

IMPROPER JURY DISCUSSIONS/FAILURE TO DELIBERATE

(Including jurors using personal expertise during deliberations)

(updated September 2010)

1. Defendant's Failure to Testify

State v. Furutani,
873 P.2d 51 (Haw. 1994).

Circuit court's grant of new trial in case involving theft and failure to report income was affirmed because jurors discussed the defendant's failure to testify, making remarks that indicated they believed if he was innocent he would have testified on his own behalf and try to "prove his innocence."

Reyna v. State,
846 S.W.2d 498 (Tex. App. 1993).

Aggravated sexual assault conviction was reversed and remanded for a new trial because jurors discussed the defendant's failure to take the stand and four jurors presented affidavits admitting that they "took into consideration" the fact that defendant did not testify. While six affidavits indicated no reference to such discussions, the court found that these affidavits did not rebut the four affidavits admitting the discussions took place.

People v. Perez,
6 Cal.Rptr. 2d 141 (Cal. App. 1992).

Conviction for assault with a deadly weapon and possession of a deadly weapon by a prisoner was affirmed as modified and remanded for a hearing when juror affidavit was presented which stated that all of the jurors had discussed the defendant's failure to take the stand. The court of appeals ruled it was error to deny the defendant's motion for a new trial because the factual scenario presented was one that established jury misconduct and a hearing should have been held.

Smith v. State,
530 S.W.2d 827 (Tex. Crim. App. 1975).

Conviction for murder and twenty year sentence were reversed and remanded for a new trial because of un rebutted juror testimony that the jurors discussed the defendant's failure to take the stand and concluded that meant he must have been guilty.

2. Prior Bad Acts

a. United States Courts of Appeals

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.

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, inter alia, about defendant's alleged involvement in undercover police unit rumored to harass black men.

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.

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. 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. 1995).

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.

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

Grant of writ of habeas corpus affirmed. Appellant was convicted of murder with special circumstance of attempted robbery and he was sentenced to life without parole. The court found that jury misconduct had occurred in that a juror told other jurors that the defendant was "very violent" and "had a violent temper." The court noted that this information directly related to the special circumstance issue of force, as the defendant 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 they could find the special circumstance of attempted robbery.

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. Aragon,
962 F.2d 439 (5th Cir. 1992).

Jurors in drug conspiracy case were exposed to prejudicial news article detailing defendant's prior criminal record; district court denial of defendant's request to poll jury to determine article's prejudicial effect was reversible error.

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.

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.

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.

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.

b. United States District Courts

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.

Guam v. Castro,
2002 WL 31663293 (Guam Terr. Nov. 27, 2002) (unreported).

New trial for manslaughter properly granted where jurors received information about prior manslaughter charge of defendant’s from print and televised news and from coworkers.

c. State Courts

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.

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

Reversal of the conviction of one of two white police officers for the murder of a black man, where jurors were exposed, inter alia, to information that the officers had been members of a racial law enforcement group known as STRESS.

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.

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. 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) (en banc).

Capital case. Two brothers' convictions for first degree murder and death sentences were reversed and remanded for a new trial 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 a new trial was overruled and the cause remanded for an evidentiary hearing because juror affiant alleged that in finding defendant guilty of a drug offense the jury discussed the defendant's prior conviction, prison sentence and reputation of the Bar where defendant worked as being a place where illegal drugs were readily obtained.

3. Personal Expertise or Experience

a. United States Courts of Appeals

Burton v. Johnson,
948 F.2d 1150 (10th Cir. 1991).

Habeas relief granted in murder case involving battering and abuse issues, where juror did not acknowledge own sexual abuse during voir dire; defendant had asked for and been denied individually sequestered voir dire on issue; juror then discussed own experiences with other

jurors. Habeas court refused to accord presumption of correctness to state court findings.

Mach v. Stewart,
129 F.3d 495 (9th Cir. 1997).

Not strictly speaking jury misconduct, but an instructive case: trenchant comments on voir dire of a social worker who claimed knowledge of psychology and of sexual abuse held to have tainted the rest of the jury pool and resulted in reversal of conviction for sexual conduct with a minor.

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

Criminal case reversed because juror told other jurors that he knew the defendant and where the witness lived.

