TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 21
Number 1 *New York State Constitutional Decisions: 2004 Compilation*

Article 16

December 2014

Appellate Division, First Department, Courtroom Television Network LLC v. New York

Paula Gilbert

Follow this and additional works at: https://digitalcommons.tourolaw.edu/lawreview

Part of the Constitutional Law Commons

Recommended Citation

Gilbert, Paula (2014) "Appellate Division, First Department, Courtroom Television Network LLC v. New York," *Touro Law Review*: Vol. 21 : No. 1 , Article 16.
Available at: https://digitalcommons.tourolaw.edu/lawreview/vol21/iss1/16

This Freedom of Speech is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Appellate Division, First Department, Courtroom Television Network LLC v. New York

Cover Page Footnote

21-1

This freedom of speech is available in Touro Law Review: https://digitalcommons.tourolaw.edu/lawreview/vol21/iss1/16

SUPREME COURT OF NEW YORK APPELLATE DIVISION, FIRST DEPARTMENT

Courtroom Television Network LLC v. New York[1]
(decided June 22, 2004)

Courtroom Television Network (CTN) asserted its right under the New York Constitution[2] to observe court proceedings and sought to declare unlawful the New York Supreme Court's refusal to allow the broadcast of trials.[3] CTN claimed that New York's prohibition of televised trials[4] restricted free speech under the First Amendment[5] of the United States Constitution. The trial court rejected this allegation, finding "no federal constitutional right to televise court proceedings."[6] The right to attend criminal trials as inherent in the First Amendment does not translate into the public's right to "observe trials on television without physically

---

[1] 779 N.Y.S.2d 74 (N.Y. App. Div. 2004)

[2] N.Y. CONST. article I, § 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."

[3] *Courtroom Television*, 779 N.Y.S.2d at 75.

[4] N.Y. CIV. RIGHTS LAW § 52 (McKinney 2004) states in pertinent part:

> No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state . . . .

[5] U.S. CONST. amend. I, which states: "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; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[6] *Courtroom Television*, 779 N.Y.S.2d at 75.

attending those proceedings."[7] Accordingly, the appellate court held that CTN was not deprived of its rights under either federal or state law.[8]

CTN, a national cable television network, sought to loosen the restrictive reins of Section 52 of New York's Civil Rights law and thereby allow for audiovisual coverage of criminal trials.[9] The claim was based on CTN's perception that the public had an acknowledged right to view criminal trials as provided for in the New York State and United States Constitutions.[10] The plaintiff contended that an individual's right to view proceedings from the actual courtroom includes one's right to observe trials on television. Accordingly, restrictions on that right as found in Section 52 limited speech in violation of the tenets of the First Amendment.[11] Here, the court rejected all of the plaintiff's arguments, and succinctly stated that no constitutional right to televise court proceedings existed.[12]

In *Nixon v. Warner Communications*[13] the United States Supreme Court held that the right of a public trial does not translate into the right of the press to publicize it.[14] In this case, Warner Communications sought access to tape recorded conversations that had previously been submitted for use in the

---

[7] *Id.*
[8] *Id.* at 76.
[9] *Id.*
[10] *Id.*
[11] *Courtroom Television,* 779 N.Y.S.2d at 76.
[12] *Id.* at 75.
[13] 435 U.S. 589 (1978).
[14] *Id.* at 610.

Watergate hearings.[15] After the grand jury indicted several individuals connected with this investigation, the tape recordings were turned over to the District Court.[16] Six weeks after the commencement of the trial, Warner Communications "filed a motion . . . seeking permission to copy, broadcast, and sell to the public the portions of the tapes played at trial."[17]

The District Court held that "the public's 'right to know' did not . . . overcome the need to safeguard the defendants' rights on appeal."[18] However, the Circuit Court of Appeals for the District of Columbia reversed the lower court's decision finding that "the mere possibility of prejudice to defendants' rights in the event of a retrial did not outweigh the public's right of access."[19] Ultimately, the Supreme Court held that the Court of Appeals erred in reversing the District Court's decision because there is no First Amendment right granting the press the right to the information, and:

> Once beyond the confines of the courthouse, a news-gathering agency may publicize, within wide limits, what its representatives have heard and seen in the courtroom. But the line is drawn at the courthouse door; and within, a reporter's

---

[15] *Id.* at 592. In February 1973, the Senate established a committee to investigate President Nixon's role in the burglary of the Democratic National Committee's headquarters in the Watergate hotel known as the Watergate hearings.

[16] *Id.*

[17] *Id.* at 594.

[18] *Nixon*, 435 U.S. at 595.

[19] *Id.* at 596 (citing United States v. Mitchell, 179 U.S. App. D.C. 293, 302-304 (1976).

> constitutional rights are no greater than those of any other member of the public.[20]

Thus, the media has no fundamental constitutional right to broadcast information obtained in courtroom proceedings.

