

The Cast ...



and
Kelsey Howard-Allen
as 'The Bully'

It's About the
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.



Games of Chance
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.

Producers' Interview with the Author
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.

Discussions continue



Self-Insulation
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.

Pro-Plaster Comments
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.

Defendant
The jury deliberations in the case of the 2012 shooting of a young woman in a parking garage in Chicago were a study in the power of the jury room.

Opening the Jury Deliberations
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The Jury Deliberations
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Later at the Hotel London



Working it out and good ideas
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We could be here all night



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and Kelley Howard-Allen as 'The Bully'

And Kevin ...



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... of ...

Discussions continue



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Lobby at the Hotel Florida



General ...



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We could be here all night



Finally



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*Jury Issues
Nondisclosure and Misconduct*



Nondisclosure in voir dire



A juror who falsely misrepresents his or her interest or situation, or conceals a material fact relevant to the controversy before the court is guilty of misconduct. Appellate courts apply a three-part test to determine if a juror's nondisclosure of information during voir dire warrants a new trial. First, the complaining party must establish that the information is **relevant and material** to jury service in the case. Next, it must be established that the **juror concealed information** during the questioning. Finally, the complaining party must establish that the juror's failure to disclose information was not attributable to the complaining party's **lack of diligence**. *De La Rosa v. Zequeira*, 659 So. 2d 239 (Fla. 1995).

Misconduct in deliberations



"[A]n inquiry [into a jury verdict] is never permissible unless the moving party has made sworn factual allegations that, if true, would require a trial court to order a new trial" *Powell v. Allstate Ins. Co.*, 652 So. 2d 354, 356 (Fla. 1995).

In determining whether misconduct has occurred, the trial court is prohibited from inquiring into matters that are ***inherent to a verdict***. See *id.* at 355-56. That is, the court may not consider matters that are subjective in nature; the "emotions, mental processes, or mistaken beliefs of jurors." *Id.* at 356. Courts may, however inquire into matters that are ***extrinsic to a verdict***-- objective facts or "overt acts that might have prejudicially affected the jury in reaching their own verdict." See *Marshall v. State*, 854 So. 2d 1235, 1240 (Fla. 2003).

Once the court determines misconduct has occurred, a rebuttable presumption of prejudice kicks in, and the non-moving party must "demonstrate the harmlessness" of the misconduct. *Powell*, 652 So. 2d at 356.

The Cast . . .



Daniel Fogarty
as
"The Gambler"



Celene Humphries
as
"The Sympathizer"



Lauren Lewis
as "The Addict"

A professional headshot of a man with short brown hair, smiling slightly. He is wearing a dark grey suit jacket, a white dress shirt, and a red and grey striped tie. The background is a mottled blue color.

William McFetridge
as
"The Experimenter"

David Sullivan

as

"The Redneck"



and
Kelley Howard-Allen
as "The Bully"

The Deliberations begin . . .

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JURY DELIBERATING

Games of chance:

Marks v. State Road Dep't, 69 So. 2d 771, 775 (Fla. 1954)

("The affidavits of jurors may be received for the purpose of avoiding a verdict, to show any matter occurring during the trial or in the jury room, which does not essentially inhere in the verdict itself, as that . . . the verdict was determined by aggregation and average or lot, or **by game of chance** or other artifice or improper manner . . .").

Pressure/influence from other jurors:

Simpson v. State, 3 So. 3d 1135, 1143 (Fla. 2009)

(stating that a juror's claim that she was pressured by the other jurors into convicting a defendant was intrinsic to the verdict).

Anti-Russian Bias:

Marshall v. State, 854 So. 2d 1235, 1240 (Fla. 2003)

After being convicted for the murder of a fellow prisoner, defendant presented evidence showing that in the course of deliberations some jurors told racial jokes and announced they would vote for a guilty verdict and life sentence because they wanted defendant to return to prison to kill more black inmates. The court held that these were examples of juror misconduct that did not inhere in the verdict.

