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Publication of Courtroom Proceedings by Television, Photography and Radio

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providing for the repair of sidewalks.³¹ The reason given was that the absence of sidewalks or the presence of defective sidewalks may be a serious public inconvenience, if not a menace to life and limb, and therefore a municipality may be clothed with power to build a walk or repair an existing walk at once without notice to landowners. This case went to the extent of saying that in such a situation the act of the municipality is really an exercise of the police power.

A third reason why the rules concerning notice in tax cases stand apart from the rules concerning notice in other cases was suggested by the Court in the *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.* case.³² The Court suggested that owners of property who must file schedules showing their taxable property with a tax assessment board, know that they have a tax assessment pending and are bound to take notice of the time and place fixed by a statute for a meeting of the tax assessment board for the purpose of making assessments as much so as parties who have a case pending in court are bound to take notice of a statute fixing the time when the term opens for the disposition of cases, and that no personal notification is necessary to meet the requirement of due process. Similarly, abutting lot owners where special improvements have been made must as reasonable persons know that special assessment proceedings are pending and notice by publication of the time and place of assessment is sufficient. The class of taxpayers being dealt with in special assessment cases are landowners, and they certainly should realize that street improvements have to be paid for and that the common method of paying for them is by special assessment.

The rules relating to notice in tax assessment cases stand clearly and distinctly apart from such rules in other types of cases. Thus, the Wisconsin Court rightly refused to apply a doctrine concerning notice in bankruptcy cases to a tax assessment case.

HARRY G. HOLZ

Publication of Court Room Proceedings By Television, Photography and Radio — The Supreme Court of Colorado recently approved the finding of a court appointed referee that Canon 35 of the CANONS OF JUDICIAL ETHICS should be revised. After a formal hearing, the referee recommended that with certain provisos the judge should have the discretion to permit the use of cameras, radio, and television instruments in court room proceedings. The provisos would prohibit photographing or broadcasting the likeness or testimony of witnesses or of jurors if such parties express objections.

³¹ *Lisbon Avenue Land Co. v. Town of Lake*, 134 Wis. 479, 113 N.W. 1099 (1907).

³² *Supra*, n. 17.

In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics,
—Col.—296 P. 2d 465 (1956).

Canon 35 the the CANONS OF JUDICIAL ETHICS reads as follows:

“Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness in giving his testimony, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.”¹

Until the present hearing was held, Canon 35 was in force in Colorado. It is found in the Rules of Civil Procedure for Courts of Record in Colorado.²

Canon 35 prescribes a blanket exclusion from the court room of press photographers, radio and television operators. It assumes that their presence will interfere with and disrupt the dignity and decorum of the court room in every case. The Colorado justice who acted as referee in the present case did not share such viewpoint.

The problem presented in the hearing is not a new one to the courts. Always the endeavor must be to balance the freedom of the press against a fair administration of justice and preservation of the dignity and decorum of the court room. The Supreme Court of the United States has frequently held that no freedoms are absolute,³ and when two rights are in conflict some balance must be obtained to prevent an unnecessary infringement by one freedom upon the other right or freedom.

It has been established that photography, radio, and television are within the realm of the constitutional guarantee of freedom of the press.⁴ The accused has been given a right to a public trial. It has been held a violation of the right to a public trial if the press is not allowed in the court room.⁵ In *Lee v. Brooklyn Union Publishing Co.*⁶ the court stated:

“The reason for the privileged character of reports of judicial proceedings is the public interest in having the proceedings made public in order to give greater security in the proper administration of justice.”

Equally well established is the fact that the trial court has the right and duty to see that the judicial proceeding is conducted in an orderly

¹ Drinker, LEGAL ETHICS, Appendix D, p. 336 (1953).

² Vol. 1, COLORADO REVISED STATUTES, Appendix B (1953).

³ *People v. Beauharnis*, 72 S.Ct. 725, 343 U.S. 250 (1952); *U.S. v. Orman*, 207 F.2d 148 (3d Cir. 1953).

⁴ *Rumley v. U.S.*, 197 F.2d 166 (D.C. Cir. 1952) *Lovell v. City of Griffin Ga.*, 58 S.Ct. 666, 303 U.S. 444 (1938).

⁵ *Craig v. Harney*, 67 S.Ct. 1249, 331 U.S. 367 (1947).

⁶ *Lee v. Brooklyn Pub. Co.*, 209 N.Y., 245, 103 N.E. 155 (1913).

and dignified manner, and that proper decorum is maintained in the court room while a trial is under way.⁷

The hearing judge concluded that with the aid of modern devices in the fields of photography, radio and television, court room proceedings can be publicized in such manner without the slightest amount of disturbance. He recognized that: photographs may be obtained without flashbulbs or excessive equipment; television cameras can be placed outside the court room with only the lens appearing through the wall or through a closed booth in the rear of the court room; ordinary lighting of the court room is sufficient; microphones could be placed inconspicuously so as not to distract a witness who is testifying.

Protection against non-use or misuse of modern equipment is found in the discretionary power to prohibit which is left in the hands of the judge.

The provisos required by the hearing judge appear to give adequate protection to witnesses and jurors who might in some manner be so disturbed by court room photographing, broadcasting or televising that justice would be affected.

The Colorado attitude will certainly give wider publicity to the defendant and his predicament. Possibly the defendant can complain, but Canon 35 does not seem primarily designed to protect the privacy of a defendant.

The qualifications of Canon 35 which Colorado is willing to sanction do not seem likely to detract from the dignity of court proceedings, distract witnesses and jurors or create misconceptions in the mind of the public.

PAUL LUCKE

Constitutional Law — Discharge of Public School Teacher Because of a Refusal to Testify — On September 24, 1952, the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate held open hearings in New York City. The investigation, conducted on a national scale, related to subversive influences in American education. The appellant, Harry Slochower, a member of the faculty of Brooklyn College, stated before the Committee that he was willing to answer all questions relating to his associations and political beliefs since 1941. He did, however, refuse to testify concerning his association memberships in 1940 and 1941 on the ground that his answers might tend to incriminate him. As a result he was suspended from his teaching position and three days later his position was declared vacant "pursuant to the provisions of Section 903 of the NEW YORK CITY CHARTER." This section provides, in

⁷ *In re Greene*, 160 F.2d 517 (3d Cir. 1947).