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# Jurors and the Sanctity of Their Verdicts

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## Jurors and the Sanctity of Their Verdicts

Undoubtedly the most common pictorial representation of Justice is that of a blind-folded woman in a toga (perhaps a goddess from out of the catacombs of Greek mythology), weighing the scales in determining the outcome of litigation. The goddess' blindfold stands for impartiality in deciding the outcome, but it could also be emblematic of the secrecy in which jury proceedings are conducted. In order to protect this secrecy, Lord Mansfield early set for the precedent that jurors would not be allowed to impeach their own verdict, even if their misconduct were such as would otherwise warrant a reversal.<sup>1</sup> It is well recognized and accepted that Lord Mansfield's voice from the past still speaks for a generally accredited rule of law today.<sup>2</sup> Some states have refused, by statute or case law, to follow the unyielding view expressed by Lord Mansfield by making a distinction between jurors testifying to matters within the conscience of each juror (sometimes referred to as that which inheres in the verdict) and those matters which refer to extrinsic facts or actions, open to the observation of all the jurors.<sup>3</sup>

In *Mattox v. United States*,<sup>4</sup> a murder conviction was reversed and a new trial granted when affidavits of jurors were introduced to the effect that the bailiff had made damaging remarks with reference to the defendant and similarly castigating newspaper language was read by the jurors while they contemplated their verdict. In the decision, the Supreme Court said that public policy forbids the reception of a matter peculiarly within the conscience of one juror to overthrow the verdict because, due to its personal nature, other jurors could not testify thereto, yet overt matters within the knowledge of all jurors could be questioned because all the jurors would know the truth thereof. The Court went further to say that evidence of jurors as to motives and influences which affected their deliberation, i.e., that which inheres in the verdict, was not admissible to either impeach or support the verdict. The jurors would be allowed to testify as to the existence of extrinsic influences, but not

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<sup>1</sup> *Vaise v. Deleval*, 1 T.R. 11, 99 Eng. Rep. 944 (1785). See Nordstrom, *New Trial—Use of Testimony of Jurors to Set Aside Verdict*, 47 MICH. L. REV. 261 (1948), for a criticism of the theory upon which *Vaise v. Deleval* was based.

<sup>2</sup> 8 WIGMORE, EVIDENCE § 2354 n. 2 (3rd ed. 1950); MCCORMICK, EVIDENCE § 68 p. 148 (1954).

<sup>3</sup> 8 WIGMORE, EVIDENCE § 2354 n. 1 (3rd ed. 1940). Text writers appear to favor the more liberal view. See generally MCCORMICK, *op. cit. supra* note 2.

<sup>4</sup> 146 U.S. 140 (1892).

to the effect, if any, such influences would have on the individual juror's mind.

The issue as to whether the *Mattox* case applied to the practice known as reaching the verdict by the quotient method,<sup>5</sup> since such would be open to the observation of all jurors, was firmly settled in the negative by *McDonald v. Pless*.<sup>6</sup> Although the only question that was present before the Court dealt with jurors impeaching a quotient verdict, broad language was used indicating that generally in balancing the interest between protecting the public interests from post-verdict harassment of jurors and the pitfalls of piercing the sanctity of the jury room on one hand, and redressing the injury of the private, individual litigant on the other, the former should prevail over the latter, except where extreme injustice would result. It should be mentioned that neither the *Mattox* case nor the *McDonald* case attempted to lay down an inflexible rule not subject to any exceptions.

The situation in the federal cases is further confused by *Jorgensen v. York Ice Machine Corp.*,<sup>7</sup> a case involving an agreement by the jurors to abide by a majority verdict, which case permitted the affidavits of the jurors to show their own misconduct; however, the court also said that an agreement to abide by a majority verdict was not a valid ground for granting a new trial, so this decision has an indeterminable effect at this time.

There does seem to be a split of authority in the United States when jurors testify to communications or other acts of third persons with the members of the jury,<sup>8</sup> but, except for rare instances such as the *Jorgensen* case, even the liberal cases reject the testimony of jurors when offered in regard to something that inheres in the verdict.<sup>9</sup>

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<sup>5</sup> The quotient verdict is arrived at by each juror agreeing in advance that each will put down the amount he thinks is a proper verdict and then dividing the aggregate by the number of jurors, with the result being the amount of the verdict. See *Miller v. Blue Ridge Transportation Co.*, 123 W. Va. 428, 15 S.E.2d 400 (1941).

<sup>6</sup> 238 U.S. 264 (1914).

