Runaway Jury: An Analysis of State Laws Concerning Juror Impeachment

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Abstract

The no impeachment rule bars the admission into evidence of juror testimony regarding jury deliberations in proceedings questioning the validity of a verdict. In *Pena-Rodriguez v. Colorado* (2017), the U.S. Supreme Court created a constitutional exception to the no impeachment rule to allow impeachment of a verdict by a juror's testimony regarding a fellow juror's clear statement during jury deliberations indicating reliance on racial bias as a substantial motivating factor for that juror's vote. This study traces the history of the no impeachment rule, analyzes the Court's decision in *Pena-Rodriguez v. Colorado* (2017), examines variation in exceptions provided by states' statutory no impeachment rules, and discusses the likely impact of *Pena-Rodriguez* as well as policy implications of the current state of no impeachment statutes.

Keywords: no impeachment rule, Sixth Amendment, impartial jury, racial bias, rules of evidence, jury decision-making

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The no impeachment rule bars the admission into evidence, in proceedings questioning the validity of a verdict, of post-verdict juror testimony regarding jury deliberations (Covington, 2018; Koffler, 2018).[1] This long-standing rule is based on public policy considerations of preserving the finality of verdicts, promoting uninhibited discussion during jury deliberations, and preventing harassment of jurors by the losing party after the trial is over (Casey, 1998; Diehm, 1991; Reidy, 2009; Thompson, 1984; West, 2011). Furthermore, the no impeachment rule has long been thought to be vital to the survival of our system of trial by jury, as close scrutiny of jurors' imperfections in carrying out their duties would likely undermine a vast number of verdicts and compromise public confidence in the jury system (*Tanner v. United States*, 1987; West, 2011). Although the rule certainly serves important public policy considerations, the rule is not without controversy, as it has prevented courts from hearing post-verdict juror testimony regarding outrageous acts of jury misconduct such as use of games of chance to determine a verdict (*Vaise v. Delaval,*1785, as cited in Miller, 2009) and jurors' drug and alcohol use during trial (*Tanner v. United States,*1987; West, 2011).

While its origins can be traced back to the common law in England, the no impeachment rule has been codified in Federal Rule of Evidence 606(b) and state statute counterparts (Crump, 2018; Miller, 2009, 2012; West, 2011). Such statutes provide for certain statutory exceptions, such as the exceptions provided in Federal Rule of Evidence 606(b) for juror testimony regarding outside influence, use of prejudicial extraneous evidence, and clerical mistake in entry of the verdict on the verdict form (Crump, 2018; Miller, 2009). Generally, most no impeachment statutes draw a strong internal versus external distinction, barring jurors from impeaching their

verdict with juror testimony regarding matters internal to jury deliberations while allowing jurors to impeach a verdict by testifying regarding matters external to jury deliberations (Miller, 2009).

When the no impeachment rule bars post-verdict juror testimony regarding a fellow juror's remarks during jury deliberations which indicated reliance on racial stereotypes in casting a vote of guilt, the no impeachment rule collides with the protection of a fundamental right: the Sixth Amendment right to a trial by an impartial jury (Koffler, 2018). The constitutional right to trial by an impartial jury provides essential protection for the liberty of the accused by placing the responsibility for judging guilt or innocence in the hands of peers, as a check against the power of the government (Crump, 2018). But this essential protection becomes an illusion when the fate of the accused is placed in the hands of a bigoted juror and the courts turn a deaf ear to other jurors' reports that the jury was far from impartial.

In *Pena-Rodriguez v. Colorado* (2017), the U.S. Supreme Court created a constitutional exception to the long-standing no impeachment rule to allow impeachment of a verdict by a juror's post-verdict testimony regarding a fellow juror's clear statement during jury deliberations indicating reliance on racial bias as a substantial motivating factor for that juror's vote. The Court deemed existing safeguards, such as voir dire and pre-verdict juror testimony, inadequate to prevent racial bias, which is essential to preserving the Sixth Amendment right to trial by an impartial jury (*Pena-Rodriguez v. Colorado*, 2017).

While this recent decision represents a step in the right direction, it raises the question of whether legislative bodies ought to re-examine state no impeachment statutes to ensure those statutes provide for appropriate exceptions which can facilitate redress for criminal defendants whose fate has been decided by jurors who have failed to live up to the noble ideal of the jury

trial as a bulwark against the government's potential abuse of power. In the wake of *Pena-Rodriguez,* it is important for state legislatures to take action since high profile instances of verdicts infected by explicit bias undermine public confidence in our jury trial system and any extension by the courts of the logic of this constitutional exception to verdicts influenced by other forms of odious bias, such as bias based on sexual orientation, religion, national origin, or gender, may occur only after a long, uneven process due to the nature of case law development. Recent news coverage of Keith Tharpe's death penalty appeal centering on a juror's post-trial statements opining regarding the "types of black people" and questioning whether "black people even have souls" (Claiborne, 2017; Stern, 2018) and Charles Rhines' death penalty appeal raising the issue of jurors' discussion of sexual orientation as a factor weighing against a life sentence during deliberations (Chammah, 2018) illustrate the corrosive effect that verdicts informed by jurors' explicit biases can have on the legitimacy of the jury trial system. Furthermore, when verdicts are products of juror misconduct, such as juror inebriation during deliberations (Wilson, 2004) or deciding a verdict by coin toss ("Guilty with the Toss of a Coin," 2000), and there is no redress for such injustice, this makes a mockery of the right to a fair trial. State legislatures can play an important role in protecting this right by taking the opportunity in the wake of *Pena-Rodriguez* to reassess state no impeachment statutes' exceptions and amend them as necessary to promote verdicts consistent with principles of justice.

In *Pena-Rodriguez v. Colorado* (2017), the Court indicated that there is notable variation in state no impeachment statutes. In light of the Court's creation of a constitutional exception to statutory no impeachment rules, now is an apt occasion to examine state-to-state variation in statutory exceptions to the no impeachment rule. The present study traces the history of the no impeachment rule, analyzes the Court's decision in *Pena-Rodriguez v. Colorado* (2017),

examines state variation in exceptions to the no impeachment rule, and discusses the likely impact of *Pena-Rodriguez v. Colorado* (2017) as well as policy implications of the current state of states' no impeachment statutes.

History of the No Impeachment Rule

The no impeachment rule has origins in the common law of late eighteenth century England (Crump, 2018; Miller, 2009; West, 2011). In *Vaise v. Delaval* (1785), based on the rationale that a witness testifying to his own misdeeds is an intrinsically unreliable witness, Lord Mansfield refused to accept a juror's post-verdict affidavit stating that the jurors decided the case by a coin toss (Crump, 2018; Miller, 2009; Thompson, 1984; West, 2011). Lord Mansfield noted, however, that post-verdict testimony regarding such jury misconduct from a source other than jurors, such as an onlooker, would be admissible in evidence (*Vaise v. Delaval*, 1785, as cited in Miller, 2009). This gave rise to the Mansfield rule, which is a blanket prohibition of post-verdict juror testimony used to call into question the validity of the verdict (Miller, 2009; West, 2011).

The Mansfield rule enjoyed widespread acceptance in England and was initially followed by many courts in the United States, but over time variation among the states developed as some states deviated from the Mansfield rule's blanket prohibition (Miller, 2009). The Iowa rule, established by the Supreme Court of Iowa in *Wright v. Illinois & Mississippi Telegraph Company* (1866), permitted the introduction into evidence of post-verdict juror testimony regarding overt acts (such as the use of improper methods to arrive at a verdict – e.g., calculating a civil damages award by averaging jurors' individual assessments of damages or using a game of chance to determine a verdict) for the purpose of impeaching a verdict, but did not allow such

testimony regarding jurors' subjective thought processes (Miller, 2009; West, 2011).The Iowa rule thus permits verdict impeachment by juror testimony regarding matters which are not part of the verdict itself and can be refuted by other jurors (Covington, 2018). In Massachusetts, the jury room door was deemed the crucial dividing line, as juror testimony regarding juror statements made outside the jury room were allowed for the purpose of impeaching a verdict, but juror testimony regarding juror statements made inside the sacrosanct jury room were prohibited (West, 2011; *Woodward v. Leavitt*, 1871).

