Constitutional Right to a Fair Trial and Social Justice Influence

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CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND SOCIAL JUSTICE INFLUENCE

Kaitlyn Marchant*

Abstract
This article evaluates the challenges that have arisen from the growth of social media and its influence on the right to the fair trial process in high-profile cases. Pretrial publicity through media exposure can bias potential jurors, potentially leading to decisions based on outside information rather than courtroom evidence. The article highlights the risks associated with jurors being exposed to external information through various media sources, which can significantly impact their objectivity and ability to make impartial judgments. It scrutinizes the limitations of the existing legal framework in addressing these challenges, including the reliance on jurors' assurances of impartiality and the presumed ability of the legal system to uncover and mitigate bias.

By highlighting the case of State of Minnesota v. Derek Chauvin, the article considers how social media amplifies pretrial publicity, further complicating the preservation of juror impartiality. This case raises important questions about the impact of social media on juror bias and whether the current legal standards are equipped to address this issue adequately. The article does not assess Chauvin’s guilt or whether the jury was correct in reaching their verdict. Rather, the article emphasizes the urgent need for a reevaluation of these legal standards, which have largely remained unchanged since the 1960s, focusing on whether a fair trial is possible in cases with worldwide attention and social justice scrutiny.

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I. INTRODUCTION

The explosive growth of social media and the public's reliance on nontraditional sources of information presents a multitude of issues for high profile cases.\(^1\) Criminal defendants may be unable to receive a fair trial if potential jurors have been exposed to information about the defendant through the media.\(^2\) Pretrial publicity could bias potential jurors from the moment a case gains media attention, and may result in decisions that are not based solely on the evidence presented in court, but rather on outside information that was obtained through media exposure.\(^3\) Put differently, jurors may have already formed an opinion upon the guilt or innocence of a defendant before having the chance to hear the evidence. Additionally, the media may expose jurors to a defendant's prior convictions, confessions, or other

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1. See Joseph F. Flynn, Note, Prejudicial Publicity in Criminal Trials: Bringing Sheppard v. Maxwell Into the Nineties, 27 NEW ENG. L. REV. 857, 858 (1993) (“The potential danger of prejudicial publicity is vastly multiplied in today's technological age.”). It should be emphasized that this law review note was published in 1993. Technology has advanced even further since then; but the dangerous effects of pretrial publicity were already being recognized.

2. See Christina Collins, Comment, Stuck in the 1960s: Supreme Court Misses an Opportunity in Skilling v. United States to Bring Venue Jurisprudence into the Twenty-First Century, 44 TEX. TECH L. REV. 391, 397 (2012) (noting that in Supreme Court cases like Irvin v. Dowd, Rideau v. Louisiana, and Estes v. Texas, the defendants did not receive a fair trial due to jurors' exposure to immense pretrial publicity); Reynolds v. United States, 98 U.S. 145, 155–56 (1878) (recognizing that pretrial publicity can affect the right to a fair trial).

damaging evidence that is inadmissible at trial. Many studies have shown that exposure to pretrial publicity has a detrimental impact on jurors’ decision-making process.

Unfortunately, the American legal system—including judges—has failed to recognize the danger of pretrial publicity and seems to underestimate the detrimental effects of it. In fact, the Supreme Court has held that juror prejudice is not presumed where extraordinary pretrial media coverage has generated community bias. Additionally, jurors are not automatically disqualified even when they


5. See, e.g., Christine L. Ruva & Elisabeth M. Hudak, Pretrial Publicity and Juror Age Affect Mock-Juror Decision Making, 19 PSYCH. CRIME & L. 179, 194 (2013) (finding that negative pretrial publicity had a significant effect on younger jurors’ verdicts and that mock jurors exposed to negative pretrial publicity misattributed information in the pretrial publicity to the trial); Christine L. Ruva & Anthony E. Coy, Your Bias is Rubbing Off on Me: The Impact of Pretrial Publicity and Jury Type on Guilt Decisions, Trial Evidence Interpretation, and Impression Formation, 26 PSYCH. PUB. POL’Y & L. 22, 22 (2020) (finding that during deliberations, jurors exposed to pretrial publicity can spread pretrial publicity bias to jurors that were not exposed to pretrial publicity); Lee J. Curley et al., Cognitive and Human Factors in Legal Layperson Decision Making: Sources of Bias in Juror Decision Making, 62 MED. SCI. & L. 206, 208 (2022) (“[P]re-trial biases appear to effect verdict outcome in jury decision making.”); Christine L. Ruva & Cathy McEvoy, Negative and Positive Pretrial Publicity Affect Juror Memory and Decision Making, 14 J. EXPERIMENTAL PSYCH. 226, 226 (2008) (finding that, in an experimental study, exposure to pretrial publicity “significantly affected guilty verdicts, perceptions of defendant credibility, juror ratings of the prosecuting and defense attorneys, and misattributions of [pretrial publicity] as having been presented as trial evidence”); Amy L. Otto et al., The Biasing Impact of Pretrial Publicity on Juror Judgments, 18 L. & HUM. BEHAV. 453, 459–62 (1994) (finding that exposure to pretrial publicity about defendant’s character and inadmissible evidence affected the way that participants assessed the evidence presented in the trial).

6. See Joseph R. Mariniello, Note, The Death Penalty and Pre-Trial Publicity: Are Today’s Attempts at Guaranteeing a Fair Trial Adequate, 8 NOTRE DAME J. L. ETHICS & PUB. POL’Y 371, 374–75 (1994) (discussing how judges underutilize remedies such as change of venue and sequestration when pre-trial publicity is present and even when they do those remedies are inappropriate and ineffective); Collins, supra note 2, at 415 (“[D]espite the proliferation of the news media and its technology, the Supreme Court has not found a single case of presumed prejudice in this country since the watershed case of Sheppard in 1966.” (quoting United States v. McVeigh, 153 F.3d 1166, 1182 (10th Cir. 1998), cert. denied, 526 U.S. 1007 (1999))).

7. See, e.g., Skilling v. United States, 561 U.S. 358, 384 (2010) (“But pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.” (quoting Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 554 (1976))). A presumption of prejudice applies only in “extreme case[s]”—such as those involving “kangaroo court proceedings,” “bedlam,” a “carnival atmosphere,” or a disturbing lack of “judicial serenity.” Id. at 379, 440, 381, 380.
have formed some opinion as to the merits of the case. Many judges are satisfied if the jurors agree that they will set aside the bias and assess the case based on the evidence presented at trial. In other words, courts take jurors at their word when they promise to be impartial. That is because judges presume that jurors can make decisions free of bias, which requires jurors to be aware of their own biases and have the ability to control those biases when deciding the case. While many jurors believe they consciously know their own biases, most are wrong.

The United States Supreme Court has noted that trial courts are well-equipped to uncover bias. In Skilling v. United States, the Court stated “[t]his face-to-face opportunity to gauge demeanor and credibility, coupled with information from the questionnaires regarding jurors’ backgrounds, opinions, and sources of news, gave the [trial] court a sturdy foundation to assess fitness for jury service.” However, the Court failed to mention the possibility that some jurors may intentionally hide their biases, or the prejudice may go unrecognized.

8. See Reynolds v. United States, 98 U.S. 145, 155–56 (1878) (“[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.”).

9. See Valerie P. Hans, The Conduct of Voir Dire: A Psychological Analysis, 11 JUST. SYS. J. 40, 44 (1986) (“[J]udges often simply ask jurors if they can be fair... ‘Once the juror has answered ‘yes,’ everything else is considered irrelevant and judges pass on to the next juror.’” (quoting Charles R. Garry, Attacking Racism in Court Before Trial, 28 GUILD PRAC. 86, 93 (1969))).

10. See Sheppard v. Maxwell, 384 U.S. 333, 348 (1966) (showing two jurors admitting in court that they heard a broadcast about the Defendant’s mistress announcing that she bore two of his children, but their assurances that it would have no effect on their judgement was sufficient for the judge to allow the jurors to remain on the jury); see also Aldridge v. United States, 283 U.S. 308, 313 n.3 (1931) (“[T]o ask a [ju-ro] whether he is prejudiced or not against a party, and (if the answer is affirmative) whether that prejudice is of such a character as would lead him to deny the party a fair trial, is... the only sure method of fathoming his thoughts and feelings.” (quoting People v. Reyes, 5 Cal. 347, 350 (Cal. 1855))).

