

Rule 606. Juror's Competency as a Witness, FRE Rule 606



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Unconstitutional or Preempted/Limited on Constitutional Grounds by [Pena-Rodriguez v. Colorado](#), U.S., Mar. 06, 2017

[United States Code Annotated](#)

Federal Rules of Evidence (Refs & Annos)

[Article VI. Witnesses](#)

Federal Rules of Evidence Rule 606, 28 U.S.C.A.

Rule 606. Juror's Competency as a Witness

[Currentness](#)

(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) During an Inquiry Into the Validity of a Verdict or Indictment.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or **evidence** of a juror's statement on these matters.

(2) Exceptions. A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

CREDIT(S)

([Pub.L. 93-595](#), § 1, Jan. 2, 1975, 88 Stat. 1934; [Pub.L. 94-149](#), § 1(10), Dec. 12, 1975, 89 Stat. 805; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 26, 2011, eff. Dec. 1, 2011.)

Relevant Additional Resources

Additional Resources listed below contain your search terms.

ADVISORY COMMITTEE NOTES

1972 Proposed Rules

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Note to Subdivision (a). The considerations which bear upon the permissibility of testimony by a juror in the trial in which he is sitting as juror bear an obvious similarity to those evoked when the judge is called as a witness. See Advisory Committee's Note to [Rule 605](#). The judge is not, however in this instance so involved as to call for departure from usual principles requiring objection to be made; hence the only provision on objection is that opportunity be afforded for its making out of the presence of the jury. Compare [Rule 605](#).

Note to Subdivision (b). Whether testimony, affidavits, or statements of jurors should be received for the purpose of invalidating or supporting a verdict or indictment, and if so, under what circumstances, has given rise to substantial differences of opinion. The familiar rubric that a juror may not impeach his own verdict, dating from Lord Mansfield's time, is a gross oversimplification. The values sought to be promoted by excluding the [evidence](#) include freedom of deliberation, stability and finality of verdicts, and protection of jurors against annoyance and embarrassment. *McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 783, 59 L.Ed. 1300 (1915). On the other hand, simply putting verdicts beyond effective reach can only promote irregularity and injustice. The [rule](#) offers an accommodation between these competing considerations.

The mental operations and emotional reactions of jurors in arriving at a given result would, if allowed as a subject of inquiry, place every verdict at the mercy of jurors and invite tampering and harassment. See *Grenz v. Werre*, 129 N.W.2d 681 (N.D.1964). The authorities are in virtually complete accord in excluding the [evidence](#). Fryer, Note on Disqualification of Witnesses, Selected Writings on [Evidence](#) and Trial 345, 347 (Fryer ed. 1957); Maguire, Weinstein, et al., Cases on [Evidence](#) 887 (5th ed. 1965); 8 Wigmore § 2349 (McNaughton Rev.1961). As to matters other than mental operations and emotional reactions of jurors, substantial authority refuses to allow a juror to disclose irregularities which occur in the jury room, but allows his testimony as to irregularities occurring outside and allows outsiders to testify as to occurrences both inside and out. 8 Wigmore § 2354 (McNaughton Rev.1961). However, the door of the jury room is not necessarily a satisfactory dividing point, and the Supreme Court has refused to accept it for every situation. *Mattox v. United States*, 146 U.S. 140, 13 S.Ct. 50, 36 L.Ed. 917 (1892).

Under the federal decisions the central focus has been upon insulation of the manner in which the jury reached its verdict, and this protection extends to each of the components of deliberation, including arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process. Thus testimony or affidavits of jurors have been held incompetent to show a compromise verdict. *Hyde v. United States*, 225 U.S. 347, 382 (1912); a quotient verdict, *McDonald v. Pless*, 238 U.S. 264 (1915); speculation as to insurance coverage. *Holden v. Porter*, 405 F.2d 878 (10th Cir.1969); *Farmers Coop. Elev. Ass'n v. Strand*, 382 F.2d 224, 230 (8th Cir.1967), cert. denied 389 U.S. 1014; misinterpretation of instructions, *Farmers Coop. Elev. Ass'n v. Strand*, supra; mistake in returning verdict, *United States v. Chereton*, 309 F.2d 197 (6th Cir.1962); interpretation of guilty plea by one defendant as implicating others, *United States v. Crosby*, 294 F.2d 928, 949 (2d Cir.1961). The policy does not, however, foreclose testimony by jurors as to prejudicial extraneous information or influences injected into or brought to bear upon the deliberative process. Thus a juror is recognized as competent to testify to statements by the bailiff or the introduction of a prejudicial newspaper account into the jury room, *Mattox v. United States*, 146 U.S. 140 (1892). See also *Parker v. Gladden*, 385 U.S. 363 (1966).

This [rule](#) does not purport to specify the substantive grounds for setting aside verdicts for irregularity; it deals only with the competency of jurors to testify concerning those grounds. Allowing them to testify as to matters other than their own inner reactions involves no particular hazard to the values sought to be protected. The [rule](#) is based upon this conclusion. It makes no attempt to specify the substantive grounds for setting aside verdicts for irregularity.

See also [Rule 6\(e\) of the Federal Rules of Criminal Procedure](#) and 18 U.S.C. § 3500, governing the secrecy of grand jury proceedings. The present [rule](#) does not relate to secrecy and disclosure but to the competency of certain witnesses and [evidence](#).

Rule 606. Juror's Competency as a Witness, FRE Rule 606

1974 Enactment

Note to Subdivision (b). As proposed by the Court, **Rule 606(b)** limited testimony by a juror in the course of an inquiry into the validity of a verdict or indictment. He could testify as to the influence of extraneous prejudicial information brought to the jury's attention (e.g. a radio newscast or a newspaper account) or an outside influence which improperly had been brought to bear upon a juror (e.g. a threat to the safety of a member of his family), but he could not testify as to other irregularities which occurred in the jury room. Under this formulation a quotient verdict could not be attacked through the testimony of a juror, nor could a juror testify to the drunken condition of a fellow juror which so disabled him that he could not participate in the jury's deliberations.

The 1969 and 1971 Advisory Committee drafts would have permitted a member of the jury to testify concerning these kinds of irregularities in the jury room. The Advisory Committee note in the 1971 draft stated that “ * * * the door of the jury room is not a satisfactory dividing point, and the Supreme Court has refused to accept it.” The Advisory Committee further commented that--

The trend has been to draw the dividing line between testimony as to mental processes, on the one hand, and as to the existence of conditions or occurrences of events calculated improperly to influence the verdict on the other hand, without regard to whether the happening is within or without the jury room. * * * The jurors are the persons who know what really happened. Allowing them to testify as to matters other than their own reactions involves no particular hazard to the values sought to be protected. The **rule** is based upon this conclusion. It makes no attempt to specify the substantive grounds for setting aside verdicts for irregularity.

Objective jury misconduct may be testified to in California, Florida, Iowa, Kansas, Nebraska, New Jersey, North Dakota, Ohio, Oregon, Tennessee, Texas, and Washington.

Persuaded that the better practice is that provided for in the earlier drafts, the Committee amended subdivision (b) to read in the text of those drafts. [House Report No. 93-650](#).

Note to Subdivision (b). As adopted by the House, this **rule** would permit the impeachment of verdicts by inquiry into, not the mental processes of the jurors, but what happened in terms of conduct in the jury room. This extension of the ability to impeach a verdict is felt to be unwarranted and ill-advised.

The **rule** passed by the House embodies a suggestion by the Advisory Committee of the Judicial Conference that is considerably broader than the final version adopted by the Supreme Court, which embodied long-accepted Federal law. Although forbidding the impeachment of verdicts by inquiry into the jurors' mental processes, it deletes from the Supreme Court version the proscription against testimony “as to any matter or statement occurring during the course of the jury's deliberations.” This deletion would have the effect of opening verdicts up to challenge on the basis of what happened during the jury's internal deliberations, for example, where a juror alleged that the jury refused to follow the trial judge's instructions or that some of the jurors did not take part in deliberations.

Permitting an individual to attack a jury verdict based upon the jury's internal deliberations has long been recognized as unwise by the Supreme Court. In *McDonald v. Pless*, the Court stated:

* * * *

[L]et it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by

Rule 606. Juror's Competency as a Witness, FRE Rule 606

an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them **evidence** of facts which might establish misconduct sufficient to set aside a verdict. If **evidence** thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation--to the destruction of all frankness and freedom of discussion and conference [238 U.S. 264, at 267 (1914)].

* * * *

As it stands then, the **rule** would permit the harassment of former jurors by losing parties as well as the possible exploitation of disgruntled or otherwise badly-motivated ex-jurors.

Public policy requires a finality to litigation. And common fairness requires that absolute privacy be preserved for jurors to engage in the full and free debate necessary to the attainment of just verdicts. Jurors will not be able to function effectively if their deliberations are to be scrutinized in post-trial litigation. In the interest of protecting the jury system and the citizens who make it work, **rule** 606 should not permit any inquiry into the internal deliberations of the jurors. [Senate Report No. 93-1277](#).

Note to Subdivision (b). **Rule 606(b)** deals with juror testimony in an inquiry into the validity of a verdict or indictment. The House bill provides that a juror cannot testify about his mental processes or about the effect of anything upon his or another juror's mind as influencing him to assent to or dissent from a verdict or indictment. Thus, the House bill allows a juror to testify about objective matters occurring during the jury's deliberation, such as the misconduct of another juror or the reaching of a quotient verdict. The Senate bill does not permit juror testimony about any matter or statement occurring during the course of the jury's deliberations. The Senate bill does provide, however, that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention and on the question whether any outside influence was improperly brought to bear on any juror.

The Conference adopts the Senate amendment. The Conferees believe that jurors should be encouraged to be conscientious in promptly reporting to the court misconduct that occurs during jury deliberations. House Report No. 93-1597.

1987 Amendments

The amendments are technical. No substantive change is intended.

2006 Amendments

Rule 606(b) has been amended to provide that juror testimony may be used to prove that the verdict reported was the result of a mistake in entering the verdict on the verdict form. The amendment responds to a divergence between the text of the **Rule** and the case law that has established an exception for proof of clerical errors. *See, e.g., Plummer v. Springfield Term. Ry.*, 5 F.3d 1, 3 (1st Cir. 1993) (“A number of circuits hold, and we agree, that juror testimony regarding an alleged clerical error, such as announcing a verdict different than that agreed upon, does not challenge the validity of the verdict or the deliberation of mental processes, and therefore is not subject to **Rule 606(b)**.”); *Teevee Toons, Inc., v. MP3.Com, Inc.*, 148 F.Supp.2d 276, 278 (S.D.N.Y. 2001) (noting that **Rule 606(b)** has been silent regarding inquiries designed to confirm the accuracy of a verdict).

Rule 606. Juror's Competency as a Witness, FRE Rule 606

In adopting the exception for proof of mistakes in entering the verdict on the verdict form, the amendment specifically rejects the broader exception, adopted by some courts, permitting the use of juror testimony to prove that the jurors were operating under a misunderstanding about the consequences of the result that they agreed upon. *See, e.g., Attridge v. Cencorp Div. of Dover Techs. Int'l, Inc.*, 836 F.2d 113, 116 (2d Cir. 1987); *Eastridge Development Co., v. Halpert Associates, Inc.*, 853 F.2d 772 (10th Cir. 1988). The broader exception is rejected because an inquiry into whether the jury misunderstood or misapplied an instruction goes to the jurors' mental processes underlying the verdict, rather than the verdict's accuracy in capturing what the jurors had agreed upon. *See, e.g., Karl v. Burlington Northern R.R.*, 880 F.2d 68, 74 (8th Cir. 1989) (error to receive juror testimony on whether verdict was the result of jurors' misunderstanding of instructions: "The jurors did not state that the figure written by the foreman was different from that which they agreed upon, but indicated that the figure the foreman wrote down was intended to be a net figure, not a gross figure. Receiving such statements violates **Rule 606(b)** because the testimony relates to how the jury interpreted the court's instructions, and concerns the jurors' 'mental processes,' which is forbidden by the **rule**."); *Robles v. Exxon Corp.*, 862 F.2d 1201, 1208 (5th Cir. 1989) ("the alleged error here goes to the substance of what the jury was asked to decide, necessarily implicating the jury's mental processes insofar as it questions the jury's understanding of the court's instructions and application of those instructions to the facts of the case"). Thus, the exception established by the amendment is limited to cases such as "where the jury foreperson wrote down, in response to an interrogatory, a number different from that agreed upon by the jury, or mistakenly stated that the defendant was 'guilty' when the jury had actually agreed that the defendant was not guilty." *Id.*

It should be noted that the possibility of errors in the verdict form will be reduced substantially by polling the jury. **Rule 606(b)** does not, of course, prevent this precaution. *See* 8C. Wigmore, **Evidence**, § 2350 at 691 (McNaughten ed. 1961) (noting that the reasons for the **rule** barring juror testimony, "namely, the dangers of uncertainty and of tampering with the jurors to procure testimony, disappear in large part if such investigation as may be desired is *made by the judge* and takes place *before the jurors' discharge* and separation") (emphasis in original). Errors that come to light after polling the jury "may be corrected on the spot, or the jury may be sent out to continue deliberations, or, if necessary, a new trial may be ordered." C. Mueller & L. Kirkpatrick, **Evidence Under the Rules** at 671 (2d ed. 1999) (citing *Sincov v. United States*, 571 F.2d 876, 878-79 (5th Cir. 1978)).

