

1-1-2016

Civil Procedure - Mere Allegation of Juror Misconduct Is Sufficient to Vacate a Final Judgment - Bouret-Echevarria v. Caribbean Aviation Maintenance Corp., 784 F.3D 37 (1st Cir. 2015)

Kevin J. Castodio
Suffolk University Law School

Follow this and additional works at: <https://dc.suffolk.edu/jtaa-suffolk>



Part of the [Litigation Commons](#)

Recommended Citation

21 Suffolk J. Trial & App. Advoc. 195 (2015-2016)

This Comments is brought to you for free and open access by Digital Collections @ Suffolk. It has been accepted for inclusion in Suffolk Journal of Trial and Appellate Advocacy by an authorized editor of Digital Collections @ Suffolk. For more information, please contact dct@suffolk.edu.

**CIVIL PROCEDURE— MERE ALLEGATION OF
JUROR MISCONDUCT IS SUFFICIENT TO
VACATE A FINAL JUDGMENT—*BOURET-
ECHEVARRIA V. CARIBBEAN AVIATION
MAINTENANCE CORP.*, 784 F.3D 37 (1ST CIR. 2015).**

Rule 60(b) of the Federal Rules of Civil Procedure grants federal courts the power to vacate judgments whenever such action is appropriate to accomplish justice.¹ While the rule generally proclaims specific instances that give rise to relief from a final judgment, Rule 60(b)(6) grants federal courts broad authority to vacate final judgments for almost any reason justifying relief so long as the court properly assesses the relevant factors embedded within the rule.² In *Bouret-Echevarria v. Caribbean Aviation Maintenance Corp.*,³ the United States Court of Appeals for the First Circuit decided whether the district court abused its discretion when it denied a Rule 60(b)(6) motion asserting that the jury had been tainted by its knowledge of a confidential settlement offer.⁴ The court held that the district court abused its discretion when it denied appellant’s Rule 60(b)(6) motion because it failed to adequately weigh the relevant factors of Rule 60(b)(6).⁵

On November 2008, appellant’s husband, Diego Vidal-Gonzales,

¹ See FED. R. CIV. P. 60(b) (listing six reasons court can vacate final judgment).

² See FED. R. CIV. P. 60(b)(6) (explaining that judge can vacate judgment for any other reason to obtain justice). The text of the rule is as follows: “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons . . . (6) any other reason that justifies relief.” *Id.* It is important to note at the outset, that Rule 60(b)(6) acts as a catchall provision allowing courts to vacate a final judgment for any reason it deems fit, for justifying relief. *Id.* Aside from the Rule 60(b)(6) catchall provision, the rule sets out five other instances when a court can vacate a previous judgment:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.

FED. R. CIV. P. 60(b).

³ 784 F.3d 37 (1st Cir. 2015).

⁴ *Id.* at 39.

⁵ *Id.* at 40.

was killed in a helicopter crash.⁶ Subsequently, in February 2012, appellant and her three children brought a products liability and wrongful death action in federal district court against Robinson Helicopter Company, the manufacturer of the helicopter, and Caribbean Aviation Maintenance Corporation (“CAM defendants”), who repaired the helicopter, claiming both defective design and negligent repair.⁷ It is alleged that prior to jury deliberations, appellant’s attorney received a confidential settlement offer totaling \$3.5 million.⁸ The appellants allegedly rejected the settlement offer and proceeded to trial where the jury returned a unanimous verdict absolving both defendants of liability.⁹ Final judgment was entered on March 19, 2012.¹⁰

On September 4, 2013, sixteen months after final judgment was entered, appellants filed a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure seeking an evidentiary hearing to assess an allegation that prejudicial information about appellant’s rejection of the settlement offer was improperly inserted into the jury deliberation.¹¹ The appellants submitted multiple affidavits reporting that Luis Irizarry, an aviation expert who provided services in a subsequent and unrelated case, met an individual who claimed to be the employer of a juror from appellant’s case.¹² The employer informed Irizarry that the juror told him that the jury did not award appellant any monetary damages because the jurors were aware that she had already declined a \$3.5 million settlement offer.¹³

⁶ See *id.* at 39 (explaining facts in detail).

⁷ See *Bouret-Echevarria*, 784 F.3d at 39-40 (summarizing history of case and jury findings). It is important to note that the crux of the complaint centered on a products liability case. *Id.* However, embedded within the products liability case were claims for a defective helicopter design, negligent repair of the helicopter, and wrongful death. *Id.* There was one lawsuit alleging multiple complaints against the two defendants. *Id.*

⁸ *Id.* While the CAM defendants acknowledged they were unsuccessful in their attempt to settle with appellants, they deny the amount referenced reflects their offer. *Id.* Robinson admits that settlement was discussed a couple of times but claim no formal settlement offer was made. *Id.* Robinson also claims it was unaware of any settlement offer from the CAM defendants. *Id.* Appellants asserted that one defendant was to pay three million dollars of the total settlement and the other defendant was to pay the remaining five-hundred thousand dollars. *Id.*

⁹ See *id.* (explaining details of jury verdict). Specifically, the jury found, “the CAM defendants were not negligent in their repair of the helicopter, and that the Robinson’s design of the helicopter was not defective.” *Id.*

¹⁰ See *id.* (giving date of judgment).

