THIRD PARTY CONTACT

(This includes both where a third party initiates contact with one or more jurors and where one or more jurors discusses the case with a non-juror. But see COURT OFFICER IMPROPER INFLUENCE where the third party is the bailiff, prosecutor, etc, and see JUROR EXPERIMENTAL AND INVESTIGATION where the juror seeks out information from a third party.)

(updated September 2010)

I. UNITED STATES SUPREME COURT

***Remmer v. United States*,**
347 U.S. 227 (1954).

Conviction for federal tax evasion vacated and case remanded for the district court to hold a hearing on alleged jury tampering. After Remmer was convicted, he learned that during the trial an unnamed person remarked to a juror that it might be profitable to return a verdict in favor of the defendant. The trial judge and the prosecutors, unbeknownst to defense counsel, had the matter investigated by the FBI and apparently concluded that the remark had been made as a joke and took no further action. The Supreme Court found the inquiry insufficient, noting that "[i]n a criminal case, any private communication, contact or tampering, directly or indirectly with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial . . .. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant." (The Supreme Court later reversed the lower court's ruling that the contact was harmless – *see* 350 U.S. 377 (1956).)

II. UNITED STATES COURT OF APPEALS

***United States v. Vasquez-Ruiz*,**
502 F.3d 700 (7th Cir. 2007).

Convictions reversed where, after the close of evidence, one of the jurors informed the district court that someone had written the word "GUILTY" in capital letters in her notebook. Although the district court interviewed the juror and received an assurance she would try to remain impartial, it did not question the other jurors and instead issued a cautionary instruction regarding the presumption of innocence. The defendant's motion for a mistrial was denied. On this record, the appeals court concluded that the government failed to rebut the presumption of prejudice and the mistrial motion should have been granted.

***United States v. Rutherford*,**
371 F.3d 634 (9th Cir. 2004).

In tax evasion case, the court remands for an evidentiary hearing on defendants' claim that jurors were intimidated by numerous government agents who were in the courtroom during the trial glaring at the jurors. The appropriate inquiry is whether unauthorized conduct "raises a risk of influencing the verdict," or "had an adverse effect on the deliberations." It is not required that any intimidation have been intentional. In denying the defendants' motion for a new trial, the district court erred in limiting juror testimony to "the existence of such conduct at the time it occurred."

Caliendo v. Warden,
365 F.3d 691 (9th Cir. 2004).

Habeas relief granted where three deliberating jurors chatted amiably and at length with the critical prosecution witness, a police officer, in an uncontrolled setting. The state appellate court decision was contrary to the *Mattox* rule which required the state court to apply a rebuttable presumption of prejudice as a result of 20- minute conversation between the jurors and the key witness.

Fullwood v. Lee,
290 F.3d 663 (4th Cir. 2002).

Remanded for hearing on allegations that juror's spouse constantly, throughout the capital murder trial, encouraged the juror to vote to convict and for death sentence. Additionally, evidentiary hearing on when and how jurors became aware of information that defendant had previously been sentenced to death and that sentence was overturned on a "technicality."

Fields v. Woodford,
281 F.3d 963 (9th Cir. 2002).

Remanded for evidentiary hearing on issue of whether juror, whose wife was victim of an unsolved rape, robbery and kidnaping, was biased, in capital murder trial involving charges of rape, robbery, murder and kidnaping, because the wife and her juror husband had many, many conversations about the case during the trial, about the wife's attack and her fear that the defendant may have been her attacker. Although juror had revealed on voir dire that his wife was victim of a robbery, he did not reveal that she had also been raped in the same crime. District court to determine whether juror intentionally withheld that information and whether his conversations with his wife, which were shared with other jurors, during the trial rendered him or any other juror biased. (The claim was denied following the evidentiary hearing.)

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

Remanded for hearing in federal prosecution where co-defendant attempted to bribe juror. Appeals 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. Appeals court also found error in trial court's rejecting without a 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."

