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ADDRESS

BY

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At this stage in our enlightened history, no defense would seem to be necessary for securing the liberty of the press against those who would seek to impair or destroy it. We have learned from the experience of others that without a free, courageous, and vigilant press, our system of government cannot function. Fraud, corruption, and dishonesty in and out of government would flourish undetected. Injustice and indifference to the rights of the accused would thrive in the courts unchecked. Poverty, slums, and other evil conditions would go unnoticed and uncorrected. For these reasons, it has been said that next to a fair trial by jury, freedom of the press is the most precious right which the people possess under our Bill of Rights.

We need not debate this point with those who would rank first in the order of priority, freedom of speech, freedom of religion, the right to privacy or any other freedom guaranteed by the Bill of Rights. It would be as fruitless to do so as to debate whether the chicken or the egg came first--or whether the man with the pad and pencil has a more important role in the press than the man with the clicking camera. By good fortune I need not furnish an opinion on this last question today. What alternative would I have in the face of the oft quoted maxim that one picture is worth a thousand words! Instead I should like to trace the remarkable growth of photography in the press, its overwhelming influence upon the people, and its equally great responsibility to them.

Unlike the printed word whose history and heritage is said to have roots running back at least to the Sixteenth Century, the press photographer by comparison is not even in his anecdotage--he is probably less than 100 years old.

Prior to 1860, the newspapers used woodcuts and other like forms of illustration for pictorial journalism. Photographs could not be used in newspapers because there was no practical method for transferring light and shade in the printing process. That we have an excellent pictorial record of the Civil War is mainly the work of the pioneer efforts of Matthew Brady, star photographer of his day.

Recognizing the importance of pictures, President Lincoln granted permission to Brady to make a photographic record of the war. His was a photographer's paradise. Since he had the field virtually to himself, every picture was a "scoop." Brady's little black wagon, which was a portable darkroom, was soon a familiar sight on all the active war fronts. The soldiers were not too happy to see him. They knew the shooting would start as soon as he arrived.

In the period between 1870 and 1900, many mechanical inventions contributed to the rapid advance of the photographic progress. In 1886, Frederick E. Ives, head of the photo-engraving laboratory at Cornell University perfected a so-called half-tone method of reproducing photographs in the printing process. But it was not until 1897 that the half-tone process was sufficiently perfected to be used by the New York Tribune on its rotary presses.

Subsequently, to satisfy the pressures for even quicker printing of pictures, photo-engraving plates were installed in the larger newspaper plants. It was not long before the thousands of artists employed by newspapers as illustrators were being displaced by the photographer who carried his heavy equipment and flash powder on assignments. At first the newspaper writers derided the new techniques of pictorial journalism. They deplored the good space that was wasted on pictures. But the progress of pictorial journalism could not be halted--it was on its way to making its niche in the newspaper world. In the early 1930's, pictures began to be sent from state to state by the new wirephoto transmission system. During World War II, the newspapers called for more and more photo coverage than ever before. We were now fully embarked in a picture age. Even the rather staid New York Times tried to keep in step with it.

The fraternity of photographers also expanded quickly. As may be expected during the early period of fast growth in any field, the ethics of the profession did not always keep pace with the novel and astute techniques adopted by some of its members.

Some of you may still remember the publicity attending the murder trial of Mrs. Ruth Snyder and her sweetheart, Judd Gray. At the time of Mrs. Snyder's electrocution, all pictures were forbidden. But a photographer of a New York tabloid strapped a tiny camera to his ankle and took the picture just as the electric current was turned on. This gruesome shot on the front page grossed a sale of one million additional copies of the paper.

While an incident of this kind increased the temporary circulation of a single newspaper, it did not help the reputation of newspaper photographers generally. In addition, graphic and sensational publicity in the 1920's and 1930's of other trials such as the Hauptmann Kidnapping case raised a torrent of criticism from the public. Bench and bar were almost unanimous that regulation of the courtroom photographer was needed to achieve the impartial administration of justice. Finally, in 1935, to restore decorum and dignity to trials in our courts and assure fairness to the accused, the American Bar Association drafted Canon 35.

