

## **HELPING TROUBLED DELIBERATING JURIES**

### **Module #4: Responding to Misconduct/Mishaps in Deliberations**

**[1 hour]**

#### Learning Objectives:

After this session, the participants will be able to:

1. Describe the most common forms of juror misconduct during deliberations;
2. Recite several methods for investigating reported misconduct in the deliberation room;
3. Create a checklist of practical ways to respond to juror misconduct during deliberations; and
4. Create a checklist of steps to follow in replacing a deliberating juror with a dismissed alternate juror.

#### Learning Activities:

1. **Opening and mini-lecture:** The lead instructor begins by providing a descriptive inventory of reported juror misbehaviors during deliberations. These include: refusal to deliberate, late discovery of juror perjury during jury selection, internet blogging about the trial or deliberations, use of the Bible for guidance, extracurricular factual or legal research, intrafamily communications about the trial, inter-juror intimidation or romance, and unreliable juror responses to judicial investigative inquiries. Then, one or more instructors describe several real-life actions taken by trial judges who have responded to some of these described instances of misconduct. (10 minutes)
2. **Group discussion – Part I:** The lead instructor asks the participants, divided into smaller discussion groups, to address and report on: (1) the legal and practical challenges facing a trial judge with respect to each instance of misconduct described earlier, and (2) the legal and practical implications when replacing a deliberating juror with a dismissed alternate juror. (20 minutes)
3. **Group discussion – Part II:** The same discussion groups attempt to reach a consensus about a model approach for a judge to undertake in response to each instance of misconduct described earlier. (20 minutes)
4. **Closing lecture:** The instructor states the latest jurisprudence, best practice suggestions, and available resources on this subject. She/he suggests Principle 19B of the ABA *Principles for Juries & Jury Trials* as a model practice guide. (10 minutes).

## **Materials:**

1. For use during class: the catalogue of reported types of juror misconduct, Principle 19B of the ABA *Principles for Juries & Jury Trials*, and an outline of lecture.
2. Reference materials:
  - a. Annotated bibliography. Local instructor will add any state-specific reference materials that would be helpful for the participants (e.g., bench books, case law, statutes, court rules, etc.)
  - b. Sample jury management orders
  - c. Sample jury instructions on how to conduct deliberations, refraining from “twittering” and other uses of personal communication devices during court proceedings, etc.

## **Bibliography:**

### Core Documents

AMERICAN BAR ASSOCIATION, PRINCIPLES FOR JURIES & JURY TRIALS (2005),

[http://www.abanet.org/jury/pdf/final%20commentary\\_july\\_1205.pdf](http://www.abanet.org/jury/pdf/final%20commentary_july_1205.pdf)

BEHIND CLOSED DOORS: A GUIDE FOR JURY DELIBERATIONS, American Judicature Society (1999).

### Journals/Periodicals

Robert G. Boatright & Beth Murphy, How Judges Can Help Deliberating Jurors: Using the Guide for Jury Deliberations, 36 COURT REVIEW (1999).

Charles M. Cork, III, *A Better Orientation for Jury Instructions*, 54 MERCER L. REV. 1 (2002-03).

B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 IND.L.J. 1229 (1993).

Meyer & Rosenberg, *Questions Juries Ask: Untapped Springs of Insight*, 55 JUDICATURE 105 (1971).

### Books and Other Works

G.Thomas Munsterman, Paula L. Hannaford-Agor & G.Marc Whitehead, **Jury Trial Innovations, 2<sup>nd</sup> Edition**, 170-171, NATIONAL CENTER FOR STATE COURTS (2006).

Neil Vidmar & Valerie P. Hans, **American Juries**, Prometheus Books (2007).

### Illustrative Case

*United States v. Warner*, 498 F.3d 666 (7<sup>th</sup> Cir. 2007); 506 F.3<sup>rd</sup> 517 (denial of *r'hrig en banc*)

## **RESPONDING-TO-JURY-MISCONDUCT EXERCISE (For use in Module #4)**

### Introduction:

This exercise is designed to: (1) help us gain a better understanding of the different types of misconduct or mishaps can arising during deliberations, and (2) sharpen our judicial skills in responding effectively to such occurrences.

Please ponder and discuss with colleagues who are present how you might respond to these possible events arising during jury deliberations.

#### **#1**

In a high-profile murder prosecution involving a Black defendant and a high-society Caucasian female victim, a jury note informs the judge that a black juror refuses to deliberate any longer. What should the judge do?

#### **#2**

In the same case described in #1, the local news media breaks a story during the 3<sup>rd</sup> day of jury deliberations about how several jurors gave apparently false answers to the court and parties during voir dire which occurred 3 months ago. What should you do?

#### **#3**

During a felony drug trial, a juror writes a note asking if she can rely on the research a fellow juror has done about the government's prior prosecution of the defendant.

#### **#4**

In the penalty phase of a capital murder case, the jury foreperson sends a note reporting that one juror is asking everyone to consider several passages from the Bible when determining the proper sentence.

#### **#5**

In a fraud prosecution of several mortgage lenders, the court learns that several jurors have sent twitters to a business magazine reporter describing the heated arguments occurring among jurors during deliberations.

#### **#6**

During the 4<sup>th</sup> day of deliberations, the jury foreperson reports to the court that one of the jurors was seen kissing the defendant's sister at a railway platform during the weekend recess.