COY v. IOWA
SUPREME COURT OF THE UNITED STATES
487 U.S. 1012
June 29, 1988
[6 – 2][1]

OPINION: Justice SCALIA/BRENNAN/WHITE/MARSHALL/STEVENS/O'CONNOR… Appellant was convicted of two counts of lascivious acts with a child after a jury trial in which a screen placed between him and the two complaining witnesses blocked him from their sight. Appellant contends that this procedure, authorized by state statute, violated his Sixth Amendment right to confront the witnesses against him.

In August 1985, appellant was arrested and charged with sexually assaulting **two 13-year-old girls** earlier that month while they were camping out in the backyard of the house next door to him. According to the girls, the assailant entered their tent after they were asleep wearing a stocking over his head, shined a flashlight in their eyes, and warned them not to look at him; neither was able to describe his face. **In November 1985, at the beginning of appellant's trial**,[2] the State made a motion pursuant to a recently enacted [Iowa] statute…to allow the complaining witnesses to testify either via closed-circuit television or behind a screen. The trial court approved the use of a large screen to be placed between appellant and the witness stand during the girls' testimony. After certain lighting adjustments in the courtroom, the screen would enable appellant dimly to perceive the witnesses, but the witnesses to see him not at all.

Appellant objected strenuously to use of the screen, based first of all on his Sixth Amendment confrontation right. He argued that, although the device might succeed in its apparent aim of making the complaining witnesses feel less uneasy in giving their testimony, the Confrontation Clause directly addressed this issue by giving criminal defendants a right to face-to-face confrontation. He also argued that his right to due process was violated, since the procedure would make him appear guilty and thus erode the presumption of innocence. The trial court

[1] Justice Kennedy did not take part in this case.

[2] So, we know that the girls were 13 or, possibly, 14 at the time of trial.

rejected both constitutional claims, though it instructed the jury to draw no inference of guilt from the screen.

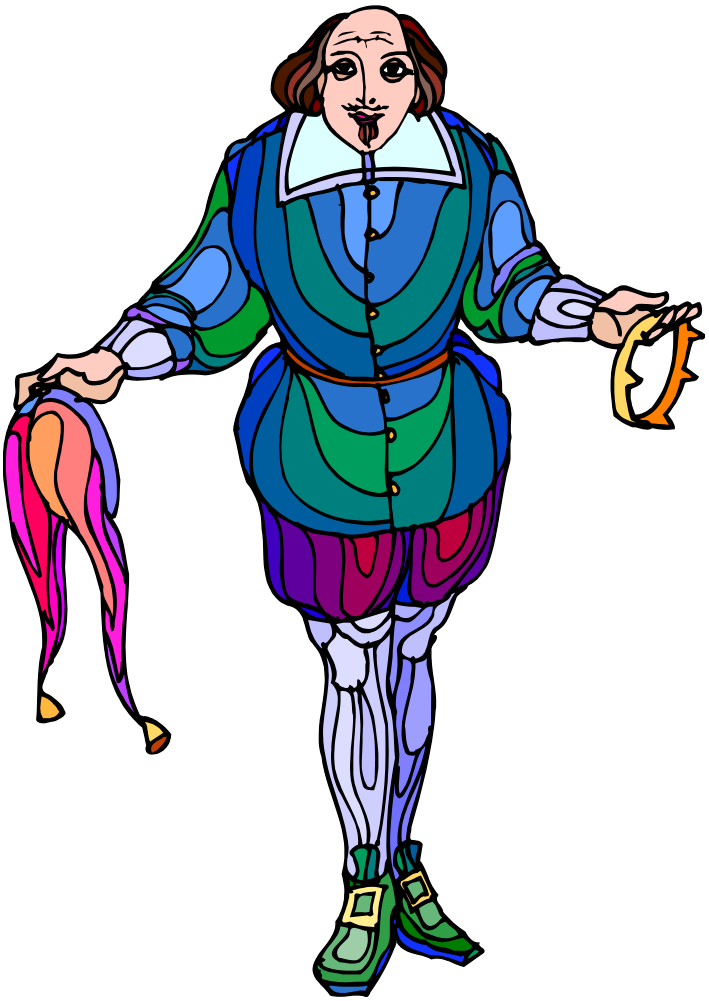
The Iowa Supreme Court affirmed appellant's conviction.