The U.S. Supreme Court first weighed in on the no impeachment rule when, in dicta, the Court cautioned against blind adherence to the Mansfield rule, noting that there may be cases where prohibiting the admission into evidence of post-verdict juror testimony would violate the fundamental principles of justice (*United States v. Reid*, 1851; Miller, 2009; West, 2011). Then, in *Mattox v. United States* (1892), the Court held that post-verdict juror testimony regarding external influences, such as extraneous prejudicial information and improper outside influence, is admissible in evidence to impeach a verdict (*Mattox v. United States*, 1892; Miller, 2009; West, 2011). In *McDonald v. Pless* (1915), the Court reiterated that some cases may require a court to allow verdict impeachment by post-verdict juror testimony in order to avoid violating the fundamental principles of justice, but found that a jury's calculation of a civil damages award by averaging each juror's assessment of damages did not warrant deviation from the general rule prohibiting the use of juror testimony to impeach a verdict. Thus, the Court rejected the Iowa rule, embracing instead the Mansfield rule albeit with an exception for external influences and a cautionary note that justice may require deviation from the general prohibition in certain cases (Covington, 2018; Miller, 2009).

In 1975, the no impeachment rule was codified in Federal Rule of Evidence 606(b), which prohibits use of post-verdict juror testimony to impeach a verdict, with the exception of juror testimony regarding outside influence or use of prejudicial extraneous evidence (Crump, 2018). Note that Federal Rule of Evidence 606(b) does not apply to nonjuror testimony, nor to juror testimony if offered either prior to the verdict or for a purpose other than impeaching the verdict, even if it is post-verdict testimony (Miller, 2012). The legislative history of Federal Rule of Evidence 606(b) shows that Congress explicitly considered a formulation similar to the Iowa rule, which would have allowed, for purposes of verdict impeachment, juror testimony regarding objective incidents transpiring during jury deliberations but not subjective mental processes, but decided instead to adopt a rule which permits juror testimony as to external matters but not as to matters internal to jury deliberations due to concerns regarding the need to preserve finality of verdicts and prevent harassment of jurors (Miller, 2009, 2012; West, 2011). Most states have evidentiary rules similar to Federal Rule of Evidence 606(b), which generally prohibit the use of juror testimony to impeach a verdict with the exception of juror testimony regarding outside influence or use of prejudicial extraneous evidence (Miller, 2009, 2012).

In *Tanner v. United States* (1987), the U.S. Supreme Court upheld the trial court's ruling that post-verdict juror testimony regarding jurors' use of alcohol and illegal drugs during the trial was inadmissible to impeach the verdict in support of a motion for new trial under Federal Rule of Evidence 606(b). The Court reasoned that the substance abuse, regardless of whether it occurred outside the jury room, was not an outside influence (*Tanner v. United States*, 1987). The Court noted that Federal Rule of Evidence 606(b)'s external versus internal distinction rests not on the location where the incident arose, but rather on whether or not the incident was internal to jury deliberations (*Tanner v. United States*, 1987). The Court also held that Federal

Rule of Evidence 606(b) does not violate the Sixth Amendment right to trial by a competent jury because the evidentiary rule furthers important public policy considerations and the Sixth Amendment right to trial by a competent jury is protected by other safeguards such as voir dire, the ability of jurors to report their fellow jurors' misconduct before a verdict is rendered, and the admissibility of non-jurors' post-verdict testimony regarding their observations of jurors' behavior (*Tanner v. United States*,1987).

To resolve a circuit split, in 2006 Congress amended Federal Rule of Evidence 606(b) by adding an additional exception allowing juror testimony regarding a jury's clerical mistake in entry of the verdict on the verdict form (Miller, 2009).[2] In doing so, Congress rejected the approach of creating a broader exception allowing juror testimony regarding the verdict resulting from juror misunderstanding of jury instructions or the verdict's consequences because such errors involve subjective mental processes (Miller, 2009, 2012). Rather, this third exception only allows for juror testimony regarding whether the verdict entered on the verdict form accurately reflects the verdict rendered by the jury (Miller, 2009, 2012).

In the wake of *Tanner v. United States* (1987), courts have generally adhered to the *Tanner* interpretation of Federal Rule of Evidence 606(b)'s internal versus external distinction, generally not allowing jurors to impeach a verdict by testifying regarding matters internal to jury deliberations while allowing jurors to impeach a verdict by testifying regarding matters external to jury deliberations (Miller, 2009). In *Warger v. Shauers* (2014), the U.S. Supreme Court addressed the issue of the no impeachment rule's application to bar post-verdict juror testimony regarding a fellow juror's statements during jury deliberations which indicate that juror's bias in favor of one party to a civil lawsuit based on the juror's life experiences. The Court held that such bias is not extraneous prejudicial information because the life experiences jurors bring with

them into the jury room are considered matters internal to jury deliberations and the fact that the juror would not have been seated on the jury had the juror been truthful during voir dire about these life experiences does not render the juror's statements about those life experiences extraneous. The Court further held that Federal Rule of Evidence 606(b) does not infringe the Sixth Amendment right to trial by an impartial jury when applied to bar post-verdict juror testimony regarding a fellow juror's statements during jury deliberation revealing that juror's bias in favor of one party based on life experiences, about which the juror lied during voir dire, because, even if voir dire is not an effective safeguard of the right to an impartial jury in such a case, the other *Tanner* safeguards, such as the ability to offer pre-verdict juror testimony regarding bias and evidence of bias from non-juror sources, still offer protection of the right to an impartial jury. While the Court did not create a constitutional exception to the no impeachment rule in *Warger*, the Court noted in dicta that its calculus of whether the *Tanner* safeguards are sufficient may differ if presented with a case of extreme juror bias which intrinsically violates the right to trial by an impartial jury (Covington, 2018; *Warger v. Shauers*,2014).

The courts have struggled with the application of the no impeachment rule to juror testimony regarding racial bias during jury deliberations, resulting in a circuit split (Covington, 2018; Koffler, 2018). Some appellate courts have extended *Tanner*'s logic to hold that statutory no impeachment rules' prohibition of juror testimony regarding jurors' racially biased statements during jury deliberations when offered for the purpose of impeaching a verdict does not violate the Sixth Amendment right to an impartial jury (Miller, 2009; see, e.g., *United States v. Benally*,10th Cir. 2008). Other appellate courts, however, have found the *Tanner* safeguards offer insufficient protection in cases involving racial bias in jury deliberations and therefore the

no impeachment rule must not be applied inflexibly where it would deny due process or the Sixth Amendment right to trial by an impartial jury; instead, trial courts have discretion to admit into evidence, for the purpose of impeaching a verdict, juror testimony regarding jurors' racially biased statements during jury deliberations (*United States v. Villar,* 1st Cir. 2009).