2011 Amendments

The language of **Rule 606** has been amended as part of the restyling of the **Evidence Rules** to make them more easily understood and to make style and terminology consistent throughout the **rules**. These changes are intended to be stylistic only. There is no intent to change any result in any **ruling** on **evidence** admissibility.

CROSS REFERENCES

Grand jury, secrecy of proceedings and disclosure, *see* **Fed.Rules Cr.Proc. Rule 6**, 18 **USCA**.

LAW REVIEW COMMENTARIES

Challenge to decisionmaking process--**Federal Rule of Evidence 606(b)** and constitutional right to fair trial. Peter N. Thompson, 38 Sw.L.J. 1187 (1985).

Dismissed with prejudice: Why application of the anti-jury impeachment **rule** to allegations of racial, religious, or other bias violates the right to present a defense. Colin Miller, 61 Baylor L. Rev. 872 (Fall 2009).

Jury misconduct, jury interviews, and the **Federal Rules of Evidence**: Is the broad exclusionary principle of **Rule 606(b)** justified? Susan Crump, 66 N.C.L.Rev. 509 (1988).

Personal knowledge under the **Federal Rules of Evidence**: A three-legged stool. Ronald Raitt, 18 Rutgers L.J. 591 (1987).
Unearthing Mansfield's **rule**: Analyzing the appropriateness of **Federal Rule of Evidence 606(b)** in light of the common law tradition. Andrew J. Hull, 38 S. Ill. U. L.J. 403 (2014).

Rule 606. Juror's Competency as a Witness, FRE Rule 606

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Federal Civil Procedure § 1023, **Evidence** Affecting Verdict; Impeachment of Verdict.

RESEARCH REFERENCES

ALR Library

65 ALR, Fed. 835, Competency of Juror as Witness, Under **Rule 606(B)** of **Federal Rules** of **Evidence**, Upon Inquiry Into Validity of Verdict or Indictment.

39 ALR 4th 800, Impeachment of Verdict by Juror's **Evidence** that He was Coerced or Intimidated by Fellow Juror.

21 ALR 4th 444, Propriety and Effect of Jurors' Discussion of **Evidence** Among Themselves Before Final Submission of Criminal Case.

58 ALR 2nd 556, Admissibility and Effect, in Criminal Case, of **Evidence** as to Juror's Statements, During Deliberations, as to Facts Not Introduced Into **Evidence**.

Encyclopedias

Am. Jur. 2d **Evidence** § 19, Proceedings to Which **Rules** Are Applicable in Part.

Am. Jur. 2d New Trial § 361, Scope of Hearing; **Evidence** on Hearing of Motion.

Treatises and Practice Aids

Federal **Evidence** § 6:14, Background and Purpose.

Federal **Evidence** § 6:15, Sitting Juror Disqualified as Witness.

Federal **Evidence** § 6:16, Jurors May Not Impeach Verdict--Scope, Origins, Underlying Philosophy.

Federal **Evidence** § 6:17, Jurors May Not Impeach Verdict--Matters Occurring and Statements Made During Deliberations.

Federal **Evidence** § 6:18, Exceptions--Extraneous Prejudicial Information as Distinguished from Common or Regional Knowledge.

Federal **Evidence** § 6:19, Exceptions--Outside Influence.

Federal **Evidence** § 6:20, Situations Beyond Reach of the **Rule**--Other Methods of Showing Jury Misconduct.

Federal **Evidence** § 6:21, Situations Beyond Reach of the **Rule**--Predeliberative Jury Misconduct, Including False Answers on Voir Dire.

Federal **Evidence** § 6:22, Situations Beyond Reach of the **Rule**--Post-Deliberative Jury Misconduct, Including Mistakes in Entering Verdict on Form.

Federal **Evidence** § 6:23, Procedural Issues--Interviewing Jurors; Motions; Hearings; Burden of Proof.

Federal **Evidence** § 6:24, Impeachment of Indictments.

Federal **Evidence** § 6:31, Showing Untruthfulness by Opinion and Reputation Testimony--Cross-Examining the Adverse Character Witness.

Federal Procedure, Lawyers Edition § 33:13, Proceedings to Which **Rules** Are Applicable in Part.

Federal Procedure, Lawyers Edition § 41:398, **Evidence** in Habeas Corpus Proceeding; Admissibility of State Court Records.

Federal Procedure, Lawyers Edition § 77:209, Burden of Proof; **Evidence**.

Federal Procedure, Lawyers Edition § 22:1553, Competency of Witness, Generally; Advocate-Witness **Rule**.

Federal Procedure, Lawyers Edition § 22:1820, Other **Evidence** as Newly Discovered **Evidence**.

Federal Procedure, Lawyers Edition § 45:2497, **Evidence**.

Handbook of Federal **Evidence** § 606:1, **Rule 606(A)**: Competency of Juror as Witness at Trial.

Handbook of Federal **Evidence** § 606:2, **Rule 606(B)**: Competency of Juror to Attack Validity of Verdict or Indictment; Disclosure of Grand Jury Testimony.

Handbook of Federal **Evidence** § 606:3, Competency and Propriety of Lawyer for a Party as Witness at Trial.

Section 1983 Litigation Federal **Evidence** § 9.03, Witness Competence.

Section 1983 Litigation Federal **Evidence** § 9.04, Impeachment Methods Under **Federal Rules** of **Evidence**.

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Section 1983 Litigation Federal **Evidence** § 9.16, Juror Impeachment of Verdict.

Wright & Miller: Federal Prac. & Proc. § 2406, Practice Under Original **Rule** 43--Competency of Witnesses.

Wright & Miller: Federal Prac. & Proc. § 6005, General **Rule**--"Every Person is Competent to be a Witness".

Wright & Miller: Federal Prac. & Proc. § 8078, Subdivision (E)--**Rules** Applicable in Part.

NOTES OF DECISIONS

Constitutionality

Where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment **rule** give way in order to permit the trial court to consider the **evidence** of the juror's statement and any resulting denial of the jury trial guarantee; abrogating *Commonwealth v. Steele*, 599 Pa. 341, 961 A.2d 786; *U.S. v. Benally*, 546 F.3d 1230; *Williams v. Price*, 343 F.3d 223. *Pena-Rodriguez v. Colorado*, U.S.2017, 137 S.Ct. 855, 197 L.Ed.2d 107. Criminal Law 🔑 957(3); Jury 🔑 33(2.10)

Federal Rule of **Evidence** generally barring **evidence** about any statement made during jury deliberations in an inquiry into the validity of a verdict or indictment applies during a proceeding in which a party seeks to secure a new trial on the ground that a juror lied during voir dire, as a post-verdict motion for a new trial based on voir dire dishonesty plainly entails an inquiry into the validity of the verdict, and Congress, in enacting that **rule**, specifically understood, considered, and rejected another version that likely would have permitted the introduction of **evidence** of deliberations to show dishonesty during voir dire; abrogating *United States v. Benally*, 546 F.3d 1230 and *Maldonado v. Missouri P.R. Co.*, 798 F.2d 764. *Warger v. Shauers*, U.S.2014, 135 S.Ct. 521, 190 L.Ed.2d 422. Federal Civil Procedure 🔑 2371

Native American defendant's Sixth Amendment right to impartial jury did not bar application of **evidence rule** prohibiting admission of statements made during jury deliberations for purpose of impeaching verdict, even if jurors expressed racial bias against Native Americans during deliberations, despite their statements during voir dire that they had no preconceptions about Native Americans that would color their evaluation of case. *U.S. v. Benally*, C.A.10 (Utah) 2008, 546 F.3d 1230, rehearing and rehearing en banc denied 560 F.3d 1151, certiorari denied 130 S.Ct. 738, 558 U.S. 1051, 175 L.Ed.2d 519, on subsequent appeal 415 Fed.Appx. 86, 2011 WL 754842, certiorari denied 132 S.Ct. 401, 565 U.S. 960, 181 L.Ed.2d 288. Criminal Law 🔑 957(3)

Evidence rule protecting jurors from harassment and supporting finality of verdict strikes constitutional balance, protecting litigant's right to fair trial from substantial juror misconduct, while protecting other legitimate interest as well and, therefore, it did not violate due process to apply **rule** in action by employee against railroad so as to preclude inquiry into whether jurors gave benefit of doubt to employee. *Maldonado v. Missouri Pacific Ry. Co.*, C.A.5 (Tex.) 1986, 798 F.2d 764, certiorari denied 107 S.Ct. 1571, 480 U.S. 932, 94 L.Ed.2d 762. Constitutional Law 🔑 3990

State appellate court's determination that juror affidavit, which recounted fellow juror's statements that if district attorney "had enough **evidence** to say" petitioner "was guilty, then he must be guilty," was inadmissible in connection with habeas petitioner's claim that alleged juror misconduct violated petitioner's due process and jury trial rights was neither contrary to, nor unreasonable application of, clearly established federal law, and, thus, habeas relief on such claim was not warranted, since fellow juror made his comments during deliberations, comments involved mental processes concerning verdict, even if it involved apparent bias in favor of prosecution, and alleged bias by one juror did not indicate it was result of extraneous prejudicial information or outside influence. *Ali v. Grounds*, S.D.Cal.2017, 236 F.Supp.3d 1241. Habeas Corpus 🔑 499

Generally

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Test for applying subd. (b) of this **rule**, that a juror may not testify as to any matter or statement occurring during course of jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from verdict or indictment or concerning his mental processes in connection therewith, is one of incompetency, with an exception being made for testimony relating to extraneous information or improper influence in jury room. *U.S. v. Eagle*, C.A.8 (S.D.) 1976, 539 F.2d 1166, certiorari denied 97 S.Ct. 1146, 429 U.S. 1110, 51 L.Ed.2d 563. Criminal Law 🔑 957(1)

Evidence of jurors is not admissible to impeach their verdict. *Holden v. Porter*, C.A.10 (Kan.) 1969, 405 F.2d 878. Federal Civil Procedure 🔑 2371

Whatever scope of jurisdiction's nonimpeachment **rule**, court determination of whether particular jury events are open or closed to inquiry must consider defendant's right to confront witnesses, to assistance of counsel and to impartial jury under the Sixth Amendment. *Tobias v. Smith*, W.D.N.Y. 1979, 468 F.Supp. 1287. Criminal Law 🔑 957(1)

Juror is incompetent to give **evidence** impeaching validity of verdict; after verdict is rendered, juror cannot testify concerning his mental processes, his possible misunderstanding of law or of effect of his verdict, or that verdict resulted from compromise. *Vizzini v. Ford Motor Co.*, E.D.Pa. 1976, 72 F.R.D. 132, vacated and remanded on other grounds 569 F.2d 754. Federal Civil Procedure 🔑 2371

Purpose

Rule prohibiting jury from impeaching its own verdict serves to promote free and uninhibited discourse during deliberations, to protect jurors from attempts to influence them after trial, and to preserve finality of verdicts. *Attridge v. Cencorp Div. of Dover Technologies Intern., Inc.*, C.A.2 (N.Y.) 1987, 836 F.2d 113. Federal Civil Procedure 🔑 2191

Intent of **Evidence Rule 606(b)** is to prohibit questioning of jurors regarding effect of extraneous information, such as newspapers, television, other media information, or personal contact directly concerning guilt or innocence of defendants on trial, on deliberations of jurors. *U.S. ex rel. Buckhana v. Lane*, C.A.7 (Ill.) 1986, 787 F.2d 230. Criminal Law 🔑 868

General **rule** that juror may not impeach his verdict insures that jurors will not feel a constraint in their deliberations for fear of later scrutiny by others and it further guarantees that jurors cannot manipulate system when their views are in minority by repudiating earlier verdict and obtaining mistrial. *In re Beverly Hills Fire Litigation*, C.A.6 (Ky.) 1982, 695 F.2d 207, certiorari denied 103 S.Ct. 2090, 461 U.S. 929, 77 L.Ed.2d 300, on remand 583 F.Supp. 1163. Federal Civil Procedure 🔑 2371

Purpose of subd. (b) of this **rule** governing inquiry into jury deliberations, like that of deliberate-concealment **rule** governing inquiry into jurors' responses on voir dire, is to preserve integrity of jury deliberations by confining claims of error to events or conditions that are improperly brought to jury's attention and involve calculated, intentional attempt to affect outcome. *U.S. v. Brooks*, C.A.D.C. 1982, 677 F.2d 907, 219 U.S.App.D.C. 319. Criminal Law 🔑 957(1)

