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## Freedom of Speech and the Press

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## FREEDOM OF SPEECH AND 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.*

*U.S. CONST. amend. I:*

*Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .*

### COURT OF APPEALS

Golden v. Clark<sup>697</sup>  
(decided October 23, 1990)

See the case analysis under EQUAL PROTECTION.<sup>698</sup> The court rejected plaintiffs' claim that section 2604(b)(15) of the New York City Charter,<sup>699</sup> which precludes certain elected officials from membership in committees of national or state political parties, is a violation of their right to equal protection under the New York State Constitution.<sup>700</sup>

Johnson Newspaper Corp. v. Melino<sup>701</sup>  
(decided November 27, 1990)

Johnson Newspaper Corp. (Johnson), the petitioner, brought an article 78 proceeding for an order compelling access to a disciplinary hearing involving a dentist, claiming "there is a constitutionally based public right of access to a professional disciplinary

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697. 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

698. See *supra* notes 461-504 and accompanying text.

699. New York City Charter § 2604(b)(15).

700. *Golden*, 76 N.Y.2d at 627, 564 N.E.2d at 616, 563 N.Y.S.2d at 6.

701. 77 N.Y.2d 1, 564 N.E.2d 1046, 563 N.Y.S.2d 380 (1990).

hearing . . .”<sup>702</sup> under the federal<sup>703</sup> and state constitutions.<sup>704</sup>

Johnson, the publisher of a newspaper, sought access to a disciplinary hearing involving a dentist. The supreme court dismissed petitioner’s article 78 proceeding, and, on appeal, the appellate division affirmed.<sup>705</sup> The court of appeals held that there is no public right of access to such a disciplinary hearing under either the federal or state constitution.<sup>706</sup>

With regard to Johnson Newspaper Corp.’s rights under the Federal Constitution, the court reasoned that the two-tiered test articulated by the United States Supreme Court, and applied by the appellate division, is still a valid criterion of whether access is protected by the first amendment. The test includes “whether the place and process have historically been open to the press and general public”<sup>707</sup> and “whether public access plays a significant positive role in the functioning of the particular process in question.”<sup>708</sup> The court of appeals noted that in its two most recent decisions regarding the first amendment right of access, the United States Supreme Court still applied the two-tiered test, contrary to Johnson’s assertions otherwise.<sup>709</sup>

In applying the test, the court of appeals found that there is no tradition of professional disciplinary hearings being open to the public, and “no showing that the public access plays ‘a significant positive role’ in the functioning of the proceedings.”<sup>710</sup>

702. *Id.* at 5, 564 N.E.2d at 1047, 563 N.Y.S.2d at 381.

703. U.S. CONST. amend. I.

704. N.Y. CONST. art. I, § 8.

705. *Johnson Newspaper Corp.*, 77 N.Y.2d at 5, 564 N.E.2d at 1047, 563 N.Y.S.2d at 381.

706. *Id.* at 7-8, 564 N.E.2d at 1049, 563 N.Y.S.2d at 383.

707. *Id.* at 5, 564 N.E.2d at 1047, 563 N.Y.S.2d at 381 (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986) (*Press-Enterprise II*)).

708. *Id.*

709. *Johnson Newspaper Corp.*, 77 N.Y.2d at 5-6, 564 N.E.2d at 1046-47, 563 N.Y.S.2d at 381-82. The court was referring to *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501 (1984) (*Press-Enterprise I*) (first amendment guarantees right of access for *voir dire* proceeding in criminal trial) and *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1 (1986) (*Press-Enterprise II*) (first amendment guarantees right of access for preliminary hearing in criminal case).

710. *Johnson Newspaper Corp.*, 77 N.Y.2d at 7-8, 564 N.E.2d at 1049,

Petitioner also asserted that there should be a right of access under the broader protections afforded by the New York State Constitution, article I section 8.<sup>711</sup> The Court noted that although the court of appeals has, in some cases, found the state constitution to be more protective of expressional freedoms than the United States Constitution,<sup>712</sup> "there is no such precedent with respect to the right of access."<sup>713</sup>

Finding that Johnson offered no persuasive argument to extend the right at this time, the court declined to do so. Thus, the result was the same under the state constitution as under the federal constitution.

## COUNTY COURT

### ST. LAWRENCE COUNTY

People v. Doe<sup>714</sup>  
(decided August 21, 1990)

A newspaper brought a motion to quash a subpoena served on its employee, the defendant Richard Roe.<sup>715</sup> The newspaper grounded its motion in the qualified news reporter's privilege under the state constitution. It also contended that the privilege existed under the Federal Constitution and brought its motion under both the state<sup>716</sup> and federal<sup>717</sup> constitutions.

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563 N.Y.S.2d at 383 (quoting *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1 (1986)).

711. *Id.* at 8, 564 N.E.2d at 1049, 563 N.Y.S.2d at 383.

712. *Id.* (citing *O'Neill v. Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 528-29, 523 N.E.2d 277, 280-81, 528 N.Y.S.2d 1, 4-5 (1988)).

713. *Johnson Newspaper Corp.*, 77 N.Y.2d at 8, 564 N.E.2d at 1049, 563 N.Y.S.2d at 383.

714. 148 Misc. 2d 286, 560 N.Y.S.2d 177 (Sup. Ct. Lawrence County 1990).

715. Richard Roe is a fictitious name. Pursuant to section 190.50 of the state's Criminal Procedure Law, the name of the party subpoenaed before a grand jury can be changed to avoid disclosure. *See* N.Y. CRIM. PROC. LAW § 190.50(7) (McKinney 1982).

716. N.Y. CONST. art. I, § 8.

717. U.S. CONST. amend. I.