

## **COURT OFFICER IMPROPER INFLUENCE (updated September 2010)**

### **I. UNITED STATES SUPREME COURT**

***Parker v. Gladden,*  
385 U.S. 363 (1966).**

Second degree murder conviction was reversed because bailiff commented to jurors "[o]h that wicked fellow [petitioner] he is guilty." The bailiff also remarked that if anything was wrong with the jurors' verdict, the Supreme Court would correct it. While only one juror acknowledged hearing the bailiff's comments and admitting that they prejudiced her, the court reversed, focusing on the official nature of the misconduct and the fact that the defendant was entitled to 12 impartial jurors, not less than 12.

***Turner v. Louisiana,*  
379 U.S. 466 (1964).**

Conviction and sentence of death reversed and remanded because two deputy sheriffs who gave crucial testimony were put in charge of jury, ate with them, conversed with them and did errands for them. The court noted that the testimony given by the deputies was in direct conflict with that of the defendant and it "must inevitably have determined whether Wayne Turner was to be sent to his death." *Id.* at 473.

***Mattox v. United States,*  
146 U.S. 140 (1892).**

Murder conviction reversed because bailiff remarked to jury that this was third person defendant had killed and because newspaper article about case was read to jury. Jurors permitted to testify about extraneous influences in jury room.

### **II. UNITED STATES COURT OF APPEALS**

***Ward v. Hall,*  
592 F.3d 1144 (11<sup>th</sup> Cir. 2010).**

Reversing denial of habeas relief as to death sentence on claim that petitioner's constitutional rights to a fair trial and a reliable sentence were violated when a bailiff improperly responded to a juror's question about parole during the penalty phase of the trial.

***Moore v. Knight,***  
**368 F.3d 936 (7th Cir. 2004).**

State post-conviction court's denial of relief in rape case where the trial judge had ex parte communications with the jury was based on an unreasonable determination of the facts. The jury had asked questions that went to the heart of petitioner's alibi defense and some jurors recalled being told, erroneously, that no evidence was in the record as to one of the questions. Evidence at the post-conviction hearing was too sparse and ambiguous to support a finding of harmless error, especially in light of the applicable presumption of prejudice.

***United States v. Brande,***  
**329 F.3d 1173 (9th Cir. 2003).**

Evidentiary hearing required in wire fraud case where court officer questioned juror's ability to convict defendant based on religious belief. Hearing ordered despite fact that defense waited five months after learning of ex parte contact before raising issue. (But note, on remand the claim was denied. See 296 F.Supp.2d 1178 (C.D. Cal. 2003).)

***Agnew v. Leibach,***  
**250 F.3d 1123 (7th Cir. 2001).**

Habeas corpus relief granted in armed robbery case where bailiff who provided substantial testimony as prosecution witness had also been charged with continuous care of jurors; prejudice inherent under *Turner*.

***United States. v. Scisum,***  
**32 F.3d 1479 (10th Cir. 1994).**

Federal conviction for trafficking in prostitution reversed where juror asked the marshal if she had to be present for reading of the verdict; the marshal sent her to the judge who, without the parties present, told the visibly upset juror that she had to be present, and counsel was informed about the communications only after the jury was polled and the verdict recorded. The government did not meet its heavy burden of showing harmless error, even though the jury had agreed on a verdict before the juror met with the judge.

***Keller v. Petsock,***  
**853 F.2d 1122 (3rd Cir. 1988).**

Hearing granted in habeas case where bailiff denied jury's request to see judge without explaining that jury could communicate with the court in writing.

***United States v. deHernandez,***  
**745 F.2d 1305 (10th Cir. 1984).**

Convictions reversed where trial court responded to jury's questions without first advising parties and attorneys, including a question about the unanimity requirement to which the trial court provided a confusing response that was potentially prejudicial.

### **III. UNITED STATES DISTRICT COURT**

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

Medical malpractice verdict was reversed and new trial ordered because security guard who was placed in charge of the jury stayed inside the deliberation room and 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.

### **IV. STATE COURT**

***People v. Cassell,***  
**62 A.D.3d 1021, 880 N.Y.S.2d 303 (NY AD 2009).**

In weapons possession case, defendant was entitled to a new trial where a law clerk and a court official assumed judicial power. During deliberations, a juror knocked on the jury room door and informed a court officer that she wanted to go home and discontinue deliberations. The officer responded by escorting the juror outside where she remained for 15-20 minutes before a law clerk directed the officer to return the juror to the jury room to continue deliberations. When the juror responded that she wanted to go home, the officer told her that the officer didn't think the juror would be going home. The juror returned to deliberations and a guilty verdict was returned shortly thereafter. It was error for the law clerk to assume judicial functions and it was per se reversible error for the trial court not to have instructed the juror regarding further deliberations in the presence of defendant.

