

PRE-TRIAL PUBLICITY IMPACTS A CRIMINAL DEFENDANT'S RIGHT TO A

FAIR TRIAL

by

MORGAN KANE

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Approved by:

Dr. Katherine Barnes

Professor of Law, Associate Dean for Programs and Innovation, and Director of the
Rogers Program on Law and Society
James E. Rogers College of Law

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ABSTRACT

This paper explores the effects of pre-trial publicity on criminal case proceedings, and how publicity impacts a defendant's right to a fair trial. Balancing the First Amendment against the Sixth Amendment of the United States Constitution, a defendant's right to due process is affected by the media's right to the freedoms of the press. Two cases – *Irvin v. Dowd* (1961) and *Sheppard v. Maxwell* (1966) – first introduce the concept of pre-trial publicity. As courts decided how to manage such publicity in the courtrooms, unconstitutional issues arose as demonstrated through *Nebraska Press Association v. Stuart* (1976), *Richmond Newspapers v. Virginia* (1980), and *Mu'Min v. Virginia* (1991). Following what is deemed unconstitutional, the current pre-trial publicity test is evaluated, and the issues surrounding it are discussed. The paper details the court's solution and the defense attorney's solution on how to combat the effects of pre-trial publicity, which introduces the Jodi Arias case. The legality of gag lawsuits in Australia and Canada are discussed and are compared to how the United States prohibits such bans on the press. In the conclusion, the ideas of pre-trial publicity are finalized and future implications as media outlets grow are considered.

“The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print” – Justice Holmes, 1907 (Dubnoff)

INTRODUCTION

Pre-trial Publicity

Pre-trial publicity creates conflict between the First and Sixth Amendments of the United States Constitution. The First Amendment expresses the right of the press and the freedoms of speech that enable the press to publish information, whereas the Sixth Amendment conveys that a criminal defendant has “the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed” (Madison). When pre-trial publicity exists during a case, the courts face the decision of weighing the First Amendment against the Sixth Amendment. Given both amendments are included in the Bill of Rights speaks to their importance in determining a person’s individual liberties. As a direct result, the pre-trial publicity that encompasses criminal cases may have an impact on the defendant’s right to due process.

Due Process

Under the Constitution of the United States of America, the Fifth and Fourteenth Amendments create the Due Process Clause. The Fifth Amendment instructs the federal government that “no one shall be *deprived of life, liberty or property without due process of law*” (Strauss). Similarly, the Fourteenth Amendment details that no state may inhibit a person to “*life, liberty or property without due process of law*” (Strauss). To determine if process is due, Judge Henry Friendly – a federal judge for the United States Court of Appeals for the Second Circuit – created a simple list as a way to determine how a due process argument may arise (Davis).

Included in this influential and highly regarded list are: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) opportunity to present reasons why the proposed action should not be taken; (4) the right to present evidence, including the right to call witnesses; (5) the right to know opposing evidence; (6) the right to cross-examine adverse witnesses; (7) a decision based exclusively on the evidence presented; (8) opportunity to be represented by counsel; (9) requirement that the tribunal prepares a record of the evidence presented; and (10) requirement that the tribunal prepares written findings of fact and reasons for its decision (Strauss). While this list is non-exhaustive, it helps to determine why a due process argument may be presented in order of perceived importance to the courts.

INTRODUCTORY CASES REGARDING PRE-TRIAL PUBLICITY

Two Supreme Court cases that first introduced the idea of pre-trial publicity were *Irvin v. Dowd* (1961) and *Sheppard v. Maxwell* (1966). These cases revolutionized how courts handle issues that affect the Sixth Amendment of the United States Constitution. As media platforms began to grow in the 1960s, courts had to adjust how they would deal with questions surrounding pretrial publicity.

***Irvin v. Dowd* (1961)**

In *Irvin v. Dowd*, the defendant – Leslie Irvin – had been tried, convicted, and sentenced to death in the Indiana State Court for six murders that occurred in Evansville, Indiana. The issue with Irvin’s conviction was that the media had heavily reported this case throughout Vanderburgh County, in which Evansville is located, as well as neighboring counties, prior to the beginning of the trial. Irvin’s defense team was granted a change of venue from Vanderburgh County to bordering Gibson County. However, Gibson County had already received extensive media coverage surrounding Irvin’s conviction. Before the beginning of the trial, 8 of the 12

jurors believed Irvin to be guilty, alluding to much pre-trial prejudice. Despite this information, the district court and Indiana Supreme Court upheld the guilty conviction (Clark). Upon appeal to the Supreme Court of the United States, it was held that Irvin “was not accorded a fair and impartial trial, to which he was entitled under the Due Process Clause of the Fourteenth Amendment” (Clark). *Irvin v. Dowd* established the rule that a court should not assume a juror’s assurance of impartiality when pre-trial publicity has been substantial (Law Library).

