Pennsylvania's Exception to the No-Impeachment Rule regarding Jury Deliberations Affected by Extraneous Information: *Pratt v. St. Christopher's Hospital*

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Pennsylvania's Exception to the No-Impeachment Rule Regarding Jury Deliberations Affected by Extraneous Information: 

*Pratt v. St. Christopher's Hospital*

CIVIL PROCEDURE – JURY TRIAL – JURY DELIBERATION – NO-IMPEACHMENT RULE – EXCEPTION – The Pennsylvania Supreme Court adopted the objective test for prejudice, as well as the associated guidelines that are set forth in *Carter by Carter v. United States Steel Corp.*, in instances of post-verdict allegations of extraneous information and/or outside influence affecting jury deliberations.


Michael Nesmith, Jr., a six-month-old child, was very ill with a high fever and confined to a hospital bed for eight days with no prognosis.¹ Finally, on August 18, 1989, doctors informed the parents, Sharon Pratt and Michael Nesmith, Sr., that a CAT scan performed on their son revealed a rare and vicious disease.² Michael was diagnosed with a subdural empyema,³ which caused him to suffer severe brain damage.⁴ Due to Michael's permanent injury, Sharon Pratt and Michael Nesmith, Sr., on behalf of their minor son, brought a medical malpractice⁵ action against St. Christopher's Hospital.⁶ After the jury returned a verdict for the

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3. A subdural empyema is a pus formation in "an artificial space created by the separation of the arachnoid from the dura as the result of trauma or some pathologic process; in the healthy state, the arachnoid is tenuously attached to the dura and a naturally occurring subdural space is not present." *Stedman's Concise Medical Dictionary for the Health Professions* 947 (4th ed. 2001).
5. The malpractice action was based on the defendants' decision to wait eight days to order the CAT scan, which ultimately led to the proper diagnosis of Michael Nesmith, Jr. *Pratt v. St. Christopher's Hosp.*, 53 Pa. D. & C.4th 526, 528 (2001). The parents of Michael alleged the doctors' failure to timely diagnose the rare but pernicious infection was the cause of the permanent injuries Michael suffered. *Pratt*, 53 Pa. D. & C.4th at 528.
6. *Pratt v. St. Christopher's Hosp.*, 866 A.2d 313, 314 (Pa. 2005). The original defendants to this action included St. Christopher's Hospital, Ronald Souder, M.D., Margaret Fisher, M.D., Covenant House Health Services, Covenant House, Inc., Germantown Hospi-
defense, the trial court granted Pratt a new trial because St. Christopher's counsel used racially biased peremptory challenges and because the jury's verdict was against the clear weight of the evidence. The second trial of this case resulted in the entry of a judgment in favor of St. Christopher's Hospital. Polling of the jurors after the trial confirmed that ten of the twelve jurors supported the verdict.

Nearly two weeks after the verdict, the trial court received a letter from Juror 10 stating that during jury deliberation some of the jurors had discussed the case with extrinsic medical profes-

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7. Brief for Appellees at 3, Pratt v. St. Christopher's Hosp., 866 A.2d 313 (Pa. 2005) (No. 30 EAP 2004). This case first went to trial on November 13, 1995, before Judge Ribner, and the jury returned a defense verdict on November 27, 1995. Brief for Appellees at 3, Pratt (No. 30 EAP 2004). Pratt filed post-trial relief seeking Judgment N.O.V. Id. The trial court granted Pratt a new trial in an opinion dated June 30, 1997, asserting that St. Christopher's counsel's use of peremptory challenges were racially biased and the jury's verdict was against the clear weight of the evidence. Id. After an appeal to the superior court affirming the trial judge's opinion that the verdict was against the weight of the evidence, this case went to trial before the Honorable Judge Dinubile on January 29, 2001, in the Court of Common Pleas of Philadelphia County. Id.


9. Pratt, 866 A.2d at 314. “In any civil case a verdict rendered by at least five-sixths of the jury shall be the verdict of the jury and shall have the same effect as a unanimous verdict of the jury.” 42 PA. CONS. STAT. § 5104(b) (2004).

10. Juror 10's letter stated as follows:

I served as Juror No. 10 in a medical malpractice trial in your courtroom that began on January 29, 2001 and ended with a verdict in favor of the defense on February 7, 2001. I am distressed by the conduct of some of my fellow jurors and feel an obligation to tell you what occurred.

I want to stress that I believe that my fellow jurors worked hard to reach what they believed was a proper verdict, but I think that they relied inappropriately on information they gathered from sources outside the courtroom to reach that verdict. Beginning during the trial and continuing through deliberations, some of the jurors reported that they had spoken to various people such as relatives and friends involved in the medical profession and their own personal physicians to get their opinions regarding whether a CAT scan should have been performed earlier, whether a meningitis test and CAT scan should have been performed at the same time and whether this was the standard of care in 1989. Two of the jurors reported conversations with multiple medical professionals that occurred on the first evening of deliberations. I believe that the opinions these jurors obtained from the outside sources influenced the verdict because the jurors discussed these outside opinions during deliberations and stated that their conversations with the medical professionals either confirmed the jurors' own opinions or changed the jurors' minds.

I have been troubled about the manner in which the verdict was reached because I am aware that jurors are supposed to decide cases based only upon the evidence that comes in during trial and not conduct their own research into the issues presented. I regret that I did not report this to you during the trial.