¹¹ See *Bouret-Echevarria*, 784 F.3d at 40 (explaining facts of case after jury verdict).

¹² See *id.* “Appellants submitted affidavits from Attorney David P. Angueira . . . and Lizzette Bouret-Echevarria, the widow of the passenger killed in the helicopter crash.” *Id.* Luis Irizarry had testified on behalf of appellants during their trial and thereafter came across the pertinent information in relation to a tainted jury. *Id.*

¹³ See *id.* at 40 (explaining conversation between employer and juror). Although the facts are difficult to follow, it is important to note the multiple layers of hearsay at play here. See *id.* at

Irizarry relayed the information to appellant's trial attorney who then informed appellant.¹⁴

The appellants initially filed their Rule 60(b)(6) motion for an evidentiary hearing in the United States District Court for the District of Puerto Rico in an attempt to vacate the prior judgment and proceed to a new trial.¹⁵ The district court judge denied the motion, finding that the filing of the motion was untimely due to the eighteen-month period between the entry of final judgment and filing of the motion, and additionally that the materials filed in support of the motion were insufficient.¹⁶ On appeal, the First Circuit held that the district court abused its discretion in denying the Rule 60(b)(6) motion without holding an evidentiary hearing.¹⁷ The First Circuit reasoned that the district court miscalculated the timeliness of the motion, did not assume the truth of fact-specific statements set forth in the submitted affidavits, and did not appreciate the inability of appellants to avoid reliance on hearsay in seeking Rule 60(b)(6) relief.¹⁸

Motions brought under Rule 60(b) are committed to the district court's discretion and denials of Rule 60(b) motions are reviewed only for an abuse of that discretion.¹⁹ Various courts have identified specific

41 (pointing out hearsay layers).

¹⁴ See *Bouret-Echevarria*, 784 F.3d at 40 (discussing juror's course of action). Appellant attempted to retain "Attorney Angueira, a Boston attorney, and informed him of the potential juror misconduct[.]" *Id.* Attorney Angueira requested that appellants ask "whether Attorney Morales would agree to be co-counsel in order to file post-judgment motions and present evidence" to the court. *Id.* at 40-41. Within twenty-four hours after being asked, Attorney Morales informed the appellants that he was withdrawing from the case. *Id.* at 41. Furthermore, Attorney Angueira called Irizarry to confirm the details of the information reported to appellants, but Irizarry told him that he would not speak to him without the permission from Attorney Morales. *Id.* Attorney Angueira called Attorney Morales to seek permission, but Attorney Morales never picked up the phone and he never returned the call. *Id.*

¹⁵ *Id.* at 42.

¹⁶ See *Bouret-Echevarria*, 784 F.3d at 41 (explaining lower court's decision). The district court stated, "[w]hile there is no specific limit under Rule 60(b)(6), seeking relief eighteen months after final judgment pushes against reasonableness." *Id.*

¹⁷ See *id.* at 40 ("In denying this request, the district court miscalculated the timeliness of the motion, did not assume, as required by law, the truth of fact-specific statements set forth in affidavits supporting the Rule 60(b)(6) motion, and did not appreciate the inability of appellants, under the unusual circumstances here, to avoid reliance on hearsay in seeking Rule 60(b)(6) relief.").

¹⁸ See *Bouret-Echevarria*, 784 F.3d at 40 (explaining reasoning behind holding district court abused its discretion).

¹⁹ See *Ahmed v. Rosenblatt*, 118 F.3d 886, 891 (1st Cir. 1997) (explaining Rule 60(b) motion standard of review); *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19 (1st Cir. 1992) ("[A]buse-of-discretion standard applies in connection with appellate review of orders refusing to grant relief under Rule 60(b)(6)."); *Ojeda-Toro v. Rivera-Mendez*, 853 F.2d 25, 28 (1st Cir. 1988) ("Rule 60(b) motion is committed to the

instances of abuse, including instances when a material factor carrying significant weight is ignored or when an improper factor is relied upon.²⁰ Generally speaking, Rule 60(b) grants federal courts the power to vacate judgments whenever such action is appropriate to accomplish justice.²¹ While the rule generally promulgates six reasons for vacating a final judgment, Rule 60(b)(6) is a catchall provision providing relief for any reason not otherwise covered, and so long as the motion is made in a reasonable time.²² Although the scope of Rule 60(b)(6) could potentially cover an extensively wide array of instances, courts have interpreted the rule to require a showing of “extraordinary circumstances,” such as a violation of due process rights or other constitutional protections, effectively creating a high threshold for appellants to overcome.²³ This

discretion of the district court and may be reversed only upon a finding of an abuse of that discretion.”); *Mitchell v. Hobbs*, 951 F.2d 417, 420 (1st Cir. 1991) (describing Rule 60(b) motion standard of review).