Downey v. Peyton,
451 F.2d 236 (4th Cir. 1971).

Habeas corpus petition granted as to hearing on potential jury misconduct because he alleged that the jury considered extra-record facts and that one juror was prejudiced because he was the jailer's son and the jailer was beaten during in an escape attempt. The district court was ordered to conduct a hearing on these allegations.

b. State Courts

Robert M. Seh Co., Inc. v. O'Donnell,
675 S.E.2d 202 (Va. 2009).

In case involving law suit about a swimming pool installation, trial court abused its discretion in failing to grant mistrial after juror revealed that his father-in-law had previously opined that a particular pool liner was inferior, which was at issue in the law suit, and the juror admitted that he could not erase from his brain the information about the liner even though he agreed to decide the case on the evidence presented. “[O]nce a jury has been empanelled and the impartiality of a juror is subsequently brought into question, it is an abuse of discretion to deny a motion for mistrial if the proponent of the motion establishes the probability of prejudice such that the fairness of the trial is subject to question. . . . [T]he standards regarding determinations of juror impartiality and probable prejudice are the same for civil and criminal cases.”

Campopiano v. Volcko,
61 A.D.3d 1343, 877 N.Y.S.2d 568 (NY AD 2009).

In automobile accident case where jurors had to decide whether plaintiff suffered a serious injury, plaintiff was entitled to a hearing on claim of juror misconduct after juror told trial court post-

verdict that she had enjoyed her jury service “except for the last two hours when she had to obtain a light box so she could read [plaintiff’s] MRIs to the jury due to her medical expertise as a respiratory therapist.” Hearing was required despite affidavit from juror submitted by defendant denying that she had held herself out as an expert or interpreted the diagnostic films for the other jurors.

Barber v. Shoprite of Englewood & Associates.
966 A.2d 93 (N.J. Super. A.D. 2009).

In personal injury case where foreperson of the jury was a practicing attorney, law professor and state senator who published an article about his experience as a juror after the trial, trial court’s finding that the foreperson had not committed misconduct by using his knowledge and status to influence the jury was not supported by the record. The foreperson, inter alia, explained instructions to the other jurors rather than submitting questions to the trial court as the jurors were instructed to do. “[O]ur review of the entire record in this case convinces us that [the foreperson’s] explanations to the jury had a ‘tendency’ to influence the verdict. That ‘tendency,’ coupled with the cumulative trial errors, deprived defendant of a fair trial.”

Whitlock v. Foster Wheeler, LLC,
72 Cal.Rptr.3d 369 (Cal. App. 2008).

In civil case by serviceman involving asbestos exposure, affirming grant of new trial where juror discussed his personal experience in the Navy which supported defendant’s position that it was not proven that the plaintiff was exposed to an asbestos-containing product which the defendant supplied to the ship on which plaintiff had served. While neither party presented evidence concerning the Navy’s general practices as to replacement of parts, the juror supplied such information to the other jurors. The juror’s statements thus “constituted external information in the form of a juror’s own claim to expertise or specialized knowledge for which there was no evidence.”

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 comment by juror who worked for Department of Health and Human Resources that her experience required that the jurors place more weight on the children’s testimony than that of the adults. “In effect, this juror . . . told other members of the jury that an incorrect legal standard should be applied to the testimony of the alleged victims in this case. . . . Any suggestion by an employee of the State, and not just any State employee but an employee of . . . the very agency which investigates child abuse and neglect, that a different standard should be applied to the alleged victims’ testimony was inherently prejudicial to the [defendant].”

Hutchinson v. Clare Rose of Nassau, Inc.,
835 N.Y.S.2d 698 (N.Y. A.D. 2007).

In action to recover damages for personal injuries, new trial ordered on the issue of damages for past and future pain and suffering where informal discussions between the court, counsel and the jurors post-verdict revealed that one juror had apparently disregarded much of the neurologic and medical testimony, and had instead utilized his own knowledge of medicine gained from his training and employment as a physical therapist in arriving at his verdict as to past and future pain and suffering, and trial court refused plaintiff's counsel's request to question the juror under oath. "By denying the plaintiff's counsel the right to place the juror under oath in order to explain his conduct during deliberations, the Trial Judge frustrated the impartial judicial inquiry necessary to determine if there was an improper influence upon the remaining members of the jury panel."

