

Mark Flores for the American Bar Association's Diversity Inclusion: Racial Bias and the No-Impeachment Rule

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Blatant racial animus in the criminal jury room cannot remain protected pursuant to Federal Rule of Evidence 606(b) and other similar state rules of evidence according to a 5–3 decision recently handed down by the U.S. Supreme Court that found such rules violate the Sixth Amendment of the U.S. Constitution. *Peña-Rodriguez*, 197 L. Ed. 2d at 127. These evidentiary rules, known as “no-impeachment” rules, generally state:

(1) Prohibited Testimony or Other Evidence. During 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 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 of evidence of a juror’s statement on these matters.

(2) Exceptions. A juror may testify about whether:

- (A) extraneous prejudicial information was improperly brought to the jury’s attention;
- (B) an outside influence was improperly brought to bear on any juror; or
- (C) a mistake was made in entering the verdict on the verdict form.

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