

Balancing the Sixth Amendment's Confrontation Clause and Witness Anonymity: A Legal Analysis of U.S. Court Practices

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Abstract. : The Sixth Amendment of the U.S. Constitution states that ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense.’ It guarantees defendants the right to confront the witnesses that stand against them, which is a principle known as the confrontation clause. Court cases such as *Maryland v. Craig* (1990) and *Crawford v. Washington* (2004) helped shape how state and federal courts interpret the right to confrontation in cases where witness safety is a large concern. The purpose of this research is to examine how the confrontation clause from the Sixth Amendment of the United States has been utilized in court cases, especially when witness safety is a concern, and how the fundamentals of said system could be modified for the future. As courts recognize the necessity of witness protection, the balance of the defendants’ right to a fair trial has been a rising concern. Current situations may be limiting fairness to both parties. In addition, witness protection programs may indirectly and directly require personal sacrifices from the witness, particularly on the part of third-party members, leading the equity of these practices to become a concern. To improve this flawed system, the legal structure must adapt to change, providing more funding and risk assessment to ensure more fairness.

Keywords: U.S constitutional law, Witness protection, Cross-examination, Witness protection program (WITSEC), Anonymous witness

1. Introduction

The Confrontation Clause of the Sixth Amendment is a fundamental right in the Bill of Rights, which was designed to ensure and protect the rights of the defendants to a fair trial; it allows the defendant to approach the witness through a process called cross-examination [1]. However, unfortunately, in certain cases, the safety of the witness could be threatened if their identity were to be exposed to the defendant and/or the public. To resolve such issues, federal and state courts have come up with accommodations to the testimony process to protect the witness and ensure anonymity, though these changes could mean that the defendant does not receive a fair trial. The

challenge lies in balancing the check-in power to safeguard both the witness's safety and the court's justice.

The objective of this research is to explore the historical background and foundations of the Confrontation Clause and how it led to its formation and examine the importance of witness anonymity and how it may contradict the basis of the Sixth Amendment. Analyze legal precedents regarding this subject and suggest reformation plans regarding such.

2. Literature review

2.1. Theoretical basis of the confrontation clause

The clause originally comes from English common law and was put into place to help prevent biased convictions based on anonymous or secondhand testimonies. This helped ensure that the witness took responsibility for what they were testifying [2]. The U.S. Supreme Court has brought this law into their amendment and interpreted this right in various cases, emphasizing its importance in contemporary criminal law trials. Tracing its roots back to 17th-century England, where trials heavily relied on secret accusations and written reports, the turning point was when Sir Walter Raleigh was accused of committing treason and there was no witness to testify in court. The court realized and understood the injustice of putting the defendant on trial without a witness to confront face-to-face [3]. English jurist William Blackstone and others soon codified this idea, emphasizing how a cross-examination is essential to ensure the credibility of the testimony and that it is only fair this way. When the Sixth Amendment was suggested, the Americans adopted such policies.

2.2. The concept and rationale of witness anonymity

The reason witness anonymity exists is not limited to solely safeguarding purposes; despite keeping witnesses away from retaliation being very important, encouraging cooperation of witnesses in criminal cases is also a vital reason why witness anonymity exists. Sealed testimony means the recorded types of court are sealed and confidential unless the judge and attorney ensure the defendant access to a fair trial without the defendant themselves knowing the identity of the witness. Despite special measures, anonymous testaments often raise legal and ethical issues, and the Confrontation Clause is designed to prevent mistakes in convictions. The idea of an anonymous witness system is a legal mechanism that was designed to protect the witnesses from retaliation while ensuring the defendants' rights [4]. For one to be granted anonymity there must be judicial authorization; the judge of the case must approve of anonymity which normally happens after the prosecution is proven to be a potential threat to the witnesses' safety, most commonly seen in cases involving young children, victims of rape and sexual abuse, gang-related cases and terrorism. In certain cases, judges and courts may hold private hearings that are out of reach from the defendant, but these hearings are useful when assessing the witness's identity, background and credibility. Prosecutors must provide evidence of the witness being a credible source of information and that there is a need for anonymity for the witness. There are various ways for courts to conceal identity during testimony, such as closed-circuit television or pseudonyms, where courts use code names and numbers when referring to the identity of the witness [5]. There may also be a proxy cross-examination where the attorney submits questions to the court, which will then transfer them to the witness. Anonymity is often permitted only when it is believed that it is absolutely necessary and serves a significant interest.

