probably have been valid in meeting the requirement of uniformity.[10] In the instant case, however, the statute was found to be concerned entirely with the raising of revenue for the construction of highways and thus was invalid since it contained no element of regulation.

The *Harris County* decision has effectively blocked an attempt by the legislature to provide one county with an additional source of revenue. Legislative draftsmen of this type of bill might avoid the *Harris County* decision and the constitutional restraints on local tax laws by utilizing the device of population brackets[11] or by including an element of regulation in a future statute. The most promising approach would seem to be the enactment of legislation similar to the act in the principal case as a general road taxation statute applicable to all counties. As the court pointed out, the problem of right-of-way financing is common to all Texas counties. If the legislature desired to limit the act's application, it could include in the statute a local option provision, enabling the voters in those counties needing additional funds to authorize the exercise of the taxing power conferred by the statute.[12] Counties not requiring extra highway revenue would have no occasion to exercise the power granted. If other solutions fail, the final answer to the problem of local road financing would lie in amending the state constitution.

Barney T. Young

CONSTITUTIONAL LAW—CRIMINAL LAW—RIGHT OF PUBLIC AND PRESS TO BE ADMITTED TO A CRIMINAL TRIAL.—*Kirstowsky v. Superior Court*, 300 P.2d 163 (Cal. Dist. Ct. App. 1956).

The plaintiff, a newspaper, sought to vacate an order of the trial court excluding the press and public from the entire trial of a murder case in which the accused had not wished to testify publicly to sexual practices enforced upon her by the deceased. *Order vacated.* The public may be excluded only during the testimony of the accused.

The federal and many state constitutions guarantee every accused

[10] For a later opinion discussing the nature of vehicular license fees, see Payne v. Massey, 145 Tex. 237, 196 S.W.2d 493 (1946).

[11] For an analysis of the avoidance of the prohibition against local and special laws contained in TEX. CONST. art. III, § 56, through statutes applicable only to counties within certain population brackets, see Comment, *Population Bills in Texas*, 28 TEXAS L. REV. 829 (1950).

[12] For a complete discussion of the problem of delegations to the voters in local option statutes, see Ray, *Delegation of Power in Texas to Agencies Other Than State Administrative Bodies*, 16 TEXAS L. REV. 494 (1938).

a public trial.[1] Of course, he may not insist that every member of the public be admitted to the courtroom.[2] But the hard question is whether or not a trial court may exclude every member of the public at the request of the defendant or with his consent. Does the *public* have an enforceable right to attend criminal trials? The Constitution bestows no such right, unless it may be implied from the mere mention of public trials. At common law criminal trials were open to the public,[3] but there is only scanty evidence that this practice was grounded in a recognized public right. Nevertheless, it is arguable that the public today has a common-law right to attend simply because that was the old common-law practice, whatever the original reason for it may have been.[4] In a number of states, including California,[5] statutes support a public right.[6] But absent a finding of a constitutional, common-law, or statutory basis for a "right," the issue whether the public is to be excluded or admitted in a particular case is left to the discretion of the trial court. In deciding the issue a court should weigh carefully the competing considerations discussed below.

It has been urged that confidence in the judicial process is enhanced by open courts. Closed-door secrecy is apt to breed suspicion and disrespect in any case, and especially in one in which an influential person is acquitted. Observation of the judicial process may be of educational benefit to the public.[7] Those in attendance may serve as witnesses to the impartiality of a criticized judge.[8]

Perhaps the strongest argument in favor of public trials derives from the interest of society in seeing that every accused person receives *neither* favor *nor* abuse. This is distinct from the personal interest of the accused individual. The presence of members of the public may have an immediate, constructive influence upon the proceedings, because they may report any irregularities.[9] It has been suggested that the presence of an

[1] U.S. CONST. amend. VI; CAL. CONST. art. I, § 13; TEX. CONST. art. I, § 10.

[2] Persons may be excluded at a "public trial" to prevent overcrowding, Kugadt v. State, 38 Tex. Crim. 681, 44 S.W. 989 (1898); or disorder, Grimmett v. State, 22 Tex. Crim. 36, 2 S.W. 631 (1886); and to protect the public's health, People v. Miller, 257 N.Y. 54, 177 N.E. 306 (1931). Youth may be excluded to protect their morals. United States v. Kobli, 172 F.2d 919 (3d Cir. 1949).

[3] *In re* Oliver, 333 U.S. 257, 267 (1948); 3 BLACKSTONE, COMMENTARIES *372, *373; Radin, *The Right to a Public Trial*, 6 TEMP. L.Q. 381, 384, 386–87 (1932).

[4] The principal case found a common-law right of public attendance. 300 P.2d at 166–68.

[5] CAL. CODE CIV. PROC. §§ 124, 125 (1949).

[6] TEX. CODE CRIM. PROC. art. 21 (Vernon 1948); *In re* Oliver, 333 U.S. 257, 267–68 (1948); *compare* People v. Murray, 89 Mich. 276, 50 N.W. 995 (1891), *with* People v. Yeager, 113 Mich. 228, 71 N.W. 491 (1897).

[7] State v. Keeler, 52 Mont. 205, 156 Pac. 1080 (1916); 1 COOLEY, CONSTITUTIONAL LIMITATIONS 647 (8th ed. 1927); Radin, *supra* note 4, at 394.

[8] 1 BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 525 (1827).

