

THE NEW YORK TIMES LOSES IN ITS EFFORTS TO UNSEAL RECORD IN HARVEY WEINSTEIN PROSECUTION

Hodgson Russ Media Law & First Amendment Alert
June 5, 2019

A New York appeals court has denied press access to the record of certain pre-trial proceedings and documents in the prosecution against Hollywood mogul Harvey Weinstein.

Together with other news organizations, the New York Times sought a court order compelling a Supreme Court Justice to unseal the record in the highly publicized criminal proceeding involving the famous Hollywood producer. See *In re New York Times Company, et al. v. Hon. James M. Burke, etc. et al.*, 2019 WL 2127383. Specifically, the press wanted access to the *Molineux/Sandoval* hearing transcript and related exhibits. A *Molineux/Sandoval* hearing addresses the admissibility of prior uncharged crimes by the defendant in a criminal proceeding. In most circumstances, such evidence is deemed not admissible because of its potential prejudicial effect on jurors.

By unanimous decision, the Appellate Division for the First Department denied the collective petitioners' request. In a short but concise decision, the Court noted that the public and the press enjoy only a qualified right of access to a criminal trial under the First Amendment, which right can be restricted "where courtroom closure is necessitated by a compelling state interest, and where the closure is narrowly tailored to serve that interest."

Since the right to an impartial jury falls within the purview of a compelling governmental interest, criminal proceedings cannot be closed unless the court makes specific findings on the record. This appellate court did just that when it noted that:

- (a) allegations of felonious sexual misconduct were likely to be "prejudicial and inflammatory;"
- (b) "some or all of those allegations might already have been determined to be inadmissible at trial, or might not even be offered at trial even if found potentially admissible;" and
- (c) the prosecution stated that some of the information has not yet been made available to the public.

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Noting its agreement with the motion court, the Appellate Court held that sealing the documents involved in the pretrial hearing was “the only way to prevent tainting the jury pool with such inadmissible, prejudicial information” in a case receiving what it describes as “worldwide media scrutiny.”

Takeaway: Although the right of public access to trials and their records in New York is strong, it has its limits. This is especially true with regard to information involving unproven allegations, which may very well be inadmissible at trial and are likely to taint a jury pool if publicly reported.

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