A central purpose of subd. (b) of this **rule** of juror incompetency is the prevention of fraud by individual jurors who could remain silent during deliberations and later assert that they were influenced by improper considerations. *U.S. v. Eagle*, C.A.8 (S.D.) 1976, 539 F.2d 1166, certiorari denied 97 S.Ct. 1146, 429 U.S. 1110, 51 L.Ed.2d 563. Criminal Law 🔑 957(1)

Policy

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Federal Rule of **Evidence** prohibiting juror testimony regarding jury deliberations advances important policy considerations by ensuring that jurors will not feel constrained in their deliberations for fear of later scrutiny by others, and by guaranteeing that jurors cannot manipulate the system when their views are in the minority by repudiating an earlier verdict and obtaining a mistrial. *Shoen v. Shoen*, D.Ariz.1996, 933 F.Supp. 871, affirmed 113 F.3d 1242. *Federal Civil Procedure* 🔑 1974.1

Common law

Even if **Federal Rule** of **Evidence** precluding impeachment of verdict through juror testimony is interpreted to retain common-law exception allowing postverdict inquiry of juror incompetence in cases of “substantial if not wholly conclusive **evidence** of incompetency,” affidavits and testimony that jurors consumed alcoholic beverages at lunch break during trial, and suggesting that several jurors fell asleep at times during afternoon, failed to meet standard. *Tanner v. U.S.*, U.S.Fl.1987, 107 S.Ct. 2739, 483 U.S. 107, 97 L.Ed.2d 90, on remand 845 F.2d 266. *Criminal Law* 🔑 957(1); *Criminal Law* 🔑 957(3)

Juror as witness

Juror's affidavit, swearing that some of the additional mitigation **evidence** gathered during the postconviction process might have had an impact on the jury's deliberations at penalty phase of capital murder trial, was not competent **evidence**, on capital murder defendant's motion to substitute his postconviction counsel, alleging that postconviction counsel was conflict-encumbered regarding pursuit of ineffective assistance claim concerning mitigation **evidence**, in light of investigation of counsel for criminal contempt in violating local **rule** by contacting jurors without district court's permission. *Brown v. U.S.*, C.A.11 (Ga.) 2013, 720 F.3d 1316, motion for relief from judgment denied 135 S.Ct. 48, 190 L.Ed.2d 53. *Criminal Law* 🔑 1602

Subd. (a) of this **rule** that member of jury may not testify as witness before jury in trial of case in which he is sitting does not preclude juror from testifying at hearing on mistrial motion on issues such as publicity or attempted tampering. *U.S. v. Robinson*, C.A.8 (Mo.) 1981, 645 F.2d 616, certiorari denied 102 S.Ct. 351, 454 U.S. 875, 70 L.Ed.2d 182. *Witnesses* 🔑 73

Impeachment of verdict

Juror's affidavit alleging that other jurors discussed **evidence** against defendant and made up their minds about his guilt before start of deliberations was inadmissible to impeach jury's verdict finding defendant guilty of price fixing, despite defendant's contention that he was denied fair and impartial jury because jurors' alleged deception denied him opportunity to exercise valid challenge for cause before start of trial, where affidavit did not contain any **evidence** of juror deceit or bias, or indicate that any juror had dishonest intentions at time of commitment. *U.S. v. Leung*, C.A.9 (Cal.) 2015, 796 F.3d 1032. *Criminal Law* 🔑 957(2)

Evidence of discussions among jurors, intimidation or harassment of one juror by another, and other intra-jury influences on the verdict is within the **rule** regarding inquiry into the validity of a verdict or indictment, rather than the exception, and is not competent to impeach a verdict. *U.S. v. Lakhani*, C.A.3 (N.J.) 2007, 480 F.3d 171. *Criminal Law* 🔑 957(3)

Defendant's claim that he was denied a fair trial before an impartial jury as required by the Sixth, Eighth, and Fourteenth Amendments was precluded by Oklahoma statute and **federal rule** of **evidence** prohibiting admission of jury testimony to impeach a verdict. *Richie v. Sirmons*, N.D.Okla.2008, 563 F.Supp.2d 1250, affirmed 599 F.3d 1131. *Criminal Law* 🔑 957(3); *Jury* 🔑 33(2.10)

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Same **rule** applicable in sphere of jury verdicts, i.e., that testimony of jury member will not be allowed to impeach validity of the jury's verdict is applicable to verdicts or sentences imposed by judges, subject to exceptions, i.e., when extraneous information has been improperly brought to attention of the court members, when outside influence has been brought to bear on a member, and when unlawful command influence has occurred. *U.S. v. Rice*, AFCEMR 1985, 20 M.J. 764, affirmed 25 M.J. 35, certiorari denied 108 S.Ct. 752, 484 U.S. 1027, 98 L.Ed.2d 765. Military Justice 🔑 1275

Inquiry into verdict

To qualify for setting aside the no-impeachment bar to allow further judicial inquiry, a juror's statement indicating racial bias must tend to show that racial animus was a significant motivating factor in the juror's vote to convict; whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered **evidence**. *Pena-Rodriguez v. Colorado*, U.S.2017, 137 S.Ct. 855, 197 L.Ed.2d 107. Criminal Law 🔑 957(3)

On plaintiff's motion for new trial in suit arising from motor vehicle accident, juror's affidavit regarding foreperson's conduct during deliberations was internal matter, and thus it was not admissible under exception to **Federal Rule of Evidence** generally barring **evidence** about any statement made during jury deliberations in inquiry into validity of verdict for **evidence** of extraneous prejudicial information; whether or not foreperson should have been struck based on her purported voir dire dishonesty as to her impartiality, her revelation during deliberations that her daughter was involved in fatal car accident may have informed her general views about negligence liability in similar cases, but it did not provide either her or other jurors with any specific knowledge regarding accident at issue. *Warger v. Shauers*, U.S.2014, 135 S.Ct. 521, 190 L.Ed.2d 422. Federal Civil Procedure 🔑 2371

In proceedings on defendant's motion for a new trial following his conviction for offenses related to participation in conspiracy to distribute cocaine, the statements made by three of the trial jurors during voir dire in later cases after they returned to the jury pool following defendant's trial, in which statements the jurors referred to defendant's failure to testify in his trial and suggested that they could not help but draw an adverse inference, were inadmissible under **rule** of **evidence** prohibiting the use of juror statements during an inquiry into the validity of a verdict; the jurors' statements concerned only intrajury influences on the verdict during the deliberative process, and they did not come within the **rule's** list of exceptions to the general **rule** of exclusion. *U.S. v. Torres-Chavez*, C.A.7 (Ill.) 2014, 744 F.3d 988, post-conviction relief denied 2015 WL 508184, vacated and remanded 828 F.3d 582. Criminal Law 🔑 957(3)

District court did not abuse its discretion in refusing to allow counsel for African-American defendant to interview only African-American on jury, after such juror appeared distraught about guilty verdict, where judge interviewed juror and made finding that interview yielded nothing that would have been admissible in **evidence** under **rule** authorizing juror testimony upon inquiry into validity of verdict. *U.S. v. Wright*, C.A.10 (Kan.) 2007, 506 F.3d 1293. Jury 🔑 76

Where trial judge had **evidence** before him that one juror had reported statements by a second juror indicating knowledge of a defendant's reputation, and a third juror, who was said to have discussed the alleged remark with first juror, was identified, judge abused his discretion in cutting off the investigation after the foreperson testified to recalling no such remark, without testimony from second juror or development of the knowledge of the third juror, thus requiring remand for further proceedings and findings on the jury taint claims. *U.S. v. Humphrey*, C.A.10 (Wyo.) 2000, 208 F.3d 1190. Criminal Law 🔑 868

Nebulous allegations of third-party contact with jury were insufficient to merit further investigation, where defendant offered no **evidence** that the third party gained improper knowledge from watching trial and then imparted that

Rule 606. Juror's Competency as a Witness, FRE Rule 606

knowledge to jury or even that any communication between third party and jurors occurred. [U.S. v. Caldwell, C.A.8 \(Ark.\) 1996, 83 F.3d 954. Criminal Law 🔑 868](#)

At hearing to determine whether defendant was biased by juror's denial of his status as convicted felon, trial court could inquire whether juror's felon status ever came up during jury deliberations and, if so, circumstances surrounding that disclosure, without violating **evidence rule** prohibiting jurors from testifying regarding validity of their verdict. [U.S. v. Boney, C.A.D.C.1995, 68 F.3d 497, 314 U.S.App.D.C. 287, on remand 942 F.Supp. 47. Criminal Law 🔑 957\(1\)](#)

Once defendant has made colorable showing of possibility that juror has been tainted, he may invoke **evidence rule**, which permits juror to testify after verdict has been rendered on question of whether extraneous prejudicial information was improperly brought to jury's attention and on whether any outside influence was improperly brought to bear upon any juror. [U.S. v. Davis, C.A.7 \(Ill.\) 1994, 15 F.3d 1393, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 250, 513 U.S. 896, 130 L.Ed.2d 171. Criminal Law 🔑 957\(1\)](#)

Juror's purported remark that defendant was guilty of mail fraud because "he got the best paid lawyer" was made, if at all, during deliberations, and defendant was thus prohibited from conducting postconviction interrogation of jurors regarding effect of remark on guilty verdict to determine whether defendant was deprived of constitutional right to impartial jury; permitting inquiry into jury's deliberations would place every guilty verdict in a criminal case at the mercy of a defendant dissatisfied by his conviction, hoping that such inquiry might unearth a statement by a juror that the defendant could point to as **evidence** of purported bias. [U.S. v. Botti, D.Conn.2010, 722 F.Supp.2d 188. Jury 🔑 76](#)

General **rule** that inquiry into jurors' internal mental processes and deliberations is barred does not bar inquiry into ambiguous or inconsistent verdict and does not preclude juror from testifying as to potential miscommunication or verdict; consideration of jurors' unsolicited comments on inconsistent verdict are allowed, prior to discharge of jury, when those comments relate to possible miscommunication by jurors or misinterpretation by court of what jurors actually decided, rather than how they reached their verdict. [Trans-World Intern., Inc. v. Smith-Hemion Productions, Inc., C.D.Cal.1996, 952 F.Supp. 667. Federal Civil Procedure 🔑 2371](#)

Evidentiary **rule** governing post-trial inquiries into validity of verdicts or indictments did not permit district court to inquire into juror's alleged misunderstanding of burden of proof, in prosecution for conspiracy, wire fraud, and program fraud, where claim, as spelled out in affidavit submitted by defendant's brother who claimed to have learned of juror's purported misunderstanding after trial, did not relate to extraneous prejudicial information or improper outside influences. [U.S. v. Flemming, C.A.3 \(Virgin Islands\) 2007, 223 Fed.Appx. 117, 2007 WL 1451126, Unreported. Criminal Law 🔑 957\(2\)](#)

Voir dire

Rule that a juror may not impeach a verdict barred District Court from considering statements made during jury deliberations, even if only to determine whether a juror lied during voir dire, where plaintiff's claim that several jurors lied on voir dire was mere speculation. [Marcavage v. Board of Trustees of Temple University, E.D.Pa.2005, 400 F.Supp.2d 801. Federal Civil Procedure 🔑 2371](#)

There is exception to general **rule** against jurors' impeaching their verdicts in cases where allegations are raised that juror may have answered falsely on voir dire about matter of potential bias or prejudice. [Alejo Jimenez v. Heyliger, D.Puerto Rico 1992, 792 F.Supp. 910. Federal Civil Procedure 🔑 1974.1](#)

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Extraneous information--Generally

Extrinsic or extraneous influences about which juror may testify in inquiry into validity of verdict include publicity received and discussed in jury room, matters considered by jury but not admitted into **evidence**, and communications or other contact between jurors and outside persons. *U.S. v. Rodriguez*, C.A.8 (S.D.) 1997, 116 F.3d 1225. *Criminal Law* 🔑 957(3); *Criminal Law* 🔑 957(5)

Although **evidence rule** generally prevents juror from testifying "as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind," **rule** does allow jurors to "testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." *U.S. v. Brown*, C.A.8 (Minn.) 1997, 108 F.3d 863, rehearing denied. *Criminal Law* 🔑 957(1); *Criminal Law* 🔑 957(5)

General **rule** that juror may not impeach his verdict does not preclude inquiry into any extraneous influences brought to bear upon jury in order to show what inferences were and whether they were prejudicial. *In re Beverly Hills Fire Litigation*, C.A.6 (Ky.) 1982, 695 F.2d 207, certiorari denied 103 S.Ct. 2090, 461 U.S. 929, 77 L.Ed.2d 300, on remand 583 F.Supp. 1163. *Federal Civil Procedure* 🔑 2371