11. See Richard Gabriel et al., Redefining Bias in Criminal Justice, CRIM. JUST., Summer 2021, at 19, reprinted in GPSol Rep. Report, October 2021 (“[J]udges believe that jurors can both identify the bias and actively control that bias.”).

12. See id. at 18; Hans, supra note 9, at 44 (“Indeed, over thirty years of research on prejudice and racism have amply illustrated the weakness in people’s own assessments of their prejudice.”).


14. Id. at 395.
by the jurors.\textsuperscript{15} It is also possible that attorneys and judges are not well suited to predict juror bias.\textsuperscript{16} Moreover, voir dire may not be as effective in exposing bias as courts presume.\textsuperscript{17}

The recent utilization of social media to garner worldwide attention for social justice movements may be another way in which jurors presume a defendant’s guilt or innocence prior to trial. Black Lives Matter ("BLM"), a social movement dedicated to fighting racism, was "the first U.S. social movement in history to successfully use the internet as a mass mobilization device."\textsuperscript{18} State of Minnesota v. Chauvin is illustrative of the implications that social media as a "mass mobilization device" may have on high profile cases.\textsuperscript{19} After George Floyd died at the hands of Minneapolis police officer Derek Chauvin, the case

\textsuperscript{15} See generally, id. (failing to mention the defects of screening jurors for bias). See Gabriel et al., supra note 11, at 21 (discussing unconscious bias); Hans, supra note 9, at 46 ("[P]erspective jurors are so intimidated by the judge’s superior status that they hide their true feelings from the judge.").

\textsuperscript{16} See Gabriel et al., supra note 11, at 21; Hans, supra note 9, at 46 ("Attorneys say that … [J]udges ask leading questions, indicate to prospective jurors what the proper answer is, and fail to ask follow-up questions even if initial responses are suggestive of bias. … [J]udges unquestioningly accept jurors’ claims of impartiality"); Jacqueline M. Kirshenbaum & Monica K. Miller, Judges’ Experiences With Mitigating Jurors’ Implicit Biases, 28 PSYCHIATRY, PSYCH & L. 683, 683 (2021) ("Many judges were found to have a lack of awareness or understanding about implicit bias ….").

\textsuperscript{17} See Hans, supra note 9, at 40–41; Ken Broda-Bahm, Treat Truncated Voir Dire as Useless, JDSUPRA (Jun. 18, 2020), https://www.jdsupra.com/legalnews/treat-truncated-voir-dire-as-useless-25832/ ("[V]oir dire is often of no value when it comes to discovering or curing bias.").


\textsuperscript{19} See State v. Chauvin, 989 N.W.2d 1, 15 (Minn. Ct. App. 2023), review denied, No. A21-1228 (Minn. July 18, 2023), cert. denied, No. 23-416, 2023 WL 8007423 (U.S. Nov. 20, 2023) (explaining the trial judge denied the defendant’s motion for a change of venue because there was no part of the state that had not been exposed to substantial pretrial publicity); Taraneh Azar, In the Fight to Defund, Social Media is the Mobilizer, NE. UNIV. POL. REV. (June 11, 2020), https://www.nupoliticalreview.com/2020/06/11/in-the-fight-to-defund-social-media-is-the-mobilizer/ (explaining the function of BLM as a mass mobilization device). See generally Marcia Mundt et al., Scaling Social Movements Through Social Media: The Case of Black Lives Matter, SOC. MEDIA & SOC’Y, Oct.–Dec. 2018, at 1, https://journals.sagepub.com/doi/10.1177/205630518807911 (discussing how social media can significantly broaden the outreach of social justice movements such as BLM).
attracted significant pretrial publicity, which was intensified by its close connection to the BLM movement and the heightened use of social media during the COVID-19 lockdown.\textsuperscript{20}

Therefore, as Chauvin’s defense attorney argues on appeal, it is very possible that seated jurors could have had bias towards the defendant based on facts they learned through social media.\textsuperscript{21} It is also possible that some jurors may have been committed to the social justice movement and harbored ulterior motives for being selected as a juror. In fact, one of the jurors actually admitted that he wanted to serve on the jury to "try to spark some change."\textsuperscript{22} Lastly, some jurors may have truthfully believed that they could decide the case based on the evidence, but harbored implicit bias based on information they were exposed to outside of the courtroom.\textsuperscript{23}

This note analyzes many of the current approaches used by courts to balance pretrial publicity against the Sixth Amendment right to a fair trial. In Part VI, this article will assess whether State of Minnesota v. Chauvin was tainted by the extreme media coverage and its connection to one of the largest social justice movements in U.S. history.\textsuperscript{24} This article will not assess whether Derek Chauvin should be

\begin{itemize}
  \item \textsuperscript{20} See Jones, supra note 3 ("High-profile incidents of police killings often result in widespread pretrial publicity about the defendant and victim. The Derek Chauvin case was no exception."); The Legal Impact, Jury Selection for the Derek Chauvin Trial, UNIV. N.H. FRANKLIN PIERCE SCH. LAW., at 04:29 (Mar. 18, 2021), https://law.unh.edu/blog/2021/03/legal-impact-jury-selection-derek-chauvin-trial ("The case was kind of the perfect situation with regards to just how quickly it was able to just blow up because of everyone being locked down. They were stuck for three months, and then this happened.").
  \item \textsuperscript{21} See The Legal Impact, supra note 20, at 04:07 (stating that issues in the Chauvin case included the ability to find impartial jurors because of "opinions on police officers and systematic racism, exposure to the news route around what happened."); see also Akriti Sharma & Joseph Ax, Former Minneapolis Officer in George Floyd Case to Appeal Murder Conviction, REUTERS (Sept 24, 2021, 11:45 AM), https://www.reuters.com/world/us/derek-chauvin-appeal-his-conviction-sentencing-death-george-floyd-2021-09-24/ (discussing the appeal); cf. Appellant's Brief at 45, State v. Chauvin, 989 N.W.2d 1 (Minn. Ct. App. 2023) (No. A21-1228), 2022 WL 18931874.
  \item \textsuperscript{23} See Kirshenbaum & Miller, supra note 16, at 683.
\end{itemize}
acquitted of the conviction or whether the jury was correct in reaching their verdict; it will analyze whether a defendant receives a fair trial when their case garners worldwide attention and was subject to scrutiny by a social justice movement.25

II. THE SIXTH AMENDMENT RIGHT TO A FAIR TRIAL

In all criminal prosecutions, the Sixth and Fourteenth Amendments guarantee defendants the right to be tried by an impartial jury in the district where the defendant committed the crime.26 Impartiality requires that every juror be free from bias or prejudice against either side.27 Trial judges are responsible for protecting this constitutional guarantee.28 The theory of our legal system is that a case shall be decided only by evidence admissible in court and not by outside influence.29 Thus, a juror shall form an opinion as to the guilt or innocence of the defendant upon evidence produced in court.

In an attempt to ensure that seated jurors are impartial, potential jurors are assessed in a procedure called voir dire.30 During voir dire, the trial judge or attorneys ask prospective jurors questions that are

25. See Sonali Chakravarti, How BLM is Subtly Shaping the Chauvin Trial, THE NATION (Apr. 16, 2021), https://www.thenation.com/article/society/chauvin-george-floyd-trial/ (“[T]he [Minnesota v. Chauvin] proceedings . . . show the profound impact that a year of protests . . . has wrought on the American legal system.”); Sharma & Ax, supra note 21 (noting that Chauvin’s verdict was viewed as an opportunity to enact change in American policing).

26. See U.S. CONST. amend. VI (granting the “right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .”); U.S. CONST. amend. XIV, § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .”); Ristaino v. Ross, 424 U.S. 589, 595 n.6 (1976) (noting that a criminal defendant’s right to an impartial jury arises from both the Sixth Amendment to the United States Constitution and principles of due process).