We are never told “how” Coy was convicted, given the testimony of two girls who could not see their attacker’s face and could not describe his face. Perhaps there were other witnesses who saw him exit the tent and go into his house or perhaps they based his testimony on “knowing” his voice. Here is an interesting question: Could the State insist on Coy speaking something out loud at his trial to enable the girls to identify his voice?

It rejected appellant's confrontation argument on the ground that, since the ability to cross-examine the witnesses was not impaired by the screen, there was no violation of the Confrontation Clause. It also rejected the due process argument, on the ground that the screening procedure was not inherently prejudicial…

The Sixth Amendment gives a criminal defendant the right "to be confronted with the witnesses against him." This language "comes to us on faded parchment," *California v. Green*, with a lineage that traces back to the beginnings of Western legal culture. There are indications that a right of confrontation existed under Roman law. The Roman Governor Festus, discussing the proper treatment of his prisoner, Paul, stated: "It is not the manner of the Romans to deliver any man up to die before the accused has met his accusers face to face, and has been given a chance to defend himself against the charges." Acts 25:16. It has been argued that a form of the right of confrontation was recognized in England well before the right to jury trial.

Most of this Court's encounters with the Confrontation Clause have involved either the admissibility of out-of-court statements or restrictions on the scope of cross-examination. The reason for that is not, as the State suggests, that these elements are the essence of the Clause's protection—but rather, quite to the contrary, that there is at least some room for doubt (and hence litigation) as to the extent to which the Clause includes those elements, whereas, as Justice Harlan put it, "simply as a matter of English" it confers at least "a right to meet face to face all those who appear and give evidence at trial." *California v. Green*. Simply as a matter of Latin as well, since the word "confront" ultimately derives from the prefix "con-" (from "contra" meaning "against" or "opposed") and the noun "frons" (forehead). Shakespeare was thus describing the root meaning of confrontation when he had Richard the Second say: "Then call them to our presence—face to face, and frowning brow to brow, ourselves will hear the accuser and the accused freely speak…" Richard II, Act 1, sc. 1.



We have never doubted, therefore, that the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact. For example, in *Kirby v. United States*, which concerned the admissibility of prior convictions of codefendants to prove an element of the offense of receiving stolen Government property, we described the operation of the Clause as follows: "A fact which can be primarily established only by witnesses cannot be proved against an accused…except by witnesses who confront him at the trial, upon whom he can look while being tried, whom he is entitled to cross-examine, and whose testimony he may impeach in every mode authorized by the established rules governing the trial or conduct of criminal cases." Similarly, in *Dowdell v. United States*, we described a provision of the Philippine Bill of Rights as substantially the same as the Sixth Amendment, and proceeded to interpret it as intended "to secure the accused the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination." More recently, we have described the "literal right to 'confront' the witness at the time of trial" as forming "the core of the values furthered by the Confrontation Clause." *California v. Green*. Last Term, the plurality opinion in *Pennsylvania v. Ritchie* stated that "the Confrontation Clause provides two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination."

The Sixth Amendment's guarantee of face-to-face encounter between witness and accused serves ends related both to appearances and to reality. This opinion is embellished with references to and quotations from antiquity in part to convey that there is something deep in human nature that regards face-to-face confrontation between accused and accuser as "essential to a fair trial in a criminal prosecution." *Pointer v. Texas*. What was true of old is no less true in modern times. President Eisenhower once described face-to-face confrontation as part of the code of his hometown of Abilene, Kansas. In Abilene, he said, it was necessary to "meet anyone face to face with whom you disagree. You could not sneak up on him from behind, or do any damage to him, without suffering the penalty of an outraged citizenry…In this country, if someone dislikes you, or accuses you, he must come up in front. He cannot hide behind the shadow." The phrase still persists, "Look me in the eye and say that." Given these human feelings of what is necessary for

fairness, the right of confrontation "contributes to the establishment of a system of criminal justice in which the perception as well as the reality of fairness prevails." *Lee v. Illinois*.