Sheppard v. Maxwell (1966)

In *Sheppard v. Maxwell*, the defendant – Sam Sheppard – was tried and convicted of beating his pregnant wife to death in Cleveland, Ohio. The issue with Sheppard’s conviction was that the presiding judge gave the media “free rein during trial” to publish the witnesses’ addresses, photograph the jurors, and ensure excellent seating within the courtroom (Gruberg). Hundreds of articles were published against Sheppard, with one newspaper citing that the judge described Sheppard as guilty. The defendant was indeed found guilty of murder despite his claims of innocence and a lack of physical evidence. As a result, Sheppard appealed his conviction to the Supreme Court of the United States. The Supreme Court ruled 8-1 that pre-trial publicity had prohibited Sheppard from receiving a fair trial. The majority opinion notably remarked on the importance of balancing the First Amendment against the Sixth Amendment by stating: “Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation but is highly censurable and worthy of disciplinary measures” (ACLU of Ohio).

UNCONSTITUTIONAL COURT CASES

Given the increasing focus of pre-trial publicity within court cases during the time, issues on how to combat the publicity began to arise. Several Supreme Court cases that determined

“gag orders” on media publications are unconstitutional. Three important cases emerged as media began to grow in popularity, resulting in courts struggling to balance the freedoms of speech and the press against the rights a criminal defendant has to a fair trial. *Nebraska Press Association v. Stuart* (1976), *Richmond Newspapers v. Virginia* (1980), and *Mu’Min v. Virginia* (1991) determined the First Amendment exceeds all other amendments, and thus, concluded gag orders on the press were prohibited in courtrooms.

***Nebraska Press Association v. Stuart* (1976)**

In *Nebraska Press Association v. Stuart*, a Nebraska state trial judge, Hugh Stuart, imposed a gag order on all news coverage surrounding Erwin Simants’s trial. The accused, Mr. Simants, had been charged with the murder of six people in Sutherland, Nebraska. A large reason Hugh Stuart issued the gag order on the press was due to the fact Sutherland, Nebraska was home to approximately 850 people. There were fears it would be impossible to convene an impartial jury if the press released news coverage on the murders (McInnis). However, the news media asked the court to remove the gag order, indicating it was not legal to restrain such publications.

The Nebraska Supreme Court upheld the gag order, citing *New York Times Company v. United States* (1971) in which the gag order restraining publication “must be balanced against the importance of a person’s right to a fair trial by an impartial jury:” (“*Nebraska Press Association v Stuart – Significance*”). As a result, the news organizations appealed to the Supreme Court. In this case, the justices had to weigh the First Amendment – the freedom of the press – against the Sixth Amendment – the right to a fair trial. Despite finding difficulties in comparing the two amendments, the justices determined the gag order was unconstitutional. The nine justices found Judge Stuart’s gag order “to be a denial of the news media’s rights under the First Amendment to

the U.S. Constitution” (“Nebraska Press Association v Stuart – Significance”). Chief Justice Burger added that there is no indication that the press should be prohibited from reporting on these events as there could be other measures taken to ensure Erwin Simants’ right to a fair trial (“Nebraska Press Association v Stuart – Significance”).

Richmond Newspapers v. Virginia (1980)

In *Richmond Newspapers v. Virginia*, the Supreme Court concluded: The First Amendment generally prohibits closing criminal trial proceedings to the public” (Wermiel). This Supreme Court case arose after a Virginia courtroom prevented reporters from being present in the room following a chain of mistrials during a criminal defendant’s case. The reporters opposed the closure of the courtroom and made the argument that, under the First Amendment, they had the right to attend the criminal trials.

