

1951

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Recommended Citation

Harold Shapiro, Right to a Public Trial, 41 J. Crim. L. & Criminology 782 (1950-1951)

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CRIMINAL LAW CASE NOTES AND COMMENTS

Prepared by students of Northwestern University School of Law, under the direction of student members of the Law School's Legal Publication Board

Leo J. Spivack, *Editor*

RIGHT TO A PUBLIC TRIAL

Harold Shapiro

Informed commentators do not agree as to when and why the right to a public trial was first developed. This disagreement is probably due to the great age of the right and to the fact that it has long been taken for granted.

Blackstone observed that public examination of witnesses was a common feature of Roman law in Hadrian's time.¹ However, it was no longer common on the European continent when Blackstone wrote,² and only England gave its citizens the right to a public trial. Evidently it was a common law right because neither the Magna Carta, the Bill of Rights of 1621, nor the Bill of Rights of 1689 made any mention of it.³ There was a right to a public trial, however, existing as early as the middle of the 17th Century⁴ and Hale⁵ as well as Blackstone⁶ noted its presence. The best explanation as to its growth was probably made by Bishop, who ascribes its development to "immemorial usage".⁷

Why the right to a public trial was included among our Constitutional guarantees is apparently unknown. Various commentators and the courts have thought that its inclusion within the Sixth Amendment was to prevent any American counterpart of the Star Chamber,⁸ the Spanish Inquisition,⁹

1. 2 JONES' BLACKSTONE 1983 (1916).

2. Ploscowe, *Development of Inquisitorial and Accusatorial Elements in French Procedure*, 23 J. CRIM. L. & CRIMINOLOGY 372 (1932).

3. Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932). See also Note, 20 HARV. L. REV. 439 (1907).

4. Lilburne's Trial, 4 HOW. ST. TR. 1273 (1649) (Accused charged with treason. Demanded and evidently received a public trial.)

5. HALE, THE HISTORY OF THE COMMON LAW OF ENGLAND 290, 291 (Runnington's Ed. 1792).

6. 2 JONES' BLACKSTONE 1983 (1916) ("This open examination of witnesses *viva voce* in the presence of all mankind, is much more inductive to the clearing up of truth than the private and secret examination taken down in writing before an officer or his clerk in the ecclesiastical and all others that have borrowed their practise from the civil law.")

7. 2 BISHOP, NEW CRIMINAL PROCEDURE Sec. 957 (2nd Ed. 1913). See also JENKS, THE BOOK OF ENGLISH LAW 91 (3rd Ed. 1932).

8. Re Oliver, 333 U.S. 257 (1948); Davis v. U.S., 247 Fed. 394 (8th Cir. 1917); Commonwealth v. Blondin, 324 Mass. 564, 87 N.E. 2d 460 (1949); Dutton v. State, 123 Md. 373, 91 Atl. 417 (1914); Tilton v. State, 5 Ga. App. 59, 62 S.E. 651 (1908); Williamson v. Lacy, 86 Me. 80, 29 Atl. 943 (1893). See also JENKS, THE BOOK OF ENGLISH LAW 91 (3rd Ed. 1932) for a similar discussion in reference to the development of the public trial in English Common Law: "Only in rare instances, of which the notorious Court of Star Chamber is the most conspicuous, has the rule been violated." However, there is evidence that the Star Chamber did not hold secret sessions. 5 HOLDSWORTH, HISTORY OF ENGLISH LAW 156 (1924) ("Like other courts of justice . . . it [the Star Chamber] heard cases in public."); Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932).

9. Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932); Note, 49 COL. L. REV. 110 (1949).

or the French *Lettres-de-cache*.¹⁰ Whatever the reason might have been for including the right within the Bill of Rights, it was never discussed during the course of debate on the Sixth Amendment.¹¹ It is Radin's opinion that the guarantee was included because of dutiful translation of the common law into the Bill of Rights.¹² There is no evidence to the contrary.

The obscure origin of the right, however, does not detract from its vitality, and lack of a public trial has often been the reason for upsetting trial court verdicts.¹³ But why is the right necessary? The courts and the commen-

10. Re Oliver, 333 U.S. 257 (1948); Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932); Note, 49 COL. L. REV. 110 (1949).