27. See Nicole L. Waters & Paula Hannaford-Agor, Jury Impartiality in the Modern Era, in ENCYC. CRIMINOLOGY & CRIM. JIST. 2735, 2735 (Gerben Bruinsma & David Weisburd eds., 2018).


29. See Waters & Hannaford-Agor, supra note 27, at 2735 (noting that truly impartial jurors are able to render a justifiable verdict on the “evidence presented at trial” notwithstanding any outside influences.).

designed to expose biases. Prospective jurors could be removed from further consideration if the defense or prosecution believes they are prejudicial towards the defendant. One way to remove a biased juror is by a challenge for cause, which allows either side to request that the judge remove a prospective juror from further consideration due to bias, prior exposure to information about the case, or other disqualifying reasons. Grounds for a challenge for cause generally includes actual bias against the defendant, opinions as to the guilt or innocence of the defendant, or the inability to decide the case based solely on the evidence presented at trial. A prospective juror may also be removed from consideration by a peremptory challenge. Typically, each side is given a certain number of peremptory challenges and a prospective juror must be removed once a party uses a peremptory challenge. Thus, it is through peremptory challenges and challenges for cause that attorneys and judges can mitigate the risk of seating an impartial jury.

III. Change in Venue

When a case attracts significant pretrial publicity or community bias, the judicial safeguards, such as voir dire, may be ineffective. The Supreme Court has held that members of the jury can become biased from exposure to information about the case through pretrial publicity. However, exposure to information about a case does not

32. See Bamberger, supra note 30.
34. See id.
37. See Irvin v. Dowd, 366 U.S. 717, 726–28 (1961) (finding that, even after a venue change to an adjoining county, the defendant was not afforded a fair trial because of the immense pretrial publicity); see, e.g., Norbert L. Kerr et al., On the Effectiveness of Voir Dire in Criminal Cases with Prejudicial Pretrial Publicity: An Empirical Study, 40 Am. U. L. Rev. 665, 671, 697 (1991) (“The key question ... was how effectively bias due to [exposure to pretrial publicity] could be eliminated through voir dire
automatically disqualify an individual from serving on the jury.\textsuperscript{38} As long as the jurors can set aside the information that they learned about the case from the media and render a verdict solely based on the evidence offered at trial, the person is allowed to serve on the jury.\textsuperscript{39}

Additionally, as evidence has shown, voir dire is unlikely to uncover jury bias caused by pretrial publicity.\textsuperscript{40} The Supreme Court in \textit{Mu'Min v. Virginia} held that trial courts are not required to ask "questions specifically dealing with the content of what each juror has read . . . ."\textsuperscript{41} As Justice Marshall noted in his dissent, how can trial judges properly assess juror impartiality without knowing the specific information that jurors were exposed to?\textsuperscript{42} Evidently, the Supreme Court's standard for voir dire questioning is far too limited in scope to effectively "cure" the effects of pretrial publicity.

Therefore, through the advancements of technology and the use of social media, pretrial publicity may become so extreme that it corrupts the ability of the trial court to seat an impartial jury.\textsuperscript{43} As a result, defendants may be subject to an unfair trial. Under such circumstances, an option available to defendants is to request a change of venue.\textsuperscript{44} The request must be granted where the pretrial publicity is so significant that prejudice is presumed.\textsuperscript{45} A presumption of prejudice is warranted when pretrial publicity "has been so pervasive and prejudicial to a defendant that a court cannot expect to find an unbiased jury pool in the community . . . ."\textsuperscript{46} The request may also be

\begin{footnotes}


\footnote{See id.}

\footnote{See \textit{Id}.}

\footnote{See \textit{Id}.}

\footnote{See \textit{Id}.}

\end{footnotes}
granted where voir dire revealed actual prejudice.\textsuperscript{47} Actual prejudice occurs when voir dire reveals an inability of the court to seat an impartial jury because "community-wide sentiment [exists] against a defendant."\textsuperscript{48}

\textbf{IV. THE SUPREME COURT’S INTERPRETATION OF PRETRIAL PUBLICITY}

The Supreme Court has provided guidelines for judges to determine whether voir dire can provide safeguards adequate to ensure an impartial jury or whether pretrial publicity becomes so extreme that it justifies a change of venue. Between 1961 and 1966, the Supreme Court considered four seminal cases—\textit{Irvin v. Dowd} (1961), \textit{Rideau v. Louisiana} (1963), \textit{Estes v. State} (1965), and \textit{Sheppard v. Maxwell} (1966)—which set forth the boundaries of pretrial publicity to prevent the violation of a defendant’s Sixth and Fourteenth Amendment rights.

\textbf{A. Irvin v. Dowd}

In \textit{Irvin v. Dowd}, the Supreme Court held that a defendant’s constitutional right is violated when a trial is held in a county that has been highly prejudiced by pretrial publicity.\textsuperscript{49} This case attracted extensive media coverage following a series of six murders in Evansville, Indiana.\textsuperscript{50} When Leslie Irvin was arrested for the murders, the police and prosecutor issued a press release stating that Irvin confessed.\textsuperscript{51} In the small community of 30,000 residents, ninety-five percent of the households had received local newspapers which detailed the confession.\textsuperscript{52} When Irvin was indicted, counsel sought a change of venue, which was granted, and the case was moved to an adjoining county.\textsuperscript{53}

At voir dire, ninety percent of the potential jurors believed Irvin was guilty.\textsuperscript{54} Eight of the twelve empaneled jurors admitted that they

\textsuperscript{47} See Schwartzbach, supra note 44.
\textsuperscript{48} Tenzer, supra note 46.
\textsuperscript{50} See id. at 719–20.
\textsuperscript{51} See id.
\textsuperscript{52} See id. at 719, 725.
\textsuperscript{53} See id. at 720. The court denied a second motion requesting a change of venue to a jurisdiction farther away, arguing that the adjoining county was also prejudiced by the widespread media coverage. See id.
\textsuperscript{54} See id. at 727.
thought Irvin was guilty but indicated that they could render an impartial verdict. The jury convicted Irvin and he was sentenced to death.

The Supreme Court unanimously reversed Irvin’s conviction on the grounds that voir dire had revealed that some of the jurors harbored actual prejudice towards Irvin. The Court set aside the conviction even though each juror guaranteed that he could render an impartial verdict. Justice Clark wrote, “[w]ith his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion . . . .” The Court recognized that it would be impossible to find a juror completely ignorant of the facts and issues involved. However, the error of the lower court was accepting the jurors’ assurances that they could be impartial when voir dire made it clear that prejudice existed in the selected jury pool.

B. Rideau v. Louisiana

The Supreme Court was once again faced with the issue of whether pretrial publicity deprived a defendant of the right to a fair trial in Rideau v. Louisiana. In that case, Wilbert Rideau was accused of robbing a bank in Lake Charles, Louisiana and murdering one of the bank’s employees. Shortly after Rideau was arrested, he sat through twenty minutes of police interrogation without his lawyer present. This interview, which included his confession, was later broadcast on a local television station, exposing a large part of the community to the confession.

A few weeks after Rideau was arraigned, the court denied Rideau’s motion for a change of venue. Rideau was sentenced to death for first degree murder. Upon their empanelment, “[t]hree

55. See id.
56. See id. at 718.
57. See id. at 727–28.
58. Id. at 728.
59. See id. at 722.
61. See id. at 723–24.
62. See id. at 724.
63. See id. The community in Lake Charles consisted of approximately 150,000 people. Over the course of three days, it was estimated that 97,000 members of the community were exposed to the interview. See id.
64. See id. (describing that the motion argued a trial in Lake Charles would deprive Rideau of his right to a fair trial).
65. See id. at 725.
members of the jury which convicted [Rideau] had stated on voir dire that they had seen and heard Rideau’s televised ‘interview’ with the sheriff on at least one occasion.”