The Supreme Court, in agreeance with the reporters, found the public is entitled to the right to attend criminal trials if they so desire. The justices cited two main reasons for their conclusion: (1) “government secrecy has some First Amendment implications, because secrecy, like direct speech restrictions, limits the stock of information from which members of the public may draw” and (2) a historical analysis of the rights guaranteed under the First Amendment shows criminal proceedings had an undisputed history of public access (Wermiel). As a result, this Supreme Court case gave way to a two-part test to determine whether governmental activities should be open to the public. The two-part test states that courts must look at the history to determine if it is a tradition that the public has the right to the information, as well as that courts “should assess the instrumental value of public access to particular government activities” (Wermiel). Due to the Supreme Court’s ruling in this case, the First Amendment is continually reaffirmed through the public’s rights to criminal trial proceedings.

Mu'Min v. Virginia (1991)

In *Mu'Min v. Virginia*, the Supreme Court justices held “the Due Process Clause of the Fourteenth Amendment does not require prospective jurors to be screened regarding the specific content of media exposure in *voir dire* examinations” (Edsey). It is important to note that *voir dire* is a preliminary examination of a witness or a juror by a judge or counsel. As a result of this holding, the Sixth Amendment’s requirement of an impartial jury is satisfied as long as the juror does not admit prejudice during *voir dire*.

Mu'Min v. Virginia reached the Supreme Court after Mu’Min’s motions for individual *voir dire* and a change of venue had been denied by the trial judge. Mu’Min was on trial for the murder of a local store owner, and the murder had gained notable attention in the media. 75% of the jurors on the case had known considerable information regarding the case before the beginning of the trial. The trial court found Mu’Min guilty of the murder and he was sentenced to death. The Virginia Supreme Court, also, upheld the conviction and sentencing despite three justices dissenting “on the basis that the defendant had not been tried by an impartial jury” (Edsey). As a result, the Supreme Court of the United States heard the case.

With only a five-to-four opinion, the justices upheld the Virginia Supreme Court’s holding. Chief Justice Rehnquist “held that a defendant is entitled to question potential jurors who have acquired previous information only as to their ability to remain impartial” (Edsey). The big issue that arose from the Supreme Court’s holding is that it completely affects a criminal defendant’s right to a fair trial. If the Due Process Clause of the Fourteenth Amendment does not require for jurors to be specific regarding knowledge of their pretrial publicity, it is near impossible for a criminal defendant to have the rights given under the Sixth Amendment (Edsey).

PRE-TRIAL PUBLICITY TEST

Pre-trial publicity in court cases occurs when “there is pervasive and continuous national media treatment in newspapers, magazines, radio, and television for the duration of the investigatory and pretrial proceedings” (Hardaway). There are four main types of trials in which pre-trial publicity attracts a strong amount of media and national attention: (1) “tabloid-type cases, (2) cases in which the nature of the crime is so heinous or shocking that the nation’s media follow it closely, (3) cases in which the defendants are celebrities, and (4) cases in which the victims are celebrities” (Hardaway).

Currently, there is no direct ruling on how to determine if pre-trial publicity is present before a trial. For many years the United States Supreme Court has used a “totality of the circumstances” test as a way to evaluate the effects of pre-trial publicity on a case. For this test, the Court looks at the trial’s environment as well as the *voir dire* transcript and any other indications of impartiality to determine if the defendant will have a fair trial. If, and when, potential jurors have a bias due to pretrial publicity, it is the trial court’s responsibility to invalidate the effects of the publicity to ensure the defendant’s right to a fair trial. It is important to note the difference between an impartial juror and an ignorant juror. A juror may be aware of the case before the beginning of a trial, but as long as he or she is capable of remaining impartial, the previous knowledge should have no lasting effect on the defendant’s trial. The issue with trying to curtail these effects is no other constitutional requirements can be violated as a result. As mentioned through *Nebraska Press Association v. Stuart* and *Richmond Newspapers v. Virginia*, the First Amendment has a strong guarantee to the freedoms of speech and the press which cannot be infringed upon to satisfy the Sixth Amendment.

The lack of a rule of law to test pre-trial publicity creates doubtfulness regarding how fair trials are today as media is more readily accessible than ever before. As the American University Law Review wrote, “such a standardless approach to pretrial publicity is problematic because it creates deference by a court to a point of neglect of a serious and growing problem” (Hardaway). With that being said, the current approach implements no judicial restraint between lower courts and the Supreme Court, indicating a court may not comply with governing principles (Hardaway).