Pratt, 866 A.2d at 314-15.
sionals known to the jurors. Juror 10 also set forth in the letter her belief that the improper contacts with the outside medical professionals had influenced the decision of several of the jurors. The trial court then distributed copies of the letter to all counsel. After evaluating the letter, Pratt's counsel filed the appropriate post-trial motions, nunc pro tunc, requesting either a new trial or a hearing on the issue. The trial court refused to grant a new trial or a hearing and entered judgment on the verdict. The trial judge, despite recognizing the existence of a narrow exception to the no-impeachment rule, held that the information set forth in Juror 10's letter did not contain a sufficient indication of prejudice. The Pennsylvania Superior Court reversed and remanded the decision for completion of the hearing, holding that the trial court abused its discretion. Judge Del Sole, writing for the majority, believed the trial court failed to consider the effect that the extraneous influence may have had on the jury deliberation process. The majority opinion also emphasized that Juror 10's testimony, which Pratt's counsel wanted to expound on through a hearing, fell squarely within the exception to the no-impeachment rule. The superior court majority relied on the plurality opinion in Carter by Carter v. United States Steel Corp. that suggested guidelines for determining when to permit post-verdict testimony

11. Id. Pamela Toller, who was originally an alternate, was Juror 10. Pratt, 53 Pa. D. & C.4th at 529-30. Ms. Toller became a member of the jury due to the excusal of an original juror. Id.
13. Id.
15. Pratt, 866 A.2d at 315.
16. Id. The trial court relied on Carter by Carter v. United States Steel Corp., 604 A.2d 1010 (Pa. 1992) (plurality), and Orndoff v. Wilson, 760 A.2d 1 (Pa. Super. Ct. 2000), as depicting a common law no-impeachment rule which provided for the preclusion of juror testimony about their mental process connected with deliberations. Id.
18. Pratt, 866 A.2d at 316.
19. Id.
20. Id. See also Pratt, 824 A.2d at 302. "Testimony that jurors sought outside information regarding the standard of care to be followed by health professionals and discussed it during deliberations is not testimony of the jury's reasoning process; rather it is testimony of overt conduct." Pratt, 824 A.2d at 302.
22. Carter's suggested guidelines entail consideration of: (1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; (2) whether the extraneous influence provide the jury with information they did not have be-
regarding the existence of extraneous influences that may have prejudiced deliberation. Judge Del Sole noted that Juror 10 asserted there was inappropriate outside information solicited by some jurors, which directly related to the central issue of whether the defendants were negligent in failing to order the CAT scan at an earlier time. When the court applied the facts of the case to the *Carter* three-prong test, it concluded that prejudice was implicated, notwithstanding the extensive expert testimony relating to the central issue presented by both sides at trial. The majority found it troublesome that jurors allegedly obtained the extraneous information from individuals in whom they trusted.

On May 19, 2004, the petition for Allowance of Appeal to the Pennsylvania Supreme Court was granted. The appeal was limited to the issue of applying the no-impeachment rule to post-verdict testimony by jurors. Justice Saylor, writing for the majority, affirmed the superior court’s decision, and for the first time the court adopted the objective test for prejudice and the guidelines set forth in the *Carter* plurality opinion to govern instances of post-verdict allegations of jury deliberations affected by extraneous information and outside influence.

The majority’s analysis began with a recitation of the arguments presented in each party’s brief. The court then indicated

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24. *Id.*
26. *Pratt*, 866 A.2d at 316-17. The majority explained its reasoning: The jurors, by seeking an opinion from an outside source, sought an opinion from someone whom they found to be personally credible, on the core issue in the case. In essence, the jurors at issue sought out a third party’s opinion on which testimony was presented at trial to accept. Human experience dictates that an individual will more heavily weight an opinion from an individual known to them, than an opinion given by a complete stranger. In this case, the two jurors in essence sought out their own expert testimony, which necessarily served to support one of the two sides at trial. *Id.* (quoting *Pratt*, 834 A.2d at 305).
29. *Id.* at 324.
30. *Id.* at 318-19. St. Christopher’s Hospital argued that the superior court erred in holding that the trial court should have conducted an evidentiary hearing and by limiting the common pleas court, on remand, to determining whether the jurors had been exposed to
where the parties agreed and where they differed in respect to the application of the law.\textsuperscript{31} Both parties acknowledged the common framework regarding the admissibility of post-verdict juror testimony as well developed and embodied in Pennsylvania Rule of Evidence 606(b).\textsuperscript{32} However, their divergence involved the prevailing exceptions to the no-impeachment rule, relating to prejudicial facts not introduced at trial, facts beyond common knowledge and experience, and information provided by outside influences.\textsuperscript{33} Despite the broadness of the general rule that a juror is not competent to testify regarding jury room occurrences,\textsuperscript{34} Justice Saylor found the exceptions to the rule clearly hold that the content of the testimony determines whether the testimony is allowable.\textsuperscript{35} The majority held that the content of the letter in the present case was exactly the type of testimony that would implicate the exception to the no-impeachment rule.\textsuperscript{36} Justice Saylor noted that accepting St. Christopher's argument or the holding of the trial court

outside sources of information, and if so, mandating a new trial without consideration of any prejudice to the Appellees. Brief for Appellants at 10-24, Pratt v. St. Christopher's Hosp., 866 A.2d 313 (Pa. 2005) (No. 30 EAP 2004). Pratt argued the superior court correctly held that the trial court must conduct an evidentiary hearing to determine whether the jury's verdict was tainted as a result of outside information and the superior court appropriately remanded the instant case to the trial court. Brief for Appellees at 7-21, Pratt (No. 30 EAP 2004).

