Constitution does not require the government to furnish a copy of the indictment to an accused.[195] The right to notice of accusation is so fundamental a part of procedural due process that the states are required to observe it.[196]

CONFRONTATION

"The primary object of the [Confrontation Clause is] to prevent depositions of *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." [197] The right of confrontation is "[o]ne of the fundamental guarantees of life and liberty . . . long deemed so essential for the due protection of life and liberty that it is guarded against legislative and judicial action by provisions in the Constitution of the United States and in the constitutions of most if not of all the States composing the Union." [198] Before 1965, when the Court held the right to be protected against state abridgment,[199] it had little need to clarify the relationship between the right of confrontation and the hearsay rule,[200] because it could control the admission of hearsay through exercise of its supervisory powers over the inferior federal courts.[201]

On the basis of the Confrontation Clause, the Court had concluded that evidence given at a preliminary hearing could not be used at the trial if the absence of the witness was attributable to the negligence of the prosecution,[202] but that if a witness' absence

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[195] United States v. Van Duzee, 140 U.S. 169, 173 (1891).

[196] *In re* Oliver, 333 U.S. 257, 273 (1948); Cole v. Arkansas, 333 U.S. 196, 201 (1948); Rabe v. Washington, 405 U.S. 313 (1972).

[197] Mattox v. United States, 156 U.S. 237, 242–43 (1895).

[198] Kirby v. United States, 174 U.S. 47, 55, 56 (1899). *Cf.* Pointer v. Texas, 380 U.S. 400, 404–05 (1965). The right may be waived but it must be a knowing, intelligent waiver uncoerced from defendant. Brookhart v. Janis, 384 U.S. 1 (1966).

[199] Pointer v. Texas, 380 U.S. 400 (1965) (overruling West v. Louisiana, 194 U.S. 258 (1904)); *see also* Stein v. New York, 346 U.S. 156, 195–96 (1953).

[200] Hearsay is the prior out-of-court statements of a person, offered affirmatively for the truth of the matters asserted, presented at trial either orally by another person or in writing. Hickory v. United States, 151 U.S. 303, 309 (1894); Southern Ry. v. Gray, 241 U.S. 333, 337 (1916); Bridges v. Wixon, 326 U.S. 135 (1945).

[201] Thus, although it had concluded that the co-conspirator exception to the hearsay rule was consistent with the Confrontation Clause, Delaney v. United States, 263 U.S. 586, 590 (1924), the Court's formulation of the exception and its limitations was pursuant to its supervisory powers. Lutwak v. United States, 344 U.S. 604 (1953); Krulewitch v. United States, 336 U.S. 440 (1949).

[202] Motes v. United States, 178 U.S. 458 (1900).