This Rule forbids the taking of photographs in the courtroom during the progress of judicial proceedings. It has been adopted officially in fourteen states, and by bar associations in at least ten other states. The Rule is also embodied in the Rules of Criminal Procedure adopted by the Supreme Court for use in all federal proceedings. It is intended to prevent cameras from diverting the attention of judge and jury to the case, to permit lawyers to carry out faithfully their obligation to the accused, and to enable witnesses to discharge their obligations as citizens. These are ingredients of a fair public trial--to dilute them would render a trial and justice a mockery and delusion.

The Press Photographers Association urges that the severity of Canon 35 should now be relaxed; that the Rule had its roots in the brash photography in vogue more than twenty years ago when flashbulbs were used; and that there is no reason to continue the

Rule at this time because the techniques of photography have progressed to such a fine point that pictures can be taken quietly and unobtrusively without detracting from the dignity of the proceedings or impairing the rights of the accused.

It is true that there is a vast difference between setting off a blast of flash powder in use at the time Canon 35 was adopted and the small, silent camera which would now be used. By the way of illustration to prove their point, photographers have taken many courtroom pictures without notice by anyone, merely using a small 35-millimeter camera concealed behind a necktie with the lens sticking through the shirt.

In recent years, some state judges have experimented in permitting photographs to be taken in the courtroom under conditions which would tend to avoid disturbance and assure decorum. Apparently, there are federal judges also who feel that Canon 35 may be safely relaxed without harm to the dignity of the court or the rights of the accused. One federal judge in North Carolina has recommended that Canon 35 be revised so as to permit individual judges to decide when photography is appropriate. Another federal judge in the State of Washington has permitted pictures to be taken in his courts in non-jury trials in order to better acquaint the public with the processes of justice.

Considerable criticism has been levelled at Canon 35 because of the strict and inflexible construction given to it by some judges. In a few instances the press has been barred from taking pictures in a courtroom of a ceremony which attends the swearing in of a

new United States District Attorney. In other cases judges have forbidden photographers from taking pictures of naturalization proceedings. Still other judges have barred pictures when a prominent member of the bar has addressed a group of citizens on the subject of the Constitution.

In response to the requests of various newspapers and national syndicated press organizations, the United States Court of Appeals and the Federal District Court for the District of Columbia have agreed to relax their rules for the taking of photographs in the courthouses.

Under these revised rules, photographs may be taken in the rooms assigned to the press with consent of the parties to be photographed. Photographs may be taken in the office of the United States Marshal, also with consent of the parties to be photographed. Ceremonial portions of naturalization proceedings may be photographed provided the presiding judge gives his permission. Persons may be photographed in the chambers of judges when the judge concerned gives his consent. By express permission of the Chief Judge of both courts, photographs may be taken of any event other than a trial or hearing in which a judge of a court is presiding.

These modified rules take into consideration the interests of the press and the public in obtaining news under procedures which safeguard the rights of individuals and the maintenance of order and dignity in the courts.

Encouraging experiments such as these have suggested the desirability of "another look" at Rule 35. I understand that a Committee of the American Bar Association presently has the matter under review and will unquestionably give it serious attention.

These are the orderly ways by which changes may be made to accommodate the needs of a free press and a free people. Each abuse of freedom constitutes another setback to it. The cause of freedom of the press--just as any other worthy cause--is won through lawful, orderly, and considered action.

Recall for a moment what happened in Baltimore some years ago. A cameraman of one of the Baltimore papers took a flashlight picture of the defendant as he was walking through the corridor to the courtroom. Immediately thereafter the judge announced from the bench that all pictures were forbidden and demanded that the exposed negatives be surrendered. Instead of turning it over as directed, the photographer slipped the negative into his pocket and handed up a blank plate. The next day the picture appeared in the morning paper.

In the face of the court's direction, another cameraman at the same trial was directed by his editor to proceed with the taking of pictures. This he did by slipping a small camera into the courtroom and while seated at the press table, secretly obtained several exposures. When these pictures were published the offenders and their editor were cited for contempt and fines were imposed. Upon appeal to the Supreme Court of Maryland, the judgments of contempt were upheld.

The newspapers claimed that since neither the court nor the spectators were aware that exposures were being made, there could be no basis for the charge of disturbing the decorum of the court or impairing its dignity. Rejecting this contention, the court held that the authority of a judge to regulate courtroom procedures, including the taking of pictures, did not depend upon whether a disturbance was created,

but was a matter for the sound discretion of the judge in achieving the impartial administration of justice.

A similar case arose more recently in the Ohio State Court. A reporter for the Cleveland Press was in the chambers of a Common Pleas Court awaiting the return of an indictment against a certain defendant for embezzlement. Consistent with Canon 35, the judge told the reporter that he would not permit the taking of photographs in the courtroom or in the chamber of the Court at the time of the arraignment. Nevertheless in defiance of the Court's order, one of the editors of the newspaper directed a picture to be taken of the defendant. Following these instructions, the press photographer took a picture of the arraignment proceedings and delivered the plate to the newspaper for publication. The editor, reporter and press photographer were held in contempt of Court. In defending these newspaper men the attorneys for the Cleveland Press challenged the constitutionality of Canon 35. The Court of Appeals of Ohio overruled this contention and affirmed the judgment of contempt. It said:

> "* * *The right to trial in a courtroom, conducted and maintained in an atmosphere that bespeaks the profound and dignified responsibilities with which those who are conducting its proceedings--dealing with human rights as they must--are charged, is basic. A court in enforcing reasonable courtroom decorum is preserving the constitutional and unalienable right of a litigant to a fair trial, and in preserving such right, the court does not interfere with the freedom of the press. A fearless and untramelled judiciary is a necessary bulwark in protecting liberty under law, and in preserving the rights of the people. * * *"

From this decision of the Ohio Court of Appeals the defendants sought review in the Supreme Court. Last month the Supreme Court denied the petition for certiorari, leaving the decision of the State Court undisturbed.

Thus, under existing decisions and rules of court, there can be little question but that a trial judge has the right to designate the time, the manner, and the number of photographs to be taken during a criminal proceeding. However, the discretion of the trial judge is not unlimited. He may not, for example, exclude the press entirely merely because the crime involved is revolting. Only recently the New York Court of Appeals reversed the conviction of an alleged vice agent because the press and photographers were excluded during the trial.

In excluding the public, including the press, reporters and photographers, the trial court declared that it was deferring to considerations of public decency and morality. The courtroom was only open to the defendant's friends and relatives. The principal question on appeal was whether the trial court had inherent power apart from the statute to exclude the general public. The court was thus called upon to resolve the ever-recurring clash between the interests of public morality and the right of an accused to a public trial.

The Court held that the important right of public trial could not be nullified by the trial judge even where the facts disclosed were of an obscene or indecent character. The Court pointed out that the trial judge may be warranted in excluding the public in a number of situations such as when unsanitary conditions, overcrowding, or disorder exist, or when a witness is emotionally disturbed. It may also bar minors from the courtroom, but considerations which affect the immature mind are not applicable to spectators who are adults. The Court ruled that the requirement of a public trial is not satisfied simply by allowing relatives and friends of the defendant's choosing

to be present. It held that the trial cannot be regarded as public if no member of the press is permitted to attend. Noting that reporting of what goes on in the courts may prove to be a potent force in restraining possible abuse of judicial power, the majority of the court said: "Deplore as we may the bad taste of reporting of that kind (the sensational and vulgar) the courts may not take unto themselves the power to enforce their notions of public decency and morality in the sacrifice of basic rights guaranteed to the defendant by statute."

Here was a case where the presence of the press was held to be a guarantee against persecution of the accused. In other cases, we may find the right of a fair trial prejudiced by the press.

One example will suffice to illustrate this point. A few years ago, a girl was criminally attacked in Florida. Newspapers published as a fact, and attributed the information to the sheriff, that the defendants had confessed. No one, including the sheriff, repudiated the story. The confession was not offered at the trial. In addition, events were reported in huge headlines such as "Night Riders Burn * * * Lake Homes." To cap it all, a cartoon was published at the time the grand jury sat. It pictured four electric chairs and bore the caption, "No Compromise--Supreme Penalty." What chance would any accused have in such a climate of fear, coercion, and public passion? The answer must be obvious. Yet no action was taken by the trial court to vindicate the interests of justice in a fair trial.

