The Racial Bias Exception to the General Rule that Precludes Jurors from Offering Testimony to Impeach Their Own Verdict

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Introduction

The "no-impeachment rule" generally provides that a juror may not testify about statements made during jury deliberations if the statement is offered to challenge the validity of a verdict or indictment.[1] This longstanding rule has roots dating back to English common law and the rule is codified in Rule 606(b) of both the Federal and Alabama Rules of Evidence.[2]

Although Rule 606(b) lists specific exceptions to this "no-impeachment rule," the United States Supreme Court has recently added a new exception based on the Sixth Amendment to the United States Constitution.[3] Specifically, on March 6, 2017, the United States Supreme Court,

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Although this Article aims to assist the Alabama practitioner, much if not all of the analysis is beneficial to practitioners in other states as well.

[1] Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 861 (2017).

[2] FED. R. EVID. 606(b); ALA. R. EVID. 606(b); *Peña-Rodriguez*, 137 S. Ct. at 863-64.

[3] *See* FED. R. EVID. 606(b) (recognizing exceptions to the no-impeachment rule).

in *Peña-Rodriguez v. Colorado*,[4] ruled that an exception exists when a juror indicates with a "clear statement" that he "relied on racial stereotypes or animus to convict a criminal defendant."[5] Under these criteria, other jurors may be permitted to testify about these statements during an inquiry into the validity of the verdict or indictment, even if they occurred during jury deliberations.[6]

This Article gives a brief overview of the no-impeachment rule and a brief summary of the *Peña-Rodriguez* decision. It concludes with an effort to answer some practical questions about the how this decision may impact the Alabama practitioner.

I. A Brief History of the No-Impeachment Rule and Rule 606(b)

From a procedural standpoint, the no-impeachment rule is most likely to come into play in conjunction with a motion for a new trial.[7] If the motion for a new trial is based on some form of juror misconduct, the moving party will normally attach supporting affidavits from jurors that describe the misconduct.[8] The responding party will then likely object and move to strike those affidavits and raise the no-impeachment rule.

At common law, long before the adoption of the Federal Rules of Evidence or the Alabama Rules of Evidence, jurors were generally precluded from giving testimony (by affidavit or otherwise) post-trial that would impeach their own verdict.[9] As Dean Gamble has observed, this general exclusionary rule stems from several policies: "[1] to preserve the finality of verdicts . . . ; [2] to prevent the harassment of jurors . . . ;

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[4] 137 S. Ct. 855 (2017).

[5] *Peña-Rodriguez*, 137 S. Ct. at 869.

[6] *Id.*

[7] VICTOR J. GOLD, FEDERAL PRACTICE & PROCEDURE EVIDENCE § 6076 (2d ed. 2017).

[8] *Id.*; *see also* CHARLES W. GAMBLE, TERRENCE W. MCCARTHY & ROBERT J. GOODWIN, GAMBLE'S ALABAMA RULES OF EVIDENCE § 606(b) (Practice Pointer 1) (3d ed. 2014) ("This issue customarily arises when the party attacking the verdict files a motion for new trial and attaches juror affidavits to it.").

[9] Vaise v. Delaval, (1785) 99 Eng. Rep. 944 (KB).

[and 3] to protect the deliberative process and thereby encourage free discussions in the jury room."[10]

Over the years, all jurisdictions have adopted this no-impeachment rule in some form.[11] Ultimately, the no-impeachment rule was codified in Rule 606(b) of the Federal Rules of Evidence and Rule 606(b) of the Alabama Rules of Evidence.[12]

Federal Rule 606(b) begins with a general exclusionary rule, which states that during an inquiry into the validity of the verdict or indictment, a juror may not testify about statements or occurrences during jury deliberations.[13] Three exceptions to this general exclusionary rule are listed in the text of the rule.[14] The exceptions provide that jurors may testify about: (1) "extraneous prejudicial information" that was brought to their attention, (2) "outside influences" brought on any juror, and (3) a mistake on the verdict form.[15]