11. 1 GALES, THE DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES 756 (1834). Debate on what is now the Sixth Amendment occurred on August 17, 1789. The author recorded discussion on the time of trial, compulsory process, place of trial, and criminal prosecutions using informations. Nothing was said about public trials. See also ELLIOT, DEBATES ON THE FEDERAL CONSTITUTION 109 (1836) for a statement made by Representative Holmes in the Massachusetts State Convention, that the proposed U.S. Constitution was faulty in having no provisions concerning free trial, jury trial, vicinity of trial, trial on informations, frequency of sessions, benefit of counsel, right to confront accusers, right of cross-examination, and types of punishment. Holmes made no mention of public trial. Further, only two state constitutions mentioned of the right prior to the Bill of Rights; PENN. CONST., DECLARATION OF RIGHTS IX (1776); N. C. CONST., DECLARATION OF RIGHTS IX (1776). However, since the ratification of the Bill of Rights, 41 states have enacted similar constitutional provisions, two states have enacted statutes guaranteeing the right to a public trial, and one State Supreme Court decision requires that all trials shall be public. Only Massachusetts, New Hampshire, Virginia, and Wyoming have no such guarantees.

12. "What happened then was that a traditional feature of English trials, more or less accidental, was carried over into the American system, and since it was relatively ancient, was treated with the reverence which so many other elements of the Common Law received, especially from the lawyers of the community." Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381, 388 (1932). See also Norton, THE CONSTITUTION OF THE UNITED STATES, ITS SOURCES AND ITS APPLICATION 217 (1922). However, Radin justifies the use of his term *accidental* on the grounds that trials were already necessarily public by the Constitutional provision for a jury in criminal cases. U.S. CONST. AMEND. V. However, unless we are to assume that the Bill of Rights is needlessly repetitious, the drafters must have had something more in mind than just the jury as far as trial publicity is concerned. See Note, 49 COL. L. REV. 110 (1949).

13. U.S. v. Kobli, 172 F. 2d 919 (3rd Cir. 1949), 3 ARK. L. REV. 460, 35 CORNELL L. Q. 395 (1950), 12 GA. B. J. 97, 33 MINN. L. REV. 662, 23 SO. CALIF. L. REV. 265, 3 VAND. L. REV. 125 (Violations of the Mann Act. Judge cleared the court except for jurors, witnesses, lawyers, members of the press, and the defendants. An offer was made to readmit anyone connected with the case if the defendants should so request. No request was made. Conviction below was reversed and remanded.); Tanksley v. U.S., 145 F. 2d 58 (9th Cir. 1944) (Rape. Trial judge cleared the court admitting only the defendant, prosecutrix, counsel, officers of the court, the press, and the brother and father of the prosecutrix. Conviction of rape by District Court reversed.); Davis v. U.S., 247 Fed. 394 (8th Cir. 1917) (Court cleared of all spectators save officers of the court, members of the press, and relatives of the defendant. Sentence by the lower court—for train robbery—reversed and remanded.); People v. Byrnes, 88 Cal. App. 461, 190 P. 2d 290 (1948) (A particularly lurid rape case. Judge excluded everyone except those having business in and with the court, officers of the court, and the defendants. New trial ordered); Neal v. State, 192 P. 2d 294 (Okla. 1948) (Transporting persons for the purposes of prostitution. Court asked "all persons . . . leave the courtroom except those actually engaged in the trial of this case and that the doors of the courtroom be closed . . ." Conviction reversed and new trial ordered.); State v. Beckstead, 96 Utah 528, 88 P. 2d 461 (1939) (Statutory rape. All spectators cleared excepting only officers of the court, witnesses, and the defendant. Conviction reversed and remanded.); McPherson v. McPherson, 1 D.L.R. 321, 327 (1936) (Uncontested divorce proceedings held in the judge's library which had two doors—one open and one closed. The reviewing court said, "So long as divorce, in contrast with marriage, is not permitted to be a matter of agreement between the parties, the public at large . . . are directly interested in them effecting as they do not only the status of the two individuals immediately concerned, but . . . the entire social structure and the preservation of a wholesome family life throughout the community." Held—the divorce decree was voidable.); State v. Jordan,

