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Constitutional Law -- Freedom of Speech as Including the Right to Be Heard Through the Use of Amplifying Devices

done so by reason of numerous decisions[7] including one leading case[8] in which discrimination against aliens with respect to hunting wild game was permitted. It is submitted that the requisite public interest did exist in this situation but was declared non-existent so as to prevent California from invading a field of exclusive federal power, the regulation of alien admission and exclusion.[9] Approval of this legislation would be a denial to this fisherman of the right to work for a living in his chosen occupation, which is equivalent to denying him the right to remain in that state.[10] When viewed from the perspective that the requisite public interest will not be found to permit discriminatory legislation when to so find would allow state legislation to invade a field of exclusive federal power, the seemingly inconsistent cases previously mentioned may be reconciled with this decision.[11]

There seems little doubt that such decisions as that in the instant case, which refuse to uphold state legislation infringing upon federal power, regardless of the public interest involved, are correct, for to hold otherwise could conceivably permit the states to legislate a delegated federal power out of existence.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH AS INCLUDING THE RIGHT TO BE HEARD THROUGH THE USE OF AMPLIFYING DEVICES

A municipal ordinance prohibited the use of amplifying devices in the streets and other public places without prior permission from the chief of police. Defendant, a Jehovah's Witness, after giving four amplified lectures in a public park, was denied further permission. Nevertheless, he continued to give such lectures, and was convicted and sentenced under the ordinance. On an appeal from an affirmance of the conviction by the New York Court of Appeals, *held*, that the ordinance is unconstitutional on its face, because it places the *right to be heard* in the uncontrolled discretion of the chief of police, thus violating the guarantee of free speech as protected by the Fourteenth Amendment. *Saia v. People of New York*, 68 Sup. Ct. 1148 (1948) (four Justices dissenting).

It would appear that the Court has expanded the right of free speech explicitly to include the *right to be heard* [1] through amplification under proper regulation. The term "right to be heard" is an articulation of what the courts

7. See Note, 39 A. L. R. 350 (1925).
8. Patsone v. Pennsylvania, 232 U. S. 138 (1914).
9. Fong Yue Ting v. United States, 149 U. S. 698 (1893).
10. See note 5 *supra*.
11. See notes 7 and 8 *supra*.

1. Saia v. People of New York, *supra* at 1150.

seem to have applied in fact in the past without identifying it as a correlative right to the right of free speech.[2]

The application of this right may be found in a number of labor cases. An examination of these cases reveals that the right of free speech of an employer includes the right to disseminate his views to his employees.[3] Similarly, employees may make known to the public the facts of a labor dispute.[4] Employees may also use all lawful propaganda to enlarge membership in their union.[5] The right to discuss is included in the right to speak.[6] The dissemination of the facts of a labor dispute is within the constitutional guarantee of liberty to discuss publicly important matters without previous restraint or fear of punishment.[7] The rights of the employer are not unlimited, as he may not use the right of free speech to coerce,[8] nor to discourage membership in a union.[9] The right to form and express opinion is of little value if communication to those immediately concerned is made impossible.[10]

The application of this principle is not limited to labor cases. A person has the right to accost another on a public street in an attempt to convert an unwilling listener, if within the bounds of peace and order.[11] Shopkeepers in doorways are within their rights when endeavoring to persuade passers-by to purchase their wares, although annoying to some;[12] and even a stranger has the right to knock on a door and offer to present his views on religion.[13]

To have true freedom of speech one must have comprehending listeners.[14] The foregoing cases have protected the right to reach this audience. The principal case further protects the right to be heard in that it allows the speaker to use mechanical means to reach an even greater audience.

HABEAS CORPUS IN FEDERAL DISTRICT COURTS—JURISDICTION OVER PARTIES

One hundred and twenty Germans, confined at Ellis Island, for deportation to Germany, filed, in the District Court for the District of Columbia, a

2. *See* Murdock v. Pennsylvania, 319 U. S. 105 (1943). (The specific words "right to be heard" can be found in the dissenting opinion at page 123.)
3. N. L. R. B. v. J. L. Brandeis & Sons, 145 F. 2d 556 (C. C. A. 8th 1944).
4. Schuster v. International Association of Machinists, Auto Mechanics Lodge No. 70, 293 Ill. App. 177, 12 N. E. 2d 50 (1937).
5. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 (1921).
6. Thomas v. Collins, Sheriff, 323 U. S. 516 (1945).
7. Thornhill v. Alabama, 310 U. S. 88 (1940); see SYNOPSIS, 2 MIAMI L. Q. 309 (1948).
8. N. L. R. B. v. Glenn L. Martin-Nebraska Co., 141 F. 2d 371 (C. C. A. 8th 1943).
9. N. L. R. B. v. Crown Can Co., 138 F. 2d 263 (C. C. A. 8th 1943).
10. N. L. R. B. v. Ford Motor Co., 114 F. 2d 905 (C. C. A. 6th 1940).
11. Cantwell v. Connecticut, 310 U. S. 296 (1940).
12. McKay Jewellers, Inc. v. Bowron, 19 Cal. 2d 595, 122 P. 2d 543 (1942).
13. Martin v. City of Struthers, 319 U. S. 141 (1943).
14. OTTO, *Speech and Freedom of Speech*, in FREEDOM AND EXPERIENCE 83 (edited by Hook and Konvitz, 1947).