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Is the Circus in Town? Justifying a Change of Venue from Online Publicity

United States v. McRae, 2009 U.S. Dist. LEXIS 32411 (W.D. Tenn. Apr. 15, 2009) is a 1983 action against a police office for violating a prisoner's rights. The incident was captured on video and had been broadcast on the news, with denouncements and outcry from politicians, public figures, the Plaintiffs in the civil action and anonymous blog posters. *McRae*, 1-2.

The Defendant sought a change of venue because of the pretrial publicity. *McRae*, 1-2. The Defendant's evidence of prejudice included a hard copy exhibit of a blog of local events. The blog contained anonymous comments concerning the case, which the Defendant claimed prejudiced his case. *McRae*, 4.

The Government opposed a transfer of venue and argued jury voir dire was the appropriate way to identify any actual prejudice to the Defendant. *McRae*, 4.



Courts can find a defendant has been prejudiced from pretrial publicity when "an inflammatory, circus-like atmosphere pervades both the courthouse and the surrounding community." *McRae*, 5.

In short, if the circus is not in town, the Court must evaluate actual prejudice against a defendant by questioning the jury pool during voir dire.

The test for a trial court to find prejudice from pretrial publicity is to review the media coverage and the prospective jurors' statements at voir dire to decide "whether a community-wide sentiment exists against the defendant." *McRae*, 5-6, citations omitted.

The Court held the pretrial publicity had NOT prejudiced the Defendant to warrant a transfer of venue. While the case had a large amount of national and local press coverage, there was nothing to show a "trial atmosphere that [has] been utterly corrupted by press coverage." *McRae*, 8-9, citations omitted.

Actual prejudice from online pretrial publicity might not be as obvious as a virtual circus in Second Life. The analysis required to show pretrial prejudice from online coverage would probably be daunting. A party might be required to produce search engine hits on a Defendant's name or other case information, listserv topics, Twitter "Tweets," comments from news websites and other online evidence to show prejudice.

For now, the most effective way to handle any prejudice from online publicity is through questioning the jury pool to find any bias. The Court will know a media circus when it sees one. Until then, if you have a high profile case, be on the lookout for Casey Junior coming down the tracks.