RICHMOND NEWSPAPERS, INC. v. VIRGINIA (1980)

448 U.S. 555

FIRST AMENDMENT

Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble...

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...

FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FACTS: In March 1976, one Stevenson was indicted for the murder of a hotel manager who had been found stabbed to death on December 2, 1975.

Trial 1: Tried promptly in July 1976, Stevenson was convicted of second-degree murder in the Circuit Court of Hanover County, Va. However, the Virginia Supreme Court reversed the conviction in October 1977, holding that a bloodstained shirt purportedly belonging to Stevenson had been improperly admitted into evidence.

Trial 2: Stevenson was retried in the same court. This second trial ended in a mistrial on May 30, 1978, when a juror asked to be excused after trial had begun and no alternate was available.

Trial 3: A third trial, which began in the same court on June 6, 1978, also ended in a mistrial. It appears that the mistrial may have been declared because a prospective juror had read about Stevenson's previous trials in a newspaper and had told other prospective jurors about the case before the retrial began.

Trial 4: Stevenson was tried in the same court for a fourth time beginning on September 11, 1978. Present in the courtroom when the case was called were appellants Wheeler and McCarthy, reporters for appellant Richmond Newspapers, Inc. Before the trial began, counsel for the defendant moved that it be closed to the public because a family member of the deceased had watched a previous and there was a difficulty in controlling the spread of information in the small community and, desiring not to have a fifth trial, defense counsel sought to limit that possibility through closing the proceedings. The prosecutor stated he had no objection and would leave it to the discretion of the court. The judge granted the defense's request and closed the proceedings to the press and public.

Two reporters with the Richmond Newspapers, Wheeler and McCarthy, who were present when the defense's motion was made, requested that there be a hearing on a motion to vacate the closure, or to overturn the judge's decision to close the proceedings. While the court granted a hearing on the motion to close the proceedings, the court ruled that the hearing was part of the trial and the current rule for the trial was that it was closed to the

press and the public; thus, the reporters were ordered to leave the courtroom for the hearing that they requested, and they complied.

The judge granted the defense's motion for a closed proceeding finding that "if I feel that the rights of the defendant are infringed in any way, [when] he makes the motion to do something and it doesn't completely override all rights of everyone else, then I'm inclined to go along with the defendant's motion."

Counsel for the reporters observed that no evidentiary findings had been made by the court prior to the entry of its closure order and pointed out that the court had failed to consider any other, less drastic measures within its power to ensure a fair trial.

The next day of trial, with the jury excused, defense counsel made a motion that a mistrial be declared in that the prosecution's evidence should be excluded, the judge granted the motion and, after excusing the jury, found the defendant not guilty.

The trial court granted the reporters' motion to intervene in the case as a party who had an interest in the outcome and with that standing, the appellants petitioned the Virginia Supreme Court seeking an appeal from the trial court's closure order. The Virginia Supreme Court denied the petition for appeal finding no reversible error.

The Appellants filed a petition with the United States Supreme Court which granted certiorari, on the grounds that it is reasonably foreseeable that other trials may be closed by other judges without any more showing of need than was presented in this case.

ISSUE: Did the closure of the trial to the press and public violate the 1st amendment or the 6th amendment?

FINDING: Yes. 7-1, the judgment is reversed. MR. JUSTICE POWELL did not take part.

REASONING: MR. CHIEF JUSTICE BURGER announced the judgment of the Court and delivered an opinion, in which MR. JUSTICE WHITE and MR. JUSTICE STEVENS joined.

The narrow question presented in this case is whether the right of the public and press to attend criminal trials is guaranteed under the United States Constitution.

[H]ere for the first time the Court is asked to decide whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without any demonstration that closure is required to protect the defendant's superior right to a fair trial, or that some other overriding consideration requires closure.

From an unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice. This conclusion is hardly novel; without a direct holding on the issue, the Court has voiced its recognition of it in a variety of contexts over the years.