The perception that confrontation is essential to fairness has persisted over the centuries because there is much truth to it. A witness "may feel quite differently when he has to repeat his story looking at the man whom he will harm greatly by distorting or mistaking the facts. He can now understand what sort of human being that man is." It is always more difficult to tell a lie about a person "to his face" than "behind his back." In the former context, even if the lie is told, it will often be told less convincingly. The Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions. Thus the right to face-to-face confrontation serves much the same purpose as a less explicit component of the Confrontation Clause that we have had more frequent occasion to discuss, the right to cross-examine the accuser; both "ensure the integrity of the fact-finding process." *Kentucky v. Stincer*. The State can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential "trauma" that allegedly justified the extraordinary procedure in the present case. That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. **It is a truism that constitutional protections have costs.**

The remaining question is whether the right to confrontation was in fact violated in this case. The screen at issue was specifically designed to enable the complaining witnesses to avoid viewing appellant as they gave their testimony, and the record indicates that it was successful in this objective. It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter.

The State suggests that the confrontation interest at stake here was outweighed by the necessity of protecting victims of sexual abuse. It is true that we have in the past indicated that rights conferred by the Confrontation Clause are not absolute, and may give way to other important interests. The rights referred to in those cases, however, were not the right narrowly and explicitly set forth in the Clause, but rather rights that are, or were asserted to be, reasonably implicit—namely, the right to cross-examine, see *Chambers v. Mississippi*; the right to exclude out-of-court statements, see *Ohio v. Roberts*; and the asserted right to face-to-face confrontation at some point in the proceedings other than the trial itself, *Kentucky v. Stincer*. To hold that our determination of what implications are reasonable must take into account other important interests is not the same as holding that we can identify exceptions, in light of other important interests, to the irreducible literal meaning of the Clause: "a right to meet face to face all those who appear and give evidence at trial." *California v. Green*. We leave for another day, however, the question whether any exceptions exist. Whatever they may be, they would surely be allowed only when necessary to further an important public policy. The State maintains that such necessity is established here by the statute, which creates a **legislatively imposed presumption of trauma**. Our cases suggest, however, that even as to exceptions from the normal implications of the Confrontation Clause, as opposed to its most literal application, something more than the type of generalized finding underlying such a statute is needed when the exception is not "firmly …rooted in our jurisprudence." *Bourjaily v. United States*. The exception created by the Iowa

statute, which was passed in 1985, could hardly be viewed as firmly rooted. **Since there have been no individualized findings that these particular witnesses needed special protection, the judgment here could not be sustained by any conceivable exception.**

Can anyone come up with a possible hypothetical whereby Coy is truly innocent? What might motivate these girls to lie? And, if innocent, how would you feel if your attorney could not even ask these girls to look you squarely in the face in front of a jury and, if true, testify under oath that you accosted them? If that is your only hope of being acquitted, it would be hard to swallow if your attorney would not be allowed to pursue that line of questioning. And, here is an interesting follow up. In this case, since Coy was screened from the girls, could Coy's attorney ask them: "Girls, if you could see the defendant, do you think you would be able to testify under oath that it was him who accosted you that night?"

The State also briefly suggests that any Confrontation Clause error was harmless beyond a reasonable doubt under the standard of *Chapman v. California*. We have recognized that other types of violations of the Confrontation Clause are subject to that harmless-error analysis…and see no reason why denial of face-to-face confrontation should not be treated the same. An assessment of harmlessness cannot include consideration of whether the witness' testimony would have been unchanged, or the jury's assessment unaltered, had there been confrontation; such an inquiry would obviously involve pure speculation, and harmlessness must therefore be determined on the basis of the remaining evidence. The Iowa Supreme Court had no occasion to address the harmlessness issue, since it found no constitutional violation. In the circumstances of this case, rather than decide whether the error was harmless beyond a reasonable doubt, we leave the issue for the court below…

Since his constitutional right to face-to-face confrontation was violated, we reverse the judgment of the Iowa Supreme Court and remand the case for further proceedings not inconsistent with this opinion. It is so ordered.