The Alabama Rules of Evidence became effective January 1, 1996, and although the Alabama Rule 606(b) has some differences from the corresponding federal rule, the two rules are very similar. The Alabama rule, like the federal rule, contains a general exclusionary rule that prohibits juror testimony about statements made and occurrences during jury deliberations if offered during an inquiry into the validity of the verdict or indictment.[16] The Alabama rule also contains the "extraneous prejudicial information" and "outside influences" exceptions.[17] However, Alabama's rule does not contain the "mistake on the verdict form" exception that was added to the federal rule by amendment in 2006.[18]

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[10] CHARLES W. GAMBLE & ROBERT J. GOODWIN, MCELROY'S ALABAMA EVIDENCE § 94.06(1) (6th ed. 2009).

[11] Brief for Petitioner at 3, Peña-Rodriguez v. Colorado, 137 S. Ct. 855 (2017) (No. 15-606).

[12] *Id.*

[13] FED. R. EVID. 606(b)(1).

[14] *Id.*

[15] FED. R. EVID. 606(b)(2). The "mistake on the verdict form" exception was added to Rule 606(b) by amendment in 2006.

[16] ALA. R. EVID. 606(b).

[17] *Id*.

[18] ALA. R. EVID. 606(b).

The extraneous prejudicial information exception focuses "upon those instances in which facts, not subjected to the purifying fire of the litigation process, make their way to the jury."[19] If a juror, for example, brought in a newspaper or visited the accident scene, Rule 606(b) would allow post-verdict or post-indictment juror testimony.[20]

The outside influence exception usually "admit[s] testimony that some improper statement was made to the jury by a person who was not a member of the jury."[21]

Like any rule of evidence, Rule 606(b) can also be impacted by the United States Constitution. The Constitution is the supreme law of the land, so it comes as no surprise that the Constitution can often dictate whether certain evidence is or is not admissible.[22] Prior to the *Peña-*

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[19] GAMBLE & GOODWIN, *supra* note 10, § 94.06(4)(a).

[20] *See, e.g.*, United States v. Brown, 108 F.3d 863, 866-67 (8th Cir. 1997) (properly permitting jurors to testify that jurors had secured newspaper accounts that defendant's employer had pled guilty for same conduct that was underlying defendant's prosecution); *Ex parte* Arthur, 835 So. 2d 981, 984-86 (Ala. 2002) (holding that juror's consultation with medical textbooks and subsequent injection of this information into jury room was extraneous and prejudicial as a matter of law, although not explicitly referencing Rule 606(b)); *see also* Mottershaw v. Ledbetter, 148 So. 3d 45, 53 (Ala. 2013) (affirming the trial court's order for a new trial; while jurors themselves did not bring extraneous prejudicial information into the jury room, they were exposed to such when admitted exhibits were not redacted pursuant to motion in limine order); Stewart v. Rice, 47 P.3d 316, 317-18 (Colo. 2002) (excluding juror affidavits stating that jurors misunderstood the verdict form when this information was only discovered after the delivery of the verdict).

[21] GAMBLE & GOODWIN, *supra* note 10, § 94.06(4)(b); *see, e.g.*, Owen v. Duckworth, 727 F.2d 643, 648 (7th Cir. 1984) (finding it prejudicial where a juror received a threatening anonymous phone call and informed other jurors of the call); Savage Indus. v. Duke, 598 So. 2d 856, 858 (Ala. 1992) (allowing a juror to state that a bailiff instructed the jury regarding the form of the verdict).

