v. Price,
343 F.3d 223 (3rd Cir. 2003).

Where petitioner claimed that a juror lied during voir dire when the juror denied harboring any racial bias, the state court unreasonably applied clearly established federal law by failing to consider testimony by a trial witness concerning a post-verdict encounter with the juror who allegedly uttered racial slurs. The case is remanded for an evidentiary hearing on the merits of the claim.

Fields v. Woodford,
309 F.3d 1095 (9th Cir. 2002).

Hearing on implied bias required in capital case involving kidnapping/rape where juror stated on voir dire that his wife had been victim of robbery but neglected to mention that she had been kidnapped and raped and the perpetrator never found. (Following the hearing, the district court ruled that there was no actual or implied bias, a ruling subsequently upheld by the appeals court.)

United States v. Carpa,
271 F.3d 962 (11th Cir. 2001).

Remand for more comprehensive evidentiary hearing to determine whether juror who concealed information on voir dire was biased. The trial court's prior hearing on the matter was woefully insufficient because: the defendant was not allowed to participate or be present during the F.B.I.'s questioning of the juror about his criminal record; the trial court was not present during the questioning and failed to question the juror itself; and the ex parte examination of the juror by the government may have added another layer of juror misconduct in this trial of multiple defendants on charges including jury tampering.

United States v. Sandilis,
14 Fed.Appx. 287, 2001 WL 867389 (4th Cir. 2001) (unpublished).

Fourth Circuit held that "*Remmer* hearing" to determine whether a juror was biased was required where information came to light that member of jury failed to reveal repeated negative business dealings with the defendant business owners. The business owners, who had never seen the juror before but only spoken with her on the phone, were informed of the juror's identity by some of their employees who attended the last day of the trial and pointed out the juror to the defendants. (After hearing, the district court denied motion for new trial and that decision was affirmed.)

***United States v. Henley,*
238 F.3d 1111 (9th Cir. 2001).**

Case remanded for second time where drug defendants alleged that co-defendant and juror had entertained bribery scheme and that one juror had made racist remarks about defendants; remand on race bias includes allegation that juror may have lied about racist views on voir dire.

***Green v. White,*
232 F.3d 671 (9th Cir. 2000).**

Juror's lies concerning his background, both on juror questionnaire and during voir dire, and juror's attempts to cover up behavior in post-trial proceedings-where juror attempted to distance himself from statements in his declaration-supplied basis for presumption of actual bias and required habeas corpus relief.

***Dyer v. Calderon,*
151 F.3d 970 (9th Cir 1998) (en banc), cert. denied 525 U.S. 1033.**

Habeas relief required where juror in capital trial failed to disclose that brother was murder victim despite on point questions before and during voir dire. Even though juror claimed to be unbiased, the court vacated the conviction and sentence, holding a finding of actual bias was not required and that bias should be presumed where a juror's actions created "destructive uncertainties" about the indifference of the juror.

***United States v. Tucker,*
137 F.3d 1016 (8th Cir. 1998).**

Remand for evidentiary hearing on defendant's juror misconduct claim where defendant presented evidence that called into question whether a juror intentionally failed to disclose during voir dire a grudge her husband and his family had against the defendant, the former governor, who had previously denied the juror's husband's clemency request. (The juror married her husband during the trial. At the time of voir dire, the juror lived with him and they had a child together.) Although at the hearing on the defendant's new trial motion the juror claimed ignorance about her husband's failed clemency request, the defendant's proffer of evidence showing the husband's family's preoccupation with the defendant was difficult to reconcile with the juror's testimony. The appeals court concluded: "Tucker has raised enough question about what Johnson knew at the time of voir dire to entitle him to a full hearing on this issue, including crucial credibility determinations." Defendant was also entitled to a hearing on whether the juror intentionally deceived the court by failing to reveal her soon-to-be husband's criminal past.

Burton v. Johnson,
948 F.2d 1150 (10th Cir. 1991).

Habeas relief granted in murder case where battering and abuse issues were prominent because juror did not acknowledge juror's own sexual abuse during voir dire; defendant had asked for and been denied individually sequestered voir dire on issue (lying juror also discussed own experiences with other jurors). Habeas court refused to accord presumption of correctness to state court findings.

United States v. Colombo,
869 F.2d 149 (2nd Cir. 1989).

Conviction overturned where juror deliberately failed to reveal on voir dire that brother-in-law was an attorney for the government.