On appeal, the Supreme Court reversed Rideau’s 1961 conviction and remanded the case for a new trial. The Court held that the effects of adverse pre-trial publicity was a denial of due process and the refusal of the trial judge to grant a change of venue violated the defendant’s right to a fair trial. In reaching its decision, the Court alluded that an impartial jury could not be selected from a community where tens of thousands of people watched Rideau personally confess to the crimes, creating a presumption of prejudice. The Court’s decision reaffirmed the importance of protecting a defendant’s right to a fair trial in cases where pretrial publicity is so pervasive.

C. Estes v. Texas

Two years later, in Estes v. Texas, Billie Sol Estes was in the national spotlight in the weeks leading up to his trial for his involvement in a mortgage fraud scandal. Despite a change in venue to a jurisdiction over 500 miles away, the case received enormous pre-trial publicity, enough to fill eleven volumes of press clippings. During a preliminary hearing, where jurors were present, members of the press overcrowded the courtroom, turning it into a “circus-like” atmosphere.

After the jury found Estes guilty, his conviction was reversed by the Supreme Court. As part of the Court’s decision, Justice Clark noted that “[p]retrial can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence.” Once more, the Court held that “prejudice was inherent” as

66. Id.
67. See id. at 723.
68. See id. at 726 (“For we hold that it was a denial of due process of law to refuse the request for a change of venue, after the people of [the community] had been exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged.”).
69. See id.
71. See id. at 535.
72. See id. at 536.
73. See id. at 535.
74. Id.
a result of the media coverage prior to trial and during the initial hearing.75

D. Sheppard v. Maxwell

On July 30, 1954, Sam Sheppard was arrested for murdering his pregnant wife.76 The ongoing investigation focused on Sheppard and was highly publicized.77 Law enforcement provided the media with incriminating information that was not presented at trial, such as Sheppard’s refusal to take a lie detector and his failure to cooperate in the investigation.78 The newspapers also published extensive details about Sheppard’s extramarital affairs.79 Some articles even alleged that his extramarital affair was motive for killing his wife.80

The media coverage intensified once jury selection began and continued throughout the nine weeks of trial.81 The names of the jurors were published in every Cleveland newspaper.82 As a result, jurors received calls and letters regarding the trial.83 The jurors were also regularly exposed to the news reports.84 Despite the massive media coverage, the trial judge did not give jurors adequate instructions to avoid any outside information about the case.85 Sheppard was not granted a change of venue, nor was his jury sequestered.86

The jury convicted Sheppard of second-degree murder.87 After his conviction, Sheppard filed a writ of habeas corpus seeking to be released from custody based on the premise that his conviction was obtained by a denial of due process.88 After the District Court granted the

75. Id. at 543–44.
77. See id. at 337–42.
78. See id. at 338–39.
79. See id. at 340.
80. See id.
81. See id. at 341–42.
82. See id. at 342.
83. See id.
84. See id. at 345 (“Every juror, except one, testified at voir dire to reading about the case in the Cleveland papers or to having heard broadcasts about it.”).
85. After jurors admitted to hearing inaccurate and inflammatory news reports about the trial, the judge, over defense’s objection, simply took the jurors at their word that it would not influence them. See id. at 348–49.
86. See id. at 352–353.
87. See id. at 335 n.1.
88. See id. at 335.
writ, the Court of Appeals reversed.\textsuperscript{89} Ultimately, the Supreme Court reversed the denial of the habeas petition and remanded the case back to the District Court with instruction to grant the writ based on the presumption that Sheppard’s jury was prejudiced.\textsuperscript{90} The Court held that the “trial judge[] fail[ed] to protect Sheppard sufficiently from the massive, persuasive and prejudicial publicity ….”\textsuperscript{91} The majority stated that the trial judge could have taken multiple steps to protect Sheppard’s jurors from pretrial publicity, such as changing the venue, sequestering the jury, or ordering a new trial.\textsuperscript{92}

Even in the 1960s, prior to the introduction of social media,\textsuperscript{93} the Supreme Court recognized the dangerous effects of pretrial publicity on criminal trials. However, \textit{Sheppard}, \textit{Estes}, and \textit{Rideau} are the only cases in which the Supreme Court has held that pretrial publicity created a presumption of prejudice and \textit{Irvin} is the Court’s only decision in which it held that pretrial publicity led to actual prejudice in the jury panel. Following these four seminal cases of the 1960s, the Court has not reversed a conviction on the grounds that pretrial publicity violated a defendant’s right to a fair trial.

\textbf{V. A CHANCE TO REEVALUATE THE STANDARD—SKILLING V. UNITED STATES}

In 2010, the Court had the opportunity to reexamine its approach to pretrial publicity.\textsuperscript{94} In \textit{Skilling v. United States}, the Court considered whether community bias and massive media attention prevented Jeffrey Skilling from receiving a fair trial.\textsuperscript{95} Skilling was one of three executives at Enron Corporation indicted for manipulating financials to mislead the public about Enron’s profitability.\textsuperscript{96}

\textsuperscript{89} See id.  
\textsuperscript{90} See id. at 363.  
\textsuperscript{91} Id. at 335.  
\textsuperscript{92} Id. at 363.  
\textsuperscript{93} See The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?, \textsc{Maryville Univ.}, https://online.maryville.edu/blog/evolution-social-media (last visited Jan. 2, 2024) (explaining the earliest form of social media was launched in 1997).  
\textsuperscript{94} See Skilling v. United States, 561 U.S. 358, 398–99 (2010) (holding that the years-long pretrial publicity of defendant did not preclude finding an impartial jury through voir dire). The Court had an opportunity to reexamine its approach to pretrial publicity in the modern age, but instead continued to follow outdated precedent.  
\textsuperscript{95} See id. at 367.  
\textsuperscript{96} See Troy Segal, Enron Scandal: The Fall of a Wall Street Darling, \textsc{Investopedia}, https://www.investopedia.com/updates/enron-scandal-summary/ (Dec. 22, 2023) (explaining that Enron was an energy-trading and utility company based in Houston,
In the three years following Enron’s collapse, the *Houston Chronicle* mentioned Enron in 4,000 articles, hundreds of which mentioned Skilling by name, and nearly 100 of which were victim related. In November 2004, Skilling moved for a change of venue on the grounds that the hostility toward him in Houston had prejudiced the potential jurors. The District Court denied the motion.

A few months before the trial, the District Court mailed questionnaires to “400 prospective jurors and received responses from nearly all [of them].” The questionnaire included questions about the prospective jurors’ “sources of news and exposure to Enron-related publicity, beliefs concerning Enron and what caused its collapse, opinions regarding the defendants and their possible guilt or innocence, and relationships to the company and to anyone affected by its demise.”

On those questionnaires, prospective jurors commented that Skilling was “‘the devil,’ ... ‘the biggest liar on the face of the earth,’ [and] ‘[should] be hanged . . .’” Both the prosecution and defense counsel "agreed to exclude” all prospective jurors that admitted to having a "pre-existing opinion about Enron ... [that] would prevent [them] from impartially considering the evidence at trial.”

Three weeks prior to trial, one of Skilling’s co-defendants pled guilty. Skilling made a renewed change-of-venue motion on the grounds that the questionnaires sent to jurors revealed "pervasive bias" and the co-defendant’s guilty plea further biased the jury pool. The District Court again denied Skilling’s motion.

During voir dire, the District Court emphasized that the trial “was not a forum to seek vengeance against Enron’s former officers, or to provide remedies for its victims.” The court asked jurors if they had been exposed to news relating to Enron’s collapse and what they

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Texas, and, at the time, the seventh-largest corporation in the United States); Skilling, 561 U.S. at 369.


98. See id. at 369.

99. See id. at 370.

100. Id. at 372.

101. Id. at 371.

102. Collins, supra note 2, at 392 (quoting Brief for Petitioner at 6–8, Skilling v. United States, 561 U.S. 358 (2010) (No. 08-1394)).

103. Skilling, 561 U.S. at 372.

104. See id.

105. See id.

106. See id.

107. Id. at 373 (internal quotation marks and citation omitted).
recalled of any stories they saw. The trial judge also scrutinized questionnaire answers that indicated potential bias and allowed each side to ask follow-up questions.

