

## UNQUALIFIED/MISBEHAVING/BIASED JURORS

(Includes Incompetent Jurors, Sleeping Jurors, Intoxicated Jurors, Racist Jurors and Jurors with Pending Charges)

(updated September 2010)

### 1. INCOMPETENT JURORS

*Sullivan v. Fogg*,  
613 F.2d 465 (2nd Cir. 1980).

Murder conviction reversed and remanded because juror was delusional and heard voices during the trial. The juror believed that the voices belonged to defense spies.

### 2. SLEEPING JURORS

*State v. Majid*,  
\_\_\_ N.E.2d \_\_\_, 2009 WL 1816946 (Ohio App. June 25, 2009).

In capital murder case resulting in sentence of term of years, plain error is found requiring reversal of the convictions due to extensive evidence on the record that at least one of the jurors slept through numerous portions of the trial, including eyewitness testimony. “[T]he numerous instances of jurors' sleeping deprived the defendant of his right to have 12 attentive jurors decide his fate and violated his right to due process.” (In five separate instances during the trial, it was brought to the court's attention that a juror had been sleeping. Rather than admonish or remove the juror, the court responded on one occasion near the close of the trial: “I saw it. So what. Let him sleep. You guys picked the jury. I didn't.”)

*Commonwealth v. Braun*,  
905 N.E.2d 124 (Mass. App. 2009).

Defendant in drug case was denied a fair trial by trial court's failure to question a juror who appeared to have been sleeping through trial. Contemporaneous observations from a court officer, defense counsel, and the judge himself alerted the judge that the juror might have been sleeping during the trial and instructions from the judge. By failing to conduct a voir dire, the judge prevented himself from obtaining the information necessary to a proper exercise of discretion.

*Judd v. State*,  
951 So.2d 103 (Fla. App. 2007).

Petitioner was entitled to an evidentiary hearing on his claim that trial counsel was ineffective in failing to object to the presence of a sleeping juror.

***Thompson v. State,***  
**873 So.2d 481 (Fla. App. 2004).**

Petitioner was entitled to an evidentiary hearing on his claim that trial counsel was ineffective for failing to notify the trial court that a juror was sleeping through “critical testimony.”

***Erlsten v. State,***  
**842 So.2d 967 (Fla. App. 2003).**

Petitioner was entitled to an evidentiary hearing on his claim that trial counsel was ineffective in failing to make a contemporaneous objection to a sleeping juror and instead waiting to raise the issue until a motion for a new trial.

***Kelley v. State,***  
**805 So.2d 88 (Fla. App. 2002).**

Remand for hearing on issue of sleeping juror and impact thereof after post-conviction applicant made facially valid showing that juror slept through significant portions of the trial.

***State v. Burns,***  
**800 So.2d 106 (La. App. 2001).**

Post-conviction applicant entitled to new trial for conviction of unlawful entry of business where trial court *sua sponte* removed a juror who the court had seen sleeping and replaced that juror with an alternate, where neither the state nor the defendant requested the substitution and defense counsel objected to the substitution.

***Spunaugle v. State,***  
**946 P.2d 246 (Okla. Crim. App. 1997).**

In capital case, trial court committed reversible error by failing to grant defendant's timely motion to replace a sleeping juror. In this case, the record clearly reflected that the juror had in fact been asleep.

***People v. South,***  
**576 N.Y.S.2d 314 (N.Y.A.D. 1991).**

New trial required where trial court failed to investigate timely allegation the juror slept through portions of the trial and even portion of the jury charge (but not that much of it). Juror who has not heard all of the evidence and the court's instructions "is grossly unqualified to render a verdict."

***People v. Evans,***  
**710 P.2d 1167 (Colo. App. 1985).**

Conspiracy to distribute marijuana conviction was reversed and remanded when juror slept through defense counsel's argument. After the trial was over, the juror was charged with contempt.

### **3. INTOXICATED JURORS**

***People v. Hedgecock,***  
**795 P.2d 1260 (Cal. 1990).**

Remanding to trial court to exercise its discretion in determining whether to conduct an evidentiary hearing on defendant's allegations of jury misconduct, including a claim of excessive consumption of alcohol provided to the sequestered jurors by the bailiffs. Regarding that claim, the court stated: "According to the affidavits submitted by the defense, one of the bailiffs provided members of the jury with large quantities of alcohol, as a result of which one juror was unable to participate in the deliberations on the day the jury arrived at a verdict. Although jurors are under no duty to abstain from the use of alcoholic beverages when they are not deliberating, here the affidavits allege that the consumption of alcohol rendered the juror unable to competently perform her duties. (See *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 412, 185 Cal.Rptr. 654, 650 P.2d 1171.) If true, this episode established misconduct, giving rise to a presumption of prejudice."

