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Supreme Court, Nassau County New York, Coleman v. O'Shea

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FREE SPEECH AND PRESS

U.S. CONST. amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . . .

N.Y. CONST. art. I, § 8:

Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press . . . .

SUPREME COURT, NASSAU COUNTY

Coleman v. O'Shea[1]
(decided March 27, 2000)

On March 28, 2000, reassessment proceedings were scheduled to begin in Nassau County.[2] "As many as 1.3 million people, including 415,000 homeowners,"[3] were potentially going to be affected either directly or indirectly by the outcome of the trial.[4] "At the pretrial conference held on March 24, 2000, the court received an application from News 12 Long Island for an order seeking permission to conduct gavel to gavel audio/visual coverage of the trial . . . ."[5] The plaintiffs consented to News 12's application without reserve or limitation.[6] The defendants' counsel, however, "[r]equested an opportunity of several hours to discuss this issue with their clients."[7] At 3:00PM, defense counsel sent a letter to the court stating, "[c]ounsel will not have an opportunity to discuss this matter with all representatives of

[1] 184 Misc. 2d 238, 707 N.Y.S.2d 308.
[2] *Coleman,* 184 Misc. 2d at 241, 707 N.Y.S.2d at 310.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 239, 707 N.Y.S.2d at 309.
[6] *Id.* The United States Government and the Attorney General of the State of New York were intervenors in the suit; also consented to News 12's application without reservation or limitation. *Id.*
[7] *Id.*

Nassau County before March 28th, but defendants reserve their right to object to cameras being permitted full and uninhibited access to the courtroom while this matter is being tried."[8] The court subsequently granted News 12's motion to conduct gavel to gavel audio/visual coverage of the trial.[9]

The issue presented in the case, and in numerous other New York cases recently,[10] was whether New York Civil Rights Law § 52,[11] purporting to prohibit the televising of compelled testimony of a witness in any court proceeding other than a legislative hearing, was constitutional under the First Amendment of the United States Constitution,[12] and Article I, Section 8 of the New York State Constitution.[13]

The legislative history of § 52 is quite colorful. The court described that the law as, "initially adopted in 1952 as Chapter 241 of New York Laws . . . [and] was amended twice."[14] The first amendment was by "Chapter 706 of the Laws of the State of New York, 1962 . . . [and] was confined to carving out an exception to

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[8] *Coleman,* 184 Misc. 2d at 239, 707 N.Y.S.2d at 309.

[9] *Id.* at 241, 707 N.Y.S.2d at 310.

[10] *See* People v. Boss, 182 Misc. 2d 700, 701 N.Y.S.2d 891, (2000); People v. Santiago, 712 N.Y.S.2d 244, 712 N.Y.S.2d 244 (2000); O'Neill v. Oakgrove Cons't. Inc., 71 N.Y.2d 521, 523 N.E.2d 277 (1988); Westmoreland v. Columbia Broadcasting System, 752 F.2d 16 (2d Cir. 1984); Katzman v. Victoria's Secret Catalogue, 923 F. Supp. 580 (S.D.N.Y. 1996).

[11] N.Y. CIV. RIGHTS LAW § 52. Section 52 states in pertinent part:

> No person, firm associate or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting or taking of motion pictures within this state of proceeding, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken . . . . *Id. See also* People v. Boss, 182 Misc. 2d 700, 702; 701 N.Y.S.2d 891, 893 (N.Y. Sup. Ct. 2000).

[12] U.S. CONST. amend. I The First Amendment to the United States Constitution states in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . . ." *Id.*

[13] N.Y. CONST. art. I, § 8. Section 8 states in pertinent part: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press . . . ."

