

## **JUROR EXPERIMENTATION AND INVESTIGATION**

(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 EXTRA RECORD EVIDENCE where the jurors are inadvertently exposed to materials that were not admitted into evidence or other improper influences. See THIRD PARTY CONTACT where someone other than a court official makes improper contact with one or more jurors.)

(updated September 2010)

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

***United States v. Rosenthal,*  
454 F.3d 943 (9<sup>th</sup> Cir. 2006).**

Drug-related convictions reversed where juror called an attorney friend during deliberations and asked whether she had to follow the trial court's instructions or if there was leeway for independent thought and the attorney friend responded that the juror had to follow the instructions and could get into trouble if she failed to do so. The communication was an improper influence upon the juror's decision to acquit or convict because "[j]urors cannot fairly determine the outcome of a case if they believe they will face 'trouble' for a conclusion they reach as jurors."

***Lawson v. Borg,*  
60 F.3d 608 (9<sup>th</sup> Cir. 1995).**

Grant of habeas relief affirmed in murder case where one juror, after conducting his own investigation during trial of the defendant, told other jurors during guilt phase deliberations that defendant was "very violent" and "had a violent temper." The misconduct was deemed harmful given that the jury had to determine whether excessive force was used in order to find special circumstance of attempted robbery.

***United States v. Martinez,*  
14 F.3d 543 (11<sup>th</sup> 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.

***Mayhue v. St. Francis Hosp. of Wichita, Inc.,***  
**969 F.2d 919 (10th Cir. 1992)**

New trial granted where jurors in civil rights action had dictionary definitions of "discriminate" and "prejudice"; rebuttable presumption employed.

***Marino v. Vasquez,***  
**812 F.2d 499 (9<sup>th</sup> Cir. 1987).**

Habeas relief granted as to murder and attempted murder convictions where one juror experimented out-of-court with a firearm to test the parties's theories of how the shooting occurred and another juror provided the hold-out juror with a dictionary definition of define malice.

***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.

***Gibson v. Clanon,***  
**633 F.2d 851 (9th Cir. 1980), cert. denied, *Clanon v. Gibson*, 450 U.S. 1035, 101 S.Ct. 1749, 68 L.Ed.2d 231 (1981).**

In murder case, petitioner was entitled to habeas relief where jurors consulted medical encyclopedia to determine rarity of petitioner's blood type and whether morphine taken by eyewitness would have affected his capacity to observe.

***United States v. Beach,***  
**296 F.2d 153 (4th Cir. 1961).**

Hearing required to determine whether jurors experimented with an item sent into deliberations. If an experiment was conducted under conditions other than those existing in the defendant's house, defendant was entitled to a new trial.

## **II. UNITED STATES DISTRICT COURT**

***Jennings v. Oku,***  
**677 F. Supp. 1061 (D. Hawaii 1988).**

Conviction and sentence vacated where jurors used foreman's Datsun sedan to ascertain how defendant's fingerprints came to be on victim's Datsun station wagon.

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

Defendant's motion for a new trial was granted in this tax evasion case because jurors received extrinsic information both during trial and during their deliberations. The information included two jurors' knowledge that the defendant's co-defendant had been convicted of a crime, the jury foreperson having read news accounts of the trial and one juror visited the property site, which was the subject matter of the charged crime of inflating the value of the donated property thereby increasing its value as a tax deduction.

***United States v. Castello*,  
526 F. Supp. 847 (W.D. Tex. 1981).**

Where defendant was convicted of assault with a dangerous weapon with intent to do serious bodily harm and assault resulting in serious bodily injury, a juror's out-of-court ballistic experiment, the results of which were reported to the other jurors, required a new trial given that the experiment was directed at the material issue of whether the victim had been shot in the back and the results were unfavorable to defendant. The presumption of prejudice that arose from the misconduct was not rebutted by the government.

***Simon v. Kuhlman*,  
488 F.Supp. 59 (S.D.N.Y. 1979).**

Habeas petitioner entitled to an evidentiary hearing to determine whether there was the possibility that petitioner was prejudiced by an experiment conducted by the jury with a stocking mask to test whether it would prevent identification as claimed by petitioner at trial.

