U.S. Supreme Court

Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978)

Landmark Communications, Inc. v. Virginia

No. 76-1450

Argued January 11, 1978

Decided May 1, 1978

435 U.S. 829

Syllabus

A Virginia statute makes it a crime to divulge information regarding proceedings before a state judicial review commission that is authorized to hear complaints about judges' disability or misconduct. For printing in its newspaper an article accurately reporting on a pending inquiry by the commission and identifying the judge whose conduct was being investigated, appellant publisher was convicted of violating the statute. Rejecting appellant's contention that the statute violated the First Amendment as made applicable to the States by the Fourteenth, the Virginia Supreme Court affirmed.

Held: The First Amendment does not permit the criminal punishment of third persons who are strangers to proceedings before such a commission for divulging or publishing truthful information regarding confidential proceedings of the commission. Pp. 435 U. S. 837-845.

(a) A major purpose of the First Amendment is to protect the free discussion of governmental affairs, which includes discussion of the operations of the courts and judicial conduct, and the article published by appellant's newspaper served the interests of public scrutiny of such matters. Pp. 435 U. S. 838-839.

(b) The question is not whether the confidentiality of commission proceedings serves legitimate state interests, but whether those interests are sufficient to justify encroaching on First Amendment guarantees that the imposition of criminal sanctions entails. Injury to the reputation of judges or the institutional reputation of courts is not sufficient to justify "repressing speech that would otherwise be free." *New York Times Co. v. Sullivan,* 376 U. S. 254, 376 U. S. 272-273. Pp. 435 U. S. 839-842.

(c) The mere fact that the legislature found a clear and present danger to the orderly administration of justice justifying enactment of the challenged statute did not preclude the necessity of proof that such danger existed. This Court has consistently rejected the argument that out-of-court comments on pending cases or grand jury investigations constituted a clear and present danger to the administration of justice. *See Bridges v. California,* 314 U. S. 252; *Pennekamp v. Florida,* 328 U. S. 331; *Craig v. Harney,* 331 U. S. 367; *Wood v. Georgia,* 370 U. S. 375. If the "clear and present danger" test could not be satisfied in those cases, *a fortiori* it could not be satisfied here. Pp. 435 U. S. 842-845.

Page 435 U. S. 830

(d) Much of the risk to the orderly administration of justice can be eliminated through careful internal procedures to protect the confidentiality of commission proceedings. P. 435 U. S. 845.

217 Va. 699, 233 S.E.2d 120, reversed and remanded.

(Απόσπασμα - Α&Β)

A

In *Mills v. Alabama,* 384 U. S. 214, 384 U. S. 218 (1966), this Court observed:

"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. [Footnote 11]"

Although

Page 435 U. S. 839

it is assumed that judges will ignore the public clamor or media reports and editorials in reaching their decisions, and, by tradition, will not respond to public commentary, the law gives "[j]udges as persons, or courts as institutions . . . no greater immunity from criticism than other persons or institutions." *Bridges v. California,* 314 U. S. 252, 314 U. S. 289 (1941) (Frankfurter, J., dissenting). The operations of the courts and the judicial conduct of judges are matters of utmost public concern.

"A responsible press has always been regarded as the handmaiden of effective judicial administration. . . . Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials, but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism."

Sheppard v. Maxwell, 384 U. S. 333, 384 U. S. 350 (1966). *Cf. Cox Broadcasting Corp. v. Cohn,* 420 U. S. 469, 420 U. S. 492 (1975). The operation of the Virginia Commission, no less than the operation of the judicial system itself, is a matter of public interest, necessarily engaging the attention of the news media. The article published by Landmark provided

accurate factual information about a legislatively authorized inquiry pending before the Judicial Inquiry and Review Commission, and, in so doing, clearly served those interests in public scrutiny and discussion of governmental affairs which the First Amendment was adopted to protect. *See New York Times Co. v. Sullivan, supra* at 376 U. S. 269-270.

B

The Commonwealth concedes that, "[w]ithout question, the First Amendment seeks to protect the freedom of the press

Page 435 U. S. 840

to report and to criticize judicial conduct," Brief for Appellee 17, but it argues that such protection does not extend to the publication of information "which by Constitutional mandate is to be confidential." *Ibid.* Our recent decision in *Cox Broadcasting Corp. v. Cohn, supra,* is relied upon to support this interpretation of the scope of the freedom of speech and press guarantees. As we read *Cox,* it does not provide the answer to the question now confronting us. Our holding there was that a civil action against a television station for breach of privacy could not be maintained consistently with the First Amendment when the station had broadcast only information which was already in the public domain.

"At the very least, the First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records."

420 U.S. at 420 U. S. 496. The broader question -- whether the publication of truthful information withheld by law from the public domain is similarly privileged -- was not reached, and indeed was explicitly reserved in *Cox. Id.* at 420 U. S. 497 n. 27. We need not address all the implications of that question here, but only whether, in the circumstances of this case, Landmark's publication is protected by the First Amendment.

The Commonwealth also focuses on what it perceives to be the pernicious effects of public discussion of Commission proceedings to support its argument. It contends that the public interest is not served by discussion of unfounded allegations of misconduct which defames honest judges and serves only to demean the administration of justice. The functioning of the Commission itself is also claimed to be impeded by premature disclosure of the complainant, witnesses, and the judge under investigation. Criminal sanctions minimize these harmful consequences, according to the Commonwealth, by ensuring that the guarantee of confidentiality is more than an empty promise.

Page 435 U. S. 841

It can be assumed for purposes of decision that confidentiality of Commission proceedings serves legitimate state interests. The question, however, is whether these interests are sufficient to justify the encroachment on First Amendment guarantees which the imposition of criminal sanctions entails with respect to nonparticipants such as Landmark. The Commonwealth has offered little more than assertion and conjecture to support its claim that without criminal sanctions the objectives of the statutory scheme would be seriously undermined. While not dispositive, we note that more than 40 States having similar commissions have not found it necessary to enforce confidentiality by us of criminal sanctions against nonparticipants. [Footnote 12]

Moreover, neither the Commonwealth's interest in protecting the reputation of its judges nor its interest in maintaining the institutional integrity of its courts is sufficient to justify the subsequent punishment of speech at issue here, even on the assumption that criminal sanctions do, in fact, enhance the guarantee of confidentiality. Admittedly, the Commonwealth has an interest in protecting the good repute of its judges, like that of all other public officials. Our prior cases have firmly established, however, that injury to official reputation is an insufficient

Page 435 U. S. 842

reason "for repressing speech that would otherwise be free." *New York Times Co. v. Sullivan*, 376 U.S. at 376 U. S. 272-273. *See also Garrison v. Louisiana*, 379 U. S. 64, 379 U. S. 67 (1964). The remaining interest sought to be protected, the institutional reputation of the courts, is entitled to no greater weight in the constitutional scales. *See New York Times Co. v. Sullivan, supra*. As Mr. Justice Black observed in *Bridges v. California*, 314 U.S. at 314 U. S. 270-271:

"The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. . . . [A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Mr. Justice Frankfurter, in his dissent in *Bridges*, agreed that speech cannot be punished when the purpose is simply

"to protect the court as a mystical entity or the judges as individuals or as anointed priests set apart from the community and spared the criticism to which, in a democracy, other public servants are exposed."

Id. at 314 U. S. 291-292.

The Commonwealth has provided no sufficient reason for disregarding these well established principles. We find them controlling and, on this record, dispositive.