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Subject: Citations and Bullet Points Re: Juror No. 7

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KEY CASES

United States v. Symington, 195 F.3d 1080, 1085 (9th Cir. 1999) (reversing conviction because defendant's right to an impartial trial was violated when the record evidence showed a reasonable possibility that the impetus for the juror's dismissal stemmed from the juror's view on the merits of the case).

United States v. Brown, 823 F.2d 591 (D.C. Cir. 1987) (reversing conviction because defendant had been deprived of the right to a unanimous jury when the record evidence showed that the dismissed juror had serious misgivings about the adequacy of the evidence presented by the government).

United States v. Thomas, 116 F.3d 606 (2d Cir. 1997) (reversing conviction finding juror was improperly dismissed when the evidence revealed that the juror's view on the merits of the case may have been unpersuaded by the prosecution's case).

Sanders v. Lamarque, 357 F.3d 943 (9th Cir. 2004) (affirming district court's application for a writ of habeas corpus under 28 U.S.C.S. § 2254 based on the state trial court's dismissal of the lone holdout juror during the inmate's murder trial).

MAIN POINTS

1. **The Sixth Amendment Absolutely Guarantees A Defendant's Right To a Unanimous Jury**

"To remove a juror because he is unpersuaded by the Government's case is to deny the defendant his right to a unanimous verdict." *Symington*, 195 F.3d at 1085 (quoting *Thomas*, 116 F.3d 606, 621 (2d Cir. 1997)); see *Brown*, 823 F.2d at 596 ("If a court could discharge a juror on the basis of such a request, then the right to a unanimous verdict would be illusory.").

2. The Ninth Circuit prohibits the dismissal of a juror if the record evidence discloses "any reasonable possibility that the impetus for a juror's dismissal stems from the juror's views on the merits of the case." *Symington*, 195 F.3d at 1087.

A court may not dismiss a juror during deliberations if the request for discharge stems from doubts the juror harbors about the sufficiency of the evidence." *Symington*, 195 F.3d at 1085; *Brown*, 823 F.2d at 596.

"When a request for dismissal stems from the juror's view of the sufficiency of the evidence . . . , a judge may not discharge the juror: the judge must either declare a mistrial or send the juror back to deliberations with instructions that the jury continue to attempt to reach agreement." *Symington*, 195 F.3d at 1085-86 (quoting *Brown*, 823 F.2d at 596).

3. A Trial Judge May Not Compromise the Secrecy of Jury Deliberations

"[A] court may not delve deeply into a juror's motivations because it may not intrude on the secrecy of the jury's deliberations." *Symington*, 195 F.3d at 1086 (quoting *Brown*, 823 F.2d at 596); see *Thomas*, 116 F.3d at 619. There are important reasons why a trial judge must not compromise the secrecy of jury deliberations. First, if trial judges were permitted to inquire into the reasoning behind jurors' views of pending cases, "it would invite trial judges to second-guess and influence the work of the jury." *Thomas*, 116 F.3d at 620. Second, a trial judge's examination of juror deliberations risks exposing those deliberations to public scrutiny. Such exposure, in turn, would jeopardize the integrity of the deliberative process. See *id.* at 618-19. As Justice Cardozo put it, "Freedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world." *Symington*, 195 F.3d at 1086 (quoting *Clark v. United States*, 289 U.S. 1 (1933)).

"In particular, a judge is limited in the extent to which it may investigate the reasons underlying a juror's position on the merits of a case." *Thomas*, 116 F.3d at 620; *Brown*, 823 F.2d at 596 ("court may not delve deeply into a juror's motivations because it may not intrude on the secrecy of the jury's deliberations."). "The mental processes of a deliberating juror with respect to the merits of the case at hand must remain largely beyond examination and second-

guessing, shielded from scrutiny by the court as much as from the eyes and ears of the parties and the public. Were a district judge permitted to conduct intrusive inquiries into--and make extensive findings of fact concerning--the reasoning behind a juror's view of the case, or the particulars of a juror's (likely imperfect) understanding or interpretation of the law as stated by the judge, this would not only seriously breach the principle of the secrecy of jury deliberations, but it would invite trial judges to second-guess and influence the work of the jury." *Id.*

4. Dismissing a Holdout Juror Can Have a Coercive Effect on the Jury

To protect a defendant's fundamental right to a jury trial, a trial judge must give careful consideration to the dismissal of a holdout juror because of the coercive effect such a dismissal can have on the verdict. *See Duncan v. Louisiana*, 391 U.S. 145, 153-56, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968); *Brasfield v. United States*, 272 U.S. 448, 450, 71 L. Ed. 345, 47 S. Ct. 135 (1926); *Sanders v. LaMarque*, 357 F.3d 943, 944 (9th Cir. 2004) (affirming grant of habeas petition under the AEDPA where state trial judge dismissed the lone holdout juror because "removal of a holdout juror is the ultimate form of coercion"); *cf. Perez v. Marshall*, 119 F.3d 1422 (9th Cir. 1997) (affirming denial of habeas petition where state trial court dismissed holdout juror after taking significant pains to ensure that she was truly unable to continue deliberating due to her emotional state).

5. Juror #7 Is Deliberating and Challenging the Sufficiency of the Government's Case

Juror #7 has accepted the Court's admonition to follow the law and is now deliberating as indicated by the exchange set forth in the second note.

Juror #7 has stated at least two reasons for his opinion that the government's evidence is insufficient. In the first "jury request" note, the Foreperson stated that Juror #7 believes the government witnesses "never tell the truth." Given the number of government witnesses who are convicted felons or who have received some form of immunity, Juror #7's opinion is reasonable and is based on his evaluation of the testimony. Additionally, after another juror asked him what evidence he needed, he stated that he believes the government should have called Ray Turner as a witness to admit to wiretapping. Again, Juror #7's comment regarding Ray Turner directly challenges the sufficiency of the government's case. Because Juror #7 is deliberating and because he is debating about the sufficiency of the evidence, his removal would be a violation of Terry Christensen's Sixth Amendment right to a unanimous jury.

6. The Foreperson and Juror #9 Should Not Be Disclosing The Secret Deliberations of the Jury On the Merits

See: Note 3 above.