²⁰ See *Indep. Oil & Chem. Workers of Quincy, Inc., v. Procter & Gamble Mfg. Co.*, 864 F.2d 927, 929 (1st Cir. 1988) (“Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them.”); *Superline*, 953 F.2d at 19 (discussing Rule 60(b) motion); *Mitchell*, 951 F.2d at 420 (same). In the case at hand, the First Circuit focused on the district court’s abuse of discretion when analyzing the factors of Rule 60(b)(6). See *Bouret-Echevarria*, 784 F.3d at 41-42 (discussing abuse of discretion in Rule 60(b)(6) motion context); cases cited *supra* note 19 (explaining instances where courts have analyzed lower court’s abuse of discretion).

²¹ FED. R. CIV. PRO. 60(b); see *Klaprott v. United States*, 335 U.S. 601, 614-15 (1949) (stating Rule 60(b) vested federal courts with the “power . . . to vacate judgments whenever such action is appropriate to accomplish justice.”); *Superline*, 953 F.2d at 19 (noting purpose of Rule 60(b)).

²² See FED. R. CIV. P. 60(b) (listing reasons justifying relief). The language of the rule encompasses six reasons:

[T]he court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Id. See also *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988) (noting timing issues associated with Rule 60(b)(6)); Hollee S. Temple, *Raining On The Litigation Parade: Is It Time To Stop Litigant Abuse Of The Fraud On The Court Doctrine?*, 39 U.S.F. L. REV. 967, 972-75 (2005) (highlighting purpose of Rule 60(b)(6)).

²³ See *Klapprott*, 335 U.S. at 614-15 (1949) (analyzing extraordinary circumstances); *Davila-Alvarez v. Escuela de Medicina Universidad Cent. del Caribe*, 257 F.3d 58, 67 (1st Cir. 2001) (“Moreover, to justify relief under Rule 60(b)(6), ‘a party must show “extraordinary circumstances” suggesting that the party is faultless in the delay.” (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993))). Courts have not explicitly

high threshold required by Rule 60(b)(6) suggests there is a definitive need to balance the finality of judgments with the need to accomplish justice.²⁴

To balance these two opposing policies, courts considering motions under Rule 60(b)(6) ordinarily hone in on certain factors to aid the process of identifying proper circumstances justifying relief, which are: (1) whether the motion was timely; (2) whether exceptional circumstances justify extraordinary relief; (3) whether the movant can show a potentially meritorious claim or defense, which, if proven, could bring success at trial; and (4) whether there is a likelihood of unfair prejudice to the opposing party.²⁵ Nonetheless, these factors must not be looked at exclusively, and rather, they must be examined together in order to view them appropriately under the circumstances.²⁶ Notably, courts have acknowledged that there is no rule requiring them to take each factor into account in every case;

stated which circumstances are deemed “extraordinary”; however, extensive case law supports the notion that “extraordinary circumstances” include violations of constitutional rights, such as the due process rights at issue in this case.

²⁴ See *Paul Revere Variable Annuity Ins. Co. v. Zang*, 248 F.3d 1, 6 (1st Cir. 2001) (“There must be an end to litigation someday and therefore district courts must weigh the reasons advanced for reopening the judgment against the desire to achieve finality in litigation.” (quoting *Ackermann v. United States*, 340 U.S. 193, 198 (1950))); see also *United States v. One Urban Lot*, 882 F.2d 582, 585 (1st Cir. 1989) (noting Rule 60(b)(6) relief is “‘extraordinary relief’ which should be granted ‘only under exceptional circumstances’” (quoting *Lepore v. Vidockler*, 792 F.2d 272, 274 (1st Cir. 1986))).

²⁵ See *Superline*, 953 F.2d at 20 (detailing Rule 60(b) motion criterias). A common goal of all courts is to ensure that vacating a judgment after analyzing these four factors will not be an empty exercise. See *Boyd v. Bulala*, 905 F.2d 764, 769 (4th Cir. 1990) (“[A] threshold condition for granting the relief is that the movant demonstrate that granting the relief will not in the end have been a futile gesture[.]”); *Lepkowski v. United States Dep’t of Treasury*, 804 F.2d 1310, 1314 (D.C. Cir. 1986) (“motions for relief under Rule 60(b) are not to be granted unless the movant can demonstrate a meritorious claim or defense[.]”); *Compton v. Alton S.S. Co.*, 608 F.2d 96, 102 (4th Cir. 1979) (“[C]ourts require that a movant under Rule 60(b) assume the burden of showing a meritorious defense . . . as a threshold condition to any relief whatsoever under the Rule.”); *In re Stone*, 588 F.2d 1316, 1319 (10th Cir. 1978) (requiring meritorious defense for relief from final judgment under Rule 60(b)); *Coon v. Grenier*, 867 F.2d 73, 76 (1st Cir. 1989) (asserting presence or absence of meritorious defense is considered with Rule 60(b) motion); *Marshall v. Monroe & Sons, Inc.*, 615 F.2d 1156, 1160 (6th Cir. 1980) (explicating precondition with respect to Rule 60(b)(1)). See generally *Luke J. Gilman & Angeles Garcia, Fifth Circuit Survey-Civil Procedure*, 47 TEX. TECH L. REV. 449, 454-56 (2015) (noting three recent cases dealing with Rule 60(b)(6) issues); *Mary C. Cavanagh, Interpreting Rule 60(b)(6) Of the Federal Rules Of Civil Procedure: Limitations On Relief From Judgments For “Any Other Reason”* 7 SUFFOLK. J. TRIAL & APP. ADVOC. 127, 131-33 (2002) (explaining grounds for denial of relief).

