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Subject: Case authority re juror dismissal and inquiry

Dismissal of juror during deliberations

Fed. R. Crim. P. 23(b)

United States v. Symington, 195 F.3d 1080, 1085-88 (9th Cir. 1999) (juror may not be dismissed if the record evidence discloses any reasonable possibility that the impetus for dismissal stems from the juror's views on the merits of the case)

United States v. Kemp, 500 F.3d 257, 304 (3d Cir. 2007) (district court may discharge juror for bias, failure to deliberate, failure to follow the court's instructions, or jury nullification when there is no reasonable possibility that the allegations of misconduct stem from the juror's view of the evidence (adopting Ninth Circuit's standard in Symington))

United States v. Thomas, 116 F.3d 606, 617 (2d Cir. 1997) (juror who refuses to follow court's instructions on the law is subject to dismissal during the course of deliberations under Rule 23(b))

United States v. Abbell, 271 F.3d 1286, 1302 (11th Cir. 2001) ("Just cause exists to dismiss a juror when that juror refuses to apply the law or to follow the court's instructions.")

Dyer v. Calderon, 151 F.3d 970, 981-84 (9th Cir. 1998) (finding that juror's lies during voir dire warranted presumption of juror bias)

Cf. Adams v. Texas, 448 U.S. 38, 45 (1980) (in capital context, juror may be challenged for cause where his views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath)

Juror Questioning

United States v. Boone, 458 F.3d 321, 329 (3d Cir. 2006) (where credible allegations of jury nullification or of a refusal to deliberate arise during deliberations, district court may, within its sound discretion, investigate the allegations through juror questioning or other appropriate means)

United States v. Egbuniwe, 969 F.2d 757, 762 (9th Cir. 1992) (trial court is required to make independent assessment of juror's ability to render fair and impartial verdict, and

need not ask juror if he can be fair and impartial; juror's assurance that he can do so is not dispositive; court's conclusion that juror's response to court's inquiry was not credible warranted dismissal of juror during deliberations)

United States v. Beard, 161 F.3d 1190, 1193-94 (9th Cir. 1998) (affirming dismissal of two jurors due to their inability to properly deliberate after they got into disputes with each other, even though jurors said they could deliberate properly; juror's assurance that he or she can render fair and impartial verdict is not dispositive (citing Egbuniwe))

United States v. Polar, 369 F.3d 1248, 1253-54 (11th Cir. 2004) (where jurors sent three separate notes complaining of uncooperative juror, and third and final note requested that judge dismiss the juror, district court appropriately conducted one-on-one interview of juror to determine whether there was sufficient cause to dismiss juror under Fed. R. Crim. P. 23(b))

United States v. Mills, 280 F.3d 915 (9th Cir. 2002) (where one juror improperly introduced extrinsic evidence to other jurors, district court properly interviewed other jurors to determine exactly what juror said and whether other jurors could ignore her statement in deciding the case; jurors may not be questioned about deliberative process or subjective effects of extraneous information)

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