Despite the important public policy considerations underlying the no impeachment rule, many have questioned its compatibility with the constitutional rights of the accused, particularly when applied to bar juror testimony regarding jurors' racial bias (Miller, 2009; Wolin, 2012). Scholars have argued for courts to find ways to creatively interpret statutory no impeachment rules to allow jurors to testify regarding jurors' racial bias for the purpose of impeaching a verdict (Gold, 1993; Wolin, 2012) and have pointed out that empirical evidence does not support the Court's conclusion in *Tanner* that other available safeguards sufficiently protect important constitutional rights (Helman, 2010; West, 2011). With the Courts of Appeals reaching differing conclusions on the application of the no impeachment rule to juror testimony regarding jurors' racially biased statements during jury deliberations and scholars decrying the injustice which arises when courts remain willfully ignorant of racial bias infecting jury deliberations, the time was ripe for the U.S. Supreme Court to weigh in on whether the no impeachment rule must yield to a defendant's Sixth Amendment right to trial by an impartial jury when a juror's statements during jury deliberations indicate the juror relied on ethnic or racial stereotypes in casting a vote of guilty.

Pena-Rodriguez v. Colorado **(2017)**

In *Pena-Rodriguez v. Colorado (*2017), the U.S. Supreme Court was confronted with the issue of whether there is a constitutionally mandated exception to the no impeachment rule when

a juror's statement reveals racial bias significantly motivated his vote of guilty. In this criminal case, after the trial concluded two jurors told defense counsel that another juror made statements indicating that juror's reliance on a racial stereotype characterizing Hispanic males as aggressive towards females as the basis for voting defendant was guilty of harassment and unlawful sexual contact and encouraging other jurors to also vote guilty based on this racial stereotype. Defendant requested a new trial based on this disclosure of racial bias in jury deliberations, but the state trial court refused to grant a new trial due to Colorado Rule of Evidence 606(b), which prohibits juror testimony regarding statements made during jury deliberations in a proceeding concerning the validity of the verdict. The intermediate state appellate court affirmed the trial court's ruling and the state supreme court also affirmed.

Justice Kennedy, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, wrote the majority opinion. Citing the United States' history of racial discrimination in the jury system and efforts by both the legislature and the courts to overcome that history and ensure that juries act to safeguard the accused from wrongful state action, the Court concluded that racial bias is different from the types of misconduct and juror bias considered insufficient to warrant an exception to the no impeachment rule in the Court's precedents.[3] While such previously considered misconduct and juror bias constituted deviations by a lone jury or juror, our history shows that racial bias is not a rare isolated occurrence and must be addressed to promote the value of equal protection of the law promised by the Fourteenth Amendment in the wake of the Civil War. Additionally, the Court noted that racial bias is different in light of practical considerations which render existing safeguards inadequate in protecting the right to trial by an impartial jury such as the risk that specific voir dire questions regarding racial bias may worsen any racial bias while being ineffective in revealing such bias and juror reluctance to report fellow

jurors' racially biased statements prior to the verdict. Finally, racial bias must be treated differently than other types of bias due to the necessity of preserving the public confidence in jury verdicts which is essential to the Sixth Amendment right to trial by an impartial jury.

The Court held that the Sixth Amendment requires an exception to the no impeachment rule when a juror's statement clearly reveals reliance on racial bias or racial stereotypes as a basis for the juror's vote of guilty. The Court cautioned that not every casual comment exhibiting racial bias warrants a constitutional exception to the no impeachment rule. However, when a juror's statement evidences racial bias significantly motivated the juror's vote of guilty, the trial court must be allowed to consider evidence of the juror's statement in order to uphold the Sixth Amendment guarantee of the right to trial by an impartial jury. The Court left open the issues of what procedures a trial court should use when a defendant files a motion for new trial on the basis of juror testimony regarding a fellow juror's racial bias and what standard a trial court should use when assessing whether evidence of racial bias is sufficient to warrant a new trial.

Justice Alito dissented, joined by Chief Justice Roberts and Justice Thomas, arguing that the Court's decision will undermine the no impeachment rule's ability to promote open discussions during jury deliberations, protect jurors from harassment by the losing party, and preserve the finality of verdicts. Justice Alito criticized the majority opinion's declaration that racial bias is different than other forms of partiality as having no basis in the text and history of the Sixth Amendment and its assessment of the ineffectiveness of the usual safeguards, including voir dire and pre-verdict juror reports of fellow jurors' inappropriate statements, as unconvincing and overstepping into an area of legislative purview. Justice Alito warned that by breaching the confidentiality of jury deliberations with this exception to the no impeachment rule, the Court

has embarked on a slippery slope since there is no principled way to draw a distinction between racial bias and other forms of partiality. Given the likelihood of further expansions of this breach of confidentiality, the creation of this constitutional exception to the no impeachment rule may well undermine the right to trial by jury, a right which relies on the ability of laypeople to speak and make decisions in the way they do in their daily affairs without being subject to public scrutiny.

Justice Thomas also dissented, arguing that the Court's holding is not supported by the original understanding of the Sixth and Fourteenth Amendments. The Sixth Amendment right to trial by impartial jury merely protects the common law right to trial by jury in existence at the time the Sixth Amendment took effect. Because there was no clearly established common law right to impeach a jury verdict with juror testimony regarding juror misconduct at the time of the ratifications of the Sixth and Fourteenth Amendments, the Sixth Amendment cannot serve as a basis for disregarding a state's statutory no impeachment rule. Justice Thomas stated that the issue of whether to modify or eliminate the no impeachment rule is a matter for the states to decide through their legislative processes and criticized the Court for overstepping by imposing an exception to the no impeachment rule which is not constitutionally required.

Methods

In *Pena-Rodriguez v. Colorado* (2017), the Court noted that while all of the states have some version of the no impeachment rule and most states follow the federal rule, there is substantial variation in the approaches states take with regard to the exceptions to the rule. However, there is very little research as to specifically how states vary in regards to exceptions to this rule in criminal trials. Furthermore, a vast majority of this research is legal or descriptive

in nature and is not an empirical assessment of: whether states offer exceptions to the no impeachment rule, under which circumstances exceptions are allowed, how many exceptions do states tend to allow in statute, and whether states have amended or updated their respective statutes over time. Also, if no statute exists or there are no statutory exceptions, does state case law provide for comparable exceptions to this rule? The present study seeks to fill these voids in the extant research.

The present study is concerned with two primary research questions: whether state juror impeachment statutes vary in regards to the exceptions allowed to the no impeachment rule in criminal cases, and whether the existence and number of state statutory exceptions to the no impeachment rule varies according to how recently states have amended their respective juror impeachment statutes.

This study obtained its data via the Westlaw legal search engine. Initial searches focused on whether states had statutory provisions for juror impeachment in criminal cases only. For the purposes of this study, the United States (Federal Rules of Evidence) was included, and hereinafter constitutes a 'state' in the analyses and discussion below. This allows for more uniformity of comparison as many states have already adopted the language of the federal rule in part or in whole. If states *did* have statutory provision(s) on when juror impeachment was allowed, the various reasons were subsequently coded. Based on a review of the literature and juror impeachment laws, the overwhelming legal reasons for juror impeachment were whether a member of the jury had been influenced by extraneous prejudicial information, improper outside influences, or whether a mistake was made on a verdict form. Nonetheless, other legally prescribed exceptions to the no impeachment rule were collected as well. Arizona had two such laws- one within the rules of evidence (Arizona Rules of Evidence, Rule 606), and one within

criminal procedure (16A A.R.S. Rules Crim.Proc., Rule 24.1). The former only applies to civil law, and the later uses slightly different language and does not include the same exceptions to the no impeachment rule as the former. For the purposes of the study, only the one pertaining to criminal cases will be examined, however both are included in Appendix A.

