

# When, If Ever, Are Unanimous Jury Verdicts Unimpeachable?

James Oldham\*

## ABSTRACT

In his 2014 article *Unearthing Mansfield’s Rule: Analyzing the Appropriateness of Federal Rule of Evidence 606(b) in Light of the Common Law Tradition*, Andrew Hull takes issue with the Mansfield Rule, which prohibits verdict impeachment by juror testimony, and its modern-day embodiment in Rule 606(b). Hull contends that the Mansfield Rule fails to align with English common law precedent. This Essay begins by arguing that Hull is mistaken for two reasons. First, the English common law was not as well settled as Hull seems to argue. Second, there is no evidence of a twelve-judge consultation—which would have had binding precedential effect—having occurred regarding the Mansfield Rule. This Essay then explores how the Mansfield Rule has developed since 2014, when Mr. Hull’s article was published.

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## INTRODUCTION

In 2014, the *Southern Illinois University Law Journal* published an article entitled *Unearthing Mansfield’s Rule: Analyzing the Appropriateness of Federal Rule of Evidence 606(b) in Light of the Common Law Tradition*, written by Andrew Hull.<sup>1</sup> The author takes issue with the perseverance of “Mansfield’s Rule” in America, as embodied in Rule 606(b) of the Federal Rules of Evidence.<sup>2</sup> The Mansfield Rule provides

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\* St. Thomas More Professor of Law and Legal History Emeritus, Georgetown University Law Center. I am particularly indebted to Thanh Nguyen, head of the Georgetown Law Library Research Service, and Research Assistant Richard Mobley. Their help was invaluable in locating the many cases that, after Mr. Hull’s article was published, addressed the Mansfield Rule in some way.

<sup>1</sup> Andrew J. Hull, *Unearthing Mansfield’s Rule: Analyzing the Appropriateness of Federal Rule of Evidence 606(B) in Light of the Common Law Tradition*, 38 S. ILL. U. L.J. 403 (2014). At the time the article was published, Mr. Hull was an attorney at the Drug Enforcement Administration. *Id.* at 403.

<sup>2</sup> *See id.* at 408–09.

that a jury verdict cannot be impeached by the testimony of the jurors.<sup>3</sup> According to Mr. Hull, “The current rationale behind Rule 606(b) is blind to the historical context surrounding Mansfield’s Rule.”<sup>4</sup> Given the Author’s extensive study of the eighteenth-century career of Lord Mansfield, this statement was naturally attention-grabbing.

Lord Mansfield was Chief Justice of England’s Court of King’s Bench from 1756 to 1788.<sup>5</sup> In 1785, the case *Vaise v. Delaval*<sup>6</sup> came before Mansfield’s court.<sup>7</sup> The case involved post-trial affidavits from jurors intended to impeach the unanimous verdict that the same jurors, and others, had reached in a recently concluded trial.<sup>8</sup> The issue was whether the affidavits were admissible.<sup>9</sup> For reasons to be discussed, Lord Mansfield decided that such affidavits were inadmissible; that holding quickly became known in England and America as “Mansfield’s Rule.”<sup>10</sup> Both countries have followed the rule ever since.<sup>11</sup>

In the United States, Congress codified the Mansfield Rule in section 606(b) of the Federal Rules of Evidence in 1975.<sup>12</sup> Rule 606(b) of the Federal Rules of Evidence provides as follows:

(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’s 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 or 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

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<sup>3</sup> See *id.* at 405–07, 409.

<sup>4</sup> *Id.* at 408.

<sup>5</sup> Karl Nickerson Llewellyn, *William Murray, 1st Earl of Mansfield*, ENCYC. BRITANNICA (Mar. 16, 2025), <https://www.britannica.com/biography/William-Murray-1st-Earl-of-Mansfield> [<https://perma.cc/ZYT9-MLLJ>].

<sup>6</sup> (1785) 99 Eng. Rep. 944; 1 T.R. 11.

<sup>7</sup> *Id.*; Hull, *supra* note 1, at 409.

<sup>8</sup> Hull, *supra* note 1, at 409.

<sup>9</sup> *Id.*

<sup>10</sup> See *id.* at 413.

<sup>11</sup> See *id.*

<sup>12</sup> See *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 217 (2017). The Supreme Court summarizes the history of the codification of the Mansfield Rule in the Federal Rules of Evidence in *Peña-Rodriguez*. See *id.* at 215–21. This Essay discusses *Peña-Rodriguez* further below. See *infra* Part II.

