COUNTERING PUBLIC PRESSURE: JURY ANONYMITY AS A PROTECTION OF CRIMINAL DEFENDANTS

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INTRODUCTION

The phenomenon known as "trial by media" has long been regarded as dangerous to the fairness of high-profile trials.[1] American history is replete with trials that captured public attention and galvanized anti-defendant fervor.[2] One way that media coverage can threaten a defendant's right to a fair trial is when the media prejudices the jury by publicizing information that would not be allowed into evidence at trial.[3] An overlooked way in which media coverage can threaten the integrity of a jury is when jurors feel pressured by public opinion to convict the defendant, even if the jurors themselves are not unduly biased by pretrial publicity. This Note explores this particular threat to the integrity of criminal trials and posits a solution: juror anonymity.[4]

Anonymous juries have been used with greater frequency in recent decades.[5] Proponents of anonymity have argued that it is necessary to guard jurors' privacy, shield them from media harassment, and, on occasion, protect them from dangerous defendants.[6] But the practice is not without its critics. Commentators have protested that juror anonymity has the potential to contribute to rather than remedy anti-defendant juror bias.[7] Others contend that anonymous juries undermine the public's right to a transparent and accessible justice system.[8] Rejecting these concerns, this Note takes the perspective that anonymity can play a vital role in guaranteeing the defendant an impartial jury. In high-profile cases, where the defendant is widely unpopular such that the jury is likely to feel intense public pressure to convict, an anonymous jury is necessary to secure the defendant's Sixth Amendment rights.

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1. *See* Gavin Phillipson, *Trial by Media: The Betrayal of the First Amendment's Purpose*, 71 L. & CONTEMP. PROBS. 15, 15 (2008); David A. Sellers, *The Circus Comes to Town: The Media and High-Profile Trials*, 71 L. & CONTEMP. PROBS. 181, 182–83 (2008).

2. *See* Sellers, *supra* note 1, at 182–83.

3. *See generally* Phillipson, *supra* note 1.

4. For the purposes of this Note, a jury is anonymous when the court does not release identifying information about jurors to the public, even if the parties are given the jurors' names.

5. *See* United States v. Ochoa-Vasquez, 428 F.3d 1015, 1034 (11th Cir. 2005) ("[S]ignificant numbers of federal and state courts throughout the country have utilized the procedure to protect jurors, prevent jury tampering and limit media influence.").

6. *See generally* Scott Ritter, *Beyond the Verdict: Why Courts Must Protect Jurors from the Public Before, During, and After High-Profile Cases*, 89 IND. LJ 911 (2014).

7. *See generally* Gerald F. Uelmen & Ephraim Margolin, *The Anonymous Jury: Jury Tampering by Another Name?*, 9 CRIM. JUST. 14–18, 60–61 (1994).

8. *See generally* Christopher Keleher, *The Repercussions of Anonymous Juries*, 44 U.S.F. L. REV. 531 (2010).

The argument proceeds in three parts. Part I offers background information on the criminal jury, modern use of anonymous juries, and the constitutional rights at stake. Part II describes situations where juries face public pressure to convict the defendant, illustrating the necessity of anonymity in certain cases. After showing that other legal safeguards are insufficient to protect defendants from juries who are biased by public pressure, Part III argues that the benefits of anonymous juries to defendants outweigh any potential drawbacks and highlights their usefulness in guaranteeing the defendant a fair trial.

I. BACKGROUND

A. Constitutional Rights

1. Right to a Jury Trial

Article III of the Constitution provides that there be a jury trial for all crimes.[9] The Sixth Amendment requires that criminal trials be speedy, public, and located in the state and district where the crime was committed and that the jury be impartial.[10] The criminal jury has its origins in the common law and pre-existed the Constitution by several centuries.[11] However, the Constitution's jury requirement has not been interpreted to codify the common law jury. When the Sixth Amendment was drafted, the Framers rejected a version that would have modified the word "[j]uries" with the phrase "with the accustomed requisites."[12] This fact led the Supreme Court in *Williams v. Florida* to conclude that "there is absolutely no indication in the 'intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury."[13] The Court went on:

> The purpose of the jury trial … is to prevent oppression by the Government …. Given this purpose, the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence.[14]

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9. U.S. CONST. art. III, § 2.

10. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law …."). The Sixth Amendment was incorporated to the states under the Fourteenth Amendment in *Duncan v. Louisiana*, 391 U.S. 145 (1968).

11. *See* Duncan v. Louisiana, 391 U.S. 145, 151 (1968).

12. Williams v. Florida, 399 U.S. 78, 95–96 (1970).

13. *Id.* at 99.

14. *Id.* at 100.

This is the guiding formulation of what is required of a criminal jury under the Sixth Amendment, and as long as they adhere to this, the features of a jury do not necessarily need to track those of the common-law jury.[15]

2. Right to an Impartial Jury

The Sixth Amendment right to an impartial jury requires juries in criminal cases to ground their verdicts exclusively in "evidence and argument in open court"[16] and to be unbiased.[17] A jury's impartiality is compromised when it is subjected to influence or coercion that would keep it from reaching a fair verdict,[18] as well as when it is exposed to prejudicial material,[19] including when the jury is in a situation that allows private communication with parties or witnesses.[20] A defendant may also not be subjected to trial amid the threat of mob domination.[21] Three central mechanisms for ensuring an impartial jury are the voir dire process, change of venue, and the requirement that jurors be selected from a fair cross-section of the community.

The voir dire process is a way to directly test the bias of individual jurors.[22] In both the federal and state criminal systems, voir dire is used to narrow a previously assembled list of potential jurors into a petit jury.[23] Attorneys have the opportunity to ask potential jurors questions to uncover biases, and they are allowed to remove a certain number of potential jurors with preemptory challenges.[24] Other jurors may be removed after being challenged for cause, which requires the challenging party to make a showing that the potential juror was biased.[25] It is unconstitutional for a juror who is prejudiced and should have been challenged for cause to be seated.[26] The trial judge has discretion to determine if a juror is impartial,[27] and "the Constitution lays down no particular tests" of impartiality.[28]

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15. *See* Brian Clifford, *Constitutional Law – "Had Anything Been Wrong, We Should Certainly Have Heard": The Anonymous Jury in America*, 32 W. NEW ENG. L. REV. 215, 224 (2010).

16. Mu'Min v. Virginia, 500 U.S. 415, 439 (1991) (Marshall, J., dissenting) (quoting Patterson v. Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907)).

17. *See* Dennis v. United States, 339 U.S. 162, 168 (1950); Irvin v. Dowd, 366 U.S. 717, 722 (1961).

18. *See* Remmer v. United States, 350 U.S. 377, 381–82 (1956); Smith v. Phillips, 455 U.S. 209, 217 (1982).

19. *See* Sheppard v. Maxwell, 384 U.S. 333, 351 (1966).

20. *See* Remmer v. United States, 347 U.S. 227, 451 (1954).

21. *See* Frank v. Mangum, 237 U.S. 309, 335 (1915); *Sheppard*, 384 U.S. at 355 (1966).

22. *See* ANDRE A. MOENSSENS ET AL., CRIMINAL LAW 7 (8th ed. 2008).

23. *See* 6 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 22.3(a), at 71 (3d ed. 2007).

24. *See id.* at 72.

25. *See id.*

26. *See* Ross v. Oklahoma, 487 U.S. 81, 85 (1988).

27. *See* Ristaino v. Ross, 424 U.S. 589, 594–595 (1976).

