

transcript of the return of verdict, which reflects that when the clerk asked if the jury had a verdict, the foreperson answered: "We do. Not guilty." (Transcript at 15). The verdict form was then passed to the clerk, who asked the jury to stand as she read the verdict form:

Members of the jury, . . . you have answered: We, the jury, find the defendant guilty of the offense charged in the indictment.

Is the verdict that was just read your true verdict, so say you one, so say you all?

Each juror stood and affirmed that the verdict that was just read was their true verdict. (Transcript at 15-17). The government has responded to complainant's § 2255 allegations, and the motion is pending before the district court.

Complainant alleges in his judicial complaint that someone altered the verdict form to read "guilty," that he has been denied legal counsel and leave to file pro se supplemental briefs to pursue the issue, and that the district judge who presided over his criminal proceedings should be recused from his § 2255 motion. He asks that the jury be polled again regarding their verdict, that counsel be appointed to assist him, and that his claims be reviewed by a particular circuit judge.

Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are "[d]irectly related to the merits of a decision or procedural

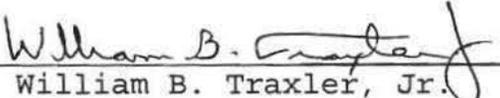
ruling" are not subject to review through a complaint of judicial misconduct or disability. To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of an arbitrary and intentional departure from, or willful indifference to prevailing law." In re Memorandum of Decision, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008). A misconduct claim may also be based upon a showing that the judge ruled as he did as the result of illegal motive or conspiracy, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

The allegations raised in complainant's judicial complaint are directly related to the merits of the district judge's decisions. Judgment was entered against complainant on the basis of the written verdict and the polling of the jury. Complainant's allegation that the verdict form was altered and that the jurors falsely affirmed the verdict of guilt is an attack on his criminal judgment. His allegations that he is entitled to have his claims investigated and heard with assistance from counsel and that his trial judge should be recused are also merits-related challenges. Neither

complainant's judicial complaint nor the record of his criminal case provides any evidence that the judge tampered with the verdict form or engaged in any other form of misconduct.

Accordingly, this complaint is dismissed as directly related to the merits of the judge's rulings and as lacking in factual support for a claim of misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge