TOURO LAW
Touro College Jacob D. Fuchsberg Law Center

Touro Law Review

Volume 22
Number 1 *New York State Constitutional Decisions: 2006 Compilation*

Article 19

November 2014

Court of Appeals of New York, Courtroom Television Network, LLC v. New York

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Recommended Citation

Weinberger, Courtney (2014) "Court of Appeals of New York, Courtroom Television Network, LLC v. New York," *Touro Law Review*: Vol. 22: No. 1, Article 19.
Available at: http://digitalcommons.tourolaw.edu/lawreview/vol22/iss1/19

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COURT OF APPEALS OF NEW YORK

Courtroom Television Network, LLC v. New York[1]
(decided June 16, 2005)

In 2003, Courtroom Television Network (CTN) sought to prevent the enforcement of section 52 of New York's Civil Rights Law,[2] which prohibits the televised broadcasting of trial proceedings.[3] Specifically, CTN argued that the ban on audiovisual equipment in New York courtrooms was unconstitutional[4] under the First Amendment of the United States Constitution[5] and section 8 of the New York State Constitution.[6] The trial court held that the press does not have a right to televise court proceedings, reasoning that such a rule would threaten fair trial rights.[7] Furthermore, the court noted that a judicial decision holding that the media has a right to

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[1] No. 88, 2005 N.Y. LEXIS 1260 (N.Y. June 16, 2005).

[2] N.Y. CIV. RIGHTS LAW § 52 (McKinney 2005) 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 . . . .

[3] Courtroom Television Network, LLC. v. New York, 769 N.Y.S.2d 70, 72 (Sup. Ct. 2003).

[4] *Id.*

[5] U.S. CONST. amend. I, stating in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

[6] N.Y. CONST. art. I, § 8, states, in pertinent part, "Every citizen may freely speak, write and publish his or her 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."

televise trials "would derail what is, and always has been a legislative process."[8] The Appellate Division affirmed, holding that there is no right to televise trial proceedings under the New York Constitution.[9] The court recognized that while the First Amendment guarantees the public a right to attend trials in person, it does not afford individuals the " 'right to view [trials] on a television screen.' "[10] The Court of Appeals of New York affirmed, holding that "there is no First Amendment or article I, section 8 right to televise a trial."[11] The court reasoned that the First Amendment does not guarantee the media greater access to courtroom proceedings than the general public.[12] Furthermore, any First Amendment or article I, section 8 right to access a trial is surpassed by the government's interest in ensuring the defendant a fair trial.[13]

CTN, a cable television network, attempted to enjoin the enforcement of the prohibition on cameras in the courtroom by seeking a declaratory judgment finding section 52 of New York's Civil Rights Law unconstitutional because it infringed on the right to observe and report trial proceedings guaranteed by the First Amendment and article I, section 8 of the New York Constitution.[14] Additionally, CTN claimed that any inconveniences incidental to the

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7 *Courtroom Television*, 769 N.Y.S.2d at 104.

8 *Id.* at 105.

9 Courtroom Television Network, LLC. v. New York, 779 N.Y.S.2d 74, 76 (App. Div. 2d Dep't 2004).

10 *Id.* at 75 (quoting Westmoreland v. Columbia Broadcasting Sys., 752 F.2d 16, 23 (2d Cir. 1984)).

11 *Courtroom Television*, 2005 N.Y. LEXIS 1260, at *1.

12 *Id.*, at *4-5.

13 *Id.*, at *11.

14 *Id.*, at *3 n.2.

presence of recording devices in the courtroom, was far outweighed by the evidence in favor of such audiovisual trial coverage.[15] The New York Court of Appeals disagreed, and reasoned that section 52 was "not a restriction on the openness of court proceedings but rather on what means can be used in order to gather news." [16] Accordingly, the court dismissed the case against the prosecutor's office and denied each of CTN's contentions, holding that there is no constitutional right to film and televise court proceedings.[17]

In *Estes v. Texas*,[18] the seminal case regarding the rights of the press to televise a criminal trial,[19] the United States Supreme Court held that televising a criminal trial deprived the defendant of due process,[20] and that there was no First Amendment right to televise or broadcast a trial.[21] The criminal defendant in this case appealed his conviction for swindling, based on the theory that the televising and broadcasting of his trial caused great disruption in the courtroom during pretrial hearings[22] and deprived him of due process.[23] The Court reasoned that the news media's right to access a trial is the same as that afforded to the general public.[24] Furthermore, the public has a right to be informed and "reporters of all media, including television, are always present if they wish to be and are

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[15] *Id.*, at *3.
[16] *Courtroom Television*, 2005 N.Y. LEXIS 1260, at *5.
[17] *Id.*, at *1.
[18] 381 U.S. 532 (1965).
[19] *Courtroom Television*, 2005 N.Y. LEXIS 1260, at *6 (N.Y. June 16, 2005).
[20] *Estes*, 381 U.S. at 535.
[21] *Id.* at 539.
[22] *Id.* at 536.
[23] *Id.* at 535.
[24] *Id.* at 540.

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plainly free to report whatever occurs in open court through their respective media."[25] Nonetheless, the right to physically attend, observe, and report trial proceedings was not interpreted by the Court to signify a right to televise such proceedings. In fact, the Court enumerated the various ways that the presence of audiovisual recording devices in the courtroom may actually adversely affect the fairness of a trial.[26] The Court's greatest concern was that television coverage could influence jurors to render a particular verdict as a result of the pressure of publicity.[27] Another issue concerning the court was the possibility that jurors might be distracted not only by the physical disturbances of camera equipment but also by awareness of the telecast.[28] Additionally, the Court expressed a concern that televising a trial could impair witness testimony and divert the attention of the judge, who must ensure a fair trial.[29] Therefore, the First Amendment does not guarantee the press a right to broadcast televised courtroom proceedings.

Moreover, in *Richmond Newspapers v. Virginia*,[30] the Supreme Court interpreted the language of the First Amendment to implicitly guarantee the right of the press and the public to attend criminal trials.[31] The Court reasoned that "without the freedom to attend such trials, which people have exercised for centuries,

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[25] *Estes*, 381 U.S. at 541-42.
[26] *Id.* at 544-50.
[27] *Id.* at 545.
[28] *Id.* at 546, 552 (stating that there is a possibility that camera equipment could become less hazardous to a fair trial with the progression and advent of new technology).
[29] *Estes*, 381 U.S. at 547, 548.
[30] 448 U.S. 555 (1980).
[31] *Id.* at 580.

important aspects of freedom of speech and 'of the press could be eviscerated.' "[32] Despite the Court's emphasis on preserving a public right to attend criminal trials, the Court noted that First Amendment rights should not be considered absolute.[33] Instead, "a trial judge [may], in the fair administration of justice, impose reasonable limitations on access to a trial."[34] One illustration of the trial judge's ability to restrict courtroom access is apparent on such occasions where the courtroom does not have adequate capacity to accommodate every person who wishes to be present.[35] The Court noted that under those circumstances, the judge may limit the general public's access and choose to give preferential seating to media personnel.[36] This line of reasoning underscores the notion that the value of an orderly courtroom and a fair trial outweigh the value of admitting the general public to a criminal trial. Nonetheless, in this case, the court also noted that limitations in the courtroom must be administered in a way that does not alter or deny opportunities for public discussion and questioning of the proceedings.[37]

Additionally, the Second Circuit in *Westmoreland v. Columbia Broadcasting System, Inc.*[38] recognized the existence of much case law articulating a right to attend trials in person.[39]

[32] *Id.* (quoting Branzburg v. Hayes, 408 U.S. 665, 681 (1972)).
[33] *Id.* at 581.
[34] *Id.*
[35] 448 U.S. at 581.
[36] *Id.*
[37] *Id.* (citing Cox v. New Hampshire, 312 U.S. 569, 574 (1941).
[38] 752 F.2d 16 (2d Cir. 1984).
[39] *Id.* at 23 (discussing right of access to criminal and civil trials.) *See* Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982) and Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3d Cir. 1984) (holding that the public has a right to attend civil courtroom

However, the court reasoned that cases, which express a right to access trial proceedings, do not necessarily stand for the proposition that the First Amendment guarantees the right to televise trials.[40] While the court agreed that right to access "enhances . . . the factfinding process," and "fosters an appearance of fairness," it refused to find a right to broadcast courtroom proceedings.[41] "There 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."[42]

Similarly, in *Courtroom Television*, the court stated that although it interprets section 8 to grant the public a right to access trials and pretrial hearings, it would not recognize that right as the equivalent of a right to televise the same.[43] Relying on cases where the press requested that a courtroom remain open, CTN contended that New York granted broader rights than afforded under the First Amendment, and thus argued that the court should grant broader rights with respect to allowing audiovisual coverage of trials.[44] The court disagreed, reasoning that when the government wishes to restrict the press, it must demonstrate a "legitimate governmental interest which outweighs any constitutional right of access by the press and public."[45] Furthermore, it noted that the New York approach to analyzing such cases is quite similar to that employed by

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proceedings).