28. United States v. Wood, 299 U.S. 123, 145–146, (1936).

The Sixth Amendment requires that the venue for a trial be changed when the area from which a jury would be selected is likely to be biased because of publicity about the trial.[29] Factors relevant to a change of venue motion include the characteristics of the community, how prejudicial the publicity was, how recent the publicity was, and, for postconviction challenges, whether the jury's verdict shows that it was prejudiced by the publicity.[30]

The Fourteenth Amendment's Equal Protection Clause prohibits prosecutors from excluding potential jurors on account of their race,[31] and the Sixth Amendment's impartial jury requirement guarantees that juries be selected from a venire that forms "a representative cross-section of the community."[32] A defendant alleging that a jury was not selected from a fair cross-section of the community must show "(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."[33]

B. Anonymous Juries

Because the voir dire process was historically open to the public, juries were not anonymous.[34] Jurors were selected from the immediate locality of the trial, which was often a small enough area that most people knew each other, so the identities of the jurors were likely common knowledge.[35] Anonymous juries in America were "very rare before the 1970s."[36] The constitutional provisions that limit the use of anonymous juries include the defendant's Sixth Amendment rights to an impartial jury and a public trial and the public's First Amendment right to access criminal trials.[37]

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29. *See* Skilling v. United States, 561 U.S. 358, 378 (2010).

30. *See id.* at 382–83.

31. Batson v. Kentucky, 476 U.S. 79, 86 (1986).

32. Taylor v. Louisiana, 419 U.S. 522, 528 (1975).

33. Duren v. Missouri, 439 U.S. 357, 364 (1979).

34. *See* Robert Lloyd Raskopf, *A First Amendment Right of Access to a Juror's Identity: Toward a Fuller Understanding of the Jury's Deliberative Process*, 17 PEPP. L. REV. 357, 370 (1990); *see also* Margolin & Uelmen, *supra* note 7, at 14 ("Juror anonymity is an innovation that was unknown to the common law and to American jurisprudence in its first two centuries.").

35. *See* United States v. Wecht, 537 F.3d 222, 235 (3d Cir. 2008); *see also* In re Baltimore Sun Co., 841 F.2d 74, 75 (4th Cir. 1988) ("When the jury system grew up with juries of the vicinage, everybody knew everybody on the jury . . . .").

36. *Wecht*, 537 F.3d at 236. "[I]t appears that public knowledge of jurors' names is a well-established part of American judicial tradition." *Id. See* Abraham Abramovsky & Jonathan I. Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN'S J. LEGAL COMMENT. 457, 457 (1999) ("[I]n United States v. Barnes, a federal trial judge in the Southern District of New York empaneled the first fully anonymous jury in American history.").

37. *See* U.S. Constitution, amend. VI ("[T]he accused shall enjoy the right to a . . . public trial, by an impartial jury . . . ."); *id.* amend I ("Congress shall make no law . . . abridging the

An anonymous jury was first used in a criminal trial in the United States in the 1977 case *United States v. Barnes*.[38] Like many of the first trials to feature an anonymous jury, this was an organized crime case.[39] After the United States Marshals received a phone call from someone threatening to kill a government witness, the prosecution asked the judge to sequester the jury.[40] The judge went beyond this, ordering *sua sponte* that the names, addresses, and religious and ethnic backgrounds of potential jurors be kept secret.[41] The defense's numerous objections were unavailing,[42] and the Second Circuit affirmed, holding that the jury's anonymity did not implicate the Sixth Amendment right to an impartial jury.[43] The court reasoned that the Sixth Amendment does not require disclosure of the jurors' identifying information unless it is relevant to show prejudice with the potential to bias the verdict.

The Second Circuit later developed rules outlining when the use of anonymous juries is consistent with the Sixth Amendment.[44] An anonymous jury is allowed despite the defendant's opposition when there is a compelling "reason to believe that the jury needs protection" from external actors and when "reasonable precautions" are taken to protect the defendant's fundamental rights and ensure that the jury remains impartial.[45] The trial judge has discretion to make this determination.[46] Examples of situations yielding compelling reasons for jury protection include when the defendant is involved in organized crime or some group able to harm jurors, the defendant has previously interfered with the judicial process, or there is a threat that the media will harass jurors.[47] Federal circuits and state courts alike have used this test to determine the constitutionality of anonymous juries.[48]

The Supreme Court has held that the First Amendment limits the concealment of criminal proceedings, giving the public and the media a right to access them.[49] In *Press-Enterprise II v. Superior Court*, the Court laid out what has become known as the "experience and logic" test, which is used to

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freedom of speech . . . ."); *see also* Globe Newspaper Co. v. Superior Ct., 457 U.S. 596, 603–04 (1982) (extending the First Amendment to give the public the right to access criminal trials).

38. 604 F.2d 121 (2d Cir. 1979); Abramovsky & Edelstein, *supra* note 36, at 457.

39. *Barnes*, 604 F.2d at 130.

40. Abramovsky and Edelstein, *supra* note 36, at 461.

41. *Id.*

42. *Barnes*, 604 F.2d at 169.

43 *Id.* at 143.

44. United States v. Paccione, 949 F.2d 1183, 1192 (2d Cir. 1991).

45. *Id.*

46. *Id.*

47. *Id.*

48. *See, e.g.*, United States v. Darden, 70 F.3d 1507 (8th Cir. 1995); United States v. Edmond, 52 F.3d 1080 (D.C. Cir. 1995); United States v. Ross, 33 F.3d 1507 (11th Cir. 1994); United States v. Crockett, 979 F.2d 1204 (7th Cir. 1992); Major v. State, 873 N.E.2d 1120, 1127 (Ind. Ct. App. 2007); State v. Bowles, 530 N.W.2d 521 (Minn. 1995); State v. Ivy, 188 S.W.3d 132, 144 (Tenn. 2006).

49. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 556 (1980).

determine when the First Amendment right to public access attaches.[50] A court must find both that "the place and process [in question] have historically been open to the press and general public"[51] (the experience prong) and that "public access plays a significant positive role in the functioning of the particular process in question" (the logic prong).[52] Once it is determined that the First Amendment right has attached, criminal proceedings are presumptively open,[53] and a defendant's motion to exclude the public from court proceedings is subject to a modified strict scrutiny standard.[54] Applying the experience and logic test in *Press-Enterprise II*, the Court held that keeping the transcript of a closed preliminary hearing for a murder trial sealed was a violation of the First Amendment, even when the defendant argued against its release on the grounds that it would create prejudicial publicity.[55] There is no consensus among courts on whether the public has a First Amendment right to jurors' identifying information.[56] While a number of courts have found that the experience prong would be satisfied, there are doubts as to the logic prong.[57]

Anonymous juries have been used with greater frequency in the last couple of decades.[58] While initially used primarily to guarantee juror safety from dangerous defendants, anonymous juries are now sometimes empaneled to protect juror privacy.[59] They have therefore been used in some trials that

50. 478 U.S. 1, 8–9 (1986).

51. *Id.* at 8.

52. *Id.*

53. *See id.*

54. *See id.* at 15. "The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values, and is narrowly tailored to serve that interest." Press-Enter. Co. v. Superior Ct. (*Press-Enterprise I*), 464 U.S. 501, 510 (1984). *See also* Raleigh Hannah Levine, *Toward a New Public Access Doctrine*, 27 CARDOZO L. REV. 1739, 1759 (2006) ("[C]ourts often disagree as to which closures satisfy strict scrutiny. For some, the test is '"strict" in theory but fatal in fact;' for others, searching for a way to justify closure, the test is strict in theory but quite flexible in fact.").

55. *Press-Enter. II*, 478 U.S. at 5, 7.

56. *Compare, e.g.*, United States v. Wecht, 537 F.3d 222, 235–239 (3d Cir. 2008) (holding that the public has a First Amendment right to access juror names), *with* Morgan v. Dickerson, 496 P.3d 793, 799 (Ariz. Ct. App. 2021) (holding that the First Amendment does not give the public a right to access juror biographical information).