United States v. Scott,
854 F.2d 697 (5th Cir. 1988).

Convictions for conspiracy to import marijuana and other crimes were reversed and the case remanded for a new trial because juror failed to disclose during voir dire that his brother was a deputy sheriff who performed work in an office that was involved in the defendants' case.

Hard v. Burlington Northern R.R.,
812 F.2d 482 (9th Cir. 1986).

FELA negligence action was reversed and remanded. The court held that the lower court erred in failing to hold an evidentiary hearing when juror affidavits and voir dire testimony indicated possibility of dishonesty. The court also remanded the case for a hearing because of one juror's statements concerning the railroad's settling practices, which constituted the introduction of an extraneous influence.

United States v. Perkins,
748 F.2d 1519 (11th Cir. 1984).

Conviction for obstruction of justice was reversed and case remanded for a new trial. The court found that the defendant had suffered actual prejudice as a result of juror's failure to disclose prior associations with the defendant as well as prior involvement in criminal cases.

McCoy v. Goldston,
652 F.2d 654 (6th Cir. 1981).

In civil rights case grounded on alleged police misconduct, remand for hearing to determine whether juror's intentional failure to disclose fact that son was in training to become parole

officer, despite being asked questions on point during voir dire, rendered trial unfair based on either a resulting prejudicial impairment of right to exercise peremptory challenges or finding that correct answer would have provided basis for challenge for cause.

***United States v. Bynum,*
634 F.2d 768 (4th Cir. 1980).**

Venireperson's concealment of fact that brother had been convicted of crime, in face of voir dire question on point, required new trials where the venireperson was seated as a juror on the trial of two separate cases involving three defendants (two of whom were convicted by the juror of making false statements to the government).

***United States v. Eubanks,*
591 F.2d 513 (9th Cir. 1979).**

Juror's failure to reveal that his two children were serving sentences for convictions arising from drug transactions in response to questions on point in juror questionnaire and on voir dire required new trial for drug defendant.

***United States ex rel. De Vita v. McCorkle,*
248 F.2d 1 (3rd Cir. 1957).**

State prisoner who was sentenced to death in robbery-murder case was entitled to habeas relief where juror during voir dire failed to reveal that he had been a robbery victim in a holdup with similarities to the capital offense. If state law permits a resentencing hearing, that is the proper remedy. Otherwise, a new trial would be required.

III. UNITED STATES DISTRICT COURT

***Stanley v. Ylst,*
2007 WL 2121845 (E.D. Cal. July 24, 2007) (not reported in F.Supp2d).**

In capital case, adopting findings and recommendation of magistrate judge (2007 WL 1100320 (E.D. Cal. April 11, 2007) and granting habeas relief on claim of juror misconduct at pre-penalty phase competency hearing where juror failed to disclose during voir dire she had been raped in the past and was presently involved in a physically abusive relationship and she lied when she stated she could be a fair and impartial juror.

***Ida v. United States,*
191 F.Supp.2d 426 (S.D.N.Y. 2002).**

Hearing required regarding possible juror concealment of bias on voir dire where evidence shows that juror commented that the defendants wouldn't have been arrested if they weren't guilty,

belying the juror's claim that he would afford the defendant the presumption of innocence. Hearing ordered at which juror was to appear to give testimony and both the government and the defendant were barred from any contact with the juror whatsoever prior to the hearing.

IV. STATE COURT

***Merck & Co., Inc. v. Garza,*
277 S.W.3d 430 (Tex. App. 2008).**

In civil suit against drug manufacturer, juror committed misconduct by failing to disclose a financial relationship with one of the plaintiffs and instead revealing only that he and the plaintiff knew each other from school. (They were both teachers.) Even assuming the juror's silence regarding his financial relationship with the plaintiff was "innocent," it was impossible to say that there was no injury to the defendant as a result of the omission.

***People v. Mosley,*
56 A.D.3d 1140, 867 N.Y.S.2d 289 (NY AD 2008).**

In assault case, defendant was entitled to an evidentiary hearing on his claim of juror misconduct where defendant alleged that he learned after the verdict that a juror failed to disclose that she was the mother of defendant's former girlfriend and that she knew defendant.