Cavalier Metal Corporation v. Johnson Metal Controls,
124 S.W.3d 122 (Tenn. App. 2003).

In breach of contract case, a new trial was required where a juror who was a former employee of defendant reported to other jurors her personal knowledge regarding facts in dispute at trial.

People v. Smith,
793 N.E.2d 719 (Ill. App. 2003).

On plain error review in a robbery-murder case, a new trial was ordered where a juror had informed other jurors that the defendant was a bad person, gang member and drug dealer, that the defendant and the alleged accomplices knew each other and were in a gang, and that the accomplice was taller and heavier than the defendant. Prejudice is found because: (1) gang membership was irrelevant and the trial court had specifically barred introduction of such evidence; (2) the comments about the relationship between defendant and the alleged accomplices could have led the jurors to infer that the men did commit the robbery together because of their past history; and (3) the remark about defendant's physical appearance in relation to an alleged accomplice could have bolstered a witness's testimony to the detriment of the defendant. Although the trial judge attempted to remedy the problem by dismissing some jurors and conducting an extensive voir dire to ensure the remaining jurors could remain fair and impartial and decide the case solely on the evidence introduced at trial, the appellate court was unable to find no prejudice given the nature of the remarks.

Bureau v. Gendron,
837 A.2d 138 (Me. 2003).

In case involving a landlord-tenant dispute, the trial court did not abuse its discretion by granting a new trial due to jury taint where the court had dismissed a juror who had told other jurors that he knew and disliked the defendant and denied defendant's related mistrial motion. It was proper

for the trial court to allow the jury to render a verdict and then, after giving the evidence of misconduct more thought, to conclude that the jury had indeed been tainted.

Cunningham v. St. Alexis Hospital Medical Center,
758 N.E.2d 188 (Ohio App. 2001), *discretionary appeals not allowed.*

New trial required in medical malpractice case where one juror reported during deliberations and before the verdict that another juror, who was a nurse, interjecting extraneous information about standard of care and other medical information. When informed about the juror's action, the trial court failed to conduct any inquiry. The appellate court found that a post-verdict inquiry would be futile because it would be impossible to ascertain extent of damage done by the juror's interjection of extraneous information.

People v. Flores,
725 N.Y.S. 2d 655 (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.

People v. Maragh,
729 N.E.2d 701 (N.Y. 2000).

Defendant was entitled to a new trial where a juror who was a nurse expressed her expert opinion on a material issue in the case, and that opinion was distinct from and in addition to the medical evidence introduced at trial.

Enyart v. City of L.A.,
90 Cal. Rptr. 2d 502 (Cal.App. 1999).

Civil judgment against the City of Los Angeles reversed where jurors exhibited bias not acknowledged in questionnaires, including comments about conduct and veracity of Los Angeles police; jurors shared views based on own experiences that LAPD regularly "screws over" people and hides evidence; case remanded for new trial.

McDonald v. Southern Pacific Transportation Co.,
83 Cal.Rptr.2d 734 (Cal.App. 1999).

In personal injury suit where plaintiff's truck was hit and damaged by train, juror, a career transportation consultant, shared evidence with jury from own experience; reversing judgment, court holds "external information in the form of a juror's own claim to expertise or specialized knowledge of a matter at issue is misconduct."

Diaz v. State,
743 A.2d 1166 (Del. 1999).

Bilingual juror's indication to other jurors outside of court that she disagreed with court interpreter's translation of foreign language testimony violated defendant's right to fair trial; juror became unsworn, uncross-examined, and unqualified witness.

State v. Adams,
727 A.2d 468 (N.J. Super 1999).

Conviction reversed where trial judge dismissed deliberating juror for telling others that "police often beat accused criminals" and replaced him with alternate; if comment was reflection of personal belief, juror should not have been excused; to extent that juror communicated extraneous information about police practice, entire jury should have been removed and mistrial declared.

Bell v. State,
74 Cal. Rptr.2d 541 (Cal. App. 1998).