57. *See* Ritter, *supra* note 6, at 930–37 (arguing that not only are the benefits of making jurors' identifying information public minimal, but that there are serious drawbacks to the practice, including its potential to compromise the defendant's right to an impartial jury). This Note's arguments incidentally support the view that the logic prong is not satisfied, so if correct, this implies that the First Amendment would not be an obstacle to a defendant's request for an anonymous jury.

58. *See* United States v. Ochoa-Vasquez, 428 F.3d 1015, 1034 (11th Cir. 2005) ("[S]ignificant numbers of federal and state courts throughout the country have utilized the procedure to protect jurors, prevent jury tampering, and limit media influence.").

59. Bridget M. Hathaway, *Socially Networked Jurors Raise Concern: Empanelling Anonymous Juries to Protect the Defendant's Right to a Fair Trial*, 57 WAYNE L. REV. 557, 563 (2011).

garnered great public interest.[60] Courts continue to insist, however, that empaneling an anonymous jury is a "drastic measure" which should be used only "in limited and carefully delineated circumstances."[61]

II. PUBLIC PRESSURE ON JURIES AS A THREAT TO UNPOPULAR DEFENDANTS

In high-profile trials, there is always a risk that the jurors will be biased by prejudicial media coverage, requiring a robust voir dire process and occasionally a change of venue. A more subtle kind of juror bias can arise when jurors feel public pressure to convict the defendant. The modern media and political environment have made this phenomenon especially dangerous,[62] and its threat can be seen in two recent high-profile criminal cases, discussed below. In both cases, media coverage and public perception tied the trial to a political or social movement such that a conviction had political or social meaning beyond the facts of the case. A large segment of the public was so in favor of conviction in each case that jurors would have understandably been afraid to face the media and general public if they had acquitted the defendant. This section shows that when jurors' identities are publicly available, jurors may be biased by the verdict rendered in the court of public opinion, denying the defendant the right to an impartial jury.

A. *The Chauvin Case*

On the night of May 25, 2020, a video of Minneapolis police officer Derek Chauvin kneeling on the neck of George Floyd, an unarmed black man who died shortly after, began circulating on social media platforms, inducing public outrage.[63] The original post of the nine-minute video, which showed Floyd groaning and complaining that he was unable to breathe as Chauvin, unphased by protesting onlookers, continued his restraint, quickly went viral on social media.[64] In the months that followed, protestors in Minneapolis and other cities in the United States and around the world called for the conviction of Chauvin as well as changes to American policing, which they saw as rife with racism, brutality, and unaccountability.[65] Some of the protests turned to riots as stores

60. *See* Keleher, *supra* note 8, at 549.

61. United States v. Ross, 33 F.3d 1507, 1519 (11th Cir. 1994).

62. *See* Ritter, *supra* note 6, at 936.

63. *'I Can't Breathe!': Video of Fatal Arrest Shows Minneapolis Officer Kneeling on George Floyd's Neck for Several Minutes*, CBS MINNESOTA (May 26, 2020, 11:30 PM), https://minnesota.cbslocal.com/2020/05/26/george-floyd-man-dies-after-being-arrested-by-minneapolis-police-fbi-called-to-investigate/.

64. *Id.*; Darnella Frazier, FACEBOOK (May 26, 2020, 1:46 AM), https://www.facebook.com/darnellareallprettymarie/posts/1425401580994277.

65. *See Protests Across the Globe After George Floyd's Death*, CNN, https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html (last updated June 13, 2020); *see also #DefundThePolice*, BLACK LIVES MATTER (May 30, 2020), https://blacklivesmatter.com/defundthepolice/.

were looted and buildings burned in multiple cities.[66] Chauvin was charged with murder. When his three-week trial came to a close in April 2021, Minneapolis braced for further violence in case of an acquittal, with over 4,000 members of the Minnesota National Guard and law enforcement dispatched to the city, public schools closed, and businesses boarded up.[67] The community breathed a collective sigh of relief when the jury found Chauvin guilty of second and third-degree murder and manslaughter.[68] He was sentenced to 22.5 years in prison.[69]

In general, media coverage of Floyd's death reinforced the theory of protestors and activists that it was the result of racism and police brutality. One study that analyzed all the news reports of Floyd's death in the following two weeks found that about 55 percent of all news items linked his death to racism or police brutality.[70] In particular, the study found that online coverage from the New York Times and the Washington Post mentioned racism in 57 percent and 43 percent of articles about Floyd's death, respectively, with even online articles from Fox News referencing racism in connection with the event in 38 percent of articles and police brutality in 25 percent.[71] The media also made a point of highlighting the infrequency with which police officers were convicted

66. *See* Tim Elfrink et al., *Protests, Fires Rage Through the Night in Minneapolis*, WASHINGTON POST (May 29, 2020, 8:01 AM), https://www.washingtonpost.com/nation/2020/05/28/minneapolis-protests-george-floyd-death/; Alan Taylor, *Fires and Protests in the Twin Cities*, THE ATLANTIC (May 29, 2020), https://www.theatlantic.com/photo/2020/05/photos-fire-and-protests-twin-cities/612325/ ("Peaceful protest marches earlier in the day gave way to chaotic scenes as several buildings were broken into and set on fire, including the Minneapolis Police Third Precinct building, which was abandoned during the protest."); *See generally George Floyd Death: Violence Erupts on Sixth Day of Protests*, BBC NEWS (June 1, 2020), https://www.bbc.com/news/world-us-canada-52872401; Stephanie Pagones, *Protests, Riots that Gripped America in 2020*, FOX NEWS (Dec. 29, 2020, 6:39 AM), https://www.foxnews.com/us/protests-riots-nationwide-america-2020. Cities that suffered from rioting included Minneapolis; New York City; Rochester, N.Y.; Portland, O.R.; Chicago, Kenosha, W.I.; and Philadelphia. *See id.*

67. Maia Niguel Hoskin, *What the Derek Chauvin Trial Verdict Might Mean for the Black Community and How Workplaces Can Begin Preparing for Either Outcome*, FORBES (Apr. 19, 2021), https://www.forbes.com/sites/maiahoskin/2021/04/19/what-the-derek-chauvin-trial-verdict-might-mean-for-the-black-community-and-how-workplaces-can-begin-preparing-for-either-outcome/?sh=cff527e423d3.

68. *See* Mike Hayes et al., *Derek Chauvin Guilty in Death of George Floyd*, CNN, https://www.cnn.com/us/live-news/derek-chauvin-trial-04-20-21/index.html (last updated Apr. 21, 2021, 12:06 AM).

69. Amy Forliti and Steve Karnowski, *Chauvin Gets 22 ½ Years in Prison for George Floyd's Death*, AP NEWS (June 25, 2021), https://apnews.com/article/derek-chauvin-sentencing-23c52021812168c579b3886f8139c73d.

70. Ben Moore, *Media Bias in the Coverage of George Floyd*, SIGNAL AI: THE SIGNAL AI BLOG, https://www.signal-ai.com/blog/media-bias-in-the-coverage-of-george-floyd (last visited Mar. 24, 2023).