Discussions continue

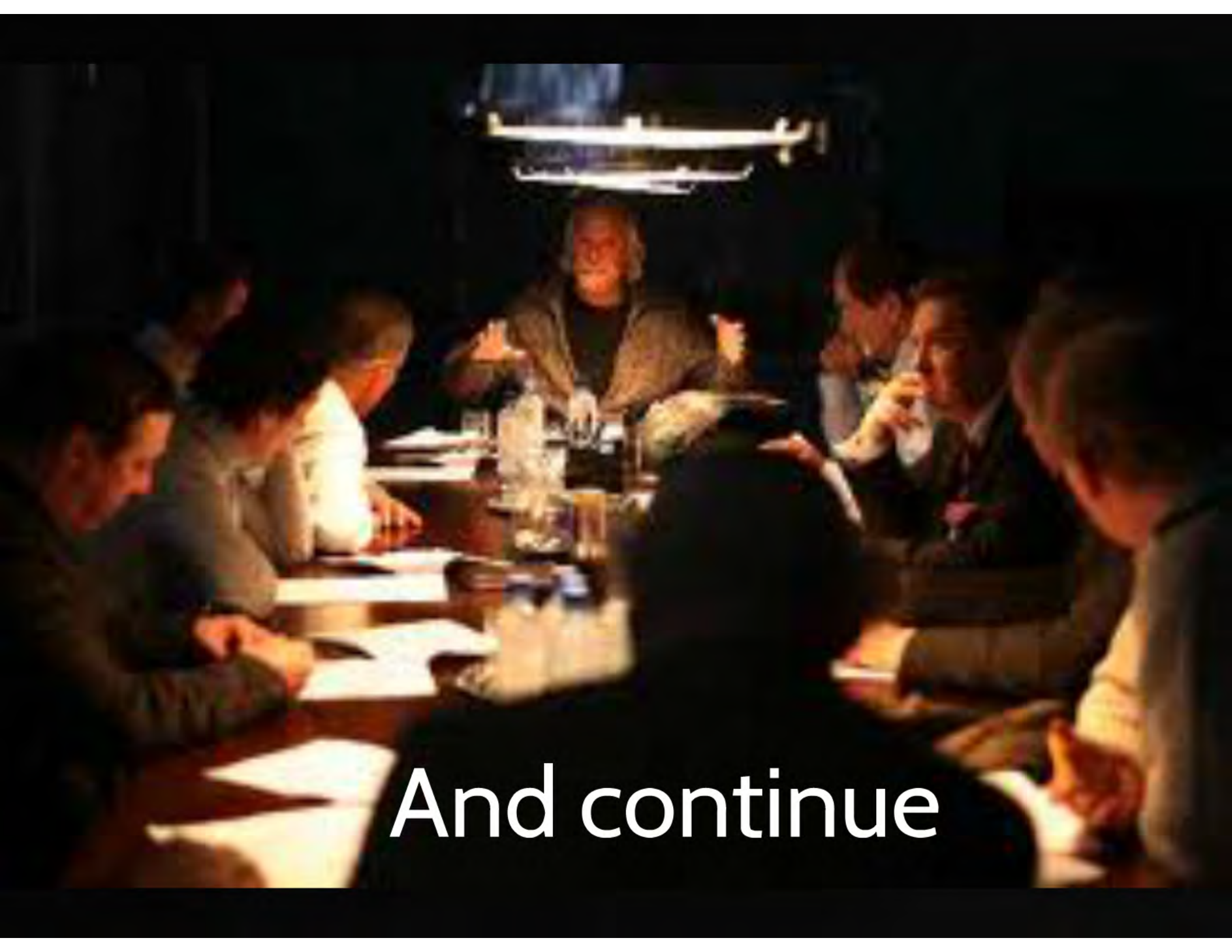


Bailiff's comments:

United States v. Venske, 296 F.3d 1284, 1291 (11th Cir. 2002) (noting that, if proven, bailiff's statement to jury that they "would not have any trouble convicting [the defendant] if they knew what [he] knew," would be considered extrinsic).

Pro-Russian Comments

Baptist Hosp. of Miami, Inc. v. Maler, 579 So. 2d 97, 100 (Fla. 1991)
("[S]ympathy for a [party] and the reasons why jurors reached a particular verdict clearly are subjective impressions or opinions that are not the subject of judicial inquiry").



