

MEDIA INFLUENCE

(This does not include cases of presumed prejudice due to pervasive publicity, e.g., *Sheppard v. Maxwell*, 384 U.S. 333 (1966), or cases where there was inadequate voir dire on pretrial publicity)

(updated September 2010)

I. UNITED STATES SUPREME COURT

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

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

II. UNITED STATES COURTS OF APPEALS

***United States v. Chandhadara*,
230 F.3d 1237 (10th Cir. 2000), cert. denied, *Chanthadara v. United States*, 534 U.S. 992 (2001).**

In federal death penalty case where jury was exposed to news article recounting the judge's comments that the theory of defense was "bogus" and "a smoke screen," prejudice was presumed as to the death sentence and the government failed to overcome the presumption. (The court found no effect on the guilt verdict in light of the strength of the government's case.)

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

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

***Nevers v. Killinger*,
169 F.3d 352 (6th Cir. 1999), cert. denied, *Killinger v. Nevers*, 527 U.S. 1004 (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 petitioner's alleged involvement in undercover police unit rumored to harass black men, viewed movie "Malcolm X" which included footage of Rodney King beating, and heard news report about preparations for a

riot in anticipation of the verdict. State court's finding of harmless error was unreasonable and contrary to law under AEDPA, because the exposure to extraneous evidence, especially about undercover police unit, went directly to petitioner's credibility which was the focus of the trial.

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

Defendant entitled to new trial where jury deliberations were tainted by extrinsic evidence, including the watching of news accounts on television, awareness of publicity, and newspapers were regularly brought into jury room, and because a juror informed other jurors that defendant faced 160 years imprisonment.

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.

Bulger v. McClay,
575 F.2d 407 (2nd Cir.), cert. denied, *Ward v. Bulger*, 439 U.S. 915 (1978).

Habeas grant affirmed where juror admitted that he had changed his vote after another juror mentioned contents of newspaper article published over weekend; article contained petitioner's address, which was distant from crime scene and made his excuse for being in area improbable.

United States v. Thomas,
463 F.2d 1061 (7th Cir. 1972).

Defendant entitled to new trial in mail fraud case because trial judge failed to investigate information that jurors had prejudicial news accounts containing references to inadmissible evidence in their possession and some jurors used this information to convince other jurors of the defendant's guilt.

United States v. Kum Seng Seo,
300 F.2d 623 (3rd Cir. 1962).

Defendant who was convicted of receiving and concealing heroin was entitled to a new trial because shortly before a vote was taken during deliberations, a juror introduced a news clipping that recounted defendant's incarceration and the extremely high bail of \$100,000 that had been set, as well as that the heroin was found in the defendant's room, which undermined the defense theory that the heroin belonged to defendant's daughter.

III. UNITED STATES DISTRICT COURT

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

New trial motion granted in mail extortion case based on a variety of juror misconduct grounds, including media influence where jurors read and discussed newspaper articles of the trial during their service as jurors on the case.

***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 codefendant's conviction; jury foreperson also read news accounts of trial and one juror visited property site on which charges depended.

***Georges v. Government of the Virgin Islands*, 986 F.Supp. 323 (D.V.I. 1997).**

Case remanded for an evidentiary hearing on whether jury improperly considered an extraneous newspaper article indicating that the defendant had shot at the co-defendant and the co-defendant's family.

***United States v. Titsworth*, 422 F.Supp. 587 (D. Neb. 1976).**

New trial ordered where several of the jurors, who had separated for the evening after their deliberations had begun, were exposed to news broadcasts concerning the search for a government witness who did not appear for trial and the broadcasts strongly suggested that the witness' disappearance had been result of improper conduct on the part of defendant. In addition, other extrinsic information in a newscast which a juror revealed to the other jurors could have bolstered the credibility of the Government's key witness against the defendant.

IV. STATE COURTS

***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.

Marshall v. State,
854 So.2d 1235 (Fla. 2003).