Subd. (b) of this **rule** which bars jurors from testifying as to any matter or statement occurring during the course of the jury's deliberations admits testimony concerning whether extraneous prejudicial information was improperly brought to jury's attention or whether any outside influence was improperly brought to bear on any juror. *U.S. v. Moten*, C.A.2 (N.Y.) 1978, 582 F.2d 654, on remand 463 F.Supp. 49. *Criminal Law* 🔑 957(6)

Under the "extraneous prejudicial information" exception to **rule** of **evidence** banning inquiry into internal jury deliberations, a juror may testify as to extra-record facts introduced into the jury room or the presence of an improper influence on the deliberations of the jury such as in the case of communications or contacts between jurors and litigants, the court, or other third parties. *Lopez v. Aramark Uniform & Career Apparel, Inc.*, N.D.Iowa 2006, 417 F.Supp.2d 1062. *Federal Civil Procedure* 🔑 2371

If a juror is competent to impeach the verdict, the question becomes whether the **evidence** adduced is sufficient to provide a substantive ground to set aside the verdict; generally, such grounds, like the exceptions to the **rule** of juror incompetency, involve extraneous influences on the jury. *Blake v. Cich*, D.C.Minn.1978, 79 F.R.D. 398. *Federal Civil Procedure* 🔑 2371

---- Bailiff's statements, extraneous information

Rule barring inquiry into effect of statement during jury deliberations on juror's state of mind did not apply to district court's determination that juror considered bailiff's tasteless comment about another juror as bad joke; testimony of juror to whom comment was made, concerning what he understood bailiff's words to mean, had no bearing on matters before jury. *Sea Hawk Seafoods, Inc. v. Alyeska Pipeline Service Co.*, C.A.9 (Alaska) 2000, 206 F.3d 900, certiorari denied 121 S.Ct. 283, 531 U.S. 919, 148 L.Ed.2d 203. *Federal Civil Procedure* 🔑 2371

---- Coercion or harassment of jurors, extraneous information

Note from juror to judge stating that juror in minority was being questioned and forced to defend his position on each count of indictment and characterizing majority's actions as harassment and insults was not admissible to support motion for new trial under **rule** prohibiting use of statements from jurors that they felt pressure to reach verdict. *U.S. v. Tallman*,

Rule 606. Juror's Competency as a Witness, FRE Rule 606

C.A.8 (Neb.) 1991, 952 F.2d 164, rehearing denied, certiorari denied 112 S.Ct. 2318, 504 U.S. 961, 119 L.Ed.2d 237, certiorari denied 112 S.Ct. 2319, 504 U.S. 962, 119 L.Ed.2d 237. Criminal Law 🔑 957(1)

Juror's letter to court stating that juror's verdict convicting defendants of conspiracy to provide material support and resources to terrorist activity and related offenses was result of fear and intimidation juror was made to feel during course of deliberations was barred under **rule** of **evidence** governing competency of juror as witness from consideration with respect to defendants' request for evidentiary hearing on issue of whether improper influence was brought to bear on juror; letter described course of deliberations and its effect on juror's mind or emotions, and did not refer to extraneous information or outside influence. *U.S. v. Sattar*, S.D.N.Y.2005, 395 F.Supp.2d 66, affirmed 590 F.3d 93, rehearing en banc denied 597 F.3d 514, certiorari denied 130 S.Ct. 1924, 559 U.S. 1031, 176 L.Ed.2d 404, appeal after new sentencing hearing 686 F.3d 156, post-conviction relief denied 2013 WL 4044756, motion for relief from judgment denied 2013 WL 4806942, appeal withdrawn, certiorari denied 134 S.Ct. 54, 187 L.Ed.2d 257. Criminal Law 🔑 957(5)

Evidence of discussions among jurors, intimidation or harassment of one juror by another, and other intrajury influences on verdict is within general **rule** rather than exception and is not competent to impeach verdict, nor is **evidence** which relates to thought processes and undisclosed subjective prejudices of individual juror. *Smith v. Brewer*, S.D.Iowa 1978, 444 F.Supp. 482, affirmed 577 F.2d 466, certiorari denied 99 S.Ct. 457, 439 U.S. 967, 58 L.Ed.2d 426. Criminal Law 🔑 957(1)

---- Comparison with other case, extraneous information

Testimony of juror which went to establish the historic, objective fact that she attended a substantial portion of the trial of other persons involved in the case was not precluded by **Rule 606(b)**, generally barring a jury's testimony as to the effect of anything upon his mind or emotions in reaching a verdict. *Isaacs v. Kemp*, C.A.11 (Ga.) 1985, 778 F.2d 1482, rehearing denied 782 F.2d 896, certiorari denied 106 S.Ct. 2289, 476 U.S. 1164, 90 L.Ed.2d 730, rehearing denied 106 S.Ct. 3321, 478 U.S. 1014, 92 L.Ed.2d 728, on remand 355 S.E.2d 644, 257 Ga. 126. Criminal Law 🔑 957(2)

Where juror's testimony was offered to show that jurors compared **evidence** in defendant's case with that in another murder case in which another juror had also served, court would consider whether defendant had shown prejudice. *Smith v. Brewer*, S.D.Iowa 1978, 444 F.Supp. 482, affirmed 577 F.2d 466, certiorari denied 99 S.Ct. 457, 439 U.S. 967, 58 L.Ed.2d 426. Habeas Corpus 🔑 499

---- Facts not in **evidence**, extraneous information

Jury's consideration of one juror's assertion that defendant had prior conviction, despite lack of **evidence** of such prior conviction, warranted evidentiary hearing, even though information came from within jury room; juror's statement was "extraneous prejudicial information," within meaning of **rule** governing impeachment of verdicts. *U.S. v. Swinton*, C.A.8 (Ark.) 1996, 75 F.3d 374. Criminal Law 🔑 957(5); Criminal Law 🔑 959

---- Insurance coverage, extraneous information

Evidence that during deliberations one juror stated that all military personnel carried liability insurance, that another stated that they were not interested in that, and that existence or nonexistence of insurance had no influence upon jurors who testified did not establish misconduct on part of jury vitiating verdict. *Holden v. Porter*, C.A.10 (Kan.) 1969, 405 F.2d 878. Federal Civil Procedure 🔑 2337

---- Internal discussion and deliberation, extraneous information

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Investigator's testimony about interviews with jurors was inadmissible to support defendant's claim that he was denied his right to a 12-person jury when a member of the jury called in sick one day in the middle of deliberations, despite claim that the **rule** generally barring jurors from testifying about matters occurring during the course of the jury's deliberations was not implicated because the interviews were limited to "historical objective fact," i.e., whether the juror was absent during deliberations, not whether the absence influenced the jury's decision; the questions did not fall within the ambit of facts to which a juror could testify under the **rule**. *Webster v. U.S., C.A.7 (Ill.) 2011, 667 F.3d 826*, rehearing and rehearing en banc denied, certiorari denied *133 S.Ct. 167, 568 U.S. 821, 184 L.Ed.2d 35*. *Criminal Law* 🔑 957(1)

Contention that several jurors discussed trial while commuting by train and that mail-fraud defendant was thereby denied impartial jury did not rise beyond level of speculation, and was thus insufficient to permit postconviction interrogation of jurors; jury demonstrated its knowledge that verdict must be based upon the **evidence** and that extraneous matter could not be considered when it immediately stopped one juror who attempted to read from her journal during deliberations, and reported incident to court, which led to juror's dismissal for cause, and remaining members of jury moreover individually confirmed their collective silence when asked if any felt they could not be impartial and find the facts solely on the basis of the **evidence** after juror's dismissal. *U.S. v. Botti, D.Conn.2010, 722 F.Supp.2d 188*. *Jury* 🔑 76

Rule generally prohibiting jurors from testifying as to deliberations prohibited proposed testimony of grand jurors, in defendant's trial for making false statements to grand jury, but only to extent that testimony concerned their subjective impressions. *U.S. v. Awadallah, S.D.N.Y.2005, 401 F.Supp.2d 308*, affirmed *436 F.3d 125*. *Grand Jury* 🔑 41.30

Given habeas court's finding that although two jurors subjectively felt pressured by other jurors into rendering guilty verdicts, there was no factual basis to conclude that jurors objectively were subjected to threats of physical harm, jurors' testimony about internal pressure in jury room was incompetent to impeach verdict, pursuant to **rule** restricting juror testimony as to matters or statements occurring during course of jury deliberations or to effect of anything upon juror's mental processes in connection therewith. *Anderson v. Miller, E.D.N.Y.2002, 206 F.Supp.2d 352*, affirmed *346 F.3d 315*. *Habeas Corpus* 🔑 712.1

In determining whether to grant new trial in sex discrimination in hiring case against hotel, on ground that one jury member having familiarity with hotel industry told fellow members that hotels where applicants previously worked were not of same quality as employer hotel, court would consider information communicated by juror but would not consider **evidence** of alleged effect of statement on other jurors. *Cocconi v. Pierre Hotel, S.D.N.Y.2001, 146 F.Supp.2d 427*. *Federal Civil Procedure* 🔑 2371

Statement in juror's affidavit that during deliberations the jury discussed defendant not taking the stand, and that defendant probably did so because he was afraid of being caught in a lie was not admissible in **evidence** on defendant's motion to set aside convictions under **Federal Evidence Rule 606(b)**, which precludes jurors from testifying to any matter or statement occurring during course of jury's deliberations or to effect of anything upon his or any other juror's mind or emotions. *Murphy v. U.S., E.D.N.Y.1985, 621 F.Supp. 560*. *Criminal Law* 🔑 1614

---- Investigations, extraneous information

Out-of-court investigation by juror is improper where it amounts to additional **evidence** supplementary to that introduced during trial. *In re Beverly Hills Fire Litigation, C.A.6 (Ky.) 1982, 695 F.2d 207*, certiorari denied *103 S.Ct. 2090, 461 U.S. 929, 77 L.Ed.2d 300*, on remand *583 F.Supp. 1163*. *Federal Civil Procedure* 🔑 1974.1

---- Juror's experience, extraneous information

Rule 606. Juror's Competency as a Witness, FRE Rule 606

District court did not abuse its discretion, in denying motorcyclist's motion for a new trial in his negligence action against a truck driver arising out of a collision between the parties, by refusing to consider juror's affidavit alleging the foreperson had focused on her own daughter's past experience with a serious traffic accident, rather than the **evidence** presented at trial; affidavit concerned an alleged bias held by a jury member, not extraneous information improperly brought before the jury. *Warger v. Shauers*, C.A.8 (S.D.) 2013, 721 F.3d 606, certiorari granted 134 S.Ct. 1491, 188 L.Ed.2d 374. *Federal Civil Procedure* 🔑 2371

Jurors' alleged statements about their personal experiences with Native Americans and their preconception that all Native Americans got drunk and then violent did not fall within scope of exception to **rule** prohibiting admission of statements made during jury deliberations for purpose of impeaching verdict for extraneous prejudicial information, even though jurors' alleged statements were entirely improper and inappropriate, where statements did not concern specific facts about Native American defendant or incident for which he was charged. *U.S. v. Benally*, C.A.10 (Utah) 2008, 546 F.3d 1230, rehearing and rehearing en banc denied 560 F.3d 1151, certiorari denied 130 S.Ct. 738, 558 U.S. 1051, 175 L.Ed.2d 519, on subsequent appeal 415 Fed.Appx. 86, 2011 WL 754842, certiorari denied 132 S.Ct. 401, 565 U.S. 960, 181 L.Ed.2d 288. *Criminal Law* 🔑 957(3)

Two jurors' alleged prior personal experiences with sexual abuse did not constitute "extraneous prejudicial information," and thus testimony regarding how the jurors allegedly drew on the prior abuse and utilized those experiences in the course of deliberations in former employees' sexual harassment suit against former employer was not admissible under exception to general **rule** barring inquiry into internal jury deliberations. *Lopez v. Aramark Uniform & Career Apparel, Inc.*, N.D.Iowa 2006, 417 F.Supp.2d 1062. *Federal Civil Procedure* 🔑 2371

Even if plaintiff's assertions that jurors voiced personal experiences with individuals of various religious faiths constituted **evidence** of extraneous information or outside influence on the jury, **rule** that a juror may not impeach a verdict did not permit a juror to testify as to the actual effect of these matters on him or on any other juror, and, thus, juror's testimony as to alleged extraneous information was not admissible on plaintiff's motion for new trial on basis of juror bias. *Marcavage v. Board of Trustees of Temple University*, E.D.Pa.2005, 400 F.Supp.2d 801. *Federal Civil Procedure* 🔑 2371

