
The Confrontation Clause in *United States v. Burr* (C.C.Va., 1807)

The prosecution in the Burr case sought to introduce evidence of conversations between a Mr. Neale and Harman Blennerhasset, in which Blennerhasset allegedly implicated Aaron Burr. Defense counsel objected on the ground that Neale's testimony about what Blennerhasset told him was inadmissible hearsay. Longstanding rules of evidence forbid one person to testify in court about statements made by another person when those statements are being introduced to prove the truth of what is being stated. Consider the statement, "John told me he robbed the bank." This is inadmissible hearsay if the testimony is used to prove that John robbed the bank. If, however, the lawyer elicits the statement only to explain why the witness called the police, the statement may be admitted (although the judge must instruct the jury that the statement may not be used to prove John robbed the bank).

Chief Justice Marshall refused to admit hearsay evidence against Burr. To allow persons to be convicted on the basis of statements made by persons not in court, Marshall asserted, violates the constitutional right of criminal defendants to confront the witnesses against them. What reasons does Marshall give for reaching this conclusion? Do you agree? Should the Sixth Amendment incorporate the entire common law of hearsay, whatever that law may be?

CHIEF JUSTICE MARSHALL

...
The present motion is particularly directed against the admission of the testimony of Neale, who is offered for the purpose of proving certain conversations between himself and Harman Blennerhasset. It is objected that the declarations of Harman Blennerhasset are at this time inadmissible on this indictment. The rule of evidence which rejects mere hearsay testimony, which excludes from trials of a criminal or civil nature the declarations of any other individual than of him against whom the proceedings are instituted, has been generally deemed all essential to the correct administration of justice. I know not why a declaration in court should be unavailing, unless made upon oath, if a declaration out of court was to criminate others than him who made it; nor why a man should have a constitutional claim to be confronted with the witnesses against him, if mere verbal declarations, made in his absence, may be evidence against him. I know of no principle in the preservation of which all are more concerned. I know none, by undermining which, life, liberty and property, might be more endangered. . . .