CONCURRENCE: Justice O'CONNOR/WHITE…I agree with the Court that appellant's rights under the Confrontation Clause were violated in this case. I write separately only to note my view that those rights are not absolute but rather may give way in an appropriate case to other competing interests so as to permit the use of certain procedural devices designed to shield a child witness from the trauma of courtroom testimony.

Child abuse is a problem of disturbing proportions in today's society. Just last Term, we recognized that "child abuse is one of the most difficult problems to detect and prosecute, in large part because there often are no witnesses except the victim." Once an instance of abuse is identified and prosecution undertaken, new difficulties arise. Many States have determined that a child victim may suffer trauma from exposure to the harsh atmosphere of the typical courtroom and have undertaken to shield the child through a variety of ameliorative measures. We deal today with the constitutional ramifications of only one such measure, but we do so against a broader backdrop. Iowa appears to be the only State authorizing the type of screen used in this case. A full half of the States, however, have authorized the use of one- or two-way closed-circuit television. Statutes sanctioning one-way systems generally permit the child to testify in a

separate room in which only the judge, counsel, technicians, and in some cases the defendant, are present. The child's testimony is broadcast into the courtroom for viewing by the jury. Two-way systems permit the child witness to see the courtroom and the defendant over a video monitor. In addition to such closed-circuit television procedures, 33 States (including 19 of the 25 authorizing closed-circuit television) permit the use of videotaped testimony, which typically is taken in the defendant's presence.

While I agree with the Court that the Confrontation Clause was violated in this case, I wish to make clear that nothing in today's decision necessarily dooms such efforts by state legislatures to protect child witnesses. Initially, many such procedures may raise no substantial Confrontation Clause problem since they involve testimony in the presence of the defendant. Indeed, part of the statute involved here seems to fall into this category since in addition to authorizing a screen, it permits the use of one-way closed-circuit television with "parties" in the same room as the child witness.

Moreover, even if a particular state procedure runs afoul of the Confrontation Clause's general requirements, it may come within an exception that permits its use. There is nothing novel about the proposition that the Clause embodies a general requirement that a witness face the defendant …But it is also not novel to recognize that a defendant's "right physically to face those who testify against him," even if located at the "core" of the Confrontation Clause, is not absolute, and I reject any suggestion to the contrary in the Court's opinion. Rather, the Court has time and again stated that the Clause "reflects a preference for face-to-face confrontation at trial," and expressly recognized that this preference may be overcome in a particular case if close examination of "competing interests" so warrants. *Ohio v. Roberts*. See also *Chambers v. Mississippi* ("Of course, the right to confront…is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process"). That a particular procedure impacts the "irreducible literal meaning of the Clause" does not alter this conclusion. Indeed, virtually all of our cases approving the use of hearsay evidence have implicated the literal right to "confront" that has always been recognized as forming "the core of the values furthered by the Confrontation Clause," *California v. Green*, and yet have fallen within an exception to the general requirement of face-to-face confrontation. *Dutton v. Evans*. Indeed, we expressly recognized in *Bourjaily v. United States* that "a literal interpretation of the Confrontation Clause could bar the use of any out-of-court statements when the declarant is unavailable," but we also acknowledged that "this Court has rejected that view as unintended and too extreme." In short, our precedents recognize a right to face-to-face confrontation at trial, but have never viewed that right as absolute. I see no reason to do so now and would recognize exceptions here as we have elsewhere.

Nothing wrong with stating her position for emphasis, but did the majority craft such a right as "absolute"? I don't think so. They merely held that **"there have been no individualized findings that these particular witnesses needed special protection"** and sent this case back to determine whether the error was harmless and, in my estimation, to determine whether there were, in fact, "special needs" for these two girls. What would be a "special need," anyway? Use your imagination. What if these girls testified that Coy told them, "If you tell on me, I will see to it that you will be killed"? Is that a "special need" for these particular girls?

Does a psychologist need to examine them in order to render an opinion that they could not emotionally handle seeing the defendant at trial? And on and on. Discuss the possible ramifications of what the Court might mean by "special needs."