***Ex Parte Burgess,*
___ So.2d ___, 2009 WL 4097586 (Ala. Sept. 5, 2008).**

In capital case, remand for an evidentiary hearing on petitioner's post-conviction claim that jurors failed to answer accurately questions that were posed to them during the voir dire examination. Lower courts erred in finding that the claim was procedurally defaulted on the ground that it could have been discovered and raised by newly appointed counsel in a motion for new trial. "[I]t is unreasonable to require that a defendant, unaware of any failure to answer correctly questions posed during the voir dire examination, must contact each juror and ask whether he or she accurately and truthfully answered such questions."

***Henderson v. State,*
___ So.2d ___, 2008 WL 398954 (Ala. Crim. App. Aug. 29, 2008).**

In capital murder case where defendant was sentenced to life imprisonment, trial court erred in denying motion for new trial without holding an evidentiary hearing on a claim of juror misconduct which was based on allegations that a juror failed to indicate on his questionnaire that a cousin had been convicted of capital murder. In support of the motion, defendant had attached an affidavit from defense counsel who stated: (1) jurors informed him in post-trial interviews that the juror in question had told other jurors that he had a cousin who was convicted of capital murder and sentenced to death just for being present at a murder scene and that because

of that he was going to convict defendant in this case; and (2) defense counsel would have struck the juror with a peremptory challenge had he known about the cousin.

People v. Saxton,
862 N.Y.S.2d 673 (N.Y. A.D. 2008).

In case where defendant alleged that a juror failed to disclose a past extramarital affair with a witness to the altercation between defendant and the victim, and the case was remanded to the lower court for a hearing on the issue “whether the juror's alleged misconduct prejudiced a substantial right of defendant,” the trial court exceeded the scope of the remittal by finding that although juror misconduct had indeed prejudiced defendant's right to an impartial jury, defendant was not entitled to relief because of his failure to demonstrate that he was unaware of the misconduct before the jury rendered its verdict. New trial ordered.

Sterling v. Feldbaum,
980 So.2d 596 (Fla. App. 2008).

In medical malpractice case, where plaintiff alleged that three jurors failed to disclose their prior litigation history during voir dire, plaintiff was entitled to conduct juror interviews. The Westlaw and docket search results plaintiff presented were sufficient to provide reasonable grounds for believing that juror misconduct had occurred.

Manrique v. State,
177 P.3d 1188 (Alaska App. 2008).

In sexual assault/burglary case, defendant was entitled to a hearing on his claim that a juror committed misconduct by intentionally failing to disclose during voir dire that she previously worked at SAFE, a shelter and advocacy program for domestic violence and sexual assault victims.

McQuary v. State,
241 S.W.3d 446 (Mo. App. 2007).

In case where defendant was convicted of distribution of a controlled substance within 2,000 feet of a school, remand was required so the motion court could make findings of fact and conclusions of law regarding defendant’s claim that a juror intentionally failed to disclose a close personal relationship with the State's principal witness.

Massey v. Carter,
238 S.W.3d 198 (Mo. App. 2007).

In personal injury case, plaintiff was entitled to a new trial where juror failed to respond when the panel was asked whether any of the prospective jurors had been sued before and, in fact, the juror

had five collection lawsuits filed against him and three of the five were recent lawsuits. The trial court erred in finding that the voir dire question was not clear and abused its discretion in ruling that the juror's nondisclosure was unintentional.

Mariner Health Care, Inc. v. Estate of Edwards ex rel. Turner,
964 So.2d 1138 (Miss. 2007).

Trial court committed reversible error in wrongful death case by, inter alia, failing to conduct an inquiry into allegations that one juror announced that her mind was made up on the first day of trial and also withheld during voir dire material disqualifying information concerning her knowledge about the defendant and bias against it.

State v. Boiko,
156 P.3d 934 (Wash. App. 2007).

In rape case, trial court did not abuse its discretion in granting defendant a new trial where a juror revealed during voir dire that she knew a key prosecution witness but did not disclose that the witness was actually her husband. In addition, it was revealed post-trial that the juror had previously applied for a job with the prosecutor and, further, she was involved in ongoing litigation with him as opposing counsel. Although the trial court found that the juror had not failed to make material disclosures during voir dire and did not find prosecutorial misconduct, it concluded that there was implied bias as a matter of law.

State v. Johnson,
155 P.3d 183 (Wash. App. 2007).