tators explain its necessity along two broad lines: (a) as a defendant's right and (b) as a right of the public. Those who call it the right of the defendant support their position in several ways.¹⁴ One of the first explanations given was that the presence of the public at the trial made it more difficult for a witness to lie.¹⁵ This was because of the public scorn that would be heaped upon the perjurer¹⁶ and, secondly, because of the possibility that the court room contained someone who could refute a lie, should one be told.¹⁷ Along the same lines, the presence of the community has been felt to have a healthy effect on the judge, the jury, and officers of the court, preventing any arbitrary action on their part.¹⁸ On a similar tack is the rationale that an unknown witness might be brought forward by publicity of the trial.¹⁹

The second explanation of the right to a public trial—the public's right—has been divided into three parts. First, it has been said that the public has the right to observe the activities of the government, including the judicial

57 Utah 612, 196 Pac. 565 (1921) (Statutory rape. Court cleared except for officers of the court, prosecutrix, and prosecutrix's father. Conviction reversed and case remanded.); State v. Keeler, 52 Mont. 205, 156 Pac. 1080 (1916) (Statutory rape. Only ones allowed to remain in courtroom were court officers, attorneys, doctors, the defendant and the press. New trial granted.); State v. Osborne, 54 Ore. 289, 103 Pac. 62 (1909) (Rape. Everyone removed from the courtroom except the defendant, attorneys engaged in the trial, the jury, officers of the court, and witnesses while on the stand. Conviction reversed and remanded.). However, some jurisdictions interpret the right as guaranteeing the defendant only a non-secret trial. See Reagan v. U.S. 202 Fed. 488 (9th Cir. 1913) (Exclusion of everyone save officers of the court, the defendant, and the witnesses. Conviction for statutory rape affirmed.). This ruling has been superseded in the 9th circuit by Tanksley v. U.S., 145 F. 2d 58 (9th Cir. 1944) which called a similar exclusion a denial of the right to a public trial. All federal appellate courts that have ruled on this question—the 8th in Davis v. U.S., 247 Fed. 394 (8th Cir. 1917), the 9th Circuit since the Tanksley case, and the 3rd Circuit per Kobli v. U.S., 172 F. 2d 919 (3rd Cir. 1949)—are now in accord that these types of exclusions will be grounds for reversal for lack of trial publicity. But see also Keddington v. State, 19 Ariz. 457, 172 Pac. 273 (1918) (Defendant accused of contributing to the dependency of a girl. Broad exclusion made of all except the defendant, his relatives, court officers, and the press. Conviction affirmed.); State v. Nyhus, 19 N.D. 326, 124 N.W. 71 (1909) (Everyone excluded except jurors, court officers, litigants, witnesses, and anyone either party wished to have remain. Exclusion not thought broad enough to justify reversal of conviction for statutory rape. Reversed and remanded for other reasons.); Grimm v. State, 22 Tex. Crim. Rep. 36, 2 S.W. 631 (1886) (Audience removed to facilitate testimony of a minor witness to the alleged rape involved in the case. Conviction affirmed.)

14. Tanksley v. U.S., 145 F. 2d 58 (9th Cir. 1944); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940).

15. 2 JONES' BLACKSTONE 1983 (1916); 2 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 355 (1827); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940).

16. HALE, THE HISTORY OF THE COMMON LAW OF ENGLAND 290, 291 (Runnington's Ed. 1792); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940); Auld, *The Comparative Jurisprudence of Criminal Process*, 1 U. OF TORONTO L. J. 82 (1935).

17. State v. Osborne, 54 Ore. 289, 103 Pac. 62 (1909); 2 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 355 (1827); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940).