To combat the issues that continue to grow, a standard rule of law needs to be established for pretrial publicity. The effects of this rule will “provide a structured framework within which the law can develop” (Hardaway). Courts will have less ambiguity when deciding how to curtail the publicity and it will help determine and evaluate potential juror bias. This will create a solid baseline for judges to adhere to and address issues of pretrial publicity as they continue to arise (Hardaway).

CURRENT SOLUTIONS TO PREVENT PRE-TRIAL PUBLICITY

Court’s Solution

To combat the effects of pre-trial publicity, the Model Rules of Professional Conduct, created by the American Bar Association, establishes rules for lawyers to follow and helps to maintain a structure for regulating conduct. There are two specific rules the American Bar Association includes in the code that touches on how a lawyer should limit the effects of pretrial publicity. Applying to all lawyers, Rule 3.6(a) “prohibits a lawyer in a proceeding from making comments to the media that can cause a substantial likelihood of materially prejudicing a proceeding” (Alvarez). In addition to 3.6(a), Rule 3.8(f) applies strictly to prosecutors. This rule “provides that prosecutors must also refrain from making statements to the media that can lead to

heightened public condemnation of the defendant” (Alvarez). These rules are incredibly serious and failing to comply with them could result in grave punishments, such as disbarment.

In addition to these restrictions on lawyers, the court has implemented procedures to limit pretrial publicity. Some examples of these mechanisms include changing a venue “so that the jury trial is moved away from the county where the case occurred” or the court “could import jurors from another county” (Alvarez). There are cases where pretrial publicity was successfully avoided by importing jurors from surrounding areas (Alvarez). For example, Timothy McVeigh, the Oklahoma City bomber, had his case transferred to Denver to find a more impartial jury (“Pretrial Publicity’s Limited Effect”). However, as technology and media usage continues to increase, the Courts will have to find other solutions to curtail the effects of pretrial publicity.

Defense Attorney’s Solution

On the contrary to how prosecutors are encouraged to remain silent regarding cases, criminal defense attorneys “preen for the cameras on the courthouse steps” to try their high-profile cases in the media (Bannon). In a sense, the words a defense attorney says to the media are of equal, if not greater, importance than the words spoken in the courtroom. Defense attorneys must prepare plenty of ways to address pretrial publicity when they face a major case. To do this, lawyers will use tools such as “public relations consultants” as they help with social media monitoring, response strategies, and interview preparations (Round Table Group). A defense attorney’s best strategy is to be aware of implicit bias within the community where the crime has occurred. Knowing information about the community allows the defense to prepare to face any backlash of pretrial publicity (Round Table Group).

ARIZONA CASE REGARDING PRE-TRIAL PUBLICITY

Arizona v. Arias (2013)

In May 2013, Jodi Arias of Maricopa County, Arizona was convicted of first-degree murder in the 2008 death of her lover, Travis Alexander. Arias claimed she acted in self-defense when admitting to stabbing him 27 times and shooting him in the head. Despite her claim of self-defense, the jury found Arias guilty. A mistrial was issued when the jury remained hung on whether Arias should be sentenced to life in prison or receive the death penalty (Kiefer 2013).

However, Arias' guilt or innocence was not the enticing issue within this widespread case. The prevalent issue occurred when the media got hold of the case and it quickly became a sensational trial. Throughout the first trial, "witnesses were threatened and allegations of legal misconduct" existed which enthralled viewers at home (Kiefer 2013). Arias' defense attorneys contracted an expert to generate details regarding the extent the media played in the case. The expert released statistics that "2,450 TV news reports just in the Phoenix area; 205 print stories, just in Maricopa County; 503 Internet photos that generated 9,600 links; 233,000 links to videos; and 524,000 tweets about Arias" developed during the trial (Kiefer 2013). This information excludes the national television news coverage.

Local news flourished, but it did not take long for this case to receive national notoriety. As a result, "the Arias trial became a four-month media fest for television and social media" due to the attractive female killer and the charming male victim (Kiefer 2013). Log Angeles jury consultant Cynthia Cohen described this case as a real-life example of how reality television combines with courtroom dramas. Sex, naked photographs, dramatic lawyers, and attraction encompassed this case as it was broadcast to millions of people around the world (Kiefer 2013).