And continue

Dartboard:

Cf. Marks, 69 So. 2d at 773 ("To constitute a quotient verdict, however, it is essential that there be a preliminary agreement or understanding among the jurors that each will select a figure as representing his opinion of value or damage and that the sum of said amounts divided by the number of jurors will be accepted by each as his or her verdict, and is in fact so accepted.").

Ignoring the jury instructions:

Devoney v. State, 717 So. 2d 501, 502-03 (Fla. 1998): In a DUI manslaughter case where judge instructed jury to disregard testimony about defendant's prior speeding tickets, the fact that jurors discussed prior tickets did not justify a new trial because consideration of the excluded testimony did not amount to consideration of evidence outside the record. Rather, it was an example of misunderstanding or not following the court's instructions. "Such misunderstanding is a matter which essentially **inheres in the verdict.**"

The '72 Jury Instructions:

Duchainey v. State, 736 So. 2d 38, 39 (Fla. 4th DCA 1999) ("The trial court is the only source from which the jurors may properly obtain the law or definition of legal terms applicable to the issue being resolved by them.").

Tapanes v. State, 43 So. 3d 159, 162-63 (Fla. 4th DCA 2010) (finding misconduct where juror used his smartphone to look up the definition of the word "prudence.").

Still talking



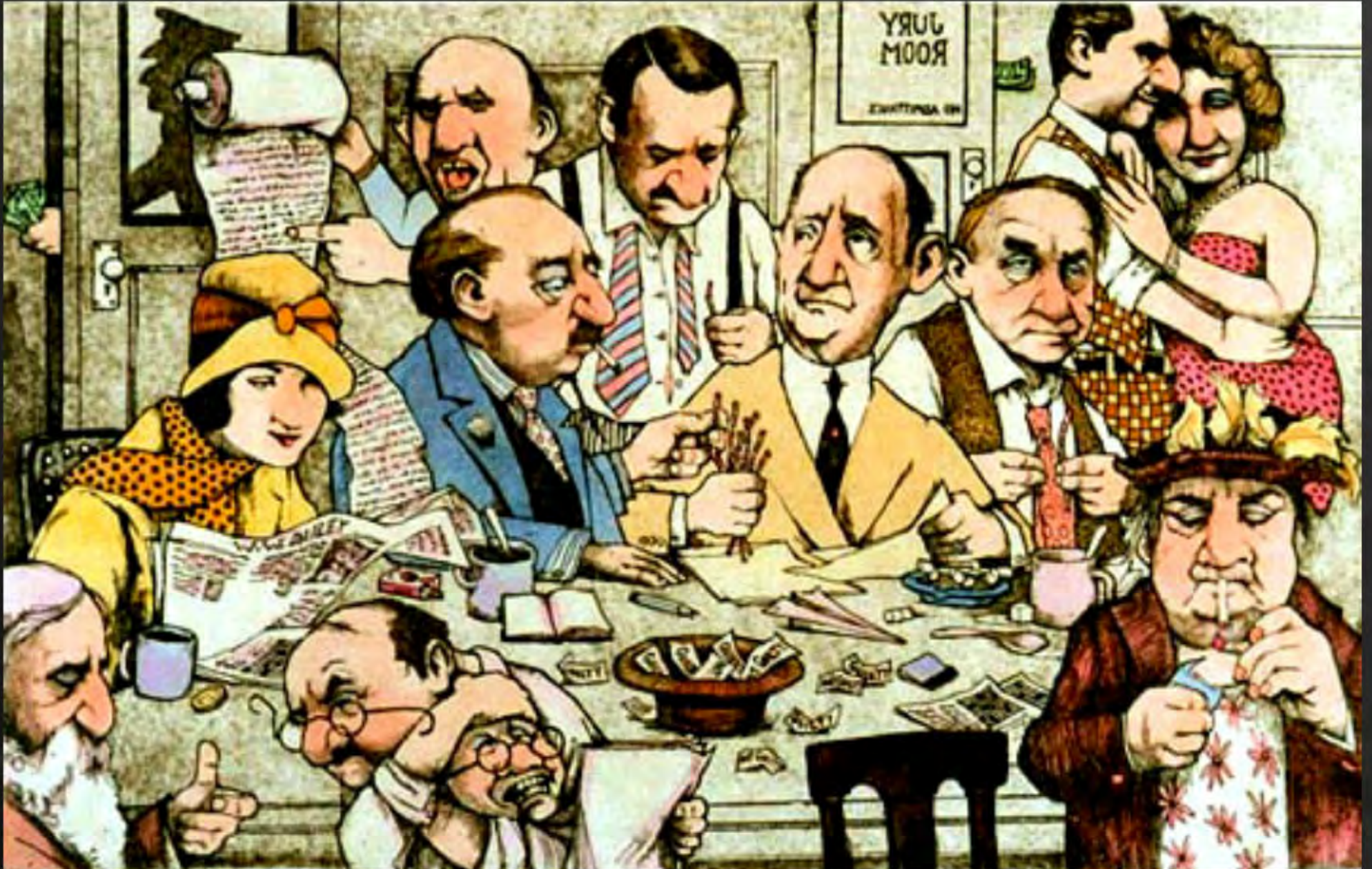
Nondisclosure of Wife's prior lawsuit:

Ford Motor Co. v. D'Amario, 732 So. 2d 1143, 1145-46 (Fla. 2d DCA 1999) (Juror answered "no" when asked on questionnaire whether she or anyone in her family had been involved in a lawsuit. Court found that there was no concealment because her response was truthful--the husband was involved in law suit before they were married.).

Nondisclosure of prior lawsuit:

Smiley v. McCallister, 451 So. 2d 977, 978 (Fla. 4th DCA 1984) (granting jury interview where, despite voir dire questions regarding involvement in automobile accidents, juror failed to disclose she had a son who had been involved in an accident).

These people won't shut up



No love for Russia:

See Powell v. Allstate Ins. Co., 652 So. 2d 354 (Fla. 1995)
(finding that racial statements made by the jurors constituted overt acts of misconduct that required judicial inquiry where testimony indicated that jurors told racial jokes, compared a black witness to a chimpanzee, and discussed the turnover rate for black employees at a juror's company).

Ask Siri, she knows everything:

Russ v. State, 95 So. 2d at 600 ("Where a juror on deliberation relates to the other jurors **material facts** claimed to be within his personal knowledge, but which are not adduced in evidence, and which statements are received by the other members of the jury and considered in reaching their verdict it is misconduct which may vitiate the verdict, if resulting prejudice is shown.").

Lip-syncing Lawyer:

Travelers Ins. Co. v. Jackson, 610 So. 2d 680, 681 (Fla. 5th DCA 1992) (finding allegations that defense attorney mouthed the word "liar" at the jury while plaintiff's expert was on the stand did "nothing more than proffer the opinion of a juror about the reasons the jury arrived at its verdict" and thus inhered in the verdict").

Mother's Against Popcorn:

Russ v. State, 95 So. 2d 594, 600 (Fla. 1957) (en banc) ("It is improper for jurors to receive any information or evidence concerning the case before them, except in open court and in the manner prescribed by law."); *id.* ("Where a juror on deliberation relates to the other jurors material facts claimed to be within his personal knowledge, but which are not adduced in evidence, and which statements are received by the other members of the jury and considered in reaching their verdict it is misconduct which may vitiate the verdict, if resulting prejudice is shown.").

Anti-blonde bias:

Marshall v. State, 854 So. 2d 1235, 1241 (Fla. 2003)
("[T]he issue of racial, ethnic, and religious bias in the courts is not simply a matter of political correctness to be brushed aside by a thick-skinned judiciary.")
(internal quotation marks omitted).



The Experimenter

Several weeks after the trial, The Experimenter, overcome with guilt and emotion sent a letter to trial counsel that included the following:

"During deliberations, some of the other jurors completely wrote off FlavorKing's expert witness because she was blonde. I didn't say anything at the time, but I totally agreed (There's no way a blonde could understand all that science!). Rather than considering the evidence and voting accordingly, I based my decision on the fact that the defense expert was blonde. In retrospect, I know that was wrong!"