***Sassounian v. Roe*,**
230 F.3d 1097 (9th Cir. 2000)

The jury's consideration of improper extraneous evidence in the form of information concerning an alleged phone call in which the caller claimed affiliation with a terrorist organization and claimed responsibility for the murder of the victim, a Turkish Consul General, was harmful error. The only special circumstance upon which the jury agreed was that the murder was committed because of nationality or national origin, and this agreement was only reached after fifteen days of deliberation, the last hour of which included revelation and discussion of extraneous information about the alleged phone call, which ultimately persuaded at least one juror to change her vote to favor finding the special circumstance. (In reaching its conclusion that this error was not harmless, the court expressly noted that, "although we may consider testimony concerning whether the improper evidence was considered, we may not consider the jurors' testimony about the subjective impact of the improperly admitted evidence." *But see Romine v. Head*, 253 F.3d 1349 (11th Cir. 2001) (Carnes, J.) (allowing uncontested use of juror affidavits about affect of prosecutor's improper closing argument on jurors to serve as competent evidence of prejudice from improper argument).

***United States v. Corrado*,**
227 F.3d 528 (6th Cir. 2000).

Allegations of jury tampering and news reporting about the arrest of a suspect for jury tampering in a trial on RICO charges required remand to the lower court. The trial court abused its discretion in failing to conduct an adequate hearing to determine whether jury tampering occurred and whether jurors learned of and were biased by media reports that a suspect accused of jury tampering in the case was arrested.

***United States v. Jackson*,**
209 F.3d 1103 (9th Cir. 2000).

In § 2255 case, an evidentiary hearing was required where juror received threatening phone call during trial. The issue was not defaulted even though the juror was questioned at trial about the phone call and it's impact on her and she was allowed to remain on the jury without objection by the defendant after she denied any negative impact or associating the call with the trial. Years later, and contrary to her statements to the trial court, the juror told the defendant's investigator that she thought the call was from one of the defendant's associates and was related to the trial. An evidentiary hearing was required only because the juror refused to sign the statement drafted by the investigator. If the juror affirmed the information proffered through the investigator, the defendant would be entitled to a new trial in accordance with *United States v. Angulo,* 4 F.3d 843

(9th Cir. 1993).

***United States v. Dutkel*,**
192 F.3d 893 (9th Cir. 1999).

In joint trial on drug conspiracy and distribution charges where co-defendant secured a hung jury by bribing a juror, there was prima facie jury tampering with respect to defendant who was convicted of the charges. A hearing therefore was required to determine whether the jury tampering affected the jury's decision-making as to Dutkel. At the hearing, there will be a strong presumption of prejudice as required by *Remmer* and the Government will bear the burden of overcoming the presumption. "Unless the district court is convinced that there is no reasonable possibility that the deliberations as to Dutkel were affected by the tampering, the court must vacate Dutkel's conviction."

***United States v. Sylvester*,**
143 F.3d 923 (5th Cir. 1998).

Trial court abused its discretion by conducting ex parte voir dire with individual jurors during its investigation of several instances of possible jury tampering involving three different jurors. "*Remmer* . . . require[s] a district judge, when confronted with credible allegations of jury tampering, to notify counsel for both sides and hold a hearing with all parties participating." A remand for an evidentiary hearing was therefore necessary even though the trial court had conducted "a thorough investigation of the tampering incidents." The trial court must decide whether the contacts resulted in prejudice. (The court found that *Remmer*'s presumption of prejudice has been overruled by subsequent Supreme Court cases.)

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

Remand for a further hearing where juror may have been subject to outside influence of spouse, a former state prisoner who had been denied clemency by the defendant (former governor of state).

***United States v. Melius*,**
123 F.3d 1134 (8th Cir. 1996).

District court exercised sound discretion in declaring a mistrial based on contact made by a woman who had been observing the trial with three jurors during a break in deliberations where the woman asked the jurors if they wanted to know why she had not been called to testify.