"[W]hile the right to a `public trial' is explicitly guaranteed by the Sixth Amendment only for `criminal prosecutions,' that provision is a reflection of the notion, deeply rooted in the common law, that `justice must satisfy the appearance of justice.'. . . [D]ue process demands appropriate regard for the requirements of a public proceeding in cases of criminal

contempt . . . as it does for all adjudications through the exercise of the judicial power, barring narrowly limited categories of exceptions. . .

The First Amendment, in conjunction with the Fourteenth, prohibits governments from "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." These expressly guaranteed freedoms share a common core purpose of assuring 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 conducted.

"[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti* (1978). Free speech carries with it some freedom to listen. "In a variety of contexts this Court has referred to a First Amendment right to `receive information and ideas.'" *Kleindienst v. Mandel* (1972). What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted.

The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance. People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may "assembl[e] for any lawful purpose," *Hague v. CIO* (1939). A trial courtroom also is a public place where the people generally - and representatives of the media - have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.

The State argues that the Constitution nowhere spells out a guarantee for the right of the public to attend trials, and that accordingly no such right is protected. The possibility that such a contention could be made did not escape the notice of the Constitution's draftsmen; they were concerned that some important rights might be thought disparaged because not specifically guaranteed. It was even argued that because of this danger no Bill of Rights should be adopted. See, e. g., The Federalist No. 84 (A. Hamilton). In a letter to Thomas Jefferson in October 1788, James Madison explained why he, although "in favor of a bill of rights," had "not viewed it in an important light" up to that time: "I conceive that in a certain degree . . . the rights in question are reserved by the manner in which the federal powers are granted." He went on to state that "there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude." 5 Writings of James Madison 271 (G. Hunt ed. 1904).

But arguments such as the State makes have not precluded recognition of important rights not enumerated. Notwithstanding the appropriate caution against reading into the Constitution rights not explicitly defined, the Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees. For example, the rights of association and of privacy, the right to be presumed innocent, and the right to be judged by a standard of proof beyond a doubt in a criminal trial, as well as the right to travel, appear nowhere in the Constitution or Bill of Rights. Yet these important but unarticulated rights have nonetheless been found to share constitutional protection in common with explicit

guarantees. The concerns expressed by Madison and others have thus been resolved; fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.

We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment; 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." *Branzburg v. Hayes* (1972).

Despite the fact that this was the fourth trial of the accused, the trial judge made no findings to support closure; no inquiry was made as to whether alternative solutions would have met the need to ensure fairness; there was no recognition of any right under the Constitution for the public or press to attend the trial. There was no suggestion that any problems with witnesses could not have been dealt with by their exclusion from the courtroom or their sequestration during the trial. Nor is there anything to indicate that sequestration of the jurors would not have guarded against their being subjected to any improper information. All of the alternatives admittedly present difficulties for trial courts, but none of the factors relied on here was beyond the realm of the manageable. Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.

Reversed.

MR. JUSTICE BRENNAN, joined by MR. JUSTICE MARSHALL, concluded that the First Amendment - of itself and as applied to the States through the Fourteenth Amendment - secures the public a right of access to trial proceedings, and that, without more, agreement of the trial judge and the parties cannot constitutionally close a trial to the public.

MR. JUSTICE STEWART concluded that the First and Fourteenth Amendments clearly give the press and the public a right of access to trials, civil as well as criminal; that such right is not absolute, since various considerations may sometimes justify limitations upon the unrestricted presence of spectators in the courtroom; but that in the present case the trial judge apparently gave no recognition to the right of representatives of the press and members of the public to be present at the trial.

MR. JUSTICE BLACKMUN, the right to a public trial is to be found in the Sixth Amendment, concluded, as a secondary position, that the First Amendment must provide some measure of protection for public access to the trial, and that here, by closing the trial, the trial judge abridged these First Amendment interests of the public.

MR. JUSTICE REHNQUIST, dissenting, believed that the Court should defer to the trial court, the original trier of fact and receiver of evidence, when the judge made his decision to close the proceedings, and accuses the Court of taking an arrogant position by interfering.

To MR. JUSTICE REHNQUIST's accusation, MR. JUSTICE BRENNAN responds: As said by Mr. Justice Jackson, concurring in the result in *Brown v. Allen* (1953), "we are not final because we are infallible, but we are infallible only because we are final."