(C) a mistake was made in entering the verdict on the verdict form.<sup>13</sup>

In his article, Mr. Hull takes issue with the perseverance of the Mansfield Rule in America through Rule 606(b). According to him, “The current rationale behind Rule 606(b) is blind to the historical context surrounding Mansfield’s Rule and to how its desire for finality conflicts with a holistic understanding of the principles behind the jury trial system.”<sup>14</sup>

Without pausing to surmise what Mr. Hull might mean by “a holistic understanding of the principles behind the jury trial system,”<sup>15</sup> this Essay seeks to accomplish two tasks. First, it assesses Mr. Hull’s claim that the Mansfield Rule embodied in Rule 606(b) is blind to the rule’s historical context. The Essay then explores the development of the Mansfield Rule in the years since 2014, when Mr. Hull’s article was published.

## I. THE HISTORICAL CONTEXT

Mr. Hull expands upon his unhappiness with the Mansfield Rule by claiming that it is “based on an outdated and discarded doctrine,” especially “when compared to the vast body of cases within the English common law that clearly contradict the rule.”<sup>16</sup> He further states:

The English common law regarding the ability of a juror to testify as to juror misconduct was well settled prior to Lord Mansfield’s decision in *Vaise v. Delaval* in 1785. Without question, affidavits or statements from jurors were regularly admitted as evidence that the jury had engaged in some sort of misconduct that affected the verdict.<sup>17</sup>

The English common law, however, was not remotely as well settled as Mr. Hull claims—at least not by the late eighteenth century—for two reasons. First, there are multiple cases from the period in question in which juror testimony was prohibited. The author cites as evidence of his assertion several seventeenth- and eighteenth-century cases, including two Common Pleas cases from the 1770s.<sup>18</sup> Not included, however, is a 1765 King’s Bench case, *Rex v. Thirkell*,<sup>19</sup> decided twenty years before *Vaise*, in which eight jurors signed a paper disapproving of the verdict

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<sup>13</sup> FED. R. EVID. 606(b).

<sup>14</sup> Hull, *supra* note 1, at 408–09.

<sup>15</sup> *Id.* at 409.

<sup>16</sup> *Id.* at 411.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 411–12.

<sup>19</sup> (1765) 97 Eng. Rep. 1052; 3 Burr. 1696.

they had just given.<sup>20</sup> In that case, Lord Mansfield “expressed great dislike of such representations made by jurymen, after the time of delivering their verdict.”<sup>21</sup> This invited a “very bad consequence, to listen to such subsequent representations contrary to what they had before found upon their oaths; and which might be obtained by improper applications subsequently made to them.”<sup>22</sup>

Yet another relevant decision was issued in 1805 by the Court of Common Pleas. In *Owen v. Warburton*,<sup>23</sup> Chief Justice James Mansfield—no relation to Lord Mansfield—delivered the following opinion of the court:

We have conversed with the other Judges upon this subject, and we are all of opinion that the affidavit of a jurymen cannot be received. It is singular indeed that almost the only evidence of which the case admits should be shut out; but, considering the arts which might be used if a contrary rule were to prevail, we think it necessary to exclude such evidence. If it were understood to be the law that a jurymen might set aside a verdict by such evidence, it might sometimes happen that a jurymen, being a friend to one of the parties, and not being able to bring over his companions to his opinion, might propose a decision by lot, with a view afterwards to set aside the verdict by his own affidavit, if the decision should be against him.<sup>24</sup>

This brings me to the second and most significant reason why the English common law was not settled by the time of Lord Mansfield’s decision in *Vaise v. Delaval*: There is no record of a twelve-judge consultation dealing with the Mansfield Rule. Indeed, Mr. Hull’s analysis fundamentally misunderstands how judges applied precedent in English law practice in the seventeenth and eighteenth centuries.

What are we to make of Justice Mansfield’s initial comment in *Owen* stating that “[w]e have conversed with the other Judges upon this subject”?<sup>25</sup> How common was it for one common law judge, or all of the judges on one of the common law courts, to arrange to converse with other common law judges on an issue or a case?