[22] *See, e.g.*, U.S. CONST. amend. VI (stating that evidence offered against a criminal defendant that violates the Confrontation Clause is inadmissible even if all other rules of evidence are satisfied); FED. R. EVID. 402 (stating that "[r]elevant evidence is admissible" unless, among other sources, the United States Constitution provides otherwise); ALA. R. EVID. 402 ("[R]elevant evidence is admissible, except as otherwise provided by the Constitution of the United States or that of the State of Alabama."); *accord* ALA. R. EVID. 412(b)(3) (recognizing that some sexually related evidence regarding a victim in a rape case may be admitted if "the exclusion of which would violate the constitutional rights of the defendant"); Chambers v. Mississippi, 410 U.S. 284, 302 (1973) ("[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.").

Rodriguez decision, the United States Supreme Court had "addressed the precise question whether the Constitution mandates an exception to [the no-impeachment rule] in just two instances."[23]

First, in the often cited decision of *Tanner v. United States*,[24] the Court rejected the invitation to find a Sixth Amendment constitutional exception to the no-impeachment rule on the basis that some of the jurors were under the influence of drugs and alcohol during the trial.[25] The Court placed great emphasis on the "long-recognized and very substantial concerns support[ing] the protection of jury deliberations from an intrusive inquiry."[26] The Court also emphasized that "drugs or alcohol voluntarily ingested by a juror seems no more an 'outside influence' than a virus, poorly prepared food, or lack of sleep."[27]

Second, in *Warger v. Shauers*,[28] a civil case involving a car accident, after the verdict was entered the losing party attempted to introduce evidence that during voir dire the jury foreperson had failed to disclose bias in favor of the defendant.[29] Specifically, while deliberating the verdict, the juror said that her daughter had been at fault in a car accident where a man died.[30] Had the daughter been sued, "it would have ruined her life."[31] The Supreme Court concluded that juror testimony regarding this statement was not admissible under the extraneous prejudicial information exception to Federal Rule 606(b).[32] The Court also declined to find a constitutional reason outside of Rule 606(b) to allow the testimony.[33] The Court emphasized, however, that there could be an exception to the no-impeachment rule in a case where "juror bias [was]

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[23] Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 865-66 (2017) (citing Tanner v. United States, 483 U.S. 107 (1987); Warger v. Shauers, 135 S. Ct. 521 (2014)).

[24] 483 U.S. 107 (1987).

[25] *Tanner*, 483 U.S. at 115-16, 125.

[26] *Id*. at 127.

[27] *Id*. at 122.

[28] 135 S. Ct. 521 (2014).

[29] *Warger*, 135 S. Ct. at 524.

[30] *Id.*

[31] *Id*.

[32] *Id*. at 529.

[33] *Id*.

so extreme that, almost by definition, the jury trial right has been abridged."[34]

Thus, the door remained open for constitutional exceptions to the no-impeachment rule, and the United States Supreme Court walked through the door with the *Peña-Rodriguez* decision.

II. The *Peña-Rodriguez* Decision and the Creation of a New Exception

The *Peña-Rodriguez v. Colorado* case arose out of a criminal prosecution in Colorado.[35] Rule 606(b) of the Colorado Rules of Evidence, like the corresponding federal and Alabama rules, generally precludes jurors who are involved in a proceeding that questions the validity of the verdict from giving testimony about statements made during jury deliberations.[36]

In *Peña-Rodriguez*, the defendant, a Hispanic male, was charged with harassment, unlawful sexual contact, and attempted sexual assault on a child.[37] During voir dire, members of the venire were asked repeatedly whether they could be fair and impartial, and at no time did any of the empaneled jurors express any reservations based on race.[38] The defendant was found guilty of harassment and unlawful sexual contact, but no verdict was reached on the attempted sexual assault charge.[39]

The defendant filed a motion for a new trial, and attached to that motion were affidavits from two jurors.[40] Those affidavits described numerous biased statements made by a juror identified as "Juror H.C."[41] For example, Juror H.C.'s previous experience as a law enforcement officer led him to believe and state that "Mexican men had a bravado that

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[34] *Id*. at 529 n.3.

[35] 137 S. Ct. 855, 861 (2017).