18. State v. Osborne, 54 Ore. 289, 103 Pac. 62 (1909); People v. Murray, 89 Mich. 276, 50 N.W. 995 (1891); Cowley v. Pulsifer, 137 Mass. 392, 394 (1884) (Holmes, J. said in a tort action: "It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should act under the sense of public responsibility and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."); 1 Cooley, CONSTITUTIONAL LIMITATIONS 441 (7th Ed. 1903) ("The requirement of a public trial is for the benefit of the accused; that the public may see that he is fairly dealt with and not unjustly condemned . . ."); JENKS, THE BOOK OF ENGLISH LAW 91 (3rd Ed. 1932); Auld, *The Comparative Jurisprudence of Criminal Process*, 1 U. OF TORONTO L. J. 82 (1935); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940); PRESCOTT, DRAFTING THE FEDERAL CONSTITUTION 741 (1940).

19. State v. Osborne, 54 Ore. 289, 103 Pac. 62 (1909); 2 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 355 (1827); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940).

processes.²⁰ Again, the courts have said that those who may be in the same position as the defendant have a right to see and hear how the defendant fares.²¹ Further, there is “. . . the educative value which is implicit in punishment.”²²

While a public trial may well be said to improve the quality of testimony by reducing, to some extent, the tendency of a witness to lie, it is also true that spectators in the court room may have an adverse effect on the testimony. Thus the public's presence has often forced witnesses into frightened or embarrassed silence. The witness has been known to refuse to testify before the uncleared court from fear of personal harm.²³ Occasionally, in statutory rape cases the embarrassed prosecutrix will not testify at all unless the court room is cleared.²⁴

While it can hardly be doubted that the presence of the public usually has a beneficial effect on the judicial process, it would be surprising if, on the other hand, the judge, the jury, and the officers of the court were not influenced by a common, strong prejudice of the courtroom spectators. Cheers, applause, and other demonstrations of approval or disapproval have often prejudiced defendants' rights.²⁵ Even unexpressed spectator hostility to the defendant has been the basis of reversible error when the mob has come into close contact with the jury.²⁶ It is apparent that the public's presence sometimes actually prevents the just administration of the law.

20. *McPherson v. McPherson*, 1 D.L.R. 321 (1936); *State v. Keeler*, 52 Mont. 205, 156 Pac. 1080 (1916); *State v. Osborne*, 54 Ore. 289, 103 Pac. 62 (1909).

21. *Beauchamp v. Cahill*, 297 Ky. 505, 180 S.W. 2d 423 (1944); *Daubney v. Cooper*, 10 B. & C. 237 (1829); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd Ed. 1940).

22. *Auld, The Comparative Judicial Process*, 1 U. OF TORONTO L. J. 82 (1935); 6 WIGMORE, EVIDENCE Sec. 1834 (3rd. Ed. 1940).

23. *Commonwealth v. Principatti*, 260 Pa. 587, 104 Atl. 53 (1918) (Witness refused to testify until all Italians were cleared from the court, fearing retribution from the Black Hand organization.).

24. *Beauchamp v. Cahill*, 297 Ky. 505, 180 S.W. 2d 423 (1944) (Defendant judge cleared the courtroom during minor's testimony. Plaintiff in this action, an attorney representing a defendant in a similar action, was also excluded. The Kentucky Court of Appeals, while recognizing the court's discretion in issuing a clearance order to prevent embarrassing a minor witness, nevertheless felt that the exclusion of the plaintiff was an abuse of its discretion and that the court had gone too far.); *Green v. State*, 135 Fla. 17, 184 So. 504 (1938) (Rape. Court refused to clear the courtroom because two female defense witnesses were too embarrassed to testify. But see the minority view at 135 Fla. 26, 184 So. 508.); *Hogan v. State*, 191 Ark. 437, 86 S.W. 2d 931 (1935) (Court cleared for the testimony of embarrassed 10-year-old rape victim.); *State v. Damm*, 62 S.D. 123, 252 N.W. 7 (1933) (Court cleared for testimony of 13-year-old seduced by her step-father.); *Grimmet v. State*, 22 Tex. Crim. Rep. 36, 2 S.W. 631 (1886) (Audience removed to facilitate testimony of minor witness to the alleged rape involved in the case.).