Thus, I would permit use of a particular trial procedure that called for something other than face-to-face confrontation if that procedure was necessary to further an important public policy. The protection of child witnesses is, in my view and in the view of a substantial majority of the States, just such a policy. The primary focus therefore likely will be on the necessity prong. I agree with the Court that more than the type of generalized legislative finding of necessity present here is required. But if a court makes a case-specific finding of necessity, as is required by a number of state statutes, our cases suggest that the strictures of the Confrontation Clause may give way to the compelling state interest of protecting child witnesses. Because nothing in the Court's opinion conflicts with this approach and this conclusion, I join it.

DISSENT: Justice BLACKMUN/REHNQUIST…The Sixth Amendment provides that a defendant in a criminal trial "shall enjoy the right…to be confronted with the witnesses against him." In accordance with that language, this Court just recently has recognized once again that the essence of the right protected is the right to be shown that the accuser is real and the right to probe accuser and accusation in front of the trier of fact:

> "The primary object of the Confrontation Clause was to prevent depositions or ex parte affidavits…being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief." *Kentucky v. Stincer*.

This journey never ceases to amaze. How many nuances are there behind the concept of "confrontation"? Well, we have seen the idea of "cross-examination" and "standing face-to-face with one's accuser." Now we have the witness "standing face-to-face with the jury." All are understandable. There is a lot more to this business of "interpreting the Constitution" (or any legislation or any thought) than meets the eye, isn't there?

Two witnesses against appellant in this case were the 13-year-old girls he was accused of sexually assaulting. During their testimony, as permitted by a state statute, a one-way screening device was placed between the girls and appellant, blocking the man accused of sexually assaulting them from the girls' line of vision. This procedure did not interfere with what this Court previously has recognized as the "purposes of confrontation." *California v. Green*. Specifically, the girls' testimony was given under oath, was subject to unrestricted cross-examination, and "the jury that was to decide the defendant's fate could observe the demeanor of the witnesses in making their statements, thus aiding the jury in assessing their credibility." In addition, the screen did not prevent appellant from seeing and hearing the girls and conferring with counsel during their testimony, did not prevent the girls from seeing and being seen by the judge and counsel, as well as by the jury, and did not prevent the jury from seeing the demeanor

of the defendant while the girls testified. Finally, the girls were informed that appellant could see and hear them while they were on the stand. Thus, **appellant's sole complaint is the very narrow objection that the girls could not see him while they testified about the sexual assault they endured.**

The Court describes appellant's interest in ensuring that the girls could see him while they testified as "the irreducible literal meaning of the Clause." Whatever may be the significance of this characterization, in my view it is not borne out by logic or precedent. While I agree with the concurrence that "there is nothing novel" in the proposition that the Confrontation Clause "reflects a preference" for the witness to be able to see the defendant, I find it necessary to discuss my disagreement with the Court as to the place of this "preference" in the constellation of rights provided by the Confrontation Clause for two reasons. First, the minimal extent of the infringement on appellant's Confrontation Clause interests is relevant in considering whether competing public policies justify the procedures employed in this case. Second, I fear that the Court's apparent fascination with the witness' ability to see the defendant will lead the States that are attempting to adopt innovations to facilitate the testimony of child victims of sex abuse to sacrifice other, more central, confrontation interests, such as the right to cross-examination or to have the trier of fact observe the testifying witness.

The weakness of the Court's support for its characterization of appellant's claim as involving "the irreducible literal meaning of the Clause" is reflected in its reliance on literature, anecdote, and dicta from opinions that a majority of this Court did not join. The majority cites only one opinion of the Court that, in my view, possibly could be understood as ascribing substantial weight to a defendant's right to ensure that witnesses against him are able to see him while they are testifying: "Our own decisions seem to have recognized at an early date that it is this literal right to 'confront' the witness at the time of trial that forms the core of the values furthered by the Confrontation Clause." *California v. Green*. Even that characterization, however, was immediately explained in *Green* by the quotation from *Mattox v. United States*[3], set forth above in this opinion to the effect that the Confrontation Clause was designed to prevent the use of ex parte affidavits, to provide the opportunity for cross-examination, and to compel the defendant "to stand face to face with the jury." *California v. Green.*