[36] *Peña-Rodriguez*, 137 S. Ct. at 862.

[37] *Id*. at 861.

[38] *Id*.

[39] *Id*.

[40] *Id*. at 862.

[41] *Id*.

caused them to believe they could do whatever they wanted with women."[42] In addition to several other racially-biased statements, he also said that "I think he did it because he's Mexican and Mexican men take whatever they want."[43]

Although the trial court recognized and acknowledged the bias of Juror H.C., the motion for new trial was denied because "[t]he actual deliberations that occur among the jurors are protected from inquiry under [Colorado Rule of Evidence] 606(b)."[44] This ruling was affirmed by the Colorado Court of Appeals and the Colorado Supreme Court, with both appellate courts relying on the general no-impeachment rule of Rule 606(b).[45]

By a five-to-three vote, the United States Supreme Court reversed and remanded the case, essentially creating a new "racial bias" exception to the general no-impeachment rule.[46] In writing for the majority, Justice Kennedy acknowledged the long history and policy reasons for the no-impeachment rule, but he also emphasized that "[t]ime and again, this Court has been called upon to enforce the Constitution's guarantee against state-sponsored racial discrimination in the jury system."[47] The majority then concluded that it was "necessary to prevent a systemic loss of confidence in jury verdicts" and held that a constitutional rule regarding "racial bias in the justice system" was necessary.[48] The Court then explicitly expressed the new exception as follows:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.[49]

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[42] *Peña-Rodriguez*, 137 S. Ct. at 862.

[43] *Id*.

[44] *Id*. (alteration in original).

[45] *Id*.

[46] *Id.* at 871.

[47] *Id.* at 867.

[48] *Peña-Rodriguez*, 137 S. Ct. at 869.

[49] *Id*.

III. The Potential Impact of the *Peña-Rodriguez* Decision on the Alabama Practitioner

Although the *Peña-Rodriguez* decision answers some questions, other questions remain unanswered. Questions (and attempted answers) pertinent to the Alabama practitioner that flow from this opinion are discussed below.

The *Peña-Rodriguez* decision involved the Colorado Rules of Evidence, so what impact, if any, does it have on Alabama state courts? The *Peña-Rodriguez* holding is applicable to proceedings in Alabama state courts. The decision was based on the United States Constitution, so the Supremacy Clause prevails. Just like the decision effectively added a new exception to Rule 606(b) of the Colorado Rules of Evidence, it did the same to Rule 606(b) of the Alabama Rules of Evidence even though the text of the exception is not written in the text of the rule.

How severe do the racially biased statements need to be to trigger this exception? As the *Peña-Rodriguez* Court explained, "[n]ot every offhand comment indicating racial bias or hostility will justify setting aside the 'no-impeachment' bar to allow further judicial inquiry."[50] To qualify, the statements must display "overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict," and must have a tendency to show that "racial animus was a significant motivating factor in the juror's vote to convict."[51] The trial judge is vested with "substantial discretion" in deciding if this threshold showing has been made.[52]

How much evidence of racial bias is needed for a motion for new trial to be granted? The Supreme Court specifically declined to address this question, stating that "[t]he Court also does not decide the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial be granted."[53] In

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[50] *Id.* at 869.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 870.

declining to address this question, the Court referenced two examples of jurisdictions with differing standards.[54] On the one hand, in *Shillcutt v. Gagnon*,[55] the Seventh Circuit described the inquiry as whether racial bias "pervaded the jury room."[56] On the other hand, the Ninth Circuit said that "[o]ne racist juror would be enough."[57] The courts will determine what is enough, and presumably the standard will differ from jurisdiction to jurisdiction.