25. *Moore v. Dempsey*, 261 U.S. 86, 91 (1923) (Five negroes convicted of murder under the most compelling circumstances wherein “. . . the whole case is a mask—that counsel, jury, and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong . . .”); *Frank v. Mangum*, 237 U.S. 309, 335 (1914) (Murder which inflamed the vicinity. Raucous conduct and cheering during the trial; cheering while the jury was polled. The Court said, “We, of course, agree that if a trial is in fact dominated by a mob so that the jury is intimidated and the trial judge yields, and so there is an actual interference with the course of justice, there is, in that court, a departure from due process of law in the proper sense of the term.”); *Taylor v. State*, 55 Ariz. 29, 97 P. 2d 927 (1940) (Statutory rape. Applause by spectators grounds for reversal.); *Collier v. The State*, 115 Ga. 803 (1902) (Rape. Rowdy crowd in court influenced jury.) See also *Davis v. Commonwealth*, 279 Ky. 127, 129 S.W. 2d 1030 (1939) (Murder trial. Large crowds extremely agitated. No reversible error in not clearing the courtroom.); *State v. Pyle*, 343 Mo. 876, 123 S.W. 2d 166 (1939) (Forcible ravishment. Crowd's misconduct not a basis for overturning case.).

26. *People v. Fleming*, 166 Cal. 357, 136 Pac. 291 (1913) (Murder. The court was

The many recognized exceptions to the right to a public trial conflict with the explanation of the right in terms of the unknown witness. The under-age spectator can be excluded by the judge in cases involving salacious testimony;²⁷ yet there can be no assurance that the excluded minor cannot give pertinent evidence. Rowdies and hysterics may be excluded by the court for disturbing orderly trial procedures;²⁸ but cannot these same individuals be potential unknown witnesses? There can be no assurance that one who is excluded from the court room for any one of a number of valid reasons²⁹ does not possess vital testimony—yet it would seem that reviewing courts have never reversed a conviction because of such an exclusion from fear that the unknown witness had been prevented from testifying. Perhaps this is because the courts recognize the fact that the possibility of pertinent testimony, either in chief or rebuttal, coming from the courtroom audience is a meager one.³⁰ Adequate trial publicity can be and has been effected by the newspapers of the neighborhood, all of which can be represented by a few reporters.

It is difficult to understand how the defendant would be injured by clearing the courtroom if the right to a public trial belongs solely to the public. Can the defendant complain that the public has been foreclosed from exercising its right? He is certainly not injured because the public cannot watch as justice is being dispensed. Nor is he injured because similar defendants will not know how to plan their defenses. And he will undoubtedly receive the “. . . full educative value implicit . . .” in his own punishment without the help of the courtroom audience. It may be that the public's interest in the right to trial publicity can be stated in a different manner. It would seem that the public has an interest in maintaining a certain standard of fairness in the general administration of justice which can be separated from each defendant's right to a fair trial. One way of assuring this standard of fairness may be by permitting the public to attend criminal trials. But (conceding for the moment that it is solely a public right) whether its importance warrants

crowded to capacity with every foot of standing room occupied. Conviction under these circumstances reversed.); *State v. Weldon*, 91 S.C. 29, 74 S.E. 43 (1912) (Murder of prominent citizen. Effect of crowded courtroom on administration of justice made grounds for reversal.).

27. *U.S. v. Kobli*, 172 F. 2d 919 (1949) (Mann Act violation); *Beauchamp v. Cahill*, 297 Ky. 505, 180 S.W. 2d 423 (1944) (Contributing to the delinquency of a minor); *People v. Hartman*, 103 Cal. 242, 37 Pac. 153 (1894) (Assault with intent to commit rape); 6 WIGMORE, EVIDENCE Sec. 1835 (3rd Ed. 1940).

28. *Moore v. Dempsey*, 261 U.S. 86 (1923) (See Footnote 25, *supra*); *Frank v. Mangum*, 237 U.S. 309 (1914) (See Footnote 25, *supra*); *State v. Genese*, 102 N.J.L. 134, 142, 130 Atl. 642, 646 (1925) (Audience persisted in laughing and disturbing the orderly court processes. The reviewing court said, “. . . the publicity of the proceedings should be subordinated to the orderly and proper manner in which they are to be conducted; and, where the defendant is not prejudiced, nor deprived of the presence, aid, or counsel of any person whose presence might be of advantage to him, it is within the discretion of the court to exclude a part of the audience from the courtroom, where it deems it necessary so to do in order to secure the administration of justice and facilitate the orderly and proper conduct of the trial.”).