Aragon v. State, 853 So. 2d 584, 588 (Fla. 5th DCA 2003) ("A juror is not competent to testify about matters inhering in the verdict, such as jurors' emotions, mental processes, or mistaken beliefs.") (internal quotation marks omitted).

We could be here all night



The Addict comes clean:

Russ v. State, 95 So. 2d at 600 ("Where a juror on deliberation relates to the other jurors material facts claimed to be within his personal knowledge, but which are not adduced in evidence, and which statements are received by the other members of the jury and considered in reaching their verdict it is misconduct which may vitiate the verdict, if resulting prejudice is shown.").

An experiment? What a nerd:

No outside information. See *Russ v. State*, 95 So. 2d at 600.

That guy with the beard really hates Russians:

See Powell, 652 So. 2d at 357 ("[I]t would be improper, after a verdict is rendered, to individually inquire into the thought processes of a juror to seek to discover some bias in the juror's mind, like the racial bias involved here, as a possible motivation for that juror to act as she did. Those innermost thoughts truly inhere in the verdict. But when appeals to racial bias are made openly among jurors, they constitute overt acts of misconduct.").



The Gambler

After trial, The Gambler sent defense counsel a letter saying the following:

"I kept an important fact to myself during deliberations and at voir dire; I have a loved one whose death was a direct result of eating too much popcorn. I thought I'd be able to vote based on the evidence presented at trial, but looking back, I can see that my decision to vote for the plaintiffs was based entirely on my desire to stick it to the popcorn industry. You have to know, my original intent was not to punish FlavorKing. I just really wanted to fulfill my civic duty!"

De La Rosa v. Zequaria, 659 So. 2d 239, 242 (Fla. 1995)
("Assuming . . . that the juror had no intention of misleading counsel, the omission nonetheless prevented counsel from making an informed judgment-which would in all likelihood have resulted in a peremptory challenge.") (internal quotation marks omitted).

Aragon v. State, 853 So. 2d 584, 588 (Fla. 5th DCA 2003) ("A juror is not competent to testify about matters inhering in the verdict, such as jurors' emotions, mental processes, or mistaken beliefs.") (internal quotation marks omitted).

Finally



CEO's Stepson:

See Mobile Chem. Co. v. Hawkins, 440 So. 2d 378, 380-81 (Fla. 1st DCA 1983) (remanding for a new trial where a juror failed to disclose that she was a second cousin of a party's wife).

Ukrainian employees:

Is this fact material?

Pill Popping:

Compare Alonso v. Ford Motor Co., 54 So. 3d 562, 564 (Fla. 3d DCA 2011) ("An allegation of juror intoxication, of course, cuts to the very heart of our nationally-revered right to a trial by jury. An excessive use of liquor by a juror during the trial is such misconduct as will vitiate the verdict.") (internal quotation marks omitted), *with Zeigler v. State*, 632 So. 2d 48, 52 (Fla. 1993) ("We know of know rule which prohibits jurors from taking [prescription] medication, and so long as it does not affect their competency, this cannot be the basis for impugning their verdict.").

The Gambler finally gets his way:

Cf. Marks, 69 So. 2d at 773 ("To constitute a quotient verdict, however, it is essential that there be a preliminary agreement or understanding among the jurors that each will select a figure as representing his opinion of value or damage and that the sum of said amounts divided by the number of jurors will be accepted by each as his or her verdict, and is in fact so accepted.").

Proxy voting, threats, and physical violence:

Intrinsic or extrinsic? Make your case.

See Powell v. State, 414 So. 2d 1095, 1096 (Fla. 5th DCA 1982) (holding juror's statement that she voted to convict because she was intimidated by her fellow jurors and rushed to make a decision as intrinsic)

Later, at the Hotel FLoridan...



Presented By
The Honorable
Judge Chris Altenbernd Pupillage

Tom Elligett
Celene Humphries
Kelley Howard-Allen
Jennie Tarr
Daniel Fogarty
William McFetridge
Lauren Lewis
David Sullivan