

Tennessee Court Rejects Effort to Limit Anonymous

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The Criminal Court for Knox County, Tennessee recently denied motions to prohibit or limit anonymous internet commentary about a capital murder proceeding. The court's order denying the motion to restrict media coverage is linked [here](#).

We have previously reported on the conflict between the First Amendment rights of the media to obtain access to or to cover criminal proceedings and the right of criminal defendants to receive a fair trial. We have also reported on the First Amendment right to engage in anonymous speech and on prior restraints on media coverage. This case represents an interesting confluence of these three areas.

As reported by the Knoxville News Sentinel, four defendants have been charged in the deaths of two people. Defendants' counsel sought to prohibit or restrict anonymous online comments about the criminal proceeding that are posted on websites published by local newspapers and broadcast outlets. The Knoxville News Sentinel and WBIR-TV, Knoxville, Tennessee, both moved to intervene in the case and oppose the defendants' motions.

To resolve the conflict, the Knox County Criminal Court balanced the well established First Amendment interests in anonymous speech against the right of the criminally accused to receive a fair trial. (See pages 6-7 of the order and [Doe v. 2TheMart.com Inc.](#), 140 F. Supp. 2d 1088, 1092-93 (W.D. Wash. 2001), for more detailed discussion of the importance of anonymous speech in establishing our government.) The court noted that prior restraints on speech have repeatedly been struck down, even in cases involving the right to receive a fair trial.

The Knox County Criminal Court used the familiar three-part test from [Nebraska Press Association v. Stuart](#), 427 U.S. 539 (1976), to determine whether, in this case, a prior restraint on protected speech would be justified. When balancing the First Amendment rights of the media and the Sixth Amendment rights of the accused, the court must determine (1) the nature and extent of pretrial publicity, (2) whether alternative measures would be likely to mitigate the effects of unrestrained pretrial publicity, and (3) how effectively a restraining order would operate to prevent the threatened danger. The court found that the balance weighed against entry of a prior restraint:

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In this case, the publicity has been extensive, detailed, and arguably misleading at times from a legal perspective. The relief sought currently is not the complete bar of media coverage of the proceedings, but rather a bar to the sharing of ideas between citizens who read or listen to the local media reports concerning this case, who wish to make anonymous public comment on the same in the media internet forums. This Court has already granted alternative measures to mitigate the effects of unrestrained pretrial publicity by granting a change of venire to those defendants who have made the request; therefore, the juries who will hear and decide the charges will not be from the local media coverage area. The relief sought also would not necessarily effectively operate to prevent the threatened danger. Counsel asserts that the restraint is necessary to ensure the effective representation of the defendants. Only two media outlets intervened in these proceedings. The internet is not restricted to use by the media alone. Private citizens have access to and utilize the internet everyday to freely discuss and exchange ideas whether on the internet forums of the two media outlets or otherwise.

Considering all the factors, this Court cannot find that disabling the internet forums of the media internet sites would be an appropriate restraint.

The court held that as long as anonymous commenters are not engaging in unlawful conduct (for example, posting defamatory content), “they should be free to anonymously participate in online forums.”

Interestingly, one of the defendants in the Tennessee case raised the right of the accused to receive effective assistance of counsel as a basis for the limitation of First Amendment rights. The attorney of this defendant evidently felt the online commentary posed a threat to the attorney’s safety and asked to withdraw from the case if the court did not limit the online commentary. Ultimately, the court determined that the speech “did not rise to a level which would require allowing counsel to withdraw at this time.”