---- **Judicial communications, extraneous information**

Defendants were not entitled to hearing, after jury returned its verdict, on grounds that note sent by juror to court at close of **evidence** indicated bias or irregularity, as defendants would have been seeking testimony from juror designed to impeach jury's verdict without any basis for supposing that jury had been subjected to outside influences. *U.S. v. Stafford*, C.A.7 (Wis.) 1998, 136 F.3d 1109, rehearing and suggestion for rehearing en banc denied, modified 136 F.3d 1115, certiorari denied 119 S.Ct. 123, 525 U.S. 849, 142 L.Ed.2d 99, dismissal of habeas corpus affirmed 92 Fed.Appx. 176, 2004 WL 232213, post-conviction relief denied 2005 WL 775317, certificate of appealability denied 2005 WL 946709. *Criminal Law* 🔑 957(1)

Rule providing that, upon inquiry into validity of verdict, juror may not testify as to any matter occurring during course of jury's deliberations nor may juror's affidavit concerning matter about which juror would be precluded from testifying be received for these purposes precluded Court of Appeals' consideration of paragraph of juror's affidavit in which she stated that "But for my private meeting with the Judge and his clerk, I would have dissented from the guilty verdict when I was polled" for purposes of defendant's motion for new trial due to ex parte communication between judge and juror; however, Court of Appeals would credit paragraphs in juror's affidavit as to what happened in her meeting with judge. *U.S. v. Scisum*, C.A.10 (Utah) 1994, 32 F.3d 1479. *Criminal Law* 🔑 957(2)

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Views expressed by jury foreman in letter sent to trial judge during deliberations were beyond scope of inquiry through motion for new trial for jury misconduct, even though some of views expressed would not constitute proper matter for jury deliberation nor for juror to rely upon in reaching verdict, where letter revealed no **evidence** of influence by extrinsic material improperly placed before jury. *Carson v. Polley*, C.A.5 (Tex.) 1982, 689 F.2d 562. *Federal Civil Procedure* 🔑 2337

On motion for new trial based upon newly discovered **evidence** of ex parte communication between one juror and trial court, **evidence** regarding actual conversation between juror and court was admissible as testimony regarding outside influence improperly brought to bear upon juror. *U.S. v. Williams*, C.A.5 (Ga.) 1980, 613 F.2d 573, rehearing denied 615 F.2d 919, certiorari denied 101 S.Ct. 137, 449 U.S. 849, 66 L.Ed.2d 60. *Criminal Law* 🔑 957(3)

Defendant was not entitled to new trial based upon newly discovered **evidence** of ex parte communication between one juror and trial court, in which juror informed judge that she was socially acquainted with one of the defense character witnesses, where meeting lasted only 15 minutes, sole topic of the discussion was juror's acquaintance with witness and whether this fact would for some reason call for disqualification, and judge did not give juror any indication of importance to be accorded character witness. *U.S. v. Williams*, C.A.5 (Ga.) 1980, 613 F.2d 573, rehearing denied 615 F.2d 919, certiorari denied 101 S.Ct. 137, 449 U.S. 849, 66 L.Ed.2d 60. *Criminal Law* 🔑 938(1)

Even if **rule** generally prohibiting juror testimony regarding statements made during deliberations applied to investigation during penalty phase of capital murder trial, **rule** was not violated by District Court's inquiry to juror about her ability to be impartial given her boss's alleged comments suggesting defendant was guilty, or its inquiry to other jurors about their ability to be impartial given juror's disclosure to them of boss's alleged comments, inasmuch as inquiries did not relate to effect of something upon any juror's mind or emotions as influencing juror to assent or dissent from verdict, or concerning juror's mental processes in connection therewith. *U.S. v. Honken*, N.D.Iowa 2005, 381 F.Supp.2d 936. *Criminal Law* 🔑 957(1); *Sentencing And Punishment* 🔑 1779(3)

Post-trial observations made by judge in the jury room where jury had taped to the wall large panels of blank paper and marked each one progressively with the essential factual issues in the case were not competent **evidence** to impugn jury verdict. *Suboh v. Borgioli*, D.Mass.2004, 298 F.Supp.2d 192. *Federal Civil Procedure* 🔑 2371

Because questioning of jurors by court may easily intrude into deliberative process and invite charges of coercion, such questioning should be avoided unless there is strong **evidence** of impropriety. *U.S. v. Musto*, D.C.N.J.1982, 540 F.Supp. 318. *Criminal Law* 🔑 868

---- News media accounts, extraneous information

On a motion for a new trial in a murder case, it was error to exclude the affidavits of jurors that a newspaper printed after the jury retired was introduced into the jury room, and an article read therefrom to the jury stating that defendant had been tried for his life once before, that the **evidence** against him was claimed to be very strong, that the argument of the prosecution was such that defendant's friends gave up all hope, and that the jury's deliberations would probably not last over an hour. *Mattox v. U.S.*, U.S.Kan.1892, 13 S.Ct. 50, 146 U.S. 140, 36 L.Ed. 917.

Statements in juror affidavits that jurors became fearful as result of reading newspaper articles or for other reasons were inadmissible for purposes of **ruling** on defendants' joint motion to dismiss or for new trial based on allegations of juror misconduct as they fell squarely within evidentiary **rule's** prohibition on juror testimony that purported to describe each juror's subjective state of mind or emotions. *U.S. v. Williams-Davis*, D.D.C.1993, 821 F.Supp. 727, affirmed in part, vacated in part 90 F.3d 490, 319 U.S.App.D.C. 267, rehearing denied, certiorari denied 117 S.Ct. 986, 519 U.S. 1128,

Rule 606. Juror's Competency as a Witness, FRE Rule 606

136 L.Ed.2d 867, certiorari denied 117 S.Ct. 988, 519 U.S. 1129, 136 L.Ed.2d 869. Criminal Law 🔑 957(2); Criminal Law 🔑 957(5)

Defendant was not entitled to interview jurors after jury returned verdict convicting defendant on all counts in order to ascertain whether any of the jurors were exposed to news media accounts of interviews with two government witnesses, in that even though jury was not sequestered, jurors were specifically instructed only a short time prior to broadcast not to watch television, listen to radio, or read any newspapers, and presumption existed that jurors followed the instruction, and defendant failed to come forth with any **evidence** that any juror was influenced by extraneous prejudicial information. U.S. v. Cauble, E.D.Tex.1982, 532 F.Supp. 804, affirmed 757 F.2d 282, certiorari denied 106 S.Ct. 406, 474 U.S. 994, 88 L.Ed.2d 357. Criminal Law 🔑 868

---- Physical impairment, extraneous information

Juror's hearing impairment which allegedly rendered him incompetent to serve at defendant's trial was not "extraneous prejudicial information" improperly brought to jury's attention, nor was it an "outside influence" improperly brought to bear upon any juror; hence, that **evidence**, which defendant proposed to elicit at evidentiary hearing on postconviction relief petition, could not have been considered under **rule**. Government of Virgin Islands v. Nicholas, C.A.3 (Virgin Islands) 1985, 759 F.2d 1073, on remand 639 F.Supp. 486. Criminal Law 🔑 1491; Criminal Law 🔑 1614

---- Third party communications, extraneous information

Statements that juror who had been threatened informed other jurors of the threat and that one juror learned from a relative of the media coverage of the threat concerned extraneous **evidence** or influence and were admissible in inquiry into validity of verdict. U.S. v. Allen, N.D.Ill.1990, 736 F.Supp. 914, affirmed 962 F.2d 660, certiorari denied 113 S.Ct. 262, 506 U.S. 892, 121 L.Ed.2d 192, certiorari denied 113 S.Ct. 284, 506 U.S. 900, 121 L.Ed.2d 210. Criminal Law 🔑 868

---- Miscellaneous cases, extraneous information

Stricken testimony by defense expert concerning causation did not constitute "extraneous information," and thus consumer, who was diagnosed with bronchiolitis obliterans which he attributed to his consumption of microwave popcorn with butter flavoring containing diacetyl, was not entitled to evidentiary hearing to determine validity of verdict in breach of implied warranty action; existence of stricken testimony was not in doubt, and juror's potential testimony that jury relied on stricken **evidence** was barred, as the testimony concerned juror's mental processes. Stults v. American Pop Corn Co., C.A.8 (Iowa) 2016, 815 F.3d 409, rehearing and rehearing en banc denied. Federal Civil Procedure 🔑 2371

Producer of oil and natural gas was not entitled to new trial in homeowner's action for damages caused by vibrations from drilling operations due to jurors' discussion of drilling method called fracking, even though jury heard no **evidence** about fracking, where jurors agreed they did not discuss fracking after court's instruction, in response to jury question of whether they were drilling or were also fracking, that it had all of the **evidence** in the case. Hiser v. XTO Energy, Inc., C.A.8 (Ark.) 2014, 768 F.3d 773. Federal Civil Procedure 🔑 2337

District court acted within its discretion in denying request for hearing based on post-verdict allegation of juror misconduct in racketeering conspiracy trial; post-verdict note from juror neither alleged nor implied any external influence on jury deliberations, but rather raised the possibility only of premature deliberations, and note contained no suggestion that jurors were biased, additionally, jury's return of split verdicts implied that jury reached independent conclusions to each defendant without making up its mind before the close of **evidence**. U.S. v. Morales, C.A.7 (Ill.)

Rule 606. Juror's Competency as a Witness, FRE Rule 606

2011, 655 F.3d 608, certiorari denied 132 S.Ct. 1121, 565 U.S. 1169, 181 L.Ed.2d 1000, post-conviction relief denied 26 F.Supp.3d 716, vacated, post-conviction relief denied 2015 WL 6407835. Criminal Law 🔑 868

Trial court did not abuse discretion by concluding government had rebutted presumption that juror's outside investigation prejudiced jury considering wire fraud case; while juror had heard from office associate that principal witness against defendant was a "real nice man" she had also heard witness testify he had lied to Securities and Exchange Commission and had engaged in illegal stock transactions; and although she had heard from outside source that defendant had been accused of stealing company property, she also had opportunity to hear defendant testify about events relating to case; juror had heard extrinsic **evidence** only after all of **evidence** had been introduced in case, and she had not relayed any information to other jurors until after jury had determined verdict. *U.S. v. Ruggiero, C.A.5 (Tex.)* 1995, 56 F.3d 647, rehearing denied, certiorari denied 116 S.Ct. 397, 516 U.S. 951, 133 L.Ed.2d 317, certiorari denied 116 S.Ct. 486, 516 U.S. 979, 133 L.Ed.2d 413. Criminal Law 🔑 956(12)

Bank officers convicted in connection with scheme to bribe city officials failed to establish that extrinsic **evidence** was improperly introduced into jury deliberations, as required to warrant new trial or hearing; juror's knowledge regarding effect of credit scores on mortgage application process, as it pertained to allegation that city officials received unusually favorable loan terms, was based upon her personal experience as real estate agent. *U.S. v. Holck, E.D.Pa.*2005, 398 F.Supp.2d 338, affirmed 500 F.3d 257, certiorari denied 128 S.Ct. 1329, 552 U.S. 1223, 170 L.Ed.2d 138. Criminal Law 🔑 925.5(1)

Odor of marijuana in courtroom was not "extraneous" prejudicial information improperly brought to jury's attention, so as to constitute cause for relief from **rule** generally barring examination or interview of jurors, in order to determine whether any marijuana odor created headaches or allergic reactions interfering with jurors' ability to deliberate; no authority was presented in support of position that attributes of properly admitted **evidence**, such as marijuana, could be considered "extraneous." *U.S. v. Dunn, D.Kan.*1997, 961 F.Supp. 249. Jury 🔑 76

Prejudicial effect of information

Defendant, who was convicted of computer sabotage and who sought new trial on ground of extraneous information concerning the "love bug" computer virus which a juror said she heard on television over the weekend in the midst of deliberations, did not meet his burden of showing substantial likelihood of prejudice from the extraneous information, and thus, was not entitled to new trial; the extraneous information was entirely unrelated to the facts and theories of defendant's case, the juror in question mentioned the information to other jurors but they didn't discuss it, jury had already deliberated for two days when the juror was exposed to the information, and there was strong uncontroverted **evidence** to support the verdict. *U.S. v. Lloyd, C.A.3 (N.J.)* 2001, 269 F.3d 228. Criminal Law 🔑 932

Strength of **evidence** against a losing party is a factor which may be considered in assessing whether improper third-party contact with jurors has resulted in actual prejudice to such party. *Port Terminal & Warehousing Co. v. John S. James Co., S.D.Ga.*1981, 92 F.R.D. 100, affirmed 695 F.2d 1328, rehearing denied 706 F.2d 318. Federal Civil Procedure 🔑 2337

Subjective effect of information

On a motion for a new trial, jurors may testify as to any fact showing the existence of an extraneous influence, but they cannot give **evidence** as to the effect which such influence had on their minds, or as to the motives and influences generally which affected their deliberations. *Mattox v. U.S., U.S.Kan.*1892, 13 S.Ct. 50, 146 U.S. 140, 36 L.Ed. 917. Criminal Law 🔑 957(5)

Rule 606. Juror's Competency as a Witness, FRE Rule 606

On a motion for a new trial on the ground of bias on the part of one of the jurors, the **evidence** of jurors, as to the motives and influences which affected their deliberations, is inadmissible either to impeach or to support the verdict; but a juror may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind. *Mattox v. U.S.*, U.S.Kan.1892, 13 S.Ct. 50, 146 U.S. 140, 36 L.Ed. 917.