The Author has published some findings in response to these questions in an article entitled *Informal Lawmaking in England by the Twelve Judges in the Late Eighteenth and Early Nineteenth Centuries*.<sup>26</sup>

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<sup>20</sup> *Id.* at 1052.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> (1805) 127 Eng. Rep. 489; 1 Bos. & Pul. (N.R.) 326.

<sup>24</sup> *Id.* at 490–91.

<sup>25</sup> *Id.*

<sup>26</sup> James Oldham, *Informal Lawmaking in England by the Twelve Judges in the Late Eighteenth and Early Nineteenth Centuries*, 29 LAW & HIST. REV. 181 (2011).

In this article, the Author explains the only method available during the relevant time period to “appeal” a decision from one of the three common law courts—King’s Bench, Common Pleas, and Exchequer<sup>27</sup>—or from the Old Bailey.<sup>28</sup> England had no Supreme Court in the years under discussion, and only a handful of cases were important enough to be taken to Parliament.<sup>29</sup> The only option to appeal lower court decisions, therefore, was to arrange a gathering of the twelve common law judges.<sup>30</sup> Although this gathering was informal and unreported—at least until *Leach’s Reports* began publishing some Old Bailey decisions in 1789<sup>31</sup>—the practicing bar understood decisions by the twelve judges to have binding precedential effect.<sup>32</sup>

Because there is no evidence of a twelve-judge consultation dealing with the Mansfield Rule, the eighteenth-century Common Pleas cases Mr. Hull cites would not have had any precedential effect on the Court of King’s Bench. Thus, Mr. Hull’s contention that the English common law regarding the Mansfield Rule was well settled by the time of *Vaise* is misplaced.

## II. THE MANSFIELD RULE IN JUDICIAL DECISIONS SINCE 2014

Even if Mr. Hull’s critiques of the Mansfield Rule held overwhelming historical weight, courts in the United States have consistently reaffirmed the use of the Mansfield Rule—both in court procedure and through precedent—even while adding exceptions to the general rule. On March 6, 2017, the U.S. Supreme Court issued its decision in *Peña-Rodriguez v. Colorado*,<sup>33</sup> the most consequential discussion of the Mansfield Rule since Mr. Hull’s article.

At trial, two jurors, on behalf of petitioner Miguel Peña-Rodriguez, filed affidavits claiming that a third juror (“Juror H.C.”) had repeatedly expressed anti-Hispanic bias.<sup>34</sup> They claimed, inter alia, that Juror H.C. stated, “I think he did it because he’s Mexican and Mexican men take whatever they want.”<sup>35</sup> The trial court “denied petitioner’s motion for a new trial, noting that “[t]he actual deliberations that occur among the

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<sup>27</sup> *Id.* at 181 n.1.

<sup>28</sup> Criminal cases were heard at the Old Bailey. *Id.* at 182 n.3. There was no permanently appointed Old Bailey judge. *See id.* at 185. Instead, common law judges and occasionally other prominent legal figures sat in rotation. *Id.* at 185–86.

<sup>29</sup> *See id.* at 192; *see also* Lester B. Orfield, *History of Criminal Appeal in England*, 1 Mo. L. REV. 326, 338 (1936) (discussing the rarity of appeals to the House of Lords).

<sup>30</sup> *See* Oldham, *supra* note 26, at 192.

<sup>31</sup> *See id.* at 183, 194, 214.

<sup>32</sup> *See id.* at 219.

<sup>33</sup> 580 U.S. 206 (2017).

<sup>34</sup> *Id.* at 212.

<sup>35</sup> *Id.* at 213.

jurors are protected from inquiry under [Colorado Rule of Evidence] 606(b).”<sup>36</sup> This ruling was affirmed by the Colorado Court of Appeals and subsequently by the Colorado Supreme Court.<sup>37</sup> The case then came to the U.S. Supreme Court, which “granted certiorari to decide whether there is a constitutional exception to the no-impeachment rule for instances of racial bias.”<sup>38</sup>

The U.S. Supreme Court voted 5–3 to reverse the Colorado Supreme Court, remanding the case for further proceedings.<sup>39</sup> Justice Kennedy, writing for the Court, described the holding as follows:

Where a juror makes a clear statement indicating that 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.<sup>40</sup>

So, at last, we arrive at the final query in this paper: What has been the influence of the *Peña-Rodriguez* decision after March 2017? This Essay can only supply a brief and largely statistical answer.