31. Pratt, 866 A.2d at 319.
32. Id. at 319. Pennsylvania Rule of Evidence 606(b) provides:

\begin{quote}
Upon an inquiry into the validity of a verdict . . . a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions in reaching a decision upon the verdict or concerning the juror's mental processes in connection therewith, and a juror's affidavit or evidence of any statement by the juror about any of these subjects may not be received. However, a juror may testify concerning whether prejudicial facts not of record, and beyond common knowledge of experience, were improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.
\end{quote}

PA. R. EVID. 606(b).

33. Pratt, 866 A.2d at 319.
34. See Friedman v. Ralph Bros., Inc., 171 A. 900, 901 (Pa. 1934). "[W]e cannot accept the statement of jurors as to what transpired in the jury room as to the propriety or impropriety of a juror's conduct." Id.

35. Pratt, 866 A.2d at 320. The Pennsylvania Supreme Court noted that the no-impeachment rule and its exception both reflect a policy decision aimed at weighing the interests in confidentiality of jury deliberations and finality of duly rendered verdicts with the ideal of ensuring fair and impartial decision-making. Id. at 319-20.

36. Id. at 321. The court agreed with the superior court's conclusion that the circumstances of the case implicated the extraneous-information exception. Id. See also Commonwealth v. Sero, 387 A.2d 63, 67 (Pa. 1978).
practically places all jury verdicts out of reach, even in cases where the jury deliberations are tainted by extraneous sources. 37

The court also stressed the rationale behind using the limited-scope objective test advanced in Carter's plurality opinion for evaluating the impact of extraneous information and outside influence. 38 The objective test and guidelines 39 provide a method for determining whether juror testimony should be permitted without conducting an inquiry into the subjective mental processes of the jurors. 40 The avoidance of the subjective mental process is an essential aspect of the objective test because any method using a subjective analysis is clearly forbidden. 41

While applying the facts of the case to the objective test, Justice Saylor acknowledged St. Christopher's argument that Juror 10's letter lacked the specificity required to establish a level of prejudice necessary to disturb the verdict. 42 However, Justice Saylor noted that the letter unquestionably implied that a majority of the jurors relied upon information shown to be unfavorable to Pratt's primary argument. 43 Due to public policy concerns, the court also discouraged "pointed, post-verdict discussions between disappointed litigants and discharged jurors that are specifically directed toward collecting evidence with which to impeach the verdict." 44 Despite the court's own constraints placed on interviewing jurors after a verdict, the majority held that Juror 10's letter was at least sufficient to warrant the further investigation that Pratt had requested. 45 Additionally, Justice Saylor expressed that the close bond between the source of the outside information and the jurors who sought the input was the key element that differenti-

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37. Pratt, 866 A.2d at 321-22. The majority stated, "[t]he trial court essentially adopted [St. Christopher's] position that the inability to conduct a post-verdict inquiry into the mental processes of the jurors forecloses a meaningful prejudice assessment." Id. at 321.

38. Id. at 322.

39. See supra text accompanying note 22.

40. Pratt, 866 A.2d at 322.

41. Id. at 320. Pennsylvania Rule of Evidence 606(b) precludes any analysis of prejudice that is based on subjective information obtained from actual jurors. Id.

42. Id. at 322-23. "For example, Juror 10's letter is not specific in terms of whether the extra-record information allegedly communicated to jurors was favorable or unfavorable to [Pratt's] position as plaintiff's or whether it was received by majority or minority jurors." Id. at 323.

43. Id. at 323.


45. Pratt, 866 A.2d at 323.
ated the evidence presented at trial and the extraneous information discussed in Juror 10's letter.\footnote{Id.}

Although the Pennsylvania Supreme Court affirmed the decision of the superior court, the majority distinguished the current holding from the lower court's decision.\footnote{Pratt, 866 A.2d at 323.}
The supreme court disagreed with the superior court's finding that prejudice would be established by the mere confirmation of the allegations set forth in Juror 10's letter.\footnote{Id. at 323-24.} Justice Saylor noted that fair application of the objective inquiry set forth in \textit{Carter} called for exploration of the key assertions made by Juror 10.\footnote{Id. at 323.} According to the majority opinion, details important to establishing prejudice were factors such as the character and extent of extraneous information conveyed.\footnote{Id. at 324.}
The majority also noted the importance in determining the extent that the extraneous information provided to jurors overlapped with evidence and testimony presented at trial.\footnote{Id. at 324.}

The Pennsylvania Supreme Court held, in the post-verdict arena, "that the interest in finality weighs substantially in favor of evidentiary development and factual determination."\footnote{Id.} However, Justice Saylor expressed in the opinion of the majority that the burden of proof remains in the hands of the party contesting the verdict.\footnote{Pratt, 866 A.2d at 324.}

The majority, in the final part of the opinion, sustained the superior court's holding that the trial court abused its discretion by refusing the requested evidentiary hearing.\footnote{Id.} Justice Saylor stressed, however, that the impartial application of the objective inquiry into jury deliberation would remain in the sound discre-
tion of the trial courts. The Pennsylvania Supreme Court also adopted the objective test and associated guidelines, as set forth by the Carter plurality. The Pratt majority held that the test and related guidelines apply when determining whether an exception to the no-impeachment rule exists "in instances of post-verdict allegations of extraneous information and/or outside influence affecting jury deliberations." The only member of the Pennsylvania Supreme Court to disagree with the majority's application of the Carter test and guidelines in the Pratt decision was Justice Newman.