As a result of this media frenzy, it was no surprise Arias' defense attorneys requested "closing hearings to the media and public" for the case's retrial (Kiefer 2018). For the retrial, Arias' lawyers also asked that another venue hold the sentencing due to the publicity surrounding the case within Maricopa County. However, despite these requests from her lawyers, Arizona law tends to agree with the media to allow the public the right to have information about cases. If cameras were banned in the courtroom, the public would lose the opportunity to observe the sentencing and it would limit the freedoms of the press under the First Amendment (Kiefer 2018). Thus, Arias and her defense team were not granted a venue change, and the press still received access to the courtroom. At the retrial, the jury found Arias guilty and she was sentenced to life in prison without the possibility of parole. Upon the sentencing, Arias and her defense team appealed, citing that pre-trial publicity affected the jury (Kiefer 2018).

There is no doubt that there was overwhelming publicity surrounding Jodi Arias' trial, retrial, and sentencing. However, the Arizona Court of Appeals determined "convicted murdered Jodi Arias [was] not entitled to a new trial" in March 2020 (Naham). Her legal team had argued that prosecutorial misconduct affected Arias' right to a fair trial through jury prejudice, but the Arizona Court of Appeals agreed the verdict reached was not affected by any prejudice. The appellate court cited "overwhelming evidence of Arias' guilt" which was demonstrated through her admission to the crime (Naham). Additionally, the appellate court concluded that the media coverage within the courtroom did not affect the trial or create an inappropriate setting for justice to be administered (Naham).

GAG LAWSUITS IN OTHER COUNTRIES

While illegal in the United States, other countries have implemented publication bans to prevent pre-trial publicity from affecting a criminal defendant's right to a fair trial. Australia and

Canada are two countries that utilize gag lawsuits in the press to prevent jurors from having a tainted view of the defendant. Gag orders within Australia and Canada both differ which demonstrates that such orders on the press are ambiguous.

Australian Suppression Order

Australian law allows courts to issue suppression orders under Section 69A of the Evidence Act 1929. Such suppression orders are utilized when “an order would prevent proper prejudice” (“Suppression Orders”). As a result of an order, it is deemed an offense if the press disobeys the rule and publishes information regarding the case at hand. Punishments for violating suppression orders can reach a maximum of \$10,000, or two years in prison, for a person or a fine of \$120,000 for a corporation (“Suppression Orders”).

Australian judges tend to issue “gag orders that temporarily restrict the publication of information related to a criminal proceeding because it might sway jurors or potential jurors” (Cave). This was incredibly prevalent in a high-profile 2018 Australian case in which Australians knew almost no information regarding the case. Australians were unable to access news sources from other countries without being notified that there was censorship present. For example, if an Australian resident went to the New York Times website for information on the local case under such suppression order, the resident would find:

“The Times is not publishing the latest news of the case online, and it blocked delivery of the Friday print edition to Australia, to comply with the judge’s order. The Times’s lawyers in Australia have advised the organization that it is subject to local law because it maintains a bureau in the country” (Cave).

Examples, such as the one listed, give rise to questions about whether a local judge can censor foreign journalists and publishers to ensure a criminal defendant’s right to a fair trial. Non-

Australian journalists could be charged with contempt of court in Australia if they are found guilty of covering the case within Australian media.

Therefore, Australia's gag orders are a drastic comparison to how the United States portrays the freedoms of the press and speech. While suppression orders are not used in every case, the debate remains the same: how to weigh the rights of the accused to a fair trial against the rights of free speech and what the public should have access to. Australia's orders seem to reflect a "misplaced lack of faith in jurors' ability to reach a fair conclusion without being influenced by coverage or related case," as they find it easier to limit the press in hopes that justice will prevail (Cave).

Canadian Publication Ban

Canadian law states the media is entitled to freely publish information regarding certain court cases. However, there are some exceptions to this right under the law. Thus, the court "may impose publication bans to protect the fairness and integrity of the case, the privacy or safety of a victim or witness, or the identify of a child or youth" ("Guidelines"). Canadian common law gives the presiding judge authority to issue gag orders on the media when weighing the accused's right to a fair trial and the right to freedoms of expression against one another.

Certain legislations indicate when publication bans may be issued. In the *Criminal Code*, "publication bans are common for bail hearings, preliminary hearings, and *voir dire*," so it is the reporters' responsibility to understand these laws and act accordingly. Some bans on the media are temporary and information cannot be published for a specific period of time. For example, Section 517 of the Criminal Code issues bans at the bail hearing and "extends until the accused is discharged after the preliminary inquiry or the trail is completed" ("Guidelines").