If a state *did not* have a law specifically related to or containing language on juror impeachment, the closest comparable statute was located (i.e. juror's ability to testify, duty of jurors, new trials, etc.) and the respective state was coded as not allowing juror impeachment by law. If a statute *did not* allow for exceptions for juror impeachment to occur by law in criminal trials, these states were coded as not allowing juror impeachment by law.[4] For example, Connecticut's Practice Book 1998 (Sec. 16-34) stated that juror impeachment is allowed, but only in civil cases. However, this does not concern criminal cases. Thus, Connecticut was coded as having no statutory exceptions to the no impeachment rule. However, for states not allowing some statutory exception to the rule, a review was conducted of Westlaw's 'Relevant Additional Resources' and 'Notes of Decisions' sections for each respective statute pertaining to juror's competency as a witness, or the statute most similar to this. This review allowed for the examination of whether a state's case law, absent established legal exceptions to the no impeachment rule, provided for such exceptions.[5] All statutes examined and coded are available in Appendix A, which records when the statute was enacted or last amended and where specifically within established law the statute was found. Almost all of the statutes examined originated within that state's rules of evidence or criminal procedure. Also, New York did not have a comparable statute to collect, but it was discovered that case law allowed for such an exception to occur; so it was coded accordingly.

We also examined the differences between states who amended their statutes relating to juror impeachment before and after 2010. This range was used because of the states for which we have data as to when the statute examined in this study was last amended or enacted (if never altered) (n=44), more than half (n=23) were amended or enacted between 2010 and 2018. We used 2010 as a cutoff since more than half of all statutes were enacted or amended during the decade of 2010s. While this pattern is beyond the scope of this study, it could be reasoned that since most state's juror impeachment statutes are modeled on the Federal Rules of Evidence, Rule 606, and that rule was last amended in 2011, many states have since updated their respective statutes accordingly.

Nonetheless, this measure includes states that do not allow juror impeachment as well, per their respective law or rule. There were seven total states for which no information could be gathered as to when their respective statute or rule was enacted or last amended. Thus, while we present basic descriptives of whether or not a state has a statutory exception to the no impeachment rule and when it was last enacted or amended (see Table 4), we collapsed the year measure so as to avoid low cell counts in our basic analyses. Overall, of the 44 states for which we have data regarding when the relevant statute was last amended or enacted, 32 states have at least one statutory exception to the no impeachment rule, whereas eight states had applicable statutes, but did not provide statutory exceptions and instead allowed exceptions only in case law. Furthermore, four states have no exception to the rule at all – either in statute or in case law. The latter two categories were coded as '0' in the proceeding analyses.[6]

The first analysis examines whether or not states that amended their respective statutes from 2010 to present vary in terms of the number of legally prescribed exceptions (e.g. exceptions defined in statute) to the no impeachment rule from those who last amended their law

before 2010. To test if these differences are significant, we employ the Mann-Whitney U test to examine whether the number of exceptions varies by whether a state amended or updated their respective statute before or after 2010. Put simply, the test examines whether two groups of data are different by ranking the data of each group and then the ranks of each group are compared. This test is used for a number of reasons. First, the assumption of normality for an independent *t*-test was not met. Second, the Mann-Whitney U test is a form of nonparametric null hypothesis testing that does not require an assumption of normality. Lastly, this test is the nonparametric equivalent to the independent *t*-test (Brace et al., 2013). For this test, however, we are only examining states that *have* a statute that expressly defines what exceptions exist to the no impeachment rule. Adding in the remaining states would bias our results as those states would inevitably have '0' statutorily defined exceptions to the rule.

The second analysis uses a chi-square test to examine whether significant differences exist between states with and without statutorily defined exceptions to the aforementioned rule in terms of when the state last amended its respective law. This analysis is important because it examines whether states that have recently amended their respective juror impeachment statutes are providing exceptions to the no impeachment rule. Put another way, this is important to examine because it signals as to whether states are amending or have recently amended statutes to limit or allow the admission of impeachment evidence. For this, we examine whether or not a state has a statutorily prescribed exception(s), whether a state's case law provides such exceptions when none exists in statute, or whether a state does not have such an exception in either statute or case law , and whether these realities vary over the two aforementioned time periods. Similar to the previously mentioned analysis, we combine states without any statutorily defined exceptions to the rule with states whose only exceptions are rooted in case law (i.e.

coded as '0').[7] This group constitutes states that do not have a statutorily defined exception to the no impeachment rule. This point will be discussed later, but the collapsing of these categories serves to also avoid low cell counts that would result from keeping three groups within the dependent variable (e.g. state status on exception to the no impeachment rule).

Overall, we anticipate that states that have amended their respective statutes more recently will have more exceptions to the no impeachment rule and will also be more likely to provide exceptions to the rule in their statute.

Results

Analyses revealed that 37 states provided some form of statutory exception to the no impeachment rule, whereas 10 only provided such exceptions via case law. Furthermore, four states overall had no exceptions in either established law or case law (see Table 1).

Almost all of the states that *did* provide a statutory exception to the no impeachment rule allowed for extraneous prejudicial information (n=35) or improper outside influences (n=36) to serve as legally valid reasons for jurors to impeach the verdict. In fact, 15 states allowed for a mistake on the verdict form to serve as a viable exception to the rule too. These were the three most common exceptions noted during data collection and coding, and serve as the primary exceptions to the no impeachment rule across states. Furthermore, these are the three exceptions outlined in the Federal Rules of Evidence, Rule 606 (see Miller, 2012 for review of these exceptions).

----Insert Table 1 approx. here----

Other notable exceptions to the no impeachment rule that were statutorily authorized included whether: a juror gave false testimony during voir dire that concealed prejudice or bias (Minnesota), a juror used drugs or alcohol (Indiana), the verdict occurred by determination of chance (Montana, North Dakota, Tennessee), during the trial a juror made one or more statements exhibiting overt racial/national origin bias (Virginia), or whether any juror discussed matters pertaining to the trial with persons other than fellow jurors (Vermont). Table 2 includes more examples of legal exceptions to the aforementioned rule.

----Insert Table 2 approx. here----

Some states either did not have a law pertaining to juror impeachment or did not allow any legal exceptions to the rule of no impeachment. In total, ten states did not have a statutory exception to the no impeachment rule, but still provide for juror impeachment via case law, whereas four states had neither. In total, including the Federal Rules of Evidence, 47 of 51 jurisdictions provide some form of juror impeachment to occur via statutory authority or case law. Table 3 provides a detailed description of the exceptions found in state case law for states that did not have a law on the books allowing for juror impeachment.

Many of the case law exceptions for states either lacking statutory provisions for juror impeachment or having no comparable laws were similar to the legal exceptions described above. For example, many exceptions rooted in case law were related to misconduct by jury

members during the trial, the influence of outside influences, extraneous prejudicial information, or a juror concealing or demonstrating bias or prejudice. These were all noted legal exceptions to the no impeachment rule too.

----Insert Table 3 approx. here----

Based on when these statutes were last amended or altered (see Appendix A), more than half of all states that provide for a statutory exception to the no impeachment rule have amended or updated their respective statutes in the 2010s. The history of seven states statutes were not located, however. Nonetheless, since 2000, 24 of 32 states for which there is available data and provide statutory exceptions to the no impeachment rule, have altered or amended their laws pertaining to juror impeachment. Seven of the eight states for which no statutorily authorized exception exists, but case law does, were last amended or altered prior to the 1990s. Furthermore, of the 15 states that allow for the mistake on the verdict form exception in statute, all have amended their statutes in the last eleven years. No statutes were found to have been last amended prior to 1960. Thus, states have been updating their no impeachment statutes quite recently.