### **III. STATE COURT**

***Campbell v. Hankins*,  
\_\_\_ S.W.3d \_\_\_, 2009 WL 1685164 (Ark. App. June 17, 2009).**

In automobile collision case, trial court did not abuse its discretion in granting new trial based on evidence that a juror visited the scene of the accident and reported back his findings and opinions to the other jurors.

***Wardlaw v. State*,  
971 A.2d 331 (Md. App. 2009).**

In case involving charges of sexual crimes and assault, trial judge abused its discretion in denying mistrial motion after learning during deliberations that a juror had done internet research on oppositional defiant disorder, a diagnosis given to the alleged victim, and then reported the

findings to the other jurors. (The findings included that lying is associated with that disorder.) Although the trial court gave a curative instruction, this was inadequate given the trial court's failure to voir dire the jurors to determine whether the improper research had irreparably influenced the jury's deliberative process to the prejudice of defendant.

***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.

***Commonwealth v. Wood,***  
**230 S.W.3d 331 (Ky. App. 2007).**

In rape case, grant of post-conviction relief upheld where jurors consulted a dictionary during their deliberations for the definition of the word "rape." The use of the dictionary was prejudicial because the jurors resorted to the dictionary because of confusion about whether penetration was required for rape to occur and the dictionary definition on this point conflicted with Kentucky law.

***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. Regarding the church visit, the court noted: "Although [the juror] may not have learned anything from her visit to the site that she did not already know and her report to the other jurors of her actions may not have had any impact on them, the offending juror's attempt to conduct an unsanctioned investigation into the facts of this case, when viewed with her other acts and comments, shows a juror unconcerned about granting Holy Cross the fair and impartial trial to which it was entitled."

***Thompson v. Krantz,***  
**137 P.3d 693 (Okla. Civ. App. 2006).**

In medical malpractice case, plaintiff was entitled to a new trial where a juror conducted internet research in order to help her understand what the medical experts were testifying to and the juror admitted that she considered the information she got from the internet in deliberations.

***State v. Boling,***  
**127 P.3d 740 (Wash. App. 2006).**

Trial court properly granted new trial to defendant convicted of manslaughter where a juror used information he received on the internet to conclude that the cause of death was other than theorized by the prosecution. Defendant did not necessarily benefit from the juror's conclusions because even with the new theory derived from the extraneous information, the jury could have speculated that defendant was nevertheless still at fault.

***Commonwealth v. Rodriguez,***  
**828 N.E.2d 556 (Mass. App. 2005).**

In case where the trial court committed reversible errors in the removal of a juror, reinforcing the appellate court's finding that the verdicts could not stand was the discovery by a juror on the internet of a statute governing removal of jurors. Although the statute was procedural in nature, "it was researched by one juror concerned about the deadlock, and its introduction into the deliberations signaled that the jury may have been trying to remove a dissenting juror."

***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.

***People v. Collins,***  
**813 N.E.2d 285 (Ill. App. 2004).**

In homicide case, the prosecution failed to rebut the presumption of prejudice that arose from the jury foreman's visit to the crime scene, which the juror testified was done in order to better understand the testimony of various witnesses. The prosecution's contention that the crime scene visit was cumulative of photographs that were admitted at trial was unpersuasive given that the juror testified that the photographs that had been available during the trial had been inadequate and the ones that were available during deliberations came too late.

***Hammock v. State,***  
**592 S.E.2d 415 (Ga. 2004).**

In felony murder case where defendant claimed she acted in self-defense, defendant was entitled to a new trial based on a juror's improper conduct in seeking out and introducing extraneous evidence into deliberations. The distance between the defendant and the victim at the time the defendant fired the weapon was an important issue in the defense. Although the blood spatter

expert opined that the victim was farther from the defendant than asserted by the defense, the expert admitted that he had failed to measure the width of a bed which prevented him from determining from the blood spatters exactly how far the victim was from the defendant. Testimony at the hearing on defendant's motion for new trial established that a juror measured the dimensions of her own bed in order to fill in the gap left by the blood spatter expert and conveyed this information to the jury. Notably, the jury had not been unanimous prior to receiving the extraneous evidence.