[14] *Coleman,* 184 Misc. 2d at 241, 707 N.Y.S.2d at 310.

the broadcast prohibition for legislative hearings."[15] The court found that the only modification of the present § 52 is the "inclusion of the Legislature and the Public Service Commission as exceptions to the broadcast ban."[16]

In 1987 a "Cameras in the Court"[17] experiment was approved by the New York State Legislature pursuant to Judiciary Law § 218.[18] This experiment was to last eighteen months in both civil and criminal cases,[19] and acted as an abrogation or exception to § 52.[20] This experiment authorized "the televising of court proceedings."[21] Through legislative reenactment, § 218 permitted almost ten years of audio-visual coverage in the courtroom.[22] Section 218 has since come to an end and now the courts must determine the constitutionality of § 52 of the New York Civil Rights Law in the context of § 218's conclusion.[23]

The court in *Coleman* held that § 52 was unconstitutional as violating both the United States Constitution and Article I, Section 8 of the New York State Constitution.[24] It stated that, "the initial adoption of § 52 is unconstitutional, and that with each successive amendment the arbitrary and capricious nature of the legislative act becomes more apparent."[25] The court also relied on the decision of *People v. Boss,*[26] where Judge Teresi found that § 52 was a "*per se* ban on all audio-visual coverage of trial court proceedings, under all circumstances in any case."[27] Although the court in *Coleman* did not agree that § 52 was a "*per se* ban," it did find Judge Teresi's analysis "convincing and its application in this reassessment case compelling."[28]

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[15] *Id.* The legislature did, however, have to find "that it is in the public interest to permit the televising, broadcasting or taking of motion pictures." *Id.*
[16] *Id.*
[17] *Id.* at 239, 707 N.Y.S.2d at 309.
[18] *Boss,* 182 Misc. 2d at 702, 701 N.Y.S.2d at 893.
[19] *Id.*
[20] *Coleman,* 184 Misc. 2d at 241, 707 N.Y.S.2d at 310.
[21] *Id.*
[22] *Boss,* 182 Misc. 2d at 702, 701 N.Y.S.2d at 893.
[23] *Coleman,* 184 Misc. 2d at 239, 707 N.Y.S.2d at 309.
[24] *Id.* at 240, 707 N.Y.S.2d at 310.
[25] *Id.* at 241, 707 N.Y.S.2d at 310.
[26] 182 Misc. 2d 700, 701 N.Y.S.2d 891.
[27] *Boss,* 182 Misc. 2d at 702, 701 N.Y.S.2d at 893.
[28] *Coleman,* 184 Misc. 2d at 240, , 707 N.Y.S.2d at 310.

The court stated that although the ban only prohibited the televising of proceedings where a witness was compelled to testify, it had no provision for those witnesses compelled to testify but who had consented to the televising of the proceeding.[29] "On that basis alone, § 52 of the Civil Rights Law is unconstitutional as being arbitrary and capricious by denying free speech in violation of the First Amendment to the United State Constitution and Article I, Section 8 of the New York State Constitution."[30]

The court further held that "[t]he First Amendment has been interpreted to require that court proceedings be public and inclusive of the press."[31] The United States Supreme Court held in *Richmond Newspapers, Inc. v. Virginia,*[32] that the First Amendment guarantees the press a right of access to criminal trials.[33] The court stated that "absent compelling and clearly articulated reasons for closing such proceedings . . . all criminal trials must be open to the press and public . . . ."[34] The Supreme Court, however, has not addressed the issue of "whether such access encompasses the right to broadcast from the courtroom."[35] However, the Supreme Court did state that "one of the demands of a democratic society is that the public should know what goes on in courts."[36]

Although it is true that *Coleman* was a civil, not a criminal case, and that *Richmond* may not be controlling, the *Coleman* Court stated that this distinction (i.e., between civil and criminal cases) "makes the determination of the unconstitutionality of § 52 of the Civil Rights Law all the more apparent."[37] There is no overwhelming concern for the criminal defendant's right to due process.

