

USE OF EXTRA-RECORD EVIDENCE

(See IMPROPER JURY DISCUSSIONS where one or more jurors discuss personal experiences or expertise, other than where it is knowledge about the case or parties received from outside sources. See MEDIA INFLUENCE for cases involving exposure to news reports about the case or parties. See JUROR EXPERIMENTATION OR INVESTIGATION regarding experiments conducted by jurors or outside investigation including trips to the crime scene, internet searches and use of reference materials such as dictionaries.)

(updated September 2010)

I. UNITED STATES SUPREME COURT

Leonard v. United States,
378 U.S. 544, 84 S.Ct. 1696, 12 L.Ed.2d 1028 (1964) (per curiam)

Prospective jurors who heard trial court announce defendant's guilty verdict in first trial presumed incapable, under theory of implied bias, of rendering impartial verdict on second trial on similar charges.

II. UNITED STATES COURTS OF APPEALS

Wishart v. Davis,
408 F.3d 321 (7th Cir. 2005), cert. denied 547 U.S. 1050 (2006)

Reversing denial of habeas relief in Indiana death penalty case where state court failed to hold a hearing after receiving a juror affidavit, in post-conviction proceedings, stating that the juror had learned during the trial that petitioner had been given a lie detector test. Some type of hearing was required under *Remmer* to determine what impact knowledge of the test had on the jury. The remedy is the release of petitioner unless the state court either retries petitioner or conducts a further post-conviction hearing addressed to the issue of jury bias.

Quintero v. Bell,
368 F.3d 892 (6th Cir. 2004)

Habeas relief granted in case involving prosecution for escape where seven of petitioner's jurors had previously served on a jury that convicted petitioner's co-escapees of the same offense.

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

Evidentiary hearing required in capital habeas case to determine whether juror was strongly influenced by pro-death penalty husband and whether jury considered extraneous evidence that defendant had previously been sentenced to death for the crime by another jury.

***United States v. Schwarz,*
283 F.3d 76 (2nd Cir. 2002)**

In case involving the prosecution of a police officer for violating a detainee's civil rights, the jury's exposure to extrinsic information -- that the co-defendant had admitted the presence of a second officer at the scene of the assault -- could not be deemed harmless. The co-defendant's statement significantly bolstered the testimony of the victim, who was the only witness to actually place a second officer at the scene, and the failure of defense counsel to call the co-defendant to testify that the second officer was not defendant likely led the jury to conclude that defendant was the second officer. The appeals court noted that the proper remedy for the trial court's failure to conduct a proper inquiry would either be a remand for an evidentiary hearing on the issue or the outright grant of a new trial. However, the appeals court did not decide which would be appropriate because it granted a new trial on another issue.

***United States v. Humphrey,*
208 F.3d 1190 (10th Cir. 2000)**

Remand for full inquiry in federal drug case where one juror told others about defendant's bad reputation; improper for trial judge to conduct ex parte examination of foreperson and also insufficient for trial court to conduct interrogation of only foreperson.

***United States v. Davis,*
177 F.3d 552 (6th Cir. 1999)**

Remand for *Remmer* hearing in drug and firearms case where alternate juror, a businessman in defendant's community, was removed for expressing to other jurors his fear of reprisal if defendant was convicted; error not to question all jurors on effects of his remarks.

***United States v. Santana,*
175 F.3d 57 (1st Cir. 1999)**

In case involving drug-related charges, trial court committed reversible error by acquiescing to request by jurors during deliberations to view Spanish-speaking defendant without the headphones he'd worn throughout the trial so that he could hear the interpreter. Although the defense was misidentification and a key prosecution eyewitness had noted "protruding" ears as a distinguishing characteristic of the person he observed, the prosecutor had failed to ask defendant to remove the headphones at any time during the trial. Because the record was closed during deliberations, the jury view of defendant unconstitutionally allowed consideration of extrinsic evidence. On the record before it, the appellate court finds it "impossible to conclude beyond a reasonable doubt that the court's error in allowing the jury to observe Santana without his headphones during its deliberations did not contribute to the verdict."