***People v. McLaurin,***  
**894 N.E.2d 138 (Ill. App. 2008).**

“[T]rial judge's decision to permit the sheriff to have *ex parte* communications with the hung jury was a ‘clear and obvious’ error.” (The sheriff was sent in to the jury room to inform the jury to continue deliberations after the court received a third note from the jury stating it was deadlocked.) This constitutional error, in combination with the trial court's exclusion of defendant from discussions concerning jury questions, required reversal of defendant's convictions for aggravated unlawful use of a weapon and unlawful use of a weapon by a felon.

***People v. Bradford,***  
**65 Cal.Rptr.3d 548 (Cal. App. 2007).**

Second degree murder conviction reversed because the trial judge entered the jury room while the jury was deliberating, unaccompanied by counsel and with no court reporter, on four occasions and each time the jurors posed questions to him concerning the instructions he had previously given them, and he responded to their questions. Assuming without deciding that *Chapman* standard of prejudice applies, reversal is required because the record is inadequate to permit meaningful appellate review. Although defense counsel failed to object to the judge's repeated unrecorded entries into the jury room, the claim of error was not waived because defendant never waived his right to have the jury deliberate without intrusion. Even assuming, however, that defense counsel had the authority to waive the implicated rights to counsel and jury trial, the trial court's actions exceeded the scope of any waiver. Further, even if the claim was forfeited the appellate court would exercise its discretion to consider it given the seriousness of the trial court's error.

***State v. Floyd,***  
**725 N.W.2d 817 (Neb. 2007).**

In case involving the shooting death of a pregnant woman, the trial court abused its discretion in denying defendant's motion for a new trial where hold-out juror had asked bailiff how long the jury would have to continue to deliberate and bailiff responded that deliberations could continue through the end of the week and either said that deliberations would continue until a unanimous verdict was reached or that there was no time limit. The communication was found to be prejudicial because: "At the time the communication was made, the jury had been ordered to return to deliberations after it was determined that the jury's verdicts on the murder and manslaughter charges were not unanimous. The communication was made to the juror who was known to be the lone dissenting juror. Either directly or indirectly, the communication focused on the potential effect that the juror's continued dissent would have on the length of deliberations. We determine that the communication could have pressured the average juror to change his or her vote in order to avoid protracted deliberations." (A new trial was not required on the felon in possession of a firearm conviction because the jury had previously returned a unanimous verdict on that charge.)

***State v. Cortez,***  
**159 P.3d 1108 (N.M. App. 2007).**

New trial was required in cocaine trafficking case where trial court, after receiving a note from the jury indicating it was deadlocked 9-3 in favor of conviction, called only the foreperson into open court and questioned the foreperson about whether further deliberations would be futile. Even though this encounter occurred in open court with defendant and counsel present, and defense counsel lodged no objection, the error by the trial court in proceeding in this manner was fundamental error. Notably, the foreperson first indicated to the court that the three hold-outs felt

like they had not received sufficient evidence. Upon prompting by the court, the foreperson inquired if there were instructions the court could give to allow the jury “to have a fresh perspective to allow people to reexamine their opinions, to reexamine the facts, the evidence in this case and/or just to discuss it one more time ... [in that] everybody, being the people who are not agreeing to the decision, are pretty confirmed in their opinions.” The trial court then told the foreperson to read the jury instructions together and discuss it again. The appellate court found that “[t]his might have signaled to the foreperson, or to the jury through the foreperson's interpretation of what the court said, that the jury was to reach a verdict. . . . [I]t would not be unreasonable, under the circumstances, for the three undecided votes to think that the court was looking to them to change their votes.”

***State v. Jojola,***  
**146 P.3d 305 (N.M. 2006).**

Conviction for child abuse resulting in death had to be reversed as a result of ex parte communication between the trial court and a juror. During deliberations, the juror entered the judge’s chambers and complained that another juror had announced that she disbelieved the State’s expert and would not change her mind about defendant’s innocence. The judge instructed the juror to “just report that you are hung” and also to do whatever she had to do. Following that encounter, the jury was able to reach a unanimous verdict. The State failed to overcome the presumption of prejudice that arose as a result of the improper communication.

***Butler v. State,***  
**896 A.2d 359 (Md. 2006).**

Reversal where trial judge addressed the deadlocked jury in response to a note about the holdout juror. Trial judge erred in commenting on one juror's position, as that comment was meant to influence one single juror.