How have the lower courts interpreted the *Peña-Rodriguez* decision so far? As of the time of the writing of this Article, lower courts have kept the decision in check and narrowly interpreted its holding despite best efforts from attorneys who have advocated for a more expansive interpretation.[58]

One of the leading cases interpreting *Peña-Rodriguez* so far is the Sixth Circuit decision of *United States v. Robinson*.[59] The defendants, African-Americans, filed a motion for new trial after they were convicted of various crimes, claiming the jury foreperson's racial statements in the jury room triggered the *Peña-Rodriguez* exception.[60] Specifically, when ten of the twelve jurors were ready to convict, the foreperson, a white female, purportedly told the two remaining jurors (both African-American) that they were "reluctant to convict because they 'owed something' to their 'black brothers,'" and that she "'[found] it strange that the colored

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[54] *Peña-Rodriguez*, 137 S. Ct. at 870-71 (citing Shillcutt v. Gagnon, 827 F.2d 1155, 1159 (7th Cir. 1987); United States v. Henley, 238 F.3d 1111, 1120 (9th Cir. 2001)).

[55] 827 F.2d 1155 (7th Cir. 1987).

[56] *Shillcutt*, 827 F.2d at 1159.

[57] United States v. Henley, 238 F.3d 1111, 1120 (9th Cir. 2001).

[58] *See, e.g.*, Young v. Davis, 860 F.3d 318, 332-33 (5th Cir. 2017) (refusing to expand *Peña-Rodriguez* to allow juror affidavits claiming that jurors did not fully understand the jury instructions); United States v. Antico, No. 9:17-cr-80102-ROSENBERG, 2018 WL 659415, at *4 (S.D. Fla. Feb. 1, 2018), *appeal docketed*, No. 18-11447 (11th Cir. Apr. 5, 2018) ("Allegations of bias against police officers do not meet the narrow exception to the no-impeachment rule that the Supreme Court declared for allegations of racial bias."); Bethea v. Commonwealth, 809 S.E.2d 684, 692-94 (Va. Ct. App. 2018) (finding that the alleged bullying of a juror in deliberations did not fall under any exception to the no-impeachment rule).

[59] 872 F.3d 760 (6th Cir. 2017), *petition for cert. filed*, No. 18-5118 (U.S. July 5, 2018).

[60] *Robinson*, 872 F.3d at 769.

women are the only two that can't see' that the defendants were guilty."[61] The district court denied the motion for new trial because the defendants gathered this evidence in violation of both a local court rule and an order from the bench to not contact jurors.[62]

On appeal, the Sixth Circuit found that not only was the motion properly denied based on the failure to follow the "no contact" rules, but the court also held that the facts did not trigger the *Peña-Rodriguez* limited exception to the no-impeachment rule.[63] Although the foreperson's comments "clearly 'indicat[ed] racial bias or hostility,'" she "did not make comments—much less a 'clear statement'—showing that animus was a 'significant motivating factor' in her own vote to convict."[64] While the foreperson did "impugn [the two African American jurors'] integrity based on their shared race with the defendants, she never said anything stereotyping the defendants based on their race."[65] These remarks were different from those at issue in *Peña-Rodriguez*, which "clearly demonstrated the juror's animus against Mexicans and, crucially, the juror's reliance on this bias in voting to convict."[66]

Similarly, in *Richardson v. Kornegay*,[67] the petitioner filed for habeas corpus relief after he was convicted of first degree murder.[68] The petitioner, an African-American, raised several juror misconduct issues, including that a black juror said "that he felt being black made other jurors think he initially voted to acquit petitioner because he and petitioner were both black."[69] In rejecting the petitioner's argument, the court observed that the statements "do not pertain to any racial bias against the petitioner," and there was "no indication that any juror relied

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[61] *Id*. at 767-68.

[62] *Id*. at 769.

[63] *Id*. at 770.

[64] *Id*. at 770-71 (alteration in original) (quoting Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 869 (2017)).

[65] *Id.* at 771.

[66] *Robinson*, 872 F.3d at 771.