----Insert Table 4 approx. here----

For example, Arizona, Maryland, and Virginia have all amended their respective statutes concerning the competency of a juror as a witness in criminal cases in the past year. However, only Virginia will allow for each of the three aforementioned legal exceptions to the no

impeachment rule, as well as for racial/ethnic bias, whereas Arizona allows for six different forms of juror misconduct (see Table 2). Arizona seemingly allows for the two most common exceptions –extraneous prejudicial information and improper outside influences- but due to the differences in language used within the statute (see Table 2), the interpretation of said exceptions may not be identical. Prior to the amending of the statute, Virginia only recognized extraneous prejudicial information and improper outside influences as statutorily recognized exceptions. Now, Virginia allows for the three most common forms of exceptions (see Table 1) as well as "[w]hether during the trial a juror made one or more statements exhibiting overt racial/national origin bias" (Sup.Ct.Rules, Rule 2:606). On the other hand, despite recently updating its rule relating to juror impeachment, Maryland remains as one of only three states that has neither an established exception to the no impeachment rule in case law or in state statute. Thus, the contemporary alterations that have occurred to the no impeachment rule are not uniform. In looking at how changes have occurred to statutes concerning a juror's competency to serve as a witness, it is equally important to note the extent to which existing statutes provide exceptions to the no impeachment rule. States that have such statutes encompass between two to six (Arizona) legally defined exceptions to the no impeachment rule (see Table 5). Nonetheless, in comparing the results displayed in Tables 4 and 5, it is evident that the majority of states that have the most statutorily defined exceptions are those that were more recently amended.

----Insert Table 5 approx. here----

To discern whether or not states that amended their respective statutes from 2010 to present vary in terms of the number of legally prescribed exceptions to the no impeachment rule from those who last amended their law before 2010, we employ the Mann-Whitney U test. The test revealed a statistically significant difference between states that amended their statutes before or after 2010 in terms of the number of exceptions included in those statutes (U=58.00, Z=-2.595, p=.015, two-tailed). Thus, states that altered their statutes more recently had more exceptions (i.e. a higher median of exceptions) as compared to states that last amended their statutes prior to 2010.

----Insert Table 6 approx. here----

To test the relationship between states having a statutory exception or not and when the statute was last amended, we will utilize the chi-square test. The analysis demonstrates that the relationship between the tendency of states to adopt statutory exceptions and when those statutes were last amended was significant $\chi^2(1, N=44) = 4.919$, p=.027. This relationship was moderate $\Phi = .334$, with the era in which the statute was last amended explaining 11.2% of the variance in whether a state provided a statutorily defined exception to the no impeachment rule.

----Insert Table 7 approx. here----

Discussion

This study empirically assesses the variation in states' statutory exceptions to the no impeachment rule in criminal cases. It also examines whether the existence and number of these

statutory exceptions vary according to how recently states' juror impeachment statutes were amended. States have taken a variety of approaches to carving out exceptions to the no impeachment rule. Exceptions for extraneous prejudicial information and improper outside influences predominate in state statutes. Another fairly common statutory exception allows juror impeachment to establish a clerical error in entry of the verdict on the verdict form. While less common, there are other notable statutory exceptions to the no impeachment rule such as states which allow exceptions for establishing that a juror lied in voir dire to hide bias, juror substance use, chance verdicts, and juror discussion of the case with nonjurors. State case law has established similar notable exceptions to the no impeachment rule in some states for extraneous prejudicial information, improper outside influence, juror misconduct, chance verdicts, and juror misrepresentations during voir dire.

There is a relationship between recency of legislative action and the existence and number of statutory exceptions to the no impeachment rule. Our study found significant relationships across these two dimensions. States which have amended their juror impeachment statutes more recently were more likely to provide statutory exceptions to the no impeachment rule, and such states also have a greater number of statutory exceptions to the no impeachment rule, on average. This does not necessarily indicate, however, that all prior versions of the now amended statute had *less* exceptions on average, as this type of longitudinal analysis is beyond the scope of this study. However, it is worth noting that statutes that *have* been more recently updated tend to have more exceptions to the rule on average; thus signifying that recent alterations may be further enunciating either what case law has determined and needs to be set forth in statute or that the trends are a natural evolution of the no impeachment rule in criminal trials.

Our examination of variation in states' statutory exception to the no impeachment rule has identified some notable exceptions provided by some states' statutes which state legislatures may want to consider adopting when amending their statutory no impeachment rules. In states which do not have statutory exceptions to the no impeachment rule but do have case law authorizing exceptions to the no impeachment rule, state legislatures should consider amending existing statutes to include the exceptions currently authorized by case law. Having each state's exceptions allowing for juror impeachment in a single location, a juror impeachment statute, would improve transparency to the populace and thus enhance accountability by providing a clear, concise, more readily accessible statement of the no impeachment rule and its exceptions in each state.

Focusing on the number of legally prescribed exceptions is important because states ranged from 0 (four states) to 6 (Arizona) in the number of exceptions enumerated in statute, and the number of exceptions allowed may reflect the impetus behind recent amendments to prior statutes due to various procedural issues state courts have faced over time. Furthermore, the number of exceptions allowed in statute exemplifies how states vary in how they approach the issue of juror impeachment in criminal trials; with the more exceptions allowed reflecting a state's willingness to permit the setting aside of the verdict if some issue may have prejudiced or negatively impacted the formation of the verdict. Put simply, the number of exceptions may reflect a state's attitude, albeit indirectly, towards the due process rights of defendants and the need for courts to root out substantial bias or juror misconduct in criminal trials.

Some states provide, either via statute or case law, for an exception to the no impeachment rule for juror statements indicating bias based on race, national origin, ethnicity, or religion. In the wake of *Pena-Rodriguez v. Colorado* (2017), regardless of whether a

jurisdiction's statute or case law provides for such an exception, all jurisdictions within the United States must allow post-verdict juror testimony regarding a juror's clear statement during deliberations evidencing racial bias as a significant motivator of the juror's vote of guilty. Note that this constitutional exception also includes bias based on ethnicity, as the Court used the term racial bias to encompass bias based on both race and ethnicity (given that the facts of *Pena-Rodriguez* actually involved the use of stereotypes based on ethnicity). This exception to the no impeachment rule is constitutionally mandated by the Sixth Amendment guarantee of the right to trial by an impartial jury (*Pena-Rodriguez v. Colorado*,2017).

As state and federal courts implement this new constitutional exception to the no impeachment rule, courts will grapple with a number of issues. Courts will need to establish what procedures to use when a defendant files a motion for new trial on the basis of juror testimony regarding a fellow juror's racial bias. Courts will also need to determine what standard a trial court should use when assessing whether evidence of racial bias is sufficient to warrant a new trial. Because *Pena-Rodriguez v. Colorado* (2017) left these issues as open questions, there is likely to be substantial variation in the approaches taken by courts in different jurisdictions and this may eventually result in a circuit split, which could prompt another U.S. Supreme Court decision to resolve these issues in favor of establishing a uniform procedure and standard. The findings of this study may provide a baseline through which courts and legal scholars can better understand the variance that exists between states regarding the use of the no impeachment rule in criminal trials, in their efforts to make a more uniform procedural standard.

Courts may see an increase in constitutional challenges to state and federal no impeachment rules as litigants seek to expand the *Pena-Rodriguez* exception to allow jurors to impeach their verdicts through juror testimony regarding fellow jurors' other biases. Justice

Alito's warning regarding the slippery slope will likely prove prophetic, as it seems likely that courts may eventually extend the logic of *Pena-Rodriguez* to create other constitutional exceptions to the no impeachment rule for other biases, such as those based on religion, gender, and sexual orientation. As Alito noted, it is difficult to discern how barring juror testimony regarding a fellow juror's clear statement evidencing racial bias as a significant motivator of the juror's vote violates the Sixth Amendment guarantee of the right to trial by an impartial jury, but barring juror testimony regarding a fellow juror's clear statement evidencing bias based on religion, gender, or sexual orientation as a significant motivator of the juror's vote does not. However, Alito's dubious prediction that an expanding constitutional exception to the no impeachment rule will undermine the right to trial by jury is unlikely to prove true. States already permit a variety of exceptions to the no impeachment rule and yet the jury trial is still alive and well. However, this study has provided insight as to the balance that exists across states between the right to due process and the need for jury secrecy; with some states leaning more towards one end of this balance than others.