***State v. Hanke,***  
**712 N.W.2d 211 (Minn. App. 2006).**

In case where defendant was convicted of possession of cocaine, the bailiff's comment in the presence of three jurors regarding a pervasive methamphetamine problem in the county and the need to punish offenders created a presumption of prejudice that was not rebutted by State. Although the defendant had not been charged with a crime involving methamphetamine, that drug had been implicated in the case.

***State v. Johnson,***  
**105 P.3d 85 (Wash. App. 2005).**

Bailiff's communications with jury during deliberations, i.e., speaking with the foreperson to inquire how deliberations were proceeding and to offer suggestions for making the process run

more smoothly, could not be presumed harmless in murder trial. Notably, defense counsel was not notified about the communications.

***Walsh v. State,***  
**166 S.W.3d 641 (Tenn. 2005).**

In case involving conviction for aggravated sexual battery, petitioner was entitled to a new trial as a result of a statement made by a court officer to the jurors after learning they were deadlocked on one charge to the effect that the jury was required to reach a decision. Testimony by the juror who had been a hold-out prior to the court officer's statement that he remark did not cause her to switch her vote was improperly considered.

***State v. White,***  
**138 S.W.3d 783 (Miss. App. 2004).**

The State failed to overcome the presumption of prejudice that arose from the presence of the judge's law clerk/bailiff during jury deliberations. Although the clerk testified that she did not verbally participate in the deliberations, "that evidence alone was insufficient to prove that her presence in the jury room had a benign effect on the deliberative process."

***State v. Brown,***  
**827 A.2d 346 (N.J. Super. A.D. 2003 ).**

Reversing conviction where jury was read back victim's testimony by court reporter in jury deliberation room, outside presence of the judge or defendant. This was reversible per se without any showing of prejudice required.

***State v. Hall,***  
**65 P.3d 90 (Ariz. 2003).**

Capital conviction and death sentence reversed where bailiff improperly told several jurors that the defendant had a bracelet-like tattoo on his wrists. Crucial to the prosecution's case was a surveillance video that the prosecution contended showed the defendant. During trial, the jurors had scrutinized the tape looking for a bracelet tattoo. Although ten jurors testified at the hearing on the new trial motion that they had not been able to see a tattoo, the trial court found that a bracelet tattoo was in fact visible on the videotape. A new trial was required since it was impossible to know the effect of the extrinsic information on the two jurors who did not testify.

***Ex parte Pierce,***  
**851 So.2d 619 (Ala. 2002).**

In capital case, trial counsel was ineffective in failing to object to fact that sheriff-witness was also escorting jury to and from courtroom in violation of *Turner v. Louisiana*.

***State v. Merricks,***  
**831 So. 2d 156 (Fla. 2002).**

Affirming reversal of conviction for sexual battery where jurors asked bailiff for readback of testimony and he told them to rely on their memories. Improper substantive communication was prejudicial per se.

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

Remand for full evidentiary hearing where death row inmates alleged, among other things, that the prosecutor visited the jurors daily.

***People v. Flores,***  
**282 A.2d 688 (N.Y. App. Div. 2001).**

Kidnaping conviction reversed where court officer usurped trial court's function by responding to jury's question about translating letter from English into Spanish and where one juror provided Spanish translation never offered in court.

***Terrell v. State,***  
**745 N. E. 2d 219 (Ind. 2001).**

Defendant was entitled to a merits ruling on his motion to set aside the verdict based on a juror's post-conviction but pre-sentencing contact with the trial judge regarding the juror's alleged involvement with the Mafia and her fear for her life.

***Carter v. State,***  
**541 S. E.2d 366 (Ga. 2001).**

Felony murder conviction reversed where trial court told jurors, outside presence of parties, that defendant would not be tried again on specific count of indictment if jury did not reach verdict.

***Garcia v. People,***  
**997 P.2d 1 (Colo. 2000).**

Trial court impermissibly invaded deliberations by interviewing foreperson after deliberations began upon receiving a note indicating one juror was not complying with the oath; defendant was further prejudiced by court's recall of discharged alternate juror to replace juror dismissed during deliberations.

***Pennie v. State,***  
**520 S.E.2d 448 (Ga. 1999).**

Murder conviction reversed where judge questioned juror about alleged communication with third party outside the presence of the defendant, without valid waiver of right to be present, and prejudice was presumed.

***Turpin v. Todd,***  
**519 S.E.2d 678 (Ga. 1999).**

Death sentenced reversed where bailiff responded personally to jury's question about parole eligibility, telling it to refer to court's earlier instructions; prejudice found because earlier charge did not bar consideration of parole and jury returned death verdict soon after communication with bailiff.