Justice Newman began her dissent by providing a brief history of the jury system. Justice Newman believed that the majority erred by granting a hearing based on unsupported allegations of extraneous evidence. Specifically, she relied on two well-established principles of law to support her dissent. The first rule involved the burden placed on the courts to protect jury verdicts from unwarranted intrusions. The second recognized principle pertained to trial judges having broad discretion in determining how to respond to allegations of extraneous influence on jurors. Justice Newman additionally noted that Juror 10's letter was not adequate to implicate the exception to the no-impeachment rule because it failed to present any detail pertaining to whether the extrinsic information received was distinguishable from the information provided during the trial. Justice Newman found that the letter failed to provide adequate evidence of potential prejudice and lacked the authenticity and reliability of

56. Id.
57. Pratt, 866 A.2d at 324.
58. Id.
59. Id.
60. Id. (Newman, J., dissenting). Justice Newman stated that Thomas Jefferson described the jury system as "the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution." Id. (citing 15 Papers of Thomas Jefferson 269 (1958)).
61. Id.
63. Id. at 324-25. Justice Newman noted that the rule regarding juror impeachment of their own verdict was set forth in order to discourage losing parties from harassing jurors, preserve verdict finality, proscribe jury tampering, and promote free and open discussion amongst jurors. Id. (citing Carter, 604 A.2d at 1013).
64. Pratt, 866 A.2d at 325 (Newman, J., dissenting). Justice Newman stated: "[T]he rule is justified by the fact that the trial judge is in a better position than the appellate court to decide the question of prejudice because of his or her first-hand knowledge of the relevant facts and evidence." Id.
65. Id. at 325-26.
an affidavit.\textsuperscript{66} It was her opinion that the letter vaguely alleged that information was solicited by jurors regarding a complex issue presented at trial and that the letter was not sufficient to prolong the process of this case even further.\textsuperscript{67}

The disagreement between Justice Newman and the majority concerning the no-impeachment rule can be traced to a 1785 English decision in which Lord Mansfield refused to adhere to the early common law.\textsuperscript{68} At early common law, the rule was that "testimony or affidavits of jurors could be received on a motion for a new trial based on misconduct in the jury."\textsuperscript{69} Then in 1785, Lord Mansfield, in \textit{Vaise v. Delaval},\textsuperscript{70} refused to consider affidavits showing that the jurors had agreed on a verdict by lot on the ground that "a witness shall not be heard to allege his own turpitude."\textsuperscript{71} Following this historic decision, the rule to bar juror testimony became known as the Mansfield Rule.\textsuperscript{72} It was not long before the rule prevailed in England and was adopted by the courts in the United States.\textsuperscript{73} A majority of American jurisdictions still follow the rule today, despite questions regarding Lord Mansfield's rationale and a lack of supporting precedent.\textsuperscript{74}

Many jurisdictions have attempted to ameliorate the harshness of the Mansfield Rule by allowing jurors to introduce certain types

\textsuperscript{66} \textit{Id.}\textsuperscript{67} \textit{Id. at 326-28.} Justice Newman noted that the majority was wrong to require a remand for hearing in the case to determine whether uncorroborated allegations of extrinsic evidence required another trial, after fifteen years of litigation and more than three years from the final appealable verdict. \textit{Id. at 325.}\textsuperscript{68} \textit{Vaise v. Delaval, 1 Term R. 11, 99 Eng. Rep. 944 (K.B. 1785). See also Jack H. Friedenthal, Mary K. Kane, & Arthur R. Miller, Civil Procedure \$ 12.5 (3d ed. 1999).}\textsuperscript{69} Wayne R. LaFarve, Jerold H. Israel, & Nancy J. King, Criminal Procedure \$ 24.9(g) (3d ed. Supp. 2005).\textsuperscript{70} 99 Eng Rep. 944.\textsuperscript{71} \textit{Vaise, 99 Eng Rep. 944.} Wigmore described this as the doctrine of \textit{nemo turpitudinem suam alleges audietur} (a witness shall not be heard to allege his own turpitude). \textit{8 John Henry Wigmore, A Treatise on the Anglo-American System of Evidence in the Common Law} \$ 2352 (3d ed. 1940).\textsuperscript{72} \textit{Friedenthal et al., supra note 68.}\textsuperscript{73} \textit{John Henry Wigmore, Evidence in Trials at Common Law} \$ 2352 (John T. McNaughton rev. ed. 1961). \textit{See also Pittsburgh Nat'l Bank v. Mutual Life Ins. Co. of NY, 425 A.2d 383, 84 (Pa. 1981).} The Mansfield Rule became the majority rule in the United States, but subsequently was challenged by some commentators and courts who questioned its harsh results and basic assumptions. \textit{Pittsburgh Nat'l Bank, 425 A.2d at 384-85.}\textsuperscript{74} \textit{Pittsburgh Nat'l Bank, 425 A.2d at 385.} Because of the criticism of Lord Mansfield's approach, a minority of states have adopted a view known as the Iowa rule. \textit{Id.} (citing Wright v. Illinois & Mississippi Telegraph Co., 20 Iowa 195, 210 (Iowa 1866)). The Iowa rule holds that juror's affidavits will be admitted as to facts that do not inhere in the verdict. \textit{Pittsburgh Nat'l Bank, 425 A.2d at 385.}
of information. Several different forms of the no-impeachment rule have evolved from the Mansfield Rule in this country, but, in general, a distinction is made between jury mistakes or misconduct during deliberations and improper outside influences impressed upon jurors. Jurors may use affidavits to testify as to overt acts, more commonly referred to as extraneous prejudicial information that may have prejudiced the jury. In Mattox v. United States, the Supreme Court significantly deviated from the Mansfield Rule against impeachment of a jury's verdict. The Court stated that "a juryman may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind" or as to "the motives and influences which affected [the jury's] deliberations."