²⁶ See *Ungar v. Palestine Liberation Org.*, 599 F.3d 79, 83-84 (1st Cir. 2010) (“[T]his compendium is neither exclusive nor rigidly applied. Rather, the listed factors are incorporated into a holistic appraisal of the circumstances.”); see also *Superline*, 953 F.2d at 20 (discussing factors cannot be rigidly applied); *Zang*, 248 F.3d at 5 (noting proper application of Rule 60(b)(6) factors). The court in *Zang* notes that a Rule 60(b)(6) analysis rests on fact-specific considerations informed by the nature and circumstances of each particular case. *Zang*, 248 F.3d at 5-6.

sometimes just one factor dominates the others to such an extent that it undoubtedly determines a result.²⁷

When analyzing the timeliness of a Rule 60(b)(6) motion, courts have held that a “reasonable” period of time is measured from the time at which a movant could have filed his or her Rule 60(b)(6) motion and the time when he or she did in fact file the motion.²⁸ Additionally, relief under the rule requires a showing that exceptional circumstances justify extraordinary relief.²⁹ For instance, when there is an allegation of a tainted jury there are serious due process implications that courts have deemed to fall under the umbrella of an exceptional circumstance justifying extraordinary relief.³⁰ Furthermore, when considering whether or not to vacate a judgment, courts must ensure that doing so will not be a waste of the court’s time or an empty exercise.³¹ The last factor—the likelihood of unfair prejudice—must extend beyond the normal inconveniences of litigation; courts have stated that the mere cost and time of re-litigating a case does not amount to unfair prejudice on its face.³²

²⁷ See *Ungar*, 599 F.3d at 86 (“In an effort to salvage the judgment, the plaintiffs argue that a court need not do a mechanical, multi-factor analysis every time a party seeks relief under Rule 60(b)(6). That is true: there is no ironclad rule requiring an in-depth, multi-factor analysis in every case.”).

²⁸ See, e.g., *Klapprott*, 335 U.S. at 607–16 (1949) (holding four-year gap timely in denaturalization case when seeking to set aside judgment); *Cotto v. United States*, 993 F.2d 274, 280 (1st Cir.1993) (finding sixteen-month delay unreasonable because settlement occurred two months after entry of order of dismissal); *United States v. Baus*, 834 F.2d 1114 at 1122 (1st Cir. 1987) (holding five-year lapse timely when opposing party changed its mind about executing judgment).

²⁹ See *Superline*, 953 F.2d at 19-20 (“The need to harmonize these competing policies has led courts to pronounce themselves disinclined to disturb judgments under the aegis of Rule 60(b) unless the movant can demonstrate that certain criteria have been achieved. In general, these criteria include (1) timeliness, (2) the existence of exceptional circumstances justifying extraordinary relief[.]”).

³⁰ See *Smith v. Phillips*, 455 U.S. 209, 217 (1982) (“Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.”). Furthermore, Rule 606(b) states, “a juror may testify about whether extraneous prejudicial information was improperly brought to the jury’s attention” or whether any “outside influence was improperly brought to bear upon any juror.” See *Bouret-Echevarria*, 784 F.3d at 45 (illustrating Federal Rule of Evidence 606(b) for verdict impeachments). If such testimony brings any external influences, the court must determine whether such extraneous information was prejudicial by determining its probable effect on a hypothetical average juror. *United States v. Boylan*, 898 F.2d 230, 261-62 (1st Cir. 1990) (explaining presumption of prejudice when “third party communication . . . injects itself into the jury process.”).

³¹ See *Superline*, 953 F.2d at 20 (“as a precondition to relief under Rule 60(b), [a party] must give the trial court reason to believe that vacating the judgment will not be an empty exercise.”)

³² See *United States v. One Parcel of Real Prop.*, 763 F.2d 181, 183 (5th Cir. 1985) (requiring party to re-litigate an action does not amount to prejudice); *Coon v. Grenier*, 867 F.2d 73, 77 (1st Cir. 1989) (finding no prejudice from passage of time and requiring party to show

In *Bouret-Echevarria v. Caribbean Aviation Maintenance Corp.*, the court analyzed each of the aforementioned factors in determining that the district court abused its discretion in denying appellant's Rule 60(b)(6) motion for an evidentiary hearing.³³ First, the court spent a considerable amount of time analyzing the timeliness factor of Rule 60(b)(6) and noted that the proper measure of a "reasonable" period of time for the purposes of the rule is the time at which the appellants *could have filed* their Rule 60(b)(6) motion against when they did in fact file the motion.³⁴ The court reasoned that the earliest time the appellants could have filed their Rule 60(b)(6) motion was when the appellants first learned of the allegations of juror misconduct—four months prior to the date they filed their motion—rather than the day when final judgment was entered.³⁵ Additionally, the court noted that the district court erred when it determined that the eighteen months between the entry of judgment and the filing of the Rule 60(b)(6) motion was unreasonable; however it reasoned that it would have been nearly impossible for the appellants to have filed their motion any earlier because they did not have knowledge of any accusation of juror misconduct.³⁶ In its analysis of the second factor under Rule 60(b)(6), the court noted that if an allegation of jurors' awareness of the confidential settlement offer is true, it surely would amount to an exceptional circumstance, justifying the extraordinary relief of vacating the final judgment.³⁷ More importantly, the court reasoned that there are serious

evidence of prejudice).