71. *Id.*

of murder and the importance of the case for racial justice, politicizing the case by tying it to the movement to hold police more accountable for racist acts.[72]

Though public opinion was not unified on Chauvin's guilt, and was even more divided on calls for police reform,[73] the unified message of the country's major institutions before and after the trial was that Chauvin committed a murder motivated by racism.[74] Nearly every major American institution felt it necessary to give its view on the case, and there was little variance in opinion. Corporate America flooded the internet with statements expressing outrage at Chauvin's actions, denouncing them as racist.[75] Colleges and universities across the country released statements demanding accountability for Floyd's death and affirming support for racial justice activism.[76] Religious leaders

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72. *See, e.g.*, Fabiola Cineas and Sean Collins, *Why Chauvin's Conviction Matters*, VOX (Apr. 20, 2021, 5:12 PM), https://www.vox.com/2021/4/20/22387556/derek-chauvin-verdict-guilty-murder-manslaughter; Marc Ramirez, *'This Is Our Selma Moment': Racial Justice Activists Hope Derek Chauvin Verdict Spurs Larger Systemic Change*, USA TODAY (Apr. 21, 2021, 4:51 PM), https://eu.usatoday.com/story/news/2021/04/21/chauvin-verdict-could-turning-point-racial-justice-us/7268060002/.

73. *See* Jennifer Agiesta, *CNN Poll: Most Satisfied with Chauvin Verdict, but Partisans Divide*, CNN (Apr. 27, 2021, 5:15 PM), https://www.cnn.com/2021/04/27/politics/cnn-poll-chauvin-trial/index.html; *see also* Jemima McEvoy, *Nearly Half of Republicans Think Derek Chauvin Verdict Was Wrong, Poll Shows*, FORBES (Apr. 25, 2021, 12:50 PM), https://www.forbes.com/sites/jemimamcevoy/2021/04/25/nearly-half-of-republicans-think-derek-chauvin-verdict-was-wrong-poll-shows/?sh=f44d22766e86; *see generally* Domenico Montanaro, *Where Views on Race and Police Stand a Year After George Floyd's Murder*, NPR (May 17, 2021, 5:00 AM), https://www.npr.org/2021/05/17/996857103/poll-details-the-very-different-views-of-black-and-white-americans-on-race-and-p.

74. *See generally* Lindsay McKenzie, *Calls for Change*, INSIDE HIGHER ED (June 2, 2020), https://www.insidehighered.com/news/2020/06/02/higher-ed-leaders-address-protests-racial-tensions-and-killing-george-floyd (providing a sample of statements from universities regarding Floyd's death); Natalie Sherman, *George Floyd: Why Are Companies Speaking up This Time?*, BBC NEWS (June 7, 2020), https://www.bbc.com/news/business-52896265; Charisse Jones, *'A Small Measure of Justice': GM, Facebook Respond to the Derek Chauvin Guilty Verdicts*, USA TODAY (April 21, 2021, 10:19 AM), https://www.usatoday.com/story/money/2021/04/20/corporate-america-responds-murder-conviction-derek-chauvin/7308456002/ ("Corporate America, which almost universally declared in statements that 'Black lives matter' in the wake of the death of George Floyd, called the conviction Tuesday of the officer who killed him a step forward— but said much more was needed to achieve widespread justice."); Paul Clolery, *Nonprofits React to Conviction of Derek Chauvin*, THE NONPROFIT TIMES (April 21, 2021), https://www.thenonprofittimes.com/npt_articles/nonprofits-react-to-conviction-of-derek-chauvin/ (providing a sample of nonprofit organizations' post-verdict statements and commenting, "[Nonprofit] leaders not only backed the verdict, many also voiced support for the George Floyd Justice in Policing Act of 2021 pending in Congress . . . .").

75. *See* Sherman, *supra* note 74.

76. McKenzie, *supra* note 74; *see, e.g.*, *Update from the President on the Death of Minneapolis Resident George Floyd*, UNIV. OF MINN. (May 27, 2020), https://president.umn.edu/sites/president.umn.edu/files/2020-06/May%2027%20Update%20from%20the%20President.pdf (letter from the president of the

spoke out characterizing Floyd's death as a racist killing.[77] Professional sports leagues and teams likewise expressed their pro-conviction perspective.[78] Even many police organizations publicly condemned Chauvin.[79] These reactions strongly reinforced the perception that the case was about more than one man's guilt, but about an anti-racism movement. Any reasonable observer could see that the country's major institutions would likely view anything less than a conviction as racist.

B. The Weinstein Case

In October 2017, the *New York Times* published an article detailing accusations of sexual harassment against prominent film producer Harvey Weinstein.[80] The report alleged that for decades Weinstein used his powerful position to exploit women who were aspiring to land acting roles in Hollywood.[81] Five days later, the *New Yorker* published accusations from

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University of Minnesota demanding accountability and justice for the death of George Floyd and announcing that the University would cease to contract with the Minneapolis Police Department).

77. *See, e.g.*, *Statement of U.S. Bishop Chairmen in Wake of Death of George Floyd and National Protests*, U.S. CONF. OF CATH. BISHOPS (May 29, 2020), https://www.usccb.org/news/2020/statement-us-bishop-chairmen-wake-death-george-floyd-and-national-protests ("We are broken-hearted, sickened, and outraged to watch another video of an African American man being killed before our very eyes."); *Southern Baptist Leaders Issue Joint Statement on the Death of George Floyd*, BAPTIST PRESS (May 30, 2020), https://www.baptistpress.com/resource-library/news/southern-baptist-leaders-issue-joint-statement-on-the-death-of-george-floyd/ ("The images and information we have available to us in this case are horrific and remind us that there is much more work to be done to ensure that there is not even a hint of racial inequity in the distribution of justice in our country. We grieve to see examples of the misuse of force, and call for these issues to be addressed with speed and justice."); Genelle Pugmire, *LDS Church President Issues Personal Statement on Recent Events Over the Death of George Floyd*, DAILY HERALD (June 1, 2020), https://www.heraldextra.com/news/2020/jun/01/lds-church-president-issues-personal-statement-on-recent-events-over-the-death-of-george-floyd/ ("We join with many throughout this nation and around the world who are deeply saddened at recent evidences of racism and a blatant disregard for human life."); Lonny Goldsmith, *Minnesota Jewish Leaders Speak Out on Death of George Floyd*, THE FORWARD (May 29, 2020), https://forward.com/news/447677/minnesota-jewish-leaders-speak-out-on-death-of-george-floyd/ ("The Jewish Community Relations Council of Minnesota and the Dakotas, in its statement released Tuesday afternoon, said: 'The Jewish community is outraged by the killing of George Floyd . . . . We demand justice for his killing.'").

78. *See generally Derek Chauvin Verdict: Have Leagues Upheld Social Justice Promises Since George Floyd's Murder?*, ESPN (Apr. 20, 2021), https://www.espn.com/espn/story/_/id/31297638/derek-chauvin-verdict-leagues-upheld-social-justice-promises-george-floyd-murder.

79. *See* Becky Sullivan, *After Chauvin Conviction, Police Consensus on Reform Remains Elusive*, NPR (Apr. 22, 2021, 12:16 PM), https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/22/989854354/after-chauvin-conviction-police-consensus-on-reform-remains-elusive.

80. *See* Jodi Kantor and Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, THE N.Y. TIMES (Oct. 5, 2017), https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html.

81. *See id.*

thirteen women against Weinstein, which included rape.[82] As further sexual assault allegations from dozens more women came to light in the following weeks and months,[83] police in Los Angeles, New York, and London began criminal investigations into Weinstein's conduct,[84] culminating with charges of rape filed against him in New York in May 2018.[85]

The accusations against Weinstein precipitated the #MeToo movement, a social media campaign that attempted to shine more light on sexual abuse by men in powerful positions.[86] Emboldened by the movement, more victims were sharing their stories of sexual assault, and "it became impossible for a single week, or even day, to go by without another story breaking in which another powerful man was accused of sexual misconduct. It was as though someone had jostled a line of dominoes, and now we were watching them all topple in real time."[87] Some accusers received considerable media attention. *New York* magazine ran a photo portfolio of some of Weinstein's accusers,[88] and *Time* magazine named #MeToo's "Silence Breakers" as its 2017 "Person of the Year."[89] Some saw the atmosphere as essential for giving women the courage to speak up and overcome society's tendency to dismiss sexual assault

82. *See* Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, THE NEW YORKER (Oct. 10, 2017, 10:47 AM), https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories.

