

Or, in other cases, the Court has found that contemptuous behavior in court may affect the impartiality of the presiding judge, so as to disqualify such judge from citing and sentencing the contemnors.<sup>1071</sup> Due process is also violated by the participation of a biased or otherwise partial juror, although there is no presumption that all jurors with a potential bias are in fact prejudiced.<sup>1072</sup>

Public hostility toward a defendant that intimidates a jury is, or course, a classic due process violation.<sup>1073</sup> More recently, concern with the impact of prejudicial publicity upon jurors and potential jurors has caused the Court to instruct trial courts that they should be vigilant to guard against such prejudice and to curb both the publicity and the jury's exposure to it.<sup>1074</sup> For instance, the impact of televising trials on a jury has been a source of some concern.<sup>1075</sup>

<sup>1071</sup> *Mayberry v. Pennsylvania*, 400 U.S. 455, 464 (1971) ("it is generally wise where the marks of unseemly conduct have left personal stings [for a judge] to ask a fellow judge to take his place"); *Taylor v. Hayes*, 418 U.S. 488, 503 (1974) (where "marked personal feelings were present on both sides," a different judge should preside over a contempt hearing). *But see* *Ungar v. Sarafite*, 376 U.S. 575 (1964) ("We cannot assume that judges are so irascible and sensitive that they cannot fairly and impartially deal with resistance to authority"). In the context of alleged contempt before a judge acting as a one-man grand jury, the Court reversed criminal contempt convictions, saying: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955).

<sup>1072</sup> Ordinarily the proper avenue of relief is a hearing at which the juror may be questioned and the defense afforded an opportunity to prove actual bias. *Smith v. Phillips*, 455 U.S. 209 (1982) (juror had job application pending with prosecutor's office during trial). *See also* *Remmer v. United States*, 347 U.S. 227 (1954) (bribe offer to sitting juror); *Dennis v. United States*, 339 U.S. 162, 167–72 (1950) (government employees on jury). But, a trial judge's refusal to question potential jurors about the contents of news reports to which they had been exposed did not violate the defendant's right to due process, it being sufficient that the judge on *voir dire* asked the jurors whether they could put aside what they had heard about the case, listen to the evidence with an open mind, and render an impartial verdict. *Mu'Min v. Virginia*, 500 U.S. 415 (1991). Nor is it a denial of due process for the prosecution, after a finding of guilt, to call the jury's attention to the defendant's prior criminal record, if the jury has been given a sentencing function to increase the sentence which would otherwise be given under a recidivist statute. *Spencer v. Texas*, 385 U.S. 554 (1967). For discussion of the requirements of jury impartiality about capital punishment, *see* discussion under Sixth Amendment, *supra*.

<sup>1073</sup> *Frank v. Mangum*, 237 U.S. 309 (1915); *Moore v. Dempsey*, 261 U.S. 86 (1923).

<sup>1074</sup> *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Rideau v. Louisiana*, 373 U.S. 723 (1963); *Irvin v. Dowd*, 366 U.S. 717 (1961); *But see* *Stroble v. California*, 343 U.S. 181 (1952); *Murphy v. Florida*, 421 U.S. 794 (1975).

<sup>1075</sup> Initially, the televising of certain trials was struck down on the grounds that the harmful potential effect on the jurors was substantial, that the testimony presented at trial may be distorted by the multifaceted influence of television upon the conduct of witnesses, that the judge's ability to preside over the trial and guarantee fairness is considerably encumbered to the possible detriment of fairness, and that the defendant is likely to be harassed by his television exposure. *Estes v. Texas*, 381 U.S. 532 (1965). Subsequently, however, in part because of improvements in technology which caused much less disruption of the trial process and in part because of