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[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] 448 U.S. 555 (1980).
[33] *Id.* at 580.
[34] *Richmond Newspapers,* 448 U.S. at 580.
[35] People v. Santiago, 185 Misc. 2d 138, 143-44, 712 N.Y.S.2d 244, 248 (N.Y. County Ct. 2000).
[36] *Coleman,* 184 Misc. 2d at 240, 707 N.Y.S.2d at 310 (quoting Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 920 (1950)).
[37] *Id.*

Additionally, the court held that due to substantial technological improvements, "unobtrusive stationary cameras utilizing natural light"[38] have replaced the "massive equipment and lighting requirements of the 1950's and 1960's."[39] This was a major concern of judges in criminal cases before such improvements were made. In *Estes v. Texas*,[40] the Supreme Court held that the defendant was denied due process as a result of certain pretrial hearings and the televising of his trial.[41] Although the Court did not decide "whether the Constitution absolutely prohibited the televising of trials,"[42] it did state that "[w]hen the advances in technology permit reporting by . . . television without its present hazard to a fair trial we will have another case."[43] The court in *Coleman* noted that it did not even need to address the issue of the effect of cameras on a jury because the case was being tried without a jury.[44]

The lower courts of New York have treated this issue in a manner similar to the federal courts. The New York Court of Appeals stated for the first time[45] in *O'Neill v. Oakgrove Contruction, Inc.*,[46] that, "[t]he protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the First Amendment."[47] Therefore, if a piece of legislation is found to be unconstitutional under the First Amendment, it is more than likely also going to be found unconstitutional under Article I, § 8 of the New York State Constitution.

Katzman v. Victoria's Secret Catalogue,[48] a case from the Southern District of New York, stated:

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[38] *Id.*
[39] *Id.*
[40] 381 U.S. 532 (1965).
[41] *Estes*, 381 U.S. at 551.
[42] *Santiago*, 712 N.Y.S.2d at 258.
[43] *Estes*, 381 U.S. at 540.
[44] *Coleman*, 184 Misc. 2d at 240, 707 N.Y.S.2d at 310.
[45] *Santiago*, 185 Misc. 2d at 153, 712 N.Y.S.2d at 255.
[46] 71 N.Y.2d 521, 528-29; 71 N.E.2d 277; 528 N.Y.S.2d 1 (1988).
[47] O'Neill v. Oakgrove Cons't. Inc., 71 N.Y.2d 521, 529 n.3, 523 N.E.2d 277, 281 (1988).
[48] 923 F. Supp. 580 (S.D.N.Y. 1996).

> During the last thirty years, studies conducted by state and federal jurisdictions to evaluate the effect on the judicial process of the presence of cameras in courtrooms have demonstrated that televised coverage of trial proceedings does not impede the fair administration of justice, does not compromise the dignity of the court, and does not impair the orderly conduct of proceedings.[49]

In this case, Court TV sought to use its standard small, stationary camera.[50] The camera made no noise and did not require additional lighting.[51] In addition, "the camera [was] placed away from the proceedings and [could] be operated by remote control by a Court TV technician . . . [and] the equipment [was] no more distracting in appearance than reporters with notebooks or artists with sketch pads."[52] The court permitted the use of the camera based on these grounds.[53]

Similarly, in a Second Circuit Court of Appeals case, *Westmoreland v. Columbia Broadcasting Sys., Inc.*,[54] the court recognized that, "[T]here is . . . an abundance of support in the cases for a constitutionally grounded public right of access to the courtroom."[55] The court stated it also agrees with the Third Circuit[56] in that, public access to civil trials "[e]nhance the quality and safeguards the integrity of the fact finding process . . . ."[57]

It appears that the lower courts of New York are in accord with the decisions of the federal courts. Although there has not been an ultimate decision from the United States Supreme Court specifically on whether or not cameras are permitted full and uninhibited access to the courtroom, case law from New York State as well as decisions from the Second Circuit seem to point in the general direction that so long as the camera is unobtrusive and

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[49] *Id.* at 585.
[50] *Id.* at 582.
[51] *Id.*
[52] *Id.*
[53] *Id.* at 589-90.
[54] 752 F.2d 16 (2d Cir. 1985).
[55] *Id.* at 22.
[56] Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3d Cir. 1984).
[57] Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982).

uninvasive, and will not otherwise infringe on a criminal defendant's right to a fair trial, the camera will be permitted.

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