83. *See Harvey Weinstein Timeline: How the Scandal Unfolded*, BBC NEWS (Oct. 24, 2022), https://www.bbc.co.uk/news/entertainment-arts-41594672 [hereinafter *Harvey Weinstein Timeline*].

84. Richard Winton, *Weinstein Criminal Probes Growing in New York and London, but so Far No Cases in L.A.*, L.A. TIMES (Oct. 16, 2017, 5:50 PM), https://www.latimes.com/business/hollywood/la-fi-ct-weinstein-investigation-20171016-story.html; Richard Winton & Victoria Kim, *Investigation Launched After Actress Tells LAPD She Was Raped by Harvey Weinstein*, L.A. TIMES (Oct. 20, 2017), https://www.latimes.com/local/lanow/la-fi-ct-weinstein-lapd-victim-20171019-story.html.

85. *Harvey Weinstein Timeline*, *supra* note 83.

86. Elizabeth Chuck, *#MeToo: Hashtag Becomes Anti-Sexual Harassment and Assault Rallying Cry*, NBC NEWS (Oct. 16, 2017, 11:32 AM), https://www.nbcnews.com/storyline/sexual-misconduct/metoo-hashtag-becomes-anti-sexual-harassment-assault-rallying-cry-n810986. The phrase "me too" was first used in activism against sexual assault by Tarana Burke in 2006, though it was not until 2017 that the modern movement employing the phrase kicked off. *See History and Inception*, ME TOO, https://metoomvmt.org/get-to-know-us/history-inception/ (last visited Mar. 24, 2023).

87. Constance Grady, *Some Say the Me Too Movement Has Gone Too Far. The Harvey Weinstein Verdict Proves That's False.*, VOX (Feb. 24, 2020, 5:07 PM), https://www.vox.com/culture/2020/2/24/21150966/harvey-weinstein-rape-conviction-sexual-predatory-assault-me-too-too-far.

88. *See* Irin Carmon & Amanda Demme, *100 Women vs. Harvey Weinstein*, N.Y. MAG. (Jan. 6, 2020), https://www.thecut.com/2020/01/harvey-weinstein-case-finally-comes-to-court.html.

89. *See* Stephanie Zacharek, Eliana Dockterman, & Haley Sweetland Edwards, *The Silence Breakers*, TIME, https://time.com/time-person-of-the-year-2017-silence-breakers/ (last visited Mar. 24, 2023).

allegations, which allowed powerful men to escape justice.[90] Others argued that the movement was making it too easy to ruin men with unproven accusations and a lack of due process.[91] They noted that the movement's mindset of "believe all women" created a presumption of guilt when a man was accused.[92]

One result of the movement was that those associated with alleged offenders or who did not criticize them harshly or quickly enough were in danger of being vilified themselves, and this was particularly true in Weinstein's case. In the months after the accusations against Weinstein were first leveled, actor Meryl Streep, who had a close professional relationship with Weinstein, took harsh criticism for not speaking out against him sooner.[93] Movie director Woody Allen was roundly condemned for commenting in the days after the scandal broke that he was "sad for Harvey" and "everybody involved."[94] He later clarified that all he meant to say was that Weinstein was "a sad, sick man."[95] Most remarkably, law professor Ronald Sullivan Jr. and his wife lost their appointments as faculty deans at Harvard after Sullivan was denounced on campus for joining Weinstein's legal defense team.[96] Two undergraduates wrote an op-ed in the *Harvard Crimson* arguing that his presence was "triggering" for sexual assault survivors,[97] and protestors graffitied his office door.[98] After months of attacks, Sullivan announced he would no longer represent Weinstein.[99]

It is an understatement to say that Weinstein was an unpopular defendant when his case came to trial in early 2020. One prominent New York defense

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90. *See* Anna North, *7 Positive Changes That Have Come from the #MeToo Movement*, VOX (Oct. 4, 2019, 7:00 AM), https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019; Grady, *supra* note 87.

91. *See* Daphne Merkin, *Publicly, We Say #MeToo. Privately, We Have Misgivings.*, N.Y. TIMES (Jan. 5, 2018), https://www.nytimes.com/2018/01/05/opinion/golden-globes-metoo.html; Karlyn Borysenko, *The Dark Side Of #MeToo: What Happens When Men Are Falsely Accused*, FORBES (Feb. 12, 2020, 3:00 PM), https://www.forbes.com/sites/karlynborysenko/2020/02/12/the-dark-side-of-metoo-what-happens-when-men-are-falsely-accused.

92. Borysenko, *supra* note 91. *See generally* ALAN DERSHOWITZ, GUILT BY ACCUSATION: THE CHALLENGE OF PROVING INNOCENCE IN THE AGE OF #METOO (2019).

93. *See* Lesley Messer, *Meryl Streep Tells Rose McGowan: 'I Did Not Know About Weinstein's Crimes'*, ABC NEWS (Dec. 18, 2017, 6:26 PM), https://abcnews.go.com/Entertainment/meryl-streep-tells-rose-mcgowan-weinsteins-crimes/story?id=51870034.

94. Gwilym Mumford, *Woody Allen Forced to Clarify Comments About 'Sad' Harvey Weinstein*, GUARDIAN (Oct. 16, 2017), https://www.theguardian.com/film/2017/oct/16/harvey-weinstein-woody-allen-sad-comment-sexual-abuse-allegations.

95. *Id.*

96. Lara Bazelon, *Harvard Shouldn't Punish Harvey Weinstein's Attorney*, SLATE (May 13, 2019, 7:25 PM), https://slate.com/news-and-politics/2019/05/harvey-weinstein-lawyer-harvard-law-school-wrong-decision.html.

97. Danu A. Mudannayake & Remedy Ryan, *Harvard, Remove Dean Sullivan*, HARVARD CRIMSON (Feb. 13, 2019), https://www.thecrimson.com/article/2019/2/13/mudannayake-ryan-remove-sullivan/.

98. Bazelon, *supra* note 96.

99. *Id.*

attorney told the *New York Times*, "I can't think of another case where the defendant comes into trial at a larger disadvantage in terms of perception."[100] During the trial, protestors outside the New York courthouse chanted "rapist."[101] The public eagerness to see Weinstein convicted could be attributed to his strong association with the #MeToo movement. As the first case from the #MeToo era to go to trial, Weinstein's case was called "historic"[102] and "a crucial test in the effort to hold powerful men accountable for sexual harassment in the workplace."[103] The *New York Times* journalists who first broke the story of allegations against Weinstein proclaimed just before the trial started that "the outcome already is anticipated as a verdict on much more than one man's alleged wrongdoing."[104] In February 2020, Weinstein was convicted of rape and sexual abuse and sentenced to twenty-three years in prison.[105]

C. Public Pressure on Juries to Convict

There are many perils faced by jurors in high-profile cases like these, including invasions of privacy and threats. For example, after the 2011 acquittal of Casey Anthony, a Florida woman who was accused of murdering her young daughter, jurors faced public outrage and death threats.[106] The danger was so great that the jurors were reported to have gone into hiding when the judge released their names three months after the verdict.[107] The jurors in the 1992

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100. Megan Twohey, et al., *All Bets Are Off as Harvey Weinstein's Sexual Assault Trial Opens Today*, N.Y. TIMES (last updated Feb. 5, 2020), https://www.nytimes.com/2020/01/05/us/harvey-weinstein-trial.html.