In case involving charges of burglary, indecent liberties and attempted rape, defendant was entitled to a new trial because a juror failed to reveal during voir dire that her daughter had been the victim of a date rape and then injected that information into deliberations. Regardless of the reason for mentioning the incident, it was "quite likely that [the juror's] comment gave greater credibility and sympathy to the witness." In denying defendant's new trial motion, the trial court failed to consider the combined effect of the juror's actions at voir dire and during deliberations. Further, the trial court did not objectively examine whether the injected information could have affected the jury's determination. Thus, the denial of the new trial motion was an abuse of discretion.

Pereda v. Parajon,
957 So.2d 1194 (Fla. App. 2007).

In personal injury lawsuit where victim was struck by a van, trial court abused its discretion by denying victim a new trial on ground that foreperson of the jury had failed to reveal during voir dire that she had been involved in prior personal injury litigation involving a car accident that had resulted in a settlement. First, the foreperson's nondisclosure, which precluded counsel's

ability to question her about the experience and to fairly evaluate her as a prospective juror, was material. Second, it was clear that the foreperson, who was an attorney, concealed her personal injury litigation history although whether or not her concealment was intentional was of no import. Finally, counsel during voir dire had made a diligent inquiry of each of the prospective jurors regarding any involvement in personal injury litigation.

Campise v. Borcharding,
224 S.W.3d 91 (Mo. App. 2007).

In personal injury action where plaintiff received only partial damages and she then moved for a new trial based on a juror's alleged failure to disclose that he had previously been a party to litigation, trial court abused its discretion in failing to hold an evidentiary hearing to determine whether there was a nondisclosure and, if so, whether the juror's failure to disclose was intentional. (An intentional nondisclosure per se mandates a new trial. If the failure to disclose was inadvertent, a new trial is not warranted unless the party seeking it proves prejudice that may have influenced the verdict.) That plaintiff did not submit an affidavit from the juror was not fatal to her hearing request given that "witnesses may be unwilling to voluntarily co-operate with movants by supplying affidavits."

Neumann v. Arrowsmith D.O.,
164 P.3d 116 (Okla. 2007).

In medical malpractice case, affirming the trial court's grant of a new trial to plaintiff where it was discovered after trial that the jury foreperson had not been completely candid during voir dire and had failed to disclose that he had been the non-prevailing party in a lawsuit. Because false voir dire answers deprive the parties of an opportunity to delve deeper into the juror's qualifications, "an omission, even if accidental concerning a juror's possible bias, entitle[s] the moving party to a new trial."

Williams v. State,
904 A.2d 534 (Md. 2006).

In case involving drug-related offenses, a juror's failure to disclose during voir dire that she had a sister who was employed as a secretary for the State's Attorney's Office that prosecuted defendants for drug crimes warranted new trial where the trial court failed to conduct an inquiry to determine whether the juror's non-disclosure of the relationship was intentional or inadvertent.

Carruthers v. State,
145 S.W.3d 85 (Tenn. Crim. App. 2004).

In capital case involving an anonymous jury where evidence existed indicating that one of the jurors may have failed to reveal that he lived near the petitioner's mother and had a troubled relationship with the petitioner's family, petitioner presented a compelling need to interview the

juror in order to determine: (1) whether the juror willfully concealed information during voir dire; (2) whether he was biased against petitioner based on his history with petitioner's family; and (3) whether the juror conveyed this information to other jurors. (Ultimately, petitioner was denied post-conviction relief. See 2007 WL 4355481 (Tenn. Crim. App. 2007).)

Tripp v. State,
874 So.2d 732 (Fla. App. 2004).

Where juror did not disclose that he knew defendant or any members of his family, and defendant learned from his brother after trial that the juror did in fact know him, the lower court erred in denying the request for a post-trial interview with the juror. The appellate court reverses the order denying the motion for a new trial and remands for an evidentiary hearing, including an interview of the juror.

Nadolski v. Ahmed,
142 S.W.3d 755 (Mo. App. 2004).

In medical malpractice case, trial court did not abuse its discretion by granting a new trial after finding that a juror intentionally failed to disclose in response to a voir dire question information concerning a products liability action against the manufacturer of the product that injured her husband.

State v. Dye,
784 N.E.2d 469 (Ind. 2003).

Affirming grant of postconviction relief where juror failed to disclose on voir dire that she had a brother who had been sentenced to death, which she believed he deserved; failed to disclose that she had two other brothers who had been arrested; and failed to disclose that she herself had been raped while very young.

