

**SOCIAL MEDIA’S INFLUENCE ON THE OUTCOME OF TRIALS:
STATE V. CASEY ANTHONY & DEPP V. HEARD—HOW
FLORIDA CAN PREVENT A BREAKDOWN IN THE
ADVERSARIAL PROCESS**

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I. INTRODUCTION

Social media has become entrenched in our lives.¹ The progressive advancement of technology has given individuals the ability to use social media to communicate and share information.² Although social media can be beneficial, it can also be used to spread disinformation and influence public opinion.³ The vast use of social media by billions of people around the world is having an impact on the American legal system.⁴ More specifically, the use of social media platforms presents challenges to individuals' Sixth Amendment right to an impartial jury.⁵ Today, overwhelming numbers of people share their opinions through social media platforms.⁶ While prominent figures are regularly subjected to these opinions—extensive media coverage of their pretrial and trial experiences can potentially impact the outcome of their cases.⁷ The law today has not evolved to take the prejudice that arises from social media into consideration.⁸ Like fire, social media needs to be handled with caution because user opinions can turn from something small to something large in the blink of an eye—which can be very difficult to control.⁹

Florida has not reconsidered the media's presence in the courtroom in over thirty years.¹⁰ This Comment seeks to address the question, how can Florida protect the media's right to free press while combating the effects of social media

1. Emily M. Janoski-Haehlen, *The Courts Are All a 'Twitter': The Implications of Social Media Use in the Courts*, 46 VAL. U. L. REV. 43, 43 (2011).

2. *Id.*

3. *See id.* at 44.

4. *See* Nicola A. Boothe-Perry, *Friends of Justice: Does Social Media Impact the Public Perception of the Justice System?*, 35 PACE L. REV. 72, 82–84 (2014); Ethan Wall, *How Social Media Affects the Law*, NEAL SCHAFFER: SOC. MEDIA & THE L., <http://nealschaffer.com/social-media-affects-law/> (July 12, 2022).

5. *See* Leslie Y. Garfield Tenzer, *Social Media, Venue, and the Right to a Fair Trial*, 71 BAYLOR L. REV. 421, 422 (2019).

6. *See* Thomas R. Romano, Note, *Modern Media and Its Effect on High-Profile Cases*, 32 SYRACUSE J. SCI. & TECH. L. 1, 2 (2016).

7. *See* Douglas E. Lee, *Cameras in the Courtroom*, FREEDOM F. INST., <http://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-the-press/cameras-in-the-courtroom/> (last visited Nov. 17, 2022).

8. *See* Riley Moran, *Casey Anthony and the Social Media Trial*, WOMEN LEADING CHANGE: CASE STUD. WOMEN, GENDER, & FEMINISM, May 2019, at 44, 48.

9. *See id.* at 54–55.

10. *See* Martin Dyckman, *Cameras in Florida's Courts*, THE FLA. BAR (Apr. 1, 2009), <http://www.floridabar.org/the-florida-bar-news/cameras-in-floridas-courts/>.

on one's right to a fair trial?¹¹ To protect the adversarial process and highly talked about individuals during their trial, it is imperative for Florida to take into consideration the effects of social media on a trial and narrow their laws regarding public access to information and the media's presence in the courtroom.¹²

This Comment will begin by highlighting the media's right to report on trials under the First Amendment right to free press as well as the defendant's right under the Sixth Amendment to a fair and impartial jury.¹³ From there, the obsession with social media today and how it presents a major problem for courtrooms will be discussed.¹⁴ Following this discussion, this Comment will examine the effects of the media on two cases that received extensive publicity—a case from the pioneer days of social media and a more recent case that was litigated during the height of the evolution of social media and the vast expansion of user platforms.¹⁵ Lastly, this Comment will view the current remedies that are in place in Florida to ensure that a fair trial is provided without affecting the rights of the media, analyze whether those remedies are effective, and suggest further remedies to prevent a breakdown in the adversarial process.¹⁶

II. RIGHT TO FREE PRESS AND AN IMPARTIAL JURY

In the age of social media, one's Sixth Amendment right to a fair trial and reasonable punishment conflicts with the media's First Amendment right to free expression, as well as the general public's right to consume news sources of their choosing.¹⁷ Balancing the freedom of the press and the rights of parties during trial is essential to upholding the United States Constitution's goal of protecting the rights of the people.¹⁸

A. *First Amendment: Right to Free Press*

The First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right

11. See discussion *infra* Part VII.

12. See discussion *infra* Part VII.

13. See discussion *infra* Section II.A–B.

14. See discussion *infra* Section III.A.

15. See discussion *infra* Parts IV–VI.

16. See discussion *infra* Section VII.A–B.

17. See Moran, *supra* note 8, at 50, 56.

18. See *id.*

of the people peaceably to assemble, and to petition the Government for a redress of grievances.”¹⁹ Despite the improvements in media technology, courts have so far refused to recognize televised court proceedings as a First Amendment right.²⁰ Throughout the years, the rights of the media to report on court cases have been decided by policymakers in the federal and state courts.²¹ These rights allow the media to essentially conduct almost unrestricted reporting.²² While trials are “presumptively open to the public . . . many state legislatures and the courts have exercised their power to limit the media’s access to such information when the rights of the parties to the case could potentially be harmed.”²³ There are varying rules governing the use of cameras in the courtrooms.²⁴ For instance, the District of Columbia prohibits televised coverage of all proceedings.²⁵ However, many state courts allow cameras into the courtroom whenever the trial judge deems it appropriate, while other states allow coverage only if all trial participants agree.²⁶

In 1965, the United States Supreme Court ruled unfavorably towards allowing courtroom media coverage in *Estes v. Texas*.²⁷ In this case, the defendant was charged with defrauding several farmers which created extensive national media coverage.²⁸ The defendant presented a pretrial motion to prevent media coverage of the trial via telecasting, photography, and radio broadcasting; the Court’s discussion on the pretrial motion was covered by the media and broadcasted to the public during the same pretrial hearing.²⁹ The pretrial hearing also garnered significant attention from the public.³⁰ The trial judge ultimately allowed television coverage of the trial.³¹ After the defendant was found guilty of the charges, he later appealed his conviction arguing the television coverage had denied him a fair trial.³² Upon appeal, the Court agreed with the defendant and held that live television coverage was distracting to jurors, judges, and defendants, and was likely to impair witness testimony.³³ The Court recognized

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19. U.S. CONST. amend. I.
 20. Lee, *supra* note 7.
 21. *See id.*
 22. Romano, *supra* note 6, at 3.
 23. *Id.* at 3–5.
 24. *See* Lee, *supra* note 7.
 25. *Id.*
 26. *Id.*
 27. 381 U.S. 532, 534–35 (1965).
 28. *See id.* at 534 n.1.
 29. *Id.* at 532.
 30. *Id.*
 31. *Id.* at 535, 537.
 32. *See Estes*, 381 U.S. at 534–35.
 33. *Id.* at 546, 547, 548, 549.

that technology could make cameras less disruptive in the future, but nonetheless held: “[o]ur judgment cannot be rested on the hypothesis of tomorrow but must take the facts as they are presented today.”³⁴

In 1981, the Court revisited courtroom media coverage and its ruling in *Estes*.³⁵ In *Chandler v. Florida*,³⁶ the Court held that Florida could allow radio, television, and still photography coverage of a trial even if the defendant objected.³⁷ In doing so, the Court analyzed the various opinions in *Estes*, concluding the majority did not offer any constitutional rule that all photographic or broadcast coverage of trials was inherently a denial of one’s constitutional right.³⁸ Therefore, the Court held that absent a showing of prejudice, there was no reason to endorse or to invalidate Florida’s experiment.³⁹ The ruling in *Chandler* prompted some states to adopt rules allowing cameras in courtrooms.⁴⁰

While technology has advanced significantly since these rulings, denying cameras access to courtrooms has not changed considerably since 1965.⁴¹ “The Judicial Conference and the federal courts still believe live television coverage distracts trial participants, unfairly affects the outcome of trials and diminishes the [integrity] of the courts.”⁴² Meanwhile, the media continues to argue that courtroom coverage is no longer “distracting” or “disruptive,” and televising the proceedings are beneficial to both the courts and the public.⁴³ Even though state courts have been more accepting of these arguments, none have granted a general right to broadcast a trial.⁴⁴ The courts that are most accepting of cameras in the courtroom give judges broad discretion to determine whether to allow televised coverage of the proceedings.⁴⁵ Other states limit that discretion in certain cases, such as those involving minors.⁴⁶

34. *Id.* at 551–52.

35. *See Chandler v. Florida*, 449 U.S. 560, 570, 573, 574 (1981); Lee, *supra* note 7; *Estes*, 381 U.S. at 551–52.

36. 449 U.S. 560 (1981).

37. *Id.* at 573, 574, 582–83; Lee, *supra* note 7.

38. *Chandler*, 449 U.S. at 570, 573, 574; Lee, *supra* note 7.

39. *Chandler*, 449 U.S. at 582; Lee, *supra* note 7.

40. Lee, *supra* note 7; *see also Chandler*, 449 U.S. at 582–83 (holding that the Constitution does not prohibit a state from adopting a program for televising its judicial proceedings).

41. *See* Lee, *supra* note 7.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. Lee, *supra* note 7.

States that are the most restrictive only allow trial coverage if all parties consent.⁴⁷

B. *Sixth Amendment: Right to an Impartial Jury*

The United States Constitution, through the Sixth Amendment provides the inalienable right to a speedy and public trial by an impartial jury.⁴⁸ This right was established to “prevent a prejudiced application of justice and provide transparency and fairness. . . .”⁴⁹ While the Sixth Amendment presents many important rights, for the purpose of this Comment, the focus will be on the right to an impartial jury.⁵⁰ With respect to civil trials, language in the Seventh Amendment may make it seem as though there is no constitutional right to an impartial jury however, this is not the case.⁵¹ Even though the Seventh Amendment states that a party is entitled only to a trial by jury, not necessarily an impartial jury, the drafters envisioned a civil jury trial because it also states under the Seventh Amendment, “where the value in controversy . . . exceed[s] twenty dollars, the right of a trial by jury [will] be preserved, and no fact tried by a jury, [will] be . . . re-examined in any Court of the United States”⁵²

An impartial jury can be defined as a jury that does not hold any bias surrounding the case.⁵³ In theory, a juror should be barred from participating in a trial if the juror is unable to provide a fair verdict based solely on the facts presented at trial.⁵⁴ A problem that is becoming more prevalent due to the evolution of media is that jurors may receive information from extraneous sources, which may affect their impartiality.⁵⁵ It is problematic for jurors to lack impartiality because the purpose of the jury is to ensure the courts punish wrongdoers and prevent arbitrary decisions against United States citizens.⁵⁶ For

47. *Id.*

48. Moran, *supra* note 8, at 47; U.S. CONST. amend. VI.

49. Moran, *supra* note 8, at 47.

50. See discussion *infra* Part I; U.S. CONST. amend. VI.

51. Tatum Lowe, Note, *The Power of the Modern Media on an “Impartial” Jury: A Deeper Look at the Kobe Bryant Wrongful Death Lawsuit*, 42 LOY. L.A. ENT. L. REV. 43, 49 (2021).

52. *Id.*; see also U.S. CONST. amend. VII.

53. *Impartial Jury: Definition & Legal Meaning*, THE L. DICTIONARY, <http://thelawdictionary.org/impartial-jury> (last visited Nov. 17, 2022).

54. Romano, *supra* note 6, at 6.

55. See *id.*

56. Moran, *supra* note 8, at 47.

the judicial system to function fairly, jurors must remain impartial.⁵⁷ “Punishment by a court of law results in serious lasting consequences, and thus the judicial process is meant to err on the side of freedom.”⁵⁸ Therefore, many measures have been implemented to ensure the impartiality of the jury.⁵⁹ To ensure the court’s objective stance, “[j]ury members need an accurate and transparent account of all the facts surrounding [the case] so they can [choose] the most effective course of action within the context of our judicial system’s freedoms.”⁶⁰ While no trial will be completely free from bias, the courts have established legal rules and standards to ensure that the initial jury selection and decision-making processes are as fair as possible.⁶¹ The prosecution and defense must select jurors from a panel that is indicative of the demographics of the community.⁶² Once the court determines that the panel is fair, the prosecution and defense determine bias by asking the potential jurors questions.⁶³ A certain number of potential jurors can be dismissed by the prosecution or defense without reason on “peremptory challenges” and on “valid challenges for cause that prove a person unable to make a fair decision.”⁶⁴ In some instances, selected jurors are subjected to jury sequestration, which means they are isolated from the public to prevent incurring accidental biases.⁶⁵ When jurors are sequestered, they cannot access Wi-Fi, phones, or the media.⁶⁶ During this period of sequestration, jurors usually stay in hotels and are only allowed to visit with people that have no connection to the case under police supervision.⁶⁷ While sequestration ensures a jury remains untampered and uninfluenced by public discourse during the trial, it is ineffective in preventing the jury from bias pretrial.⁶⁸

57. *Id.*

58. *Id.* at 48.

59. *Id.* at 47.

60. *Id.*

61. Moran, *supra* note 8, at 48.

62. *Id.*; *see also* Taylor v. Louisiana, 419 U.S. 522, 538 (1975).

63. Moran, *supra* note 8, at 48.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *See* Moran, *supra* note 8, at 48.

III. THE MEDIA'S INFLUENCE ON TRIAL OUTCOMES

Modern technology has drastically impacted not only how we access information—but how we process and interpret it.⁶⁹ In today's globalized world, social media is now one of the most important tools for communicating, spreading information, and entertaining.⁷⁰ Over 4.76 billion people around the world use social media, which equates to fifty-nine percent of the total global population, and this number continues to increase rapidly with the advancement of technology.⁷¹ Within the last year, 137 million new users joined social media.⁷² Over sixty percent of Americans rely on social media as their main source of news.⁷³ Due to the audience reach that social media provides, the news is no longer contained in the area where the event occurred, and there is no “delay in the mass population hearing some interpretation of the events that [transpired].”⁷⁴ Thus, the public may not only have knowledge of specific events before a trial but may have also already formulated a preconceived opinion on the matter.⁷⁵ While these opinions may have been centered on some facts, many of these opinions are shaped by what users are saying on social media and by how the media portrays the story.⁷⁶ While traditional media outlets cannot release material such as confidential information, these outlets are able to

69. See, e.g., *id.* at 54. An example of modern technology drastically impacting how we process and interpret information was seen in the Casey Anthony trial. *Id.* The prosecution presented “expert attestation and crime scene material,” meanwhile the media published images of Anthony “scantly clad at parties, getting a tattoo on her shoulder, [and] participating in a hot body contest at the Fusion nightclub” *Id.* The media’s publications “incited frustration among the general public,” and despite jurors being sequestered, “the jury had access to sources within and outside of the courtroom,” inevitably influencing the jury. *Id.*

70. See Dave Chaffey, *Global Social Media Statistics Research Summary 2023*, SMART INSIGHTS (Jan. 30, 2023), <http://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/>; Sydelle Fernandes, *58% of World's Population Now Use Social Media*, BIZZ BUZZ (Mar. 10, 2022, 11:24 PM), <http://www.bizzbuzz.news/trendz/58-of-worlds-population-now-use-social-media-1116814>.

71. Chaffey, *supra* note 70.

72. *Global Social Media Statistics*, DATAREPORTAL, <http://datareportal.com/social-media-users> (last visited Nov. 17, 2022); Chaffey, *supra* note 70.

73. See Andrew Hutchinson, *New Research Shows That 71% of Americans Now Get News Content via Social Platforms*, SOC. MEDIA TODAY (Jan. 12, 2021), <http://www.socialmediatoday.com/news/new-research-shows-that-71-of-americans-now-get-news-content-via-social-pl/593255>.

74. Lowe, *supra* note 51, at 72.

75. *Id.*

76. *Id.*

“sensationalize reports and overemphasize aspects of a story [to] appeal to viewers.”⁷⁷ The media is a participant in the market economy, and the success of their business centers on their network ratings.⁷⁸ By sensationalizing reports and overemphasizing pieces of a story, traditional media outlets make these events more appealing to the public, and it follows that more viewers will be inclined to tune into that specific outlet.⁷⁹

The press has exercised their freedom of speech, reporting to the masses both facts and opinions in high-profile cases, even prior to television and the internet.⁸⁰ Though, it has long been acknowledged by members of the court that the media’s influence is an injury to one’s right to a fair trial.⁸¹ As early as 1931, “Judge Stuart H. Perry took issue with [the] local newspaper reports’ [ability to] influence . . . court trials . . .”⁸² During his time in the courts, Perry noticed that newspapers had “asserted their moral authority over their audiences,” and if the jury did not conform to “the verdict championed by the media,” widespread anger would result.⁸³ While Perry had admitted that the press’ critiques to the court offer a vital check to their judicial power, he also claimed that “the function of newspapers as a forum for mobilization is compromised when it is the papers influencing the general public, and not the other way around.”⁸⁴

Social media profiles, unlike traditional media formats, are held to a no sub judice standard.⁸⁵ The public can post information that news networks are not allowed to.⁸⁶ Additionally, a person can make a TikTok video or a Facebook post about a court case without corroborating any of the information they decide to discuss.⁸⁷ The phrase “trial by social media,” describes the impact that “media coverage of a court case can have on the public perception of guilt or innocence of an accused . . .”⁸⁸ The press’ infringement on the inviolability of jury trials has drawn increased attention due to the growing diversification of media outlets.⁸⁹

77. Moran, *supra* note 8, at 49.

78. *Id.*

79. *Id.*

80. *Id.* at 48–49.

81. *Id.* at 49.

82. Moran, *supra* note 8, at 49.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. Moran, *supra* note 8, at 49.

88. *Id.* (explaining the phrase “trial by social media”).

89. *Id.*

A. *The Negative Impact the Media Has on the Court*

Under the Sixth Amendment, all defendants are entitled to a trial by an impartial jury.⁹⁰ With the vast use of social media today, the exacerbated present trends of spectacle, and the need to choose sides, it makes it rather difficult for trials to be impartial.⁹¹ Additionally, jurors may decide differently knowing that they will be scrutinized by the world based on their decision and opinion.⁹²

According to the latest data from Pew Research, “[a] little under half (48%) of U.S. adults say they get news from social media.”⁹³ That number has fluctuated since 2018.⁹⁴ This demonstrates how social media has become a critical news source.⁹⁵ The reliance on social media platforms like Facebook and TikTok for news and information greatly influences how people think.⁹⁶ These platforms show you other users’ opinions about a particular topic.⁹⁷ Given the level of interest in high profile cases, content creators on social media platforms are using trials that are highly publicized to drive their engagement numbers.⁹⁸ These easily accessible insights into what others think greatly influences individuals’ own opinions.⁹⁹ This can be very prejudicial to a party if mass media portrays these types of events in a “dooming or fault-assigning” light to only one of the parties.¹⁰⁰ What follows is a party being stuck with a prejudicial jury or a

90. U.S. CONST. amend. VI.

91. See *Media Influence in Capital Cases*, CAP. PUNISHMENT IN CONTEXT, <http://capitalpunishmentincontext.org/issues/media> (last visited Nov. 17, 2022).

92. *Id.*

93. MASON WALKER & KATERINA EVA MATSA, PEW RSCH. CTR., NEWS CONSUMPTION ACROSS SOCIAL MEDIA IN 2021, at 3 (2021), http://www.pewresearch.org/journalism/wp-content/uploads/sites/8/2021/09/PJ_2021.09.20_News-and-Social-Media_FINAL.pdf.

94. *Id.*

95. *Id.*

96. *See id.*

97. *See id.*

98. Zama Ndlovu, *The Bad Lessons from Johnny Depp and Amber Heard for Victims of Abuse*, MAIL & GUARDIAN (June 15, 2022), <http://mg.co.za/thoughtleader/2022-06-15-amber-heard-crucified-in-the-court-of-public-opinion/>; Heavy Spoilers, *Johnny Depp vs Amber Heard Trial Recap | Full Breakdown and Analysis*, YOUTUBE (Apr. 26, 2022), <http://www.youtube.com/watch?v=71ACRkNlhQg&t=1s>.

99. *See Hutchinson, supra* note 73.

100. Lowe, *supra* note 51, at 72; *see also* Romeo Vitelli, *How “Trial by Media” Can Undermine the Courtroom*, PSYCH. TODAY (Aug. 22, 2018), <http://www.psychologytoday.com/gb/blog/media-spotlight/201808/how-trial-media-can-undermine-the-courtroom>.

jury with subconscious biases because of the news and media the jury consumed.¹⁰¹

Jurors are likely to develop biases about the case based on the media coverage they have been exposed to prior and during trial.¹⁰² While jurors are supposed to avoid the media, it is virtually impossible to abstain from hearing and viewing the media's perception in this day and age, especially when it involves prominent figures.¹⁰³ Due to how rapidly social media is changing, jurors are more vulnerable to unintentionally hearing about a trial since they are likely to see pop-up social media notifications on their electronic devices.¹⁰⁴ Approximately eighty-five percent of Americans own a smartphone, a thirty-five percent increase from a survey that was taken in 2011.¹⁰⁵ With eighty-five percent of Americans having a smartphone, it makes it challenging for courts to ensure that jury members render their verdicts based only on what they see and hear in the courtroom, as is required.¹⁰⁶

The impact of today's modern media on jury impartiality has never been more prevalent.¹⁰⁷ Courts are increasingly being faced with adjudicating cases with constant media coverage both in criminal and civil trials.¹⁰⁸ This becomes concerning when these issues gain nationwide coverage, leaving very few people without some sort of opinion on the case.¹⁰⁹ Courts today are now facing jury pools that come in with knowledge of the "facts" and predetermined opinions before any party has had an opportunity to present their case.¹¹⁰ Research studies regarding highly publicized cases have consistently found that "potential jurors often have extremely negative attitudes toward the accused."¹¹¹ However, studies have also shown that jurors have "extremely positive attitudes" towards "high-profile litigants."¹¹² This was the instance in Florida's first "Trial by

101. Lowe, *supra* note 51, at 72–73.

102. *See id.* at 73; Vitelli, *supra* note 100.

103. *A Non-Biased Jury: Do They Really Exist?*, LEXISNEXIS, <http://www.lexisnexis.co.uk/research-and-reports/bar/a-non-biased-jury-do-they-really-exist.html> (last visited Nov. 17, 2022).

104. *New Jury Instructions Strengthen Social Media Cautions*, U.S. CTS. (Oct. 1, 2020), <http://www.uscourts.gov/news/2020/10/01/new-jury-instructions-strengthen-social-media-cautions>.

105. *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <http://www.pewresearch.org/internet/fact-sheet/mobile/>.

106. *See id.*; Lowe, *supra* note 51, at 64–65.

107. Lowe, *supra* note 51, at 45, 71–72.

108. *See id.*

109. *See id.*

110. *Id.* at 46.

111. *Id.* at 73; Vitelli, *supra* note 100.

112. Lowe, *supra* note 51, at 73.

Media” case—the trial of Casey Anthony—and the recently litigated case in Virginia—*Depp v. Heard*.¹¹³

IV. STATE V. ANTHONY: 2011 COURT CASE TRIED BY SOCIAL MEDIA

Casey Anthony was charged in Florida back in 2008, with the first degree murder of her two-year-old daughter, Caylee Anthony.¹¹⁴ Casey Anthony’s trial was one of the first court cases tried by social media.¹¹⁵ While the trial began in 2011, the media was already in a frenzy before the start of the trial reporting on interpretations of the evidence and accounts of Anthony’s personal life prior to the crime.¹¹⁶ As a result of the media’s craze, a mass amount of information became easily accessible to the public before jury selection began.¹¹⁷ Although Anthony had been acquitted by the selected jury in the courtroom, outside the courtroom, social and economic punishments were imposed on Anthony because the court of public opinion found her guilty of murdering her daughter.¹¹⁸

A. *Implications of Media Reports*

The few years between the death of Caylee Anthony and jury selection, the media reported extensively on the disappearance of Caylee Anthony, the investigation, and what the trial would look like for Casey Anthony.¹¹⁹ Over the course of the forty-two day trial, the atmosphere inside and outside the

113. No. CL-2019-2911, 2019 WL 2683058 (Va. Cir. July 25, 2019); *see also* Elizabeth Blair & Ayana Archie, *Amber Heard Says Social Media Was a Factor for Her Defamation Trial Jury*, NPR, <http://www.npr.org/2022/06/15/1104925752/amber-heard-says-social-media-was-a-factor-for-her-defamation-trial-jury> (June 15, 2022, 5:00 AM); Nicholas A. Battaglia, Comment, *The Casey Anthony Trial and Wrongful Exonerations: How “Trial by Media” Cases Diminish Public Confidence in the Criminal Justice System*, 75 ALB. L. REV. 1579, 1586–87 (2011).

114. Battaglia, *supra* note 113, at 1587; Moran, *supra* note 8, at 45.

115. Moran, *supra* note 8, at 48. “[T]he court of public opinion—a term coined by government official Alger Hiss in his book *In the Court of Public Opinion* to refer to public support for one side of a court case due to the influence of news media” *Id.* at 47. To win in the court of public opinion, a person involved in the case must gain majority support from the public. *See* Battaglia, *supra* note 113, at 1584–85.

116. Moran, *supra* note 8, at 47.

117. *Id.* at 48, 49.

118. *Id.* at 55.

119. *Id.* at 47.

courthouse was chaotic.¹²⁰ Several million onlookers tuned in to the trial.¹²¹ The media grappled for coverage, swarming the area surrounding the county courthouse where the trial took place.¹²² Broadcast news stations assembled multi-story, air-conditioned structures in an open lot directly across from the courthouse because the screen time dedication to Anthony's trial was so intense.¹²³ In their news reports, the media relied on documents, interviews, tapes, and photos made or received by public agencies during the course of the investigation, which described the details of the case.¹²⁴ This was allowed because Florida's Public Records Laws provide that documents made or received by public agencies in the course of official business may be inspected by any individual who wants to examine such documents, unless a document is exempt from inspection.¹²⁵ These measures were established to "ensure transparency in the Floridian government and court system."¹²⁶

Due to Florida's law and the media's obsession with this event, the court of public opinion, was able to easily form an opinion on Anthony and what a judicious outcome for her should look like, since they had access to information on Anthony's life, character, and the alleged crimes.¹²⁷ The court of public opinion focused on Anthony's character, and the commentary was highly gendered.¹²⁸ A majority of the public "perceived Anthony as cold and unfeeling, not the image of a grieving mother society expects of a pretty, white, middle-class woman."¹²⁹ Unfortunately, narratives like this, which obstruct justice have existed long before the influence of the media and public opinion; but with the creation of social media, such narratives became wide-spread.¹³⁰ Instances of Anthony laughing and smiling during the investigation and her lack of emotion during the trial spiked discussions on social media of nearly 100 posts per minute.¹³¹ Access to media has had positive effects for many, but for Casey Anthony, it was a powerful punishment.¹³²

120. *Id.* at 52–53.

121. Moran, *supra* note 8, at 52–53.

122. *Id.* at 53.

123. *Id.*

124. *Id.* at 47.

125. *Id.*; FLA. STAT. §§ 119.011(12), .07(1)(a), .071 (2022).

126. Moran, *supra* note 8, at 47; *see also* FLA. STAT. § 119.07(1)(a).

127. Moran, *supra* note 8, at 47.

128. *Id.* at 54.

129. *Id.*

130. *Id.* at 56.

131. *Id.* at 54.

132. Moran, *supra* note 8, at 56.

Prior to the trial, the media had years to make their case through newspapers, television, and social media platforms.¹³³ These outlets led to Anthony's conviction in the court of public opinion long before the official trial.¹³⁴ Commentators argue that although "a conviction in the court of public opinion holds no legal weight, the social repercussions of this decision entail punishment through ostracization."¹³⁵ They further argue that even though Anthony was acquitted by the court appointed jury using all credible information and evidence from the trial, the verdict was still widely perceived as a wrongful discharge.¹³⁶ Public consensus would arguably recall this case as "miscarriage of justice," regardless of whether the jury was impartial.¹³⁷ The court of public opinion raises questions as to the effectiveness of the United States judicial system.¹³⁸ The media's ability to reach a wide audience reflects highly on the attainments of the First Amendment;¹³⁹ however, could this same wide-reaching quality compromise one's right to a fair trial?¹⁴⁰

B. *The Impact of the Media on the Jury & the Courts Attempt to Combat Bias*

Deliberation on social media over Anthony's innocence began to occur before the jury selection process, resulting in information flowing freely and the risk of prejudiced jurors.¹⁴¹ "Over the years leading up to the Casey Anthony trial, [the media] retold the events preceding and following the death of Caylee Anthony."¹⁴² The judicial process of the Casey Anthony case became difficult as a result of the media's sensationalized reports and overemphasized aspects of the events, as the spread of disinformation by the media preceded the selection of the jury.¹⁴³ Commentators state that "[t]he impact of the media on the Casey

133. *Id.* at 54.

134. *Id.* at 50.

135. *Id.*

136. *Id.*

137. Moran, *supra* note 8, at 50.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 49.

142. Moran, *supra* note 8, at 49.

143. *Id.*; *The Fight Against Disinformation*, MINISTERIO DE ASUNTOS EXTERIORES,

UNIÓN EUROPEA Y COOPERACIÓN,
<http://www.exteriores.gob.es/en/PoliticaExterior/Paginas/LaLuchaContraLaDesinformacion.aspx>
 (last visited Nov. 17, 2022) ("Disinformation is one of the major concerns of democratic countries. Behind false news or fake news, strategies are often articulated to manipulate public opinion

Anthony trial is a pertinent example of the difficult balance between the fundamental right to access information and speak freely and the right to a fair trial.”¹⁴⁴

The Florida courts acknowledged the threat of biased public opinions and took action to ensure Casey Anthony's due process.¹⁴⁵ However, the Casey Anthony trial was among the first cases to attract significant media attention where the public was offering predictions as to the cause of death of Caylee Anthony.¹⁴⁶ Given the novelty of social media, no historical precedents could offer a solution for the influence of social media platforms on the impartiality of not just the jury but also the population at large.¹⁴⁷ Due to how widely circulated this case's media coverage was, the court had to select jury members from a county nearly a hundred miles away because “media coverage may have been less prominent there.”¹⁴⁸ Despite selecting jurors from a different county, the jury selection occurred three years after police arrested Anthony, making it, arguably, highly probable that people from this county already had knowledge on the highly publicized case.¹⁴⁹ In an effort to combat bias, the defense dismissed all potential jurors who had already made up their mind about Anthony's guilt due to the information they learned from the media and sequestered the selected jurors for forty-three days.¹⁵⁰

C. *The Verdict*

On July 5, 2011, the jury returned their verdict and found that Casey Anthony was not guilty of murder because they could not confirm how Caylee Anthony died beyond a reasonable doubt.¹⁵¹ Despite the decision, society did not accept Casey Anthony back.¹⁵² Everyone had something to say about the verdict: from popular news networks like CNN, Fox, and A&E, to Nancy Grace, and Facebook groups.¹⁵³ Society vehemently rejected the jury's decision,

The development and widespread use of digital media allow for campaigns to spread quickly, making disinformation a more pressing problem.”).

144. Moran, *supra* note 8, at 50.

145. *Id.* at 48.

146. *Id.*

147. *Id.*

148. *Id.*

149. *See* Moran, *supra* note 8, at 48.

150. *Id.*

151. Battaglia, *supra* note 113, at 1590; *see also* Moran, *supra* note 8, at 56.

152. Moran, *supra* note 8, at 56.

153. *Id.* at 55.

particularly on social media platforms like Twitter.¹⁵⁴ Criticism against Anthony's verdict was so robust that the release of juror names was postponed by the judge because of concerns about the jurors' safety due to public disagreement with the final decision.¹⁵⁵ Following the verdict, Casey Anthony went into hiding.¹⁵⁶ While the jury decided not to punish Anthony, the public felt she deserved punishment and decided to impose social and economic punishments on her.¹⁵⁷ Following the trial, it was difficult for Anthony to find work and businesses frequently denied her services.¹⁵⁸ "The function of the court system is to legitimize and substantiate punishments," but the laws do not require the public to agree with the court's outcome and they cannot stop the effect of the public's social force.¹⁵⁹ Anthony's trial is a testament to the current deterioration of the United States court systems as a result of the media's wide-reaching impact.¹⁶⁰

Social media's presence today is far larger than it was during the 2011 Casey Anthony trial.¹⁶¹ With the pioneer days of social media far behind us, we have now entered an era of immense global use of social media.¹⁶² With over half the world on social media platforms and an enormous increase in the number of users posting their opinions online daily, it is imperative we find a way to ensure American citizens have unobstructed access to both fundamental pillars of democracy.¹⁶³ The following section will emphasize that, like Casey Anthony, others are feeling the wrath of social media during their trials and the social punishments implicated by public opinion.¹⁶⁴

V. DEPP V. HEARD: 2022 COURT CASE TRIED BY SOCIAL MEDIA

Johnny Depp, an American actor, sued Amber Heard, an American actress, claiming that an op-ed Heard wrote for the Washington Post in which

154. *Id.*

155. *See id.*

156. *Id.*

157. Moran, *supra* note 8, at 55.

158. *Id.*

159. *See id.* at 56.

160. *Id.*

161. *See* Brian Dean, *Social Network Usage & Growth Statistics: How Many People Use Social Media in 2022?*, BACKLINKO, <http://backlinko.com/social-media-users> (Oct. 10, 2021).

162. *See id.*

163. *Id.*; *see also* Moran, *supra* note 8, at 56.

164. *See* discussion *infra* Part V.

she claimed to be “a public figure representing domestic abuse,” was defamatory and caused him to lose lucrative acting roles.¹⁶⁵ Heard countersued Depp claiming that Depp’s attorney’s statements asserting that her op-ed was “an abuse hoax” which she considered an attempt to capitalize on the #MeToo movement, were defamatory.¹⁶⁶

On June 1, 2022, in a Virginia court, the seven-person jury unanimously ruled in favor of Depp.¹⁶⁷ The court awarded Depp \$15 million for the three counts of defamation that Depp claimed were inflicted on him by Heard in her Washington Post article, however, that number was reduced to \$10.35 million due to Virginia law.¹⁶⁸ Heard won on one counterclaim, with jurors awarding the actress \$2 million in damages.¹⁶⁹ However, these rulings came after social media was already flooded with pro-Johnny Depp and anti-Amber Heard content throughout the six-week trial.¹⁷⁰

A. *The Effect of Public Opinion on the Trial and the Social Repercussions*

Public opinion on the trial was hard to avoid.¹⁷¹ The negative coverage that was immeasurably spread throughout the media “likely influenced the jury and the outcome of the trial.”¹⁷² In addition to the impartiality of jurors that arguably resulted from the mass public opinion, Heard faced and continues to face social punishments from the public.¹⁷³

165. Emily Yahr, *What to Know About Johnny Depp and Amber Heard's Defamation Trial*, WASH. POST (Apr. 10, 2022, 12:09 PM), <http://www.washingtonpost.com/arts-entertainment/2022/04/10/johnny-depp-amber-heard-case/>.

166. Matthew Weaver, *Amber Heard Reportedly Plans to Appeal Against Johnny Depp Defamation Verdict*, GUARDIAN (June 2, 2022), <http://www.theguardian.com/film/2022/jun/02/amber-heard-reportedly-planning-appeal-johnny-depp-defamation-verdict>.

167. Edward Helmore, *Depp-Heard Trial Verdict: Jury Rules in Favor of Johnny Depp*, GUARDIAN (June 1, 2022), <http://www.theguardian.com/film/2022/jun/01/johnny-depp-amber-heard-verdict-trial-ruling>.

168. *Id.*; Weaver, *supra* note 166.

169. Weaver, *supra* note 166; Helmore, *supra* note 167.

170. See Anya Zoledziowski, *Did Social Media Sway the Johnny Depp Jury?*, VICE NEWS (June 3, 2022, 6:43 PM), <http://www.vice.com/en/article/qjkd4q/johnny-depp-heard-trial-jury-social-media>.

171. *See id.*

172. *Id.*

173. Kayla Cotter, *Johnny Depp, Amber Heard, and the Court of Public Opinion*, DAILY PENNSYLVANIAN: 34TH ST. (June 28, 2022, 12:00 AM), <http://www.34st.com/article/2022/06/johnny-depp-amber-heard-domestic-violence-court-trial-social-media-public-opinion>.

In this case, social media reached a verdict long before the jury reached theirs.¹⁷⁴ The burden of proof fell on Johnny Depp to prove by clear and convincing evidence that Heard acted with actual malice, but one look at social media will tell you it did not.¹⁷⁵ For over a month, platforms like TikTok, Twitter, Facebook, and Instagram, had become saturated with online jokes and memes, a majority of which painted Depp in a favorable light.¹⁷⁶ Even if social media had convinced many to believe that Depp was not the primary aggressor, some commentators believe the media put Depp on a pedestal.¹⁷⁷

When Depp lost his United Kingdom libel case in 2020, Heard supporters did not declare that justice had been served or that Depp was the wrongdoer, although the judge found that twelve of the fourteen allegations of abuse were “substantially true.”¹⁷⁸ When the United Kingdom’s verdict was decided, many of Depp’s fans claimed that the outcome was unjust.¹⁷⁹ From the start, the media had cast Depp as misunderstood and a victim, and assigned Heard as the villain.¹⁸⁰

Content creators mocked Heard’s testimony throughout the 2022 defamation trial, for profile engagement.¹⁸¹ From “#AmberTurd . . . to comedy skits mocking her legal team’s performance, her viral ridicule was impossible to escape” for anyone with a smartphone or internet.¹⁸² Internet users became crime experts and body language analysts, capable of deciphering how a victim should behave.¹⁸³ Trends sparked on these platforms with creators cutting and editing trial footage to make Heard’s accusations seem unfounded.¹⁸⁴ As of June 3, there were over 20 billion views on TikTok for the hashtag #justiceforjohnnydepp; in comparison, #justiceforamberheard had only approximately 80 million views

174. *Id.*

175. *Id.*; Zoledziowski, *supra* note 170; *see also* Smriti Sneh, ‘You Think This Has Been Fair?’: Amber Heard Calls Johnny Depp Fans Cowards Who Can’t Look Her in the Eye, ANIMATED TIMES (June 13, 2022), <http://www.animatedtimes.com/you-think-this-has-been-fair-amber-heard-calls-johnny-depp-fans-cowards-who-cant-look-her-in-the-eye/>.

176. Cotter, *supra* note 173.

177. *Id.*

178. *Id.*; Yahr, *supra* note 165; *see also* Sneh, *supra* note 175.

179. Cotter, *supra* note 173.

180. *Id.*

181. *Id.*

182. *Id.*; *see also* Benita Fernando, *Explained: The Social Media Trial of Amber Heard*, INDIAN EXPRESS, <http://indianexpress.com/article/explained/explained-the-social-media-trial-of-amber-heard-7945993> (last updated June 1, 2022, 7:23 AM).

183. Cotter, *supra* note 173; *see also* Fernando, *supra* note 182.

184. *See* Zoledziowski, *supra* note 170; Cotter, *supra* note 173.

and about 900 million views for the hashtag #amberheardisguilty.¹⁸⁵ The public believed that Heard was a liar long before her testimony was found to be inconsistent.¹⁸⁶ On social media, Depp's abnormal "behaviors were written off as courtroom quirks."¹⁸⁷ Depp's "stardom won over [the social media] platforms before Heard had the chance to take the stand, and when she did [take the stand], her every move worked to dismantle her case."¹⁸⁸ Heard's every move was scrutinized—to many, it was proof that furthered the narrative depicting her as a "manipulative, cruel, and an emotionally unstable" woman.¹⁸⁹ Unlike Depp, Heard was not "given sympathy or the benefit of the doubt."¹⁹⁰ If Heard cried, she was faking it and exaggerating; if she did not cry, she was unsympathetic.¹⁹¹ Regardless if Heard's claims were fabricated, the fight was never fair in the court of public opinion.¹⁹² When Heard openly alleged "disturbing, graphic accusations of sexual violence such as a 'cavity search' for cocaine and being penetrated with a liquor bottle," the allegations of abuse were mocked by social media users rather than the public being skeptical.¹⁹³ Heard's "visible bruises in photos, text message [evidence], and even Depp's . . . aggressive comments and destructive rampages [were not] given their due diligence."¹⁹⁴ "Heard wasn't somebody the public began to gradually doubt . . . she was the target of [an attack by] social media seeking to poke holes in her story."¹⁹⁵

Nonetheless, there was also evidence working against Heard.¹⁹⁶ An audio recording exposed her instigating Depp to "'tell the world' that he's a victim of domestic violence," and it was discovered that the promise she made to donate the entirety of her divorce settlement to the American Civil Liberties Union and the Children's Hospital Los Angeles was not done.¹⁹⁷ "Yet, Depp's vile text messages to . . . Paul Bettany, in which [Depp] said he would 'f— [Amber Heard's] burnt corpse' after drowning and burning her 'to make sure she's dead' were brushed off by many as an unfortunate error in judgment."¹⁹⁸

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185. Sneh, *supra* note 175.
186. Cotter, *supra* note 173.
187. *Id.*
188. *Id.*
189. *Id.*
190. *Id.*
191. Cotter, *supra* note 173.
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. Cotter, *supra* note 173.
197. *Id.*
198. *Id.*

Neither Depp nor Heard conformed to the idea of a perfect victim, but, as journalists point out, the public was undoubtedly “more inclined to excuse [Depp’s] toxicity over [Heard’s].”¹⁹⁹

B. *A Dangerous Precedent*

Every allegation should be properly investigated, which requires accusations to be taken seriously.²⁰⁰ For Heard, her accusations were “met with global humiliation.”²⁰¹ Making a big media display of *Depp v. Heard* is a dangerous precedent to set.²⁰² Undoubtedly, there were multiple issues with Heard’s case that tarnished her credibility; however, the issue is not that Heard was found liable, it is that the public considered her liable from the start.²⁰³ In a way, Heard is still in an abusive relationship, but now it is with the world.²⁰⁴

Like Casey Anthony, Amber Heard was met with social punishment.²⁰⁵ Viewers heard distressing testimony, particularly from Heard, who alleged she was sexually assaulted and attacked by Depp, causing her to fear for her life.²⁰⁶ Since Heard’s Washington Post article, her life has been consumed by public anger and embarrassment.²⁰⁷ Heard mentioned “it was ‘humiliating’ to relive those moments in front of cameras.”²⁰⁸

VI. “SOCIAL MEDIA TRIALS” 2011 TO 2022

Since the Casey Anthony trial, social media platforms have “almost tripled their total user base . . . from 970 million in 2010 to [over] 4.48 billion users in July 2021.”²⁰⁹ Since 2015, the growth rate of social media has been “an average of 12.5% year-over-year.”²¹⁰ As of 2021, “[t]he average social media user

199. *Id.*

200. *Id.*

201. Cotter, *supra* note 173.

202. *Id.*

203. *Id.*

204. *See id.*

205. *See* Moran, *supra* note 8, at 44; Cotter, *supra* note 173.

206. *See* Cotter, *supra* note 173; Gene Maddaus, *Why Was Depp-Heard Trial Televised? Critics Call It ‘Single Worst Decision’ for Sexual Violence Victims*, YAHOO! FIN. (May 27, 2022), <http://finance.yahoo.com/news/why-depp-heard-trial-televised-231520293.html>.

207. *See* Cotter, *supra* note 173.

208. *See* Helmore, *supra* note 167; Maddaus, *supra* note 206.

209. Dean, *supra* note 161.

210. *Id.* (emphasis omitted).

engages with an average of 6.6 various social media platforms.”²¹¹ Hence, “with the growth of technology, media, and information sharing today, there has been [increasing] concern over whether jurors can fulfill their constitutional duty to be ‘impartial’”²¹² Even before social media, trials have been highly publicized.²¹³ However, the manner in which the public consumes the news, the speed at which news spreads, and the information potential jurors learn prior to the trial largely owed to social media is particularly new.²¹⁴ Not only has social media erroneously convinced potential jurors that they know the facts prior to a high-profile trial, learning information beforehand gives “jurors additional time to form [biased] opinions on guilt or liability.”²¹⁵

Are courts supposed to turn a blind eye to the power and influence the modern media has over potential jurors and adjudicators?²¹⁶ “Subjecting parties with legitimate impartiality concerns to the media in the courtrooms hardly seems to be the correct legal solution, especially when access to an impartial jury is a constitutionally protected right.”²¹⁷

VII. FLORIDA MOVING FORWARD

Unfortunately, it is unlikely that the Casey Anthony and Johnny Depp trials are the last trials subjected to mass public opinion.²¹⁸ Social media’s impact on swaying the public’s perception of an individual can be highly detrimental to one’s ability to obtain a fair trial.²¹⁹ With the increasing number of social media users, Florida must examine how the State can adapt to the existence of social media and still protect the principles of a fair trial.²²⁰ Florida must go farther than confiscating electronic devices from jurors in the courtroom and reminding them of their zealous duty as jurors.²²¹ Realistically, just because judicial directions are given, does not mean that they will be followed.²²² Giving

211. *Id.* (emphasis omitted).

212. Lowe, *supra* note 51, at 45.

213. *See* Moran, *supra* note 8, at 48–49.

214. Lowe, *supra* note 51, at 45.

215. *Id.*

216. *See* Moran, *supra* note 8, at 48–49.

217. *See* U.S. CONST. amend. VI; Lowe, *supra* note 51, at 47.

218. *See* Lowe, *supra* note 51, at 43, 45 (discussing how the media has changed over time and the increase of the public expressing their opinions on social media platforms).

219. *See* Narrelle Harris, *Social Media and the Fair Trial*, LA TROBE UNIV., <http://www.latrobe.edu.au/nest/social-media-and-the-fair-trial/> (last visited Nov. 17, 2022).

220. *See* Janoski-Haehlen, *supra* note 1, at 68.

221. *See id.* at 48.

222. *See id.*

direction will not stop a juror from googling the contents of the case or seeing opinions on social media when they get home.²²³

A. *Florida's Current Rules Regarding Media in the Courtroom*

Florida's Rules of Judicial Administration permit "electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts . . ." ²²⁴ Rule 2.450 provides that the media coverage is subject only "to the authority of the presiding judge" who may limit or prohibit coverage of the proceedings to "control the conduct of proceedings before the court . . . and ensure the fair administration of justice . . ." ²²⁵ Judges have the ability to exclude or limit the use of cameras in the courtroom only if a party can show that the presence of cameras will cause harm. ²²⁶ This burden is high for the parties, and attorneys representing the media must be heard in opposition. ²²⁷ Currently, Florida's Rules of Judicial Administration regarding media in the courtroom are broad, with some claiming Florida has the "nation's broadest rule allowing cameras into courtrooms." ²²⁸

The media's reporting of proceedings has always been thought to be sufficient to keep the public informed by making citizens more knowledgeable and better able to partake in bringing necessary changes to the justice system. ²²⁹ It has been more than thirty years since the Florida Supreme Court heard the concerns about cameras in the courtrooms. ²³⁰ Despite "Florida's success with cameras [in the courtrooms] for [over thirty] years and the successes experienced in the courtrooms of numerous other states," social media has taken a drastic turn within the last few years. ²³¹

223. *See id.*

224. FLA. R. JUD. ADMIN. 2.450(a).

225. *Id.*

226. Dyckman, *supra* note 10.

227. *Id.*

228. *Id.*

229. *See id.*

230. *See id.*

231. *See* Dyckman, *supra* note 10; Lowe, *supra* note 51, at 45; *Cameras in the Court: A State-by-State Guide (Alabama-Idaho)*, RTDNA, http://www.rtdna.org/article/cameras_in_the_court_a_state_by_state_guide (last visited Nov. 17, 2022).

B. *Preventing a Breakdown in the Adversarial Process*

Many high-profile cases have sparked a plethora of discussions on social media, and while public discourse has its benefits, it can also be extremely detrimental in upholding the fairness and reliability of the adversarial process.²³² Protecting the rights of news sources is essential because they provide the public with reliable information and enable the public to make informed decisions, which benefits society at large.²³³ However, one of the hallmarks of a democratic political system is the protection of the right to a fair trial.²³⁴ If parties are to receive a fair trial, assessments of their guilt or innocence should be decided in the confines of a controlled courtroom by an impartial jury, untainted by the frenzy of sensationalistic press bombardment.²³⁵ Nevertheless, “[a] limit to journalism would compromise both the Constitution and our democratic processes.”²³⁶ So, how can Florida ensure the protection of the vital fundamental right of an accused person to an impartial jury without compromising the media’s ability to report?²³⁷

To prevent the breakdown of the adversarial process caused by social media, Florida should re-evaluate its laws regarding media in the courtrooms and consider adopting a practice similar to the United Kingdom.²³⁸ In the United Kingdom, the media is banned from reporting on rulings made at pretrial hearings until after the trial has fully concluded.²³⁹ The reporting ban on pretrial hearings can only be lifted if the judge assigned determines it is in the interests of justice to do so.²⁴⁰ By contrast, under the First Amendment, the press in the United States generally has a right to report on pretrial hearings.²⁴¹ However, a judge could close a pretrial hearing from the public if requested by the defense or

232. See Moran, *supra* note 8, at 50.

233. *Id.*

234. See *id.*; U.S. CONST. amend. VI.

235. See U.S. CONST. amend. VI; Moran, *supra* note 8, at 47.

236. Moran, *supra* note 8, at 50.

237. *Id.*; see also Romano, *supra* note 6, at 26.

238. See Dayna M. Chikamoto, *Trial by Media: The Risks to Defendants of Differing US and UK Approaches*, KRAMER LEVIN (Mar. 3, 2022), <http://www.kramerlevin.com/en/perspectives-search/trial-by-media-the-risks-to-defendants-of-differing-us-and-uk-approaches.html> (describing the United Kingdom’s practice regarding media in the courtroom).

239. *Id.*; Criminal Procedure and Investigations Act 1996, c. 25, pt. VI, § 41(1), (6) (UK), <http://www.legislation.gov.uk/ukpga/1996/25/section/41>.

240. Chikamoto, *supra* note 238; Criminal Procedure and Investigations Act 1996, c. 25, pt. VI, § 41(3)–(4).

241. U.S. CONST. amend. I; Chikamoto, *supra* note 238.

prosecution.²⁴² Special findings are required to be made on the record that: “closure [is] necessary to preserve ‘higher’ or ‘overriding’ values, and the order [is] narrowly tailored to serve those higher or overriding values.”²⁴³

It is essential for Florida to provide leeway in what journalists report and how they cover ongoing trials because “the American system values the scrutiny of the press in criminal proceedings and views the media’s criticisms as a tool to hold the justice system accountable.”²⁴⁴ However, to protect parties from the barrage of social media, Florida should consider limiting the information released to the public as well as limiting the presence of the media during both pretrial and trial proceedings.²⁴⁵ Currently, Florida has laws that govern limitations on media in court proceedings, but the burden for limitations is high.²⁴⁶ For instance, cases involving minors cannot be televised from inside the courtroom, and certain information is concealed from the public.²⁴⁷ A couple of Florida’s reasons for adopting this law are “[t]o provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development” and “[t]o ensure the protection of society.”²⁴⁸ Implementing a system in Florida that postpones, not bans, the media from recording the trial and getting insights on a case until after the verdict will ensure that the public violence entrenched in our societies does not find itself in courtrooms, “perpetuating injustice against those brave enough to seek justice.”²⁴⁹ Limiting the press’ knowledge of information before and during trial will significantly decrease media sensationalism and will still allow the media to freely report.²⁵⁰ The compromise of allowing the media to continue to report but delaying the availability of information until the end of trial will allow parties to obtain a fair trial in addition to giving the public all available information at once to make an informed opinion—not one resting on prediction.²⁵¹

Although the legal system has many significant deficiencies, some parties go to trial and are tried by a jury that has not been contaminated by pretrial publicity.²⁵² As previously discussed, the media participates in a market

242. Chikamoto, *supra* note 238.

243. *Id.*; Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 9–10 (1986).

244. Chikamoto, *supra* note 238.

245. *See id.*

246. Lowe, *supra* note 51, at 56; *see also* FLA. STAT. § 985.035(1) (2022).

247. *See* FLA. STAT. §§ 985.035(1), .04(1)(a)–(b), (7)(a), (8).

248. *Id.* § 985.01(1)(c), (d).

249. Ndlovu, *supra* note 98; *see also* Chikamoto, *supra* note 238.

250. *See* Moran, *supra* note 8, at 49.

251. *See* Chikamoto, *supra* note 238.

252. *See* Moran, *supra* note 8, at 48.

economy and wants to report on what will bring in viewership.²⁵³ Not all trials are sufficiently newsworthy to garner press attention.²⁵⁴ However, some parties are not so lucky.²⁵⁵ In these circumstances, the media is eager to publish all the evidence they can find without regard to the effects on prospective jurors.²⁵⁶ Therefore, it may be argued that this deferment of information is not beneficial to all Floridians.²⁵⁷ However, the delay of the release of information and courtroom footage of the trial will reap many benefits in addition to fair trials for parties.²⁵⁸ The Florida Bar conducted a poll in 2005 that showed most of Americans' understanding of the court system came from what they learned in a single high school class.²⁵⁹ Livestreaming and reporting court proceedings one day at a time would likely mis-educate the American people because only a portion of the proceedings would be shown.²⁶⁰ Unless all portions of a legal proceeding are shown and viewed, lay citizens may not be able to understand the issues at hand and how the court resolves those issues.²⁶¹ The criticism of 'mis-education' regarding media reporting has not really been discussed; therefore, it is difficult for the remark to be taken seriously.²⁶² Proper education of the court system will increase educated opinions rested on facts.²⁶³ Releasing trial footage and key details on the case all at once will better educate the American people on our judicial system and the steps that are crucial to reaching a verdict.²⁶⁴

VIII. CONCLUSION

This Comment identifies the dangers that social media can conjure in the courtroom and the compromise of a right to a fair trial in the court of law by a simultaneous trial in the court of public opinion.²⁶⁵ Thus, greater protections in Florida are imperative to extinguish the negative effects caused by social media that have been imputed on the justice system.²⁶⁶ Attempting to find a solution

253. *See id.* at 49.

254. *Id.*

255. *See id.*

256. *See id.*; Garfield Tenzer, *supra* note 5, at 436.

257. *See* Moran, *supra* note 8, at 50; Chikamoto, *supra* note 238.

258. *See* Chikamoto, *supra* note 238.

259. Dyckman, *supra* note 10.

260. *Id.*

261. *Id.*

262. *Id.*

263. *See id.*

264. Dyckman, *supra* note 10.

265. *See* Janoski-Haehlen, *supra* note 1, at 45.

266. *See* Garfield Tenzer, *supra* note 5, at 465.

for cases like Casey Anthony's and *Depp v. Heard* are crucial with the ongoing rise of social media and the easy access to both accurate and inaccurate information.²⁶⁷ Without a concrete solution for this increasingly inherent problem, a party who must go up against the court of public opinion will continue to put their livelihood on the line as they try to combat not only the issue at trial, but also the modern media.²⁶⁸

When the concern of public opinion is brought to light, citizens begin to question the fairness and reliability of the United States legal system and the purpose it serves.²⁶⁹ It is the responsibility of legal practitioners and the courts to address this matter head on and begin to consider the standards that are in place and the changes that need to be made to better serve the needs of those utilizing the legal system under these circumstances.²⁷⁰

267. See Janoski-Haehlen, *supra* note 1, at 45.

268. See Moran, *supra* note 8, at 49, 55.

269. See Boothe-Perry, *supra* note 4, at 94–95.

270. See Janoski-Haehlen, *supra* note 1, at 68.