[9] State v. Osborne, 54 Ore. 289, 103 Pac. 62 (1909).

audience will encourage truthful testimony[10] and impress the judge with his responsibility.[11] But, from a realistic standpoint, the scattering of persons present at most criminal trials is apt to have little effect, and, if anything, a large crowd may repress testimony and encourage pyrotechnics.[12] Wigmore does suggest that if the trial is public a key witness may be in attendance and step forward.[13] But he cites only one case for this dramatic possibility, and its occurrence seems even less likely today, because of poor court attendance and the fact that most witnesses are located when the offense is investigated and discussed in the press.

Courts sometimes feel that the nature of the particular testimony to be given or of the witnesses who are to testify requires the exclusion of the public. One frequent reason for exclusion is the supposed adverse effect of details of sensational criminality upon public morals.[14] However, it would seem that the public's presence at a rape trial is equally as desirable as its presence at a trial for robbery or murder, and will probably do it no more harm nor good.[15] Courts sometimes allow young girls who are unable to testify publicly in cases involving sexual offenses to testify in private.[16] The principal case is one of the rare decisions granting this privilege to a defendant. This may be gentlemanly, but it is also shortsighted, for the values of public trial apply equally to all testimony. Courts occasionally suggest that the presence of the press is adequate public representation. Reporters may be more attentive than the casual spectator,[17] but they may also be more hardened and insensitive to injustice.[18] One observer is no substitute for a roomful,[19] and reading a journalistic summary is no substitute for observation. Actually it would seem more consistent with a concern for public morals to prevent the dissemination of newspaper accounts read by millions than the attendance at the trial

[10] Tanksley v. United States, 145 F.2d 58 (9th Cir. 1944); 6 WIGMORE, EVIDENCE § 1834 (3d ed. 1940).

[11] State v. Keeler, 52 Mont. 205, 156 Pac. 1080 (1916); *accord*, Crowley v. Pulsifer, 137 Mass. 392, 394 (1884) (dictum, per Holmes, J.); 1 COOLEY, CONSTITUTIONAL LIMITATIONS 647 (8th ed. 1927).

[12] Radin, *supra* note 4, at 394–96.

[13] 6 WIGMORE, EVIDENCE § 1834 (3d ed. 1940).

[14] Reagan v. United States, 202 Fed. 488 (9th Cir. 1913); People v. Jelke, 308 N.Y. 56, 123 N.E.2d 769 (1954); State v. Hensley, 75 Ohio St. 255, 79 N.E. 462 (1906).

[15] United States v. Kobli, 172 F.2d 919, 923 (3d Cir. 1949) ("franker and more realistic attitude of the present day towards matters of sex"); E. W. Scripps Co. v. Fulton, 100 Ohio App. 157, 125 N.E.2d 896, 904, *dism'd*, 164 Ohio St. 261, 130 N.E.2d 701 (1955) ("The public morals are not protected by trying to hide its sins behind closed doors").

[16] Hogan v. State, 191 Ark. 437, 86 S.W.2d 931 (1935); Beauchamp v. Cahill, 297 Ky. 505, 180 S.W.2d 423 (1944); State v. Damm, 62 S.D. 123, 252 N.W. 7 (1933).

[17] Keddington v. Arizona, 19 Ariz. 457, 172 Pac. 273 (1918).

[18] United States v. Kobli, 172 F.2d 919 (3d Cir. 1949).

[19] United States v. Kobli, *supra* note 18, at 923. ("The law, however, is chary of putting all its eggs in one basket.")

itself of a hundred or so at most.[20] But in fact representatives of the press are usually allowed to remain when the public is excluded.[21]

The principal case acknowledges a right of the public to attend criminal trials, but concludes that a "fair trial" may require some testimony to be given privately.[22] On the contrary, it would seem that from the point of view of all interested parties—the public as well as the accused—a "fair trial" is one which in all its phases is open to the public.

Nick Johnson

CONSTITUTIONAL LAW—TAXATION—LOCAL TAX ON USERS AND LESSEES OF TAX-EXEMPT UNITED STATES PROPERTY NOT AN INFRINGEMENT OF IMMUNITY OF FEDERAL GOVERNMENT.—*Township of Muskegon v. Continental Motors Corp.*, 77 N.W.2d 799 (Mich. 1956), *appeal docketed*, 25 U.S.L. WEEK 3154 (U.S. Nov. 13, 1956) (Nos. 564, 565).

The defendant corporation, under contract with the United States to produce defense materiel, used rent-free a plant owned successively by the Reconstruction Finance Corporation and the United States. Although a statute[1] authorized the RFC to make payments in lieu of and in the amount of ad valorem property taxes, title was transferred to the United States and the property thus removed from the local tax rolls. Subsequently the defendant was assessed a tax authorized to be collected from profit-making lessees and users of tax-exempt property ". . . in the same amount and to the same extent as though the lessee or user were the owner of such property." The Michigan statute further provided that the tax should be assessed in the same manner as ad valorem property taxes but should not become a lien against the property.[2] The trial court ruled that the defendant must pay the assessed tax. *Affirmed.* As a specific tax upon the defendant corporation's privilege of using the property, the tax is not invalid either as an infringement on federal immunity or as a tax discriminatory in purpose or effect.

The Michigan law, passed June 10, 1953, was designed to retain tax revenues lost in situations such as this transfer from the RFC to the United States. Loss of local tax revenue incidental to the liquidation of

[20] 33 TEXAS L. REV. 247, 248 (1954).

[21] Radin, *supra* note 4, at 391. *Contra*, United Press Ass'n v. Valente, 308 N.Y. 71, 123 N.E.2d 777 (1954); *In re* Mack, 126 A.2d 679 (Pa. 1956).

[22] 300 P.2d at 169.

[1] 47 STAT. 9 (1932), as amended, 15 U.S.C. § 607 (1952).

[2] MICH. COMP. LAWS § 211.181 (Supp. 1954).