***United States v. Cheek*,**
94 F.3d 136 (4th Cir. 1996).

Habeas petitioner entitled to new trial where juror was approached by person associated with co-defendant for purpose of bribing juror to vote to acquit and scaring juror such that juror did not inform trial court. Lower court's determination that presumption of prejudice required by *Remmer*, had not attached was error, as was lower court's delving into impermissible 606(b) testimony from juror in allowing inquiry concerning whether juror had listened to and considered all the evidence, and then relying on the impermissible testimony in reaching conclusions.

***United States v. Smith*,**
26 F.3d 739 (7th Cir. 1994).

Juror's statement to other jurors that she had a visitor on night before she was excused from jury, together with another juror's expression of concern for her safety, required further inquiry by trial judge beyond merely interrogating excused juror; remanded.

***United States v. Angulo*,**
4 F.3d 843 (9th Cir. 1993).

In cocaine/heroin distribution case where juror was excused after it was learned that she had received an anonymous threatening phone call, but the district court failed to determine the possible bias of other jurors, a remand is required for a new hearing. If the government fails to show that the phone call was harmless beyond a reasonable doubt, a new trial should be ordered.

***Hunley v. Godinez*,**
975 F.2d 316 (7th Cir. 1992).

A presumption of bias attached where defendant was charged with burglary and murder and four jurors had their hotel rooms burglarized during deliberations. The jurors' claims that the burglary would not affect their verdict was not dispositive given that the previously divided jury quickly voted to convict after the burglary occurred.

***United States v. Maree & Brooks*,**
934 F.2d 196 (9th Cir. 1991), *abrogated on other grounds*, 432 F.3d 1092 (9th Cir. 2006).

Brooks' conspiracy to distribute cocaine conviction was reversed and a new trial ordered because a juror discussed the case with her friends during her jury duty and her friends said that people like the defendant should be incarcerated.

***Church v. Sullivan*,**
942 F.2d 1501 (10th Cir. 1991).

Habeas petitioner was entitled to an evidentiary hearing on his juror misconduct claim where petitioner presented affidavits from acquaintances who stated that during a break in petitioner's armed robbery trial, they saw a woman identified by petitioner as the "head jailer's wife" speak with some of the jurors. One of the affiants heard the women asking the jurors how he or they (apparently referring to the defendant) could have done what was done to elderly victims. The affiant further reported that “the jury and the victims and other spectators to the trial all mingled together during the breaks in the hallway.”

***Stockton v. Virginia*,**
852 F.2d 740 (4th Cir. 1988), *cert. denied*, 489 U.S. 1071 (1989).

Habeas relief as to death sentence affirmed where jurors were approached by the proprietor of a diner during the sentencing deliberation stage who said, among other things, that they ought to "fry that son of a bitch."

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

Tax evasion conviction reversed because of numerous acts of juror misconduct, including one instance involving a juror who spoke with a friend, who was an accountant, on matters relating to the case.

***Budoff v. Holiday Inns, Inc.*,**
732 F.2d 1523 (6th Cir. 1984).

Wrongful death verdict was vacated and the case remanded for a new trial where the child of an employee of plaintiff's counsel contacted a juror's child and discussed the case. The "administration of justice" required finding misconduct when a person under the supervision of counsel initiates a private contact with those close to jurors.

***Owen v. Duckworth*,**
727 F.2d 643 (7th Cir. 1984).

Habeas relief granted based on government's inability to overcome presumption of bias in case where a juror received a threatening call and other jurors learned of the call and assumed that petitioner or a friend of petitioner was responsible. The lower court’s finding that the extra-judicial contact was harmless was clearly erroneous.

***United States v. Greer*,**
620 F.2d 1383 (10th Cir. 1980).

In drug case, a new trial was required as a result of discussions between a U.S. Marshal and jurors during a lunch break about sentencing under the Federal Youth Corrections Act. Given the defendant’s youthful appearance, jurors may have assumed he would be sentenced under the Act. “Information about sentencing or other consequences of a verdict is prejudicial because, if the jury is convinced that a defendant will receive a light sentence, it may be tempted to convict on weaker evidence.”