***People v. Lee Chuck,***  
**20 P. 719 (Cal. 1889).**

Capital conviction reversed due to alcohol consumption during a break in deliberations for dinner. Although the jurors denied being intoxicated, the court stated: "We are of the opinion that where the proof of the drinking is clear and undisputed, and that it was done while the jury were actually deliberating upon their verdict, in a capital case, a verdict of conviction should not be allowed to stand."

### **4. RACIST JURORS**

#### **a. United States Supreme Court**

***Spencer v. Georgia,***  
**500 U.S. 960, 114 L. Ed.2d 727, 111 S. Ct. 2276 (1991) (Kennedy, J., concurring in denial of certiorari).**

Justice Kennedy states that he would have voted to grant the African American death row inmate's certiorari petition, which alleged an equal protection violation based on a juror's

affidavit recounting the use of racial slurs concerning Spencer during deliberations and asserting that race played a role in the jury's verdicts, if Kennedy had not been convinced that *Teague* would pose no impediment to the claim being heard in federal habeas proceedings. (Kennedy noted, however, that a federal court would have to determine whether Georgia's rule precluding affidavits from jurors to impeach a verdict constitutes an adequate state ground for the decision.)

**b. U.S. Court of Appeals Cases**

***Williams v. Price,*  
238 F.3d 1111 (9th Cir. 2001).**

Where petitioner claimed that a juror lied during voir dire when he 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.

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

Remanded for hearing in light of *Dutkel*, in federal prosecution where co-defendant attempted to bribe juror. Court found that attempted bribery of the juror was, prima facie, jury tampering, therefore, invoking a strong presumption of prejudice, manifest in juror's resulting intense anxiety. Court found error in trial court's rejecting without hearing "African-American defendants' claim that juror who allegedly used the word "nigger" was racially biased, without making any findings concerning whether juror actually made a racist statement, and if so, its specific content" and required lower court to conduct hearing on issue, and, specifically, excepting juror testimony concerning racial bias exempt from Rule 606(b) prohibitions.

***United States v. Rouse,*  
100 F.3d 560 (8th Cir. 1996).**

New trial ordered based on evidence of racial prejudice in jury room; the court declared that racial prejudice in the jury room cannot and will not be tolerated or condoned.

***United States v. Heller,*  
785 F.2d 1524 (11th Cir. 1986).**

Tax evasion conviction was reversed because jurors made anti-Semitic "jokes" and religious remarks. The court dismissed the jurors' denial that they were only joking, remarking that the bigotry in this case was "reminiscent of a less civilized era." *Id.* at 1528.

**c. U.S. District Court Cases**

***Jimenez v. Heyliger,*  
792 F.Supp. 910 (D. Puerto Rico 1992).**

Medical malpractice verdict was reversed and remanded for a new trial because security guard, placed in charge of the jury, stayed inside the deliberation room, brought jurors requested items related to the defendant's claim he had not committed negligence. An additional ground of misconduct consisted of remarks an alternate juror made to a bailiff concerning the plaintiff's national origin which indicated that other jurors had discussed her ethnicity and national origin.

***Tobias v. Smith,*  
468 F. Supp. 1287 (W.D.N.Y. 1979).**

Habeas corpus petition requesting evidentiary hearing on jury misconduct was granted because of racist remarks, including one juror's remark that "You can't tell one black from another" and a second juror admonished his fellow jurors not to accept the word of a black person over that of a white person.

**d. State Cases**

***People v. Estella,*  
23 Misc.3d 989, 874 N.Y.S.2d 353 (NY Co. Ct. 2009).**

In case where overwhelming evidence supported defendant's convictions for attempted murder, assault, and other charges, defendant was nevertheless entitled to a new trial given a juror's post-trial statement to an assistant district attorney that the juror guessed that he based his decision on the defendant's race. (The defendant was black, the juror was white.) Although the juror later denied making that statement, the assistant district attorney was more credible than the juror whose credibility was further weakened by platitudes such as "half of my friends are black," and "I voted for Obama."

***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.

***State v. Phillips,***  
**927 A.2d 931 (Conn. App. 2007).**

Reversal based on trial court’s failure to investigate allegations of racist remarks made by juror toward other jurors.

***Marshall v. State,***  
**854 So.2d 1235 (Fla. 2003).**

In death penalty case, the post-conviction court erred by summarily denying juror misconduct claim where it was alleged that a woman called defense counsel post-trial claiming to have been a juror at petitioner’s trial and stating, among other things, that some jurors told racial jokes about petitioner, some jurors said they would vote to convict and for a life sentence so that petitioner could be returned to prison to kill more black inmates, and that some jurors read and discussed outside articles concerning the trial.

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

Habeas corpus petition requesting evidentiary hearing on jury misconduct was granted because of racist remarks, including one juror's remark that "You can't tell one black from another" and a second juror admonished his fellow jurors not to accept the word of a black person over that of a white person.

***State v. Varner,***  
**643 N.W.2d 298 (Minn. 2002).**

Holding that court below applied wrong standard, supreme court reverses gun conviction where juror had been overheard making racially biased comments; question was possible prejudice to defendant, not actual, and trial court should have engaged in serious questioning of jurors.