Grant of motion for new trial affirmed in action for mistaken arrest because juror attempted to recreate arrest with third party outside jury room and passed on "results" to other jurors. Also, other jurors gave opinions claiming expertise on shoulder injuries and law enforcement investigations.

Titus v. State,
963 P.2d 258 (Alaska 1998).

Case remanded for further hearing where all but one juror knew, or knew of, defendant in tiny community and some claimed personal knowledge that he had been drinking on night of alleged rape.

Frieze v. State,
1998 WL 372735 (unpublished)(Tex. App. 1998), *petition for discretionary review refused*
(Feb 24, 1999).

Conviction for indecency with a child remanded for new trial because jurors agreed to convict only on representation from juror who was Sheriff's Department employee that defendant would get probation.

State v. Adams,
880 P.2d 226 (Haw. App. 1994), *cert. denied*, 884 P.2d 1149 (Haw. 1994)

Second degree assault conviction was reversed and remanded for a new trial when juror relayed

her previous experiences as a sexual assault victim, in essence explaining why the alleged victim in the case did not defend herself and presenting extra-record evidence. The juror in this case also lied to the court in that, when questioned, she failed to reveal that she had been a victim of sexual assaults in the past.

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

Manslaughter conviction reversed and remanded because a juror discussed the fact that he had known the defendant as a boy, that the defendant had always been a "bad boy" and that he believed the killing had been a revenge killing.

State v. Larue,
722 P.2d 1039 (Haw. 1986).

Second degree rape and first degree sexual abuse convictions were reversed and remanded for a new trial because juror relayed her own experiences when she was once touched as a child, thereby vouching for the minor child's testimony.

Young v. Brunicardi,
232 Cal. Rptr. 588 (Cal. App. 1986).

Negligence judgment reversed where police officer juror presented own experiences on ticketing procedures to influence jury

Bearden v. State,
648 S.W.2d 688 (Tex. Crim. App. 1983).

Misdemeanor DUI conviction was reversed and remanded for a new trial because juror testified that if the defendant was drinking at bar in question, then the alcohol was consumed in units of "double shots" and thus defendant's alcohol consumption was twice what he testified to consuming.

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

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

Hatton v. Highlands Insurance Co.,
631 S.W.2d 787 (Tex. App. 1982).

Worker's compensation judgment was reversed and remanded for a hearing on a new trial because jurors discussed insurance coverage not in evidence.

Cross v. State,
627 S.W.2d 257 (Tex. App. 1982).

DUI conviction was reversed and remanded because of juror's discussion of the prison's rehabilitation facilities. The appellate court held it was error for the trial court to have denied the appellant's motion for a hearing on his new trial motion which was supported by two affidavits.

Lumbermens Mutual Casualty Co. v. Cummings,
618 S.W.2d 883 (Tex. Civ. App. 1981).

Worker's compensation judgment was reversed and the causes remanded for a new trial because jurors discussed their own personal experiences with back problems.

Elston v. Sherman Coca-Cola & Dr. Pepper Co.,
596 S.W.2d 215 (Tex. Civ. App. 1980).

Negligence judgment reversed and the cause remanded for a new trial because jurors discussed their own work experiences and these discussions had an affect on the award for loss of future earnings.

Vincent v. Goodman,
568 S.W.2d 907 (Tex. Civ. App. 1978).

Suit over oral contract was reversed and remanded for a new trial because jurors discussed their own personal experiences with having wells drilled and, as a result, several jurors changed their votes.

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.

Dunn v. White,
479 P.2d 215 (Kan. 1970).

Grant of new trial affirmed in civil suit involving personal injury. The court held that the defendant's rights were violated when jurors discussed issues of insurance coverage, attorney's

fees and whether insurance companies were the actual parties to the suit, rather than the parties.

Bashford v. Slater,
96 N.W.2d 904 (Iowa 1959).

Results of an action at law for damages caused with an automobile were reversed and the case remanded for a new trial because jurors discussed impact of liability insurance on the amount the defendant would actually have to pay, life expectancy and earnings.

Gibbs v. State,
291 S.W.2d 320 (Tex. Crim. App. 1956).