101. Michael R. Sisak, *Harvey Weinstein Appeals Conviction, Blames 'Cavalier' Judge*, AP NEWS (Apr. 5, 2021), https://apnews.com/article/new-york-trials-harvey-weinstein-manhattan-courts-4535e9bf0c8affed775236f58e6be4d5.

102. Maria Puente, *Harvey Weinstein's Sex Crimes Trial Begins Monday in New York: What You Need to Know*, USA TODAY (last updated Jan. 6, 2020, 5:21 AM), https://eu.usatoday.com/story/entertainment/celebrities/2020/01/03/harvey-weinsteins-trial-what-know-me-too-case-goes-court/2774183001/.

103. *Full Coverage: Harvey Weinstein Is Found Guilty of Rape*, N.Y. TIMES (last updated June 15, 2021), https://www.nytimes.com/2020/02/24/nyregion/harvey-weinstein-verdict.html.

104. Twohey, et al., *supra* note 100.

105. Colin Dwyer, *Harvey Weinstein Sentenced to 23 Years in Prison for Rape and Sexual Abuse*, NPR (Mar. 11, 2020, 11:06 AM), https://www.npr.org/2020/03/11/814051801/harvey-weinstein-sentenced-to-23-years-in-prison.

106. Kyle Hightower & Tamara Lush, *Anthony Jurors Lay Low After Names Released*, NBC NEWS (Oct. 25, 2011, 8:26 AM), https://www.nbcnews.com/id/wbna45029137; Paul Duggan, *Casey Anthony and the Court of Public Opinion*, WASH. POST (July 5, 2011), http://articles.washingtonpost.com/2011-07- 05/local/35236428_1_media-assassination-casey-anthony-caylee.

107. *Casey Anthony Jurors Reportedly in Hiding After Judge Releases Their Names*, CBS News (Oct. 25, 2011, 2:46 PM), https://www.cbsnews.com/news/casey-anthony-jurors-reportedly-in-hiding-after-judge-releases-their-names/. *See also* Scott Ritter, Note, *Beyond the Verdict: Why Courts Must Protect Jurors from the Public Before, During, and After High-Profile Cases*, 89 IND. L.J. 911, 911-12 (2014) (describing some of the harassment suffered by the jurors in the Anthony trial, including businesses putting up signs saying that they were not welcome).

trial of four police officers accused of beating Rodney King in Los Angeles, whose not guilty verdict sparked race riots, described similar mistreatment by the public.[108] One juror who received death threats told the *Chicago Tribune* in the weeks that followed, "[m]y life is beyond hell. I cannot take anymore."[109] Other jurors were reported to have left their homes and moved out of the area for their safety.[110]

Pressure on jurors to convict can take more subtle and less violent forms as well. Jurors may fear social ostracization and backlash from friends and family if they reach an unpopular verdict. They may want to avoid being seen publicly as on the wrong side of history.[111] Jurors may also be justified in fearing that an unpopular or politically incorrect acquittal could damage their professional lives and reputations, leading to discrimination and career difficulties. After all, the careers of some, even private individuals, have been ruined for being seen as violating the social norms at the heart of the Black Lives Matter and #MeToo movements (which were front and center in the Chauvin and Weinstein cases).[112] Ronald Sullivan, the attorney who lost his position at Harvard for joining Weinstein's defense team, told the *New Yorker* that people who supported his decision to represent Weinstein "feel as though they cannot say anything publicly because they will be tarred and feathered as 'rape sympathizers.'"[113] In such a climate, it would be no overreaction for jurors to worry that employers or universities would take adverse action against them because their decision to acquit was not in line with the company or institution's values.

Indeed, there is reason to think that jurors in the Chauvin and Weinstein cases faced such pressures. The jurors in the Weinstein case, who were kept anonymous and identified only by numbers, were still hounded by the media as

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108. *See Death Threats, Fear Follow King Jury*, CHI. TRIBUNE (May 10, 1992, 12:00 AM), https://www.chicagotribune.com/news/ct-xpm-1992-05-10-9202110599-story.html.

109. *Id.*

110. *Id.*

111. *See* Darlene Ricker, *Holding Out: Juries vs. Public Pressure*, 78 A.B.A. J. 48, 51 (1992).

112. *See* Helen Lewis, *How Capitalism Drives Cancel Culture*, ATLANTIC (July 14, 2020), https://www.theatlantic.com/international/archive/2020/07/cancel-culture-and-problem-woke-capitalism/614086/ (recounting the stories of Sue Schafer, a graphic designer fired from the *Washington Post* for wearing blackface to a party in an attempt to mock Megyn Kelly; Niel Golightly, who was forced to leave his job in communications at Boeing when his 33-year-old article arguing against women serving in the military was uncovered; and Emmanuel Cafferty, a truck driver who was tricked into making a white-power/"okay" hand signal, and a video of the incident went viral); John Daniel Davidson, *If You Don't Support Black Lives Matter, You're Fired*, FEDERALIST (June 11, 2020), https://thefederalist.com/2020/06/11/if-you-dont-support-black-lives-matter-youre-fired/ (listing the people who received adverse treatment or were fired from their jobs in media, sports, education, and government for actions as insignificant as tweeting "all lives matter," deciding not to cancel an exam in the days following George Floyd's death, and stating on TV that Canada is not a racist country).

113. Isaac Chotiner, *A Harvard Law School Professor Defends His Decision to Represent Harvey Weinstein*, NEW YORKER (Mar. 7, 2019), https://www.newyorker.com/news/q-and-a/a-harvard-law-school-professor-defends-his-decision-to-represent-harvey-weinstein.

soon as their jury service ended.[114] Though the identities of the jurors in the Chauvin case were kept private for the duration of the trial, with only some limited demographic information released initially, Judge Peter Cahill told them during juror selection that their names would eventually be made public.[115] In November 2021, about seven months after the trial, Judge Cahill made good on his promise, releasing the names of the twelve jurors and two alternate jurors in Chauvin's trial.[116] It is worth considering whether Chauvin's jury, knowing that they would eventually have to publicly stand by their verdict, could have been impartial considering that an acquittal would put them at odds with the position of nearly every corporation and university in the country.[117] Even if the jurors were unbiased by pre-trial publicity, they must have worried that a not guilty verdict would eventually risk them being viewed as racists by nearly any company they would like to work for, university they might study at, and even many religious bodies and nonprofits they would like to join. And this is not to mention the strong possibility that a not guilty verdict would have triggered rioting and unrest in Minneapolis and across the country and brought death threats and harassment to the jurors not unlike what occurred after the Rodney King and Casey Anthony verdicts.[118]

III. ANONYMOUS JURIES AS A PROTECTION OF DEFENDANTS

As we have seen, in trials where a defendant's guilt has been politicized or tied to a political or social movement, there is a serious risk that the jury will not be able to be impartial. The present mechanisms of achieving juror impartiality are unable to solve this problem so long as the identities of jurors are made public. A potential solution is the use of anonymous juries. As will be argued below, anonymous juries may assist the court in guaranteeing the defendant a fair trial and can be justified under the Sixth Amendment.

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114. *See* Ed Pilkington, *Weinstein Jurors Face Next Challenge: Media Pressure to Tell Their Stories*, GUARDIAN (Feb. 27, 2020, 4:00 PM), https://www.theguardian.com/world/2020/feb/27/weinstein-guilty-verdict-jurors ("In high-profile cases such as the Weinstein trial, which was seen as the first big test in a court setting of the #MeToo movement, an entire media industry has developed around gaining exclusive access to key jurors. TV channels employ researchers to sit in court for the duration of the trial specifically to identify the jurors and approach them the instant the verdict is handed down.").