The legislative history of Rule 606(b) of the Federal Rules of Evidence reflects a combination of the Mansfield Rule and the exception established in Mattox. During the construction of Rule 606(b), there was a debate over whether to adopt the more expansive policy of the Iowa rule or to adopt Mattox's stricter "external influences" approach. The Iowa rule, derived from Wright v. Illinois & Mississippi Telegraph Co., precludes only testimony regarding the effect of statements made during deliberations on the juror's mind or the jury's decision. The opposing Mattox view permits only jury testimony concerning external influences operating on jurors. The House Judiciary Committee sought incorporation of the Iowa rule, whereas the Senate Judiciary Committee

75. FRIEDENTHAL ET AL., supra note 68. Although, the information is still tightly restricted and the inquiry into the mental processes of the jurors or the effects of certain matters on the jury's mental processes is still excluded. Id.
76. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, FEDERAL EVIDENCE § 247 (2d ed. 1994). "[T]he losing party cannot, in order to secure a new trial, use the testimony of jurors to impeach their verdict." McDonald v. Pless, 238 U.S. 264, 269 (1915).
77. The phrase "extraneous prejudicial information" is often used instead of the term "overt acts" in an attempt to avoid the difficulty of defining an act. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, supra note 76.
78. Id.
79. 146 U.S. 140, 149 (1892).
80. Mattox, 146 U.S. at 149.
81. Id. See also Hyde v. United States, 225 U.S. 347 (1912).
83. Id.
84. Wright, 20 Iowa at 210.
85. Id.
86. Mattox, 146 U.S. at 149.
was in favor of the stricter approach introduced by *Mattox.*\(^{87}\) The Conference Committee integrated the Senate Judiciary Committee's more restrictive protection of a jury's deliberations into Rule 606(b) in order to avoid contested verdicts.\(^{88}\) This integration of the stricter protection allowed testimony about extraneous prejudicial information or outside influences, but forbade any testimony regarding statements made during deliberations.\(^{89}\) The allowance of juror testimony regarding the existence of extraneous influence is commonly referred to as an exception to the no-impeachment rule.\(^{90}\)

A range of commentators have observed that the extraneous influence exception derives from an early Massachusetts decision, *Woodward v. Leavitt.*\(^{91}\) In *Woodward,* the majority of the Massachusetts Supreme Court held that "[a] juryman may testify to any facts bearing upon the question of the existence of the disturbing influence, but he cannot be permitted to testify how far that influence operated upon his mind."\(^{92}\) Most jurisdictions following this

89. Markovitz, supra note 82.
90. Pratt, 866 A.2d at 320. The differences and similarities between the Iowa Rule and the federal rule are as follows:
Like the Iowa Rule, the extraneous influence rule excludes evidence of beliefs, intentions, motives, and misunderstandings of jurors, and permits evidence of improper contact with third parties or exposure to unauthorized evidence; unlike the Iowa Rule, however, the federal rule excludes evidence that the jury reached a verdict by chance, or that the jurors used a quotient method to calculate damages.

*Id.* (quoting Mark Cammack, Comment, *The Jurisprudence of Jury Trials: The No Impeachment Rule and the Conditions for Legitimate Legal Decisionmaking,* 64 U. COLO. L.REV. 57, 68 (1993)).
92. Woodward, 107 Mass. at 466. The Woodward court emphasized the importance of jurors not testifying about the subjective thoughts involved in deliberations through the following:
But where evidence has been introduced tending to show that, without authority of law, but without any fault of either party or his agent, a paper was communicated to the jury, which might have influenced their minds, the testimony of the jurors is admissible to disprove that the paper was communicated to them, though not to show whether it did or did not influence their deliberations and decision.
approach to the no-impeachment rule and exceptions do not all agree on what constitutes an “overt act” or “extraneous prejudicial information.” No concrete answer exists as to what evidence may be used to impeach the verdict, and there has been no common agreement as to exactly what should be permitted and what precluded. Thus, this area of law is one in which it is especially important to review the law in each state.

Pennsylvania is a state that follows the majority rule providing an evidentiary bar against the admissibility of testimony of a discharged juror as to what occurred among the jurors in the jury room. However, Pennsylvania is also one of many states that recognizes a narrow exception to the no-impeachment rule by allowing post-trial testimony of extraneous influences that might have affected the jury during its deliberations. A review of Pennsylvania jurisprudence shows that, as early as 1822, courts in the Commonwealth have recognized exceptions to the no-impeachment rule.