Westlaw reports that *Peña-Rodriguez* has been substantively cited in only two subsequent Supreme Court decisions.<sup>41</sup> One, *Tharpe v. Sellers*,<sup>42</sup> is not substantively relevant to this Essay because *Tharpe* did not apply the *Peña-Rodriguez* exception to Rule 606(b) and largely dealt with procedural issues.<sup>43</sup> The other case is *Love v. Texas*,<sup>44</sup> a denial of certiorari that contains a dissenting opinion by Justice Sotomayor, joined

<sup>36</sup> *Id.* (alterations in original). Note that Colorado’s Rule 606(b) is substantially the same as Federal Rule 606(b). See COLO. R. EVID. 606(b); FED. R. EVID. 606(b).

<sup>37</sup> *Peña-Rodriguez*, 580 U.S. at 214.

<sup>38</sup> *Id.* Somewhat surprisingly, the Court noted that [Juror] H.C.’s bias was based on petitioner’s Hispanic identity, which the Court in prior cases has referred to as ethnicity, and that may be an instructive term here. Yet we have also used the language of race when discussing the relevant constitutional principles in cases involving Hispanic persons. Petitioner and respondent both refer to race, or to race and ethnicity, in this more expansive sense in their briefs to the Court. This opinion refers to the nature of the bias as racial in keeping with the primary terminology employed by the parties and used in our precedents.

*Id.* at 214–15 (citations omitted).

<sup>39</sup> *Id.* at 229.

<sup>40</sup> *Id.* at 225.

<sup>41</sup> See List of 159 Citing References for *Peña-Rodriguez v. Colorado*, WESTLAW, <https://westlaw.com/> [https://perma.cc/2ZG5-2UCK] (Aug. 24, 2025) (search “580 U.S. 206”; then click “Cases” from the “Citing References” dropdown; then filter by Headnote Topic 11 and all except the lowest “Depth of Treatment” level; then click “Apply”).

<sup>42</sup> 583 U.S. 33 (2018).

<sup>43</sup> See *id.* at 33–34.

<sup>44</sup> 142 S. Ct. 1406 (2022).

by Justice Breyer and Justice Kagan.<sup>45</sup> Justice Sotomayor described the case as one in which “petitioner Kristopher Love, a Black man, claim[ed] that one of the jurors in his capital trial was racially biased because the juror asserted during jury selection that ‘[n]on-white’ races were statistically more violent than the white race.”<sup>46</sup> After commenting that “[t]his Court ha[d] recognized that claims of racial bias must be treated ‘with added precaution’ in light of the special danger such bias poses,”<sup>47</sup> Justice Sotomayor explained why, in light of *Peña-Rodriguez*, the Court of Criminal Appeals had improperly relied on state rules regarding the voir dire process in failing to address Love’s constitutional claim.<sup>48</sup>

The lower federal courts and state courts present a much more animated story on the influence of *Peña-Rodriguez* since March 2017. According to Westlaw, lower courts referenced *Peña-Rodriguez* in 159 cases as of August 2025.<sup>49</sup> Additionally, as of August 2025, ninety-seven law journal articles have addressed or referenced *Peña-Rodriguez*.<sup>50</sup>

The Author has not had occasion to inspect these opinions and articles because such analysis is largely outside the scope of this Essay’s critique of Mr. Hull’s article. However, enterprising legal historians who wish to evaluate the effect of *Peña-Rodriguez* on the Mansfield Rule as embodied in Rule 606(b) should undertake this project. Such analysis would add greatly to an understanding of the evolving nature of the Mansfield Rule in American jurisprudence.

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<sup>45</sup> *Id.* at 1406 (Sotomayor, J., dissenting).

<sup>46</sup> *Id.* (second alteration in original).

<sup>47</sup> *Id.* at 1408.

<sup>48</sup> *See id.* at 1408–09.

<sup>49</sup> List of 159 Citing References for *Peña-Rodriguez v. Colorado*, *supra* note 41. Specifically, the search resulted in thirty federal appellate cases, seventy-two federal district court cases, and fifty-six state court cases. *See id.*

<sup>50</sup> List of 97 Citing References for *Peña-Rodriguez v. Colorado*, WESTLAW, <https://westlaw.com/> [<https://perma.cc/GW6S-J7AC>] (search “580 U.S. 206”; then click “Secondary Sources” from the “Citing References” dropdown; then click “Law Reviews”; then filter by Headnote Topic 11; then click “Apply”).