***People v. Waddle,***  
**97 P.3d 932 (Colo. 2004).**

In case where defendant was convicted of child abuse resulting in death, the defendant was entitled to a new trial because of a juror's use of the internet to obtain information about an anti-depressant the defendant was taking. The only disputed issue was whether the child's death resulted from a seizure or from being shaken by defendant. Because both explanations were strongly supported by medical experts, any evidence of a predisposition to shake the child, based on information from the internet about the medication at issue, took on a greater significance.

***Pratt v. St. Christopher's Hospital,***  
**824 A.2d 299 (Pa. Super. 2003)**

In medical malpractice case where a juror revealed post-trial that some jurors had sought out information from outside medical professionals on a key disputed issue, an evidentiary hearing was required. If, on remand, the trial court finds the allegations to be true, judgment should be vacated and a new trial ordered.

***Meyer v. State,***  
**80 P.3d 447 (Nev. 2003).**

New trial was ordered in sexual assault case as a result of a juror's independent research into the side effects of Accutane medication taken by the victim. There was a reasonable probability that the extraneous evidence effected the jury's verdict given that the side effects of Accutane was a material issue in the case and the information received by the juror tended to undermine the defendant's theory that the victim's physical marks were caused by a reaction to medicine or falling.

***Stallings v. Black and Decker, Inc.,***  
**796 N.E.2d 143 (Ill. App. 2003).**

Trial court abused its discretion in denying motion for new trial in wrongful death case where the safety of defendant's circular saw was at issue and a juror personally investigated the matter by going to stores to look at saws and consulting with a store clerk regarding the availability of the type of blade the plaintiff alleged the circular saw should have been equipped with.

***Commonwealth v. Philyaw,***  
**774 N.E.2d 659 (Mass. App. 2002).**

Remanding for evidentiary hearing based on affidavit from defendant's mother whose friend had worked with one of his jurors; juror told friend that when panel could not reach a decision it sent two jurors to scene of crime for information; trial court erred in concluding that it would need an affidavit from the person who actually spoke to the juror in order to grant the motion for a new trial.

***Travis v. Stone,***  
**66 S.W.3d 1 (Mo. 2002).**

Presumption of prejudice not overcome in wrongful death action where juror, during break in reconstruction expert's testimony, went to examine scene of accident.

***Lindsey v. Boddie-Noell Enterprises,***  
**555 S.E.2d 369 (N.C. App. 2001)**

New trial ordered in personal injury case where juror looked up "willful" and "wanton" in dictionary.

***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. Hood,***  
**724 N.E.2d 1238 (Ohio App. 1999)**

Where juror looked up "aiding and abetting" in Black's Law Dictionary found in district attorney's office and shared definitions with fellow jurors, mistrial in aggravated robbery case approved of by court affirming conviction after retrial, refusing to reverse on double jeopardy grounds.

***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.

***Wade v. City of Chicago Heights,*  
693 N.E.2d 426 (Ill. App. 1998).**

In civil case involving a car accident, the lower court erred in denying the City's motion for a mistrial based on a juror's misconduct in visiting the accident scene. The City was prejudiced by the juror's misconduct since the circumstances present at the accident scene were directly related to one of the core issues of the case, namely whether certain barricades were visible such that the collision could have been avoided.

***State v. Sanders,*  
496 S.E.2d 568 (N.C. 1998).**

Trial court's declaration of mistrial at state's behest affirmed where, at capital sentencing proceeding, juror allegedly inquired of a judge and police officers about meaning of "life imprisonment" and stated that she was threatened by other jurors.

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***State v. Spencer,*  
694 N.E.2d 161 (Ohio App. 1997).**

In case involving charges of prescribing methadone without the proper license, a juror committed clear misconduct by contacting 12 doctors and questioning them about prescribing methadone. Reversal of the conviction was required in light of the trial court's failure to inquire into whether the investigating juror remained impartial.

***Pearson v. Fomby,*  
688 So. 2d 239 (Ala. 1997)**

Case remanded where juror stated in affidavit that he consulted dictionary for meaning of word "standard," and told other jurors what he had found; trial court required to hold proceedings to determine whether dictionary definition influenced jury.

***Ex parte Thomas,*  
666 So.2d 855 (Ala. 1995).**

Juror putting on pants defendant had been wearing at time of arrest, having another juror bind his



hands and attempt to reach into his pockets to determine whether it was possible for handcuffed defendant to remove cocaine from his pocket during ride in police car was reversible error where one juror based her decision in part on experiment.