In *Ritchie v. Holbrooke*, jurors were permitted to testify that, after the jury had received the charge of the court and retired to consider their verdict, the foreman of the jury declared that the plaintiff had provided him with answers to his questions in a conversation which he had with him, out of court, and after the jury had been sworn. In another case, there was an allegation that the jury foreman made an unauthorized visit to the accident scene, took measurements, and told his fellow jurors about his findings. The Pennsylvania Supreme Court, applying the no-impeachment rule, held that the post-verdict testimony depicting the foreman’s actions was inadmissible because the information conveyed to the other jurors was information already in evidence. The majority stated that “only in clear cases of improper

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93. FRIEDENTHAL ET AL, supra note 68.
94. Id.
95. Id.
96. Sero, 387 A.2d at 63.
97. Id. at 67.
100. Id. at 459.
101. Friedman, 171 A. at 901.
102. Id. The issue here was that the foreman measured some distances at the scene of the accident; but this could not have influenced the jury for it appears the distances were all in evidence and all the facts which the juror may have reported were properly before the jury. Id.
conduct by jurors, evidenced by competent testimony, should a verdict which is fully supported by the evidence be set aside and a new trial granted."\textsuperscript{103} Later, in \textit{Welshire v. Bruaw},\textsuperscript{104} the Pennsylvania Supreme Court allowed jurors to testify against a tipstaff who coerced a number of jurors to bring in a verdict by a certain hour.\textsuperscript{105} The majority held that misconduct of a third party in relation to jury deliberations is not subject matter barred by the no-impeachment rule.\textsuperscript{106}

More recent Pennsylvania Supreme Court jurisprudence shows a strict adherence to the no-impeachment rule, albeit with a narrow exception.\textsuperscript{107} Beginning in 1970, in \textit{Commonwealth v. Zlatovich},\textsuperscript{108} the court refused to permit a post-trial evidentiary hearing in relation to a post-trial remark published in a newspaper.\textsuperscript{109} The court concluded that, even if the juror would be able to reiterate the statement attributed to him in the newspaper account, such testimony, "concerned as it was with the motives and reasoning processes behind the jury's verdict, would be inadmissible."\textsuperscript{110} However, the majority opinion noted, "[W]e permit discharged jurors to testify as to the existence of outside influences during their deliberation."\textsuperscript{111}

Later, in \textit{Commonwealth v. Sero},\textsuperscript{112} post-verdict testimony consisted of a statement by one juror regarding another juror's husband who had communicated information concerning the defendant's interest in Bible study after being charged with his wife's murder.\textsuperscript{113} Justice Manderino, writing for the majority, held that the testimony of the alleged juror misconduct was admissible.\textsuperscript{114} The majority based the admissibility of the misconduct on the concept of third-party misconduct being the precise evil the exception to the no-impeachment rule intended to prevent.\textsuperscript{115}

\begin{itemize}
\item \textsuperscript{103} \textit{Id.}
\item \textsuperscript{104} 200 A. 67 (Pa. 1938).
\item \textsuperscript{105} \textit{Welshire}, 200 A. at 88
\item \textsuperscript{106} \textit{Id.}
\item \textsuperscript{108} 269 A.2d 469 (Pa. 1970).
\item \textsuperscript{109} \textit{Zlatovich}, 269 A.2d at 473.
\item \textsuperscript{110} \textit{Id.}
\item \textsuperscript{111} \textit{Id.}
\item \textsuperscript{112} 387 A.2d 63, 67 (Pa. 1978).
\item \textsuperscript{113} \textit{Sero}, 387 A.2d at 66-67.
\item \textsuperscript{114} \textit{Id.}
\item \textsuperscript{115} \textit{Id.} "[I]nformation, if prejudicial, that reaches a juror through a third party is precisely the evil our exception to the no impeachment rule is intended to obviate." \textit{Id.} Although testimony of the alleged juror misconduct was admissible, the conduct was not
In *Pittsburgh Nat'l Bank v. Mutual Life Ins. Co. of NY*, a case comparable to *Friedman v. Ralph Bros., Inc.*, a juror visited a car dealership and inspected a vehicle similar to the one involved in the case. While acknowledging the exception to the no-impeachment rule, the court held the post-verdict testimony to be inadmissible by finding *Friedman* controlling.

One view resulting from the above cases is that they stand for the principle that the only evidence that may be the subject of post-verdict testimony is improper conduct by third parties. However, the *Carter* plurality opinion emphasized that no such holding emerges from these cases. The plurality in *Carter* acknowledged that despite the importance given to improper third party conduct, what results from the case history is the need to "analyze the facts and circumstances of each case with the goal of protecting the sanctity of the jury's verdict and at the same time preventing injustice."

In 1992, the Pennsylvania Supreme Court, through its plurality decision in *Carter*, established an objective test and suggested guidelines to establish the existence of extraneous influences that might have affected the jury deliberations. *Carter* involved a teenager who climbed an electrical transmission tower at the United States Steel Corporation's Carrie Furnace Works. While climbing, the teenager grabbed onto a high voltage wire and was electrocuted. Prior to reaching a verdict, members of the jury sufficient to warrant the grant of a new trial, since the information did not "create the potential for prejudice that we have said can emasculate a jury's impartiality and indifference, thus mandating a new trial." *Id.*

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117. 171 A. 900 (Pa. 1934).
118. *Pittsburgh Nat'l Bank*, 425 A.2d at 384. When Carmen A. DeChesaro's car went off the road the seat/should belt strangulated him to death and his life insurance carrier refused to pay the benefits and face amounts related to his policies because they viewed his death was the result of suicide. *Id.*
119. *Id.* at 386.
120. *Carter*, 604 A.2d at 1015.
121. *Id.*
122. *Id.* "We can maintain the viability of the jury as a judicial decision making body only by guaranteeing that a verdict is reached by evidence and argument in open court, not by outside influences that might strip the jury of the impartiality we demand." *Id.* (citing *Sero*, 387 A.2d at 67). When determining if an exception to the no-impeachment rule exists, the court noted that it makes no difference whether a case is criminal or civil, because both deserve a commitment to fairness. *Carter*, 604 A.2d at 1014.
123. *Pratt*, 866 A.2d at 315.
125. *Id.* Andrew Carter's injuries resulted in amputation of his left forearm and one of his toes. *Id.* at 1010. Carter's parent and natural guardian brought an action against the
were exposed to a television news segment that summarized the contents of an article that appeared in the morning's newspaper. The trial court granted the United States Steel Corporation (USX) a new trial, concluding that the news segment viewed and discussed by jurors during deliberations was prejudicial.