***Lam v. Chung-Ko-Cheng,***  
**2001 N.Y. Misc. LEXIS 1272 (N.Y. Civ. Aug. 31, 2001).**

Verdict set aside in defamation case where several jurors used racially abusive language against others to coerce compromise verdict; white male juror accused by others on panel of conspiring with white male lawyer for plaintiff; African-American juror who sided with white male on evidence was derided as "Uncle Tom."

***Bynum v. ESAB Group, Inc.,***  
**2001 WL 704400 (Mich. App. Mar. 23, 2001).**

Trial court properly granted new trial in civil case where one juror revealed that other jurors harbored racial animus against African-American plaintiff and attorney; court rejects argument that juror affidavits cannot be considered in support of claim.

***State v. Johnson,***  
**630 N.W.2d 79 (S.D. 2001).**

Reversal of rape conviction required where defendant was African-American, victim was Caucasian, and where one juror commented to another juror, "I have a rope," to which the other juror responded, "I have a tree," despite trial court's finding that jurors were just joking and could be fair.

***State v. Phillips,***  
**731 A.2d 101 (N.J. App. Div. 1999).**

Trial court's inadequate inquiry concerning dismissal of African-American juror who complained about racial comment made by another juror during deliberations required new trial; court made no effort to identify which juror made racial comment, or to question jurors individually about the incident.

***Connecticut v. Santiago,***  
**715 A.2d 1 (Conn. 1998).**

Case remanded for further proceedings where juror alleged to have used racial epithet ("spic") to describe defendant. Court sanctioned wide-ranging inquiry into circumstances in which remark made, and persons involved, because of extreme importance of avoiding convictions based on race.

***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.

***Wright v. CTL Dist., Inc.*,  
650 So.2d 641 (Fla. App. 1995).**

Civil verdict was reversed and remanded for an evidentiary hearing because jurors allegedly made racist remarks about the plaintiff and bailiff answered jurors' legal questions, rather than getting the judge to respond to the jurors' questions.

***State v. Brown*,  
668 A.2d 1288 (Conn. 1995).**

Where anonymous juror letter contained allegations of jury exposure to racially derogatory remarks regarding defendant allegedly made by court officials, remand required; opinion notes that trial court must conduct preliminary inquiry, on record, whenever it is presented with any allegations of jury misconduct in a criminal case.

***Tapia v. Barker*,  
206 Cal.Rptr. 803 (Cal. App. 1984).**

Civil judgment reversed when Mexican-American civil plaintiff was discriminated against by jurors who negatively remarked on his race during deliberations.

***After Hour Welding, Inc. v. Laneil Management Co.*,  
324 N.W.2d 686 (Wis. 1982).**

Civil verdict for plaintiff was reversed and remanded for an evidentiary hearing because one juror overheard another juror make an anti-Semitic remark about a corporate officer being "A Cheap Jew." Id. at 688.

***Weathers v. Kaiser Found. Hosps.*,  
5 Cal. 3d 98 (1971).**

Reversal in civil action against hospital where jurors did not disclose bias toward hospital during voir dire (also allegations of racism during deliberations, conducting outside investigation and use of extraneous evidence).

***People v. Whitmore*,  
45 Misc.2d 506, 257 N.Y.S.2d 787 (1965).**

Verdict set aside by trial court based upon in part discussions by jurors expressing racial bias against the defendants.

## 5. Charges Pending Against Juror

***Brooks v. Dretke,***  
**418 F.3d 430 (5th Cir. 2005).**

Habeas relief granted in death penalty case where a juror was arrested for being in possession of a loaded .25 caliber pistol while going through screening to enter the courthouse for the penalty trial. Bias is implied bias because the juror sat through the penalty phase aware that the prosecuting attorney had significant discretion in charging him. *Teague v. Lane* did not bar grant of relief on theory of implied bias.

***Reese v. State,***  
**739 So.2d 120 (Fla. App. 1999).**

Prejudice was presumed and a mistrial required where state law enforcement officer appeared in court during deliberations to arrest juror; juror knew arrest was imminent, and juror's prosecution was being handled by same prosecutor trying case against defendant.

## 6. Other Bias

***Jackson v. United States,***  
**395 F.2d 615 (D.C. Cir. 1968).**

In case where defendant was charged with killing his wife and assaulting a man who he claimed was having an affair with his wife, defendant was entitled to a new trial in light of fact that seated juror was apparently involved in a love triangle with similarities to the love triangle defendant testified to in this case. Prejudice was presumed.

***State v. Tody,***  
**764 N.W.2d 737 (Wis. 2009).**

In joy riding case, presence of trial judge's mother on the jury violated defendant's right to be tried by an impartial jury. "A presiding judge's mother serving as a juror is a special circumstance so fraught with the possibility of bias that we must find objective bias regardless of the particular juror's assurances of impartiality."