Juror's affidavit that attempted to explain effect of *Allen* charge, asking the jury to resume deliberations after jury announced its inability to reach unanimous verdict, on the jury was inadmissible because **federal evidence rule** prohibits use of juror's statement to impeach the verdict. *U.S. v. Tines*, C.A.6 (Tenn.) 1995, 70 F.3d 891, certiorari denied 116 S.Ct. 1280, 516 U.S. 1180, 134 L.Ed.2d 225. *Criminal Law* 🔑 957(1)

Evidence rule governing competency of juror as witness permits juror to testify on question of whether any extraneous prejudicial information was improperly brought to bear upon juror, but juror may not testify as to effect outside information had upon juror. *U.S. v. Davis*, C.A.10 (Utah) 1995, 60 F.3d 1479, certiorari denied 116 S.Ct. 1829, 517 U.S. 1210, 134 L.Ed.2d 933. *Witnesses* 🔑 73

Trial judge did not abuse his discretion in refusing to conduct hearing to determine whether one juror, during course of trial, had actually said "they ought to hang him now, so that we can go home," and as to whether another juror had commented in presence of others that he or she, like some trial witnesses, had been hypnotized, where **Federal Rule of Evidence** governing inquiry into validity of verdict or indictment would not permit juror to testify to effect of communication upon his mind or emotions, or concerning his mental process in connection with verdict, and thus, hearing would be fruitless in absence of presumption of prejudice. *U.S. v. Kimberlin*, C.A.7 (Ind.) 1986, 805 F.2d 210, certiorari denied 107 S.Ct. 3270, 483 U.S. 1023, 97 L.Ed.2d 768. *Criminal Law* 🔑 868

Rule permitting inquiry into external influences upon jury is limited to identification of extraneous sources of information; once existence of external influences upon jury has been established, neither court nor counsel may inquire into subjective effect of external influences upon particular jurors, but court must decide whether extraneous information was prejudicial by determining how it would affect objective, typical juror. *Urseth v. City of Dayton*, S.D.Ohio 1987, 680 F.Supp. 1084. *Federal Civil Procedure* 🔑 2371

Mental processes--Generally

Affidavit in which arbitrator of client's underlying products liability claim opined that his decision would not have changed in the absence of alleged negligence by client's attorney violated **rule** proscribing admission of testimony revealing deliberative thought processes of judges, juries, and arbitrators, and thus could not be considered on motion for summary judgment by attorney and law firm in client's legal malpractice action. *Rubens v. Mason*, C.A.2 (N.Y.) 2004, 387 F.3d 183, on remand 417 F.Supp.2d 262. *Federal Civil Procedure* 🔑 2537

Juror's letter contained no **evidence** that was admissible in an inquiry into the validity of verdict of guilt or to support the grant of a new trial, where the juror wrote about her own thought processes and those of other jurors, about matters and statements occurring during the jury's deliberations, and about those matters as influencing the juror to assent to the verdict. *U.S. v. Gonzales*, C.A.6 (Ky.) 2000, 227 F.3d 520. *Criminal Law* 🔑 957(1)

In reviewing state inmate's federal habeas corpus petition based on alleged ineffective assistance of counsel, it was error to consider **evidence** from two jurors who indicated that they would have voted to acquit had they been given entrapment instruction; by introducing such **evidence**, inmate was improperly probing mental processes of jurors during deliberations and attempting to use results to secure new trial. *Capps v. Sullivan*, C.A.10 (N.M.) 1990, 921 F.2d 260. *Habeas Corpus* 🔑 496

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Jurors' postverdict testimony indicating that each juror misunderstood the effect of his or her responses to special interrogatories was prohibited by **Evidence Rule 606(b)** because they related to how the jury interpreted, or misinterpreted, the court's instructions and unquestionably constituted testimony as to a "juror's mental processes" forbidden by the **Rule**. *Robles v. Exxon Corp.*, C.A.5 (Tex.) 1989, 862 F.2d 1201, certiorari denied 109 S.Ct. 1967, 490 U.S. 1051, 104 L.Ed.2d 434. *Federal Civil Procedure* 🔑 2337

Affidavit by jury foreman asserting that jurors intended that insured recover \$369,500 on policy covering factory which was destroyed by fire was an attempt to testify regarding jury's thought processes in violation of **Rule 606(b)**, and was properly ordered stricken, since affidavit did not advance foreman's previous assertion that verdict announced was not verdict that had been reached. *Continental Cas. Co. v. Howard*, C.A.7 (Ind.) 1985, 775 F.2d 876, certiorari denied 106 S.Ct. 1641, 475 U.S. 1122, 90 L.Ed.2d 186. *Federal Civil Procedure* 🔑 2197

Testimony of juror concerning juror's opinion--or recitation of juror's perception of behavior of judge during judicial proceedings on basis of which juror formed that opinion--is not admissible **evidence** in judicial proceedings to which **Federal Rules of Evidence** apply. *Cool Light Co., Inc. v. GTE Products Corp.*, D.Mass.1993, 832 F.Supp. 449, affirmed 24 F.3d 349, certiorari denied 115 S.Ct. 498, 513 U.S. 994, 130 L.Ed.2d 408. *Federal Civil Procedure* 🔑 73

Inquiry of juror regarding any matter or statement occurring during course of jury's deliberation or to effect of anything upon that or any other juror's mind or emotions as influencing juror to assent to or dissent from verdict, or concerning juror's mental processes in connection therewith is forbidden; juror may neither testify to such matters nor may affidavit or **evidence** of any statement of juror concerning such matters be received with exception of **evidence** of extraneous prejudicial information brought to jury's attention or outside influence improperly brought to bear upon juror. *U.S. v. Rugiero*, E.D.Mich.1992, 804 F.Supp. 925, affirmed 20 F.3d 1387, rehearing and rehearing en banc denied, certiorari denied 115 S.Ct. 208, 513 U.S. 878, 130 L.Ed.2d 137, denial of post-conviction relief affirmed 173 F.3d 854. *Criminal Law* 🔑 957(1); *Criminal Law* 🔑 957(2)

A defendant whose counsel heard voices speaking Spanish from area of jury room was not entitled to an evidentiary hearing to determine whether the deliberations were conducted in Spanish; the requested inquiry would solicit testimony as to the jurors' mental thought processes, which is forbidden by **Federal Rule of Evidence**. *U.S. v. Tormes-Ortiz*, D.Puerto Rico 1990, 734 F.Supp. 573. *Criminal Law* 🔑 957(1)

---- Lack of capacity, mental processes

Evidence that juror used drugs to point of incapacity was admissible in challenge to criminal conviction on ground of juror misconduct; declining to follow *U.S. v. Conover*, 772 F.2d 765 (11th Cir.). *U.S. v. Schultz*, E.D.Mich.1987, 656 F.Supp. 1218. *Criminal Law* 🔑 868; *Criminal Law* 🔑 957(3)

Fear

Evidence that two jurors allegedly had stated to defendant's counsel that defendant was insane at time of murder but that they had reached guilty verdict because they feared not guilty by insanity verdict would have been less effective in assuring defendant's removal from society could not be considered in any subsequent challenge to conviction, and thus, petitioner was not entitled to invoke discovery process, on petition for habeas corpus relief. *Fulghum v. Ford*, C.A.11 (Ga.) 1988, 850 F.2d 1529, certiorari denied 109 S.Ct. 802, 488 U.S. 1013, 102 L.Ed.2d 793. *Habeas Corpus* 🔑 688

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Bias or prejudice of juror

Evidence that jurors expressed racial bias against Native Americans during deliberations fell within scope of **evidence rule** prohibiting admission of **evidence** of statements made during jury deliberations for purpose of impeaching verdict, even though jurors had stated during voir dire that they had no preconceptions about Native Americans that would color their evaluation of case. *U.S. v. Benally*, C.A.10 (Utah) 2008, 546 F.3d 1230, rehearing and rehearing en banc denied 560 F.3d 1151, certiorari denied 130 S.Ct. 738, 558 U.S. 1051, 175 L.Ed.2d 519, on subsequent appeal 415 Fed.Appx. 86, 2011 WL 754842, certiorari denied 132 S.Ct. 401, 565 U.S. 960, 181 L.Ed.2d 288. *Criminal Law* 🔑 957(3)

In prosecution for conspiracy to manufacture, distribute, and use cocaine base, **rules** of **evidence** did not permit district court to question jurors who briefly saw defendant in shackles as to whether the incident biased the jurors. *U.S. v. Jones*, C.A.10 (Wyo.) 2006, 468 F.3d 704, post-conviction relief denied 2011 WL 13071712, appeal dismissed 437 Fed.Appx. 639, 2011 WL 3648227, certiorari denied 132 S.Ct. 1727, 565 U.S. 1252, 182 L.Ed.2d 264, rehearing denied 132 S.Ct. 2124, 182 L.Ed.2d 885. *Criminal Law* 🔑 868

Postverdict testimony by juror concerning alleged racial slur made during deliberations in state court by another juror could not be used, in habeas action, to impeach jury verdict, pursuant to **Federal Rules** of **Evidence**. *Shillcutt v. Gagnon*, C.A.7 (Wis.) 1987, 827 F.2d 1155. *Habeas Corpus* 🔑 712.1

Since juror's "affidavit" admitted that she told judge that she knew and had formed an opinion about the case, her contention that she was prejudiced thereby was incompetent testimony regarding effect of something on her mind or emotions rather than **evidence** that she committed perjury during voir dire. *Brofford v. Marshall*, C.A.6 (Ohio) 1985, 751 F.2d 845, certiorari denied 106 S.Ct. 194, 474 U.S. 872, 88 L.Ed.2d 163, rehearing denied 106 S.Ct. 418, 474 U.S. 1000, 88 L.Ed.2d 369. *Criminal Law* 🔑 134(3)

Notarized statement signed by jury foreman indicating that he was farmer with about \$130,000 invested in his farm was not competent **evidence** to support allegation that juror was influenced by sympathy for farmer who was victim of wire fraud, in view of subd. (b) of this **rule**. *U.S. v. Bohr*, C.A.8 (Mo.) 1978, 581 F.2d 1294, certiorari denied 99 S.Ct. 361, 439 U.S. 958, 58 L.Ed.2d 351. *Criminal Law* 🔑 957(1)

Anti-Semitic statement of juror in criminal trial did not rise to level of substantial and incontrovertible **evidence**, that juror was biased and that this bias affected actual deliberations in drug trial so as to justify evidentiary hearing or new trial on ground of juror misconduct, considering indirect nature of source of allegations which were affidavits prepared by defense attorneys consisting of hearsay allegations, and fact that defendants submitted no information indicating that statement impacted upon jury in their deliberations. *U.S. v. Abcasis*, E.D.N.Y.1992, 811 F.Supp. 828. *Criminal Law* 🔑 956(13)

Racially prejudiced remark made by juror during deliberations was protected from disclosure by **Federal Rule** of **Evidence** prohibiting a juror from testifying as to any matter or statement occurring during course of deliberations, notwithstanding claim that remark came within exception permitting testimony on issue whether extraneous prejudicial information was improperly brought to jury's attention, since remark was not "extraneous" nor was it "information," but was an expression of a racial stereotype. *Shillcutt v. Gagnon*, E.D.Wis.1985, 602 F.Supp. 1280, affirmed 827 F.2d 1155. *Criminal Law* 🔑 957(1)

Juror's testimony as to antics of another juror, who strutted as a minstrel and used black dialect, etc., because defendant and his counsel were black, was inadmissible in habeas corpus proceeding under subd. (b) of this **rule**. *Smith v. Brewer*,

Rule 606. Juror's Competency as a Witness, FRE Rule 606

S.D.Iowa 1978, 444 F.Supp. 482, affirmed 577 F.2d 466, certiorari denied 99 S.Ct. 457, 439 U.S. 967, 58 L.Ed.2d 426. Habeas Corpus 🔑 712.1

Alternate juror's post-trial allegations that she overheard other jurors comment in presence of other jurors and prior to close of **evidence** that defendants were "already guilty and you know how everybody feels about Arabs" did not warrant new trial for defendants of Arabic descent who were convicted of conspiracy to commit wire fraud, wire fraud, conspiracy to commit money laundering, and money laundering; information regarding juror misconduct was available during trial and consideration of jurors' purported statements would require district court to interview jurors regarding their deliberations in contravention of **rule** barring such inquiry into validity of verdict. *U.S. v. Shalhout, D.Virgin Islands* 2012, 280 F.R.D. 223, affirmed 507 Fed.Appx. 201, 2012 WL 6581619. *Criminal Law* 🔑 938(1); *Criminal Law* 🔑 957(1)