Thus you see that the courts are constantly faced with the perplexing problem of how to reconcile freedom of the press with the need

for maintaining the impartial administration of justice. Neither is more important than the other. Freedom of the press depends on free and constitutional institutions such as an uncoerced court and judicial integrity. One of the means of assuring independence to judges is a free press. Both are indispensable for a free society and for its government.

Now what precisely do these principles mean when given a practical application to our daily lives and actions?

Simply this.

The press is free to criticize the work and administration of judges; to keep the triers of the accused alive to their sense of duty and to the importance of their functions; to condemn the court system and seek its reform; to report on matters pending in civil and criminal courts; to inquire whether attorneys are conducting themselves as their Canons of Ethics require.

The sole restriction imposed by the courts has not been upon the exercise of freedom of the press--but against abuse of it. A trial is not a "free-for-all." The press may not impair or subvert the process of impartial and orderly decision either by court or jury. It may not influence or intimidate judge or jury so that the defendants are prejudged as guilty. It may not divest the court of control of the proceedings. Guilt or innocence of the accused must be determined on the basis of the facts testified to in court--not by opinion, rumor, insinuation, suspicion and hearsay outside of court which the accused has no chance to rebut or deny; or which a trial or appellate court has no chance to consider.

In this way, our American courts accommodate one set of principles, with another equally important, so that liberty of the press and justice may continue to stand side by side.

The English courts are far more drastic in their treatment of editors, publishers, writers and photographers who are guilty of creating prejudice against persons before their case is finally heard.

In one case, a news film showed the arrest of a man, subsequently charged with unlawful possession of firearms, with the caption: "Attempt on the King's Life." The arrest had been made after a revolver fell close to the King's horse during a procession in which the King was riding. It was widely feared that an attempt had been made on the King's life. This was held to be contempt of court upon the ground that the picture and caption were likely to bring about "derangement in the carriage of justice."

In another case, an English newspaper was held in contempt for publishing the photograph of a person charged with a criminal offense where the identity of the accused was in question. The Chief Justice said:

> "What does a newspaper do when it prints a photograph in these circumstances? It invites the whole country to scrutinize the features of the accused who has been arrested. That it does that act not in the course of preparation of the case for the prosecution but merely in the course of the conduct of a money-making business does not excuse in a newspaper that which would be

reprehensible in a police officer. * * * In the publication of a photograph no less than in narrative it is the duty of a newspaper to take care to avoid publishing that which is calculated to prejudice a fair trial."

In Cornwall, Ontario, the Chief Justice presiding at a murder trial, criticized newspaper cameramen for taking photographs of the jury after telling them "Now smile, gentlemen." The court was concerned about having juries molested and declared that he would not tolerate such infringements of the dignity of justice.

Although the English press has been subject to closest scrutiny by the courts, it has established a "watchdog" of its own practices. This was done in 1953 to avoid statutory action which might otherwise have invaded the liberty of the press because of the irresponsible acts of a few members. It is composed of 15 editorial and 10 managerial representatives whose chief function it is to disclose and condemn practices which may bring the press into disrepute.

In the United States we have "steered clear" of official censorship wherever and whenever possible. Except during emergency periods such as war, prior restraints upon publications are forbidden. For it was against the tyranny of the licensor that the struggle of the freedom of the press was primarily focused. But the publisher may be subject to subsequent punishment if he abuses his liberty by engaging in acts or other statements contrary to the public welfare. Neither libelous, lewd, obscene or profane pictures, any more than printed words of this character, are protected by the First Amendment.

In several recent cases the Supreme Court has applied the principles of freedom of speech and press to motion pictures. An interesting aspect in these cases was the importance which the court attached to the pictures themselves. Before passing judgment, the court held a private screening of these films and then concluded that they passed muster. One of the reasons that courts have rarely been called on to deal with these cases is because the motion picture industry has established effective voluntary regulation to protect against pictures which may be contrary to public morals. The comic illustrators also are now experimenting with voluntary regulation in order to eliminate its more violent and blood-thirsty features. Many of these illustrators recognize that portrayal of crime with lethal weapons are merely first steps for children in the direction of crime. Many responsible press publishers have exercised similar self-restraint in their publications.