³³ See generally *Bouret-Echevarria*, 784 F.3d at 43-49 (analyzing appropriate factors of Rule 60(b)(6)). While the court analyzed each of the four factors, it also noted that the factors were not exhaustive and that a court was not restricted to only those factors. *Id.* at 44. Therefore, the court expanded its reasoning to include other factors aligning with the policy concerns behind the existing factors. *Id.* at 43, 46-49.

³⁴ See cases cited *supra* note 28 (explaining reasonable period of time for Rule 60(b)(6) motion).

³⁵ See *Bouret-Echevarria*, 784 F.3d at 44 ("The district court, however, measured the reasonableness of appellants' delay in bringing forth their Rule 60(b)(6) motion from the entry of final judgment, not from the time that appellants first learned of the allegations of juror misconduct.").

³⁶ See *id.* ("In making its determination that eighteen months was unreasonable, the district court did not address the fact that the earliest appellants could have brought their Rule 60(b)(6) motion was May 22, 2013, the day they learned of the potential misconduct."). The court went into fact-specific detail as to why the appellants could not have filed their motion any earlier, specifically because appellants' counsel was actively attempting to substantiate the motion and find local counsel with whom to associate. *Id.* Summarily, the court reasoned that the eighteen months between entry of final judgment and the filing of the motion was reasonable. *Id.*

³⁷ See *id.* at 45 (explaining juror's knowledge of confidential settlement offer as a violation of due process); *supra* note 30 and accompanying text (discussing exceptional circumstances justifying extraordinary relief). The court in *Smith v. Phillips* explained that if a jury is aware of and bases its decision on knowledge that will affect a jury's impartiality, there has been a

due process implications of a tainted jury as well as convincing policy concerns surrounding the necessity of maintaining juror privacy.³⁸

The court then briefly analyzed whether the claim had enough merit to vacate the judgment and whether filing the motion would result in unfair prejudice to the defendants.³⁹ Specifically, the court reasoned that the claim possessed enough merit to satisfy Rule 60(b)(6) relief.⁴⁰ Furthermore, the court held that the appellant's pursuit of a Rule 60(b)(6) motion would not unfairly prejudice the defendants because the only possible hardship would be the normal costs and time commitments associated with litigation.⁴¹ The court expanded its reasoning beyond the four factors under Rule 60(b)(6) and noted that the essence of the district court's abuse of discretion occurred when it dismissed fact-specific allegations in the appellant's affidavits as mere rumor rather than assuming the truth of such fact-specific statements contained in the motion.⁴² The

violation of due process. *See Smith*, 455 U.S. at 217 ("Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.").

³⁸ *Bouret-Echevarria*, 784 F.3d at 45. The court stated:

In recognition of the due process implications of a tainted jury, and the need to maintain juror privacy, our law provides for the exploration of the influence of extraneous information on the deliberations of a jury under controlled circumstances. Federal Rule of Evidence 606(b) states that a "juror may testify about whether extraneous prejudicial information was improperly brought to the jury's attention" or whether any "outside influence was improperly brought to bear upon any juror." If the existence of external influences is established through such testimony, the court must determine whether such extraneous information was prejudicial by determining its "probable effect on a hypothetical average juror."

Id. (citing *United States v. Boylan*, 898 F.2d 230, 262 (1st Cir. 1990)); *see also Boylan*, 898 F.2d at 261 (discussing presumption of prejudice exists when "third party communication . . . directly injects itself into jury process.").

³⁹ *See Bouret-Echevarria*, 784 F.3d at 45 (analyzing last two factors of Rule 60(b)(6)).

⁴⁰ *Id.* ("Although the jury found neither negligence on the part of the CAM defendants nor a product defect on the part of Robinson, this case had enough merit to get to the jury. If the jury knew of the settlement offer when it rejected appellants' case, we cannot say that a retrial without that proscribed information would be an empty exercise.").

⁴¹ *See id.* at 45-46 (explaining reasoning behind holding that last two factors were satisfied). With respect to whether or not the appellants had a meritorious claim, the court explained that as a precondition to relief a party must give the trial court reason to believe that vacating judgment would not be an empty exercise. *Id.* at 46; *see Superline*, 953 F.2d at 20 (analyzing whether vacating judgment is empty exercise). The court also reasoned that the CAM defendant's claim of unfair prejudice was insufficient because the majority of their claims appeared to be nothing more than the usual inconveniences any party faces when forced to re-litigate. *Bouret-Echverria*, 783 F.3d at 46.