United States v. Forrest,
620 F.2d 446 (5th Cir. 1980).

Where juror was tampered with at request of defendant, a hearing was necessary even though that juror was excused after the tampering was discovered. This was because the trial court had failed to determine whether the juror had discussed the tampering with other jurors or whether the remaining jurors had otherwise learned of the incident. Following the hearing, "[i]f it appears that the jury was contacted impermissibly, and if the government fails to satisfy its burden of proving the contact was not prejudicial, a new trial must be ordered." That the impermissible conduct was initiated by defendant himself was irrelevant. "A fair and impartial jury cannot be permitted to draw the conclusion that, because a defendant attempted to fix his trial, he is guilty of the offense for which he is being tried."

Krause v. Rhodes,
570 F.2d 563 (6th Cir. 1977), *cert. denied*, 435 U.S. 924 (1978).

In civil rights action related to the killing of four students at Kent State University by the Ohio National Guard, plaintiffs were entitled to new trial because verdict was returned by a jury at least one of whose members had been threatened and assaulted during trial by a person interested in its outcome, and the trial court failed to question the juror about the effect of the threats, or question the other jurors about whether they also had been threatened or whether they were informed about the intimidation of their fellow juror. .

United States v. Pittman,
449 F.2d 1284 (9th Cir. 1971).

Reversal where trial court directed government agent, who was a prosecution witness at trial, to enter jury room to playback a tape recording that was introduced into evidence. "[T]he potential for prejudice inherent in any adversary's intrusion into the jury room and the uncertainties in ascertaining the extent of such prejudice require the extreme measure of a new trial in cases where the invasion was at the direction of the court and not inadvertent."

Morgan v. United States,
380 F.2d 915 (5th Cir. 1967).

Remand for a hearing where juror had conversation regarding defendant with juror from different panel during trial break.

Richardson v. United States,
360 F.2d 366 (5th Cir. 1966).

Remand for a hearing where trial court abused discretion in failing to hold hearing regarding contact between prosecution witness and juror in hall during trial break.

***United States v. Harry Barfield Company, Inc.*,**
359 F.2d 120 (5th Cir. 1966).

In case involving law suit by corporation for federal tax refund, new trial required where the president of the corporate taxpayer deliberately approached several jurors during recess and stuck up conversations about family relationships. Prejudice is found given that the conduct was "deliberate and intentional as distinguished from a mere inadvertent or accidental contact involving only an exchange of greeting in order to avoid an appearance of discourtesy."

III. UNITED STATES DISTRICT COURT

***Anderson v. Miller*,**
2001 WL 1182832 (E.D.N.Y. Oct. 2, 2001) (unreported).

Evidentiary hearing required in habeas case where trial court conducted insufficient inquiry into complaints by two jurors of intimidation and physical threats by fellow jurors. Petitioner did not fail to develop facts under § 2254(e) where state trial judge abruptly terminated inquiry into allegations. (Following the hearing, there was a factual finding that no physical threats had occurred. That the two jurors felt subjectively pressured into rendering guilty verdicts did not provide a basis for relief. *See* 206 F.Supp.2d 352.)

***United States v. Gaffney*,**
676 F.Supp. 1544 (M.D. Fla. 1987).

Mail extortion convictions reversed and motion for new trial granted where, in addition to jury exposure to and discussion of media reports, "[a]t least two jurors were aware of the fact that a juror had been contacted by an individual outside the courtroom who told her not to believe what she was hearing in the courtroom," "[a] juror had a discussion with an attorney-friend that may or may not have been related to the case, but was disclosed in the jury room during deliberations and was perceived by other jurors as a discussion about various legal aspects of the trial," and "[s]ome jurors discussed the case with their spouses and related the fact that they had these discussions to other juror."

***Neal v. John*,**
110 F.R.D. 187 (D. Virgin Islands 1986).

Malicious prosecution verdict reversed and a new trial ordered where one juror overheard a defense witness allege he was paid for his testimony, and also heard that a defense witness had perjured herself, and the juror passed this information on to other jurors.

IV. STATE COURT

***State v. Lewis*, 654 S.E.2d 808 (N.C. 2008).**

In case involving multiple charges including sexual offense and robbery, petitioner was entitled to a new trial where during trial one of the jurors, who was a deputy sheriff, had a conversation with the lead investigator on the case who informed the sheriff deputy-juror that petitioner had failed a polygraph examination and further expressed his expectation that the deputy sheriff-juror would do the right thing. That the deputy sheriff-juror was already aware that petitioner had failed the polygraph examination did not negate petitioner's entitlement to a new trial given that the lead investigator's comments were intended to influence the verdict. (Apparently unbeknownst to the lead investigator, petitioner had disclosed the failed polygraph to the sheriff-juror prior to impanelment of the jury when the sheriff-deputy was transporting petitioner to the jail.)

***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 in 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.

***People v. Roberts*,**
824 N.E.2d 250 (Ill. 2005).

Reversal where juror was replaced following contact with a witness and after case had been submitted to jury and the trial court failed to question the alternate juror about her knowledge of the contact and did not ensure that the alternate juror was not biased due to outside influence.

***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.

***Dryman v. Watts*,**
603 S.E.2d 51 (Ga. App. 2004)

The trial court did not abuse its discretion in granting a motion for a new trial in a negligence action based on deposition testimony of a nonjuror who admitted she received a telephone call from one of the jurors during deliberations asking for information related to the case, and a cell phone bill further substantiated that the call was made from the juror during deliberations.

***Jenkins v. State*,**
825 A. 2d 1008 (Md. App. 2003).

"[D]enial of petitioner's motion for a new trial was a clear abuse of discretion under the specific egregious circumstances in the case *sub judice*, where, during a recess in a criminal trial, both the juror and the State's detective witness clearly ignored the trial court's orders prohibiting interaction between jurors and witnesses, where the juror not only intentionally sought out interaction with the detective during a weekend religious retreat, but, after such retreat, went to lunch with the detective while the trial was still pending and where they discussed personal details of their lives, (footnote omitted) and the State's detective witness drove the juror to his car in her own personal vehicle. Regardless of whether details of the ongoing trial were discussed, personal and prolonged contact as occurred in this case not only interjects an inherent prejudice to petitioner in the form of possible bias in favor of the State's case, but also creates an appearance of serious impropriety and causes subsequent serious harm to the perception of the integrity of the jury process itself."

***State v. Roman*,**
817 A.2d 100 (Conn. 2003).

In murder case, the trial court erred in failing to conduct any inquiry into a facially credible claim of juror misconduct, namely that a juror had spoken with a member of the victim’s family. Remand for the hearing.

***Buisker v. Thuringer*,**
648 S.W.2d 817 (S.D. 2002).

In wrongful death suit, state trooper married to bailiff commented to juror that defendant had liability insurance, thus forming basis of jury’s belief that parties were in cahoots; new trial ordered.

Evans v. Commonwealth,
572 S.E.2d 481 (Va. App. 2002).

In sexual assault case, the defendant was entitled to an evidentiary hearing to investigate a juror misconduct allegation that suggested that a juror had contact with the defendant's uncle during trial, and that the defendant's uncle stated that defendant was always in trouble and that he hoped the defendant would be sentenced to forty years. The trial court erred in resolving the allegation against the defendant without further inquiry where two partially conflicting sworn written statements by the juror were submitted, one of which supported the misconduct allegation.

***Commonwealth v. Guisti*,**
747 N.E.2d 673 (Ma. 2001).

Post-verdict hearing required where juror during trial posted messages on a listserv about her jury service including, "[let's] just say he's guilty and let's just get on with our lives. I am missing good gym time." Although the posting itself was improper, it did not constitute extraneous information that could impeach verdict. Of concern, however, was whether the juror received responses to her postings which she then shared with other jurors.

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

In capital case involving motions to vacate, a remand for full evidentiary hearing was required where the death row inmates alleged that jurors were provided with newspapers, access to television, visits and alcohol during their sequestration; the prosecutor maintained at least daily ex parte contact with the jurors; and jurors decided on guilt and sentence before deliberations began.

