Summary & Outcome

On June 23, 1982, the United States Supreme Court found that a Massachusetts statute that required that the public be excluded from the courtroom during the testimony of minor victims in a sex-offense trial violated the First Amendment. The case arose after Globe Newspaper Co. challenged the Massachusetts statute when it was denied access to a rape trial conducted in the Superior Court for the County of Norfolk. In its decision, the Supreme Court noted that the right of access to criminal trials was afforded protection by the First Amendment because trials had historically been open to the press and public and played a crucial role in the functioning of the judicial process. The Court emphasized that for this constitutional right to be restricted, the State must show that its denial is necessitated by a compelling governmental interest and is narrowly tailored to serve that interest. By applying strict scrutiny, the Court concluded that while the State's interest in protecting minors was compelling, it did not justify a mandatory closure rule since the particular circumstances of the case could affect the significance of the interest. Rather than a blanket closure rule, the Court deemed that the interest could be served by requiring the trial court to evaluate the need for closure on a case-by-case basis. Additionally, the Court determined that there was no evidence the rule led to an increase in the number of minor sex victims coming forward.

Facts

The case began when the appellant, Globe Newspaper Co. (Globe), unsuccessfully tried to gain access to a trial conducted in the Superior Court for the County of Norfolk, Commonwealth of Massachusetts, where the criminal defendant was charged with the rape of three minors girls.

In April 1979, during the preliminary motions hearings, the trial judge ordered the courtroom closed. Before the trial began, Globe presented a motion requesting the Court to revoke the closure order and asked for permission to intervene and assert its right to access the trial. However, relying on Section 16A of Chapter 278 of Massachusetts General Laws (West 1981), the trial court denied Globe's motions and prohibited the press and the general public from the courtroom. After the Globe objected to the exclusion order, the Court rejected the request for relief. The Globe then unsuccessfully appealed to the Supreme Judicial Court, which while agreeing that s. 16A did not demand an exclusion of press, still dismissed the appeal. It held that § 16A was designed "to encourage young victims of sexual offenses to come forward; once they have come forward, the statute is designed to preserve their ability to testify by protecting them from undue psychological harm at trial." [p.600].

Subsequently, Globe then appealed to the Supreme Court of the United States.

Decision Overview

Justice William J. Brennan delivered the opinion of the Court. The main issue for the Court to analyze was whether Section 16A of Chapter 278 of Massachusetts General Laws (West 1981), as construed by the Massachusetts Supreme Judicial Court, violated the First Amendment.

The Court began its analysis of the case by remembering that in the decision in the case of Richmond Newspapers, Inc. v. Virginia, it had firmly established that both the press and the general public have the constitutional right to access criminal trials. The Court clarified that while the First Amendment did not explicitly mention the right to access criminal trials, it was broad enough to accommodate such a right, the protection of which was necessary to enjoy other First Amendment rights.

The Court then explained that, as voiced in the case of Richmond Newspapers, Inc. v. Virginia, there were two main features of the criminal justice system that jointly explained why the First Amendment adequately affords a right of access to criminal trial protection. On the one hand, the Court noted that criminal trials both in the US and England had historically been open to the press and general public. On the other hand, the Court remarked that permitting public access to criminal trials improved the quality of the fact-finding process, thus promoting an appearance of fairness and heightened public respect for the judicial process. For the press and public to be banned, the Court noted that "the State must show that denial of such right is necessitated by a compelling governmental interest and is narrowly tailored to serve that interest" [p.607].

The Court explained that the State interests asserted to support § 16A were, on the one hand, to protect minor victims of sex crimes from additional trauma and embarrassment and, on the other, to encourage victims to testify.

Regarding the first interest, the Court deemed that protection of the physical and psychological well-being of a minor was a convincing reason. Yet, the Court considered it fell short of justifying a mandatory closure rule since it was clear that the case's circumstances could affect the interest's significance. In the Court's view, trial courts should determine whether the closure is necessary to protect a minor victim's welfare on a case-by-case basis. However, the Court considered that Section 16A required closure regardless of whether the victim sought the exclusion of the press and general public and if they would suffer injury by their presence. The Court underscored that in the instant case, the victims' names were already public knowledge, and the record indicated that they were willing to testify regardless of the presence of the press.

Concerning the second interest, the Court believed that Commonwealth failed to provide empirical support for the claim that Section 16A increased the number of victims coming forward and cooperating with state authorities. The Court noted that although Section 16A prohibited the press and general public from the courtroom during the testimony of minor sex victims, they could access the transcript and any other possible sources that could account for the testimonies. Thus, the Court concluded that if the Commonwealth's interest in encouraging minor victims to come forward relied on keeping their testimony secret, Section 16A hardly protected that interest effectively.

In light of the reasons mentioned above, the Court found that Section 16A, as construed by the Massachusetts Supreme Judicial Court, violated the First Amendment and, thus, ordered the reversal of the judgment.

Dissenting or Concurring Opinions:

Justice Sandra Day O'Connor presented a concurring opinion, emphasizing that "neither Richmond Newspapers nor the Court's decision today were to carry any implications outside the context of criminal trials" [p.611].

Justice Warren E. Burger, joined by Justice William H. Rehnquist, dissented from the majority's opinion. They contended that, contrary to the majority's claim, there was a historical exclusion of the public from trials involving sexual assaults against minors. Further, they deemed that Section 16A passed constitutional scrutiny due to its minimal effect on the First amendment. Specifically, they held that the interest in protecting the victimized child was compelling enough to meet the test set out in Richmond Newspapers, supra. According to Justice Burger, "the law need not be precisely tailored so long as the state's interest overrides the law's impact on First Amendment rights and the restrictions imposed further that interest" [p. 616]. The law was put in place to protect minors from immense psychological damage that a public trial may cause, and the underreporting of sexual offenses as a result. Justice Burger condemned the reckless disregard for these ground realities and the assurance that such a statute provided.

According to Justice Paul Stevens, in his dissenting opinion, the question of whether the "Court should entertain a facial attack on a statute that bears on the right of access cannot be answered simply by noting that the right has its source in the First Amendment" [p.621]. In Justice Stevens's view, since "statutes that bear on this right of access do not deter protected activity in the way that other laws sometimes interfere with the right of expression, we should follow the norm of reviewing these statutes as applied rather than on their face" [p. 621].