⁴² *Bouret-Echevarria*, 783 F.3d at 46-47. The district court ruled that the affidavits submitted by appellants in support of their Rule 60(b)(6) motion were "insufficient to push the

court noted that although the district court may have been correct to categorize the fact-specific statements as impermissible hearsay, it “failed to appreciate the critical fact that appellants could not [have] obtain[ed] fact-specific statements beyond the” affidavits submitted in their request for an evidentiary hearing.⁴³ Lastly, the court noted that a finding of an abuse of discretion, and then granting Rule 60(b)(6) relief, could create some uncertainty about the finality of a judgment; however the court reasoned that the due process values protected by Rule 60(b)(6) are pertinent to accomplish justice.⁴⁴

The First Circuit’s reasoning was structured elegantly to touch upon the factors of the rule first and then to the more significant underlying issues behind Rule 60(b)(6).⁴⁵ The First Circuit did, however, seem to rely too heavily on the appellant’s arguments surrounding each of the four factors of the rule.⁴⁶ For example, the court spent a significant amount of time explaining what constitutes a “reasonable” time limit under the timeliness factor of Rule 60(b)(6) and it also spent a considerable amount of time explaining what constitutes unfair prejudice and exceptional

Plaintiffs’ claims beyond the daunting threshold required by Rule 60(b) . . . if they ‘were sufficient to force a court to hold an evidentiary hearing, the court would be potentially required in any civil case to grant an evidentiary hearing following a jury verdict based on mere rumors, regardless of how much time had elapsed since judgment.’” *Id.* The First Circuit reasoned that the district court is not legally allowed to assume facts in affidavits to be false or mere rumors. *Id.* It stated that the district court failed to recognize a proposition of law that applies to a district court’s consideration of allegations underlying Rule 60(b)(6) relief. *Id.*; see *Superline*, 953 F.2d at 18 (“In the first instance, an inquiring court should assume the truth of fact-specific statements contained in a Rule 60(b)(6) motion.”). The First Circuit then noted that specific facts in the appellants’ affidavits, specifically the communications relating to juror misconduct and details surrounding the confidential settlement offer, could not be dismissed as mere rumor given that they had a probative weight, which the district court ignored. *Id.*

⁴³ See *Bouret-Echevarria*, 784 F.3d at 47 (explaining district court’s treatment of hearsay). The appellants could not have obtained any further fact-specific statements because their attorney, Attorney Morales, refused to talk to their current attorney and the key expert witness, Irizarry, refused to talk to anyone as well. *Id.* at 47-48. Therefore, the appellants were very limited in their facts alleging juror misconduct. *Id.* Furthermore, appellants’ attorney was barred from contacting any jurors due to a local law that prohibited “post-verdict communication with jurors except under court supervision.” *Id.* at 48-49.

⁴⁴ See *id.* at 49 (“We do not minimize the importance of finality of judgments or protecting the privacy of jurors. Yet we must also consider the due process values implicated by jury deliberations free of extraneous influences. Indeed, Rule 60(b)(6) exists, in part, to protect such values, and, in so doing, to ‘accomplish justice.’ Inescapably, there is a tension here between the values of finality and due process. . . . [T]he district court denied the request for an evidentiary hearing, and thereby concluded that the value of due process must necessarily be sacrificed for the value of finality.”).

⁴⁵ See generally *Bouret-Echevarria*, 743 F.3d at 43-50 (analyzing underlying factors of Rule 60(b)(6)).

⁴⁶ See *id.* (explaining essential aspects of each factor).

circumstances.⁴⁷ While an assessment of each factor should be given weight in making a proper determination in this case, the district court, and even the First Circuit, was correct to note that a decision should not depend solely on whether one or more factors of a rule have been satisfied.⁴⁸ Therefore it could be inferred that the First Circuit made its decision based on the fact that the timeliness factor was indeed satisfied but, as Justice Barron—the dissenting justice—notes, the failure to properly assess one factor should not have been the reason for the reversal.⁴⁹ An abuse of discretion does not arise when a court fails to properly assess merely one factor; therefore, if the District Court properly considered the substance of the motion rather than its form, then it is likely that the court did not abuse its discretion.⁵⁰

In addition to focusing on whether the district court properly weighed the relevant factors of the rule, the appellees extended their arguments beyond a multifactor analysis and rightfully crafted arguments around how far the district court should have gone in assuming the truth of the fact-specific statements contained in the Rule 60(b)(6) motion.⁵¹ While

⁴⁷ See *id.* at 43-46 (analyzing unfair prejudice and exceptional circumstances).

⁴⁸ See *Bouret-Echevarria*, 784 F.3d at 50 (Barron, J., dissenting) (stating majority should not reverse based on satisfaction of one factor). In his dissent, Judge Barron notes that the district court's treatment of the timeliness factor cannot warrant reversal. *Id.* Specifically, he states,

The majority suggests that the District Court erred in assessing the timeliness of the Rule 60(b) motion and in failing to give sufficient credence to the allegations contained in the supporting affidavits. But any error in the District Court's treatment of the timeliness of the motion cannot warrant reversal because the District Court did not rest the denial solely on that basis. We thus may reverse only if the District Court erred in how it responded to the substance of the allegation contained in the affidavits that the jury was exposed to a settlement offer. I do not see, however, how the District Court erred in that regard.

Id.

⁴⁹ See *supra* note 48 and accompanying text (stating majority should not reverse based on satisfaction of one factor).

⁵⁰ See *Bouret-Echevarria*, 784 F.3d at 50 (Barron, J., dissenting) (“We thus may reverse only if the District Court erred in how it responded to the substance of the allegation contained in the affidavits that the jury was exposed to a settlement offer. I do not see, however, how the District Court erred in that regard.”).