Finally, we may see state legislatures take action to amend state statutes to codify the *Pena-Rodriguez* exception. Some state legislatures may also take the initiative to add a broader statutory exception to the no impeachment rule for juror statements indicating other odious biases, such as those based on religion, national origin, gender, or sexual orientation. The extent to which *Pena-Rodriguez* motivates state legislatures to amend state juror impeachment statutes remains to be seen, of course. Future research assessing developments in both legislation and case law in the years following *Pena-Rodriguez* may be warranted.

This study is not without its limitations, however. One is that the data are cross-sectional, in that we only examined the most current or updated requisite statute and not lexiconical

changes over time. The latter would provide more support for the results of this study, however, at the outset of the study, was beyond the scope of our initial research questions. Another limitation is that while statutes provide explicit direction for criminal courts to adhere to, in that they are codified and can be more readily drawn on by courts, this study was unable to capture all case law exceptions that states have. For example, it is unclear as to whether these respective statutes have evolved as a result of case law, or were created due to shifting jurisprudence. Furthermore, do states – that have an applicable no impeachment statute - have the same exceptions enumerated in their statutes as well as state case law? This question was beyond the scope of this study as well, but such an analysis could lend credence to the assertion that states should codify existing exceptions as they evolve to increase transparency, and reduce confusion in the court room. Lastly, the analytic strategy of this study did not capture other theoretical or contextually related factors that may explain: the presence of a statutory exception, the number of statutory exceptions, or any such change to the respective statute. Future studies should build on our study to address both the limitations of our study and the areas in which our initial research questions can be further examined.

Conclusion

We have a long-held tradition of courts refusing to hear jurors' post-verdict testimony to impeach their own verdict, owing to the view that close examination of jurors' shortcomings would only serve to undermine public confidence in the jury system (*Tanner v. United States*, 1987; West, 2011). However, in *Pena-Rodriguez v. Colorado* (2017), the Court decided that courts turning a deaf ear to jurors' reports of their fellow jurors' reliance on racial bias in casting their vote of guilty in a criminal trial is a far greater threat to public trust in our justice system than carving out a limited constitutional exception to the no impeachment rule. This marks an

important turning point in our jurisprudence, with the U.S. Supreme Court drawing a line in the sand to protect fundamental principles of justice.

This research can inform criminal justice policy development in the area of state statutory no impeachment rule exceptions. After *Pena-Rodriguez,* many state legislatures may amend state no impeachment statutes to codify the constitutional exception created by the Court. As state legislators undertake this task, this would be a good time to also take stock of what other exceptions should be added to states' no impeachment statutes. The present study provides base line data on the current state of states' statutory exceptions to the no impeachment rule. By identifying variations in state statutory exceptions, this research highlights the most common exceptions as well as notable less common exceptions. State legislatures can use this data to assess whether their state no impeachment statutes have the most common exceptions and this may facilitate reflection in states not having the common exceptions on the desirability of adding such exceptions. For example, states which do not have the exception for mistake on the verdict form may want to consider adding this exception.

The notable less common exceptions identified in this study may also give state legislators food for thought as they consider whether their state no impeachment statutes strike the appropriate balance between the interests in protecting due process and preserving secrecy of jury deliberations. For instance, in states which do not have such exceptions, it would seem prudent to consider adding the exceptions for determining verdicts by chance and juror intoxication, as it seems hard to justify turning a blind eye to such mischief. Furthermore, only Virginia had a statutory exception for racial bias; as this statute *was* amended following the *Pena* ruling. The Court ruled that racial bias constituted a violation of one's Sixth Amendment rights to an impartial jury trial; thus requiring that racial bias serve as an exception to the no

impeachment rule. However, only Virginia has explicitly codified this new exception to the no impeachment rule, and it remains to be seen as to whether other states will follow suit. Since it is not clear that 'racial bias' could fall under the 'extraneanous prejudicial information' category (or another category that we examined), states should pursue the codification of this exception so as to clarify existing procedure pertaining to juror's competency to impeach the verdict.

State legislatures can take further steps to shore up public trust in our system of trial by jury by amending state no impeachment statutes to add additional exceptions which allow judges to hear jurors' post-verdict testimony regarding certain overt acts which make a mockery of the idea that juries serve an important function as a check against government power. At a minimum, ensuring each state's no impeachment statute has exceptions for clerical error in entry of the verdict on the verdict form, juror alcohol and drug use during trial, chance verdicts, and intra-jury violence and bribes would be prudent. State legislatures can also move us closer to our aspired ideal of trial by an impartial jury by adding statutory exceptions for juror bias, whether that bias be based on race, ethnicity, national origin, religion, gender, sexual orientation, or gender identity. While attempting to perfect the jury may be a fool's errand, we can certainly enact policies which move us closer to the noble ideal embodied in the Sixth Amendment.

In *Pena-Rodriguez v. Colorado* (2017), the Court made a clear statement that racial bias is different. Unlike other imperfections in jury deliberations, the courts can no longer take a "hear no evil" approach when a juror offers post-verdict testimony that a fellow juror made racially biased statements during jury deliberations which indicate the fellow juror's reliance on racial bias in voting upon the defendant's fate. The time is ripe for state legislatures to weigh in with amendments to their states' no impeachment statutes to provide a broader statutory exception to the no impeachment rule for juror testimony regarding fellow jurors' statements

during jury deliberations indicating bias against other protected classes motivated a vote to convict. Justice can only be blind when courts are free to listen to evidence of improper bias infecting jury deliberations, regardless of whether that evidence comes from a juror after a verdict has been rendered.

Endnotes

[1] While the term impeachment is commonly heard in reference to charging a government official with misconduct to effect removal from office or undermining the credibility of a witness's testimony, this term is also used in criminal procedure in reference to the use of juror testimony to attack the validity of the jury's verdict.

[2] A circuit split occurs when the different circuit courts of appeals within the federal court system decide precedents which establish differing rules of law on a particular issue. One of the factors the U.S. Supreme Court considers when deciding whether to hear an appeal (grant certiorari) is the presence of a circuit split on an important issue of law, as resolution of the legal issue by the U.S. Supreme Court promotes uniformity of law among jurisdictions.

[3] While *Pena-Rodriguez v. Colorado* (2017) involved a juror's reliance on ethnic bias and stereotypes, the U.S. Supreme Court conflates ethnic and racial bias by using the term racial bias throughout the Court's majority opinion and focusing on the United States' history of racial discrimination. Given the Court's treatment of ethnic bias and racial bias as interchangeable terms, the Court's holding logically applies to both racial bias and ethnic bias.

[4] Since the focus of this study is state statutory exceptions to the no impeachment rule, references to allowing juror impeachment "by law" refer to statutory exceptions to the no impeachment rule (in contrast to exceptions to the no impeachment rule created by case law).

[5] The focus of this article is state statutes governing juror impeachment. Accordingly, an exhaustive survey of state case law on juror impeachment is beyond the scope of this article. For states having no statutory exceptions to the no impeachment rule, a review of Westlaw's 'Relevant Additional Resources' and 'Notes of Decisions' sections for each respective statute pertaining to juror's competency as a witness or the statute most similar to this provides information on typical exceptions provided by state case law for states without statutory exceptions to the no impeachment rule. See Table 3.