Nevers v. Killinger,
169 F.3d 352 (6th Cir. 1999)

Habeas relief granted in case involving second-degree murder conviction following trial of white police officer for beating black man to death. Trial court had refused to grant hearing or mistrial after learning that jury had considered extraneous information about defendant's alleged involvement in undercover police unit rumored to harass black men, viewed movie "Malcolm X" which included video of Rodney King beating, and heard news report about preparations for riot in anticipation of verdict. State court's finding of harmless error was unreasonable and contrary to law under AEDPA. The jury's exposure to extraneous evidence, especially about undercover police unit, went directly to defendant's credibility which was focus of trial.

United States v. Herndon,
156 F.3d 629 (6th Cir. 1998)

Remanded for evidentiary hearing where juror recalled during deliberations that he may have had prior dealings with defendant and trial court refused to investigate.

United States v. Keating,
147 F.3d 895 (9th Cir. 1998)

Federal conviction of Savings & Loan owner Charles Keating reversed and new trial granted because jurors knew of, or became aware of, his state court conviction on related charges.

United States v. Cunningham,
145 F.3d 1385 (D.C. Cir. 1998)

Reversal of some convictions is required based on jury inadvertently being provided with unredacted 911 tapes containing statements not heard at trial.

Eslaminia v. White,
136 F.3d 1234 (9th Cir. 1998)

Habeas relief granted where a taped interview of the defendant conducted by the police was admitted into evidence, but the jury also listened to the other side of the tape in the jury room. The other side contained a taped conversation between the defendant and his brother.

Jeffries v. Wood,
114 F.3d 1484 (9th Cir. 1997).

Writ of habeas corpus granted in capital case where juror informed other jurors of defendant's prior armed robbery conviction; court holds that improper communication need not come from source outside jury to require reversal.

United States v. Berry,
92 F.3d 597 (7th Cir. 1996)

Affirming lower court's grant of a new trial where jury used during its deliberations the transcript of a tape recording that identified defendant as one of two speakers. (Over defense counsel's objection, the jury was allowed to view the transcript during the trial as it listened to the tape-recording. The transcript was not admitted into evidence, however, and the other person on the tape-recording never identified defendant as the second speaker.) "[I]n a case such as this, where identity of the speaker on a recording was the crucial issue, the unauthenticated and unadmitted transcript identified the defendant as the speaker, and there was not a significant amount of identification evidence, the judge could have concluded that the jury, in using the transcript during its deliberations, likely placed substantive weight on the transcript's identification of [defendant] as the speaker."

United States v. Hall,
85 F.3d 367(8th Cir. 1996)

Remand required for government to rebut presumption of prejudice where jurors overheard bench conference where other crimes discussed.

U.S. v. Swinton,
75 F.3d 374 (8th Cir. 1996)

Case remanded for hearing where juror contacted judge after trial to say that another juror informed panel during deliberations of defendant's prior criminal record.

United States v. Gaston-Brito,
64 F.3d 11 (1st Cir. 1995)

Where defense counsel alleged that after a witness was asked who had ordered something to occur, a case agent sitting at the prosecution table improperly gestured toward the defense table, the district court was obligated to undertake an adequate inquiry to determine whether the incident occurred and whether it was harmless. (The witness had testified that he did not know who had ordered the act at issue.) The district court's failure to conduct the required inquiry mandated reversal of the defendants's conviction.

Lawson v. Borg,
60 F.3d 608 (9th Cir. 1995).

Grant of habeas relief affirmed based on juror misconduct in introducing extrinsic information about defendant's alleged violent character. Petitioner was convicted of murder with special circumstance of attempted robbery and he was sentenced to life without parole. Juror misconduct occurred in that a juror told other jurors that petitioner was "very violent" and "had a violent

temper." This information directly related to the special circumstance issue of force, as petitioner claimed that he was collecting on a debt and the jury then had to assess whether he had used excessive force in doing so before it could find the special circumstance of attempted robbery.

United States v. Harber,
53 F.3d 236 (9th Cir. 1995)

Conviction for money laundering conspiracy reversed when case agent's 56 page report, not admitted into evidence, was found to have been in the jury room during deliberations.