[67] No. 5:16-HC-2115-FL, 2017 WL 1133289 (E.D.N.C. Mar. 24, 2017), *appeal docketed*, No. 18-6488 (4th Cir. May 3, 2018).

[68] *Richardson*, 2017 WL 1133289, at *1.

[69] *Id.* at *10.

on racial stereotypes or animus to convict petitioner."[70] Some courts have also distinguished *Peña-Rodriguez* when comments demonstrating racial bias or hostility were directed against a fellow juror, as opposed to the defendant.[71] In sum, the *Peña-Rodriguez* decision has remained in check, at least as of the time this Article was written.

If this issue arises, is there any case law a practitioner can go to for guidance other than the *Peña-Rodriguez* decision and cases interpreting *Peña-Rodriguez*? As the Court mentioned in the *Peña-Rodriguez* decision, at least seventeen jurisdictions "have recognized a racial-bias exception to the no-impeachment rule—some for over half a century."[72] In addition, various federal courts had also recognized such a racial bias exception prior to the *Peña-Rodriguez* decision.[73] Thus, courts in the future will not be writing on a clean slate, as there are a number of decisions from these jurisdictions that Alabama practitioners can look to for guidance.

For example, in *United States v. Villar*,[74] the jury convicted a Hispanic man of bank robbery.[75] Within hours of the conviction, a juror informed defense counsel by email that the minds of most of the jurors were made up from the first day, and that one juror stated, "I guess we're profiling but they all cause trouble."[76] In denying the defendant's motion to set aside the jury's verdict due to the possibility of bias and prejudice, the trial court observed that Rule 606(b) did not give him the discretion to breach the confidentiality of jury deliberations under those circumstances.[77] On appeal, the First Circuit held that,

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[70] *Id*.

[71] *See, e.g.*, Williams v. Price, No. 2:98cv1320, 2017 WL 6729978, at *9 (W.D. Pa. Dec. 29, 2017) ("Assuming one of the four jurors in question called Montgomery a "nigger lover," the racial slur was directed to Montgomery, not to Williams. That significant fact distinguishes this case from *Peña-Rodriguez*, in which the juror made racially biased comments against Mexicans that were specifically directed to the defendant and his alibi witness.").

[72] *Peña-Rodriguez*, 137 S. Ct. at 870.

[73] *Id*. at 865.

[74] 586 F.3d 76 (1st Cir. 2009).

[75] *Villar*, 586 F.3d at 78.

[76] *Id*.

[77] *Id.* at 81.

> [w]hile the issue is difficult and close, we believe that the rule against juror impeachment cannot be applied so inflexibly as to bar juror testimony in those rare and grave cases where claims of racial or ethnic bias during jury deliberations implicate a defendant's right to due process and an impartial jury.[78]

Thus, the case was remanded for the trial judge to make the determination whether an inquiry into the juror deliberations was necessary to vindicate the defendant's constitutional rights.[79]

Does the *Peña-Rodriguez* holding apply in civil cases? At this time, the answer appears to be "no." The language of the opinion limits the holding to criminal trials.[80] Some may wonder, however, if this holding will follow the path of *Batson v. Kentucky*,[81] and ultimately be extended to civil cases. *Batson*, the landmark decision that held that peremptory jury strikes could not be made on the basis of race, was initially limited to criminal cases.[82] A mere five years later, the United States Supreme Court extended the *Batson* holding to civil cases.[83]

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[78] *Id*. at 87.

[79] *Id.* at 79; s*ee, e.g.*, State v. Brown, 62 A.3d 1099, 1110 (R.I. 2013) (concluding that "a juror's racial bias is not *extraneous prejudicial information* or an *outside influence* contemplated by Rule 606(b)" and agreeing with *Villar* by concluding that "Rule 606(b) does not preclude the admission of such testimony where necessary to protect a defendant's right to a fair trial by an impartial jury—a right guaranteed by the federal and state constitutions" (emphasis added)); State v. Hidanovic, 747 N.W.2d 463, 474 (N.D. 2008) (collecting various authorities and concluding that "[w]e agree with the foregoing authorities that racial and ethnic bias cannot be condoned in any form and may deprive a criminal defendant of a right to a fair and impartial jury"); Powell v. Allstate Ins. Co., 652 So. 2d 354, 357 (Fla. 1995) ("In the instant case, we find the alleged racial statements made by some of the jurors to constitute sufficient 'overt acts' to permit trial court inquiry and action.").