On appeal to the Supreme Court of Pennsylvania, the primary issue became whether the broadcast was a proper basis for impeaching the jury's verdict. The plurality opinion in *Carter* first established that an objective test was essential to determine whether an extraneous influence is prejudicial. The objective test requires a trial judge to determine how an objective, typical juror would be affected by such an influence. Next, the plurality adopted guidelines for determining the reasonable likelihood of prejudice. Following these guidelines, the trial judge should consider "(1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; (2) whether the extraneous influence provided the jury with information they did not have before them at trial; and (3) whether the extraneous influence was emotional or inflammatory in nature."

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United States Steel Corporation (USX) pursuant to the *Restatement (Second) of Torts* § 339 (1965), "Artificial Conditions Highly Dangerous to Trespassing Children." *Id.*

126. *Id.* During its 6:00 p.m. news program, WTAE, a local television station, broadcast the following story:

The parents of an electrocuted sixteen-year-old are suing USX Corporation. Orlando Dudley died October 4th, 1986 when he touched a live wire in the Carrie Furnace Mill. The North Braddock boy was searching for copper wire. His parents claim USX was negligent because it did not warn of electrical dangers. They say the company should have posted danger signs after another boy lost a hand and part of his foot in a similar 1984 electrocution there.

*Id.*

127. *Id.* The Pennsylvania Superior Court then reversed the grant of a new trial. *Id.* The case was then reargued before the superior court sitting en banc, and the order granting a new trial was affirmed by a divided court. *Id.*

128. *Id.* "Although testimony as to the subjective reasoning process of the jurors is inadmissible, there remains a question as to the admissibility of testimony that the broadcast was seen by two of the jurors and communicated to other jurors during deliberations." *Id.* at 1014.


130. *Id.* See generally *Weinstein & Berger, Weinstein's Evidence* § 606(b) (1985 & May cum. supp.).

131. *Carter*, 604 A.2d at 1016. The court began its consideration of the proper standard of prejudice by examining its prior decision in *Commonwealth v. Bradley*, 459 A.2d 733 (Pa. 1983). *Id.* In *Bradley*, the court adopted a rule to be applied to both civil and criminal cases that would grant a new trial only where there is a reasonable likelihood of prejudice. *Id.* (citing *Bradley*, 459 A.2d at 733).

132. *Carter*, 604 A.2d at 1016. The majority opinion stressed the notion that the three considerations listed here are not intended as a "three-part-test" or a "rule." *Id.* at 1016 n.7.
In *Pratt*, Justice Saylor correctly selected the *Carter* guidelines as a useful starting place for conducting the essential inquiry into the existence of prejudice.\(^{133}\) Additionally, the majority appropriately found the objective test to be the "prevailing methodology" for assessing the impact of extraneous information and outside influence.\(^{134}\) The court clearly recognized the need to evaluate assertions of prejudice while protecting the sanctity of the jury deliberations.\(^{135}\) Review of case history and evidence rules show a complete bar on queries into the subjective mental processes of the jurors.\(^ {136}\) Despite this complete bar, the past has also presented the reoccurring need to prevent the injustice often created by extraneous information.\(^ {137}\)

In relation to this case, the effect of the Pennsylvania Supreme Court's ruling on St. Christopher's is certainly a harsh one. After fifteen years of litigation and more than three years after the final appealable verdict, St. Christopher's must again prepare to defend itself.\(^ {138}\) Justice Newman accurately noted in her dissent that "it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote."\(^ {139}\) However, the majority found an absolute need for a balance between competing policies of fairness and verdict finality.\(^ {140}\) While considering the significant passage of time from the initial trial, the majority fittingly believed "that the interest in finality weighs substantially in favor of evidentiary development and factual determination, with the burden of proof allocated to the party contesting the verdict."\(^ {141}\)

In relation to future inquiries into jury deliberations, the *Pratt* ruling may hinder the finality of jury verdicts, but the ruling will certainly help to curb the use of prejudicial extraneous information by jurors. Many critics of the law's impact on the "medical malpractice crisis" would suggest that this ruling is just another dagger to the side of an already beleaguered medical system. Other critics will suggest that this holding is another reason for medical insurers to, once again, raise premiums for malpractice

\(^{133}\) *Pratt*, 866 A.2d at 322.
\(^{134}\) Id.
\(^{135}\) Id. at 323.
\(^{136}\) See, e.g., FED. R. EVID. 606(b); PA. R. EVID. 606(b); *Pratt*, 866 A.2d at 315-16.
\(^{137}\) See, e.g., Welshire v. Bruaw, 200 A. 67, 68 (Pa. 1938); *Carter*, 604 A.2d at 1014, n 3.
\(^{138}\) *Pratt*, 866 A.2d at 324.
\(^{139}\) Id. at 328.
\(^{140}\) Id. at 323.
\(^{141}\) Id.
insurance. Admittedly, at first glance it does appear the Pratt decision will significantly increase the cost of litigation. Additionally, it seems that Pratt provides plaintiffs with yet another weapon against the medical field, but as time progresses, this ruling may help to alleviate a major burden on obtaining jury verdicts that are suitable for the exact circumstances of the case at hand.