Bonner v. Holt,
26 F.3d 1081 (11th Cir. 1994)

Habeas relief granted to petitioner convicted of shoplifting cigarettes and sentenced to life imprisonment where jury learned that petitioner was a habitual offender before it had unanimously reached a verdict on guilt-innocence. "The jury was at first unable to reach a unanimous verdict, but in the second round of deliberations, in which the extrinsic evidence was considered, the jury returned a verdict of guilt. This presents strong evidence that the error in this case had a 'substantial and injurious effect or influence in determining the jury's verdict.'"

United States v. Segines,
17 F.3d 847 (6th Cir. 1994)

Where trial court did not review original tapes for intelligibility and authenticity and the tapes were not admitted into evidence, it was error for the trial court to allow jury to take tapes into jury room. Convictions vacated.

United States v. Martinez,
14 F.3d 543 (11th Cir. 1994)

Remand required where jury deliberations tainted by extrinsic evidence, including jury's use of a dictionary, jurors' watching news accounts on television, juror's awareness of publicity, jurors' regularly bringing newspapers into jury room and juror's informing other jurors that defendant faced 160 years' imprisonment.

United States v. Walker,
1 F.3d 423 (6th Cir. 1993)

During deliberations in drug conspiracy case, jury was exposed to transcripts of portions of videotaped testimony deemed inadmissible; district court should have conducted *Remmer* hearing to determine prejudicial impact of extraneous evidence; remanded for new trial.

United States v. Gillis,
942 F.2d 707 (10th Cir. 1991)

Reversal where jury panel members were also jury panel members in a previous drug distribution conspiracy prosecution (same charge, different defendants) and trial court failed to adequately voir dire to ensure impartiality.

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.

United States v. Luffred,
911 F.2d 1011 (5th Cir. 1990)

Reversing defendant's convictions for conspiracy to commit bank fraud and bank fraud where chart prepared by prosecution and used as a trial aid was provided to the jury by the marshal at the jury's request. The trial court had on three occasions rejected the prosecution's request that the chart, which represented the prosecution's theory of the case, be admitted into evidence. In concluding that the prosecution failed to rebut the presumption of prejudice, the appeals court noted, inter alia, that the "curative" instruction given to the jury after it was learned that the chart had been provided to it "did more to exacerbate rather than alleviate the situation" by adding after instructing the jury to disregard anything it may have learned from the chart that the chart had been "supported by the evidence ... to a great extent or perhaps completely....".

Dickson v. Sullivan,
849 F.2d 403 (9th Cir. 1988)

Reversing denial of habeas relief where there was a reasonable possibility that two jurors, who were present when deputy sheriff made statement to effect that defendant had "done something like this before," were influenced in their determination of defendant's guilt.

Stephens v. South Atlantic Cannery, Inc.,
848 F.2d 484 (4th Cir. 1988)

Employer entitled to new trial based on extraneous notations on personnel files and other records--that had been altered after being admitted into evidence--taken by jury into jury room during deliberations.

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

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

United States v. Perkins,
748 F.2d 1519, 1533 (11th Cir. 1984)

Convictions reversed where juror told others in deliberation that he knew defendant and knew where witness lived.

United States v. Vasquez,
597 F.2d 192 (9th Cir. 1979).

In case involving charges of making a false statement to a government agency, conviction reversal because the official court file had been left in the jury room during deliberations and most jurors had examined it. The file included motions and instructions that had been denied by the court during trial, other documents which included inadmissible evidence that defendant had been previously prosecuted for an offense involving contraband, and other inadmissible facts underlying a search of defendant prior to her arrest.

Donovan v. Davis,
558 F.2d 201 (4th Cir. 1977).

State prisoner was entitled to habeas relief from attempted rape conviction where seven of the jurors had also served on the jury that acquitted him of unauthorized use of a motor vehicle one week earlier. Notably, at the earlier trial, there was much more evidence presented concerning petitioner's attraction to women. By allowing jurors to sit on both trials, the second jury was exposed to evidence outside of the record.

Wall v. Superintendent, Virginia State Penitentiary,
553 F.2d 359 (4th Cir. 1977).