***State v. Erickson,***  
**597 N.W.2d 897 (Minn. 1999).**

Remand for hearing to determine prejudice where bailiff, upon request, brought jury an exhibit not introduced into evidence, and then upon retrieving it suggested that the jurors "should review the video," trial court erred both in failing to question all jurors and in holding a hearing outside defendant's presence. (After remand, convictions were affirmed: *State v. Erickson*, 610 N.W.2d 335 (Minn.2000).)

***State v. Rideout,***  
**725 A.2d 8 (N.H. 1999).**

New trial ordered where juror in need of insulin shot was aided by police officer who testified for prosecution; appellate court finds that trial court erred in not holding state to burden of establishing that no prejudice occurred and not interviewing jurors.

***State v. Bisaccia,***  
**724 A.2d 836 (N.J. Superior Court App. 1999).**

Trial court erred by refusing to grant mistrial or order inquiry in racketeering trial despite numerous allegations of misconduct, including jury's exposure to newspapers in deliberation room; judge's ex parte communication with juror who indicated he could not be fair; and jurors' expressed concerns about being followed by man from courtroom. Hearing is ordered, if possible. If a hearing is not possible due to the six years that passed since trial, a retrial was required.

***Goff v. Arkansas,***  
**953 S.W.2d 38 (Ark. 1997).**

Trial judge committed reversible error by entering the jury room to answer questions he received from the jury in a note. Despite having informed attorneys for the state and defendant of the questions and his intended answers, the court violated Arkansas law by not having his colloquy put on the record. As the right to be present at any stage of a criminal proceeding which is critical to the outcome is a fundamental right, prejudice is presumed.

***Anderson v. State,***  
**695 A.2d 1135 (Del. 1997).**

Trial court erred in responding to a note from a juror during deliberations without informing defendant's counsel of the question and his proposed answer beforehand.

***State v. Rodriguez,***  
**703 So.2d 803 (La. 1997).**

Case remanded for an evidentiary hearing after the trial court refused to consider juror testimony concerning communications with a bailiff. The juror testimony that had been proffered during a hearing on defendant's new trial motion indicated that when the foreman requested to see an item of evidence, the bailiff informed him that the jury was not permitted to view evidence after beginning deliberations.

***People v. Khalek,***  
**689 N.E.2d 914 (N.Y. 1997).**

Conviction for sexual abuse in the first degree reversed where court officer sent to tell jury to stop deliberations for the day was informed that the jury had reached a verdict but neglected to pass that information on to the court. It was subsequently discovered that the jury had voted to acquit, yet returned with a guilty verdict the next day.

***State v. Parchman,***  
**973 S.W.2d 607 (Tenn. Crim. App. 1997).**

Where jurors had question about effect of 11 to 1 vote, and questioned bailiff who told them that judge would send them back for further deliberations, case reversed; court relies on rebuttable presumption of prejudice.

***Wilding v. State,***  
**674 So. 2d 114 (Fla. 1996).**

State failed to prove harmlessness beyond reasonable doubt where jurors contacted court employee expressing fear about defendant's access to personal information about them. (Holding was receded from somewhat in *Devoney v. State*, 717 So.2d 501 (Fla. 1998)).

***Alexander v. State,***  
**919 S.W.2d 756 (Tex. Crim. App. 1996).**

Presumption of prejudice not rebutted where juror passed question to district attorney via bailiff, and prosecutor recalled witness to testify in answer to question raised in juror note.

***State v. Watkins,***  
**526 N.W.2d 638 (Minn. 1995).**

Where court bailiff referred to defense attorney as "that darky" and where jurors repeatedly referred to the defendant as "darky" or "that darky" during deliberations, a new trial was required when state failed to overcome the presumption of prejudice arising from the racist remarks.

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

Criminal conviction was overturned and remanded to the trial court for a hearing on jury misconduct. Prior to sentencing, an anonymous note informed the trial judge that some of the jurors had overheard bailiffs betting that the defendant would be convicted because he was black and from New York. The court held that a trial court must conduct a preliminary inquiry, on the record, whenever it is presented with any allegations of jury misconduct.

***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.

***Allers v. Riley,***  
**901 P.2d 600 (Mo. 1995)**

Personal injury verdict was reversed and remanded for a new trial because bailiff provided the jury with two dictionaries. The jurors used the dictionaries to define "proximate cause" and "prudent" in ways other than provided by state law.