<sup>7</sup> 160 F.2d 432 (2d Cir. 1947), cert. denied 332 U.S. 764 (1947). For an excellent discussion of the federal cases in this area, see 6 MOORE'S FEDERAL PRACTICE, § 59.08[4] pp.3806-3814 (2d ed. 1953).

<sup>8</sup> See Annot., 90 A.L.R. 249 (1934), supplemented in 146 A.L.R. 514 (1943).

<sup>9</sup> *Hyde v. United States*, 225 U.S. 347 (1912); *Mattox v. United States*, 146 U.S. 140 (1892); *O'Brien v. City of Seattle*, 52 Wash.2d 543, 327 P.2d 433 (1958).

The genesis of the West Virginia cases in this area is from *Bull v. Commonwealth*,<sup>10</sup> which held that, in accordance with the weight of authority and the reasons behind that authority, jurors should not be allowed to impeach their verdicts, especially on the basis of their own misconduct. The court said that it did not intend to lay down a set rule without any exceptions, but it did indicate that it would look upon any such proffered testimony with great misgivings.

The first apparent discussion of the problem in West Virginia is in *Vanmeter v. Kitzmiller*.<sup>11</sup> By dicta the decision in *Bull v. Commonwealth* was said to be conclusive on the impropriety of setting aside a verdict and granting a new trial on the affidavits of jurors. However, this was an instance involving the affidavits of a witness who was approached and questioned by a juror, and such conduct on behalf of the juror was clearly grounds for reversal.

Next in a chronological history of the subject in West Virginia came *Chesapeake & O.R.R. v. Patton*,<sup>12</sup> an eminent domain proceeding wherein the court refused to allow jurors to testify that they had rendered a quotient verdict.<sup>13</sup> Although it is well recognized in West Virginia that it is reversible error for jurors to consent in advance to a particular method of arriving at the verdict, abide by the result, and thereby surrender their right to dissent, it appears

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<sup>10</sup> 14 Gratt. (55 Va.) 613 (1857). Since West Virginia and Virginia have a common heritage from this case it is interesting to note recent developments in the latter state. In *Dozier v. Morrisette*, 198 Va. 37, 92 S.E.2d 366 (1956), *W*, an insurance agent, told the jurors, after the evidence had been heard, that his company carried insurance on both the litigants. Only *W* and the jurors had knowledge of the conversation, and in this instance, where only *W* was guilty of misconduct, the Virginia court held this to be an exception to the *Bull* case and allowed the jurors' affidavits to come in. The Virginia rule apparently is in line with those states recognizing a distinction between acts of third parties and matters that inhere in the verdict, but probably has a stricter test by allowing evidence of the former only in exceptional cases to prevent a failure of justice. See *Phillips v. Campbell*, 200 Va. 136, 104 S.E.2d 765 (1958).

<sup>11</sup> 5 W. Va. 380 (1872).

<sup>12</sup> 9 W. Va. 648 (1876).

<sup>13</sup> For an unusual application of the quotient method see *Bryan v. Commonwealth*, 131 Va. 709, 109 S.E. 477 (1921), where the court refused to allow a juror to testify that in a murder trial the jury had used the quotient method in determining the length of the defendant's prison sentence.

equally well settled that jurors cannot testify that they used the quotient method.<sup>14</sup>

In *Probst v. Braeunlich*,<sup>15</sup> the West Virginia court said that it was well settled in this state that as a general rule, with few if any exceptions, jurors cannot impeach their own verdict. The decisions in this state were said to be limited and restrictive in this regard. Five years later (1889) the court refused to make an exception to the general rule where two jurors tendered affidavits declaring that juror *F* had stated to the jury upon retirement that he was well acquainted with one of the parties and that the party had more personal property than he (*F*) had and that *F* knew the amount of assessment of that personal property.<sup>16</sup> Similarly the West Virginia court has refused to make an exception to the general rule where the affidavits of jurors were offered to show that depositions at the trial were taken into the jury room,<sup>17</sup> or where the affidavits were offered to the effect that certain jurors would never have consented to the verdict if other jurors had not informed them that the defendant carried insurance.<sup>18</sup>

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<sup>14</sup> *Miller v. Blue Ridge Transportation Co.*, 123 W. Va. 428, 15 S.E.2d 400 (1941); *Lowther v. Ohio Valley Oil & Gas Co.*, 88 W. Va. 650, 108 S.E. 276 (1921). See also *Armentrout v. Virginian Ry. Co.*, 72 F. Supp. 997 (S.D. W. Va. 1948), *rev'd on other grounds* 166 F.2d 400 (4th Cir. 1948), for an erudite opinion by the late Judge Ben Moore, (which treated this matter as a procedural problem, and therefore was not based on West Virginia precedent), condemning the impropriety of jurors impeaching their own quotient verdicts.