State prisoner was entitled to habeas relief from his burglary conviction where five jurors on the case had been jurors in a previous trial where petitioner testified in support of the defendant and, at that first trial, the jury heard testimony regarding petitioner's felony record and other damaging information regarding his character that was not allowed to be admitted at his burglary trial. No person, no matter how dedicated to their voir dire oaths, could have erased all of the information they learned during the first trial when deciding guilt or innocence.

United States v. Howard,
506 F.2d 865 (5th Cir. 1975).

Hearing required in criminal case where juror told others that defendant had been in trouble before.

Paz v. United States,
462 F.2d 740 (5th Cir. 1972)

Hearing required following conviction for transporting drugs where jurors allowed to keep books related to drugs, drug traffic and drug problems in jury room.

Mottram v. Murch,
458 F.2d 626 (1st Cir.), *rev'd on other grounds,* 409 U.S. 41, 34 L. Ed. 2d 194, 93 S. Ct. 71 (1972).

State prisoner entitled to habeas relief where four jurors in his habitual offender trial had been jurors at petitioner's earlier trial for car theft and the four jurors heard evidence in the first trial which they were not entitled to hear in the second.

United States ex rel. Owen v. McMann,
435 F.2d 813 (2nd Cir. 1970), *cert. denied,* 402 U.S. 906 (1971).

Affirming grant of habeas relief to a state prisoner where one or more of the convicting jury members had reported to other jurors unfavorable incidents in petitioner's life that were unrelated to the charges.

Farese v. United States,
428 F.2d 178 (5th Cir. 1970).

In case involving charges of crime of transporting in interstate commerce a forged and fraudulently made security and of aiding and abetting in that offense, conviction must be reversed because jury discovered \$750 in large denominations in exhibit during deliberations.

Lett v. United States,
15 F.2d 690 (8th Cir. 1926)

Reversal where eight jurors who had, earlier that morning, sat on the jury which convicted the defendant's wife in a related offense, were allowed to sit on the defendant's jury. The presumption of prejudice was "too great to be ignored."

III. UNITED STATES DISTRICT COURT

Roman v. Hedgpeth,
2008 WL 4553091 (C.D. Cal. Oct. 8, 2008).

State prisoner convicted of second degree murder who had unsuccessfully argued self-defense was entitled to habeas relief on claim of juror misconduct where jury returned its verdict shortly after learning through a redacted transcript that prisoner had two strikes and had been in prison before. (In fact, he had only one strike. But any evidence about his criminal history had been ruled inadmissible.) Given that the jury had deliberated for more than 6 days and sent two notes to the judge indicating that the jury was at a “standstill”, and could not “unanimously decide guilt or innocence in any of the charges,” the evidence of guilt could not be relied upon to rebut the presumption of prejudice. To the extent the state appellate court found that the references to the alleged two strikes and prior prison time were “insignificant” because they were “brief” and “unemphatic,” this was an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. State appellate court’s reliance on testimony by three jurors that there was an agreement not to consider the new information was misplaced given that it is “well-settled that a jury’s discussion of improper evidence is not rendered harmless merely because the jurors agreed to ‘ignore’ the evidence.” State court’s conclusion that exposure to the extrinsic evidence was harmless was an unreasonable application of Supreme Court precedent. Further, introduction of the extrinsic evidence had a “substantial and injurious effect or influence in determining the jury’s verdict.”

Warrichaiet v. Jansen,
441 F. Supp. 2d 989 (E.D. Wis. 2006).

Habeas relief granted in case involving charges of assault on a law enforcement officer and disorderly conduct where a member of the jury mentioned during deliberations that petitioner had been involved in one or more bar fights, that the juror knew petitioner to be a “big bully,” and that one of petitioner’s brothers had engaged in similar conduct at a bar. The district court harbored grave doubts about the harmlessness of the extraneous information given that evidence of petitioner’s propensity for aggression or bullying “would have influenced the average juror’s determination that [petitioner] was either the aggressor or not reasonably acting in self-defense in the events at issue.” The state court’s ruling that the extraneous evidence was harmless “was based on an ‘unreasonable determination of the facts in light of the evidence presented.’”

Benjamin v. Fisher,
248 F. Supp. 2d 251 (S.D. N.Y. 2002).