Criminal conviction and sentence were reversed because, during punishment deliberations, juror remarked to those jurors wanting to ask for suspended sentence that other jurors wanted defendant to get forty years, after which the jurors who were originally in favor of a suspended sentence voted to give defendant some time in the penitentiary.

State v. Malone,
62 S.W.2d 909 (Mo. 1933).

Second degree murder conviction was reversed and remanded because members of the defense team overheard jurors remarking on defendant's history of prior legal troubles and one juror remarked that if he was turned loose, he would get into trouble again.

State v. Lorenzy,
109 P. 1064 (Wash. 1910).

Conviction for "conniving at the prostitution of his wife" was reversed and remanded because a juror remarked that if other jurors saw the place where defendant worked "they would find it to be a house of prostitution yet."

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

"Where 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."

4. Parole

Musgrove v. State,
986 S.W.2d 738 (Tex. Crim. App. 1999).

Trial court must hold hearing where affidavit provides probable cause to believe jury misconduct occurred; issue here was jury's improper consideration of Texas parole law at sentencing in burglary case; remand ordered; relief denied after remand.

Buentello v. State,
826 S.W.2d 610 (Tex. Crim. App. 1992).

Voluntary manslaughter conviction was reversed and remanded back to the trial court because two jurors were found to have misstated the application of the parole law, leading to at least two jurors voting for a harsher punishment that they would have if the misstatement had not occurred.

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

Conviction for aggravated sexual assault and indecent liberties with a child was remanded 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. The jurors apparently agreed to average the amount of time they thought the appellant should get and thus a hearing should have been granted on this ground. Moreover, one of the appellant's own character witnesses remarked "What do you do with a guy like that?" which was sufficient to raise a rebuttable presumption of injury to the defendant. Finally, a juror admitted to discussing parole and this alone was sufficient to sustain appellant's motion for a hearing on a new trial.

Johnson v. State,
652 S.W.2d 541 (Tex. App. 1983).

Aggravated robbery conviction was reversed and remanded because jurors misstated application of the parole law which resulted in one juror agreeing to a 75 year sentence because she believed that the defendant would only serve 20 to 30 years. The juror indicated that she would not have voted for such a harsh punishment if the discussions of parole had not occurred.

Collins v. State,
647 S.W.2d 719 (Tex. App. 1982).

Conviction for burglary with intent to commit theft was reversed and the case remanded for a new trial because the jurors extensively discussed the impact of parole on defendant's sentence.

Grismore v. State,
641 S.W.2d 593 (Tex. App. 1982).

Aggravated robbery conviction was reversed and remanded for a new trial because juror's discussions about parole caused one juror to change his opinion on sentencing.

Munroe v. State,
637 S.W.2d 475 (Tex. Crim. App. 1982).

Petitioner pled guilty and opted for a jury sentencing. The sentencing was reversed and his case remanded for a new trial because the jury discussed the possibility of parole and some jurors changed their sentencing verdict as a result of such discussions.

Sanders v. State,
580 S.W.2d 349 (Tex. Crim. App. 1978).

Aggravated assault conviction was reversed and remanded because the jurors' discussions about parole law were extensive and caused two jurors to change their vote from probation to confinement.

5. Failure to Deliberate

a. United States Courts of Appeals

United States v. Symington,
195 F.3d 1080 (9th Cir. 1999).

"[I]f the record evidence discloses any reasonable possibility that the impetus for a juror's dismissal stems from the juror's views on the merits of the case, the court must not dismiss the juror." Here, reversal of the defendant's convictions is required given that while there may have been some reason to doubt the dismissed juror's abilities to properly serve as a juror, there was also considerable evidence to suggest that the other jurors' frustrations with her derived primarily from the fact that she held a position opposite to theirs on the merits of the case.

United States v. Thomas,
116 F.3d 606 (2nd Cir. 1997).

"[T]he importance of safeguarding the secrecy of the jury deliberation room, coupled with the need to protect against the dismissal of a juror based on his doubts about the guilt of a criminal defendant, require that a juror be dismissed for a refusal to apply the law as instructed only where the record is clear beyond doubt that the juror is not, in fact, simply unpersuaded by the prosecution's case." Here, the court reverses the defendant's conviction finding that "the district court erred in dismissing a juror, based largely on its finding that the juror was purposefully disregarding the court's instructions on the law, where the record evidence raised the possibility that the juror's view on the merits of the case was motivated by doubts about the defendants' guilt, rather than by an intent to nullify the law."