[6] Thus, if a state has a statute dealing with the impeachment of a verdict by a juror, we examined whether that statute provided any such exception to the rule. Thirty-two states provided explicit exceptions to the no impeachment rule in their statute. If the applicable statute did not have any exceptions, we then turned to Westlaw (see Methods) to determine if case law exceptions existed. This was conducted in a simple 'yes/no' fashion, with a basic recording of the more readily available case law exceptions, as we did not conduct an extensively deep examination of case law as we examined 51 jurisdictions in this study. If a state did not allow for a case law exception either, then they were recorded as having no exception to the rule (i.e. 4 states).

[7] Again the focus of the analysis is on the extent to which these exceptions are provided in state statutes. While we recorded a simple 'yes/no' response as to whether case law exceptions existed in the absence of a statutorily authorized exception (along with some of the categories of exceptions we found, if available via a basic overview of state case law), we did not record every

exception that existed in state case law as such an examination would be beyond the scope of this study and would require a deep analysis of state case law, which was not needed to conduct this study. However, some exceptions were noted, if found during the course of our examination into whether a state's case law provided recourse. Nonetheless, since these analyses are focused on the presence and robustness of state statutory exceptions over the two time periods, recording all states without explicit statutory exceptions to the rule as '0' allows for more specific examination of exceptions to the rule in statute across states and whether they have been amended recently. It would not make logical sense to include case law exceptions in the same category as statutory exceptions in our models since we do not want to conflate the two sources and case law exceptions can lead to statutory exceptions. Thus, when we are examining whether a state has updated or amended their respective 'no impeachment rule' recently, we are also looking at whether they have added an exception in statute. While this article cannot examine longitudinal shifts in state statutes, we can examine whether a state has recently updated their respective statute and whether that version contains any exceptions. We are essentially looking as to whether a pattern exists between states that have recently amended their respective statute and whether statutory exceptions exist. For example, Maryland updated their statute in 2018 but did not provide any exception to the rule. This demonstrates an unwillingness to recognize any exceptions to the rule via statute.

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*Woodward v. Leavitt,*107 Mass. 453 (1871).

Tables

Table 1

Juror Impeachment Laws by State (N=51)

State	Juror Impeachment Allowed?	Extraneous Prejudicial Info	Improper Outside Influences	Mistake on Verdict Form
Alabama	Yes	x	x	
Alaska	Yes	x	x	
Arizona	Yes			
Arkansas	Yes	x	x	
California	No*			
Colorado	Yes	x	x	x
Connecticut	No			
Delaware	Yes	x	x	x
Florida	No*			
Georgia	Yes	x	x	x
Hawaii	No			
Idaho	Yes	x	x	
Illinois	Yes	x	x	x
Indiana	Yes	x	x	x
Iowa	Yes	x	x	x
Kansas	No*			
Kentucky	No*			
Louisiana	Yes	x	x	
Maine	Yes	x	x	
Maryland	No			
Massachusetts	Yes	x	x	
Michigan	Yes	x	x	x
Minnesota	Yes	x	x	x

Mississippi	Yes	x	x	
Missouri	No*			
Montana	Yes	x	x	
Nebraska	Yes	x	x	
Nevada	No*			
New Hampshire	No*			
New Jersey	No*			
New Mexico	Yes	x	x	x
New York	No*			
North Carolina	Yes	x	x	
North Dakota	Yes	x	x	x
Ohio	Yes	x	x	
Oklahoma	Yes	x	x	
Oregon	No*			
Pennsylvania	Yes	x	x	
Rhode Island	Yes	x	x	
South Carolina	Yes	x	x	
South Dakota	Yes	x	x	x
Tennessee	Yes	x	x	
Texas	Yes		x	
Utah	Yes	x	x	
Vermont	Yes	x	x	x
Virginia	Yes	x	x	x
Washington	No			
West Virginia	Yes	x	x	x
Wisconsin	Yes	x	x	
Wyoming	Yes	x	x	
US	Yes	x	x	x

Totals		35	36	15
Statutory Exception	37			
Case Law Exception	10			
No Exception	4			

Note. "Juror Impeachment Allowed" column records whether a state has a statutory exception to the no impeachment rule. States which have no statutory exception, but have established exceptions to the no impeachment rule in case law are denoted with an asterisk next to "No" (e.g., "No*").
*State allows for juror impeachment via established case law, despite having no statutory provisions for juror impeachment.

Table 2

Other Statutory Exceptions for Juror Impeachment

State	Other Exceptions
Arizona	Receiving evidence not admitted during the trial or phase of trial; Deciding the verdict by lot; Perjuring himself or herself, or willfully failing to respond fully to a direct question posed during the voir dire examination; Receiving a bribe or pledging his or her vote in any other way; Being intoxicated during trial proceedings or deliberations; Conversing before the verdict with any interested party about the outcome of the case;
Indiana	Drug or Alcohol use
Minnesota	Threats of violence or violent acts; whether juror gave false answers on voir dire that concealed prejudice or bias
Montana	Assention to verdict by determination of chance
North Dakota	Verdict arrived at by chance
Ohio	Concerning any threat, any bribe, any attempted threat or bribe, or any improprieties of any officer of the court
Tennessee	Verdict arrived at by chance
Texas	To rebut a claim that the juror was not qualified to serve
Vermont	Whether any juror discussed matters pertaining to the trial with persons other than fellow jurors
Virginia	Whether during the trial a juror made one or more statements exhibiting overt racial/national origin bias

Table 3

States without Statutory Provisions for Juror Impeachment

State	Juror Impeachment Allowed in Law[a]	Juror Impeachment Allowed by Case Law	Exceptions
California	No	Yes	No explanation of what is and is not included in terms of juror impeachment, but most of the law regarding juror impeachment comes in the form of case law over time.
Connecticut	No	No	
Florida	No	Yes	Case law allows for exception due to overt acts that may have prejudiced the jury in reaching their verdict
Hawaii	No	No	
Kansas	No	Yes	Under civil procedure but applies to criminal cases per K.S.A. 60-402; allows for exception via case law if verdict arrived at by chance; disregarding jury instructions or responsibilities of being a juror
Kentucky	No	Yes	Case law allows for exceptions
Maryland	No	No	
Missouri	No	Yes	Rooted in case law; Can grant a new trial pursuant to V.A.M.S. 547.020 for jury misconduct or when verdict has been decided by means other than a fair expression of opinion on the part of all the jurors; Overt independent acts of misconduct outside of courtroom; statements

			reflecting ethnic or religious bias or prejudice
Nevada	No	Yes	Case law allows for testimony about an objective fact concerning juror misconduct; very vague
New Hampshire	No	Yes	Case law: from the language, it appears that the Court's inquiry of the jury may elicit testimony concerning "any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent or to dissent from the verdict or indictment or concerning his mental processes in connection therewith ..."
New Jersey	No	Yes	Case law allows for exception due to outside influences
New York	No	Yes	If mistake occurs; prejudicial conduct occurring outside of jury room; general misconduct
Oregon	No	Yes	Case law allows for exception due to misconduct that amounts to fraud, bribery, forcible coercion or any other obstruction of justice that would subject the offender to a criminal prosecution therefore
Washington	No	No	

Note. Includes state case law providing exceptions to the no impeachment rule only for states which do not have a juror impeachment statute or do not have statutory exceptions allowing juror impeachment to occur.

[a] Juror impeachment exceptions provided by statute.

Table 4

Changes to Juror Impeachment Laws by Decade (n=44)

Decade	No Exception	Case Law Exception	Statutory Exception	Total
1960	0	2	0	2
1970	0	1	2	3
1980	1	1	3	5
1990	1	3	3	7
2000	0	0	4	4
2010	2	1	20	23
Total	4	8	32	44

Note. Number of states last amending or enacting the relevant statute in each decade. Does not include seven states for which no data on when the relevant statute was enacted or amended was available.