Jury’s inadvertent exposure to and consideration of inadequately redacted portion of police report detailing defendant’s prior robbery arrests and probationary status, in prosecution for burglary and robbery, was prejudicial.

United States v. Brown,
913 F. Supp. 1324 (D. Minn. 1996).

Defendant was granted new trial because, during deliberations, one juror disclosed that co-defendant had been found guilty of same crime and fined \$367,000.

United States v. Posner,
644 F.Supp. 885 (S.D.Fla. 1986), *aff'd* 828 F.2d 773 (11th Cir. 1987), *cert. denied*, 485 U.S. 935 (1988), *rehearing denied*, 485 U.S. 1042 (1988).

Motion for new trial granted in tax evasion case because jurors received extrinsic information during both trial and deliberations, including fact of co-defendant's conviction; jury foreperson also read news accounts of trial and one juror visited property site on which charges depended.

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

Caruthers v. State,
909 N.E.2d 500 (Ind. App. 2009).

Murder conviction reversed where trial court failed to sua sponte conduct an interrogation of the jury after it was brought to the court's attention by the bailiff and defense counsel during trial that some of the jurors felt intimidated by actions attributed to the defendant, the defendant's family, and/or the victim's family. Instead, after learning that the jurors were concerned about their safety, the trial court had ordered extra security for the jurors as well as alternative parking and informed the jurors about the heightened protections. "Although it was commendable for the trial court to take action to protect the jury's safety, the trial court's actions, without further investigation into the possible threats, could have led the jurors, including any jurors not directly exposed to threats, to believe that the judge believed that they were in danger and that they were, in fact, genuinely in danger." Given the circumstances, "the trial court abused its discretion by failing to investigate and this failure constituted fundamental error."

State v. Kamel,
972 A.2d 780 (Conn. App. 2009).

In case involving assorted drug-related charges and interfering with an officer, defendant was entitled to a new trial due to the trial court's failure to conduct a preliminary on the record

inquiry after learning that the jury was exposed during its deliberations to brass knuckles, which were marked for identification but not admitted into evidence as an exhibit because they were not relevant to the charged crimes. “Brass knuckles are not an innocuous item but one that would suggest to the average juror that the defendant, charged with interfering with an officer, among other crimes, had violent, unlawful propensities. It is well established that consideration of extrinsic evidence is jury misconduct sufficient to violate the constitutional right to trial by an impartial jury.” A new trial is required rather than a remand given that the trial court learned of the brass knuckles during an ex parte meeting with the jurors, the trial court had unilaterally determined that the exposure to the brass knuckles was harmless, and the trial was five years earlier.

State v. Cecil,
655 S.E.2d 517 (W. Va. 2007).

In sexual abuse case, defendant was entitled to new trial as a result of cumulative juror misconduct, including juror’s use of website MySpace.com after testimony was presented during the trial that at least one of the alleged victims in the case had maintained an account on the website, and juror’s discussion of the website with her daughter who was a fellow student with an alleged victim and knew her family.

Graybeal v. Martin Sand & Gravel,
179 P.3d 1278 (Okla. Civ. App. 2007).

In civil case, affirming grant of new trial where foreperson informed other jurors that plaintiff had already received an insurance settlement and was financially well-off. “It is irrelevant whether the foreman actually conducted an ‘independent investigation,’ received this information in some other manner, or made the statements without any factual basis whatsoever. The result was the same. These statements were clearly improper, involved purportedly extraneous information, and were intended to sway the jury toward a defendant's verdict.”

People v. Ault,
95 P.3d 523 (Cal. 2004)

Affirming trial court’s granting of a new trial where a juror in a child molestation case received information from an outside source and then shared this information with other jurors during deliberations in an effort to bolster the credibility of the prosecuting witness.

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

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

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

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.

Loeffelholz v. Citizens For Leaders With Ethics And Accountability Now,
82 P.3d 1199 (Wash. App. 2004).

In defamation and malicious prosecution case, the trial court did not abuse its discretion in finding a new trial was warranted on damages where a juror during deliberations placed before his fellow jurors salary and retirement information that was wholly outside the evidence and not subject to scrutiny by either party.