***State v. Richards,***  
**466 S.E.2d 395 (W.Va. 1995)**

Criminal case reversed in part and remanded for a hearing on potential juror misconduct. Defense counsel submitted motion prior to sentencing alleging that a juror had improperly conducted independent research by seeking a definition of "malice" in a dictionary during jury deliberations. Reference to a dictionary during deliberations is misconduct.

***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.

***Ex parte Potter,***  
**661 So.2d 260 (Ala. 1994).**

Jurors' unauthorized viewing of accident scene during a prosecution for criminally negligent homicide warranted reversal of conviction.

***Commonwealth v. Cuffie,***  
**609 N.E.2d 437 (Mass. 1993).**

Reversal required where one juror reported that second juror made independent visit to crime scene.

***Fulton v. Callahan,***  
**621 So.2d 1235 (Ala. 1993)**

Action for equitable relief judgment reversed and remand for a new trial because of jurors' use of dictionary to define "wantonness" and "oppression."

***State v. Owen,***  
**510 N.W.2d 503 (Neb. App. 1993).**

Evidentiary hearing required where jurors looked up "reasonable" and "doubt" in dictionary in perjury case.

***State v. Cornell,***  
**845 P.2d 1094 (Ariz. App. 1992)**

Reversal where juror looked up words "aggravate" and "assault" in dictionary in aggravated assault case.

***Hill v. United States,***  
**622 A.2d 680 (D.C. 1992).**

Drug conviction reversed and remanded because juror's visit to crime scene helped him to form an opinion.

***State v. Pichay,***  
**823 P.2d 152 (Haw. 1992).**

In trial for firearms and propelled vehicle violations, trial court erred in allowing jurors to use two dolls and a calculator during deliberations and in failing to conduct inquiry on prejudice.

***State v. Trammell,***  
**484 N.W.2d 263 (Neb. 1992).**

Juror improperly viewed scene of crime; results of view were reported to other jurors, who used that information in corroborating a defendant's controversial confession; supreme court held such misconduct was not harmless beyond reasonable doubt.

***People v. Dashnau,***  
**591 N.Y.S. 2d 124 (N.Y.A.D. 4.Dept. 1992).**

Drug conviction reversed where juror searched for defense counsel's name in phone book and concluded that because counsel was private attorney, he was being paid by defendant and defendant must therefore have sold drugs to pay for services.

***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. Magliaro,***  
**611 A.2d 422 (Conn. App. 1992).**

Negligent homicide case remanded because trial court failed to conduct an investigation into prejudice from jurors' use of medical texts.

***Smoketree-Lake Murray v. Mills Concrete,***  
**286 Cal.Rptr. 435 (Cal. App. 1991).**

Judgment reversed and new trial granted in civil action alleging construction defects against developer because of juror experimentation pouring concrete.

***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.

***Jordan v. Brantley,***  
**589 So.2d 680 (Ala. 1991)**

Appellate court affirmed trial court's decision to reverse a civil verdict and grant a new trial. The court held that it was misconduct for the jury foreperson to have taken a dictionary into the jury room for purpose of defining "prudent" and "reasonable" and to then discuss their meaning from the dictionary.

***Glage v. Hawes Firearms,***  
**276 Cal.Rptr. 430 (Cal. App. 1990).**

Civil judgment was reversed and new trial granted because of jurors' use of dictionary to define "preponderance."

***Williams v. State,***  
**570 So.2d 884 (Ala. Crim. App. 1990).**

Attempted murder conviction reversed and remanded because juror visited the crime scene. Affirmative demonstration of prejudice was not required.

***Schmiz v. Illinois Central Gulf Railroad Co.,***  
**546 So.2d 693 (Miss. 1989).**

Civil judgment reversed because jurors made visit to railroad crossing where accident occurred.

***Jones v. Sieve,***  
**249 Cal. Rptr. 821 (Cal. App. 1988).**

Court affirmed the granting of a new trial because jurors used a reference book to define "terms

that were subject to deliberation."

***In re Lasley,***  
**505 So.2d 1263 (Ala. 1987).**

Conviction for two counts of first degree assault was reversed and the case remanded for a new trial because jurors conducted home experiments running hot water when defendant was accused of scalding children in his care and then reported their findings to other jurors. Additionally, one juror consulted a legal text to understand legal terms.