Dalton v. State,
63 P. 3d 847 (Wash. App. 2003).

New trial ordered where juror concealed on voir dire that he had formed an opinion about the plaintiff as an "opportunist" (plaintiff was seeking a money judgment after her child died in foster care).

Conference America, Inc. v. Telecommunications Cooperative Network, Inc.,
___ So.2d ___, 2003 WL 22753446 (Ala. Nov. 12, 2003).

In civil contract dispute case, the trial court abused its discretion in denying plaintiff's motion for new trial that was based on a juror's failure to reveal that he had been involved in at least three contract disputes and that he had been a defendant in legal actions involving those contract

disputes. The juror also failed to disclose that he had been arrested, jailed and convicted of a criminal offense, and that he had been charged with being in arrears in his child support and was a party to a paternity action. There was no evidence that the matters inquired about were temporally remote, that the questions posed to the juror were ambiguous, or that the juror's misrepresentations were inadvertent.

State v. Centeno,
787 A.2d 537 (Conn. 2002).

After conviction in larceny case but before sentencing, defendant told lawyer that he recognized juror who had once solicited him to commit unrelated crime; trial court's failure to conduct any hearing based on alleged "facial incredibility" of defendant's statements held erroneous and case remanded for inquiry.

Bell v. Sabates,
90 S.W.3d 116 (Mo. App. 2002).

Affirming grant of new trial where juror failed to disclose on voir dire that he had been a defendant in a personal injury case two years earlier.

State v. Harris,
652 N.W.2d 585 (Neb. 2002).

In shoplifting case, a new trial is ordered where juror failed to disclose that she had been convicted of shoplifting and the circumstances indicated that this was not a case of juror dishonesty because of mistake or embarrassment, but rather there was an inference that the juror deliberately lied with the motivation of being placed on the jury.

State v. Hatcher,
568 S.E.2d 45 (W. Va. 2002).

Reversing conviction where juror failed to disclose that her mother had been murdered or that the police officer who investigated the case was also listed as a witness at the defendant's trial.

Kelly v. Community Hospital of the Palm Beaches, Inc.,
818 So.2d 469 (Fla. 2002).

New trial required for plaintiff doctors in fraudulent inducement case against hospital, where several jurors failed to reveal litigation histories, where the information was relevant to issues at trial, the jurors concealed the information, and the moving party was diligent in seeking the information. Accord *Roberts v. Tejada*, 814 So.2d 334 (Fla. 2002) (juror's failure to disclose prior litigation history in med-mal action warranted new trial and counsel were not required to scour public records for information on jurors as part of diligence requirement).

State v. Stone,
567 S.E.2d 244 (S.C. 2002).

New sentencing phase trial required where, among other things, trial court removed juror during penalty phase after juror recognized capital murder defendant's aunt as an old neighbor and "scant" acquaintance of the juror's. The juror indicated that she did not recognize the aunt's name during jury selection when asked, didn't intentionally withhold information about their relationship, and would not be biased by the relationship.

Proudfoot v. Dan's Marine Service, Inc.,
558 S.E.2d 298 (W.Va. 2002).

New trial required in personal injury action where juror concealed felony conviction during voir dire when asked a specific question about criminal history and where information was not discoverable using ordinary diligence. Court reversed long line of cases in stating that party no longer has to show wrong or injustice.

Banther v. State,
783 A.2d 1287 (Del. 2001).

Remand for evidentiary hearing required where jury foreperson failed to reveal on voir dire she had been the victim of a violent crime. The state's attempt to argue that the juror did not answer falsely because no one was ever prosecuted for the crime was not persuasive.

Davis v. State,
778 So. 2d 1096 (Fla. App. 2001).

Burglary case remanded for evidentiary hearing where juror did not disclose on voir dire that he had had altercation with defendant prior to trial

Quinine v. Commonwealth,
547 S. E.2d 524 (Va. App. 2001).

Reversing on other grounds, court notes that trial court also erred in refusing to investigate allegations that juror had answered falsely on voir dire and had communicated with witness during trial.

State v. Woods,
550 S.E.2d 282 (S.C. 2001).

New trial required where juror concealed information that she was a volunteer victim's advocate for three years with the prosecutor's office. The court rejected the juror's fluctuating responses and reasons about why she didn't respond correctly when asked about the matters on voir dire, as

well as her claim that she wasn't biased and did not intentionally withhold the information. The court announced it will use the inferred bias standard when a juror is found to have intentionally withheld information during voir dire.