Furthermore, in *Richmond Newspapers v. Virginia*[21] the Supreme Court held the First Amendment guarantee was that of the public's right to attend a criminal trial.[22] *Richmond* involved a plaintiff who was tried in the same court four times after consecutive mistrials.[23] The counsel for the defendant moved for the courtroom to be closed to the public, allowing only witnesses to appear for testimony.[24]

The Court in *Richmond* found an indispensable right of public presence in a courtroom, and determined that "without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press could be eviscerated.' "[25] Since the First Amendment prohibits governments from limiting the freedom of speech or of the press, it "[assures] freedom of communication on matters relating to the functioning of government. Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are

[20] *Id.* at 610 (quoting Estes v. Texas, 381 U.S. 532, 589 (1965)).
[21] 448 U.S. 555 (1980).
[22] *Id.* at 580.
[23] *Richmond*, 448 U.S. at 559.
[24] *Id.*
[25] *Id.* at 580 (quoting Branzburg v. Hayes, 408 U.S. 665, 681 (1972)).

conducted."[26] While *Richmond* upheld a First Amendment right of the public and press to observe court proceedings, it simply limited that right to one of *physical* attendance in a courtroom.[27]

Further, *Richmond* relied on the earlier landmark Supreme Court decision of *Estes v. Texas*.[28] The *Estes* Court spoke of the common misconception that the First Amendment extends a right to the media to broadcast courtroom events.[29] Preservation of a fair trial must be maintained and televising trials would frustrate this objective.[30]

The Court enumerated specific reasons why the use of television in a courtroom may cause unfairness, citing the potential harmful impact on jurors, impairment to the quality of witness testimony, additional responsibilities for the trial judge, and the damaging impact on the defendant.[31] The government contended that the "televising of criminal trials would be enlightening to the public and would promote greater respect for the courts."[32] While the Court acknowledged a public right to be informed about court activities, and the media's entitlement to the same rights as the public, the Court ultimately concluded that, "[t]he theory of our system is that the conclusions to be reached in a case will be

---

[26] *Id.* at 575.
[27] *Id.* at 580.
[28] *Estes*, 381 U.S. 532.
[29] *Id.* at 539.
[30] *Id.* at 540.
[31] *Id.* at 545-49.
[32] *Id.* at 541.

induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."[33]

In *Westmoreland v. Columbia Broadcasting System* the court similarly articulated a right to attend trials without a right to view them on a television screen.[34] Here, the court acknowledged the importance of "the free flow of commercial speech"[35] and fostering the appearance of fairness that is heightened through the public and the press attendance at trials.[36] Accordingly, while the court found that the First Amendment clearly gave the public and press a right of access to trials,[37] it stated that "[t]here is a long leap . . . between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised."[38]

In *CTN*, the court evaluated the television station's claim that Section 52 violated the First Amendment, and stated that "[u]nder the Free Speech Clause, a content-neutral statute that burdens speech must further an important or substantial governmental interest that is unrelated to the suppression of free expression."[39] Moreover, "the statute's incidental restriction on expression must be no greater than is essential to the furtherance of

[33] *Estes*, 381 U.S. at 551 (quoting Patterson v. Colorado, 205 U.S. 454, 462 (1907)).
[34] Westmoreland v. Columbia Broad. Sys., 752 F.2d 16 (2d Cir. 1984).
[35] *Id.* at 22 (citing Young v. Am. Mini Theatres, 427 U.S. 50, 76 (1976) (Powell, J. concurring)).
[36] *Id.* at 23.
[37] *Id.*
[38] *Id.*
[39] *Courtroom Television*, 774 N.Y.S.2d at 76 (internal quotation marks omitted).

that interest."[40] The court went on to say that Section 52 does not "unwarrantedly abridge" free speech given the governmental need served by the protection of live witness testimony in state courts.[41]

In *Santiago v. Bristol* a capital murder defendant brought a proceeding seeking a writ of prohibition after a motion by television stations permitting audiovisual coverage of his trial was granted.[42] The defendant and the District Attorney contested the motion, arguing that Civil Rights Law Section 52 explicitly prohibited such activity.[43] "Indeed, Civil Rights Law § 52 prohibits televising, broadcasting or taking motion pictures of a trial . . . ."[44] The court spoke of the right protected by the First Amendment as "[t]he right of access . . . not the right to broadcast the proceedings."[45] The *Santiago* court determined that no right under the United States Constitution existed to televise or otherwise broadcast a trial.[46]

Borrowing the reasoning of *Santiago*, the *CTN* court determined that "there is no precedent recognizing such a right and the New York Court of Appeals has never interpreted Article I, Section 8 as granting any greater access rights than those provided under *Richmond Newspapers v. Virginia* . . . ."[47] The court also

---

[40] *Id.*
[41] *Id.* (quoting Cox v. New Hampshire, 312 U.S. 569, 574 (1974)).
[42] 709 N.Y.S.2d 724, 725 (N.Y. App. Div. 2000).
[43] *Id.*
[44] *Id.* at 814.
[45] *Id.*
[46] *Id.*
[47] *Courtroom Television,* 774 N.Y.S.2d at 76. *See Westmoreland,* 752 F.2d at 16 (interpreting *Richmond* as articulating a right to attend trials, not a right to view them on television).

discussed the relationship between Section 52 and the First Amendment.[48] Under the First Amendment, a state statute that limits speech must further a significant state interest and the limitation can be no greater than what is necessary to attain the state goal.[49] Accordingly, even if it is assumed that Section 52 restricts speech within the meaning of the First Amendment, "Section 52 is sufficiently tailored to further an important state interest, namely, the preservation of the value and integrity of live witness testimony in state tribunals."[50]

The United States Constitution and New York State Constitution are congruent on the constitutionality of restricting the broadcast of courtroom proceedings. The primary similarity between federal and state law is that both the state and federal constitutions address the public right to free speech and press and have been interpreted by state and federal courts to guarantee open, unrestrictive courtroom attendance. However, federal case law does not provide a definitive opinion on the constitutionality of the media televising court proceedings, whereas New York has determined, through Section 52, that restricting media broadcasts of trials is constitutional.

In conclusion, the press has no right under the New York State Constitution to televise trial proceedings.[51] New York courts

---

[48] *Courtroom Television,* 774 N.Y.S.2d at 76.
[49] *Id.*
[50] *Id.*
[51] *Id.*

have determined that the First Amendment's freedoms do not imply the liberty to open a courtroom to television cameras.[52]

Paula Gilbert

[52] *Id.*