***State v. Kelley,***  
**517 N.W.2d 905 (Minn. 1994).**

First degree criminal sexual conduct conviction reversed and remanded for a new trial because of ex parte communications between the trial judge and deadlocked jurors. The judge told them to keep deliberating and reach a verdict and declined to grant a mistrial even after he learned that two jurors almost had a physical fight over their deliberations, when one juror told the other to step out in the hall. Defense counsel was never made aware of the situation. The appellate court found that the trial judge's admonition to keep deliberating until a verdict was reached was coercive in that it implied that the jurors had to deliberate until they were unanimous.

***State v. Cameron,***  
**428 S.E.2d 10 (S.C. App. 1993).**

Conviction for entering bank with intent to steal and life sentence reversed and remand for new trial because bailiff improperly remarked to jury foreperson not to worry if verdict was guilty with no recommendation of mercy because the judge was fair. This improperly lessened the jury's burden to decide on recommendation of mercy and implied that judge had sentencing discretion.

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

The appellate court granted a remand for an evidentiary hearing as to improper bailiff comments with jurors and an alternative writ to explore possibility of jurors' excessive drinking, finding that allegations of jury misconduct were serious enough to sustain the trial court's decision to conduct an evidentiary hearing. Defendant was convicted of conspiracy to violate disclosure laws and perjury. Bailiff allegedly commented about how well jurors were treated, about hold out jurors and about a fight that once erupted when there was a hold out and told a story about a "green hat" designed to illuminate the concept of reasonable doubt. Moreover, the bailiff provided alcohol to jurors, one of whom drank so much that she had to leave her jury seat every 15 minutes to vomit.

***Ravin v. Gambrell,***  
**788 P.2d 817 (Colo. 1990).**

Medical malpractice verdict was reversed and a new trial granted when bailiff gave erroneous statement of law to a sick juror. The bailiff told her that a unanimous verdict had to be reached and that the judge could make the jurors stay and deliberate for two weeks.

***Lockridge v. State,***  
**397 S.E.2d 695 (Ga. 1990).**

Voluntary manslaughter conviction was reversed and a new trial granted because, prior to sequestration, a bailiff told one juror that the defendant was guilty and that he "murdered that

man."

***Morris v. State,***  
**364 S.E.2d 571 (Ga. 1988).**

Murder conviction reversed where bailiff had numerous contacts with jury foreperson regarding viewing evidence. In one instance, foreperson requested a bloody towel, which the bailiff responded was not in evidence. Additionally, the foreperson requested a transcript of medical testimony which the judge denied, but the bailiff informed had not yet been transcribed.

***State v. Weiler,***  
**512 A.2d 531 (N.J. 1986).**

Conviction for murder, conspiracy and two counts of attempted murder reversed due to court officer's remarks before and during the jury's deliberations. A court officer befriended one juror and remarked to the juror that she knew defendant was guilty and, moreover, that she had been privy to proceedings that the jury had not seen. Other jurors heard the bailiff make derogatory remarks about defense counsel, including that defense counsel was "lying" as well as remarks that defendant was guilty. While some jurors also made unauthorized visits to the crime scene and informed other jurors about their independent investigations, the Court relied on the bailiff's actions as grounds for overturning this sentence and conviction.

***State v. Elmore,***  
**308 S.E.2d 781 (S.C. 1983).**

Absolute reversal required where judge entered the jury room during guilt phase deliberations, even though accompanied by counsel from both the state and defense, to answer a question of the jury concerning reaching decision, based on improper communication with jury because defendant not present.

***People v. Pierce,***  
**595 P.2d 91 (Cal. 1979).**

Second degree murder conviction reversed because, during the trial, the jury foreman discussed the case with a police witness. The court dismissed the foreman's contention that he had not been influenced.

***State v. Robin,***  
**543 P.2d 779 (Ariz. 1975).**

Error for trial court to communicate with jury during deliberations unless defendant and counsel have opportunity to be present

***King v. State,***  
**89 S.E.2d 585 (Ga. App. 1955).**

Conviction for voluntary manslaughter reversed because bailiff told a deadlocked jury that the judge said he would keep them a week or they would make a verdict. Shortly thereafter three jurors changed their vote from acquittal to guilty. Statement from bailiff was deemed presumptively prejudicial even though it had not been authorized by the trial judge.

***McCoy v. State,***  
**42 So.2d 195 (Miss. 1949).**

Murder conviction reversed because bailiff told jury that judge said he had nothing to do until the next term of court except wait for the jury to reach a verdict and "that as far as he was concerned they could stay there until they rotted." Shortly after the statement was made, the jury rendered a verdict. Just prior to the bailiff's comment the jury was 11 to 1 for conviction after twenty three hours of deliberating. It was immaterial whether the trial judge had actually made the statement or not.