Doubts of juror

District court did not abuse its discretion in refusing to further question disgruntled juror who, hours after voting to convict, contacted court to change her vote because she had been "bullied"; court decided that there was no **evidence** that juror had been subjected to outside influences or physical threat and thus no grounds under federal evidentiary **rule** for questioning juror, and court security officer (CSO) confirmed that juror had only left courtroom after verdict had been reached. *U.S. v. Daniels, C.A.7 (Ill.)* 2015, 803 F.3d 335, rehearing and rehearing en banc denied 806 F.3d 1111, certiorari denied 136 S.Ct. 2410, certiorari denied 136 S.Ct. 2410, 195 L.Ed.2d 780. *Criminal Law* 🔑 957(2)

District court did not abuse its discretion in refusing to allow jury further deliberations as to defendant's guilt, when, five days after jury had unanimously agreed on defendant's guilt, and while jury was continuing deliberations as to codefendants, jury sent district court note stating that some jurors had been wrong about fingerprint **evidence** during deliberations as to defendant. *U.S. v. Stover, C.A.D.C.2003*, 329 F.3d 859, 356 U.S.App.D.C. 175, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 2088, 541 U.S. 1018, 158 L.Ed.2d 635, appeal after new sentencing hearing 472 F.3d 910, 374 U.S.App.D.C. 149, certiorari denied 128 S.Ct. 240, 552 U.S. 888, 169 L.Ed.2d 147, certiorari denied 128 S.Ct. 247, 552 U.S. 888, 169 L.Ed.2d 147, appeal after new sentencing hearing 356 Fed.Appx. 423, 2009 WL 4250487, certiorari denied 130 S.Ct. 1923, 559 U.S. 1022, 176 L.Ed.2d 392, certiorari denied 130 S.Ct. 2423, 559 U.S. 1114, 176 L.Ed.2d 937, post-conviction relief granted in part, denied in part 576 F.Supp.2d 134. *Criminal Law* 🔑 868

Testimony railroad sought from jurors as to whether jurors could treat railroad fairly or whether injured employee would be given "benefit of the doubt" concerned matter shielded from inquiry by **evidence rule** governing inquiry into validity of verdict or indictment where post verdict motion to obtain juror testimony did not indicate that any juror had concealed information during voir dire or that any juror believed he or she would be unable to treat railroad fairly, but concealed that factor in voir dire. *Maldonado v. Missouri Pacific Ry. Co., C.A.5 (Tex.)* 1986, 798 F.2d 764, certiorari denied 107 S.Ct. 1571, 480 U.S. 932, 94 L.Ed.2d 762. *Federal Civil Procedure* 🔑 2371

Defendant convicted of racketeering, racketeering conspiracy, and other offenses was not entitled to evidentiary hearing on motion to vacate to address a juror's attempted recantation of a vote of guilty, absent any **evidence** that the recantation was the result of jury tampering, or that trial court's inquiry into the attempted recantation was inadequate. *Gotti v. U.S., S.D.N.Y.2009*, 622 F.Supp.2d 87, reconsideration denied 2009 WL 2366465. *Criminal Law* 🔑 1655(8)

Posttrial statements by jurors to press, regarding their own understandings of consequences of verdict, were not admissible to impeach verdict by showing that jurors were confused, where no substantive **evidence** was proffered regarding jurors' alleged exposure to extraneous information. *U.S. Football League v. National Football League, S.D.N.Y.1986*, 644 F.Supp. 1040, affirmed 842 F.2d 1335. *Federal Civil Procedure* 🔑 2371

Rule 606. Juror's Competency as a Witness, FRE Rule 606

Manner of reaching verdict--Generally

Rule barring disclosure of jury deliberations extends to each of the components of deliberation, including arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process. *U.S. v. McGhee*, C.A.8 (Ark.) 2008, 532 F.3d 733, rehearing and rehearing en banc denied, post-conviction relief denied 2009 WL 2413106. Criminal Law 🔑 957(1)

Defendants were not entitled to examination of jurors to verify defendants' claim of improper influence of jury deliberations based on published newspaper interview with juror which indicated that jury had improperly considered and discussed defendants' failure to testify where inquiry would have violated subd. (b) of this **rule** prohibiting juror from testifying as to any matter or statement occurring during course of jury's deliberations or to the effect of anything upon his or any juror's mind or emotions and where exceptions to subd. (b) of this **rule** of extraneous prejudicial information or outside influence were not alleged by defendants. *U.S. v. Friedland*, C.A.3 (N.J.) 1981, 660 F.2d 919, certiorari denied 102 S.Ct. 2268, 456 U.S. 989, 73 L.Ed.2d 1283. Criminal Law 🔑 868

Juror's letter to court stating that juror's verdict convicting defendants of conspiracy to provide material support and resources to terrorist activity and related offenses was result of fear and intimidation juror was made to feel during course of deliberations failed to make specific, credible allegation warranting further inquiry into issue of whether conduct in jury room was so severe as to be within exception to **rule** of **evidence** barring post-verdict inquiry into matters or statements occurring during jury's deliberations; letter complained specifically only about verbal harassment by fellow jurors. *U.S. v. Sattar*, S.D.N.Y. 2005, 395 F.Supp.2d 66, affirmed 590 F.3d 93, rehearing en banc denied 597 F.3d 514, certiorari denied 130 S.Ct. 1924, 559 U.S. 1031, 176 L.Ed.2d 404, appeal after new sentencing hearing 686 F.3d 156, post-conviction relief denied 2013 WL 4044756, motion for relief from judgment denied 2013 WL 4806942, appeal withdrawn, certiorari denied 134 S.Ct. 54, 187 L.Ed.2d 257. Criminal Law 🔑 957(5)

---- Compromise, manner of reaching verdict

While juror may attack verdict (justifying new trial) by testifying concerning outside influences on jury such as newspapers or statements by court personnel, juror's testimony about jury's internal deliberations cannot result in mistrial; even compromise verdict cannot be challenged later by juror if reasonable jury could have found that conviction was supported by **evidence** beyond a reasonable doubt. *U.S. v. Straach*, C.A.5 (Tex.) 1993, 987 F.2d 232. Criminal Law 🔑 866; Criminal Law 🔑 957(1); Criminal Law 🔑 957(6)

---- Mistake, manner of reaching verdict

District court could not consider, on defendant's motion for new trial sought on ground that supplemental instruction was so confusing that it resulted in improper verdict, any **evidence** of subjective state of mind of two jurors that led them to agree to the guilty verdict, even though the two jurors returned to the courtroom just after the trial ended and stated that they were confused by the final charge and felt they had made a mistake, in prosecution for receiving or distributing child pornography and advertising to receive, exchange, or distribute child pornography. *U.S. v. Pabon-Cruz*, S.D.N.Y. 2003, 255 F.Supp.2d 200. Criminal Law 🔑 957(2)

In products liability action, grounds existed for recalling jury foreman and the two jurors who, despite answers to special interrogatories indicating a decision against plaintiff, congratulated plaintiff's counsel on his victory, in view of the uncertainty, in order to be interviewed by district judge; in such interviews, each of them would be asked, individually and in camera, but on the record, such questions as would help determine whether there was prima facie **evidence** for supposing that all nine of the jurors would, if recalled, agree that there had been a "mistake" in reporting any jury answer,

Rule 606. Juror's Competency as a Witness, FRE Rule 606

and whether such mistake, if found to exist, would undercut the preclusion of liability reflected in the answers recorded in court. [Mount Airy Lodge, Inc. v. Upjohn Co., E.D.Pa.1982, 96 F.R.D. 378. Federal Civil Procedure](#) 🔑 2237.1

---- Quotient, manner of reaching verdict

In federal court, affidavits of jurors are not competent **evidence** to show that quotient verdict was reached. [Womble v. J.C. Penney Co., E.D.Tenn.1969, 47 F.R.D. 350, affirmed 431 F.2d 985. Federal Civil Procedure](#) 🔑 2371

Damage awards

Plaintiff's requested inquiry of jury following verdict in personal injury action as to whether damages award represented amount already reduced for plaintiff's negligence went to what jurors were thinking when they chose number that they did and whether thinking was sound, rather than alleged clerical error, and thus, trial court properly precluded inquiry following jury's discharge based on this **rule** prohibiting juror testimony about juror deliberations or mental processes. [Plummer v. Springfield Terminal Ry. Co., C.A.1 \(Me.\) 1993, 5 F.3d 1, certiorari denied 114 S.Ct. 1057, 510 U.S. 1112, 127 L.Ed.2d 377. Federal Civil Procedure](#) 🔑 1974.1

Amendment of \$235,000 jury verdict to double amount of damages did not violate **evidence rule** against impeachment of jury verdict; shortly after adjournment, jurors brought to court's attention that their award of \$235,000 was intended to be net award after they had reduced amount of damages for plaintiff's 50% negligence, and district court carefully limited inquiry to whether jury intended award of \$235,000 minus 50%. [McCullough v. Consolidated Rail Corp., C.A.6 \(Mich.\) 1991, 937 F.2d 1167. Federal Civil Procedure](#) 🔑 1974.1

In action under the Securities Exchange Act of 1934, § 10(b), [15 U.S.C.A. § 78j\(b\)](#), and **Rule** 10b-5, defendants' attempt to characterize part of \$750,000 award of compensatory damages as prejudgment interest on basis of juror's affidavit stating that jury had included prejudgment interest in such award was in essence an attempt to impeach award in violation of **Rule 606(b)**, which precludes juror from testifying regarding jury deliberations. [Michaels v. Michaels, C.A.7 \(Ill.\) 1985, 767 F.2d 1185, certiorari denied 106 S.Ct. 797, 474 U.S. 1057, 88 L.Ed.2d 774. Federal Civil Procedure](#) 🔑 2197

Submission of supplemental interrogatory to jury inquiring whether jury had reduced compensatory damages awarded to plaintiff by plaintiff's contributory negligence did not violate **rule** prohibiting inquiry into jury's deliberations where interrogatory was submitted to clarify ambiguous verdict form which did not instruct jury whether to reduce plaintiff's recovery for its contributory negligence, interrogatory did not attempt to correct jury's misunderstanding of law or erroneous computation, did not instruct jury to increase or decrease its verdict, and did not intrude into jury's deliberative processes. [T.H.S. Northstar Associates v. W.R. Grace & Company-Conn., D.Minn.1994, 860 F.Supp. 640, affirmed in part, vacated in part 66 F.3d 173, rehearing and suggestion for rehearing en banc denied. Federal Civil Procedure](#) 🔑 1974.1

In hearing to determine whether prejudgment interest should be awarded in private securities action, **evidence** concerning method used by jury to reach its damage award, specifically, whether jury included interest as element of damages, would not be considered. [Wilsmann v. Upjohn Co., W.D.Mich.1983, 572 F.Supp. 242. Interest](#) 🔑 39(2.20)

Posttrial interviews--Generally

District court did not abuse its discretion in refusing to allow counsel for African-American defendant to interview only African-American on jury, after such juror appeared distraught about guilty verdict, where judge interviewed juror and

Rule 606. Juror's Competency as a Witness, FRE Rule 606

made finding that interview yielded nothing that would have been admissible in **evidence** under **rule** authorizing juror testimony upon inquiry into validity of verdict. [U.S. v. Wright, C.A.10 \(Kan.\) 2007, 506 F.3d 1293. Jury 🔑 76](#)

District court's questioning of juror who contacted the court three days after jury returned its verdict finding defendant guilty of computer sabotage to express discomfort with her vote went beyond the scope permitted by **evidence rule** governing inquiry into validity of verdict, where the court repeatedly asked the juror to describe the actual effect extraneous information, which the juror said she heard on television over the weekend in the midst of deliberations, had on her vote. [U.S. v. Lloyd, C.A.3 \(N.J.\) 2001, 269 F.3d 228. Criminal Law 🔑 957\(5\)](#)

Rule prohibiting postverdict inquiry into juror's statement during deliberations justified district court's decision not to examine last juror, after interviewing rest of jury and determining that no extrajudicial influence had occurred. [U.S. v. DiSalvo, C.A.3 \(Pa.\) 1994, 34 F.3d 1204, rehearing and rehearing en banc denied, habeas corpus denied 1998 WL 54387, affirmed 172 F.3d 42. Criminal Law 🔑 957\(1\)](#)