The jury ultimately found Skilling guilty. On appeal, the Supreme Court was presented with two questions: “First, did the District Court err by failing to move the trial to a different venue based on a presumption of prejudice? Second, did actual prejudice contaminate Skilling’s jury?” The Court answered both of those questions in the negative, affirming the District Court’s ruling.

The Court held that although extensive media coverage existed, it did not warrant a presumption of prejudice. The majority distinguished Skilling from prior cases where juror prejudice was presumed. Rideau, Estes, and Sheppard, either involved small communities, the media published the defendant’s confession, or the trial commenced shortly after the vast media coverage. None of those factors were present in Skilling. Further, the jury acquitted Skilling of several charges, weighing against the presumption of prejudice. Thus, the Court held that a venue change was not warranted. The Court also found that no actual prejudice existed on the grounds that the lengthy questionnaire and voir dire were effective in removing biased jurors.

Justice Ginsburg, writing for the majority noted that “pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.” The Skilling Court found that “news stories about Enron did not present the kind of vivid, unforgettable information we have recognized as particularly likely to produce prejudice, and Houston’s size and diversity diluted the media’s impact.”

108. See id. at 374. As discussed above, trial courts are not required to inquire into the content of pre-trial publicity exposure, but this court found it necessary to ensure voir dire was effective at vetting out prejudice. See id. at 389; supra notes 39–42 and accompanying text.
110. Id. at 377.
111. See id. at 398–99.
112. See id.
113. See id. at 381–84.
114. See id. at 382–84. For example, in Rideau, the media published the defendant’s confession. See supra notes 62–66 and accompanying text.
115. See Skilling, 561 U.S. at 381–82.
116. See id. at 383.
117. See id. at 398–99.
118. See id. at 384.
119. Id. (quoting Neb. Press Ass’n v. Stuart, 427 U.S. 539, 554 (1976)).
120. Id. at 384.
Seemingly, a presumption of prejudice must be based upon more than the existence of immense publicity, and that the amount of media coverage is merely a factor to consider.\textsuperscript{121} Whether the pretrial publicity contains confessions or other blatantly prejudicial or memorable information also seems relevant to whether a court will presume prejudice.\textsuperscript{122}

The Court’s ruling in \textit{Skilling v. United States} has been criticized by many legal commentators.\textsuperscript{123} Namely, critics describe the pretrial publicity standard as “so narrow and out dated that it” provides no protection to modern day defendants like Skilling.\textsuperscript{124} For example, Christina Collins comments that one issue with the \textit{Sheppard-Estes-Rideau} standard “is that it requires a guilty confession or similar ‘smoking gun’” in order to prove a presumption of prejudice.\textsuperscript{125} The problem with this narrow holding is denoted in the Court’s reasoning, which “suggests that because Skilling did not announce his guilt—even though many media outlets published its assumptions of his guilt and co-defendant Causey pleaded guilty prior to trial—Skilling did not deserve a change in venue.”\textsuperscript{126}

Another significant problem is that the Court based its standard on “cases with extremely outdated media technology.”\textsuperscript{127} As discussed in Part IV, this line of cases arose in the 1960s when the primary media sources were newspapers and a few television channels.\textsuperscript{128} Technology changed immensely in the fifty or so years leading up to \textit{Skilling}, such as the invention of the World Wide Web, cell phones, and social networking sites.\textsuperscript{129} These developments

\begin{itemize}
\item \textsuperscript{121} See id. at 384–85.
\item \textsuperscript{122} See id. at 382–83 (2010) (“[A]lthough news stories about Skilling were not kind, they contained no confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight. Rideau’s dramatically staged admission of guilt, for instance, was likely imprinted indelibly in the mind of anyone who watched it…. Pretrial publicity about Skilling was less memorable and prejudicial.”).
\item \textsuperscript{124} Collins, supra note 2, at 393.
\item \textsuperscript{125} Id. at 418 (quoting Skilling v. United States, 561 U.S. 358, 383 (2010)).
\item \textsuperscript{126} Id.
\item \textsuperscript{127} Id.
\item \textsuperscript{128} See id.
\item \textsuperscript{129} See \textit{A Short History of the Web}, CERN, https://home.cern/science/computing/birth-web/short-history-web (last visited Jan. 4, 2024) (the World Wide Web
revolutionized the way that information was shared and how people communicated with one another; further intensifying the effects of pretrial publicity. Therefore, it is unlikely that the circumstances in *Sheppard, Rideau, and Estes* would have much analogy to present day cases.

Notwithstanding this disapproval, *Skilling v. United States* has shaped trial courts’ application of the presumption of prejudice in the modern age of media and technology by significantly limiting its scope. Even since the *Skilling* decision, there have been radical changes in technology with the creation of mainstream social media platforms like Instagram and TikTok. Therefore, it is even more necessary that the pretrial publicity standard undergoes a much-needed change.

VI. STATE OF MINNESOTA V. DEREK CHAUVIN

In May 2020, George Floyd was arrested in Minneapolis, Minnesota for allegedly using a counterfeit twenty-dollar bill. Derek Chauvin, one of the arresting officers, handcuffed Floyd, pinned him to the ground, and kneeled on his neck. After nine and a half minutes, Floyd lost consciousness and was later pronounced dead at the hospital. After the incident, Derek Chauvin was dismissed from the Minneapolis Police Department. He was later arrested and

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132. See id.


134. See Evan Hill et al., *supra* note 131.
charged with second-degree murder, third-degree murder, and second-degree manslaughter for the death of George Floyd.\textsuperscript{135}

This incident "sparked the largest racial justice protests in the United States since the Civil Rights Movement."\textsuperscript{136} In 2020, over 7,750 protests linked to the Black Lives Matter movement were held across the United States between May 26th, the day after Floyd’s death, and August 22nd.\textsuperscript{137} Although the majority of protests were peaceful, some participants were violent and committed unlawful acts.\textsuperscript{138} As a result, the governor of Minnesota activated the National Guard on May 28th, 2020.\textsuperscript{139}

Clearly, Floyd’s death caused a national uprising over police reform, which was shaped by the Black Lives Matter movement.\textsuperscript{140} BLM’s message was mainstreamed through social media when users shared a video of Chauvin kneeling on Floyd’s neck minutes before his death.\textsuperscript{141} Three days after Floyd’s death, ‘#BlackLivesMatter’ was mentioned over eight million times on Twitter, Facebook, Reddit, and blogs.\textsuperscript{142} To put that number in perspective, on the same day popular brands like Nike and Starbucks were mentioned approximately 80,000 and 40,000 times respectively; and on the day of Floyd’s death,

\begin{itemize}
\item \textsuperscript{135} See Statement of the Case of Appellant at 2, State v. Chauvin, 989 N.W.2d 1 (Minn. Ct. App. 2023) (No. A21-1228).
\item \textsuperscript{138} See id.
\item \textsuperscript{139} See Press Release, Off. of Governor Tim Walz & Lt. Governor Peggy Flanagan, Governor Walz Signs Executive Order Activating National Guard to Protect the People of Minnesota (May 28, 2020), https://mn.gov/governor/newsroom/press-releases/?id=1055-433799 (‘Governor Tim Walz [on May 28, 2020] signed Executive Order 20-65, activating the Minnesota National Guard to help protect Minnesotans’ safety and maintain peace in the wake of George Floyd’s death.’).
\item \textsuperscript{140} See Alex Altman, Why the Killing of George Floyd Sparked an American Uprising, TIME (June 4, 2020, 6:49 AM), https://time.com/5847967/george-floyd-protests-trump/.
\item \textsuperscript{141} See id.
\item \textsuperscript{142} See Brittany Levine Beckman, #BlackLivesMatter Saw Tremendous Growth on Social Media. Now What?, MASHABLE (July 2, 2020), https://mashable.com/article/black-lives-matter-george-floyd-social-media-data (reporting statistical data collected by the University of Connecticut’s Social Media Analytics Center).
\end{itemize}
#BlackLivesMatter was only used 7101 times, presumably before any media outlet had reported on the story.\(^{143}\) Throughout the thirty days following Floyd’s death, the phrase had been used more than 80 million times on those social media platforms, while “George Floyd” and “protest” were mentioned roughly 42 million times.\(^{144}\) On Instagram, activists started an initiative called #BlackOutTuesday where 28 million participating users posted a black square on their feed with the purpose of “going silent on social media, reflecting on [Floyd’s death], and standing in solidarity with the Black Lives Matter movement.”\(^{145}\) All of those extreme numbers do not even account for the amount of times the case was mentioned by conventional news outlets, such as newspapers, television, and radios.