2.3. Existing research on the conflict

Famous scholars, for example, Weisberg and Courts, have discussed the limitations of the Confrontation Clause in cases that require protection for the witness [6]. In *Maryland v. Craig* (1990), the Supreme Court ruled that a defendant's right to face-to-face confrontation is not absolute. The case involves a child victim of sexual abuse, and to prevent further trauma, in the interest of the child's mental health, closed-circuit television was permitted for testimonies. This case is the first one since the amendment was made that allowed alternative testimony in certain circumstances. This shows how the amendment may not be made to fit all cases, and the tension between the constitutional law and how courts function in reality is developed through time [7].

As Joan Comparet-Cassani argues, cross-examination is used to reveal any possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues in the trial [8], and that the bias of the witness may be used to evaluate whether their testimony is believable or not, emphasizing the importance of credibility when it comes to cross-examination. Cassani believes that after the inmates become convicts, their credibility naturally becomes one of the major areas of concern and research, which, in the case of the Alvarado court, the defendants are deemed as entitled to know the identity of the prosecution's witnesses, and this is because of the concern raised by their credibility. Therefore, Alvarado held that the defense must disclose the identity of a crucial witness "at trial" when the witness's credibility is at stake [9]. Cassani has strong beliefs that the identity of the witness becomes important and essential when their credibility is at stake [6]. This aligns with Cassani's argument later on in her research paper; she argues that the right to confrontation is one of the most important trial rights.

2.4. The interviewee's perspective

The interview with Karen Marble, a lawyer based in California, offers a thoughtful insight into how courts balance witness protection and the Sixth Amendment. Marble believes that constitutional rights are important. However, it should not be granted in all cases, the safety of the witnesses should be put into priority, especially in cases where children are involved. Marble also believes that not all witnesses should receive the same level of care and anonymity, as an innocent third-party member that is not involved with the crime should be entitled to more protection than those who were a part of the crime. The interviewee has also mentioned how she believes that witness protection programs often deprive the witness of the rights that they are entitled to, as they will be given a new identity and forced to move living surroundings, which tend to be worse than what they are used to. Also, the separation from friends and families may also happen in the process, making it extremely unfair for them, as they have done nothing wrong. Marble believes the different level of accommodation should be made in order to ensure the comfort of the witness, but this also comes along with issues such as insufficient funding in the protection of witnesses, lack of time and resources to power these ideas, and other barriers that come along; therefore, many of these ideals may be overly idealistic. However, it sheds light on the areas requiring improvement and the potential for implementation.

3. Conclusion

Courts and cases recognize the need for witness protection. However, they remain aware of how such protection of the witness may infringe the rights of the defendant to a fair trial. At the same time, witness protection programs often deprive the witness of their freedom and their comfort in

exchange for safety, which does not seem fair, especially when the witness is a third-party member rather than a victim, as they are just doing justice. Different measures should be taken in different circumstances, and the level of protection provided should vary. It is also found that legal precedents show how exceptions could be made under different situations, providing alternative methods for cross-examination. Although these accommodations have been made mainly in cases involving young children or victims of sexual assault and abuse, I do believe accommodations should be stretched further for everyone.

The overuse of protection measures could decrease the justice and fairness of trials and hence cause misrule of cases. The current legal framework of the U.S. does not fully address challenges like digital threats to witnesses; as technology develops, it becomes easier to locate and search for people, leading to the anonymity of witnesses being in danger. However, it is also highly likely that as technology develops, there will be more solutions towards the issue and that the government will have more advanced tools to help maintain the anonymity of the witness. The witness protection program has been modified various times throughout time, showing improvements are possible, which, in other words, provides more hope for those in need.

The government could attempt to develop a clearer guideline on when and how witness anonymity should be granted and have the awareness that different people have different needs; in order to achieve equity in these programs, the government cannot apply the same rule to all. Perhaps to expand the use of technology such as real-time voice alteration or concealed video testimony to protect identities while protecting confrontational rights, this could help ensure the safety of the witness but at the same time offer the defendant a safe and fair trial. Perhaps there could be a development of post-trial transparency, where the identity of the witness could be unsealed after a set period of time and they could be put out of witness protection programs so that they could return to their normal civilian lives. This, however, could only be completed if the threat to the witnesses' safety no longer exists. Moreover, funding in such areas needs to increase, as some witnesses that come from low-income families and backgrounds may not be financially able to protect themselves from retaliation risks. The level of protection needed for each individual witness also varies; therefore, funding an independent risk-assessing agency would help resolve such issues.

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