A prevalent case that implements such temporary publication bans highlights a series of kidnappings, molestations, and killings of teenage girls that occurred in St. Catharines, Ontario, Canada during the early 1990s. These crimes gained great notoriety across southern Ontario quickly as police attempted to find the persons that committed such reprehensible crimes. Paul Bernardo, a serial rapist, escalated to murder with the assistance of his then-wife, Karla Homolka. Bernardo raped and killed the young women while Homolka acted as his willing accomplice. As they terrorized Ontario, just a few short miles from Niagara Falls, New York, the young couple was nicknamed “The Ken and Barbie Killers” for their strikingly good looks and alluring charm (Turner).

Given how prevalent the crimes had been portrayed in the news for many years, Judge Francis Kovacs implemented a publication ban preventing Canadian news sources from pursuing the story. This ban, enforced by the courts under Canadian laws, protected the “accused’s right to a jury untainted by pretrial publicity” (Turner). Despite disagreeing with the integrity of such gag orders, Canadian journalists observed the ban on publicizing news about the case.

The case of Bernardo and Homolka brought about viewpoints from both sides regarding whether such a ban is beneficial. On one side, news reporters made the argument that it is important to balance “the public’s right to know about what happened at trial” against how this would impact a potentially prejudiced jury (Turner). To concur with this analysis, Michael Mandel – a law professor at Toronto’s York University – contends such publication bans indicate jurors are “morons [who] can’t tell the difference between evidence heard at trial and what appears in the newspaper” (Turner).

On the contrary, there are many supporters of such publication bans as they are deemed proper in certain cases. Catherine Ford, a former associate editor of the Calgary Herald,

maintains there has always been a hierarchy of rights. As a result, a criminal defendant's right to a fair trial untainted by prejudiced jurors is more important than the public knowing all the details about the crime. Ford and other proponents for gag orders on the press understand that prohibitions tend to be lifted on these bans through Section 517 of the *Criminal Code*, and the public will receive the information following the trial's closure (Turner).

CONCLUSION

It is evident pre-trial publicity impacts criminal case proceedings. High-profile cases attract the media and draw viewers in as the courtroom unveils despicable crimes. Since the idea was first introduced in the early 1960s, pre-trial publicity has only continued to grow in courtroom discussions as judges, lawyers, and defendants balance the issues at hand.

Jury bias is the root of discussions surrounding pre-trial publicity. If the jurors are biased against the defendant, it can greatly affect his or her chances of receiving a fair trial as outlined in in the Sixth Amendment. With that being said, an up-and-coming argument focuses on the idea that jurors are capable of dividing their biases with the facts presented at trial. However, there is no proof that a juror's bias is not present, and the courts are faced with this issue constantly as media platforms grow.

The First Amendment and the Sixth Amendment, outlined in the Bill of Rights in the United States Constitution, are incredibly important rights people deserve. When balancing these two amendments against one another in cases of pre-trial publicity, it seems courts tend to agree with the First Amendment and the rights of the press more so than the rights a criminal defendant is ensured. As a result, and evident through years of cases, due process is greatly altered.

With the primary methods of combatting pre-trial publicity not always proving effective, courts are constantly looking for solutions to provide equality and fairness to the defendant and

the press. For such equality to be reached, courts must look at how these standards are not an adequate solution to modern-day problems. Technology's role in the growth of social media has made it easy for the public to receive knowledge about cases quickly and unchallenging. The Pew Research Center conducted a poll from August 31 to September 7, 2020 that discovered "more than eight-in-ten U.S. adults (86%) say they get news from a smartphone, computer, or tablet often" (Shearer). This statistic gives ample evidence that these amendments must be revised to include social media as a way for courts to have precedent when deciding if pre-trial publicity is at hand.

Ultimately, the current pre-trial publicity test is not feasible as it creates ambiguity within different states. Moving forward, there must be a test that addresses these issues for criminal defendants in high-profile cases to have an equal and fair chance at their trial. Given the United States does not permit gag orders on the press as demonstrated through Canadian and Australian laws, there needs to be a different way to balance the press' right to publish what they desire with the defendant's rights he or she receives at trial. Based on this analysis, pre-trial publicity will continue to grow and affect court cases so long as there is no correct examination for it.

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