

**PREMATURE DELIBERATIONS/PREJUDGMENT**  
(updated September 2010)

**I. UNITED STATES COURT OF APPEALS**

***White v. Mitchell,***  
**431 F.3d 517 (6<sup>th</sup> Cir. 2005).**

Habeas relief granted as to death sentence where a juror's statements when re-questioned before the penalty phase indicated she had a strong inclination toward imposing the death penalty and that she was looking forward to participating in the imposition of sentence. Defense counsel's challenge for cause at that point should have been granted.

***Oswald v. Bertrand,***  
**374 F.3d 475 (7<sup>th</sup> Cir. 2004).**

Affirming grant of habeas relief where the trial court failed to conduct an adequate inquiry into pretrial conversations among potential jurors that defendant was likely guilty and into one juror's assertion that he "might just vote either way just to end it."

***United States v. Resko,***  
**3 F.3d 684 (3<sup>rd</sup> Cir. 1993).**

Conviction for conspiracy to distribute and possess cocaine and heroin was reversed and the case remanded for a new trial because every juror admitted to premature deliberations.

**II. UNITED STATES DISTRICT COURT**

***Oswald v. Bertrand,***  
**249 F.Supp.2d 1078 ( E.D. Wis. 2003), *aff'd*, 374 F.3d 475 (7<sup>th</sup> Cir. 2004).**

Habeas relief granted after trial court failed to conduct adequate inquiry into pretrial conversations among jurors that defendant was likely guilty and into one juror's assertion that he "might just vote either way just to end it."

**III. STATE COURTS**

***Sawicki v. New Britain General Hospital,***  
**971 A.2d 709 (Conn. App. 2009).**

Plaintiff in medical malpractice case was entitled to a new trial due to jurors' misconduct in evaluating the evidence and stating positions prior to the close of evidence and the submission of the case for deliberations. Trial court erred in denying new trial based on claims by the jurors

that they had followed the court's jury instructions notwithstanding their predeliberation discussions of the evidence and expressions of opinion regarding the plaintiff's case. The proper analysis is objective and focuses on the nature and quality of the misconduct.

***Valdez v. State,***  
**196 P.3d 465 (Nev. 2008).**

In capital murder case, trial court abused its discretion in denying mistrial after jury committed misconduct by deliberating about penalty while deciding the issue of guilt. Because “the jury decided Valdez's sentence without the necessary information or instructions,” this rendered “the sentencing determination arbitrary and capricious, in violation of the Eighth Amendment.” Further, “[t]he jury misconduct also denied Valdez his Sixth Amendment right to a fair trial by an impartial jury” as to both the guilt and sentence findings. “Because of the possibility that the jury decided Valdez's guilt by choosing its desired sentence, rather than based on the evidence, there is a reasonable probability that the jury's deliberation of Valdez's sentence while deliberating his guilt affected the verdict. The State did not prove beyond a reasonable doubt that the error did not cause Valdez prejudice.” And Valdez was also prejudiced by the jury deciding the sentence with no instructions at all. The fear that the jury had decided on death likely influenced Valdez to forgo a sentencing hearing and stipulate to a life without possibility of parole sentence. (The jury did not reveal what its premature sentencing decision was.)

***Ovando v. County of Los Angeles,***  
**71 Cal.Rptr.3d 415 (Cal. App. 2008).**

In lawsuit by landowners concerning expropriated wetlands, lower court abused its discretion by denying landowners's motion for new trial where jury acted improperly by discussing the case, and expressing opinions on the damages, prior to its deliberations. The situation was further aggravated by the fact that alternative jurors were present and participated in the discussions.