Even during emergency war periods our press has enjoyed relative freedom from restraint. During World War II, and again in the Korean conflict, the press was subject merely to mildest censorship--and then only to the extent that the security and safety of the nation was involved. The test laid down in World War II was a practical one that editors could apply in their daily lives. It was, "Is this information I should like to have if I were an enemy?" Applying this test, press photographers were restricted from taking pictures that would convey knowledge of troop movements, fortifications, camouflaged objects, munition dumps, restricted service bases and the like. But with these few reasonable restrictions, writers and photographers were free to tell the story of battles won and lost--as they did--graphically,

accurately and in the highest traditions of a free press. Who of us will ever forget the memorable picture which was taken as the Marines unfurled the American flag atop Mt. Suribachi on Iwo Jima!

Not only have we successfully kept the press free of censorship, but we have removed obstacles from their path, and instituted action to protect the civil rights of newsmen and press photographers.

The Department of Justice has cooperated with the press in making it easier for press photographers to obtain pictures of Federal prisoners. Previously, overzealous United States marshals would interfere with press photographers by keeping criminals under "wraps" while transporting them from jail to courthouse or back. Early last year, the United States marshals were directed that neither they nor their deputies shall, under any circumstances, interfere with a press photographer taking a photograph on the street or in other places outside of the Federal Courthouse. I trust that this new regulation has made your difficult job just a bit easier.

The Department of Justice is also concerned with protecting the press photographer and other newsmen against unlawful state interference and arbitrary local police action. Last year the Department obtained a conviction of the police chief of Newport, Kentucky, for violating the Civil Rights Act. The defendant was fined $1,000. He had seized the camera of a photographer of the Louisville Courier-Journal, destroyed the films taken during the course of a gambling raid, and then arrested and jailed the photographer. This is believed to be the first civil-rights conviction against unlawful state interference with freedom of the press. The precedent established by this case will make it clear that violation of the press photographer's civil rights will not be tolerated.

I have discussed the growing power of photography in the press and some rules and decisions which have marked out its proper boundaries. Now I should like to say a few words about the duties and responsibilities of the press photographer.

In a Republic, one of the burdens that inevitably attends an increase in power is a corresponding increase in responsibility. The press photographers today have infinite power of communicating facts, ideas and knowledge of all kinds from all parts of the world.

Insofar as their work affects criminal enforcement and the courts, we have a common problem. Our part is to so conduct procedures and protect the press photographers in their proper sphere of activity that the accused will obtain a fair trial. On the other hand, the photographer in the press has been and will continue to be of immeasurable aid to enforcement authorities. Every day his graphic pictures are helping to apprehend criminals at large. Through wide distribution of pictures in the press the FBI has had great success in tracking down its "ten most wanted fugitives." In some cities, such as Los Angeles, flash of the "mug" of a wanted criminal over television stations during a daily morning program has produced notable results in nabbing him.

Just as the press photographer has this great capacity for promoting the worthwhile aims of society, he also has an equal power to impede and obstruct them. For example, improper use of pictures can convert a cowardly "punk" of a young criminal into a glorified hero whose feats other children will soon try to emulate. Just as

constructive treatment through pictures of groups, classes or races may reduce friction and promote good will, improper use of pictures can inflame a mob to hate, to riot, to lynch, or to commit other lawless action. Just as accurate pictures of situations and people here and abroad can facilitate greater understanding and sympathy among the peoples of the world, inaccurate, faked or tampered pictures debasing the truth can be responsible for needless tension, unrest, and conflict.

In every phase of life--political, economic, social, religious, or educational--proper use of photography can be an instrument of good, of unity, of reason, of tolerance, of justice for mankind. I am confident that you will use your great power and freedom wisely and faithfully for the benefit of the people--to whom the freedom of the press belongs.