Buckholts v. State,
545 S.E.2d 99 (Ga. App. 2001).

Where defense counsel in drug possession case informed court that two jurors had been seen talking with state's chief investigative officer, trial court's failure to inquire into nature of communications before denying mistrial motion required reversal.

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. 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.

Mullins v. States,
525 S.E.2d 770 (Ga. App. 1999).

Drug possession conviction reversed where, during a court recess, an acquaintance of two jurors told them that defendant would not "be here" if he were not guilty, and testimony was in conflict as to whether one of the jurors expressed agreement with the statement. (The jurors initially denied that the acquaintance made the remark but later admitted that he had.) Although the two jurors were ultimately excused, the record was silent as to whether the jurors spoke with the other jurors about the incident and their questioning by the trial court.

***May v. State*,**
716 N.E.2d 419 (Ind. 1999).

Trial court abused its discretion in denying defendant's request to replace juror with an alternate where juror encountered an officer testifying for the state in a restaurant, exchanged pleasantries with the officer, then invited the officer to his house to watch a fight the following weekend; this contact "no doubt affected" the juror's ability to assess the officer's credibility.

***State v. Coburn*,**
724 A.2d 1239 (Me. 1999).

In case of operating under influence of alcohol, conviction overturned where one juror asked police officer husband about purpose of intoxilyzer test and another tried contested maneuver in own vehicle; prosecution did not rebut presumption of prejudice.

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

Case remanded for hearing where judge had failed to inquire into outside influences on jurors, including their being followed by strangers and receipt of implied threats; defendants must have new trial if full hearing not possible due to passage of time. (After remand, new trial granted because state was not able to rebut presumption of taint of jury by contacts. *See* 771 A.2d 592.)

***State v. Faucher*,**
596 N.W.2d 770 (Wisc. 1999).

Reversing conviction based on newly enunciated standard on objective bias where juror discovered that long-time neighbor was an important state's witness and where juror felt that neighbor would never lie, even though juror declared he could be fair and impartial. Wisconsin Supreme Court delineates three new standards concerning bias determinations: statutory bias, subjective bias, and objective bias.

***State v. Bailey*,**
713 So.2d 588 (La. App. 1998).

Remanded for evidentiary hearing to determine whether jury impartiality was affected by juror's telling story that his wife received call from woman with defendant's last name who asked for juror's daughter's telephone number.

***People v. Hobley*,**
696 N.E.2d 313 (Ill. 1998).

Illinois death row inmate was entitled to an evidentiary hearing on his allegation that the jury was exposed to improper extraneous influences where he submitted affidavits from jurors stating that third parties made comments to them in a restaurant to the effect that petitioner was guilty and should receive the death penalty.

***People v. Nesler*,**
941 P.2d 87 (Cal. 1997).

Trial court erred in denying defendant's motion for a new trial where juror both obtained prejudicial information about the defendant from a stranger at a bar and relayed the information to other jurors during deliberation.

Ites v. State,
923 S.W.2d 675 (Tex. Crim. App. 1996).

Jurors *ex parte* contact with state witness grounds for reversal in sexual assault case where witness was defendant's son, and jurors heard son say he would rather die than visit father; rebuttable presumption of prejudice.

State v. Rojas,
868 P.2d 1037 (Ariz. App. 1993).

In sexual abuse case, trial court abused its discretion by denying motion for mistrial made on ground that one of the jurors, on the day before jury deliberations, asked the judge's secretary whether the judge would sentence right away after the verdict, and, prior to deliberations, sent a sympathy note to the victims enclosing a $20 bill. The post-verdict colloquy with the juror was inadequate to cure the revealed misconduct.

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

Habeas relief granted in death penalty case where juror did not disclose on voir dire extent of pretrial knowledge about case and discussed case in middle of trial with non-juror in violation of oath.