The question immediately comes to mind as to the manner of proving that a verdict was reached by the quotient method, when jurors are forbidden to testify to that effect. In *Kelly v. Rainelle Coal Co.*, 135 W. Va. 594, 64 S.E.2d 606 (1951), an industrious counsel provided an unusual, if not practically applicable, method of discovering and proving such an improper verdict. After the verdict had been read and before the court ruled on defendant's motion to set aside the verdict, one of the defendant's attorneys inspected the room in which the jury had deliberated. In support of the motion to set aside the verdict, defendants showed that the jury room had been thoroughly cleaned before the jury had retired in the instant case; that all papers in said room had been removed; that no case involving monetary damages had been conducted between the time of the cleaning and the deliberation in the instant case; and after the deliberation fourteen pieces of paper had been found, eleven with varying amounts and one with the amount obliterated. The other two pieces found were apparently the two halves of a single sheet on which the eleven other amounts plus a twelfth (presumably the amount on the obliterated sheet) had been added together, divided by twelve with the result equal to the amount of the verdict returned in the case. In light of facts so clear, the verdict was set aside. How often such an instance as this would occur is problematical, but it may give some moral assistance to embattled attorneys.

<sup>15</sup> 24 W. Va. 356 (1884).

<sup>16</sup> *Bartlett v. Patton*, 33 W. Va. 71, 10 S.E. 21 (1889).

<sup>17</sup> *Graham v. Citizens' Nat. Bank*, 45 W. Va. 701, 32 S.E. 327 (1898).

<sup>18</sup> *Graziani v. Fimple*, 110 W. Va. 383, 158 S.E. 658 (1931).

The logic behind the West Virginia decisions is apparent in *Pickens v. Coal River Boom and Timber Co.*<sup>19</sup> Four jurors said in affidavits filed with the motion for a new trial that the plaintiff had treated the jurors to liquor at a saloon during the trial. The court first emphatically condemned such reprehensible conduct, saying it was such misbehavior as would constitute contempt of court. However, there were conflicting affidavits from other jurors controverting the alleged misbehavior, and the court felt that the preponderance was against the misbehavior. The court cited the *Bull* case,<sup>20</sup> acknowledging that while at first glance the rule is an unreasonable one, still it was felt that to allow such evidence would be a strong inducement to a disappointed litigant to bribe or corrupt a juror to impeach his own verdict. Public policy was believed to be in favor of keeping the door shut against what was called the certain dangers of frustration and corruption of public justice from this source.

In a criminal case where the defendant was sentenced to hang for murder, three jurors tried to say by affidavits that they acted under a mistake of law, i.e., they did not know that they could recommend mercy, and that if they had so known, they would have called for life in prison. Three other jurors testified by way of affidavits that all this had been fully explained. The court said that this was an excellent illustration of the wisdom behind the rule against jurors impeaching their own verdicts. The court would not allow either set of affidavits to be introduced, but this case was reversed by the Supreme Court of Appeals on other grounds.<sup>21</sup>

Since West Virginia has demonstrated a tendency to regard with suspicion any attempts on the part of jurors to impeach their own verdicts, it is not incongruous to find similar rules laid down to the effect that third persons cannot impeach a verdict by putting statements in their affidavits which reportedly have been told them by jurors.<sup>22</sup>

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<sup>19</sup> 58 W. Va. 11, 50 S.E. 872 (1905).

<sup>20</sup> Note 10, *supra*.

<sup>21</sup> *State v. Cobbs*, 40 W. Va. 718, 22 S.E. 310 (1895).

<sup>22</sup> *Utt v. Herold*, 127 W. Va. 719, 34 S.E.2d 330 (1945); *State v. Porter*, 98 W. Va. 390, 127 S.E. 386 (1925). It should be noted however, that in the former case the affiant was related to one of the parties in interest and in the latter case the juror in question testified in open court to the effect that he had not made the remarks attributed to him by the affiant. There should be little doubt as to the West Virginia court's position in this situation, but it may not be technically closed by virtue of the fact situations in these cases.