The majority of publicity was critical of Chauvin and even contained public official’s opinions about his guilt. For instance, a major news outlet published statements made by Minneapolis Police Chief Medaria Arradondo who claimed, “the death of George Floyd was ‘murder’ and that [Chauvin] ‘knew what he was doing’…”\(^{146}\) Further, the commissioner of Minnesota’s Department of Public Safety John Harrington called the incident murder, stating, “[t]hat’s what it looked like to me.”\(^{147}\) At a preliminary hearing, Hennepin County District Judge Peter Cahill expressed concerns that these statements could jeopardize Chauvin’s right to a fair trial.\(^{148}\) “It’s in everyone’s

\(^{143}\) See id.

\(^{144}\) See id.


best interest’ that no public statements about the case be made, [Judge] Cahill said ....”

However, equally prejudicial information was published about Floyd. For example, conservative news outlets published significantly negative information about Floyd, focusing on his prior criminal history and the fact that he was high on fentanyl at the time of his death. The Washington Post noted that “some in right-wing media keep doing their utmost to make this tragedy about Floyd’s drug use and troubled life, in what seems like an attempt to absolve Chauvin long before the jury reaches a verdict.” Therefore, the prospective jury pool in Minneapolis was being exposed to prejudicial information about both Chauvin and Floyd.

Because of the significant pretrial publicity and ongoing riots, Chauvin requested a venue change on September 11, 2020. Judge Cahill denied the motion, reasoning that “no corner of the State of Minnesota has been shielded from pretrial publicity regarding the death of George Floyd. Because of that pervasive media coverage, a change of venue is unlikely to cure the taint of potential prejudicial pretrial publicity.” Jury selection began on March 9, 2021, at the Hennepin County Courthouse. The Court issued questionnaires to all prospective jurors to reveal any potential bias and conducted over two
weeks of individualized voir dire. Prospective jurors were asked questions designed to expose bias, such as their opinions about the American criminal justice system, police brutality, and the BLM movement. The defense was allowed to question prospective jurors regarding the pretrial publicity and was granted 18 preemptory challenges, 3 of which were unused.

Three days into voir dire, the City of Minneapolis announced a 27-million-dollar settlement with the Floyd family. As a result, Judge Cahill interviewed the nine jurors that had already been selected and dismissed two who could no longer remain impartial after hearing about the settlement. On March 18, 2021, Chauvin renewed the motion for change of venue and new trial on the grounds that the publicity regarding the settlement could prejudice the jury pool, which Judge Cahill denied.

Opening arguments began on March 29, 2021, in Minneapolis and lasted nearly three weeks. The jury ultimately found Chauvin guilty on all charges and Judge Cahill sentenced him to twenty-two and a half years in prison. Chauvin subsequently filed the appeal at hand, which largely focused on the argument that Hennepin County

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156. See Berman & Bailey, supra note 155.


158. See Nicholas Bogel-Burroughs & John Eligon, George Floyd's Family Settles Suit Against Minneapolis for $27 Million, N.Y. Times, https://www.nytimes.com/2021/03/12/us/george-floyd-minneapolis-settlement.html (Mar. 30, 2021); The Legal Impact, supra note 20, at 9:23 (UNH professor of law, Buzz Scherr, noted that the settlement was “perhaps the largest amount any case of that kind had ever been settled for. The problem was it came in the middle of jury selection. It’s really quite puzzling why they decided to announce that settlement. Because you have to believe a lot of people who were in the group of 350 that were called in to be potentially on the jury, read about that.”).


Court erred by failing to move the trial to a different venue based on the presumption that an impartial jury could not be selected from the Minneapolis community.\textsuperscript{163}

The State of Minnesota ("Respondent") characterized Chauvin’s appeal as a “kitchen-sink’s worth of arguments” and claimed that the Hennepin Court adopted adequate safeguards to ensure that an impartial jury was seated.\textsuperscript{164} Respondent further argued that Chauvin would not be able to find a venue anywhere in the United States where prospective jurors had not heard about the case, and therefore, a change of venue would not have cured the issue.\textsuperscript{165}

**VII. CHAUVIN’S ARGUMENTS ON APPEAL**

The bulk of Chauvin’s arguments on appeal assert that pretrial publicity was so prejudicial and pervasive that the court should presume prejudice, and thus Chauvin’s case should have been transferred to a different venue.\textsuperscript{166} At first glance, the circumstances discussed in Section VI bear an extremely strong resemblance to the facts presented in *Skilling*, as opposed to the Supreme Court cases where prejudice was presumed.\textsuperscript{167} For example, the publicity surrounding Chauvin did not involve a defendant’s confession as in *Irvin*, a "circus like" courtroom atmosphere as in *Estes*, a police interrogation broadcasted on the news as in *Rideau*, or the defendant’s refusal to take a lie detector test and the trial court’s failure to mitigate in *Sheppard*.\textsuperscript{168}

Although Chauvin argues that the factors set forth in *Skilling* support a presumption of prejudice in *Chauvin*, its parallels to that case weigh against Chauvin’s success on appeal. However, a closer examination exposes many factors that distinguish this case from *Skilling* and reveals some similarities to the extreme cases where the Supreme Court presumed prejudice.\textsuperscript{169} Nonetheless, this case presents novel

\begin{itemize}
  \item \textsuperscript{163} See Appellant’s Brief, supra note 21, at 14, 19, 21.
  \item \textsuperscript{164} Respondent’s Brief, supra note 155, at 6.
  \item \textsuperscript{165} See id. at 6, 15 ("But the entire state—indeed, the entire country—knew about Chauvin’s infamous crime. . . . Where the entire state—indeed, the country and the world—is subject to publicity, there is no meaningful advantage to be gained from holding trial elsewhere.”).
  \item \textsuperscript{166} See Appellant’s Brief, supra note 21, at 13–14, 19, 21.
  \item \textsuperscript{167} Compare supra Part V (discussing Skilling v. United States), with supra Part VI (discussing State v. Chauvin).
  \item \textsuperscript{168} See supra Part IV.
  \item \textsuperscript{169} For a brief description of the cases where the Supreme Court presumed prejudice, see Walter H. Bush & Christopher B. Freeman, *Out of Houston? The Venue Argument in the Skilling Case*, 1 REYNOLDS CTNS. & MEDIA L.J. 19, 19–21 (2011).
\end{itemize}
issues, and therefore, the outdated standard set forth by the Supreme Court in Estes, Rideau, Irvin, and Sheppard is ineffective in assessing the pretrial publicity in Chauvin.

As discussed in Section V, the Supreme Court was unwilling to presume prejudice in Skilling, even when pretrial publicity saturated the community with enormous amounts of negative information about the defendant. Due to the nature of Skilling’s crime, one that cost a significant number of people in Houston to lose their jobs and life savings, the community had a “personal, emotional, and economic stake in the case.” Chauvin presents a strikingly similar situation. Following Chauvin’s crime, the majority of community members were outraged by his conduct, so much so that people in Minneapolis and neighboring cities began protesting against police brutality. This community sentiment spread across the nation, and eventually across the globe. The entire situation caused community members to have personal stakes in the case, whether that be in condemning the police brutality that was occurring across the country or out of fear that their community would be destroyed if Chauvin was acquitted. Although extensive media coverage of this case existed, the Supreme Court has held that factor alone is insufficient to warrant a presumption of prejudice—there must be more.