Despite the burden placed on St. Christopher's in this case, many hospitals, doctors, pharmacists, and other medical professionals stand to benefit from the ruling in Pratt. Just as law libraries across the country fill their shelves with differing opinions on legal matters, the bookcases in any medical library are filled with scholarly journals and books from experts across the world with opposing views and explanations. As Justice Newman noted in Toogood v. Rogal, "medicine is not an exact science," and in order to understand the applicable standards of care, a specialized understanding of the subject matter is required. In medical malpractice cases, the outside medical professional, who is not privy to facts of the case and provides his or her opinion to a juror, is comparable to the back seat driver or an armchair quarterback. Had the majority in Pratt ruled otherwise, they would have been permitting the use of outside medical professionals chosen specifically by the jurors. Some jurors, as in Pratt, may rely on their own family physician, or in other cases, jurors may choose to talk with a relative who is a nurse or technician. Essentially, professionals outside the realm of the case are injecting their opinions into jury deliberations which ultimately affects the entire legal system and the lives of those involved. Allowing jurors to rely on opinions of outsiders to the case significantly undermines the rules of evidence and particularly Justice Newman's ruling in Toogood, which stressed the importance of the expert witness in medical malpractice cases.

Moving beyond the medial malpractice arena, the holding in Pratt influences both general civil procedure and criminal procedure by giving the trial judges mandatory guidelines and a test

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142. 824 A.2d 1140 (Pa. 2003). In Toogood, the Pennsylvania Supreme Court held that, in order for a plaintiff to establish a prima facie case for medical malpractice, despite the use of res ipsa loquitur, the plaintiff must offer expert medical testimony to establish the physician's standard of care and the breach of that standard. Toogood, 824 A.2d at 1151.
143. Toogood, 824 A.2d at 1151.
144. Id.
regarding extraneous prejudicial influences. In essence, the \textit{Carter} guidelines provide an excellent starting place for all trial judges to assess whether jury deliberations were prejudiced by extraneous information or outside influences. More importantly, however, the holding in \textit{Pratt} supplies trial judges with a method for ensuring that fairness and justice prevail.

Juror 10’s letter to the trial judge does lack specificity in material respects. Justice Newman noted the letter lacked particulars, such as which jurors sought the extraneous information, what specific information the unidentified jurors obtained, and whether the information provided was in favor of the plaintiffs or defendants. Justice Newman correctly indicated the letter failed to provide details regarding whether the information obtained had already been covered in trial. However, the majority in \textit{Pratt} never suggested the letter alone was enough to grant a new trial. The majority correctly held the letter was sufficient to warrant only an evidentiary hearing, and the hearing would determine whether there should be a new trial.

On April 12, 2005, the evidentiary hearing was held and the trial court concluded that under the objective test adopted by the Pennsylvania Supreme Court, \textit{Pratt} did not meet the burden required to warrant a new trial. Of the twelve jurors, nine had no recollection of any outside or extraneous information being introduced whatsoever. Of the two dissenting jurors, only one recalled jurors discussing the nature of the brain disease and whether it was easily diagnosed with doctors who did not testify at trial. The only juror to side with St. Christopher’s and acknowledge an outside influence was Juror 10. Because of the testimony obtained during the evidentiary hearing, the trial court concluded that sufficient evidence to support a finding of prejudice did not exist.

Opponents of the Pennsylvania Supreme Court’s holding may claim the result of the hearing shows why no exception to the no-impeachment rule should exist. Conversely, the result of the

\begin{itemize}
  \item 145. \textit{Pratt}, 866 A.2d at 324.
  \item 146. \textit{Id.} at 322.
  \item 147. \textit{Id.} at 325.
  \item 149. \textit{Pratt}, No. 1576 at *6.
  \item 150. \textit{Id.} at *7.
  \item 151. \textit{Id.}
  \item 152. \textit{Id.} at *8.
\end{itemize}
hearing provides proof that the *Carter* guidelines and test will serve to uphold just verdicts and help to eliminate prejudice introduced to the jury. Some may suggest that the result of the hearing showed a need for a more detailed letter, because more information would paint a better picture as to what evidence will be brought out at the hearing. However, if the court had required Juror 10's letter to contain greater detail it may have in effect condoned post-verdict attempts at reversing a jury's decision. A more comprehensive letter may have forced the author of the letter to discuss the jury deliberations with others involved in the trial, such as counsel for *Pratt*, instead of submitting the letter on her own accord. By requiring specificity, the court would have contradicted the longstanding principle of discouraging post-verdict discussions directed toward collecting evidence with which to impeach the verdict. Instead of encouraging post-verdict discussions, the majority has appropriately chosen a test and guidelines that will enable jury deliberations in the future to remain practically unimpeachable and all the while just. The *Carter* guidelines will help insulate jury deliberations from the growing plethora of outside influences and extraneous information that constantly challenge justice. While at the same time, the objective test ensures that nothing intrudes upon the subjective thought process of jurors. Since colonial times, Pennsylvania has defended the right to a trial by jury, and the *Pratt* decision will serve as a keystone to preserve that right.

*Robert A. Gallagher*