[80] *See Peña-Rodriguez*, 137 S. Ct. at 869 ("[T]he Court now holds that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus *to convict a criminal defendant*, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." (emphasis added)).

[81] 476 U.S. 79 (1986).

[82] *Batson*, 476 U.S. at 88-89.

[83] *See* Edmondson v. Leesville Concrete Co., 500 U.S. 614, 630 (1991) (applying the *Batson* rule and stating that "courts must entertain a challenge to private litigants racially discriminatory use of peremptory challenges in a civil trial" just as in the criminal context).

If the *Peña-Rodriguez* holding is later extended to civil trials, it will likely have to travel a different path than *Batson*. As discussed above, the *Peña-Rodriguez* decision was based on the Sixth Amendment right of a criminal defendant to be tried by "an impartial jury."[84] *Batson*, on the other hand, was based on the Equal Protection Clause, finding that race-based peremptory strikes violate the equal protection rights of the prospective jurors.[85] In questioning whether the *Peña-Rodriguez* decision will be extended to the civil context in the future, two prominent attorneys described the possible barriers as follows:

> Before *Pena-Rodriguez* could have a bearing on impeaching civil jury verdicts on the basis of racial bias in state courts that do not already allow it, the Court would have to be asked, among other things, (1) whether a civil litigant's right to an impartial jury is on par with that of a criminal defendant's right, (2) whether a juror is a state actor for purposes of the equal protection clause, and, ultimately, (3) whether the civil litigant's right to an impartial jury trumps a state's interests in the finality of its judgments. There is no clear indication in *Pena-Rodriguez* as to how the Court would answer those questions. So, while civil practitioners are wise to familiarize themselves with *Pena-Rodriguez* and keep an eye on any expansion or extended application it gets, it is not a foregone conclusion that it will follow the path of *Batson* into the civil arena.[86]

Does the *Peña-Rodriguez* holding apply to cases of religious, gender, or other bias? The language of the opinion limits the holding to racial bias.[87] It remains to be seen whether courts will extend this concept to other types of bias. So far, however, the decisions appear to strictly limit the holding.

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[84] *Peña-Rodriguez*, 137 S. Ct. at 868-69; *see also* M. Christian King & Wesley B. Gilchrist, *Will Peña-Rodriguez v. Colorado Apply to Civil Cases?*, LAW360, Mar. 13, 2017, https://www.law360.com/articles/900903/will-Peña-rodriguez-v-colorado-apply-to-civil-cases ("By its terms, the Sixth Amendment applies to 'criminal prosecutions' only and applies equally to the states.").

[85] *Batson*, 476 U.S. at 89 (1986).

[86] King & Gilchrist, *supra* note 84.

[87] *Peña-Rodriguez*, 137 S. Ct. at 869 (holding that a juror's statement indicating reliance "on racial stereotypes or animus to convict a criminal defendant" permits an exception to the no-impeachment rule).

Conclusion

The *Peña-Rodriguez* decision is the latest illustration of a concept that is much broader than the limited holding of the case: a practitioner's evidentiary knowledge must go well beyond the rules listed in the Federal Rules of Evidence or the Alabama Rules of Evidence. Statutes, other rules of court, and in this instance, the United States Constitution, contain many provisions with evidentiary implications. Time will tell how far this decision will reach and how it will be interpreted, but hopefully this Article provides the Alabama practitioner with some assistance if and when the issue arises.