Another parallel is Chauvin’s argument that Minneapolis’ civil settlement with Floyd’s family created prejudice in the jury pool. Although this fact is not analogous to Skilling, it carries similarities to when Skilling’s co-defendant pled guilty before trial. In Skilling, the defendant argued in his change of venue motion that his co-defendant’s admission of guilt would lead prospective jurors to believe Skilling was guilty by virtue of association. The city of Minneapolis’ settlement with the victim’s family was for Chauvin’s conduct and is directly attributable to his guilt. It showed that the city of Minneapolis believed it had no chance of success at trial, so it agreed to pay the largest pretrial settlement ever for a civil rights claim. This is a

170. See supra Part V.
172. See supra Part VI.
173. See supra Part VI.
175. See Appellant’s Brief, supra note 21, at 48.
176. See Skilling, 561 U.S. at 372.
177. See Leila Fadel, Minneapolis Agrees to Pay $27 Million to Family of George Floyd, NPR, at 0:06 (Mar. 13, 2021, 8:00 AM), https://www.npr.org/2021/03/13/976785212/minneapolis-agrees-to-pay-27-.
much more compelling argument than a fellow co-defendant pleading guilty.

The Supreme Court held in *Skilling* that a co-defendant’s guilty plea "does not . . . warrant an automatic presumption of prejudice," but instead, requires the trial court to assess the prejudicial impact of the guilty plea on seated jurors. In *Chauvin*, Judge Cahill took adequate precautions to ensure that none of the seated jurors were biased by the settlement, even releasing two jurors that were prejudiced by that information, thus rebutting any presumption of prejudice the civil settlement may have invoked.

There is also an argument that the Court’s decision in *Skilling* was influenced by the fact that Skilling committed financial crimes, as opposed to violent crimes, like those committed in *Irvin*, *Rideau*, and *Sheppard*. The majority in *Skilling* “suggest[ed] that Skilling’s economic offenses were less incendiary than Irvin’s violent crime spree . . .” However, the Supreme Court never indicated whether “the standards [are] different when the crimes alleged are financial . . . rather than gruesome and violent.”

Nevertheless, the Supreme Court should have spoken on this issue because the nature of the crime will significantly influence how communities react to the incident, as well as tone of the media coverage. In *Chauvin*, Floyd’s death resonated not only with his friends and family, but with the Minneapolis community, the entire nation, and even some countries across the world. Skilling’s crime may have invoked anger and sadness in those who lost their jobs, as well as the people of Houston after witnessing the collapse of their community, but nowhere near the impact that Floyd’s death had on Americans. That may be why the trial court in *Skilling* concluded that the media coverage was “objective and unemotional,” and the Supreme Court stated that the publicity was not memorable or prejudicial.

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180. See Bush & Freeman, supra note 169, at 21.
182. See Bush & Freeman, supra note 169, at 21.
contrary, the media coverage of Chauvin was emotionally driven and extremely memorable.\textsuperscript{184}

Further, in \textit{Skilling}, the Court emphasized the size and characteristics of Houston, contrasting it to the small community of 150,000 people in \textit{Rideau}.\textsuperscript{185} Skilling’s trial was held in Houston where “more than 4.5 million individuals [were] eligible for jury duty.”\textsuperscript{186} Although Chauvin claims that this factor weighs in favor of the prosecution, the city of Minneapolis actually falls much closer to the \textit{Rideau} community with an estimated population of 429,954 in the year of Floyd’s death.\textsuperscript{187} Nonetheless, whether the size of the community was closer to 500,000 or 5 million, there was no population in this country that could have diluted the effects of pretrial publicity in this case. The media coverage was so pervasive that “unless they were living under a rock, there [was] no one in Minneapolis, and probably no one in the United States, who[] was not familiar with George Floyd’s death . . . .”\textsuperscript{188}

There are several other differences that distinguish Chauvin from \textit{Skilling}. The Court in \textit{Skilling} based a significant part of its decision on the fact that the jury acquitted Skilling of nine counts of insider trading, which “[ran] counter to th[e] presumption [of prejudice].”\textsuperscript{189} However, in Chauvin the jury convicted him of all counts.\textsuperscript{190} Based on the rationale in \textit{Skilling}, that factor seems to weigh in favor of a presumption of prejudice.\textsuperscript{191}

The Supreme Court also held that the four years between Enron’s collapse and Skilling’s trial, diluted the media’s impact.\textsuperscript{192} By contrast, the trial in \textit{Rideau} occurred only a few months after the crime and when

\begin{itemize}
  \item[\textsuperscript{184}] See Melissa De Witte, \textit{Anger and Sadness Soared Following George Floyd’s Death, Particularly Among Black Americans}, Stanford Psychologists Find, \textit{Stan. News Serv.} (Sept. 20, 2021), https://news.stanford.edu/press-releases/2021/09/20/psychological-toge-floyds-murder/ (“Data showed that immediately after Floyd’s death, feelings of anger increased by about half in the population: Roughly 38 percent of Americans said they experienced anger. Sadness increased about a third, with 38 percent also reporting feelings of loss, despair and grief.”).
  \item[\textsuperscript{185}] See supra notes 112–13 and accompanying text.
  \item[\textsuperscript{186}] \textit{Skilling}, 561 U.S. at 382.
  \item[\textsuperscript{187}] See \textit{QuickFacts: Minneapolis City, Minnesota}, U.S. \textit{Census Bureau}, https://www.census.gov/quickfacts/minneapoliscityminnesota (last visited Jan. 6, 2024).
  \item[\textsuperscript{188}] Berman & Bailey, supra note 155.
  \item[\textsuperscript{189}] \textit{Skilling}, 561 U.S. at 383.
  \item[\textsuperscript{190}] See Appellant’s Brief, supra note 21, at 31.
  \item[\textsuperscript{191}] See \textit{Skilling}, 561 U.S. at 383.
  \item[\textsuperscript{192}] See id.
\end{itemize}
media coverage was most prevalent. Again, Chauvin falls somewhere in between those two extremes with less than a year occurring between Floyd’s death and Chauvin’s trial. Once more, a factor is present in Chauvin that seems to weigh in favor of a presumption of prejudice.

Chauvin argued on appeal that the factors discussed above warrant a finding that Chauvin is one of the extreme situations where prejudice must be presumed. Although few similarities exist between Chauvin and the cases where the Supreme Court approved a presumption of prejudice, Chauvin’s case is one of the most extreme instances of pretrial publicity. At the time when Irvin, Rideau, Estes, Sheppard, and even Skilling were each decided, the Court could have never foreseen the volume of the pretrial publicity present in this case. In Chauvin, the publicity did not just saturate the community—it saturated the nation. Where the volume of media coverage is so extreme and widespread that the entire nation and other countries are exposed to enormous amounts of negative information about the defendant, that factor alone should warrant a presumption of prejudice.

Even in the absence of a confession or other “smoking gun,” an important consideration under the Supreme Court’s standard, the publicity in Chauvin was memorable and inherently prejudicial. Some of the information published by the media was just as incriminating as a defendant’s own confession, such as public officials’ comments regarding Chauvin’s guilt. Jurors can have difficulty in disbelieving or rejecting statements made by trusted local officials, such as the Minneapolis police chief, the Governor of Minnesota, and the Head of Minnesota’s Department of Public Safety. Judge Cahill acknowledged the danger of those comments and expressed that he would have to change the venue if public officials and attorneys

193. See Rideau v. Louisiana, 373 U.S. 723, 726 (1963) (holding excessive media attention and televised spectacle prejudiced the jury pool and entitled the defendant to a change in venue); Skilling, 561 U.S. at 729 (Clark, J., dissenting) (noting that the defendant’s trial occurred only two months after his “confession” was televised).
194. See Appellant’s Brief, supra note 21, at 1–2, 53.
195. See id. at 44–51.
196. See Skilling, 561 U.S. at 383.
continued to make statements about Chauvin’s guilt. Judge Cahill cautioned against making any further statements, but he failed to recognize that the comments could have already prejudiced the jury pool.