Whether or not "there is something deep in human nature" that considers critical the ability of a witness to see the defendant while the witness is testifying, that was not a part of the common law's view of the confrontation requirement. "There never was at common law any recognized right to an indispensable thing called confrontation as distinguished from cross-examination." I find Dean Wigmore's statement infinitely more persuasive than President Eisenhower's recollection of Kansas justice or the words Shakespeare placed in the mouth of his Richard II concerning the best means of ascertaining the truth. In fact, **Wigmore considered it clear "from the beginning of the hearsay rule in the early 1700's to the present day" that the right of confrontation is provided "not for the idle purpose of gazing upon the witness, or of being gazed upon by him," but, rather, to allow for cross-examination.**

[3] Case 6A-C-1 on this website.

Similarly, in discussing the constitutional confrontation requirement, Wigmore notes that, in addition to cross-examination "the essential purpose of confrontation"—there is a "secondary and dispensable element of the right:…the presence of the witness before the tribunal so that his demeanor while testifying may furnish such evidence of his credibility as can be gathered therefrom…This principle is satisfied if the witness, throughout the material part of his testimony, is before the tribunal where his demeanor can be adequately observed." The "right" to have the witness view the defendant did not warrant mention even as part of the "secondary and dispensable" part of the Confrontation Clause protection.

That the ability of a witness to see the defendant while the witness is testifying does not constitute an essential part of the protections afforded by the Confrontation Clause is also demonstrated by the exceptions to the rule against hearsay, which allow the admission of out-of-court statements against a defendant. For example, in *Dutton v. Evans*, the Court held that the admission of an out-of-court statement of a co-conspirator did not violate the Confrontation Clause. In reaching that conclusion, the Court did not consider even worthy of mention the fact that the declarant could not see the defendant at the time he made his accusatory statement. Instead, the plurality opinion concentrated on the reliability of the statement and the effect cross-examination might have had. See also *Mattox v. United States* (dying declarations admissible). In fact, many hearsay statements are made outside the presence of the defendant, and thus implicate the confrontation right asserted here. Yet, as the majority seems to recognize, this interest has not been the focus of this Court's decisions considering the admissibility of such statements. *California v. Green.*

Finally, the importance of this interest to the Confrontation Clause is belied by the simple observation that, had blind witnesses testified against appellant, he could raise no serious objection to their testimony, notwithstanding the identity of that restriction on confrontation and the one here presented.

While I therefore strongly disagree with the Court's insinuation that the Confrontation Clause difficulties presented by this case are more severe than others this Court has examined, I do find that the use of the screening device at issue here implicates "a preference for face-to-face confrontation at trial," embodied in the Confrontation Clause. *Ohio v. Roberts*. This "preference," however, like all Confrontation Clause rights, "must occasionally give way to considerations of public policy and the necessities of the case." The limited departure in this case from the type of "confrontation" that would normally be afforded at a criminal trial therefore is proper if it is justified by a sufficiently significant state interest.

Indisputably, the state interests behind the Iowa statute are of considerable importance. Between 1976 and 1985, the number of reported incidents of child maltreatment in the United States rose from 0.67 million to over 1.9 million, with an estimated 11.7 percent of those cases in 1985 involving allegations of sexual abuse. The prosecution of these child sex-abuse cases poses substantial difficulties because of the emotional trauma frequently suffered by child witnesses who must testify about the sexual assaults they have suffered. "To a child who does not understand the reason for confrontation, the anticipation and experience of being in close proximity to the defendant can be overwhelming." Although research in this area is still in its

early stages, studies of children who have testified in court indicate that such testimony is "associated with increased behavioral disturbance in children."

Thus, the fear and trauma associated with a child's testimony in front of the defendant have two serious identifiable consequences: They may cause psychological injury to the child, and they may so overwhelm the child as to prevent the possibility of effective testimony, thereby undermining the truth-finding function of the trial itself. Because of these effects, I agree with the concurring opinion, that a State properly may consider the protection of child witnesses to be an important public policy. In my view, this important public policy, embodied in the Iowa statute that authorized the use of the screening device, outweighs the narrow Confrontation Clause right at issue here—the "preference" for having the defendant within the witness' sight while the witness testifies.