29. Exclusion of minors during the course of salacious testimony; see Footnote 27, *supra*. Exclusion of rowdies and persons causing disturbances, see Footnote 28, *supra*. Exclusion of the entire audience during the testimony of a minor, see Footnote 24. Necessary limitation due to the size of the courtroom, see Auld, *The Comparative Jurisprudence of Criminal Process*, 1 U. OF TORONTO L. J. 82 (1935); Radin, *The Right to a Public Trial*, 6 TEMP. L. Q. 381 (1932); *McPherson v. McPherson*, 1 D.L.R. 321 (1935).

30. Wigmore cites one example of the discovery of pertinent testimony because the trial was open to the public. 6 WIGMORE, EVIDENCE Sec. 1834, Page 333 (3rd Ed. 1940). Research has uncovered no other examples.

enforcement at the expense of allowing a defendant to invoke a right in which he has no interest to overturn an otherwise valid judgment is an open question.

Public trials, as we have seen, are sometimes prejudicial to the defendant, almost never bring forth pertinent testimony from the unknown witness, and may be largely a right of the public which should not be invoked by the defendant. These factors, of course, do not demonstrate that the right of public trial is never of substantial importance to the defendant. They do suggest, however, that the right should not be applied in rigid and inflexible terms, but rather in such a way as to advance the interests of the public and the defendant in the particular circumstances of each case.

The public has an interest in keeping what it considers the impressionable segment of the population insulated from salacious testimony.³¹ On review, the only question will be, was the exclusion only so wide as to protect that portion of the population. The public also has an interest in the orderly administration of justice.³² To that end hysterics and rowdies may be removed from the court room and the defendant will not be heard to complain unless the exclusion was broader than necessary. In a large number of jurisdictions, the factors of a speedy and orderly trial are regarded as so outweighing the defendant's right to a public trial as to completely eliminate the necessity for considering the breadth of the exclusion.³³ The only consideration relevant in such a jurisdiction is whether there was *any* kind of public trial.

The circumstances of a case may be such that the defendant's interest cannot be protected unless the public is barred from the court room. He is entitled to a fair trial and if this fairness can be achieved only through the exclusion of all or part of the spectators, the right to a public trial must be suspended in order to meet the requirements of due process.³⁴

Today's judicial administration has two features which, to some degree, alleviate the necessity for trial publicity—an adequate record of trial court proceedings and appellate facilities for correcting errors below. Any abuses clear enough to be obvious to the court room audience are not likely to escape the reviewing court. Further, it would seem that today's trial judge is more influenced in reaching a proper decision by the immediate approval or disapproval of the reviewing court than by the supposed public interest in such a judgment.

It must therefore be granted that the public's presence is not the only factor in preventing arbitrary judicial action. But we cannot conclude from this that the right to a public trial is valueless. It would be impossible to estimate the worth of the influence wielded by the public on the jury, the officers of the court, and even the review-minded judge. It would be foolhardy—because its worth is inestimable—to suggest that the right is without substance.

31. Footnote 27, *supra*.

32. Footnote 28, *supra*.

33. Commonwealth v. Blondin, 324 Mass. 564, 87 N.E. 2d 460 (1949) (Statutory rape.); State v. Croak, 167 La. 92, 118 So. 703 (1928) (Rape); Keddington v. State, 19 Ariz. 457, 172 Pac. 273 (1918) (Contributing to the dependency of a girl); People v. Swafford, 65 Cal. 223, 3 Pac. 809 (1884) (Abduction for the purposes of prostitution).

34. The defendant has a right to have an unintimidated trial. Moore v. Dempsey, 261 U.S. 86 (1923); Frank v. Mangum, 237 U.S. 309 (1914); Taylor v. State, 55 Ariz. 29, 97 P. 2d 927 (1940); Collier v. The State, 115 Ga. 803 (1902); see Footnote 25, *supra*. The defendant also has a right to shield his witnesses from embarrassment by the presence of the courtroom crowd. Green v. State, 135 Fla. 17, 26, 184 So. 504, 508 (1938); see Footnote 24, *supra*.