Bates v. United States,
834 A.2d 85 (D.C. App. 2003)

Denial of new trial motion is vacated where trial court failed to make an adequate inquiry into a juror's prior relationship with a defense witness. It was illogical for the trial court to credit the testimony of the juror, who denied harboring a bias against the witness, while also claiming to accept the defense proffer that the witness would present contrary testimony on a material fact – whether the juror and witness remained on good terms after the witness's son was injured when left in the care of the juror. (According to the witness, she was so angry she vandalized the juror's car following the incident with her son.) Under these circumstances, the trial court was required to assess the credibility of the witness, and then question other jurors if a possibility of bias was found to exist.

State v. DeStefano,
71 A.2d 592 (N.J. Super. 2001)

Receiving stolen property conviction reversed where trial court failed to conduct hearing after juror stated that he could no longer be fair or properly deliberate after learning extraneous facts.

State v. Kier,
2001 WL 1463810 (Wash. App. Nov. 19, 2001) (unpublished).

Robbery case remanded where one juror told others that defendant had criminal history and trial court did not conduct adequate investigation.

Chew v. State,
804 S.W.2d 633 (Tex. App. 1991).

Rape conviction reversed and remanded for a new trial when juror discussed other similar charges were pending against the defendant. Jurors were also exposed to an unintroduced exhibit documenting the complainant's unwillingness to testify due to media harassment.

State v. Shaia,
2000 WL 710102 (Del. Super. Mar. 20, 2000), *aff'd*, 765 A.2d 953 (Del. 2000)

New trial granted where jury was inadvertently provided with court clerk's "trial notes" during deliberations; notes contained references to courtroom events about which jury should not have known, e.g., evidentiary rulings, notes on motions and rulings, etc.; the court concluded that this information was "inherently prejudicial."

Sunrise Enterprises, Inc., v. Mid-South Rd. Builders, Inc.,
987 S.W.2d 674 (Ark. 1999)

Civil judgment reversed in property dispute where juror brought real estate contract into deliberations and showed to other jurors.

Duchainey v. State,
736 So.2d 38 (Fla. App. 1999)

Remanded for hearing where it was discovered after verdict that jury room contained photocopied and highlighted pages from an unauthorized dictionary and thesaurus. Held that if alleged misconduct proved at hearing, it could not be harmless error.

State v. Bisaccia,
724 A.2d 836 (N.J. Super. Ct. App. Div. 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 given the six years since trial. If a hearing is not possible, retrial will be required.

State v. Garza,
991 P.2d 905 (Kan. App. 1999), cert. denied, *Kansas v. Garza*, 528 U.S. 929, 120 S.Ct. 325, 145 L.Ed.2d 253 (1999)

Reversible error found where jurors discovered, read and discussed on-point case left in jury room; conviction for drug possession overturned.

Caroll v. State,
990 S.W.2d 761 (Tex. Crim. App. 1999)

Aggravated robbery convictions reversed where file folder containing photographic array was taken into jury room and also had prior mug shot of defendant which jurors reviewed.

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.

People v. Budzyn,
566 N.W.2d 229 (Mich. 1997)

During the trial of two white police officers for the murder of a black man, jurors were exposed to the film Malcolm X, media reports that the city was preparing for a riot in the case of an acquittal, and information that the officers had been members of a racial law enforcement group known as STRESS. Finding that there was a real and substantial possibility that the extraneous influences could have affected the jury, the Michigan Supreme Court conducted a harmless error analysis and reversed the conviction of one defendant.

Collins v. State,
701 So.2d 791 (Miss. 1997)

Trial court committed reversible error by sending a Black's Law Dictionary into the jury room after the jury requested a definition of premeditation. The Mississippi Supreme Court held that prejudice was presumed because the extraneous material was introduced to the jury by the court rather than by accident or by a third party.

State v. Henning,
545 N.W.2d 322 (Iowa 1996)

Defendant met burden of proving prejudice where jurors learned of defendant's previous drunk driving convictions during vehicular homicide case.

State v. Hightower,
680 A.2d 649 (N.J. 1996)

Prejudice presumed and new sentencing required where juror in capital case gave other jurors extraneous victim impact evidence and jury returned death sentence, despite removal of offending juror and limiting jury instructions.

