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PERSPECTIVE

What happens in the jury room

By Paul M. Smith and Ishan Bhabha

On Oct. 8, the U.S. Supreme Court heard argument in *Warger v. Shauers*, a case that presents an interesting take on the question of how closely courts can examine what takes place inside the “black box” of the jury room.

The case arose from a car accident in which a young couple hit a motorcyclist, causing injuries that eventually required the amputation of one of his legs. The motorcyclist sued the couple asserting a variety of state tort causes of action, and during voir dire the district judge inquired of potential jurors whether any of their experiences or their personal background rendered them unable to assess the merits of the case objectively. Both in response to the judge’s questions, and in response to subsequent questions asked by counsel, several potential jurors indicated that they likely could not deliver an unbiased verdict and those candidates were dismissed from the venire. The jury eventually rendered its verdict, finding the defendants not liable.

Afterward, one juror stopped by the plaintiff’s attorney’s office and complained about certain events that had taken place in the jury room. Specifically, the juror claimed that during deliberations the foreperson had informed the other jurors that her daughter had been at fault in a fatal automobile accident, and claimed that had her daughter been sued it would have “ruined her life.” The juror relaying this anecdote reported that the foreperson’s statements had influenced the other jurors who, after hearing the story, expressed concern about ruining the young couple’s life by imposing substantial liability for the accident.

Based on the affidavit from the concerned juror, the plaintiff’s coun-

sel moved for a new trial, claiming that the foreperson had been dishonest during voir dire when she claimed that she could objectively and dispassionately review the evidence and return a verdict in accordance with the law as instructed. The district court denied the motion, holding that the concerned juror’s affidavit was inadmissible under Federal Rule of Evidence 606(b). That rule provides that “[d]uring an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury’s deliberations; the effect of anything on that juror’s or another juror’s vote; or any juror’s mental processes concerning the verdict or indictment. The court may not receive a juror’s affidavit or evidence of a juror’s statement on these matters.”

The district court found that the affidavit concerned topics that fell within the ambit of Rule 606(b) and that the affidavit did not qualify for admission under one of Rule 606(b)’s enumerated exceptions, including the exception permitting a juror to testify about whether “extraneous prejudicial information was improperly brought to the jury’s attention.”

The 8th U.S. Circuit Court of Appeals affirmed, determining first there was an important distinction between “extraneous prejudicial information,” which can unseat a verdict, and a juror’s prior life experiences, which jurors unavoidably rely on during deliberations.

The Court of Appeals also rejected the defendant’s argument that the affidavit was being introduced not to challenge the verdict, but to prove that the foreperson had been dishonest during voir dire. The 8th Circuit recognized a 2-2 circuit split on the question whether testimony concerning juror dishonesty could be

introduced to challenge a verdict. In siding with courts that have deemed such testimony prohibited by Rule 606(b), the 8th Circuit noted in particular that full and frank deliberations in the jury room could be damaged by the prospect of post-verdict scrutiny by disappointed litigants. Moreover, “to achieve finality in the litigation process and avoid relentless post-verdict scrutiny and second guessing, occasional inappropriate jury deliberations must be allowed to go unremedied.”

During oral argument in the Supreme Court, the justices immediately honed in on one of the principal concerns raised by adopting the rule urged by the plaintiff, that the prospect of reversing an unfavorable verdict would be a strong incentive for enterprising lawyers to vigorously investigate jury-room deliberations hoping to discover that a juror said something in passing that might provide the basis for a claim of dishonesty. As several justices observed, statements made during voir dire could easily be twisted in such a way to suggest juror dishonesty, when the juror was drawing on entirely permissible past experiences.

Attorneys’ understandable desire to leave open opportunities for reversal in case of a unfavorable verdict would lead to several tangible practical problems. Jury service is famously unpopular in the U.S., with rates of absenteeism continually on the rise despite ever-increasing penalties for prospective jurors that fail to appear for jury service. Yet, if juror dishonesty during voir dire (when compared with statements made in the jury room) can support a new trial, then lawyers would have a powerful incentive to increase the scope and extent of voir dire to create long records of jurors’ statements that can later be compared with statements

made during deliberations. Not only would pre-trial voir dire increase in time, but after trial jurors could be harassed by lawyers seeking information about what took place in the jury room or haled into court to defend statements made during deliberations. A verdict is traditionally thought of as providing finality for litigants and jurors, and permitting the content of juror deliberations to support post-trial attacks on a verdict could substantially diminish that finality and make juror service onerous and unpopular.

A problematic scenario, touched on by several justices during argument, arises when comments during deliberations demonstrate that a juror’s verdict is based on racial, religious or ethnic prejudices. Some circuit courts have carved out a narrow constitutionally based exception to Rule 606(b) to permit evidence in these cases, and such an approach might allow the court to maintain the sanctity and security of the jury room while still preventing egregious biases and prejudices from tainting verdicts.

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