It is extremely concerning that the trial court judge, the prosecution, and many media sources recognized that Chauvin could not have found a venue anywhere in the country that had not been exposed to the enormous amounts of negative publicity. Merely accepting the fact that a defendant is “out of luck” because pretrial publicity is so widespread and pervasive violates basic principles of the Constitution. Such defendants should not be forced to endure an unfair trial in a prejudicial community.

Trial courts may claim that voir dire will cure any bias. However, this argument does not suffice, because “[t]he purpose of the presumption of prejudice is the idea that ‘in particularly extreme circumstances, even the most rigorous voir dire cannot suffice to dispel the reasonable likelihood of jury bias.’” In those cases, the trial courts cannot take jurors for their word when they promise to be impartial. There is no rebutting a presumption of prejudice—the case must be moved to an impartial venue.

Chauvin also raises an issue regarding the influence of the BLM movement on juror decision making. As discussed in Part VI, by using the internet as a mass mobilization device, the BLM movement was able to spread awareness of Floyd’s death across the country. However, the movement also influenced jurors’ perceptions of the defendant, policing, and our criminal justice system. Chauvin turned into a symbol of police brutality and society placed all of its anger towards systematic racism into the trial itself. A professor at UCLA stated

199. See id.
200. See id.
201. See U.S. CONST. amend. VI.
203. See id. at 393 (“When vicious publicity coupled with existing community bias reaches a level such that the entire jury pool is presumed biased against the defendant, the trial must be transferred to a more impartial venue.”).
204. See supra Part VI.
206. See Reid Forgrave & Maya Rao, Derek Chauvin Trial Represents a Defining Moment in America’s Racial History, STAR TRIB. (Mar. 28, 2021, 6:07 AM), https://digitalcommons.pace.edu/plr/vol44/iss1/4
Chauvin’s case “has really become a global indictment of police forces[].” It is hard to argue that a defendant can receive a fair trial under those conditions—when there is massive public outrage against the defendant. Some will argue that Chauvin did not deserve a fair trial, but the right to an impartial jury is guaranteed in the Constitution. The American criminal justice system is based on the principle that those protections are not denied when someone is accused of a heinous crime.

VIII. Subsequent History

In April 2023, the Court of Appeals of Minnesota affirmed the district court’s ruling. The basis for that decision is premised on its finding that the Hennepin County Court did not abuse its discretion by denying Chauvin’s change of venue motion. The Court of Appeals held that Judge Cahill properly mitigated the potential bias by “verifying that the jurors [could] set aside their impressions or opinions and deliver a fair and impartial verdict.” Once more, a Court has refused to find a presumption of prejudice based in large part on the outdated principles established in *Irvin*, *Rideau*, *Sheppard*, and *Skilling*. In all four cases, the Supreme Court affirmed its belief that jurors are capable of setting aside their impression or opinion after being exposed to pretrial publicity. The Court of Appeals


207. Id.
208. See U.S. CONST. amend. VI.
209. See Brent E. Turvey & Aurelio Coronado, Chapter 6 – Racial Profiling: The Civil Rights Perspective, in CRIMINAL PROFILING: AN INTRODUCTION TO BEHAVIORAL EVIDENCE ANALYSIS (5th ed. 2022) (“The criminal justice system in the United States rests on the principle that all suspects and defendants are innocent until proven guilty.”).
211. See id. at 19
212. See id.
213. See id.
214. See Irvin v. Dowd, 366 U.S. 717, 723 (1961) (“It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court”); Rideau v. Louisiana, 373 U.S. 723, 727 (1963) (Clark, J., dissenting) (“When the jurors testify that they can discount the influence of external factors and meet the standard imposed by the Fourteenth Amendment, that assurance is not lightly to be discarded. When the circumstances are unusually compelling, as in Irvin, the assurances may be discarded . . . .”); Sheppard v. Maxwell, 384 U.S. 333, 354 (1966) (“[W]e cannot say that Sheppard was denied due process by the judge’s refusal to take
recognized that significant pretrial publicity existed in Chauvin's case and that seated jurors had been exposed to that publicity.\textsuperscript{215} However, it stated that the "ultimate test" is whether an impaneled juror can guarantee that they are able to render an impartial verdict despite having formed a prejudicial opinion.\textsuperscript{216} This is based on the Supreme Court's assumption that jurors are able to accurately assess and control their own biases—a belief that has been repeatedly defeated by psychological studies.\textsuperscript{217}

After the Appellate Court's decision, Chauvin appealed to the State Supreme Court, which denied its review on July 18, 2023.\textsuperscript{218} Thereafter, Chauvin petitioned for Writ of Certiorari to the United States Supreme Court.\textsuperscript{219}

In its petition for certiorari, Chauvin argued that \textit{State v. Chauvin} presents issues that remain unresolved after the Court's prior cases addressing pretrial publicity.\textsuperscript{220} \textit{Skilling} provided a non-exhaustive list of factors in determining whether an "extreme case" exists to warrant a presumption of prejudice.\textsuperscript{221} The factors included the "size and characteristics of the community", a criminal defendant's confession or other equally prejudicial information, the duration between the criminal charges and trial, whether the jury finds the criminal defendant not guilty of some charges, and the steps the trial court took to mitigate the prejudice.\textsuperscript{222} However, the circumstances that arose in Chauvin were not addressed by those factors, such as the effects of nationwide riots or the influence of the BLM movement. Therefore, the question Chauvin presented to the Court was whether prejudice should be presumed when the "community from which the jurors will be chosen experienced catastrophic violent riots resulting from a precautions against the influence of pretrial publicity alone . . ."). \textit{Skilling} v. United States, 561 U.S 358, 398–99 (2010) ("It is sufficient if the juror[s] can lay aside [their] impression[s] or opinion[s] and render a verdict based on the evidence presented in court." (quoting \textit{Irvin}, 366 U.S. at 723)).

\begin{itemize}
\item \textsuperscript{215} See \textit{Chauvin}, 989 N.W.2d at 21–22.
\item \textsuperscript{216} See \textit{id.} at 19.
\item \textsuperscript{217} See Arthur H. Patterson & Nancy L. Neufer, \textit{Removing Juror Bias by Applying Psychology to Challenges for Cause}, 7 \textit{CORNELL J.L. & PUB. POL’Y} 97, 98 ("people persevere in their initial attitudes, \textit{even} in the face of contradictory evidence"); \textit{see also supra} note 5 and accompanying text.
\item \textsuperscript{218} See \textit{Chauvin}, 989 N.W.2d at 21–22.
\item \textsuperscript{219} See Petition for Writ of Certiorari, Minnesota v. Chauvin, No. 23-416 (U.S. Oct. 16, 2023), 2023 WL 6973994.
\item \textsuperscript{220} See \textit{id.} at i.
\item \textsuperscript{221} See \textit{Skilling} v. United States, 561 U.S 358, 381–84 (2010)
\item \textsuperscript{222} See \textit{id}.
\end{itemize}
police officer’s acts and believed that further rioting or harm to them or their families will result if they acquit the police officer as a criminal defendant.”

Chauvin urged the Court to reconsider its outdated framework regarding cases of extreme pretrial publicity in light of these unprecedented circumstances. However, on November 20, 2023, the Supreme Court declined to review Chauvin’s case. As such, his 270-month prison sentence stands, and so do the Court’s 1960s pretrial publicity standards.

IX. Conclusion

The Supreme Court denied another opportunity to evaluate its outdated and ineffective standards in light of the unconceivable advancements in technology since Irvin, Rideau, Estes, and Sheppard. *State of Minnesota v. Derek Chauvin* presented a primary example of massive pretrial publicity and hostile community bias against the defendant that went unprotected by the Court’s current framework, as was the case in *Skilling*. Had the Court reviewed Chauvin’s case, it would have had the opportunity to assess many unprecedented issues, such as the impact of social justice movements on juror bias, the use of social media as a mass mobilization device, and the extreme magnitude of publicity that surrounded this case. However, the Court’s denial of Chauvin’s petition affirms its belief that the standards established primarily in the 1960s are still applicable to today’s media technology.

223. See Petition for Writ of Certiorari, *supra* note 219, at i.

224. *See id.* at 22–37.