United States v. Brown,
823 F.2d 591 (D.C. Cir. 1987).

If the record evidence discloses any possibility that a juror's request for discharge stems from the juror's view of the sufficiency of the government's evidence, the court must deny the request. Here, the district court's dismissal of a juror in the midst of the jury's lengthy deliberations deprived the defendants of their constitutional right to a unanimous jury.

b. State Cases

State v. Elmore,
90 P.3d 1110 (Wash. App. 2004).

In case involving numerous charges, including murder, the trial court committed reversible error by dismissing a juror where the record showed a reasonable possibility that the other jurors' complaints about the juror's alleged failure to deliberate and follow the law stemmed from the dismissed juror's views on the merits of the case. The trial court further erred by intruding into deliberations by further questioning two jurors about another juror's conduct after determining that the jurors disagreed at least in part because of different views on the merits of the case.

Riggs v. State,
809 N.E.d 322 (Ind. 2004).

Convictions for murder and criminal deviant conduct are reversed where trial court removed a pro-defense juror during deliberations even though the juror represented that he was trying to fulfill his role as a juror and was making a decision based on the evidence. The foreman's accounts of the dismissed juror's behavior amounted to rudeness and intransigence but there was no record establishing physical threats, intimidation or other conduct justifying removal.

People v. Karapetyan,
130 Cal.Rptr.2d 849 (Cal. App. 2003).

In double murder case, trial court committed reversible error by dismissing a juror for alleged failure to deliberate. The trial court's finding that the juror's religious beliefs prevented him from making a decision misstated the evidence adduced during the court's inquiry into the complaints made by other jurors. And while the dismissed juror had expressed concern for penalty, that was not a proper basis for dismissal since his concern was alleviated once he learned this was not a death penalty case. Finally, the assertion that the juror refused to follow the court's instructions was not supported by the record.

People v. Barber,
124 Cal.Rptr.2d 917 (Cal. App. 2002).

Murder conviction is vacated and new trial ordered where jury reported that it was hopelessly deadlocked and trial court then erred by: (1) questioning jurors in a manner that revealed the identity of the lone holdout; (2) allowing the prosecutor to examine the holdout juror; and (3) allowing testimony from only those jurors who claimed the holdout juror was not deliberating in good faith. The trial court also erred by finding that the holdout jury committed misconduct in failing to reveal a prior arrest where the court did not resolve whether the juror had in fact been arrested in the past, and the court did not find that the juror's silence about the matter was intentional.

People v. Cleveland,
21 P.3d 1225 (Cal. 2001).

Trial judge erroneously removed, based on "failure to deliberate," juror who during deliberations concluded that evidence was insufficient to convict the defendant, who was being prosecuted on two counts of 2nd degree robbery. The removal of a juror who has deliberated and who simply views the evidence as insufficient was plain error requiring a new trial for the defendant.

Williams v. State,
792 So.2d 1207 (Fla. 2001).

Capital murder defendant granted new trial because trial court committed reversible error in substituting alternate juror for juror who declared she was unable to continue with deliberating because of the stress and pressure involved. In such situations, the remedy is to grant a mistrial.

People v. Bowers,
87 Cal. App. 4th 722 (Cal. App. 2001).

Juror improperly discharged in sex abuse case for alleged failure to deliberate; juror, who was lone holdout for not guilty verdict, was replaced with alternate and jury convicted; court finds that had juror remained on panel, mistrial would have been likely.

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

"[I]f a trial court interrupts the deliberations of a jury and suspends its fact finding functions to investigate allegations of juror misconduct, its inquiry must not intrude into the deliberative process. . . . [I]n the exercise of judicial discretion, before a juror is dismissed from a deliberating jury due to an allegation of juror misconduct, there must be findings by the trial court that support a conclusion that the allegedly offending juror will not follow the court's instructions." Here, the conviction must be reversed because the record failed to show a sufficient inquiry prior

to dismissal of a juror as to whether he was willing to follow the trial judge's instructions prior to deliberations or during the course of deliberations.