***Evans-Smith v. Commonwealth,***  
**361 S.E.2d 436 (Va. App. 1987)**

Conviction for second degree murder was reversed and remanded for a new trial because jurors used an almanac to determine probable time of sunrise on date of the killing.

***People v. Castro,***  
**229 Cal. Rptr. 280 (Cal. App. 1986).**

Conviction for destroying jail property, arson and rioting was reversed because of jury misconduct involving one juror who used binoculars to determine whether a witness could have seen what they alleged they could see. The court found that it was irrelevant whether the juror shared the findings with others because that juror's deliberations were tainted by the experimentation and that was enough to require a reversal.

***Snook v. Firestone Tire & Rubber Co.,***  
**485 So.2d 496 (Fla. App. 1986).**

Civil judgment was reversed and the case remanded for interview with jurors where a juror reported that another juror independently spoke with auto shop personnel about tire mounting procedures and then reported her findings to the jury while it was deliberating.

***State v. Abell,***  
**383 N.W.2d 810 (N.D. 1986)**

Conviction for gross sexual imposition was reversed and remanded for a new trial because jury used dictionary to define "force" and force was the only issue for the jury's consideration.

***Bobo v. State,***  
**327 S.E.2d 208 (Ga. 1985).**

Felony murder, burglary and assault conviction with life imprisonment was reversed because two jurors made a trip to the crime scene that was critical in determining the credibility of the sole

eyewitness's identification of the criminal.

***Borden v. St. Louis Southwestern Railway Co.,***  
**698 S.W.2d 795 (Ark. 1985).**

Affirming the grant of a new trial based on two jurors going to the scene of the truck-train collision at issue.

***Moore v. State,***  
**324 S.E.2d 760 (Ga. 1984)**

Voluntary manslaughter conviction reversed because juror consulted a Readers Digest publication entitled "You and the Law" in order to gain clarity on definition of manslaughter. The source consulted contained a different definition of manslaughter from that of Georgia state law.

***Golden v. Ballard,***  
**654 S.W.2d 823 (Tex. App. 1983)**

Judgment in civil case reversed and remanded because uncontested evidence was presented that one juror changed his mind after consulting a math text.

***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.

***Duran v. Lovato,***  
**656 P.2d 905 (N.M. App. 1982).**

Personal injury verdict was reversed and the case remanded back to the trial court for a hearing on jury misconduct grounds because juror speed tests were conducted in violation of the rule that jurors should not consider extraneous influences.

***Kirby v. Rosell,***  
**648 P.2d 1048 (Ariz. App. 1982).**

Superior court affirmed grant of new trial in a civil suit because jurors used a road map, with information identical to that presented at trial. Court held that "[i]t is enough that the unauthorized evidence directly relates to the issues in the case and may have improperly influenced the verdict." *Id.* at 1051.

***Frede v. Downs,***  
**428 N.E.2d 1035 (Ill. App. 1981)**

In civil case involving a boating accident, the verdict in favor of the defendant had to be set aside due to the misconduct of a juror in secreting his own book on boating into the jury room which was referenced by the jury during deliberations.

***Heaver v. Ward,***  
**386 N.E.2d 134 (Ill. App. 1979).**

In civil case involving an automobile accident, a new trial was required due to the jury foreman's misconduct in making an independent visit to the accident scene, preparing a diagram of the intersection which he brought to the jury room during deliberations, and also bringing a drivers instructional booklet into the jury room. Because this unauthorized evidence was directly related to issues in the case, reversal of the judgment was required.

***People v. Holmes,***  
**372 N.E.2d 656 (Ill. 1978).**

Attempted robbery conviction reversed for new trial where jurors investigated various heels of shoes to determine what type of insignia they would leave after hearing testimony about prints left in ground after robbery.

***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.

***Watkins v. State,***  
**229 S.E.2d 465 (Ga. 1976).**

Armed robbery conviction reversed because some jurors went to crime scene to make factual determinations and then reported their findings to other members of the pool.

***People v. Conklin,***  
**111 Cal. 616, 627 (Cal. 1896).**

Overzealous jurors fired borrowed rifle to check powder mark evidence. Case reversed.