State v. Cho,
30 P.3d 496 (Wash. 2001).

Remand for evidentiary hearing to determine whether juror deliberately failed to inform the trial court he was a retired police officer in order to be seated as a juror. The trial court is to grant a new trial for defendant, who was convicted of criminal assistance, if it finds the juror intentionally withheld the information.

Dickenson v. State,
732 N.E.2d 238 (Ind. App. 2000).

Juror's failure to reveal on voir dire that she had known defendant since childhood, had current friendship with victim, and had prior knowledge of underlying offense amounted to misconduct requiring new trial on charge of attempted murder.

State v. Jenkins,
2 P.3d 769 (Kan. 2000).

New trial granted in murder case where juror intentionally failed, in the face of specific voir dire, to reveal that her son had been murdered, that prosecution witnesses were the same officers who assisted in prosecuting her son's killer, and that the juror regarded the area where the defendant's crime occurred as a "drug area."

Doyle v. Kennedy Heating and Service, Inc.,
33 S.W.3d 199 (Mo. App. 2000), review denied.

New trial required in this personal injury action because juror failed to disclose she had filed for bankruptcy five years earlier. Jurors were voir dired about bankruptcy filings. The offending juror heard the question but didn't answer because she didn't think it was important. The Court held that once the intentional concealment of information by a juror on voir dire is proven, bias and prejudice must be presumed.

Long v. Norris & Assoc.,
538 S.E.2d 5 (S.C. App. 2000).

New trial required where juror concealed fact that his car had been repossessed in this injury action against a repossession service. Defendant investigated juror post verdict and submitted credit report and juror affidavit admitting truth. Thorough discussion of why a juror lie on voir dire requires grant of a new trial.

Petition of James Mello,
761 A.2d 506 (N.H. 2000).

New Hampshire Supreme Court barred on double jeopardy grounds retrial of petitioner whose first trial for aggravated sexual assault ended in a mistrial because one juror concealed information that she was a victim of sexual assault but revealed it to other jurors during deliberation. The trial court declared a mistrial without any inquiry of any of the jurors because the law did not permit the judge to make inquiry of jurors at that stage.

People v. Kuntu,
720 N.E.2d 1047 (Ill. 1999).

Remand for an evidentiary hearing where the day after the jury returned a death sentence, the jury foreman wrote a letter to the State's Attorney for the county in which the trial occurred suggesting that the two men had a personal relationship which had not been disclosed during voir dire. (Relief was ultimately denied on that claim but the death sentence was reversed on other grounds. See 752 N.E.2d 380 (Ill. 2001).)

Enyart v. City of L.A.,
90 Cal. Rptr. 2d 502 (Cal. App. 1999).

Civil judgment against city of Los Angeles reversed where jurors concealed bias on voir dire and in questionnaires, including strong negative opinions about conduct and veracity of Los Angeles police; jurors shared views based on own experiences that LAPD regularly "screws over" people and hides evidence; case remanded for new trial.

Zamudio v. Superior Court,
74 Cal.Rptr.2d 765 (Cal. App. 1998).

On showing of lying on voir dire, defendant was entitled to juror questionnaires which were not otherwise discoverable.

Lebron v. State,
724 So.2d 1208 (Fla. App. 1998).

Rejecting harmless finding, court vacated defendant's conviction and remanded for new trial where jury foreperson failed to disclose during voir dire his suspicion that defendant had murdered his friend in previous homicide.

Young v. State,
720 So.2d 1101 (Fla. App. 1998).

Court reversed trial court's denial of defendant's motion for new trial and remanded to determine

whether juror withheld information at voir dire, where juror had not disclosed that she had been sexually abused and where the defendant was charged with lewd act on a minor.

James v. State,
717 So.2d 1086 (Fla. App. 1998).

Affidavits by defendant's family and witnesses--that juror knew defendant's family and juror had relatives who had been convicted of criminal offenses despite negative responses during voir dire--established prima facie case of juror misconduct and entitled defendant to evidentiary hearing. After remand, convictions affirmed.

State v. Martinelli,
972 S.W.2d 424 (Mo. App. 1998).

Juror's intentional failure to disclose felony and misdemeanor convictions on voir dire required new trial.