It is well to note one case inharmonious with the aforementioned West Virginia authorities: *State v. Dean*.<sup>23</sup> This is a case apparently founded upon sociological, rather than legal, considerations. Here a young Negro woman was indicted and convicted of murder. The jurors on voir dire were asked by the judge if they were biased or prejudiced against members of the Negro race, to which question they all answered "no". After the conviction, one juror went to a beer hall where he told others (who swore thereto by their affidavits) that he wanted to see the defendant hanged because she was colored and that, furthermore, all Negroes should be hanged. The court did not refer to *Utt. v. Herold*, or *State v. Porter*,<sup>24</sup> which would seem to be authority against third persons testifying as to what was related to them by jurors, but in reversing the conviction the court said that it was confining its decision to the case at hand.

No discussion of this problem in West Virginia would be complete without a perusal of the cases involving jurors testifying in order to substantiate their verdict. The earliest case found in this area is *State v. Cartright*,<sup>25</sup> which involved a separation of the jury. The court held that generally the jurors should be allowed to testify only where facts were brought to the court's attention regarding the jury's conduct which prima facie vitiates the verdict. In such a case the jurors may state any facts known to them which tend to explain such conduct and remove the presumption of reversible error. However, such testimony should not be permitted to show what actually did or did not influence their verdict. The court prefaced this holding by saying that it would seem that the reasons for excluding the testimony of jurors to impeach their verdict would be equally as strong when their evidence was offered to sustain the verdict. The court felt that in criminal cases there was a great temptation to explain away irregularities, because if the jurors were to admit misconduct, they could well be subject to public censure and fines.

In *State v. Robinson*,<sup>26</sup> the testifying jurors admitted that they had received sealed letters after they had been impaneled, but they did deny that any of the letters had any reference to the case.

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<sup>23</sup> 134 W. Va. 257, 58 S.E.2d 860 (1950).

<sup>24</sup> Note 22, *supra*.

<sup>25</sup> 20 W. Va. 32 (1882). *Accord*, *State v. Cotts*, 49 W. Va. 615, 39 S.E. 605 (1901).

<sup>26</sup> 20 W. Va. 713 (1882).

The affidavits further stated that they had faithfully observed the oath and had not conversed with anyone. The court held that the testimony of jurors could be received to explain or disprove any misconduct, separation or irregularity, but the jury could not show by what motives they were actuated, or that any misconduct did not have any influence or effect on their minds in reaching the verdict.

Also, in a case involving an erroneous instruction, the jurors were not allowed to show how they understood the instruction;<sup>27</sup> and where a juror had to go to the lavatory, the juror could testify that he neither met nor talked to anyone, but he could not testify as to whether his leaving the jury room had any effect on the minds of the other jurors.<sup>28</sup>

It is apparent from the foregoing cases that West Virginia has made a distinction between those things which inhere in the verdict and other extrinsic matters connected with the verdict when jurors testify in *support* of the verdict. This is the same distinction which has gained much acceptance throughout the country when applied to jurors impeaching their verdict.<sup>29</sup> West Virginia has not as yet made this distinction in the latter situation, but it should be noted that there has never been a clear factual situation before the court in which such a distinction could be made.<sup>30</sup> In those cases where the controversial actions were by a third party, notably the *Pickens*<sup>31</sup> and *Cobbs*<sup>32</sup> decisions, counter-affidavits off-set the impropriety charged and did not present as clear a factual vehicle as, for instance, *Mattox v. United States*.<sup>33</sup>

Upon reflection, it would seem that the most logical rule in this area would be that expressed in the *Mattox* case. Where third persons have introduced extraneous matters into the jurors' deliberations, the jurors should be allowed to testify to these facts. This

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<sup>27</sup> *Reynolds v. Tompkins*, 23 W. Va. 229 (1883).

<sup>28</sup> *State v. Harrison*, 36 W. Va. 729, 15 S.E. 982 (1892). *Accord*, *State v. Barker*, 92 W. Va. 583, 115 S.E. 421 (1922).

<sup>29</sup> See generally notes 8 and 9, *supra*.

<sup>30</sup> One case, *Landau v. Farr*, 104 W. Va. 445, 140 S.E. 141 (1927), does contain blunt language to the effect that affidavits of jurors could not be used to impeach their verdict; however, this decision did not even refer to what was contained in the affidavits and should not be persuasive authority today.

<sup>31</sup> Note 19, *supra*.

<sup>32</sup> Note 21, *supra*.

<sup>33</sup> Note 4, *supra*.



would not destroy the integrity of the jury system nor would it lead to a wholesale influencing of jurors by bereaved litigants and their attorneys. The actions in question would be apparent and within the observation of most, if not all, of the jurors and this would prevent injustice being done to an innocent litigant.

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