***State v. Strauss*,**
415 S.E.2d 888 (W. Va. 1992).

Defendant convicted of burglary and larceny was entitled to new trial based on direct evidence of jury contamination: not only did juror fail to report to the court that a prosecution witness was a personal acquaintance, something the juror realized after the witness testified, or that the juror had a conversation with the witness during trial, but the juror also informed other members of the jury that the witness was a good person. Although the juror at issue denied that the conversation with the witness influenced his vote, another juror said she was influenced by the statement that the witness was a good person.

Hollywood Corporate Circle v. Amato,
604 So.2d 888 (Fla. App. 1992).

Tort verdict was reversed and new trial ordered because juror researched law, spoke with his police officer girlfriend and brought a police handbook into the jury room.

State v. Grant,
604 A.2d 147 (N.J. 1992).

Felony murder, conspiracy, attempted armed robbery and aggravated assault convictions with life sentence were reversed because juror foreperson told at least two other jurors that her husband, a correctional officer, informed her that the defendant would not have been carrying a gun unless he intended to rob someone.

Kelley v. State,
555 N.E.2d 140 (Ind. 1990).

In shoplifting case, defendant was entitled to a mistrial where three of the six jurors ate lunch with the state's only witness prior to close of evidence. "Despite the lack of clear evidence that the security guard and the jurors discussed the trial proceedings and despite the three jurors' assertions that their impartiality was intact, the enhancement of the credibility of the prosecution's witness seems highly probable, regardless of whether the jurors themselves realized it at the time."

State v. DeGraw,
764 P.2d 1290 (Mont. 1988).

Conviction for felony assault was reversed and remanded for a new trial because jury foreman was a third party to a conversation in which the defendant's criminal record was mentioned. Jury foreman's conversation was relayed to other jurors who were informed that the foreman had information from the sheriff's department.

***McIntire v. State*,**
698 S.W.2d 652 (Tex. Crim. App. 1985).

In case involving convictions for aggravated sexual assault and indecent liberties with a child, court remands for a hearing because of several possible acts of jury misconduct, including an implied quotient verdict, third party communication with a juror and discussion of parole. It was alleged that the jurors agreed to average the amount of time they thought the defendant should get and thus a hearing should have been granted on this ground. Moreover, one of the defendant's own character witnesses remarked "What do you do with a guy like that?" when in an elevator with a juror, which was sufficient to raise a rebuttable presumption of injury to the defendant. Finally, a juror admitted discussing parole and this alone was sufficient to sustain defendant's motion for a hearing.

***Haddad v. Commonwealth*,**
329 S.E.2d 17 (Va. 1985).

Murder conviction reversal required where juror engaged in lunchtime conversation with nonjurors in which the juror indicated defendant was not "going to go free," even though juror assured court he could still be a fair and impartial juror.

***Owens v. State & Lumpkin v. State*,**
305 S.E.2d 102 (Ga. 1983).

Two murder convictions and life sentences were reversed when an unidentified man came into the jury room and discussed possible verdicts and sentences and warned the jurors that a not guilty verdict would allow the defendant to "walk away." The court found that it was impossible to determine whether the unidentified man had come into the jury room prior to or subsequent to the jury's final decision and, moreover, even if the remark was made after the decision, the court found that post-verdict events, i.e. writing and publishing the verdict, polling, etc., are all crucial phases which could have been affected by the contact.

***Andrews v. County of Orange*,**
182 Cal.Rptr. 176 (Cal. App. 1982).

Inverse condemnation judgment was reversed and a new trial was ordered because jurors conducted a field trip to inspect homes affected by air traffic and one juror spoke to her husband about the case after the trial had started.

***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.

People v. Honeycutt,
570 P.2d 1050 (Cal. 1977).

Murder conviction reversed where jury foreman, during a recess in deliberations, received information and advice about homicide law from an attorney friend.

State v. Jones,
255 S.W.2d 801 (Mo. 1953).

Second degree burglary conviction reversed and new trial ordered because sheriff, who was a witness, relayed his own experiences with burglary to a juror serving on the case.