[40] *Westmoreland,* 752 F.2d at 23.

[41] *Id.* (quoting *Globe Newspaper* 457 U.S at 606).

[42] *Id.*

[43] *Courtroom Television*, 2005 N.Y. LEXIS 1260, at *9.

[44] *Id.*, at *8-9.

[45] *Id.*, at *10.

the federal courts.[46]

In *United Press Association v. Valente*,[47] the New York Court of Appeals considered whether the public, including the press had a right to request that a criminal trial remain open, where the judge barred the presence of the public and the news media from the courtroom.[48] The court discussed a general judicial aversion towards imposing limitations on the First Amendment rights of the press to report freely, but noted that the First Amendment has "never been held to confer upon the press a constitutionally protected right of access to sources of information not available to others."[49] The court explained that the primary function of a public trial is not to ensure that public spectators may attend, but rather to "[safeguard] the accused against possible unjust persecution and abuse of judicial authority and . . . [to] assur[e] him a fair trial."[50] Nonetheless, the court recognized that the public interest in attending criminal trials was authentic, but held that the press did not have a right independent of the defendant's rights to request that the trial remain open or closed to the public.[51] Thus, New York law does not distinguish between the right of the press and the right of the public to insist on access to a particular court proceeding when the judge restricts admittance.[52]

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[46] *Id.*
[47] 123 N.E.2d 777 (N.Y. 1954).
[48] *Id.*
[49] *Id.* at 778.
[50] *Id.* at 780.
[51] *Id.* at 783.
[52] *Courtroom Television,* 2005 N.Y. LEXIS 1260, at *12.

Similarly, in *Johnson Newspaper Corporation v. Melino*,[53] the New York Court of Appeals held that there is not a public right of access to professional disciplinary hearings under either the United States Constitution or the New York State Constitution.[54]

The court in *Courtroom Television*, relied on both *Johnson* and *Valente* in determining that New York courts do not interpret section 8 to provide broader rights to the press than the First Amendment.[55] Accordingly, the court held that section 52 of New York's Civil Rights Law survived constitutional challenge.[56] Furthermore, because the court found that the ban on audiovisual broadcasting of trial proceedings did not affect any constitutional rights, it was unnecessary to consider whether the law would pass constitutional muster.[57] Nonetheless, the court stated that the statute would survive under strict scrutiny analysis, reasoning that "the statute is narrowly tailored to serve governmental interests at issue, namely insuring that criminal defendants receive fair trials, that witnesses are forthcoming in their testimony, that the trial court has control of the courtroom and that the integrity of the trial is maintained."[58] Finally, although the press has the same right to attend criminal trials as the public, this right to physical attendance does not encompass the right to televise such proceedings.[59]

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[53] 564 N.E.2d 1046 (N.Y. 1990).
[54] *Id.* at 1047.
[55] *Courtroom Television,* 2005 N.Y. LEXIS 1260, at *13.
[56] *Id.*
[57] *Id.*, at *13 n.5.
[58] *Id.*
[59] *Estes*, 381 U.S. at 540.

Thus, it is clear that the New York State Constitution does not grant broader rights than the First Amendment, with respect to access to trial proceedings. Both the federal courts and the state courts give great consideration to the potentially unfair impact that televising a criminal trial may have on a defendant, in determining whether cameras should be allowed in the courtroom. In addition, presumably to further the government interest in a just trial, both the Federal Constitution and the New York State Constitution assure that the public has a right of access to court proceedings. However, the New York Court of Appeals has held that the state constitution does not ensure that the press has a right to broadcast courtroom proceedings thus upholding the constitutionality of section 52. Additionally, the federal courts have expressed a clear opinion that such a restriction is not a violation of the First Amendment.

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