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## Commentary: State of Tennessee v. Gilbert

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# STATE OF TENNESSEE V. GILBERT COMMENTARY

By Thad Cwiklinski

*“We have never suggested that this right to impartiality and fairness protects against only certain classes of prejudice or extends to only certain groups in the population... It is unsurprising, then, that this Court has invalidated decisions reached by juries with a wide variety of different prejudices.”<sup>1</sup>*

—U.S. Supreme Court Justice Thurgood Marshall

The Sixth Amendment’s guarantee of an “impartial jury” is an essential tenet of American jurisprudence. In criminal trials, courts implement an array of safeguards to prevent prejudicial information from reaching jurors and to keep verdicts unbiased. The *voir dire* process and juror anonymity are intended to accomplish these goals and, if they fail, judges may set aside jury verdicts that are “contrary to law and the evidence.”<sup>2</sup> In *Peña-Rodriguez v. Colorado*, the Supreme Court recognized the necessity of combatting juror bias.<sup>3</sup> The Court held that when a juror demonstrates that her conviction of a defendant is based on racial bias or animus, the verdict may be thrown out.<sup>4</sup> To do so, though, it must be “clear” from the juror’s statements that the juror acted on racial bias.<sup>5</sup> Indeed, many jurors may not show enough outward bias to reach the high *Peña-Rodriguez* standard. Nevertheless, the case still marks a welcome departure from a justice system that favors finality but ignores juror bias.

Issues of racial bias in the jury room become complicated, however, when prejudicial information comes from the room itself rather than the jurors. Ideally, a jury room is a sacrosanct place where jurors may discuss a case free from outside pressures and influences to administer justice, not decisions based on personal belief.<sup>6</sup> In *State of Tennessee v. Gilbert*,<sup>7</sup> this was not the case.

In *Gilbert*, white jurors deliberated and convicted Tim Gilbert, a Black man, in a setting more reminiscent of a Civil War battleground than a sanctuary. The jury deliberated to convict Gilbert in the Giles County Courthouse’s “United Daughters of the Confederacy Room” (“U.D.C. room”).<sup>8</sup> The United Daughters of the Confederacy, an organization for female descendants of Confederate soldiers, preserves the legacies

of these Confederate soldiers and “the Lost Cause.” Since its inception, the organization carried out its mission through massive fundraising efforts for monuments to Confederate leaders as well as to the Ku Klux Klan.<sup>9</sup> At times, the United Daughters of the Confederacy even acted as “a public relations agency” for the white supremacist group.<sup>10</sup>

The U.D.C. room overflowed with Confederate memorabilia: had designers intended solely to pack in as much prejudicial information as possible, they could not have been more successful. Even before entering the room, the twelve white jurors in Gilbert’s case immediately saw a glass panel containing a Confederate flag, U.D.C. insignia and “U.D.C. Room” emblazoned on the door in gold paint.<sup>11</sup> As they entered, jurors were exposed to more memorabilia, including the room’s

centerpiece: an unmistakable Confederate battle flag. In the anomaly that someone did not recognize the massive flag’s glaring blue “X” slashed across a red background, it was labeled “Confederate Flag, Property of Giles County Chapter #257 UDC.”<sup>12</sup> Portraits of Confederate leaders encircled the room. One portrait even designated the president of the Confederacy as “President Jefferson Davis” (rather than “Confederate President Jefferson Davis”). A framed letter from the national leader of the United Daughters of the Confederacy rounded out the room’s decor.<sup>13</sup>

Strikingly, the jury deliberations in the United Daughters of the Confederacy Room in Gilbert’s case were not a “one-off thing” resulting from a scheduling issue or isolated incompetence. Instead, the United Daughter of the Confederacy Room

served as the default jury room in the Giles County Courthouse for at least the past 43 years without anyone challenging its effect on jurors.<sup>14</sup> Countless defendants before Gilbert, many of them Black, had their fates decided in the same environment.