***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. Loftin,***  
**922 A.2d 1210 (N.J. 2007).**

In capital case, conviction and death sentence vacated where, during the early stage of the trial, it was learned that a white juror had told two of his African-American co-workers that he was going to buy a rope to hang the African-American defendant who was charged with murdering a

white man. When questioned by the trial court about the remark, the juror denied that he had predetermined defendant's guilt and he was permitted to sit with the other jurors for the remainder of the trial although ultimately he was designated an alternate juror. At no time did the trial court voir dire the other jurors to confirm that preconceived notions about defendant's guilt had not been conveyed to them. The New Jersey Supreme Court found that the trial court erred in not excusing the juror at issue given his apparent bias. It also criticized the trial court for failing to ensure that other members of the panel had not been irreparably tainted. It concluded that the conviction and sentence could not stand because it had "no confidence that the verdict was the product of a fair trial." (The error was reached through ineffective assistance of counsel claims. Trial counsel was found to have been ineffective in failing to ask for a full voir dire of the jury and appellate counsel was deemed ineffective for failing to raise on direct appeal the trial court's refusal to remove the juror and its failure to voir dire the other jurors.) The state supreme court also found that "a remand to conduct a jury voir dire is not a feasible remedy" given that the trial occurred almost thirteen years ago.

***Vestry Church Wardens of Church of Holy Cross v. Orkin Exterminating Company,***  
**644 S.E.2d 735 (S.C. App. 2007).**

In breach of contract case, trial court abused its discretion by denying plaintiff a new trial where juror discussed case with outside parties, expressed opinions about the case to other jurors prior to deliberations, and conducted an independent investigation by visiting the church that was the subject of the litigation. Regarding premature deliberations, the court observed: "The prohibition against jurors discussing a case until the trial judge submits it to them for deliberation and decision involves, our supreme court has held, a matter of fundamental fairness. The prohibition is meant to insure that jurors remain impartial throughout the entire trial and that they hear both sides of a controversy before making up their minds and rendering a verdict." (Footnotes omitted.)

***People v. Romano,***  
**8 A.D.3d 503 (N.Y. App. Div. 2004).**

Affirming lower court decision setting aside jury verdict where the evidence established that the jurors and the alternate jurors discussed the trial testimony before deliberations commenced, some jurors read and discussed newspaper articles about the case, and there were improper communications between the jurors and the alternate jurors during deliberations.

***People v. Rivera,***  
**304 A.D.2d 841 (N.Y. App. Div. 2003).**

Where uncontradicted posttrial hearing testimony established that a juror stated before trial "I know that n\* \* \* \*r is guilty," defendant was entitled to a new trial.

***State v. Palmer,***  
**71 P.3d 1078 (Idaho App. 2003).**

Drug conviction reversed where trial court instructed the jurors prior to opening statements that they could discuss the case amongst themselves during the progress of the trial.

***State v. McLeskey,***  
**69 P.3d 111 (Idaho 2003).**

Convictions for burglary and aggravated assault with a firearm vacated based on instruction which permitted jurors to discuss the case during the course of the trial. Given the risks involved in permitting jurors in a criminal case to discuss the case prior to its final submission, the court found that prejudice reasonably could have occurred.

***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).

***Hodge v. Commonwealth,***  
**68 S.W.3d 338 (Ky. 2001 ).**

Remand for full evidentiary hearing where defendant in robbery/murder case alleged that prosecutor visited jurors daily; jurors were provided with newspapers and alcohol; jurors decided on guilt before deliberations began; and other jury tampering occurred.

***Williams v. State,***  
**793 So. 2d 1104 (Fla. App. 2001 ).**

Manslaughter case remanded where alternate juror told defendant's family that sitting juror had decided on defendant's guilt before trial was over; family told defense counsel who did nothing; appellate court held counsel ineffective and remanded case for determination of whether presumption of prejudice could be rebutted.

***State v. Cherry,***  
**20 S.W.3d 354 (Ark. 2000).**

New trial granted in first-degree murder case where seven of twelve jurors admitted to either participating in or overhearing conversations about the case, alternate juror believed such conversations took place every time jurors were left alone, and one juror indicated that three to five jurors had formed premature opinions about defendant's guilt.