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.

Keen v. State,
639 So.2d 597 (Fla. 1994).

Capital conviction and death sentence reversed where jurors were exposed during deliberations to unauthorized article describing tactics employed by defense attorneys who demeaned a victim's character and made personal attacks on the prosecutors. The trial judge exacerbated the error by questioning jurors about their thought processes during guilt-phase deliberations.

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

A duty to conduct a preliminary inquiry was triggered when the court received an anonymous letter informing it that the jurors overheard the sheriffs' statements that they were betting that the defendant would be found guilty because he was black and from New York.

State v. Brooks,
520 N.W.2d 796 (N.D. 1994)

Conviction for delivery of controlled substance was reversed and remanded because juror informed others that defendant's business partner had been tried and convicted of drug related offense.

Clarke-Mobile Counties Gas Dist. v. Reeves,
628 So.2d 368 (Ala. 1993)

Court found prejudice where juror stated that another juror's statement concerning her experience with defendant affected her decision.

State v. Tammetta,
624 So.2d 433 (La. App. 1993)

Reversed where trial court allowed written statements of witnesses into jury room in violation of state law.

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.

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.

Chew v. State,
804 S.W.2d 633 (Tex. App. 1991)

Rape conviction reversed and case remanded for new trial when juror discussed other similar charges pending against defendant and jurors exposed to unintroduced exhibit documenting complainant's unwillingness to testify due to media harassment.

Haight v. Aldridge Electric Company, Inc.,
575 N.E.2d 243 (Ill. App. 1991)

In negligence action regarding an automobile accident, the unauthorized production of almanac evidence as to time of sunset on the date of the accident during jury deliberations was grounds

for reversal, where the nature of the evidence related directly to crucial issue in case, i.e., visibility, and was not merely cumulative.

Loving v. Baker's Supermarkets, Inc.,
472 N.W.2d 695 (Neb. 1991)

Slip-and-fall judgment reversed and remanded when attorney's notes including notations on medical expenses were inadvertently taken to the jury room by bailiff.

McCray v. State,
565 So.2d 673 (Ala. Crim. App. 1990)

Second degree kidnaping and assault conviction reversed and remanded for a new trial because jurors read portions of the Alabama Pattern Jury Instructions which led one juror to erroneously assert that the jury could not convict the defendant of the lesser included offense.

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.

Dumas v. State,
491 So.2d 1083 (Ala. Crim. App. 1986).

Conviction reversed where juror discussed fact that he had known defendant since he was young, that defendant had always been a "bad boy" and that he believed the killing was for revenge.

State v. Poh,
343 N.W.2d 108 (Wisc. 1984).

Three counts of DUI/negligent homicide remanded for new trial; jury's contact with extraneous information not harmless because it related to defendant's history of drinking and driving.

State v. Poland,
645 P.2d 784 (Ariz. 1982).

Co-defendant brothers' convictions for first degree murder and death sentences reversed because jurors discussed federal charges against the defendant which related to same series of events leading to the state charges.

Commonwealth v. Fidler,
385 N.E.2d 513 (Mass. 1978)

Hearing was granted on the issue of jury misconduct in a case involving a kidnaping conviction because juror stated that the defendant had been shot at one month prior to the case.

State v. Steinmark,
266 N.W.2d 751 (Neb. 1978).

District court ruling denying motion for new trial overruled and evidentiary hearing ordered because jurors considered defendant's prior conviction, prison sentence and reputation of the bar where defendant worked as being place where illegal drugs were readily obtained.

Gilliland v. State,
93 So.2d 745 (Ala. 1957)

Second degree murder conviction was reversed and remanded for a new trial because jurors were sent into the same room which had been used for evidence and the victim's clothes, not introduced as evidence, were left in the room and the jurors inspected the clothing.

Russ v. State,
95 So.2d 594, 600 (Fla. 1957)

Holding that "[w]here a juror on deliberation [relies on or] relates to the other jurors material facts claimed to be within his personal knowledge, but which are not adduced in evidence . . . it is misconduct which may vitiate the verdict," in remanding for evidentiary hearing.