115. Mark Berman & Holly Bailey, *The Jurors Who Decided Derek Chauvin's Fate*, WASH. POST (Apr. 20, 2021), https://www.washingtonpost.com/nation/2021/03/28/jury-chauvin-trial-george-floyd/.

116. *Judge Releases Names of Jurors in Derek Chauvin's Trial*, AP NEWS (Nov. 2, 2021), https://apnews.com/article/death-of-george-floyd-minneapolis-c57dce196d1f4be95b88dc1c752f27c5.

117. *See supra* notes 74, 76, and accompanying text. *See also* Ritter, *supra* note 6, at 934 ("In a close case, a juror might factor this expected public response into his or her decision, even subconsciously, seeking to personally avoid such a backlash.").

118. *See* Tom Hals, *Chauvin Jurors Facing 'Through the Roof' Stress as Deliberations Begin*, REUTERS (Apr. 19, 2021, 5:32 PM), https://www.reuters.com/world/us/chauvin-jurors-facing-through-roof-stress-deliberations-begin-2021-04-19/.

A. Existing Safeguards Are Insufficient

The principal mechanisms for ensuring an impartial jury are ineffective at preventing jury bias when the defendant is widely unpopular and the case is highly politicized, like in the cases discussed above.[119] First, while voir dire may be helpful in identifying obvious or glaring biases among the jurors, the usefulness of questioning jurors about their ability to be fair is limited. Besides the fact that jurors are not always honest during voir dire,[120] studies show that they often struggle to identify their own prejudices.[121] Prejudice often operates on an unconscious level, meaning that jurors with biases against the defendant may ignorantly have confidence in their ability to be impartial.[122] It can be particularly difficult to weed out the kind of bias that arises when jurors are aware of the unpopularity of a defendant or the possibility of public backlash following an acquittal but are not themselves consciously biased against the defendant.[123] Jurors may be able to honestly answer that media coverage has not prejudiced their view of the defendant, and yet unknowingly be biased by their knowledge that the general public would be outraged by an acquittal.[124]

Change of venue can likewise do little to mitigate the pressure on juries to convict in high-profile trials. In extremely popular cases with national attention where jurors feel intimidated by public opinion to convict the defendant, moving the trial to a different county or even state is unlikely to increase the

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119. *See* Mark J. Geragos, *The Thirteenth Juror: Media Coverage of Supersized Trials*, 39 LOY. L.A. L. REV. 1167, 1169 (2006) ("[T]he existing techniques for minimizing the impact of juror bias do not effectively protect the rights of criminal defendants from the dangers posed by prejudicial publicity …. [T]hese methods have proven to be particularly ineffective when there is a high level of prejudice against the defendant.").

120. *See* Newton N. Minow & Fred H. Cate, *Who Is an Impartial Juror in an Age of Mass Media?*, 40 AM. U. L. REV. 631, 650–54 (1991) ("[I]t is unlikely that someone will admit publicly to being a bigot. Potential jurors are influenced by a desire to get the 'right' answer, find approval from the judge, and be in the majority. In addition, as one commentator noted, 'prospective jurors observe what happens to those that are not sufficiently uninformed: the judge asks them to leave; they have failed the test as fair and impartial jurors.'"); Geragos, *supra* note 119, at 1187–89 ("Studies have shown that not only do jurors often hide their true prejudices and preconceptions during voir dire, but that jurors also sometimes lie outright during open court questioning.").

121. *See* Reshma M. Saujani, *"The Implicit Association Test": A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L 395, 419 (2003) ("Social cognition theorists would argue that the search for the 'ideal impartial juror' is futile because jurors may not be aware of the biases that affect their judgments. Thus, the unconscious nature of juror bias prevents the voir dire from impaneling fair and impartial jurors, and methods, such as direct questioning, may be fruitless unless questions are designed to tap into one's source of bias."); *see also* Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1188 (Jul. 1995) ("Empirical evidence indicates that people's access to their own cognitive processes is in fact poor. Accordingly, cognitive bias may well be both unintentional and unconscious.").

122. *See* Krieger, *supra* note 121.

123. *See* JAMES J. GOBERT, JUSTICE, DEMOCRACY AND THE JURY 73 (1997).

124. *See* Ritter, *supra* note 6, at 934 ("In a close case, a juror might factor this expected public response into his or her decision, even subconsciously, seeking to personally avoid such a backlash.").

chance of seating an impartial jury.[125] Indeed, in the modern age where television and the internet allow national media to dominate over local media, public pressure on jurors to convict is unlikely to be much stronger in the region where the crime was committed than in other areas of the country.[126] While change of venue can be an effective means of guaranteeing the defendant a fair trial in some instances, in the types of cases described in this Note it is all but useless.

B. Anonymity as a Solution to Public Pressure

In the first years of its use, juror anonymity was generally requested by the prosecution not the defendant as a means to protect jurors from dangerous defendants.[127] Critics of the practice thus have viewed it as a threat to defendants' Sixth Amendment rights, namely the right to a public trial and an impartial jury.[128] Jurors, the argument goes, are more likely to assume that the defendant is dangerous when the court conceals their identities from them.[129] This creates a bias that undermines the presumption of innocence at the heart of the Sixth Amendment.[130] However, when it is clear to the jurors that the reason for anonymity is to shield them from public pressure, and not the defendant's violence, this concern vanishes. In high-profile cases with a great amount of media attention, and especially when the defendant is not alleged to be involved in organized crime, jurors can tell that their anonymity is not a reason to fear the defendant or her associates.

Another argument against anonymous juries is that their unaccountability to the public allows them to be derelict in their duty to apply the law impartially.[131] There is some social science evidence that jurors who do not need to explain and justify their opinion on the defendant's guilt think less carefully about their verdict and are more likely to convict.[132] However, this does little to undermine the case for anonymous juries, since even jurors who do not have to explain their reasoning to the world on cable television must

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125. *See* Geragos, *supra* note 119, at 1190.

126. *See* Phillipson, *supra* note 1, at 27.

127. *See* Hathaway, *supra* note 59, at 563; Margolin & Uelmen, *supra* note 7, at 16 ("The primary justification for using an anonymous jury is to foreclose any opportunity for jury tampering by the defendant or the defendant's associates.").

128. *See* Keleher, *supra* note 8, at 553.

129. *See* Margolin & Uelmen, *supra* note 7, at 16 ("The prejudice that a defendant suffers when tried by an anonymous jury is not unlike the prejudice suffered by a defendant who is gagged and shackled in the courtroom.").

130. *See* Keleher, *supra* note 8, at 553–54 ("Anonymity 'implicates the defendant's constitutional right to a presumption of innocence by "rais[ing] the specter that the defendant is a dangerous person from whom the jurors must be protected . . . ."'").

131. *See id.* at 563–65.

132. *See id.*; *see generally* Philip E. Tetlock, *Accountability and the Perseverance of First Impressions*, 46 SOC. PSYCH. Q. 285–92 (1983); D. Lynn Hazelwood & John C. Brigham, *The Effects of Juror Anonymity on Jury Verdicts*, 22 L. & HUM. BEHAV. 695–713 (1998).

engage with and convince their fellow jurors in the jury room.[133] This is especially true when verdicts are required to be unanimous, meaning that jurors cannot quietly cast their votes relying solely on their prejudiced first impressions.[134] To reach a verdict, jurors are required to engage in reasoned discussion of the case, the anticipation of which encourages jurors to pay close attention to the evidence and think carefully about their opinions. This is just the process that social science tells us leads juries to a fairer treatment of defendants.[135]

In addition, the revelation that anonymity reduces jurors' feelings of accountability to the public,[136] far from being a drawback, is an important benefit of anonymous juries. One of the purposes of our jury system is to ensure that criminal trials are uninfluenced by public pressure, especially political pressure.[137] Jurors should be insulated from public opinion so they can focus only on applying reason and common sense to the evidence presented at trial.[138] Public opinion in high-profile cases is often tethered to political and social

133. *See* JEFFREY ABRAMSON, WE, THE JURY: THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY 205 (2000) ("The whole point of having jurors deliberate face-to-face is to change people's preconceptions about a case through conversation with others."); Nancy J. King, *Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials*, 49 VAND. L. REV. 123, 143 (1996) ("The process of discussing and defending one's views to fellow jurors, as well as the prospect of defending the verdict to one's closest personal relations, may well generate the self-criticism that researchers suggest total anonymity sometimes removes.").