Appellant argues, and the Court concludes, that even if a societal interest can justify a restriction on a child witness' ability to see the defendant while the child testifies, the State must show in each case that such a procedure is essential to protect the child's welfare. I disagree. As the many rules allowing the admission of out-of-court statements demonstrate, legislative exceptions to the Confrontation Clause of general applicability are commonplace. I would not impose a different rule here by requiring the State to make a predicate showing **in each case**.

In concluding that the legislature may not allow a court to authorize the procedure used in this case when a 13-year-old victim of sexual abuse testifies, without first making a specific finding of necessity, the Court relies on the fact that the Iowa procedure is not "firmly…rooted in our jurisprudence." Reliance on the cases employing that rationale is misplaced. The requirement that an exception to the Confrontation Clause be firmly rooted in our jurisprudence has been imposed only when the prosecution seeks to introduce an out-of-court statement, and there is a question as to the statement's reliability. In these circumstances, we have held: "Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness." *Ohio v. Roberts*. Clearly, no such case-by-case inquiry into reliability is needed here. Because the girls testified under oath, in full view of the jury, and were subjected to unrestricted cross-examination, there can be no argument that their testimony lacked sufficient indicia of reliability.

For these reasons, I do not believe that the procedures used in this case violated appellant's rights under the Confrontation Clause.

Appellant also argues that the use of the screening device was "inherently prejudicial" and therefore violated his right to due process of law. The Court does not reach this question, and my discussion of the issue will be correspondingly brief.

Questions of inherent prejudice arise when it is contended that "a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." *Estes v. Texas*[4]. When a courtroom arrangement is challenged as inherently

[4] Case 6A-SPT-3 on this website.

prejudicial, the first question is whether "an unacceptable risk is presented of impermissible factors coming into play," which might erode the presumption of innocence. If a procedure is found to be inherently prejudicial, a guilty verdict will not be upheld if the procedure was not necessary to further an essential state interest.

During the girls' testimony, the screening device was placed in front of the defendant. In order for the device to function properly, it was necessary to dim the normal courtroom lights and focus a panel of bright lights directly on the screen, creating, in the trial judge's words, "sort of a dramatic emphasis" and a potentially "eerie" effect. Appellant argues that the use of the device was inherently prejudicial because it indicated to the jury that appellant was guilty. I am unpersuaded by this argument.

These questions are not easy by any means, but I just cannot agree. Putting the defendant behind a screen with special lighting because these young girls would be severely harmed by looking at such a disgusting individual (for, after all, that is how it is all portrayed), speaks volumes as to a juror's likely conclusion based on the procedure itself. It speaks "guilty."

Unlike clothing the defendant in prison garb, *Estelle v. Williams*, or having the defendant shackled and gagged, *Illinois v. Allen*, using the screening device did not "brand appellant…with an unmistakable mark of guilt." A screen is not the sort of trapping that generally is associated with those who have been convicted. It is therefore unlikely that the use of the screen had a subconscious effect on the jury's attitude toward appellant.

In addition, the trial court instructed the jury to draw no inference from the device:

> "It's quite obvious to the jury that there's a screen device in the courtroom. The General Assembly of Iowa recently passed a law which provides for this sort of procedure in cases involving children. Now, I would caution you now and I will caution you later that you are to draw no inference of any kind from the presence of that screen. You know, in the plainest of language, that is not evidence of the defendant's guilt, and it shouldn't be in your mind as an inference as to any guilt on his part. It's very important that you do that intellectual thing."

Given this helpful instruction, I doubt that the jury—which we must assume to have been intelligent and capable of following instructions—drew an improper inference from the screen, and I do not see that its use was inherently prejudicial. After all, "every practice tending to single out the accused from everyone else in the courtroom need not be struck down." *Holbrook v. Flynn* (placement throughout trial of four uniformed state troopers in first row of spectators' section, behind defendant, not inherently prejudicial). I would affirm the judgment of conviction.