⁵¹ See *Bouret-Echevarria*, 784 F.3d at 50 (Barron, J., dissenting) (“As the majority notes, a district court is required to assume ‘the truth of fact-specific statements contained in’ a Rule 60(b)(6) motion.”). The majority also noted this exact requirement of Rule 60(b), that a district court must assume the truth of the facts submitted in the motion. *Id.* at 47. Trial courts generally are given great deference in evidentiary rulings mostly because they are in the best position to hear and assess all testimony in the relevant context. Todd J. Bruno, *Say What?? Confusion In The Courts Over What The Proper Standard Of Review For Hearsay Rulings*, 18 SUFFOLK J. TRIAL & APP. ADVOC. 1, 26-28 (2013). The Tenth Circuit explained, “[g]iven the fact- and case-specific nature of hearsay determinations, ‘our review of those decisions is especially

the majority agreed that a Rule 60(b)(6) motion requires the district court to assume the truth of fact-specific statements, its holding seems somewhat hypocritical given the fact that it allowed “layers of hearsay” to be injected into the appeal.⁵² The district court did indeed assume the truth of the facts in the motion—that there was a mere allegation, or a “rumor,” of juror misconduct.⁵³ Nevertheless, the First Circuit, in finding that the fact-specific portions of the motion could not be dismissed as mere rumor, admitted what seems to be impermissible hearsay and effectively assumed more than just the truth of the facts submitted in the Rule 60(b) motion.⁵⁴

deferential.” *See id.* (quoting *United States v. Blechman*, 657 F.3d 1052, 1063 (10th Cir. 2011)). Appellate courts ordinarily review evidentiary rulings for an abuse of discretion as it pertains to questions of law rather than questions of fact. *Bruno*, *supra* note 32, at 27-28 (2013). Appellate courts do not usually review evidentiary hearings de novo, unless the review involves in depth statutory interpretation. *Id.*; *see also* *State v. Robinson*, 270 P.3d 1183, 1198 (Kan. 2012) (“Ordinarily, we review the admission of hearsay evidence for an abuse of discretion. However, the issue of whether the trial court complied with specific statutory requirements for admitting evidence requires statutory interpretation, which we review de novo.”).

⁵² *Bouret-Echevarria*, 784 F.3d at 47. The majority stated:

There were layers of hearsay in the report of jury misconduct: an unidentified party telling Irizarry that one of the party’s employees, also unidentified, was a juror in Bouret-Echevarria’s trial, and that this juror told the unidentified party that the jury declined to award appellant any money damages because they knew she had been offered and rejected a \$3.5 million settlement. Ordinarily, the district court would be correct that such rumors, despite the concerns that they engendered in Morales and Irizarry, would not justify an evidentiary hearing. Here, however, the district court failed to appreciate the critical fact that appellants could not obtain fact-specific statements beyond the reports of Morales and Irizarry in requesting an evidentiary hearing.

Id.

⁵³ *See id.* at 50 (Barron, J., dissenting) (“The District Court was thus obliged to take as true that a report of juror misconduct reached the petitioner Bouret—not that the juror made the report, or even that the juror’s employer passed the report to the expert witness Irizarry. But that being all that must—or even legally can—be taken as true, I do not see what the District Court did wrong.”).

⁵⁴ *See id.* at 47 (“These fact-specific portions of Bouret-Echevarria’s motion could not be dismissed as mere rumor. They had a probative weight that the district court ignored.”). It is important to note the distinction between the majority and the dissent here: the majority admitted factual allegations, specifically the aforementioned layers of hearsay, and held that, although it was mere rumor, it gave rise to a furthering of the appeal. *Id.* As the dissent notes, the district court did not abuse its discretion because the fact-specific statements merely alleged that there was juror misconduct. *Id.* at 50 (Barron, J., dissenting). Since the allegations were unsupported and classified as “layers of hearsay” and “rumor” the district court properly refused to investigate the allegations any further. *Id.* Even if the district court acted in an unreasonable fashion when it refused to investigate further, it did not likely give rise to a total abuse of discretion that should result in a reversal of its decision. *See id.* (“I do not believe a different view about how discretion should be exercised in the face of a petition based on such an unsubstantiated rumor—made well after a final verdict—supplies a sufficient reason to conclude that discretion was

Although the court may have acted reasonably when it agreed that there were no other means of obtaining sufficient information and therefore the matter should have been investigated further, the matter did not necessarily warrant a finding that the district court abused its discretion in denying further investigation.⁵⁵ The district court did not unreasonably weigh material factors or make any mistakes in its analysis; rather, it reasonably decided not to permit rumors and unsubstantiated claims to be brought in as evidence for vacating a prior judgment.⁵⁶

Putting the rules of evidence and civil procedure aside for a moment, this case seems to draw attention to a larger policy consideration: the value of a final judgment versus the importance of due process rights.⁵⁷ On one hand, ensuring that judgments are made final hits at the core of maintaining civil and criminal process and keeping litigants from engaging in frivolous matters.⁵⁸ On the other hand, affording each party their respective due process rights protects against injustice and ensures that each party is given a fair shot at being heard.⁵⁹ Here, the First Circuit arrives at its decision partly based on the principle of fairness and affording appellants their due process rights; however, the standard specifically noted within the case centered on an “abuse of discretion” neither procedural nor substantive due process.⁶⁰ It would not be at all unreasonable to conclude

abused or exercised unreasonably.”).