134. *See* Emil J. Bove III, *Preserving the Value of Unanimous Criminal Jury Verdicts in Anti-Deadlock Instructions*, 97 GEO. L. J. 251, 266–67 (2008) (arguing that the requirement of unanimity improves the quality of jury deliberations by encouraging greater flow of information between jurors).

135. *See* Tetlock, *supra* note 132 (finding that those who were told before they studied evidence concerning a defendant that they would be required to justify their opinion of the defendant's guilt or innocence were less likely to be affected by primacy bias: the tendency of evidence presented earlier in a sequence to have a greater influence on one's final judgment than evidence presented later).

136. *See* Hazelwood & Brigham, *supra* note 132, at 699 (arguing that anonymity makes jurors feel less accountable to the public because it reduces their fear of reprisal).

137. *See* King, *supra* note 133, at 140–41 ("Our jury system deliberately insulates the jury from political and social pressures that may influence the actions of prosecutors, the press, or politicians. We place our faith in the ability of the jury selection system to produce a group of conscientious community members who will do the right thing. Cut off from outside information, jurors must consider the evidence and instructions in each case using only the knowledge and experience they bring to the jury box."); Bridges v. California, 314 U.S. 252, 271 (1941) ("Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.").

138. *See* King, *supra* note 133, at 143–44 ("[Accountable decision makers] are more likely than anonymous decision makers to shift their decision toward the views they believe are held by their prospective audience. If, indeed, public accountability encourages jurors to act as political partisans seeking to placate whatever group poses the greatest risk of retribution, rather than as individuals with independent consciences, it is exactly what we don't need more of in our jury system today. 'Anonymity,' as Justice Stevens recently observed, 'is a shield from the tyranny of the majority.'").

causes separate from the facts of the case at hand,[139] and reliance on such external considerations can only serve to prevent the application of equal justice. Jurors that feel accountable to the media, political activists, or violent mobs jeopardize our criminal justice system and the rights of defendants.

Another argument against anonymous juries is that publicizing the names of jurors is necessary to maintain the public's trust in our judicial system. The Supreme Court pointed out in *Press Enterprise I* that the openness of criminal proceedings "enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."[140] The Fourth Circuit has also opined:

> We recognize the difficulties which may exist in highly publicized trials . . . and the pressures upon jurors. But we think the risk of loss of confidence in the judicial process is too great to permit a criminal defendant to be tried by a jury whose members may maintain anonymity. If . . . the attendant dangers of a highly publicized trial are too great, [the court] may always sequester the jury and change of venue is always possible . . . .[141]

This argument is unpersuasive, however, because it is possible to keep voir dire and all court proceedings open to the public without disclosing jurors' identifying information. Multiple commentators have suggested the use of a juror numbering system whereby jurors and potential jurors would be identified by numbers during court proceedings, while their names and addresses would be revealed only to the court and the parties.[142] Such a system would allow the parties to conduct a full voir dire, allow the public to learn the characteristics of the jurors so it can be confident in the trial's fairness, and still keep the media from having access to jurors' names.[143] The jury would remain anonymous, but because all court proceedings would be open, there would be no harm to the integrity of the judicial system.[144] There is also nothing lost from the public not having the opportunity to try to root out biased jurors itself:

> [F]or there is no reason to believe that the public (including the media) has the ability or motivation to go beyond anything the

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139. *See supra* notes 102–04 and accompanying text.

140. Press Enter. Co. v. Superior Court (Press Enterprise I), 464 U.S. 501, 508 (1984).

141. In re Baltimore Sun, 841 F.2d 74, 76–77 (4th Cir. 1988).

142. *See, e.g.*, Laura N. Wegner, *Juror Anonymity in Criminal Trials: The Media, the Defendant, and the Juror—Providing for the Rights of All Interested Parties*, 3 ALB. GOV'T L. REV. 429, 453–57 (2010); King, *supra* note 133, at 135.

143. *See* Wegner, *supra* note 142, at 456.

144. *See* Ritter, *supra* note 6, at 932–33 ("It is hard to imagine—and no court has identified—a situation where the public suspects something unfair happened in a trial solely because it does not know the names and addresses of the jurors. A public understanding of the adversarial system and the voir dire process should be enough to alleviate any of the public's concerns."); King, *supra* note 133, at 144 ("[T]he name of a juror is itself empty of meaningful content, at least on the question of how the juror might decide a case. Instead, the public looks to other information—the juror's political views, occupation, race, age, etc. This information is readily available from questionnaires and voir dire proceedings, even when jurors are anonymous.").

> parties might uncover. It is the goal of media entities to sell newspapers or advertising, not to ensure that a trial is fair. While the media may have more resources at its disposal than the general public, there is no indication that these resources would exceed those of the prosecution or defense in a high-profile case.[145]

The purported negative consequences of jury anonymity are insufficient to outweigh the benefit of shielding jurors from public pressure in high-profile trials. In cases with broad popularity, and especially those where a social or political movement casts the defendant as a villain, courts should not hesitate to keep jurors' names secret to make sure the trial has as little outside influence as possible.[146] If a jury is influenced by public pressure, the defendant's Sixth Amendment right to an impartial jury is violated,[147] and if a case is close, it may only take one juror who fears public backlash to sway the decision away from justice.[148] Preventing a situation like this must be the priority of courts, especially considering how much easier it is to take measures like juror anonymity that proactively decrease the likelihood of juror bias than to weed out actual bias among jurors.[149]

CONCLUSION

High-profile trials with broad public appeal and widespread outrage against the defendant can be difficult cases for courts to navigate. The possibility of the jury being influenced by information other than "evidence and argument in open court"[150] puts the defendant's constitutional rights in grave danger. This threat is particularly relevant when a criminal trial is tied to a political or social movement, a phenomenon that has occurred in some recent cases. Anonymous juries, rather than harming the integrity of our criminal justice system, can be a solution to this problem by removing public pressure on juries to convict the defendant.

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145. Ritter, *supra* note 6, at 932.

146. *See* Patterson v. Colorado *ex rel.* Attorney General, 205 U.S. 454, 462 (1907) ("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.").

147. *See* Ritter, *supra* note 6, at 935 ("Specifically, a juror concerned about the backlash he or she may face from the public in response to an acquittal may be more inclined to find a defendant guilty—a clear violation of the defendant's Sixth Amendment rights."); Sheppard v. Maxwell, 384 U.S. 333, 362 (1966) ("Due process requires that the accused receive a trial by an impartial jury free from outside influences.").

148. *See* Fullwood v. Lee, 290 F.3d 663, 678 (4th Cir. 2002) ("[I]f even a single juror's impartiality is overcome by an improper extraneous influence, the accused has been deprived of the right to an impartial jury."); Parker v. Gladden, 385 U.S. 363, 366 (1966) (per curiam) ("[P]etitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.").

149. *See* Ritter, *supra* note 6, at 935–36.

150. *Patterson*, 205 U.S. at 462.