Even though, from time to time during inquiry as to alleged jury misconduct, jurors may have based answers on arguably subjective aspect of deliberations, there was no violation of **rule** precluding jury testimony as to juror's mental processes, where district court in the main screened out such responses, and gave instructions alerting jurors that the deliberative process itself was not a matter for discussion. [U.S. v. Boylan, C.A.1 \(Mass.\) 1990, 898 F.2d 230, certiorari denied 111 S.Ct. 139, 498 U.S. 849, 112 L.Ed.2d 106. Criminal Law 🔑 957\(1\)](#)

Even if post-trial affidavits of two jurors, which purported to establish jury's confusion as to special verdict form that was used in former public employee's suit, alleging retaliation for exercise of his free speech rights, were admissible on motion to alter or amend judgment or for new trial, affidavits were entitled to little weight, given that affidavits were obtained through ex-parte solicitation by employee's counsel and fueled by jurors' professed desire to see employee prevail, and **evidence** that jury's "mistake" was not misunderstanding of special verdict form, but rather misconception of legal consequences stemming from their factual findings. [Munaf v. Metropolitan Transp. Authority, E.D.N.Y.2003, 277 F.Supp.2d 163, affirmed 381 F.3d 99. Federal Civil Procedure 🔑 2371](#)

Juror's revelation that he knew that defendant had previously been convicted of attempted murder warranted post-verdict interview, where juror had stated during voir dire that he had no prior knowledge of case, and nature of prior conviction was not in **evidence**. [U.S. v. Felton, D.Mass.2003, 239 F.Supp.2d 122. Criminal Law 🔑 868](#)

Even though attorney may not have initiated postverdict juror contact in first instance, attorney had responsibility to know that postverdict solicitation of contact with jurors by client's agent violated First Circuit mandate against postverdict contact and to do everything possible to discourage further violation; attorney's failure to bring matter to attention of court and to seek court authorization for contact with jurors, and his choice instead to proceed with contact, exceeded bounds permitted of officer of court, notwithstanding attorney's contention that he did not know of **rule**. [Cool Light Co., Inc. v. GTE Products Corp., D.Mass.1993, 832 F.Supp. 449, affirmed 24 F.3d 349, certiorari denied 115 S.Ct. 498, 513 U.S. 994, 130 L.Ed.2d 408. Attorney And Client 🔑 32\(12\)](#)

Federal evidence rule prohibiting juror testimony as to any matter or statement occurring during course of deliberations did not apply to informal postverdict interviews of former jurors after one defendant in drug conspiracy prosecution had been indicted for unduly influencing petit juror and for aiding and abetting the same. [U.S. v. Militello, D.N.J.1987, 673 F.Supp. 141. Jury 🔑 76](#)

Partial verdicts

Rule 606. Juror's Competency as a Witness, FRE Rule 606

In prosecution for conspiracy to misapply monies of bank and misapplication of bank funds, subd. (b) of this **rule** barring impeachment of verdicts by testimony of jurors as to matters occurring during course of deliberations applied, and statements made by juror in in camera interviews that she “felt like [at] the last minute we were railroaded * * * ” and that she believed “there was not **evidence** to make [her] decide [certain defendants] were involved in a conspiracy,” were not competent to impeach partial verdict finding certain defendants guilty on conspiracy count. *U.S. v. Hockridge*, C.A.2 (N.Y.) 1978, 573 F.2d 752, certiorari denied 99 S.Ct. 85, 439 U.S. 821, 58 L.Ed.2d 112, certiorari denied 99 S.Ct. 86, 439 U.S. 821, 58 L.Ed.2d 112. *Criminal Law* 🔑 957(2)

Time of impeachment

Rule that a juror may not impeach the verdict as to matters that inhere therein after the jury has been discharged has both an evidentiary and a substantive basis; a party must clear both hurdles to overturn verdict. *Blake v. Cich*, D.C.Minn.1978, 79 F.R.D. 398. *Federal Civil Procedure* 🔑 2371

Where juror's statement had been received after verdict was accepted and recorded subd. (b) of this **rule** against juror's impeachment of jury verdict applied, though judgment had not been entered. *Vizzini v. Ford Motor Co.*, E.D.Pa.1976, 72 F.R.D. 132, vacated and remanded on other grounds 569 F.2d 754. *Federal Civil Procedure* 🔑 2371

Hearing--Generally

Allegations of juror bias or unsubstantiated suspicions do not automatically warrant inquiry by court; rather, to justify post-trial hearing involving trial jurors, defendant must show clear, strong, substantial and incontrovertible **evidence** of extrinsic influence. *U.S. v. Lawrence*, S.D.Ohio 2006, 477 F.Supp.2d 864, vacated in part 555 F.3d 254, rehearing and rehearing en banc denied, certiorari denied 130 S.Ct. 1879, 559 U.S. 1009, 176 L.Ed.2d 368, affirmed in part 735 F.3d 385, motion for relief from judgment denied 135 S.Ct. 753, 190 L.Ed.2d 641. *Criminal Law* 🔑 957(1)

--- Facts not in **evidence, hearing**

District court did not abuse its discretion, at evidentiary hearing on petition for habeas corpus, by refusing to allow testimony from trial jurors as to whether deliberations would have been different had jurors been presented with mitigating **evidence** that was allegedly available, but not presented at trial. *Williams v. Collins*, C.A.5 (Tex.) 1994, 16 F.3d 626, certiorari denied 115 S.Ct. 42, 512 U.S. 1289, 129 L.Ed.2d 937. *Habeas Corpus* 🔑 712.1

--- Voir dire, hearing

Trial court was not restricted by **Rule** of **Federal Evidence** limiting inquiries into “validity of verdict or judgment” from conducting voir dire of jury after it was discovered that transcript that was not admitted into **evidence** had been sent to jury room, inasmuch as jurors would have been questioned during their deliberations and before they reached verdict; however, trial court's reliance upon **rule** in refusing to voir dire jury was harmless, where court had other valid reasons for refusing to conduct voir dire. *U.S. v. Sababu*, C.A.7 (Ill.) 1989, 891 F.2d 1308. *Criminal Law* 🔑 868; *Criminal Law* 🔑 1174(1)

Affidavits

Defendant was not entitled to hearing on issue of whether several jurors were improperly exposed to extraneous prejudicial information during trial for mail fraud and filing false claims with United States; hearing would have been redundant and unnecessary, since trial court was provided with affidavit which gave it notice of potential juror misconduct and nature of alleged improper contact, and under **evidence rule**, trial court could not have inquired into

Rule 606. Juror's Competency as a Witness, FRE Rule 606

possible subjective effect improper contact might have had on jurors. *U.S. v. Davis*, C.A.10 (Utah) 1995, 60 F.3d 1479, certiorari denied 116 S.Ct. 1829, 517 U.S. 1210, 134 L.Ed.2d 933. *Criminal Law* 🔑 868

Post-trial affidavits of two jurors, which purported to establish jury's misunderstanding of special verdict question in former public employee's suit, alleging retaliation for exercise of his free speech rights, were barred from consideration on motion to alter or amend judgment or for new trial by **rule** providing that such testimony was inadmissible when used to impeach jury verdict; two jurors' statements as to their confusion did not reflect confusion by all jurors, as affiants were not competent to testify as to intent of other jurors. *Munafo v. Metropolitan Transp. Authority*, E.D.N.Y.2003, 277 F.Supp.2d 163, affirmed 381 F.3d 99. *Federal Civil Procedure* 🔑 2371

If **evidence** in hearing on unauthorized, extrajudicial conduct or communication with juror consists of juror affidavit, it must be determined whether affidavit relates solely to conduct of nonjuror or extraneous influence upon juror or jury without reference to any phase of deliberative process. *Herring v. Blankenship*, W.D.Va.1987, 662 F.Supp. 557. *Criminal Law* 🔑 957(1)

Presumptions

Defendants were not entitled to presumption of prejudice, on motion for new trial, on grounds that jury foreperson allegedly contacted outside attorney about issue in case, as jurors' testimony after trial did not indicate subject matter of that contact; at most, **evidence** showed that foreperson contacted attorney and asked hypothetical question about something. *U.S. v. Blumeyer*, C.A.8 (Mo.) 1995, 62 F.3d 1013, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1263, 516 U.S. 1172, 134 L.Ed.2d 212. *Criminal Law* 🔑 956(12)

When extrinsic contact with juror relates to legal issues, presumption of prejudice does not apply, and it is defendant's burden to produce **evidence** not barred by **rule** governing inquiry into validity of verdict that is sufficient to prove actual prejudice necessary to justify new trial. *U.S. v. Blumeyer*, C.A.8 (Mo.) 1995, 62 F.3d 1013, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1263, 516 U.S. 1172, 134 L.Ed.2d 212. *Criminal Law* 🔑 956(12)

Subd. (b) of this **rule** relating to inquiries into verdicts does not create a conclusive presumption of prejudice arising from private communications during trial between jurors and third persons. (Per Doyle, Circuit Judge Barrett concurring.) *U.S. v. Greer*, C.A.10 (Okla.) 1980, 620 F.2d 1383. *Criminal Law* 🔑 1163(6)

Because **Federal Rules** of **Evidence** preclude inquiry into the subjective effects of extrinsic influences on jurors, courts apply presumption of prejudice from extrinsic influences, and burden is on government to rebut the presumption. *U.S. v. Straight*, U.S. Armed Forces 1995, 42 M.J. 244. *Military Justice* 🔑 1421

New trial

Information provided by a juror that, when discussing whether to convict a defendant, several jurors mentioned that it would not matter if they convicted him because he was charged with a white collar crime and would only get a slap on the wrist, constituted incompetent **evidence** absent some allegation that the information about penalties was brought to the jury's attention by or through an outside source, and the district court abused its discretion in considering this testimony in deciding that defendant was entitled to a new trial. *U.S. v. Gonzales*, C.A.6 (Ky.) 2000, 227 F.3d 520. *Criminal Law* 🔑 957(3)

Affidavit as to extrajudicial statements made by juror as to jury proceedings in diversity personal injury action may have been inadmissible under subd. (b) of this **rule**; in any event, trial court did not abuse his discretion in refusing to grant

Rule 606. Juror's Competency as a Witness, FRE Rule 606

new trial based on allegations of juror misconduct grounded on contents of such affidavit. [Poches v. J.J. Newberry Co., C.A.8 \(S.D.\) 1977, 549 F.2d 1166. Federal Civil Procedure 🔑 2371](#)

In absence of specific allegations of ability to adduce competent **evidence**, a district court properly denies both a motion to subpoena jurors and a motion for new trial based on newly discovered **evidence** of juror incompetency. [U.S. v. Eagle, C.A.8 \(S.D.\) 1976, 539 F.2d 1166, certiorari denied 97 S.Ct. 1146, 429 U.S. 1110, 51 L.Ed.2d 563. Criminal Law 🔑 949\(1\); Criminal Law 🔑 957\(1\)](#)

Unsigned, unverified letter that the jury foreman allegedly sent to the Postmaster General about Postal Service employee's discrimination action against Postmaster did not demonstrate juror bias and misconduct that would warrant new trial following jury verdict for employee; although letter wondered why no action against employee's supervisor had been taken following numerous complaints, and letter indicated that foreman had attempted to find answers to these questions, letter did not establish that jury relied on excluded **evidence**, conducted outside research, or used their verdict to improperly impose a punitive award on the government, as jury was instructed not to do. [Jackson v. Potter, D.Colo.2008, 587 F.Supp.2d 1179. Federal Civil Procedure 🔑 2337](#)

Appropriate analysis for new trial motion on grounds of extrinsic **evidence** before jury is as follows: whether jury was exposed to information material to trial which was not presented at trial subject to cross-examination and other judicial controls; if so, whether information was prejudicial, i.e., whether information was directly and rationally related to adverse verdict; and, if so, whether Government has overcome prejudice by showing beyond reasonable doubt that information did not contribute to verdict. [U.S. v. Caro-Quintero, C.D.Cal.1991, 769 F.Supp. 1564, affirmed 42 F.3d 1403. Criminal Law 🔑 925.5\(1\)](#)

Recusal

Judge would recuse himself from a case which had been remanded with direction that counsel for both sides should be permitted to conduct direct and cross-examination of jury foreman who had failed to reveal that he had been convicted of felony; judge believed that allowing examination of juror took away trial court's control over mode of interrogating witnesses, and violated **rule** of **evidence** precluding admission of jury testimony to impeach verdict. [U.S. v. Boney, D.D.C.1996, 942 F.Supp. 47. Judges 🔑 50](#)

Harmless error

Government may establish harmless error in jury's exposure to extraneous material by showing that material was merely duplicative of **evidence** introduced in open court, or by showing that other **evidence** amassed at trial was so overwhelming that jury would have reached same result even without extraneous material. [U.S. v. Caro-Quintero, C.D.Cal.1991, 769 F.Supp. 1564, affirmed 42 F.3d 1403. Criminal Law 🔑 1174\(2\)](#)

Fed. **Rules** Evid. **Rule** 606, 28 U.S.C.A., FRE **Rule** 606
Including Amendments Received Through 9-1-17