Howard v. State,
982 S.W.2d 536 (Tex. App. 1998).

New trial on punishment required when it emerged during opening of punishment phase that juror was stepmother of victim of another of defendant's alleged rapes. Not strictly a dishonesty case because stepmother was unaware of connection until that stage, but court said was "contrary to human nature" to expect her to ignore feelings about rape of stepdaughter.

State v. Myers,
698 A.2d 823 (Conn. 1997).

Convictions for murder, first-degree robbery, and attempted first-degree assault remanded for a hearing to determine existence of actual bias where a juror neglected to inform the court during voir dire that he had been the victim of an assault. After remand, conviction was reversed and new trial granted: *State v. Myers*, 244 Conn. 683, 711 A.2d 704 (Conn. 1998).

Groves v. Ketcherside,
939 S.W.2d 393, 394 (Mo. App. 1997).

Verdict person's failure to disclose during voir dire that he received an unfavorable verdict in a wrongful death action arising out of the death of his wife required new trial.

State v. Wormley,
701 A.2d 944 (N.J. 1997).

Court's failure to voir dire remaining jurors after juror was dismissed for not revealing her

knowledge of the defendant and the crime during voir dire constituted plain error.

Canada v. State,
944 P.2d 781 (Nev. 1997).

When asked during voir dire if any member of his family had been the victim of a crime, juror answered no. However, it came to light at the conclusion of the trial that the juror's father had been murdered and that he himself had been the victim of organized crime. Trial court erred in failing to grant mistrial.

Tomlin v. State,
695 So. 2d 157 (Ala. Crim. App. 1996).

New trial required when juror failed to disclose during voir dire that he had been victim of crime, had read new articles about case, had visited courthouse and seen defendant surrounded by reporters, had criminal record, had father with criminal record, and had friend in law enforcement.

Dominion Bank v. Masterson,
928 P.2d 291 (Okla. 1996).

Civil judgment on conversion and slander reversed where juror answered on voir dire that he had been previously party to one lawsuit and information later surfaced that he had been a party 21 times, and that the losing party's attorney in this case had secured judgment against him. The litigant's right to fair exercise of peremptory challenges was hampered by the nondisclosure, requiring a new trial.

Marshall v. State,
664 So.2d 302 (Fla. App. 1995).

Criminal case reversed and remanded for new trial because juror failed to disclose that she volunteered at the county jail where the defendant was being detained and that she had contact with the defendant and one of his key witnesses in the course of her duties as a volunteer after being chosen as a juror. The juror escorted the defendant's witness to see him the night before his trial was to begin. She had already been chosen to sit on the jury. The combination of these elements was prejudicial to the defendant.

State v. Adams,
880 P.2d 226 (Haw. App.) cert. denied, State v. Adams, 884 P.2d 1149 (1994) .

Second degree assault conviction was reversed and remanded for a new trial when juror relayed her previous experiences as a sexual assault victim, in essence explaining why the alleged victim in the case did not defend herself and presenting extra-record evidence. The juror in this case also

lied to the court in that, when questioned, she failed to reveal that she had been a victim of sexual assaults in the past.

State v. Holcomb,
886 P.2d 14 (Or. App. 1994).

First degree burglary conviction reversed and remanded for a new trial because juror failed to reveal that he had been charged with a criminal offense and was asked to reveal any such prior charges on voir dire.

In Re Hitchings,
860 P.2d 466 (Cal. 1993).

Capital case. New trial ordered where juror did not disclose on voir dire extent of pretrial knowledge about case and discussed case in middle of trial with nonjuror in violation of oath.

Freeman v. State,
605 So.2d 1258 (Ala. Crim. App. 1992).

Capital case. Death sentence overturned and new trial granted when jury foreman failed to disclose that he had been a police officer after defense counsel specifically asked all venire members with a law enforcement background to identify themselves.

T.K. Stanley, Inc. v. Cason,
614 So.2d 942 (Miss.1992).

New trial motion should have been granted where evidence was overwhelming that a juror withheld material information on voir dire, inter alia, that the juror knew the plaintiff.

Holland v. State,
588 So.2d 543 (Ala. Crim. App. 1991).

Venireperson who was selected as juror expressed view as to defendant's guilt before jury was empaneled and before giving false response concern fairness during voir dire; trial court's failure to inquire whether these remarks had in fact been made, and if so, whether the juror could set her previous opinion aside, required reversal.