⁵⁵ See cases cited *supra* note 20 (explaining instances giving rise to abuse of discretion). In order for a court to find that a lower court abused its discretion, a material factor deserving significant weight must have been ignored, an improper factor must have been relied upon, or the court made a serious mistake in weighing the factors. See cases cited *supra* note 20 (applying higher standard for abuse of discretion).

⁵⁶ See *supra* note 52 (identifying layers of hearsay).

⁵⁷ See *Bouret-Echevarria*, 784 F.3d at 49 (“We do not minimize the importance of finality of judgments or protecting the privacy of jurors. Yet we must also consider the due process values implicated by jury deliberations free of extraneous influences.”). The First Circuit noted that the very purpose of Rule 60(b) is to protect due process rights in order to accomplish justice. *Id.*; see also *Klapprott*, 335 U.S. at 615 (stating that Rule 60(b) “vests power in courts” to vacate judgments to achieve justice).

⁵⁸ See *Bouret-Echevarria*, 784 F.3d at 49 (“we understand that granting an evidentiary hearing in the context of a request for 60(b)(6) relief creates temporary uncertainty about the finality of a judgment. However, that finality remains until the court actually vacates the judgment.”).

⁵⁹ See *supra* note 44 and accompanying text (explaining importance of due process rights with regards to litigation); *Bouret-Echevarria*, 784 F.3d at 49 (“Nevertheless, influenced by the errors in law and judgment that we have identified, the district court denied the request for an evidentiary hearing, and thereby concluded that the value of due process must necessarily be sacrificed for the value of finality.”).

⁶⁰ See *supra* note 18 (explaining that First Circuit is looking for abuse of discretion in making its determination). The court transitioned from reviewing the case for an abuse of discretion to reviewing the case for a violation of due process, which is inconsistent with similar appellate reviews of evidentiary hearings. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 891 (1st Cir.

that the district court acted well within its means and power when it denied the appellant's Rule 60(b) motion.⁶¹ The district court merely found that the allegation—that jurors became aware of settlement discussions and used this awareness to reject appellant's claims against the defendant—was unsubstantiated and essentially categorized it as inadmissible hearsay.⁶² In reversing the district court the First Circuit did exactly what historical cases have tried to prevent—allowing courts to make policy decisions and inject personal biases or beliefs into its decision, thus severely diminishing the value of justice.⁶³

It should be restated that an abuse of discretion is typically found when a material factor carrying significant weight is ignored or when an improper factor is relied upon. The First Circuit held that the district court abused its discretion in denying the appellant's Rule 60(b)(6) motion. It found that there was sufficient evidence that warranted the granting of the motion and that the district court ignored the possibility that the facts presented to it could have been true. Rather than adhere to the proper standard of review when analyzing Rule 60(b)(6) cases, the First Circuit unreasonably allowed outside factors and personal beliefs to weigh far too heavily on its ultimate decision. A reversal should have only been warranted if the district court acted unreasonably and ignored material factors, an act that did not seem to be at play here. This case exemplifies the ongoing tensions between the significance of due process rights in civil and criminal cases and the value of the finality of judgments.

1997); *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19 (1st Cir. 1992) (citing *Rodriguez-Antuna v. Chase Manhattan Bank Corp.*, 871 F.2d 1, 3 (1st Cir. 1989)); *see also* *Ojeda-Toro v. Rivera-Mendez*, 853 F.2d 25, 28 (1st Cir. 1988) (“[T]he treatment of a Rule 60(b) motion is committed to the discretion of the district court and may be reversed only upon a finding of an abuse of that discretion.”); Todd J. Bruno, *Say What?? Confusion In The Courts Over What Is The Proper Standard Of Review For Hearsay Rulings*, 18 SUFFOLK J. TRIAL & APP. ADVOC. 1, 26-28 (2013) (noting that appellate courts typically review evidentiary hearings for abuse of discretion).

⁶¹ *See generally* *Bouret-Echevarria*, 784 F.3d at 50 n.10 (Barron, J., dissenting) (“There is no precedent beyond *Superline* that elaborates on the showing that a party must make to require a district court to hold an evidentiary hearing in circumstances akin to those presented here. But analogous precedent from the criminal context—which the majority also takes to be relevant—seems to me to support the conclusion that the District Court had considerable discretion to make the call it made.”).

⁶² *See* *Bouret-Echevarria*, 784 F.3d at 49-50 (Barron, J., dissenting) (“But the core allegation . . . was an ‘unsubstantiated conclusion’ resting on indirect sources. And I do not believe a different view about how discretion should be exercised in the face of a petition based on such an unsubstantiated rumor—made well after a final verdict—supplies a sufficient reason to conclude that discretion was abused or exercised unreasonably.”).

⁶³ *See generally* *Bouret-Echevarria*, 784 F.3d at 47-50 (finding district court abused discretion).

Kevin J. Castodio