Gilbert argued that white jurors deciding a Black man's freedom in a Confederate shrine—that is also a jury room—exposed the jury to extraneous prejudicial information which “embolden[ed] jurors to act on racial animus.”<sup>15</sup> The State merely responded that 1) Gilbert had waived his right to contest the location of jury deliberations by not raising his concerns before trial,<sup>16</sup> and that 2) since another jury had acquitted Gilbert of a separate crime after deliberating in the same room, the contents of the room were not prejudicial.<sup>17</sup> The Circuit Court for Giles County bluntly rejected both arguments. It held that defendants need not object to the location of jury deliberations before trial,<sup>18</sup> and that the defendant's prior acquittal had no bearing on the case at hand.<sup>19</sup> Further, the Giles County Circuit Court noted that, to many Americans, the Confederate flag represents “the attempt to perpetuate the subjugation of Black people through chattel slavery.”<sup>20</sup> Accordingly, the Gilbert County Circuit Court granted Gilbert a new trial.<sup>21</sup>

While *Gilbert* offers an egregious example of a setting prejudicing a jury verdict, its ruling displays the extreme end of a spectrum,

not a standard line for showing prejudice. The question remains after *Gilbert*: When does the location of jury deliberations cross the line and become prejudicial to the point that a new trial is necessary? Hopefully, the *Gilbert* ruling will function as a watershed moment for defendants seeking relief from jury verdicts originating in overtly racist environments. For this to occur, it is imperative that defense attorneys, jurors and citizens continue to “flag” such flagrant violations wherever they see them.

1. *Ham v. South Carolina*, 409 U.S. 524, 531-532 (1973) (Marshall, J. concurring in part and dissenting in part).
2. Lewis F. Powell, Jr. *The Right to a Fair Trial*, 51 AMERICAN BAR ASS'N J. 534 (1964).
3. Peña-Rodriguez v. Colorado, 137 S.Ct. 855, 869 (2017) (“where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.”); See also Harmann Singh, *Bias in the Jury Room: Where to Draw the Line*, HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW (Apr. 9, 2017), <https://harvardcrcl.org/bias-in-the-jury-room-where-to-draw-the-line/>.
4. *Id.*
5. *Id.*
6. *Lowrey v. State*, 197 P.2d 637, 653 (Okla. Crim. App. 1948) (“Courts cannot be too strict in compelling a rigid and vigilant observance of the provisions of the statutes designed to preserve inviolate the right of trial by jury and the purity of jury trials.”).

7. *State of Tennessee v. Gilbert*, No. M2020-01241-CCA-R3-CD, 2021 WL 5755018, at \*1 (Tenn. Crim. App. Dec. 3, 2021).
8. *Id.* at \*13.
9. Greg Huffman, *The Group Behind Confederate Monuments Also Built a Memorial to the Klan*, FACING SOUTH: A VOICE FOR A CHANGING SOUTH (June 8, 2018), <https://www.facingsouth.org/2018/06/group-behind-confederate-monuments-also-built-memorial-klan>.
10. *Id.* The original quote from Huffman's article accurately describes the Ku Klux Klan as a “terrorist group.” For the purposes of this article, the author shortens the quote to emphasize that the Klan's embodies white supremacy, but by omitting the quote in no way intends to diminish the fact that the Klan is terrorist group.
11. Gilbert, 2021 WL 5755018, at \*13.
12. *Id.*
13. *Id.* at \*16.
14. *Id.* at \*15. The “over 43 years” estimation comes from the trial judge who says that the United Daughters of the Confederacy Room was the default jury room for his entire career. The jury foreman corroborated this, noting that during the 14 years of his employment at the Giles County Courthouse the United Daughters of the Confederacy Room had always been the default jury room.
15. *Id.* at \*14.
16. *Id.* at \*8.
17. *Id.* at \*15.
18. *Id.*
19. *Id.* at \*19.
20. *Id.* at \*17.
21. *Id.* at \*21.