Abercrombie v. State,
574 So.2d 879 (Ala. Crim. App. 1990).

Conviction for possession of a pistol, after conviction of a violent crime, was reversed and the case remanded because juror failed to answer truthfully on voir dire the question whether she had an interest in convicting the defendant. The juror was the mother a woman whom the defendant

had previously raped.

State v. Gilbert,
568 So.2d 876 (Ala. Crim. App. 1990).

Grant of new trial affirmed and conviction for two counts of rape, sodomy and sexual abuse were reversed and remanded because juror failed to reveal that she knew someone who had been sexually abused.

Clark v. State,
551 So.2d 1091 (Ala. 1989).

Court issued the writ of error coram nobis and his drug conviction reversed because juror failed to reveal his prior jury service on a drug case in which the defendant was convicted.

Gray v. Bryant,
379 S.E.2d 894 (S.C. 1988).

Medical malpractice action was reversed and remanded and a new trial granted because juror failed to disclose that she was a patient of the respondent doctor.

Ex Parte Pool,
497 So.2d 537 (Ala. 1986).

Law enforcement officer's manslaughter conviction was reversed because two jurors failed to answer questions regarding (1) conflicts/problems they had with law enforcement officers in the past and (2) any relation to law enforcement officers. One juror failed to reveal her prior legal problems and another failed to reveal that her ex-husband was a police officer.

Gold Kist, Inc. v. Brown,
495 So.2d 540 (Ala. 1986).

In personal injury lawsuit involving a truck, the trial court did not abuse its discretion in granting motion for new trial where one juror provided a misleading response to a question about his occupation. (Instead of revealing that he primarily drove a truck as his job, the juror claimed on voir dire to work in a warehouse.)

Warrick v. State,
460 So.2d 320 (Ala. Crim. App. 1984).

First degree manslaughter conviction was reversed and remanded because juror failed to disclose his knowledge of facts about the homicide and having worked with the victim's brother-in-law.

People v. Diaz,
200 Cal. Rptr. 77 (Cal. App. 1984).

Conviction for assault with a deadly weapon was reversed because juror failed to reveal that he had been the victim of the same crime for which defendant stood accused. Prejudice was presumed.

Herrera v. State,
665 S.W.2d 497 (Tex. App. 1983).

Voluntary manslaughter conviction with 20 year sentence was reversed and remanded for a new trial because juror failed to reveal that she had previously been the complainant in an assault case.

Ex parte Ledbetter,
404 So.2d 731 (Ala. 1981).

Conviction for robbery was reversed and remanded or a new trial on certiorari to the state supreme court because when questioned as to whether he had been the victim of a violent crime, a juror failed to disclose that he had been the victim of a shooting incident.

State v. Thompson,
361 A.2d 104 (N.J. Super. Ct. App. Div. 1976).

Conviction for rape, assault and battery and robbery was reversed and remanded for a new trial because juror failed to reveal his law enforcement background which included temporary work as a security guard and his then current employment as a juvenile counselor. The court presumed prejudice.

Smith v. Kent,
523 P.2d 446 (Wash. App. 1974).

Tort action verdict was reversed and remanded for a new trial because juror failed to reveal his experiences as a seasoned truck driver and then later admitted to the panel that he had operated almost every kind of truck. The court held that prejudice was presumed for a dishonest juror response to voir dire questioning and that it was irrelevant whether the dishonest answer was intentional or the defendant was actually harmed by the misconduct. Moreover, the court held that the entire jury panel was tainted when even one juror lies on voir dire.

***Weathers v. Kaiser Found. Hosps.*,
485 P.2d 1132 (1971).**

In wrongful death case against hospital where defendants prevailed, affirming grant of new trial where some jurors failed to disclose bias in favor of hospital during voir dire (also allegations of racism during deliberations, conducting outside investigation and use of extraneous evidence).

***Durham v. State*,
188 S.W.2d 555 (Tenn. 1945).**

Rape conviction reversed where juror failed to disclose that he was the prosecutor in the same trial court in a prosecution for assault with intent to commit rape.

***People v. Galloway*,
259 P. 332, 337 (Cal. 1927).**

Capital case. Reversing capital conviction and death sentence where litigant examined a juror on her qualification and juror does not "answer truly, it is manifest that [litigant] was deprived of his right to challenge for cause."