***State v. Sweitzer,***  
**2000 WL 973416 (Ohio App. 11 Dist. July 14, 2000), *aff'd*, 90 Ohio St.3d 1475, 738 N.E.2d 798 (Ohio Nov 22, 2000).**

Rape convictions reversed and new trial granted where trial court, faced with nonfrivolous allegation of premature deliberations, "failed to make further inquiry into the allegations as it had a duty to do to ensure that appellant's Sixth Amendment right was not infringed upon."

***State v. Aldret,***  
**489 S.E.2d 635 (S.C. App. 1997), *aff'd, in relevant part, rev'd, in part*, 509 S.E.2d 811 (SC 1999).**

Alternate juror's affidavit stating that jury engaged in premature deliberations should have been admitted and considered in conjunction with defendant's new trial motion; refusal to inquire into this issue would result in denial of fundamental fairness.

***Fisher v. State,***  
**690 A.2d 917 (Del. 1996).**

New trial ordered where defendant was convicted by less than 12 impartial jurors; one juror told other jurors that any African-American male in the area where defendant was arrested was guilty of drug dealing.

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

Juror allegedly expressed view as to defendant's guilt before jury was empaneled; 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.

***Holland v. State,***  
**587 So.2d 848 (Miss. 1991).**

In capital case, death penalty sentence overturned where jurors initially gave the sentence before the penalty phase of the trial had even begun. Although the trial judge informed the jurors that they could not render a verdict prior to the sentencing phase and then proceeded to conduct the sentencing proceeding, vacation of the later death sentence was nevertheless required. The state supreme court noted, inter alia, that opinions once formed are difficult to change. The court intimated, however, that if the judge had individually voir dired the panel, then the death sentence may not have been reversed.

***State v. Joyner,***  
**346 S.E.2d 711 (S.C. 1986).**

Judge's confusing instruction concerning premature deliberations actually permitted jury to discuss murder case before deliberations began, requiring reversal. *See also State v. Pierce*, 346 S.E.2d 707 (S.C. 1986) (companion case).

***Commonwealth v. Kerpan,***  
**498 A.2d 829 (Pa. 1985)**

Reversal where the judge, with the agreement of defense counsel, encouraged the jury to discuss the evidence amongst themselves during the trial itself and before deliberations. In a case of first impression, the court held that the "experiment" violated defendant's right to an impartial jury under U.S. Const. amend. VI and Pa. Const. art. I § 9 because premature jury deliberations or discussions were prohibited and thus trial counsel rendered IAC for agreeing to it and failing to object.

***Knorp v. State,***  
**645 S.W.2d 892 (Tex. App. 1983).**

Conviction for official misconduct was reversed and remanded for a new trial because jurors prematurely discussed the case, discussed the fact that defendant had taken a loan of \$6,000, which was much greater than the amount of money he was formally charged with taking and defendant was separated from his wife.

***State v. Eagen,***  
**582 P.2d 1195 (Mont. 1978).**

Conviction for mitigated deliberate homicide was reversed and remanded for a new trial because juror made public pronouncement that he as well as other jurors had prejudged the defendant's guilt and that some of the jurors were the victim's friends and same juror was allowed to sit with other jurors and alternate even after he was disqualified. After an initial interview with the juror who at first denied being in a bar and speaking about the case and then later admitted to "joking" about it, the juror was allowed to sit with the jury for the rest of the afternoon and then he was later replaced by an alternate.

***People v. Brown,***  
**132 Cal. Rptr. 217 (Cal. App. 1976).**

Conviction for furnishing false claims rendered under a medical program was reversed and remanded for a new trial because during a break juror indicated his belief in the defendant's guilt. The juror to whom the comment was made a sworn statement to the court about the incident.

***State v. Drake,***  
**229 S.E.2d 51 (N.C. App. 1976).**

Second degree murder conviction was reversed and remanded for a new trial because of uncontradicted witness testimony that she heard a juror comment on the issue of self-defense as being something the defendant made up to conceal his actions.