

April 1963

President's Page

George G. Bailey

West Virginia Bar Association

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

Recommended Citation

George G. Bailey, *President's Page*, 65 W. Va. L. Rev. (1963).

Available at: <https://researchrepository.wvu.edu/wvlr/vol65/iss3/3>

This The West Virginia Bar Association is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

President's Page

For several years officials of Bar Associations and lawyers in general have been cognizant of increasing pressures fostered by the news media of the country to secure an amendment or repeal of Judicial Canon 35. While this pressure has not been severe in West Virginia, several of the State's newspapers have engaged in editorial comment on this subject from time to time. Many West Virginia lawyers read with approval the discussion by Arch Cantrall about "liberalizing" the provisions of this canon. See, *A Country Lawyer Looks At Canon 35*, American Bar Association Journal, August, 1961.

On February 5th of this year the House of Delegates of The American Bar Association approved a final report of a Special Study Committee which recommended the retention of Judicial Canon 35. Thus Canon 35 continues its recommendation to the courts that they should not permit photography in the courtroom or the broadcasting or televising of court proceedings. The broadcasting or televising of naturalization proceedings, under supervision of the court, continues to receive approval of the Canon.

The Bar was concerned that this action might provoke vigorous protest from the news media, but even the nation's press appears to have reacted calmly. In particular, The New York Times, by editorial, gave its unqualified approval.

West Virginia lawyers would do well to be advised on this matter in the event they are called upon to discuss the issue or comment publicly thereon. While the report of the Special Study Committee has been mildly publicized, the answers of the Committee to the principal arguments advanced by spokesmen of national news media organizations are briefly summarized. Some of these claims and the Committee's answers are:

(1) The claim that Canon 35 discriminates against electronic media in favor of the press is answered by the fact that both radio and television reporters have exactly the same rights as a newspaper reporter—to come to court, observe proceedings and report observations.

(2) In answer to the claim that the Canon restricts freedom of the press and the public's right to know, the Committee observed that the right of public trial is the right of the defendant, is a protection for the accused and does not require throwing open the courtroom to satisfy the curiosity of a vast unseen audience.

(3) The contention that the decision concerning photography and broadcasting should be made by the individual judge is refuted by the statement that the right to a fair trial does not belong to the trial judge to dispense or curtail as he sees fit. Individual judges should be protected from pressure and from having to make a determination in each case.

(4) While acknowledging the claim that technical advances have been made in photography and broadcasting, the Committee denied that this fact rendered Canon 35 obsolete and stated that the presence of photographic and sound devices, with operators working under competitive pressures, would cause distractions and be disruptive of the judicial atmosphere in which trials should be conducted.

(5) In reply to the media argument that Canon 35 is legislation beyond the authority of a professional association, it was declared that canons of judicial ethics are merely recommended standards of judicial conduct implemented by voluntary action of the courts and bar associations and that acceptance by judges and lawyers is a voluntary choice and not compulsory.

The conclusions of the Committee are warranted if they forestall abuses in a small minority of cases. Justice for all is the object of the canons and not merely justice in a majority of cases. While it is conceded that under ideal circumstances and with ideal equipment operated by competent and discreet technicians, near noiseless photography and broadcasting is possible, yet noise and confusion are not the sole or principal objections. Trial participants become actors. If unwilling actors, their vital legal rights may be violated. Willing actors are even more dangerous because they may be concerned with their effectiveness as actors rather than compliance with their oaths as witnesses.

George G. Bailey