Table 5

Number of Statutory Exceptions to the Rule by State

Total	States
0	California, Connecticut, Florida, Hawaii, Kansas, Kentucky, Maryland, Missouri, Nevada, New Hampshire, New Jersey, New York, Oregon, Washington
2	Alabama, Alaska, Arkansas, Idaho, Louisiana, Maine, Massachusetts, Mississippi, Nebraska, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Wisconsin, Wyoming
3	Colorado, Delaware, Georgia, Illinois, Iowa, Michigan, Montana, New Mexico, Ohio, South Dakota, Tennessee, West Virginia, US
4	Indiana, North Dakota, Vermont, Virginia
5	Minnesota
6	Arizona

Note. Number of statutory exceptions to the no impeachment rule. States having no statute (e.g., New York) or having a statute but no statutory exceptions are included in the "0" row.

Table 6

Mann Whitney U Test of # of State Statutory Exceptions to the No Impeachment Rule (n=32)

	Before 2010	2010-Present
N	12	20
Median	2	3
Mann-Whitney U	58	
Z	-2.595	
p	0.015	

Note. Includes only states having at least one statutory exception to the no impeachment rule. Does not include seven states for which no data on when the relevant statute was enacted or amended was available.

Table 7

Chi-Square Test of State Statutory Exceptions to the No Impeachment Rule (n=44)

	Statute Amended				
	Before 2010	2010-Present	χ^2	p	Total (%)
Exceptions					
Yes	12	20	4.919	0.027	72.7

Note. Does not include seven states for which no data on when the relevant statute was enacted or amended was available.

STATES LAWS CONCERNING JUROR IMPEACHMENT

Appendix A

State	Citation	Enacted/Amended	Chapter/Title	Article/Title
Alabama	ARE Rule 606	N/A	Witnesses	Competency of juror as witness
Alaska	Alaska Rules of Evidence, Rule 606	1994	Witnesses-Impeachment	Competency of juror as witness
Arizona	Arizona Rules of Evidence, Rule 606	2012	Witnesses	Juror's Competency as a Witness
	16A A.R.S. Rules Crim.Proc., Rule 24.1	2018		
Arkansas	A.R.E. Rule 606	N/A	Witnesses	Competency of juror as witness
California	West's Ann.Cal.Evid.Code § 1150	1967	Evidence Affected or Excluded by Extrinsic Policies	Other Evidence Affected or Excluded by Extrinsic Policies
Colorado	CRE Rule 606	2007	Witnesses	Competency of juror as witness
Connecticut	C.G.S.A. § 51-245	2012	Courts	Jurors
Delaware	D.R.E., Rule 606	2014	Witnesses	Competency of juror as witness
Florida	West's F.S.A. § 90.607	1995	Evidence Code	Competency of certain persons as witnesses
Georgia	Ga. Code Ann., § 24-6-606	2013	Witnesses Generally	General Provisions-Juror as Witness
Hawaii	HRS § 626-1, Rule 606	1984	Witnesses	Competency of juror as witness

STATES LAWS CONCERNING JUROR IMPEACHMENT

State	Citation	Amended	Chapter/Title	Article/Title
Idaho	Idaho Rules of Evidence (I.R.E.), Rule 606	1985	Witnesses	Competency of juror as witness
Illinois	Evid. Rule 606	2011	Witnesses	Competency of juror as witness
Indiana	Rules of Evid., Rule 606	2014	Witnesses	Juror's Competency as a Witness
Iowa	I.C.A. Rule 5.606	2017	Witnesses	Juror's Competency as a Witness
Kansas	K.S.A. 60-441; 444	1963	Extrinsic Policies Affecting Admissibility	Evidence to test a verdict or indictment
Kentucky	KRE Rule 606	1992	Witnesses	Competency of juror as witness
Louisiana	LSA-C.E. Art. 606	1989	Witnesses	Disqualification of juror as witness
Maine	Maine Rules of Evidence, Rule 606	2015	Witnesses	Competency of juror as witness
Maryland	MD Rules, Rule 5-606	2018	Witnesses	Competency of juror as witness
Massachusetts	MA Guide to Evidence Section 606	N/A	Witnesses	Juror's Competency as a Witness
Michigan	MI Rules MRE 606	2012	Competency of juror as witness	
Minnesota	50 M.S.A., Rules of Evid., Rule 606	2016	Witnesses	Competency of juror as witness
Mississippi	M.R.E. Rule 606	2016	Witnesses	Juror's Competency as a Witness

STATES LAWS CONCERNING JUROR IMPEACHMENT

State	Citation	Amended	Chapter/Title	Article/Title
Missouri	Courtroom Handbook On Mo. Evid. § 606.2 (2017 ed.)	N/A		
Montana	Montana Rules of Evidence, Rule 606	1990	Witnesses	Competency of juror as witness
Nebraska	Neb.Rev.St. § 27-606	1975	Witnesses	Competency of juror as witness
Nevada	N.R.S. 50.065	1971	Witnesses	General Provisions-Competency: Juror as Witness
New Hampshire	New Hampshire Rules of Evidence, Rule 606	2017	Witnesses	Juror's Competency as a Witness
New Jersey	NJ R. Evid. N.J.R.E. 606	1993	Witnesses	Restriction on juror as witness
New Mexico	NMRA, Rule 11-606	2012	Witnesses	Juror's Competency as a Witness
New York	N/A	N/A		
North Carolina	Rules of Evid., G.S. § 8C-1, Rule 606	1983	Witnesses	Competency of juror as witness
North Dakota	Rule 606, N.D.R.Ev.	2014	Witnesses	Juror's Competency as a Witness
Ohio	Evid. R. Rule 606	2007	Witnesses	Competency of juror as witness
Oklahoma	12 Okl.St.Ann. § 2606	2002	Witnesses	General Provisions-Competency of juror as witness
Oregon	O.R.S. § 40.335	1981	Witnesses	Competency of juror as witness

STATES LAWS CONCERNING JUROR IMPEACHMENT

State	Citation	Amended	Chapter/Title	Article/Title
Pennsylvania	Pa.R.E., Rule 606	2013	Witnesses	Juror's Competency as a Witness
Rhode Island	Rhode Island Rules of Evidence, Rule 606	N/A	Witnesses	Competency of juror as witness
South Carolina	Rule 606, SCRE	1995	Witnesses	Competency of juror as witness
South Dakota	SDCL § 19-19-606	2016	Witnesses	Juror's Competency as a Witness
Tennessee	Rules of Evid., Rule 606	2001	Witnesses	Competency of juror as witness
Texas	TX Rules of Evidence, Rule 606	2015	Witnesses	Juror's Competency as a Witness
Utah	Utah Rules of Evidence, Rule 606	2011	Witnesses	Juror's Competency as a Witness
Vermont	Vermont Rules of Evidence, Rule 606	2011	Witnesses	Competency of juror as witness
Virginia	Sup.Ct.Rules, Rule 2:606	2018	Witness Examination	Competency of juror as witness
Washington	Washington Rules of Evidence, ER 606	1992	Witnesses	Competency of juror as witness
West Virginia	West Virginia Rules of Evidence (WVRE), Rule 606	2014	Witnesses	Juror's Competency as a Witness
Wisconsin	W.S.A. 906.06	N/A	Evidence-Witnesses	Competency of juror as witness
Wyoming	Wyoming Rules of Evidence, Rule 606	1978	Witnesses	Competency of juror as witness

STATES LAWS CONCERNING JUROR IMPEACHMENT

State	Citation	Amended	Chapter/Title	Article/Title
US	Federal Rules of Evidence Rule 606, 28 U.S.C.A.	2011	Witnesses	Juror's Competency as a Witness