In death penalty case, the post-conviction court erred by summarily denying juror misconduct claim where it was alleged that a woman called defense counsel post-trial claiming to have been a juror at petitioner's trial and stating, among other things, that some jurors told racial jokes about petitioner, some jurors said they would vote to convict and for a life sentence so that petitioner could be returned to prison to kill more black inmates, and that some jurors read and discussed outside articles concerning the trial. (Relief was denied following the hearing.)

Stroud v. State,
787 N.E.2d 430 (Ind. App. 2003).

In drug prosecution, the trial court abused its discretion in denying defendant's motion for a mistrial after the court contaminated the entire jury by having jurors who had been exposed to a prejudicial news article describe the contents of the article in front of the other jurors, and then failed to expressly admonish the jurors not to consider the information from the article. In finding prejudice, the appellate court noted that the article informed the jury that the defendant had previously been convicted of committing a similar offense, that the defendant was currently charged with a triple homicide, and that the defendant had engaged in egregious inappropriate and antisocial behavior during prior criminal proceedings. Also significant to the court was the fact that the jury was exposed to the article early in the case.

Commonwealth v. Fredette,
776 N.E.2d 464 (Mass. App. 2002).

In case involving convictions for unnatural and lascivious acts, trial court failed to implement effective procedures for inquiring into possible prejudice after learning of a juror's exposure to inflammatory statements made on television by the victim's mother. Combined with other errors, a new trial was required.

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

New trial in case involving negligent homicide conviction properly granted where jurors received information about defendant's prior manslaughter charge from print and televised news, as well as from coworkers.

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

Remand for full evidentiary hearing where death row inmates alleged in post-conviction proceedings, inter alia, that the jurors were provided with newspapers, television access and

alcohol while sequestered.

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

Trial court erred in 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 a hearing is not possible given the six years since the trial was held, a retrial will be required.

State v. Myers,
603 N.W.2d 390 (Neb. 1999).

Trial court abused its discretion in refusing to grant mistrial where eleven jurors and one alternate read newspaper article indicating that defendant in narcotics trial on which jurors sat also faced separate murder trial; trial court had previously barred the prosecution from admitting evidence relating to the murder charge.

Duran v. State,
57 Cal. Rptr.2d 890 (Cal. App. 1997).

Relief granted where juror impermissibly considered defendant's sentence, and jury considered a newspaper article criticizing the criminal justice system.

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.

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.

Province v. Center for Women's Health,
25 Cal. Rptr.2d 667 (Cal. App.1993), overruled on other grounds, *Heller v. Norcal Mutual Ins. Co.*, 876 P.2d 999 (1994).

In medical malpractice case, plaintiff was entitled to a new trial based in part on a juror's prejudicial misconduct in reading newspaper accounts of the case and suggesting to another juror during the trial that the trial was a waste of time and that the decision was "clear cut."

People v. Holloway,
790 P.2d 1327 (Cal. 1990).

Capital conviction and death sentence reversed where a juror read news accounts detailing defendant's prior assault of a woman with a hammer and evidence about this offense had been excluded from trial.

State v. Harvey,
730 S.W.2d 271 (Mo. App. 1987).

In double murder case, remand is required to determine whether defendant was prejudiced by two juror's serious misconduct in deliberately reconnecting television and radio wires in their hotel rooms after the wires had been disconnected to prevent jurors from exposure to news media influences during the trial. The two jurors were subsequently exposed to news broadcasts about the case, one of which revealed that the defendant was being retried as a result of a prior mistrial.

People v. Andrews,
196 Cal. Rptr. 796 (Cal. App. 1983).

Conviction for robbery, assault and unlawful taking of vehicle was reversed and remanded for a new trial because jurors inadvertently viewed news account of the defendant's wife's guilty plea to charges stemming from the same incident for which the defendant was being tried.

Lindsey v. State,
295 N.E.2d 819 (Ind. 1973).

Reversing for new trial because "the accused was unconstitutionally subjected to a grave peril to which he should not have been subjected" as a result of trial court's failure to interrogate the jury to determine the extent of its exposure to prejudicial publicity.

State v. Salters,
257 S.E.2d 502 (S.C. 1967).

The court reversed and remanded a conviction for arson, conspiracy to commit arson and intent to defraud an insurance company because jurors had read news accounts of charges against

defendant for which he was not then on trial.